

UNFPA Submission for UPR of Maldives (2nd Cycle)

I. Background and Framework

A. Scope of international obligations

The Republic of Maldives (Maldives) is party to all core treaties but OP- ICESCR, ICCPR OP2, ICRMW, CRPD OP and CEDAW. Maldives placed reservations on some of the conventions¹. The reservation to Article 16 of CEDAW restricts women's freedom to choose if, when and whom to marry.

B. Constitutional and legislative framework

Maldives established multi-party democracy and the separation of powers with the 2008 Constitution. The second chapter contains most of the rights and freedoms included in the ICESCR and ICCPR, but qualify that no rights can be against the tenets of Islam. This qualification limits rights based on sexual orientation and gender. There are limitations to certain freedoms such as freedom of religion and expression. The Maldivian legal system is based on the Islamic Sharia and common law. Legal reform is ongoing, and key legislation was passed to implement the rights and freedoms in the Constitution. Further capacity building is required to continue progress on democratic reform and to operationalize the Constitution.

C. Institutional and human rights infrastructure and policy measures

The Human Rights Commission of the Maldives (HRCM) established by the Constitution monitors and reviews human rights, and provides recommendations to address violations. The Executive, Legislature and Judiciary are obligated to uphold human rights. The newly established Ministry of Law and Gender, under the auspices of the Attorney General's Office, coordinates the legislative agenda to implement the rights and freedoms guaranteed in the Constitution. Capacity needs to be built to mainstream human rights.

II. Cooperation with Human Rights Mechanisms

A. Cooperation with treaty bodies

The Maldives has submitted reports and will be reviewed by CEDAW in 2015 and CRC in 2016. State submissions to CAT, CESCR, CERD and CRPD are pending and overdue.

B. Cooperation with special procedures

The Maldives has extended a standing invitation to special procedures. The latest visit was in February 2013, by the Special Rapporteur on the independence of judges and lawyers.

C. Cooperation with the Office of the High Commissioner for Human Rights

The Human Rights Adviser deployed within the UN Country Team between November 2012 and September 2014 has cooperated with the government, civil society and the HRCM on issues

¹ Article 18 (para 1 and 2) of ICCPR and article 16 (para 1 b, c and d) of CEDAW.

related to international human rights mechanisms and incorporation of international human rights standards in key legislation and policies.

III. Implementation of International Human Rights Obligations

A. Equality and non-discrimination

Sexual orientation and gender identity

Homosexuality in Maldives is a criminal offence², and non-heterosexual orientation or gender identity leads to discrimination by state institutions and stigmatization by the general public. Public declaration of homosexuality and sex out of wedlock is an offense according to the Sexual Offenses Act.

Stereotypes of homosexual men are often portrayed in the media as effeminate and objects of ridicule. The public sector family planning programme including condoms is couple based.

Individuals suspected or perceived as homosexuals or transgender face intimidation and overt threats. There have been incidents of violence and assault, including the 2012 case where a journalist, LGBT rights advocate and former Amnesty Prisoner of Conscience Hilath Rasheed was almost killed with a knife³. Subsequently he fled the country to avoid further attacks. In June 2014, a homosexual Maldivian who was granted asylum in New Zealand made headlines as a transvestite that spurred heated debate in mainstream and social media, including calls for violence. The President's Office stated that such individuals would be persecuted according to the country's laws on return to the Maldives⁴. The unsafe environment for LGBT persons is exacerbated by increasing intolerance and religious conservatism.

Recommendations

- Decriminalize homosexuality and non-mainstream gender orientations.
- Ensure protection from human rights violations based on sexual orientation and gender identity, including through law reform to prevent hate crimes, as well as sensitization of judiciary, policy, health and other service providers.

B. Right to life, liberty and security of the person

Gender based violence

Research⁵ show 1 in 3 women between the ages 15 and 45 reported physical or sexual violence at least once in their lives. 1 in 5 women are abused by their intimate partner.

Maldives has progressed through enactment of the Domestic Violence Prevention Act in 2012, which the Family Protection Authority was established to oversee. The Sexual Harassment

² Maldivian Penal Code 2014, Chapter 410, Article 411

³ http://www.haveeru.com.mv/ismail_hilath_rasheed/42514, 6 June 2012

⁴ <http://minivannews.com/politics/maldivian-asylum-seekers-assured-of-prosecution-upon-return-says-presidents-office-86360>, 3 June 2014

⁵ The Maldives study on Women's Health and Life Experiences, Ministry of Gender and Family, 2007

Prevention Act and Sexual Offences Act, which criminalizes marital rape, were passed in 2014. The Government created awareness on gender based violence and the Domestic Violence Prevention Act, through outreach in cooperation with civil society. The 16 days of activism against violence against women is marked each year by the Government, with support from media organizations.

A shelter was established in Male' for survivors of violence and abuse, however it is used to house other vulnerable populations as well. Four safe homes were established in the islands. There are no programmes for rehabilitation of perpetrators of violence and staff working in the shelter and safe houses lack adequate training and skills.

Recommendations

- Institutionalize systematic training and capacity building to prevent, respond and monitor gender based violence through health, judiciary, police and social services
- Ensure resources in the justice system to investigate violence cases, punish perpetrators, provide for remedies and guarantees of non-repetition
- Provide adequate resources to Family Protection Agency to coordinate a cross sector response and hold relevant institutions accountable for implementation of the law.

D. Right to privacy, marriage and family life

Family Planning

Unmet need for family planning is 28% among the married population⁶ and there is social condemnation and criminalization of out of wedlock pregnancy. The criminalization includes underage girls falling pregnant as a result of abuse and lead to expulsion from school.

There have been media reports of infanticide⁷. Police recorded 8 infanticides in 2012 and 10 in 2013. There is evidence of risky illegal abortions, in some cases causing death of women⁸. Between 2009 and 2012 the cause of two out of the 19 maternal deaths was unsafe abortions⁹. 9 out of 14 maternal deaths during 2003 to 2007 were related to unwanted pregnancies.

Family planning outreach efforts are inconsistently implemented by the health service providers leaving gaps. There is no mechanism to systematically update skills of the providers.

Recommendations

⁶ Ministry of Health (MOH), 2010, Maldives Demographic and Health Survey 2009

⁷ <http://minivannews.com/politics/baby-girl-found-concealed-in-a-bag-pronounced-dead-85591> ,
<http://minivannews.com/society/couple-charged-with-murder-after-allegedly-aborting-burying-five-month-old-foetus-57398>

⁸ MOH, 2011, Synopsis of Maternal Deaths of the Year 2010

⁹ MOH, 2008, Maternal Death Synthesis Report 2003 to 2007

- Ministry of Health to promote family planning and contraception through public health outreach and other means as a basic social service and a human right to enjoy a safe and responsible sexuality, including timing, number and spacing of their children.
- Ministry of Health to remove institutional barriers for contraceptive provisions such as removing condoms from Schedule 3¹⁰ drugs list.
- Promote choice between a broader range of contraceptive methods, especially for remote islands, including short term and long term methods, barrier methods and emergency contraception.

Investigate and address barriers for access to family planning, in particular those experienced by adolescents and youth, unmarried women and marginalized and excluded population groups such as persons with disabilities, LGBT, sex workers, etc.

Marriages under 18 years

The minimum age of marriage in Maldives is 18, however there is a stipulation in law that allows children under age of 18 to be married at the discretion of the Judge or Magistrate¹¹. In 2012 there were 35 registered marriages involving children¹². The median age of first marriage as per the most recent Demographic and Health Survey¹³ remains at 19 years.

In recent years there has been an increase of out of court marriages¹⁴, particularly in religious conservative contexts. Children born from those unions are considered “illegitimate” and deprived of legally using the father’s name or inheriting property from the father, in accordance with Maldivian interpretation of Sharia Law. The Family Court announced in April 2014 that out of court marriages would not be registered¹⁵, none the less the practice continues.

Recommendations

- Remove exceptions to the minimum age for marriage in Family Law
- Sensitize communities on disadvantages related to early marriage
- Engage religious institutions to prevent under age and out of Court marriages
- Ensure equal rights for children, including inheritance, regardless of and parents marital status

I. Right to health

Youth and Adolescent Sexual health

¹⁰ Schedule 3 drugs are only available with a medical prescription

¹¹ Family Law, 2000, Article 4(b)

¹² Statistical Year Book 2013

¹³ MOH, 2010, Maldives Demographic and Health Survey 2009

¹⁴ http://www.haveeru.com.mv/dhivehi/family_court/153492, (This link leads to an article in Divehi, suggest to include the English version – if available – or to remove the link).

¹⁵ <http://minivannews.com/politics/fatwas-against-registering-marriages-a-huge-challenge-family-court-chief-judge-83630>, 27 April 2014

The government developed a multi-sectoral Youth Health Strategy, but it is pending endorsement.

Youth lack access to comprehensive sexuality education both inside and outside formal school system, especially outside of the capital. In small communities young people and adolescents face privacy issues in accessing sexuality and health information. Services are often not served by staff trained to attend youth, and hours of availability are inconvenient for youth. The incorporation of life skills education into the new school curriculum to be rolled out in 2015 is a positive development.

The Global School Health Survey reported that 16% of girls and 17% of boys have experienced sexual abuse. Studies¹⁶ have shown that youth and adolescents increasingly engage in high risk behaviours such as unprotected sex, drug use and unsafe abortions.

While there are no data on prevalence of female genital mutilation, in 2014 a leading religious scholar and Vice President of Figh Academy called for female genital mutilation¹⁷ and the former Vice President Dr. Waheed expressed concern about female genital mutilation¹⁸.

Recommendations

- Incorporate comprehensive sexuality education in the new curriculum and strengthen capacity of schools to deliver and monitor implementation
- Government to develop a mechanism to reach out of school children through social media, civil society or sports organization
- Continue to inform about the implications of female genital mutilation, including as a violation of women's right to physical integrity, health and security. Establish explicit legal protection in law against female genital mutilation.
- Ensure the services and protections contained in the Youth Health Strategy are initiated and implemented in a coordinated manner.

¹⁶ MOH, 2010, Maldives Demographic and Health Survey 2009; UNFPA, 2013, Reproductive Health Knowledge and Behaviour of Young Unmarried Women in the Maldives; MOE, 2009, Global School-based Student Health Survey Maldives Country Report

¹⁷ <http://minivannews.com/politics/figh-academy-vp-endorses-female-genital-mutilation-77037>, 6 February 2014

¹⁸ <http://minivannews.com/politics/reported-increase-in-practice-of-female-circumcision-raises-alarm-27670>, 30 October 2011