



International Covenant on Civil and Political Rights

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Human Rights Committee

Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding observations adopted by the Human Rights Committee at
its 105th session, 9-27 July 2012

Maldives

1. The Committee considered the initial periodic report submitted by the Maldives (CCPR/C/MDV/1) at its 2900th and 2901st and 2902nd meetings (CCPR/C/SR.2900, 2901 and 2902), held on 12 and 13 July 2012. At its meeting (CCPR/C/SR.), held on 25 July 2012, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of the Maldives (CCPR/C/MDV/1) (together with its core document (HRI/CORE/MDV/2010), and the information presented therein, as well as the written replies to the Committee's list of issues (CCPR/C/MDV/Q/1/Add.1) and the oral replies provided by the delegation to questions put forward by Committee members. The Committee regrets that the initial periodic report of the State party was not written according to the reporting guidelines of the Committee and the harmonized guidelines on reporting under international human rights treaties, and encourages the State party to do so for the submission of its future periodic reports. It expresses its appreciation for the constructive dialogue with the State party's delegation on the measures that the State party has taken to implement the provisions of the Covenant since its ratification.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional measures taken by the State:

- (a) The adoption, in 2008, of a Constitution which contains a Bill of Rights ;
- (b) The removal by the Parliament, in 2008, of the gender bar on running for presidency;
- (c) the enactment of the Anti-Domestic Violence Act, in April 2012;

4. The Committee welcomes the ratification by the State party of the following international instruments:

- (a) The International Covenant on Economic, Social and Cultural Rights, on 19 September 2006;
- (b) The Optional protocol to the International Covenant on Civil and Political Rights, on 19 September 2006;
- (c) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 13 March 2006;
- (d) The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment, on 20 April 2004;
- (e) The Optional Protocol to the Convention against Torture, on 15 February 2006;
- (f) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 10 May 2002;
- (g) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 29 December 2004;
- (h) The Convention on the Rights of Persons with Disabilities, on 5 April 2010.

C. Principal matters of concern and recommendations

5. The Committee considers the State party's reservation to article 18 of the Covenant to be incompatible with the object and purpose of the Covenant (general comments No. 22 (1993) on the right to freedom of thought, conscience and religion, and No. 24 (1994) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant) because: (a) it applies unrestrictedly to all the provisions of article 18 of the Covenant, including the right to have or adopt a religion, which right may not be subject to restriction; (b) moreover, the reservation is not specific, and does not make clear what obligations of human rights compliance the State party has or has not undertaken (general comment No. 24 (1994), para. 19).

The State party should withdraw its reservation to article 18 of the Covenant.

6. While noting that the State party, in 2008, adopted a Constitution which includes a Human Rights Chapter, the Committee is concerned that the provisions of article 16 (b) of the Constitution provides that "the limitation of a right or a freedom specified in this Chapter by a law enacted by the People's Majlis as provided in the Constitution, and in order to protect and maintain the tenets of Islam, shall not be contrary to article (a)" impedes the application of the Covenant in the domestic legal order of the State party. It is also concerned that very few cases are known where the provisions of the Covenant have been directly invoked before the courts (art. 2).

The State party should take all measures to give full and unimpeded effect to the provisions of the Covenant in its domestic legal order and ensure that the provisions of article 16 (b) of the Constitution are not invoked to justify the failure by the State party to fulfil its obligations under the Covenant. . The State party should also undertake efforts aimed at, inter alia, training its judges, magistrates, prosecutors and lawyers on the provisions of the Covenant and by conducting awareness-raising campaigns for the population on the rights protected by the Covenant.

7. The Committee is concerned at legislation which provides that all members of the national human rights institution, the Human Rights Commission of the Maldives, must be Muslim. The Committee is also concerned at the narrow mandate of the Commission which prevents it from promoting all fundamental human rights and freedoms (art.2).

The State party should remove the legal requirement which prevents non-Muslims from being appointed as members of the Human Rights Commission of the Maldives and consider expanding its mandate to promote all human rights and freedoms, in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) .

8. The Committee is concerned that the State party is not fully respecting the rights of non-discrimination and privacy. In particular, it is concerned about discrimination against people on the basis of their sexual orientation as well as the social stigmatization and social exclusion of these groups. While the Committee observes the diversity of morality and cultures internationally, it recalls that they must always be subject to the principles of universality of human rights and non-discrimination (general comment No. 34 (2011) on article 19 (freedom of opinion and expression), para. 32). Accordingly, the State party has the duty to protect the individual's liberty and privacy, including in the context of same sex sexual activities among consenting adults (arts. 2, 17 and 26).

The State party should decriminalize sexual relations between consenting adults of the same sex. It should also combat the stigmatization and marginalization of homosexuals in society. The State party should accelerate the enactment of the Anti-Discrimination legislation which is currently under consideration by the Parliament, and ensure it includes a prohibition of discrimination on the basis on sexual orientation.

9. The Committee is concerned at article 9 (d) of the Constitution according to which a non-Muslim may not become a citizen of the Maldives (arts. 2, 18 and 26).

The State party should revise its Constitution to ensure that religion is not a basis for citizenship.

10. The Committee, while welcoming the efforts made by the State party to facilitate the participation of women in public and political life, including in the Judiciary, is concerned at the continuing de facto gender-discrimination which results, inter alia, in the underrepresentation of women in political and public affairs and prevents women from fully enjoying these rights (arts. 2, 3 and 25).

The State party should strengthen its efforts to facilitate the participation of women in political and public affairs, including by taking temporary special measures and conducting awareness-campaigns to further increase the participation of women in public and political affairs. The State party should adopt strategies to combat stereotypes on the role of women, including by sensitizing its population on the need to ensure the enjoyment by women of their rights.

11. The Committee, while noting the adoption of the Domestic Violence Act in April 2012, is concerned at the persistence of domestic violence, in particular violence against women and girls, in the State party. The Committee is also concerned at the low rate of complaints lodged for domestic violence, and at the lack of effective mechanisms of protection and rehabilitation for victims (art. 2, 3 and 7).

The State party should take the necessary measures to implement fully the Domestic Violence Act. It should facilitate complaints from victims without fear of reprisals, intimidation or exclusion by the community; investigate, prosecute and punish those responsible with appropriate penalties; and provide compensation to victims. The State party should further establish a proper mechanism of protection, including by

setting up shelters and by providing psychological rehabilitation and conduct awareness-raising campaigns on the negative impacts of domestic violence.

12. The Committee is concerned that women in the Maldives continue to be discriminated against in the State party with regard to inheritance (arts. 2, 3, 23 and 26).

The State party should guarantee equality between men and women in matters relating to family law, in particular by ensuring, de jure and de facto, the right of women to inherit property on an equal footing with men.

13. The Committee, while noting that the State party has adopted a moratorium on the death penalty, observes that the State party has not yet abolished the death penalty. The Committee is concerned about a draft amendment to Section 21 of the Clemency and Pardoning Act under consideration before the Parliament, aimed at obliging the Supreme Court to uphold sentences of death for certain crimes and which would prevent the President from granting clemency, as provided in article 115 of the Constitution (art. 6).

The State party should consider abolishing the death penalty and ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights. It should remove mandatory death penalties from its statutes.

14. The Committee is concerned at reported cases of torture in some police stations in the State party. It is also concerned at reported cases of torture and ill-treatment by Police and National Defence Forces that occurred in the State party prior to 2008 which have not all been investigated. The Committee is further concerned at information according to which human rights violations, including torture, were committed by the Police during the arrest and detention of protestors in the course of the demonstrations of 8 February 2012, in Male' and Addu cities (art. 7).

The State party should take steps to combat torture and ill-treatment in its all forms and prohibit it in its legislation. The State party should consider setting up an independent commission of inquiry to investigate all human rights violations, including torture that took place in the State party prior to 2008 and provide compensation to the victims. The Committee should further investigate all allegations of torture that took place at the time of the demonstrations of 8 February 2012, in Malé and Addu, prosecute those responsible, and provide compensation and rehabilitation to the victims. The State party should implement the findings of the Commission of Inquiry set up to investigate events that took place during the political transition period.

15. The Committee is concerned at the composition of the Police Integrity Commission, which hampers its independence. The Committee is also concerned at the low number of cases relating to torture and ill-treatment received by the Commission as well as at the low number of police officers sanctioned (arts. 7 and 14).

The State party should review the composition of the Police Integrity Commission to ensure that its independence is guaranteed. The State party should also ensure that complaints lodged by alleged victims of torture or ill-treatment are thoroughly and impartially investigated and that those responsible are prosecuted and punished with appropriate penalties.

16. The Committee is concerned at reported cases of corporal punishment of children in schools. The Committee is also concerned that flogging can be administered to persons for certain offences prescribed by the Sharia law (art. 7).

The State should abolish flogging. It should also explicitly prohibit corporal punishment in all institutional settings.

17. The Committee is concerned at reports relating to trafficking in migrants from neighbouring countries for labour and sexual exploitation purposes. While noting that trafficking is prohibited by article 25 (a) of the Constitution, the Committee is concerned that no legislation has yet been enacted by the State party to prevent and protect against trafficking in persons. The Committee is further concerned at the lack of statistical data on the number of trafficked persons, the investigations conducted, the number of prosecutions and convictions, and the protective measures put in place, as well as the absence of a strategy to combat trafficking (art.8).

The State party should:

- (a) Conduct a study on the root causes of trafficking and provide statistical data on those trafficked;**
- (b) Speed up the adoption of the Bill prohibiting and punishing all forms of trafficking in persons and implement it;**
- (c) Investigate incidences of trafficking and prosecute those responsible;**
- (d) Provide protective measures, in particular shelters, as well as rehabilitation and compensation to victims;**
- (e) Adopt a National Plan of Action on Trafficking in persons.**

18. The Committee is concerned that suspects may be detained by the Police or National Defence Forces for a period exceeding 48 hours without appearing before a judge and without charge. The Committee is also concerned at reports that suspects do not always benefit from legal assistance (art. 9).

The State party should provide legal guarantees to suspects detained by the Police, or National Defence Forces, whereby that they are brought before a judge who should decide on the lawfulness of their detention and/or its extension, within 48 hours. In adopting its Legal Aid Act, the State party should also ensure that free legal assistance is provided in any cases where the interest of justice so requires.

19. The Committee is concerned at poor conditions of detention, as well as the high rate of overcrowding in some prisons. The Committee is further concerned at the lack of a complaint mechanism for inmates regarding their conditions of detention or ill-treatment (art. 10).

The State party should strengthen its efforts to improve prison conditions, including by adopting a national strategy. In particular, the State party should reduce the high rate of overcrowding in its prisons, including by shortening the period of pretrial detention and by using alternative measures to the deprivation of liberty. The State party should establish a complaint mechanism for inmates with regard to their conditions of detention.

20. The Committee is concerned at the fact that the composition and the functioning of the Judicial Service Commission (JSC) seriously compromise the realization of measures to ensure the independence of the Judiciary as well as its impartiality and integrity. The Committee is also concerned that such a situation undermines the judicial protection of human rights and fundamental freedoms in the State party (arts. 2, para. 3, and 14).

The State party should take effective measures to reform the composition and the functioning of the Judicial Service Commission (JSC). It should also guarantee its independence and facilitate the impartiality and integrity of the Judiciary, so as to effectively protect human rights through the judicial process.

21. The Committee is concerned at the lack of effective protection against non-refoulement (art. 7 and 13).

The State party should adopt legislation to ensure respect for the principle of non-refoulement especially when persons risk being subjected to torture or other cruel, inhuman and degrading treatment or punishment or other serious human rights violations in their country of return.

22. The Committee is concerned at alleged frequent attempts at interference and obstruction of the media in the State party. In particular, the Committee is concerned at reports that journalists are subjected to intimidation and harassment, and that some journalists have been detained, beaten and subjected to other forms of violence, including during protests which occurred in the State party in 2012 (art. 19).

In light of its general comment No. 34 (2011), the State party should fully guarantee the right to freedom of expression in all its forms. The State party should also avoid any kind of illegal interference in the media, including by refraining from the use of force against journalists. It should further protect journalists and media against any form of violence and censorship. Moreover, the State party should investigate incidents of attacks on journalists and media, and bring those responsible to justice.

23. The Committee, while noting that article 32 of the Constitution guarantees the right of peaceful assembly for everyone and without prior permission, is concerned that the “Regulation concerning Assembly”, requires at least three persons representing the organizers of public assemblies to submit a written form fourteen days in advance. It is particularly concerned at reported cases of excessive use of force by the Police and the National Defence Forces during demonstrations, including during those which took place from 16 January to 6 February 2012 (art. 21).

The State party should fully guarantee the right to freedom of assembly in compliance with the Covenant and revise its legislation accordingly. It should adopt procedures and regulations in compliance with human rights standards for the police in controlling large crowds of protestors. It should investigate incidents which occurred in the State party, in particular during the 2012 demonstrations, and prosecute and bring Police and Defence Forces officers responsible to justice.

24. The Committee is concerned at the fact that non-Muslims can only practise their religion in private and do not have public places of worship. It is also concerned that it is prohibited for Maldivian citizens to adopt a religion other than Islam (arts. 2 and 18).

The State party should revise its legislation to authorize non-Muslims to practice and manifest their religion, including in places of public worship. The State party should abolish the crime of apostasy in its legislation and allow Maldivians to fully enjoy their freedom of religion.

25. The Committee notes the legal and political circumstances which resulted in the resignation of the former President of the Maldives, on 7 February 2012, and the transfer of power to the new President (arts. 2, para. 1, and 25).

The State party should:

(a) **Ensure that the rights contained in article 25 of the Covenant, which lies at the core of democratic government based on the consent of the people (general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service), are fully protected;**

(b) **Take steps to ensure that the Commission of Inquiry set up to investigating the circumstances surrounding the transfer of power, in February 2012, can carry out its functions in conditions guaranteeing its complete independence and impartiality.**

26. The Committee is concerned at information before the Committee that some individuals who have provided information to the Committee for the consideration of the State party's initial report have been subject to threats and intimidation as a result of submitting such reports.

The State party, as a matter of urgency, should take all necessary steps to protect individuals who have provided information to the Committee. The State party should inform the Committee on measures taken in this regard.

27. The State party should widely disseminate the Covenant, the Optional Protocol to the Covenant, the text of the initial report and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee requests the State party, when preparing its periodic report, to broadly consult with civil society and non-governmental organizations.

28. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 5, 20, 25 and 26 above.

29. The Committee requests the State party, in its periodic report, due to be submitted by 27 July 2015, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.
