

SHADOW REPORT

On the

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

In response to the Maldives Initial State Report

June 2012



Human Rights Commission of the Maldives

Acronyms

APF:	Asia-Pacific Forum of National Human Rights Institutions
CAT:	Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment
CCPR:	Committee on Civil and Political Rights
DIE:	Department of Immigration and Emigration
DPRS:	Department of Penitentiary and Rehabilitation Services
DRP:	Dhivehi Rayyithunge Party
FCPD:	Family and Child Protection Department
FCSC:	Family and Children Service Centre
GER:	Gross Enrolment Rate
HPSN:	Home for People with Special Needs
HRCM:	Human Rights Commission of the Maldives
ICC:	International Co-ordination Committee of National Human Rights Institutions
ICCPR:	International Covenant on Civil and Political Rights
ICJ:	International Commission of Jurists
ICPED:	International Convention for the Protection of All Persons from Enforced Disappearance
ICPRMWF:	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ID:	Identification cards
IGMH:	Indra Gandhi Memorial Hospital
ILO:	International Labour Organization
JJU:	Juvenile Justice Unit
JSC:	Judicial Services Commission
LRA:	Labour Relations Authority

MBC:	Maldives Broadcasting Corporation
MDGs:	Millennium Development Goals
MDHS:	The Maldives Demographic Health Survey
MDP:	Maldivian Democratic Party
MJA:	Maldives Journalist Association
MMC:	Maldives Media Council
MMR:	Maternal Mortality Ratio
MNBC:	Maldives National Broadcasting Corporation
MNDF:	Maldives National Defence Force
MoE:	Ministry of Education
MoGFHR:	Ministry of Gender, Family and Human Rights as of 2012
MoH:	Ministry of Health and Family
MPS:	Maldives Police Service
MRF:	Maldivian Rufiyaa
NER:	Net Enrolment Rate
NPM:	National Preventive Mechanism
NPM:	National Preventive Mechanism
OPCAT:	Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment
PGO:	Prosecutor General's Office
PIC:	Police Integrity Commission
RTI:	Right to Information
SEN:	Special Education Needs
TEAM:	Tourism Employees Association of the Maldives
TIP:	Trafficking in Persons Report

TVM:	Television Maldives
UDHR:	Universal Declaration of Human Rights
UNDP:	United Nations Development Program
UPR:	Universal Periodic Review
VAW:	Violence against Women
VOM:	Voice of Maldives
VTV:	Vila Television
WHO:	World Health Organisation

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Introduction

1. The Human Rights Commission of the Maldives (HRCM) was first established under Presidential Decree on December 10, 2003. On August 18, 2005, the Human Rights Commission Act was ratified, thereby making the HRCM the first independent and autonomous statutory body in the Maldives. The amendments brought to the Human Rights Commission Act in August 2006 broadened the mandate and powers of the HRCM, making it compliant with the Paris Principles. With the ratification of the Constitution in August 2008, the HRCM was made an independent and autonomous constitutional body.
2. The HRCM currently holds 'B' status accreditation with the International Co-ordination Committee of National Human Rights Institutions (ICC) and is an Associate Member of the Asia-Pacific Forum of National Human Rights Institutions (APF).
3. In December 2007, the HRCM was designated as the National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (OPCAT).
4. The new Constitution ratified in 2008 includes provisions for the separation of powers comprising the Legislature (composed of elected Representatives of the people), the Executive (composed of President, Vice- President and Cabinet members) and the Judiciary (composed of Supreme Court, High Court and lower courts). Additionally the Constitution also includes provisions for establishment of Independent Institutions to increase accountability and transparency of the government.
5. The first multi party presidential election and the parliamentary elections were held in 2008, and 2009 respectively. The political instability that resulted from the unconstitutional arrest of the Chief Judge of Criminal Court (January 16, 2012) by MNDF on accusations of ethical issues was followed by a series of demonstrations calling for his release and to uphold the rule of law, which led to further political unrest leading to the resignation of President Mohamed Nasheed on February 7, 2012 and subsequently Vice President Mohamed Waheed Hassan Manik was sworn in as the President. The human rights concerns pertaining to the arrest was communicated to the UN Special Procedures and the relevant UN Committees by HRCM.
6. After the change of power on February 8, 2012, the President declared that he was forced to resign, thus triggering a series of demonstrations and protests alleging the change of power to be the result of a coup d'état. These protests calling for an early election sometimes resulted in violent crackdown by the police. These allegations led the current government to set up a National Inquiry Commission (NIC) to investigate the change of power.
7. The HRCM is pleased to present its first Shadow Report on the International Covenant on Civil and Political Rights (ICCPR). This submission to the Human Rights Committee has been

prepared by the Human Rights Commission of the Maldives (HRCM), with regard to the International Covenant on Civil and Political Rights (ICCPR) which the Maldives is party to since its ratification in 2006.

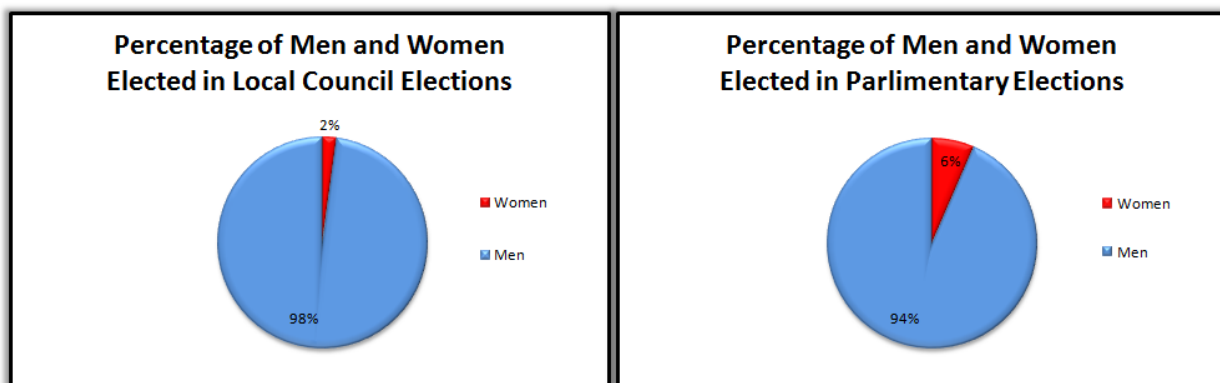
8. This report is the Parallel/Shadow Report compiled to the Periodic State Report submitted by the Maldivian Government last year. To prepare this report, HRCM consulted with relevant stakeholders, including the government authorities, institutions and civil society organizations in addition to the review of in-house monitoring data and complaints received concerning civil and political rights.

Article 3: Equal Rights of Men and Women

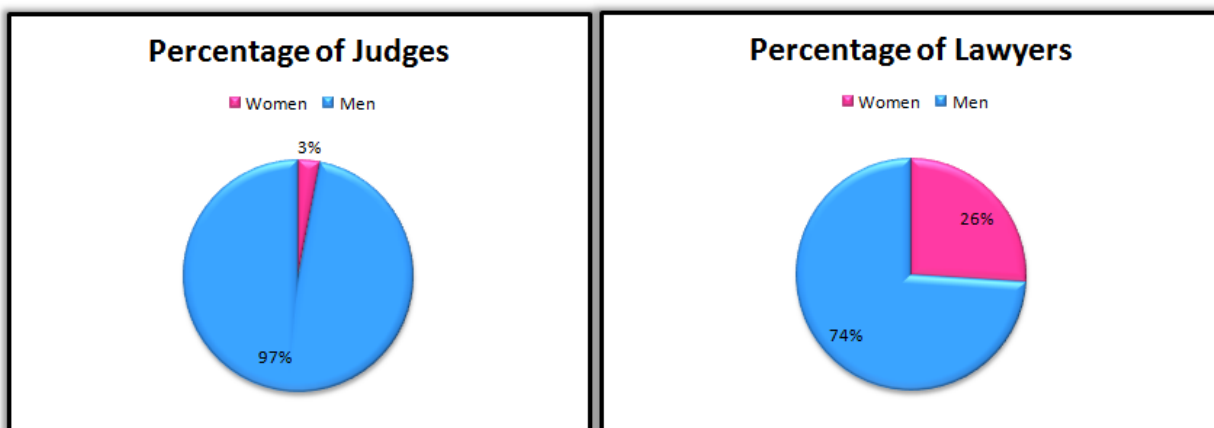
Existence of Gender Imparity in running for Public Offices

9. Chapter two of the present Constitution on Fundamental Rights and Freedoms, guarantees equal rights, opportunities and freedoms to all persons in the State. Article 17 (a) of Constitution stipulates that everyone is entitled to rights and freedoms without discrimination of any kind; including race, national origin, colour, sex, age, mental or physical disabilities, political or other opinions or native island. Moreover, according to Article 17 (b) of the Constitution special assistance or protection to disadvantaged individuals or groups or to groups requiring special social assistance as guaranteed by law shall not be deemed as discrimination specified in clause 17(a). Article 20 of the Constitution further upholds the principles of non-discrimination and equality before and under the law and it also provides equal protection and equal benefit of the law to all persons. Additionally, the present Constitution has removed the gender bar in running for Presidency of Maldives. Subsequently, on March 13, 2010, Maldives has withdrawn its reservation made to Article 7(a) of the Convention on the Elimination of Discrimination against Women. As part of the initiative taken by the government to mainstream gender equality, a gender mainstreaming policy was formulated and endorsed by the government in 2009. In addition, the government has assigned gender focal points in all the ministries with the task of promoting gender perspective in all work undertaken by the respective ministries. A general observation is that, regardless of the government in administration, productive efforts are always made to formulate gender related policies promoting affirmative action but constructive efforts for the implementation of such policies unfortunately remain inadequate. Thus, it would be worthwhile to undertake a comprehensive review as to ascertain the reasons for such slow progress in implementation.

10. Maldivian women remain underrepresented in both public and political life. The representation of Maldivian women in the Parliament is 6 percent and in the Local Councils 2 percent. Hindrance to women’s engagement in politics results from limited prospects for political participation and understanding of democracy, limited experience in the political arena, lack of family and societal support, inadequate access to financial means and radical campaigns against participation of women in politics, public and professional life. The increase in religious conservatism restricts women’s leadership roles along with their mobility while further perpetuating patriarchy. For these reasons there seems to be limited experience and low political commitment amongst women. At the institutional level the disaggregated data and gender focused research undertaken are insufficient.



Source: *Statistical Report on Local Council Election -2011, Elections Commission and Women in Public life in the Maldives, Situational Analysis, UNDP Maldives.*



Source: <http://jsc.gov.mv/jlist/index.html>, Judicial Service Commission
 Source: <http://agoffice.gov.mv/pdf/lawyers/lawyersSep08.pdf>, Attorney General’s Office

11. So far the State has fallen short to provide adequate measures to overcome challenges faced by women towards realizing the rights in running for public offices. Positive

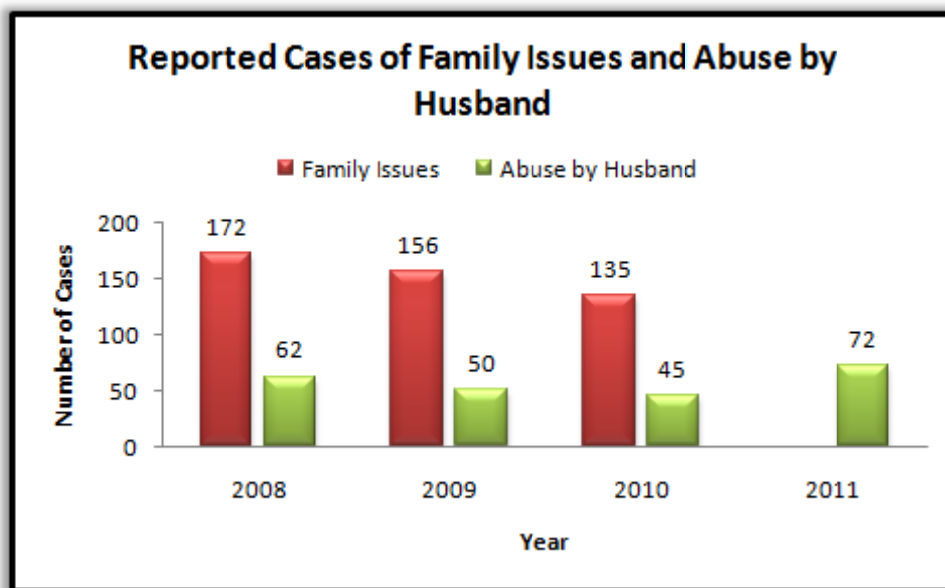
campaigns encouraging women to get involved in politics and running for public offices are limited. Likewise, Maldivians lack adequate family and societal support thereby creating unsupportive working conditions for women. Maldives has so far failed to establish child care centres that would support working mothers, and has not introduced legislative quotas and programs to ensure equal representation for women to accommodate a comprehensive approach towards addressing the issue of advancement for women's rights.

- 12. The State should introduce legislative quotas and create awareness programs targeting all spheres of society with regard to women's equal participation in politics. It should also facilitate forums and dissemination of information to empower women running for public offices. In addition, the State should create an adequate financial and institutional support system for all working mothers, including those running for public offices.**

Prevalence of Violence against Women (VAW)

13. Violence against women continues to occur at a significant level in Maldives. In April, 2012, Maldives ratified the Domestic Violence Act which is an outstanding milestone achieved to overcome violence against women. Article 2 of the Act, states that the objectives of the law is to declare all acts of domestic violence as punishable crimes, giving protection to victims of domestic violence and providing due justice in a timely manner that is of least financial burden to victims of domestic violence. Physical abuse, sexual abuse, verbal and psychological abuse, financial or economic restrictions, deliberate impregnation despite medical advice or , deliberate impregnation to restrict freedom from seeking divorce in an abusive marriage, deliberately withholding property of the victim, intimidation, harassment and stalking are some of the offences punishable under the Act.
14. In 2006, the study on Women's Health and Life Experiences¹, recorded that every one in three women between the ages of 15 and 49 years reported some form of physical or sexual violence at least once in their lives². The study also revealed that one in five women between the ages of 15 and 49 years reported physical or sexual violence by a partner, and one in nine reported experiencing severe violence. The same study identifies that one in six women in the capital Male', and one in eight women within the nation reported experiencing childhood sexual abuse under the age of 15 years. Of those women between the ages of 15 and 49 years who had been pregnant, 6 percent reported subjected to physical or sexual abuse during pregnancy. The survey further reported that many respondents' perceived women to be subordinate to men, and that men used religion to justify restrictions and actions pertaining to VAW.

15. The following table by the Maldives Police Service (MPS) summarizes reported cases in number with regard to VAW from 2008 to 2010.³



Source: Statistical Report 2010 Maldives Police Service & Maldives Police Service

Year	Forced Sexual Misconduct		Rape	
	Filed	Concluded	Filed	Concluded
2008	8	5		
2009	47	27	0	1
2010	35	23		

Source: Department of Judicial Administration, Justice Sector

16. The Study on *Women’s health and life experiences* also identified that “approximately 10 percent of women reported that their first sexual experience was either coerced or forced and the younger the girl at first sexual encounter, the more likely it was that sex was forced.” In recent years, the media reports relating to gang rape has been on the increase. HRCM in the year 2010 took the initiative to discuss this issue with all the relevant stakeholders. The deliberations from these meetings highlighted legislative gaps in the legislations such as inadequate Evidence Act. It was also highlighted that the issue of defining consent in cases of rape was impeding justice to victims of rape. HRCM’s proposition highlighted the importance of formulating an operative definition on rape as the current Penal Code⁴ does not classify it as a separate offence. Other issues deliberated include the need to create awareness among the general public, importance of improving the medico-legal documentation, initiating a program on creating a profiling sexual

offenders and the establishment of multi-sectoral mechanism amongst the relevant stakeholders to address the issue.

17. According to the Penal Code, in the absence of a confession a person can only be convicted of rape, if there were two male or four female witnesses to the act. The factors contributing to the low conviction rate of offenders of sexual assault or rape include absence of Evidence Act, lack of provisions (fear of reprisals by abusers) on witness protections, finding witnesses (two male or equivalent women), and lack of awareness among public on the topic. Often times, victims are unaware of measures that need to be taken after they have been victims of such crimes. For example, most victims lack information that they should seek medical attention before any evidence is depleted, and refrain from washing themselves or taking showers before they do so. In addition, lack of national guideline on medico-legal documentation, failures in implementation of existing laws and procedures leading to re-victimization of the victim and also fear of intimidation and of being stigmatized by the community are factors that account for lower convictions of sexual offenders.
18. Despite the fact that Domestic Violence Act (3/2012) was a major breakthrough in prevention and protecting victims of abuse, the country is yet to experience positive progress in providing justice and protection to victims of violence. The government stakeholders need to disseminate and raise awareness of the Domestic Violence Act to the general public, especially to women population. There have been attempts to downplay the importance of prevention of domestic violence by some scholars on religious grounds with the enactment of Domestic Violence Act.
19. Maldives lack a proper rehabilitation system that could help victims of violence in providing psychological and rehabilitation support: Department of Gender and Family [now Ministry of Gender, Family and Human Rights as of 2012 (MoGFHR)] has been working to establish a safe house or temporary shelter for victims of domestic violence since 2007. Till date there is no such facility established, by MoGFHR. However, they do accommodate some of the victims in one way or another within the existing institutions e.g. FCPD.
- 20. State needs to undertake all measures to address the issues of Violence Against Women (VAW) as in the newly enacted Domestic Violence Act. It is important to establish a mechanism to provide justice, protection and rehabilitation to victims of violence, in order to fulfil State's obligation to protect victims subjected to violence.**

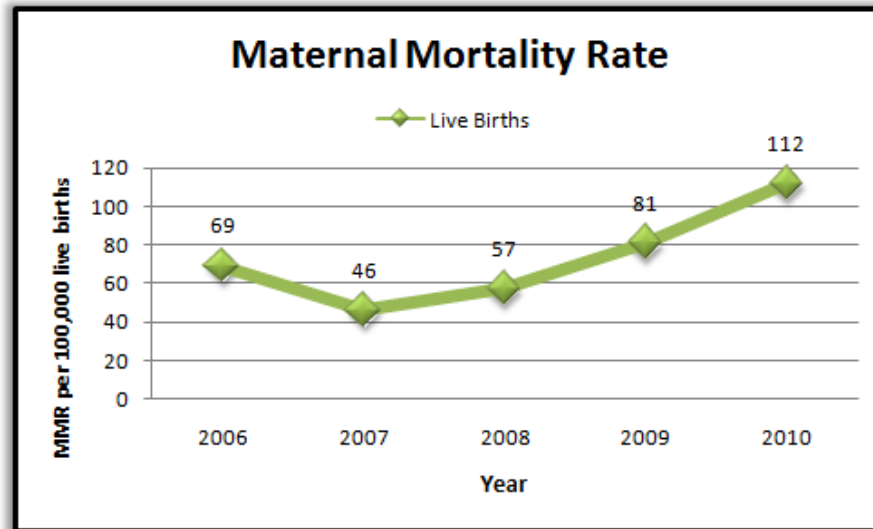
Article 6- Right to Life

Right to Survival

21. Maldives has made substantial progress in achieving many of the Millennium Development Goals (MDGs), such as improving maternal health, and reducing child mortality. Despite the outstanding developments, a *Desk Review on Health Sector of Maldives*⁵ conducted by HRCM in 2009 has made apparent that there are serious challenges in the provision of adequate health care facilities to the people. Amongst these challenges are the issues of lack of basic health care facilities in some outer islands, limited access to specialist health care even in islands where island and regional hospitals are established, regional hospitals not having adequate equipment, lack of systematic development of health personnel across the nation and lack of legislative protections. In addition, the review also highlights the inefficiency and ineffectiveness of the current health services.
22. The data published in 2009 by World Health Organisation (WHO), shows that in Maldives, there is prevalence of malnutrition among children below the age of five years. It was recorded that 17.8 percent of children were underweight, 20.3 percent were stunted, 10.2 percent were wasted and 6.5 percent were overweight⁶.
23. The *Health Master Plan (2006-2015)* by Ministry of Health recorded that re-emerging communicable diseases pose immense threat to the people and burden on the health system. The *Annual Communicable Disease Report* noted that a total of 2909 dengue cases were reported which were the highest, compared to previous years and deaths reported were also higher in 2011 with a total of 12 across the nation⁷. This report further noted that diseases like malaria, filaria and leprosy are targeted for elimination. The *Maldives Demographic Health Survey (MDHS)* published in 2010 by Ministry of Health and Family, noted although the prevalence of HIV/AIDS is low, certain risk behaviours such as sex work and intravenous drug use, which are seen to be increasing, pose increased risk of contracting HIV in these at-risk populations.
24. In the year 2011, the *Maldives Health Statistics* by Ministry of Health and Family revealed that “one of the targets of the Millennium Development Goals is to reduce the Maternal Mortality Ratio (MMR) by three quarters between 1990 and 2015”. The Baseline MMR data recorded in 1990 was 500 per 100,000 live births. As such it is targeted to reduce the maternal mortality ratio to 125 per 100,000 live births by year 2015⁸. It was further noted that, “ given the small population a single maternal death can have a large effect on the MMR of the country, now is the time to be cautious and push special measures in place to

bring the MMR on track. Moreover, factors such as unsafe abortions and drug abuse and other social behaviours have to be taken into consideration in bringing down the MMR”⁹.

25. The Statistics below reveals an increase in MMR.



Source: Maldives Health Statistics

26. Important legislations pertaining to the right to health such as Public Health Act and Act on Medical Negligence or Malpractice are yet to be passed by the Parliament. HRCM in its statement issued on the occasion to mark the World Health Day (2011) called upon the government to formulate new legislations to strengthen and monitor health services delivery in the country¹⁰.

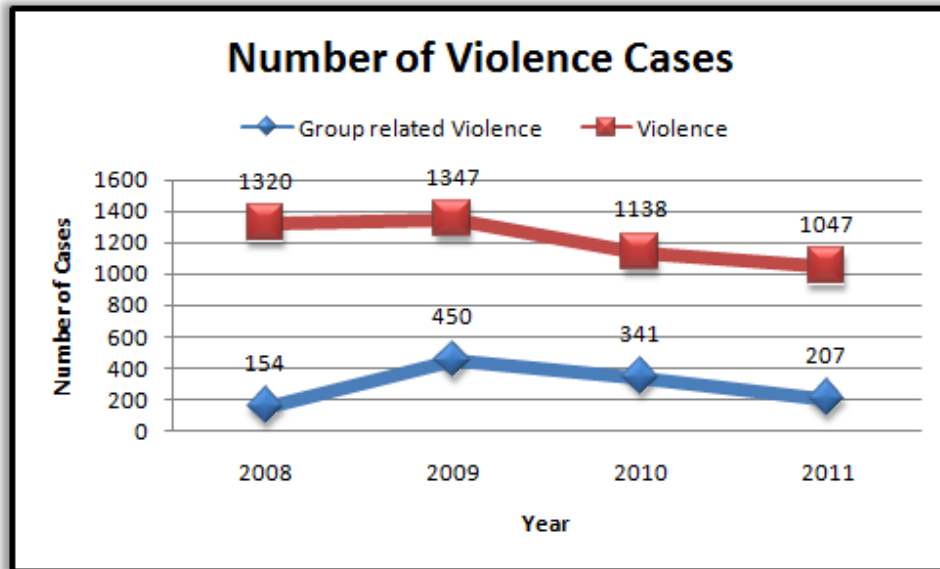
27. State needs to strengthen the existing healthcare mechanisms and address the current problems in the health services especially giving emphasis to life threatening illnesses and incidents. Thus, the current system should provide easy access to adequate medical care (in terms of qualified personnel, equipment and services) in all regions of the country, expediting the process of bringing into effect the legislations pertaining to public health related to medical negligence by health care providers so that health professionals and the institute needs to will be held accountable in cases of medical negligence and malpractices.

Increasing Violence

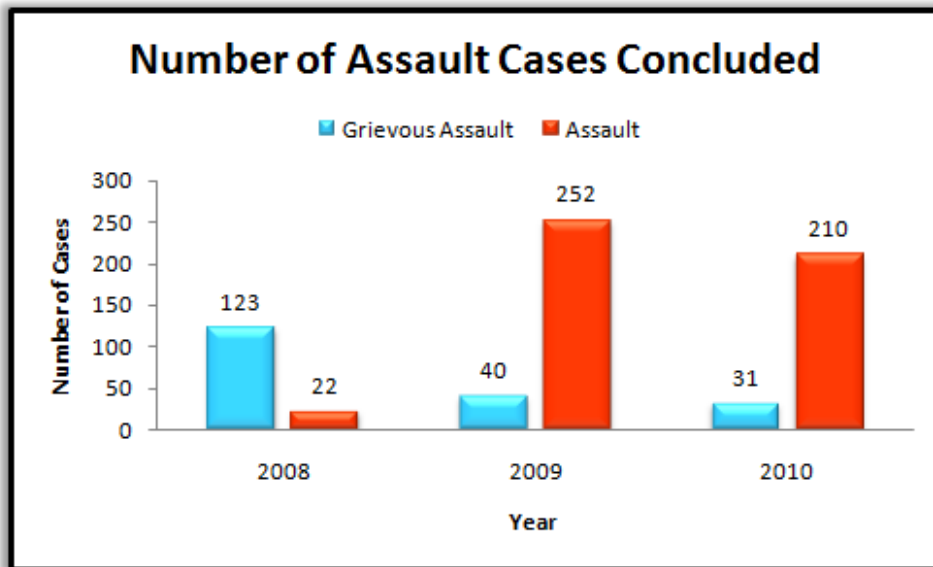
28. In the recent years, gang violence, burglary, mugging, sexual abuse of children and murders are increasing to alarming level in the society. From the year 2011, HRCM received a total of

11 cases pertaining to right to life. Out of these 11 cases, 3 cases relate to murder. Others relate to custodial deaths and health related issues.

29. Following are the statistics provided by MPS on violence



Source: Statistics from Maldives Police Service



Source: Department of Judicial Administration, Justice Sector Statistics

30. It must be observed that even though the records are low, this number is extremely high when taken as a percentage of the total population of the country. Moreover, some of the

murders were committed in public places during the daytime. Victims of gang violence either end up with permanent injuries or death. It is to be noted that most of the people who are involved in cases of extreme violence, and murders are repeat offenders (sometimes juveniles). This shows failure on the part of law enforcement authorities and criminal justice system in the country.

31. It is observed that the increase in fatal crime in the country have been aggravated due to a number of factors. Some of the direct factors are inadequate legislation pertaining to criminal justice system such as the Penal Code. The current Penal Code does not reflect the spirit of the present Constitution and is inadequate to address the new emerging issues. There has been ongoing debate on the revisions to the Penal Code to make it compliant with the Constitution and international obligations. Other factors attributing to the increase in crimes include, inadequate legislations pertaining to evidence and witnesses, dismissal of forensic evidence by courts, absence of a witness protection program and inadequate correctional and rehabilitation system for convicted offenders. The lack of a comprehensive integrated crime prevention mechanism remains the greatest weakness in addressing the issue of increase in crime. High numbers of unemployed youth¹¹, and the persistent substance abuse and drug addiction among youth in the country are indirect factors catalysing the increase in crime.
32. Following are recent incidents which clearly demonstrate the failure to adopt a holistic approach to the growing criminal activities.
 - a) An alleged criminal was detained in August 2010, for his involvement with the murder of a 17 year old, on July 20th, 2010. After six months of imprisonment, the alleged criminal was released on February 17th, 2011 by the Criminal Court, when Police claimed that their request to Ministry of Health and Family (MoH) to facilitate in obtaining the medico-legal report of the defendant from the hospital (IGMH) was not complied. Hence, the Criminal Court considering six months, as a sufficient period to respond to an official request from Police, released the alleged criminal, claiming that the verdict was also a measure to hold MoH responsible for not providing requested information in due time. Following 28 days of his release, on March 16th, 2011 he was accused of stabbing a 21 year old young man to death. Later that month MPS arrested the alleged criminal.
 - b) In the early hours of February 19, 2012 a 21 year old was stabbed in an alley and passed away while undergoing treatment in the hospital. This was one of four incidents of gang violence reported that night. The group targeted the innocent young man mistaking him for someone else¹². The State is charging three underage suspects with murder in the first degree.

33. The State should expedite the revision of existing Penal Code, and bring into force the Criminal Procedure Code and other legislations pertaining to evidence and witness protection. The State should further establish effective rehabilitation mechanisms for offenders, better prisons and correctional facilities to house and to rehabilitate criminals and to strengthen effective coordination between drug rehabilitation system and criminal justice system. The state should introduce a nationwide program to engage unemployed youth in civic education and social cohesion programs that would support themselves and the society.

Enforcement of Death Penalty

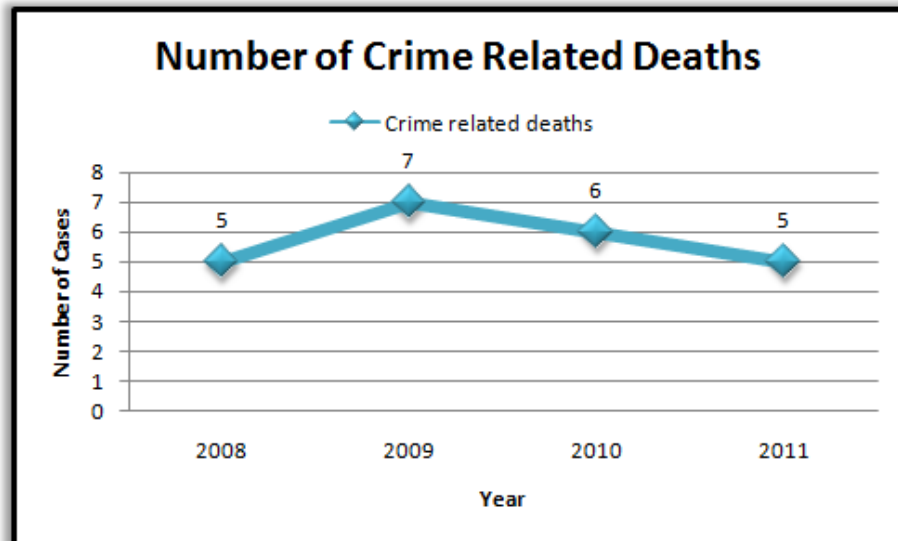
34. Article 10(a) of the present Constitution stipulates that the religion of the Maldives is Islam and Islam shall be the one and only basis of all the laws of the Maldives. Additionally, article 10(b) stipulates that no laws contrary to any tenet of Islam shall be enacted in the Maldives. Thereby, the basis of the Maldivian Penal Code is Islamic Shari'ah. Hence, the current Shari'ah tenets give the courts the power to pronounce capital punishment for offences like, murder, and crimes against community.

35. It is important to note that child offenders may be sentenced to death in the Maldives under Islamic Shari'ah. The Article 6 of *Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors* states that, children from 15 years of age till 18 years of age should bear criminal liability in respect of all offences committed by them. Furthermore, the Article states that minors should receive two thirds of the minimum penalty stated in the law and also gives the discretion where no minimum penalty is stated. However, according to article 5, minors from attainment of 10 years of age, till completion of 15 years of age, is liable to bear criminal responsibility of some offences such as unlawful intentional killing of human beings, other offences relating to homicide and participation in such offences. Neither the Penal Code encompasses provisions on penalties for offences committed by minors nor does the Juvenile Justice Bill explicitly proscribe death penalty.

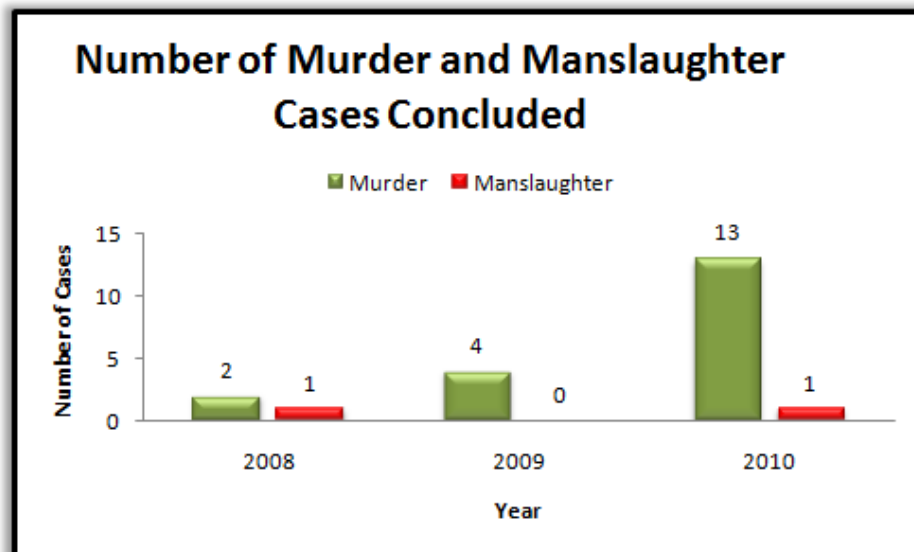
36. Death penalty was last enforced in 1953 for attempted murder of the first President of the country by using black magic. From January 2001 to December 2010, a total of 14 people were sentenced to death by the courts and none were below 18 years of age. However, the sentences were never implemented and were commuted to life imprisonment with more leniency afforded to certain cases¹³.

37. The previous Constitution (the Constitution from 1997 to 2008), placed the President as the highest authority of appellate in the judicial process and gives the power to commute death sentences to life imprisonment if the convicts apply for clemency. So as a practice all

sentences for capital punishment have been commuted to life imprisonment. When the new Constitution came into effect in August 2008, the Constitution reformed the judiciary establishing a three tier court system where the Supreme Court has the final verdict on all matters relating to judiciary. However, the Constitution in its article 115 states that President is entrusted pursuant of the Constitution to carry out the duties to grant pardons or reductions of sentence as provided by law, to persons convicted of a criminal offence who have no further opportunity to appeal.



Source: Maldives Police Service



Source: Department of Judicial Administration, Justice Sector Statistics

38. Citing the growing numbers of assaults and murder cases in the recent years and influenced by public sentiments regarding gang violence, in March 2011, Parliament accepted an

amendment to section 21 of the Clemency and Pardoning Act, obliging Supreme Court to uphold and execute sentences on death penalty. The amendment was accepted for debate in the Parliament with majority voting in favour of the amendment. The proposed revision was submitted to the Social Committee of the Parliament for review. If the amendment gets passed, the power vested with the President to grant clemency to sentences of capital punishment under article 115(s) of the Constitution will be removed. As a recent development, member of the parliament, who proposed the amendment to the Clemency and Pardoning Act, has withdrawn the amendment, for the purpose of re-submitting the amendment to the Act, once Parliament approves Penal Code and Criminal Justice Procedure Bill. Nevertheless, the following month another parliament member submitted a similar amendment to Clemency and Pardoning Act obliging Supreme Court to uphold and execute sentences on death penalty and to uphold Islamic Shari'ah in the country.

39. In April, 2012, once again a parliament member submitted a bill enforcing death penalty. The argument for the proposal of the bill was the fact that 29 people had been killed in the past 3 years in gang related crimes. The proposed amendment to the Article 21 of the Clemency Act would require death penalty to be administered if Supreme Court upholds death sentence issued by a lower court or Supreme Court issues a death sentence¹⁴.
40. Maldives has affirmed the UN Resolution of Moratorium on death penalty on December 18, 2007, which emphasizes all States that still provision capital punishment to “progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed”¹⁵. This resolution still needs to be endorsed by the Parliament. In addition, one of the recommendations of the Universal Periodic Review (UPR) that is being considered by the State includes the ratification of the 2nd Optional Protocol to ICCPR.
41. As mentioned above, article 10 (a) and (b) of the Constitution strictly and clearly stipulates that the religion of the country is Islam and no laws contrary to any tenet of Islam shall be enacted, thus abolition of death penalty may not be possible unless otherwise article 115(s) of the Constitution is amended. Similarly, there are several laws that is pending which could make an impact on the death penalty including, the passage of the revised Penal Code, Criminal Procedures Code, Evidence Bill and Witness Protection bill. Furthermore, Maldives is yet to establish an independent forensic institution to provide accurate information to support judiciary to make an impartial, accurate decision on matters concerning administration of death penalty.
- 42. State should facilitate the establishment of an independent forensic institution. It is imperative that State revise the current Penal Code to reflect the spirit of the new Constitution that was ratified in August, 2008 and in par with its international obligations, and also enact Criminal Procedure Code, Evidence Bill and Witness Protection Bill. It is**

important that state take prompt measures to ratify the Second Optional Protocol to the Covenant on the abolition of death penalty as this is one of the recommendations being considered by the State during the UPR process.

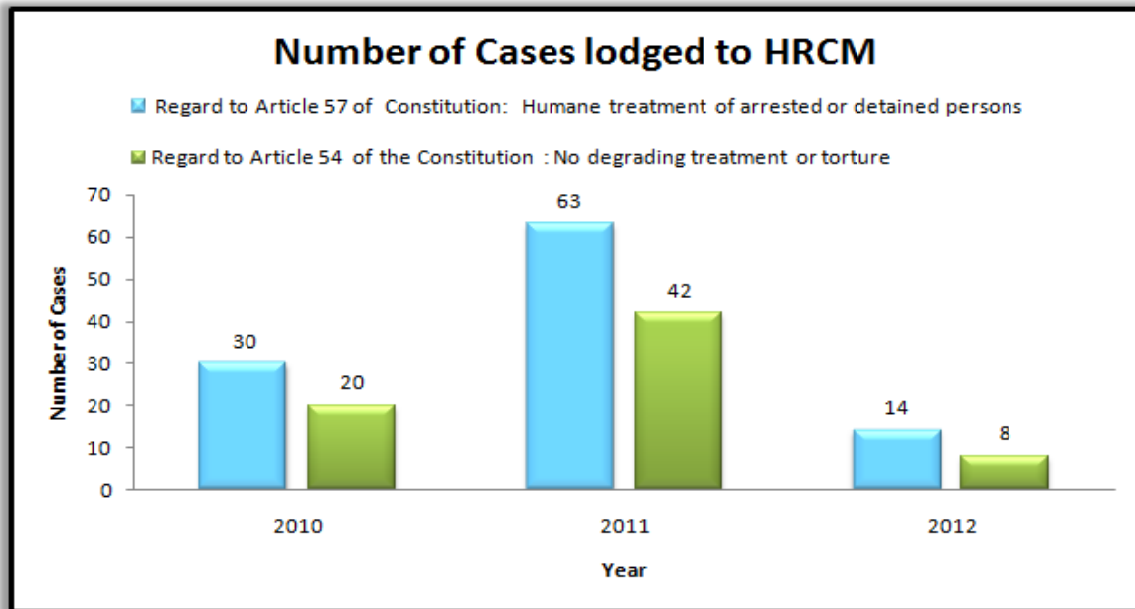
Article 7 – Prohibition of Torture & Article 10 –Conditions of Detention

Prevalence of Corporal Punishment in Schools

43. Article 54 of the present Constitution clearly prohibits any form of torture, or degrading treatment in any setting. Furthermore, Article 10 of the Law on Protection of the Rights of the Children (1991) stipulates that punishment in school should be appropriate to the child’s age and should not affect physical and psychological well-being.
44. Although, there is no legislation that explicitly prohibits corporal punishments in schools, Ministry of Education (MoE) prohibits use of corporal punishment. Nevertheless, there are number of incidents of physical abuse of students by the teachers and supervisors. The Lale’ International School (2010) investigation conducted by HRCM, made it apparent that a number of students experienced physical and psychological abuse in the school.¹⁶ Some of the findings include abuses such as strangling and whipping children with belts. The findings of HRCM were further validated when the Criminal Court in August 2010 found the former principal of the school, guilty of assaulting children and sentenced him to pay MRF 200 (US\$12.97) as fine under article 126 of the Penal Code. However, the penalty enforced through this particular case itself shows the extent of adhering to the spirit of intolerance to torture. In addition, the inspections undertaken by MoE have verified that there are cases pertaining to physical and psychological abuse of children in schools. MoE acknowledges the fact that the monitoring and inspection undertaken was insufficient.
- 45. State must expedite the passage of the Education Act and ensure that it prohibits all forms of corporal punishment in school. It is also important that State take all necessary measures to strengthen the existing procedures required to guarantee that children are not subjected to corporal punishment as a disciplinary measure in the education system.**

Prevalence of Torture, Cruel or Inhuman Treatment at Detention Facilities

46. Following are the details of the number of cases lodged to HRCM from the year 2010 with regard to treatment of arrested or detained persons and degrading treatment or torture.



Source: Human Rights Commission of the Maldives

47. As per the *HRCM Act* Article 20 (a)(b) and 21 (e)(f) , the HRCM has looked into the human rights violations that took place during and after the arrest of the demonstrators who were taken into custody in the protests in Male' and Addu City on February 8, 2012. A fact finding team from HRCM visited Addu City on February 10, 2012 to investigate allegations and complaints lodged at HRCM. Following are the findings of this investigation.

- a) Seventeen people were treated in Feydhoo Health Centre with various levels of injuries in the unrest that took place in Addu City on 8th February 2012. Among them were a person with a broken leg and a person with a ½ inch lesion to the head.
- b) Among those who claimed to have been subject to Police brutality while under Police custody, 10 of them had visible marks, wounds, gashes and cuts. One of them also had a burn mark that resembled a cigarette burn on his foot.
- c) Even though, each prison cell in Gan Police Station are built to accommodate 2 people, there were 5 to 6 people placed in a cell, leading to suffocating conditions and cramming.

- d) As there is no specific detention centre in Hulhumeedhu, the protesters taken to Police custody were kept in the sitting area of the Police station; handcuffed all the while except for when they went to the toilet.
- e) It was noted that those in Police custody who were taken to Hithadhoo Regional Hospital for treatment were not referred to a doctor or given medical treatment. In addition to this, the people arrested claimed that they were taken to the burnt up sites and Police rubbed ash on their body and the investigation team did find traces of ash on their bodies.
- f) Police had violated, Article 48, 54, and 57 of the Constitution, Article 5 of UDHR, Article 2 (b) of CAT, Article 7 and 10 of ICCPR, and Article 7a (11) of the Police Act. Those under Police custody were threatened with torture and retribution while rude and vulgar language was also used in a disgraceful manner as they were arrested in front of their family members.
- g) It was noted that those in custody who personally requested for medical assistance from a doctor, and others who were in custody (including the person who had an injury to his genitals) were not given timely medical assistance.
- h) Even though, the Police reported that they had records of the belongings of those kept in custody, none of those in custody received a receipt for their belongings that were kept with the Police.
- i) In Gan Police Station, there were not enough pillows and mats for the people held in custody.
- j) Police violated Article 48 (a) which states that when a person is being taken into custody the reason for doing so must be explained and a written document should be given to the arrestee within 24 hours, however, those who were taken into arrest on 8th February were not informed of the reason of their arrest. Article 48 (b) which states that when a person is being taken into custody they must be informed about their right to have a lawyer, most of those taken into custody were not informed of this right. While Article 48 (d) states that a person who is a suspect of a crime must be brought before a judge within 24 hours, some of those in custody that day were brought before a judge after 30 minutes passed the 24 hour limit. These actions also violated Article 57, 246 (a) of the Constitution.
- k) The 'Detention Extension Form' given to those in custody had a scanned stamp and the Police explain that it was because all documents and stationery were destroyed in the fire.

- l) All the protesters who were taken into custody were given a written document within 24 hours, as stated in the Constitution.
 - m) Addu City was in a state of fear and the Police were facing challenges in providing for the needs of those taken into custody as the Courts and Police Station were burnt down during the unrest.
 - n) On February 8, 2012, the violent protests led to immense destruction and damage to the Police stations and Police vehicles which were eventually burnt down, destroying State property and personal property of the Police officers. The severe destruction and damage caused to the Police Stations and courts created huge challenges in providing services needed for the people in the city. In addition, the rights of many people were violated and many court cases had to be brought to a halt as all legal documents and information concerning the lives of many people were destroyed in the fire.
- 48.** With the ratification of the present Constitution in August 2008, article 54 and 57 clearly prohibits any form of torture, or degrading treatment in any setting and obliges that arrested detainees are treated humanely. Article 48 of the Constitution further protects the rights of the person at the time of arrest. Two major issues that the NPM identified during routine monitoring visits to places of detention are the detention of suspects in police custodial for indefinite periods of time and inconsistent data management of inmates in these places.

It has been found that there is an emerging issue relating to prolonged periods of detention pending trial within the police custodial

- a) A total of 70 convicts are being held in custodial for more than a year which also includes 26 Somalis. Here it is crucial to note that according to article 48 (d) of the Constitution, on arrest or detention, everyone has the right to be brought before a Judge within twenty four hours to determine the validity of the detention. Some of these cases are still in the process of investigation and some have already been forwarded to Prosecutor General's Office, and are pending trial.
 - b) Although inmate's data is being maintained, it is Important to highlight that errors are found in the documentation of their personal identification information.
- 49.** After the establishment of NPM¹⁷ in 2008, so far it has carried out more than 45 visits to places of detention where people are deprived of their liberty. Apart from prisons, these also include police custodial facilities, juvenile detention centers and psychiatric facilities.

During these monitoring visits, NPM has identified varying issues that could lead to torture, cruel or inhuman treatment in the detention facilities.

50. Following is a brief overview of issues identified by NPM with regard to torture which were shared with the relevant state authorities.

- a) The legal framework to prohibit torture and other inhuman treatment as required in the Constitution is currently lacking in the system. The recently drafted Bill on Anti-Torture which criminalizes all forms of torture is pending at the Parliament for endorsement since 2010.
- b) There are no formal minimum standards established regarding treatment of detainees. Children under State care are placed in *KudakudhingeHiyaa* (children's home), and this institution follows the *Minimum Standards for Children's Homes*.
- c) Furthermore, there is a strong need for legislative and regulatory safeguards against torture which includes reviewing and adopting interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest. Similarly, the juvenile residential detention centers and particularly the facility for special needs, geriatrics and psychiatric patients, need to do extensive work to strengthen their procedural guidelines and regulations in order to strengthen the protective measures that safeguard the rights and dignity of individuals residing under State care in the institutions. Police Integrity Commission (PIC) with HRCM and other relevant stakeholders worked on a minimum standard for police stations and custodial and this is still at draft stage. HRCM has provided comments for this draft.
- d) In general, the prisons and custodial do not have a formal categorization system with regard to crimes committed. However, some of the police stations have recently categorized the detainees. Likewise, the penitentiary services have also recently attempted to categorize prisoners according to their conduct, whereby prisoners' progress from high security to low security based on good conduct. However, this type of categorization is neither accurately reflective in practice, nor is it in line with what is prescribed in the *Standard Minimum Rules for the Treatment of Prisoners*. According to authorities, categorization is impossible due to limited space and overcrowding.
- e) At present, there is no juvenile detention centre. As a result, the minors between ages of 16 to 18 who get arrested are detained in separate cells located within

the general police custodial. However, these cells are located among the cells where adults are detained. MPS informed on March 8, 2007 that a design for Juvenile detention centre has been drafted and they are in the process of finding financial support for the building.

- f) There exist issues pertaining to solitary confinement in detention facilities at large, more so in prisons and police custodial. NPM has also observed prevalence of such practices in the Home for People with Special Needs (HPSN).¹⁸ During NPM's visit to Police Custodial, it was observed that among the six cells for solitary confinement for male detainees, five cells were occupied. Among these detainees there were detainees who have been held there for several days and several months without been allowed to go outside, even for walks and exercise. Moreover, lights in some of these cells were broken which makes the cells very dark at night.
- g) Maldives Police Service has recently, established a custodial wing within one of the Prison premises as to address the issue of overcrowding. However, this custodial wing is not officially recognized and this change further moved away from the general principles of clear separation of suspected detainees from the convicted prisoners.
- h) At present, the penitentiary system does not have rehabilitation facilities considering the large number of repeat offenders. There was an ad-hoc training initiatives by the prison management that continued till April 2009, which came to a standstill following a fire incident in one of the prisons. During this period, some level of vocational trainings and academic teaching was provided. Likewise, the proposed budget for prison management for the year 2011 included a considerable amount of budget for rehabilitation. However, the budget on rehabilitation was deducted during the budget formalization process at the Parliamentary review stage. As recent developments, HRCM has been informed that efforts are underway to formulate a comprehensive rehabilitation system; however, it is not clear when this would be implemented, as formal plans are yet to be developed.
- i) In addition, the Department of Penitentiary and Rehabilitation Services had revealed that there are plans to start secondary educational teaching within one of the Prisons, as well as plan to initiate prison industry.¹⁹ However, no efforts are in place to rehabilitate the three vulnerable groups residing in HPSN, although there has been a temporary project where an occupational therapist was in place for a few months in the year 2009. Unfortunately, the plan that has been put forward by the therapist has not been implemented. Moreover, there

is a need for psychologists or counselors to offer psycho-social support to the residents.

- j) The Educational Training Centre for Children functions as a foster home managed by the Ministry of Education. This centre focuses on children's academic development and provides a nurturing environment. The Correctional Training Centre for Children targets juvenile delinquents and provides supportive training, life skills and guidance in order to minimize risky behaviour.
- k) The 2011 Drug Act obligates authorities to establish effective after care programmes. Drug rehabilitation service is provided through the rehabilitation centre in *K. Hinmafushi* Island. The rehabilitative model known as the Therapeutic Community Program is adequately implemented; however, it lacks an effective after-care program. Therefore, the drug rehabilitation program requires a systemic approach, to be delivered through highly trained professionals, and implemented at a wider scope in order to meet the high number of drug users in the country.
- l) Institutional capacity of personnel working at the penitentiary and MPS in managing detention centers needs to be more aligned with human rights best practices. The MPS is currently reviewing their procedural guidelines in this aspect. Police Integrity Commission is also currently working on developing a Standard Minimum Rules for Custodial. NPM has recommended MPS to establish a detailed disciplinary procedural guideline.
- m) Persons working with children, mentally ill and persons with disabilities lack the professional guidance and capacity to handle these groups of people. NPM found that limited personnel have undergone the basic training required to undertake the job at these places, both at contact level and management level. It is important that staff working in institutions where people are under state care receive intensive training as often torture takes place due to lack of knowledge and skills to manage situations and individuals by the service providers.

51. NPM also identified that in the detention context, there were incidents which posed threat to inherent dignity of the human being. Following incidents provides an insight into this.

- a) In 2009, some of the prisoners at Maafushi and Himmafushi jail were swiftly transferred to a hastily built temporary jail in Addu Atoll. The transfer process was alarming as during the long sea journey of 470km on a boat, prisoners were handcuffed and restrained, in view of any potential retaliation or possible escape and the transfer was not informed to the prisoners' families. There were no

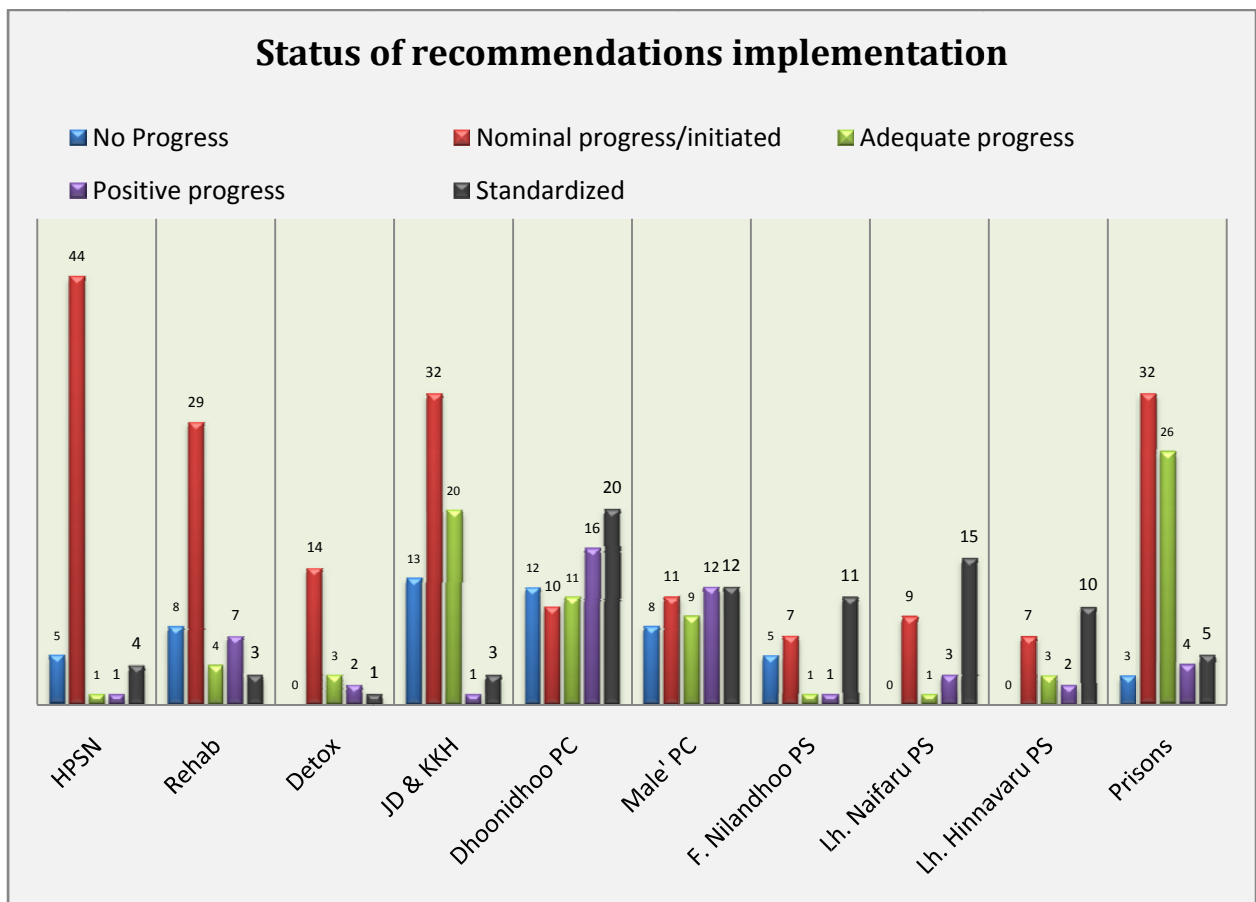
official records of how the selection was made. With regard to the prison facility at Addu Atoll, NPM team found that two prisoners were isolated for an indefinite period in small cells, more appropriately described as *cages*. Each cell was of 5' by 5', and of height 8', and made from steel rigid rods or bars on five sides. Toilets were not available, and as a result inmates urinated into a bottle. Prisoners also informed that for other needs, they had to call for an officer who escorts them to a nearby toilet. This facility was shutdown within seven months of its establishment following HRCM intervention.

- b) NPM visits to Maafushi Jail (2010), the Immigration Detention Centre (2009), and the Dhoonidhoo Police Custodial (2011) reveals a clear pattern with regard to the differential treatment towards migrant workers such as the overcrowded space they were kept in. This in turn led to various other issues such as access to toilet facilities and spreading of communicable diseases. The issues relating to proper health care to prisoners are increasing, and this has led to communicable diseases like scabies and other skin infections.
- c) Although no formal case has been reported, several migrant detainees informed about the disrespectful language, attitudes and treatment they were subjected to.
- d) In 2010, at Maafushi Jail, prisoners reported widespread practice of strip search, at times in a manner that violates their dignity. According to the prisoners this often occurs during transferring prisoner from one cell to another. DPRS has a local order stating the stages of a strip search but this is not being followed by the prison officers and this is still a prevailing issue.
- e) A highly disturbing observation made in the HPSN visit in April 2011, was that as a disciplinary measure; to control during incidents of misbehavior, patients were kept in solitary confinement without any clothes. Three patients were seen in this condition, who had been isolated since the previous day and night. Moreover, the cells they were kept in did not have any bedding. Therefore, the patients were subjected to stay in the cells overnight, and sleep on the floor, without any clothing or bedding. The justification given for such treatment was as a precaution against attempted suicide. In accordance with the process in their regulation which is outdated the facility did not put patients in these isolation cells.
- f) The facility works with limited financial and human resources which consequently, lead to incidents of torture and inhumane treatment rather than explicit and intentional acts of torture.

g) HRCM has raised the isolation of patients in the above described manner as a serious issue that violates the individual's dignity, and urged the authorities to make use of other means to deal with the issue in a humane, dignified and respectful manner.

52. A total of 482 recommendations have been made to State authorities following the visits to detention facilities and places where people are deprived of liberty by the end of 2011. In 2009, a total of 83 recommendations, in 2010 a total of 158 recommendations and in 2011, a total of 241 recommendations have been made. Total aggregate percentage of recommendations under the categories of nominal progress, adequate progress, and positive progress and standardized is 51%.

53. The following table depicts the status of implementations of recommendations issued to the state by HRCM under its mandate as the NPM.



54. **State authorities must take all measures required to expedite the process of passing and enacting the Bill on Anti-Torture as this will be a bold step against prevention of torture. It is equally important that the State review the current status of the detention facilities and develop infrastructure in accordance with internationally accepted minimum standards for detention facilities, which strictly emphasize on categorization and segregation of various types of offenders, including adults and juveniles. In addition, the State should ensure that all the detention facilities possess relevant procedures and guidelines needed for its operation. The State should conduct, capacity building programs for the staff, especially focusing on personnel who are dealing with children and persons with disabilities and mental illnesses. Moreover, sufficient resource allocation is necessary by the State in order to effectively manage the detention facilities.**

Article 8: Prohibition of Slavery

Existence of Practices Leading to Forced Labour

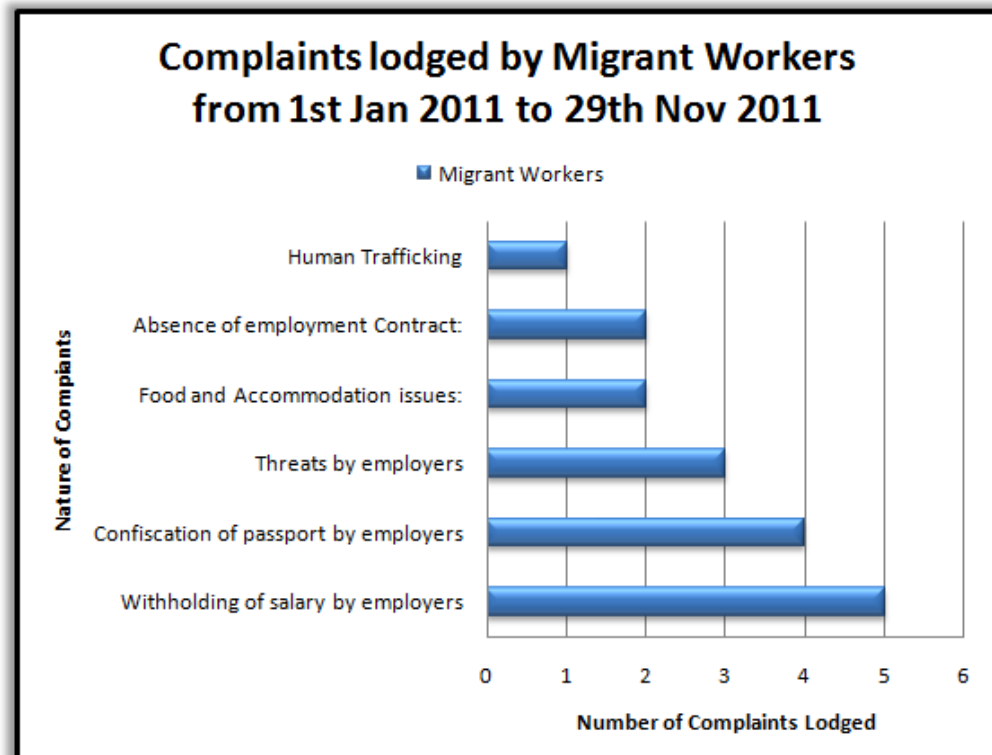
55. Article 25 (a) of the Constitution states that no one shall be held in slavery or servitude, or be subjected to forced labour. Article 3(a) of the Employment Act (2008) categorically states that no person shall be compelled or forced into employment and defines forced employment such as any service or labour obtained from a person under the threat of punishment, undue influence or intimidation, and does not include services or labour performed by any person on his own volition²⁰. According to article 68 of the Employment Act, the only penalty prescribed for offenses relating to violations of Employment Act is a fine not more than MRF 5000.00 (US\$ 324.25).
56. Among the significant number of migrant workers, Maldives have been considered as a preferred destination for employment²¹, especially from countries such as Bangladesh, India, Philippines and Sri Lanka. The total number of migrant workers employed in the country by the year 2010 is 79,777²². Among these migrant workers, considerable number of migrant workers is subjected to various forms of exploitation such as fraudulent recruitment practices by their agents and withholding of wages²³. Migrant workers are also subjected to other inhumane condition such as being accommodated in overcrowded places which lack proper ventilation, adequate sanitary facilities and in most cases without fresh water or with limited accessibility to fresh water²⁴.
57. Many of the migrant workers pay a large sum of money as a commission to get employment opportunities in the Maldives, putting themselves in a position where they are unable to leave the country or work place due to the heavy debt. This is clearly reflected in the number of complaints lodged by the migrant workers to Labour Relations Authority

(LRA) and other relevant authorities. Many of the migrant workers do not have proper procedural information to lodge a complaint. Likewise, accessing the services from LRA would be a challenge for the migrant workers based at the atolls due to transportation difficulties. Moreover, even if they are aware of the information on reporting procedures, many would remain hesitant to disclose their undocumented status due to fear of deportation or other punishments. Currently, LRA undertakes supervision on the work sites and addresses all types of issues relating to employment. Nevertheless, the inspection visits are minimal in number and the areas covered in the inspection are limited considering the wide array of problems in the area.

58. Following are the complaints lodged by migrant workers to Labour Relations Authority (LRA).

Complaints lodged by Migrant Workers to Labour Relation Authority	2008	2009	2010	2011
Request for assistance to return back to country	1718	1487	302	505
Non-payment of wages	64	52	83	60
Request to change employer			2	67
Unable to obtain passport				6
Unable to obtain return ticket or wages in order to return back to the country		145	21	9
Food and accommodation issues	1	4	12	27
Delay in the payment of wages or hostile work environment			42	

Source: Labour Relations Authority (LRA)



Source: Human Rights Commission of the Maldives

59. Article 41 of the Constitution provides freedom to enter, remain in and leave the country and to travel within the country. Government has not imposed any restrictions regarding travel to and from to other countries. However, many migrant workers are faced with a number of limitations in their movement, which make them vulnerable for exploitation and human trafficking. Many of migrant workers employed in the construction industry are often housed within the premises of the worksite, leaving them with no option but to stay there for all purposes. Similarly, many migrant workers are left without work upon arrival and often their agent abandoned them in small apartments with no food, work or legal documents. In an alien country, with no support system and unable to communicate in the native language these migrants are afraid to move freely in the country. They also do not have adequate information on how to seek assistance and are reluctant to seek help due to fear of arrest or deportation.

60. It is not only migrants who come for unskilled labour at private sectors who are subjected to such exploitations but at times professionals also face various exploitations such as confiscation of the legal documents. It is a common practice to confiscate passport of the migrant workers by the employer and the agents. Maldives Police Services have found passports and work permits of migrant workers withheld by many of the recruitment or employment agencies working in the Maldives.²⁵

61. At a joint press conference held on January 11, 2012 by the Foreign Minister, Minister of Human Resources, Youth and Sports and Attorney General, an initiative was announced to temporarily halt issuing of new work permits to Bangladeshi nationals and discussed registering the biometric details of all expatriates in an effort to combat human trafficking. At the press conference it was also announced that employers would be advised to cease withholding passports of foreign nationals.²⁶ However, some government authorities continue to withhold the passports of expatriates stating that it is with the intention of safe keeping.
62. *The Rapid Assessment of Employment Situation in Maldives* conducted by HRCM in 2009 further revealed that some domestic workers, especially migrant female domestic workers are at times trapped in situations of forced labour, and is in many cases restricted from leaving the employer's home. The report also highlighted that even though the situation of migrant workers employed as labourers is grim and may not technically be defined as bonded labour or forced labour, it is questionable whether such labourers can freely terminate their employment. The report has put forward a total of 71 recommendations to the State and 8 recommendations directly relate to improvement of the situation of migrant workers in the country.
63. The HRCM has been periodically monitoring implementation process of these recommendations by the State. Following are the results of the implementation of the 8 recommendations by State on 2011. The findings suggest a lack of appropriate measures taken by the State to implement the recommendations. Out of the 8 recommendations, there were no efforts put to implement half of the recommendations. Those recommendations that State has failed to implement are²⁷:
- a) Consider requiring entry visas be obtained from the Maldivian High Commission/Consulate in the country concerned for nationals of countries subject to trafficking in order to prevent human trafficking. Maldivian High Commission/Consulate concerned could check the permission issued for the employment of the applicant and/or other relevant documentation prior to issuing the visa.
 - b) Consider ratification of or accession to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
 - c) Include provisions in a housing code setting minimum standards for accommodation of workers.

d) Consider establishing a separate bureau for expatriate workers with the responsibilities to issue quotas to employ expatriate workers and work permits, to collect and maintain statistics with respect to expatriate workers and to deal with complaints of and other matters relating to expatriate workers.

64. In 2009, government anticipated that there were around 30,000 undocumented workers in the country.²⁸ Department of Immigration and Emigration (DIE) reported that out of 2700 deported migrant workers in the year 2009, 2200 were undocumented migrant workers from Bangladesh. In 2009, a total 34 expatriates were also deported for engaging in prostitution.²⁹ The information received from DIE further demonstrated that the country is also a transit point for human trafficking. The information also validated that the age group of suspected victims of human trafficking identified at Ibrahim Nasir International Airport from 2010 to 2011 range from 2 years to 46 years.

65. Following are data received from DIE with regard to human trafficking.

Statistics of suspected Human Trafficking cases identified at Ibrahim Nasir International Airport 2010-2011 (Unclassified)						
Year	Male			Female		
	Nationality	Case	Total number of suspected cases	Nationality	Case	Total number of suspected cases
2010	China	Suspected case for labour exploitation	1	China	Suspected case for labour exploitation	1
	Sri Lanka	Suspected case for sexual exploitation	1			
2011	Syrian Arab Republic	Suspected case for labour exploitation	5	India	Suspected case for labour exploitation	2
					Suspected case for sexual exploitation	1
		Suspected case for exploitation	3	Syrian Arab Republic	Suspected case for labour exploitation	3

Source: Department of Immigration and Emigration

Cases related to Human Trafficking	
Cases	Total
Identification of Cross border trafficked victim (minor-sexual exploitation)	1
Suspected victims of human trafficking	13
Intercepted Suspected victims of human trafficking	2
Intercepted Suspected victims of human trafficking at the border control of Ibrahim Nasir International Airport	3
Fraudulent practices	18
Withholding of documents	1
Deported for Human Trafficking	1

Source: Department of Immigration and Emigration³⁰

66. Considering the fact that Maldives has been ranked in the tier 2 watch list of the Trafficking in Persons (TIP) Report for two consecutive years and being a member of the International Labour Organization (ILO), it's time the State takes swift measures to manage the issues related to the migrant worker population of the country. In recent years, the State has acknowledged the existence of human trafficking and other issues faced by the migrant workers. The State has also taken initiative of drafting a bill on human trafficking with the help of Australian Attorney General's Office. Maldives also agreed to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPRMWF) during the UPR process.

Trafficking Victims identified by Ministry of Gender, Family and Human Rights				
Year	Average Age	Total number of cases	Sex	
			Female	Male
2009	14	1	1	0
2010	18+	1	1	0

Source: Ministry of Gender, Family and Human Rights

67. HRCM is currently undertaking a *Rapid Assessment on Human Trafficking in the Maldives*. Main objective of the assessment is to gain a better insight into current situation of human trafficking in the Maldives and to bring the issue of trafficking to the forefront and increase national attention to the issue. The preliminary findings determine that there are both

locals and migrant workers as victims of human trafficking in the country and they are trafficked for purposes of sexual exploitation, forced labour, held in slave like conditions and are subjected to other forms of exploitation.

68. The State needs to find proper solutions to the estimated 30,000 or more undocumented migrant workers, ensuring that such measures taken by the government does not re-victimize individuals. It is also important to establish a psycho-social support system for foreign and local victims of trafficking. The State needs to strengthen its efforts to enforce existing regulations relating to work place standards and to undertake periodic monitoring of worksites so as to guarantee favourable conditions. The State also needs to take appropriate measures to ensure that workers are not exploited by the employers, agents or any other party and work towards respecting, protecting and fulfilling the rights of migrant workers. It is equally important to speed up the bill on Anti Human Trafficking and Smuggling and the ratification of International Convention on Protection of Rights of All Migrant Workers and their Families (ICPRMWF). Likewise, it needs to create awareness relating to human trafficking of both local and migrant workers.

Article 9, Arbitrary Arrest

69. Article 45 of the present Constitution states that everyone has the right not to be arbitrarily detained, arrested or imprisoned except as provided by law enacted by Parliament which should not be contrary to the Constitution and tenants of Islam. Additionally, article 46 of the Constitution states that everyone has the right not to be arbitrarily detained, or detained for an offence unless the arresting officer sees the offence being committed, or has reasonable and probable grounds or evidence to believe the person has committed an offence or is about to commit an offence, or under the authority of an arrest warrant issued by the court.

Existence of Practices that leads to Arbitrary Arrest or Detention

70. Despite the aforementioned provisional guarantees on freedom from arbitrary arrest or detention, there are incidences of such violations. Following are prominent incidents which illustrate the breach of what rights enshrined in the Constitution.

71. *On January 16, 2012, the unlawful arrest and secret detention, by the military, of the Chief Judge of the Criminal Court Uz. Abdulla Mohamed was a clear violation of the rights specified in the ICCPR and those stipulated in the Maldives Constitution This was an act that HRCM criticized from the very outset as it violates basic rights outlined in the Constitution,*

the International Human Rights Instruments and also greatly undermines the independence of the judiciary in the Maldives. In addition, the total abstention of compliance of the government to the ruling by the Supreme Court to immediately release the Judge created a dangerous precedent in ensuring the rule of law in Maldives. As there was no news of his whereabouts for two days and after having meetings with the family and trying out to initiate dialogue with concerned authorities, HRCM used its powers under the HRCM Act to issue a directive to the Ministry of Defense and National Security, for the Judge's immediate release. When information on the place of detention was disclosed through the media, HRCM also mandated as National Preventive Mechanism conducted an unannounced visit on 19th of January 2012 to the premises where the judge was held. However, the military refused entry to the HRCM team and informed that no visits can be made without prior permission. HRCM was able to meet with the Judge on the 20th and 23rd January 2012. It was a pressing concern for the Commission that he had no access to his lawyer or been given an opportunity to meet with his family during his detention, although the Judge was kept in a safe facility without inflicting any injury or harm.

a) *HRCM concluded its Investigation into this issue on 27th May 2012 and the Report was sent out to the relevant stakeholders and to those found accountable for conducting the act. The arrest of Chief Judge on 16th January 2012 was unlawful; violating the rights guaranteed under the Constitution of Maldives and international conventions that Maldives is a party to. Following are the findings of the Investigation report.*

- i. *The arrest of the Chief Judge of Criminal Court by MNDF was in violation of the; Article 24 of the constitution on Right to Privacy, Article 33 of the Constitution on Right to protect reputation and name, Article 45 of the Constitution on No unlawful arrest or detention, Article 46 of the Constitution on Power of arrest and detention, Article 47 of the Constitution on search and seizer, Article 48 of the Constitution on rights on arrest or detention, Article 69 of the Constitution on Non-destructive interpretation of Constitution, Article 12(a) of the Judges Act stating that if a judge has been accused for a criminal offence and was not caught in action, the judge has to be arrested with a order from the court higher than the court where the judge works, Article 9 of ICCPR on the right to liberty and freedom from arbitrary arrest or detention and Article 6 of ICPED on taking necessary measures to hold criminally responsible for the acts of enforced disappearance.*
- ii. *The detention of the Chief Judge of Criminal Court in Girifushi by MNDF was in violation of the; Article 20 of the constitution on Equality, Article 21 of the constitution on Right to life, Article 41 of the constitution on*

Freedom of Movement and Establishment, Article 43 of the constitution on Fair administrative action, Article 48 of the constitution on Rights on Arrest or Detention, Article 53 of the constitution on Assistance of Legal Counsel, Article 54 of the constitution on No Degrading Treatment or Torture, Article 8 of UDHR on Right to Remedy by Competent Tribunal, Article 9 of UDHR on Freedom from Arbitrary Arrest and Exile, Article 12 of UDHR on Freedom from Interference with Privacy, Family, Home and Correspondence, Article 9 of ICCPR on the right to liberty and freedom from arbitrary arrest or detention, Article 10 of ICCPR on Humane treatment of People deprived of their liberty, Article 2 of ICPEd on definition of Enforced Disappearance and Article 18 of ICPEd on Rights at arrest and detention.

- iii. The detention of the Chief Judge of Criminal Court in Girifushi by MNDF was in violation of the; Article 69 of the constitution on Non-destructive interpretation of Constitution, Article 245 of the constitution on Illegal orders and non-compliance, Article 246 of the constitution on Equal Treatment, Article 20 of Judicature Act on Conforming to and challenging a ruling, Article 48 of Judicature Act on Jurisdiction of the courts in its own right, Article 8 of the Armed Forces Act on Duties of the Armed Forces and Article 18 of Armed Forces on Null and Void Orders.*
- iv. It is conclusive to the investigation that the President and the Minister for Defense and National Security has to take the responsibility for arbitrary arrest and detention of the Chief Judge.*
- v. It is conclusive that it was the orders of the President to arrest Chief Judge as there was no action taken against MNDF for disobedience to the orders of the Courts.*
- vi. As stated in the Article 159 of the Constitution, investigating and taking action against judges are the mandate of JSC, it is conclusive that attempting to forcing the resignation of Chief Judge while detained by MNDF is in violation of Article 115 (c) of the Constitution on promoting the rule of law, and to protecting the rights and freedoms of all people.*
- vii. It is conclusive that MNDF was in violation of the Article 26 (a) of Human Rights Commissions Act, as it states that “It is a duty of Maldivian citizens and persons within the jurisdiction of the Maldives as per the Constitution of the Republic of Maldives, to obey orders to summon to the Commission, or provide information or submit a document to the Commission or act or*

refrain from committing an act required by the Commission, in relation to the powers conferred through Commission's responsibilities"

viii. HRCM notes that MNDF was in violation of Article 141 (C) of the Constitution which states that "No officials performing public functions, or any other persons, shall interfere with and influence the functions of the courts."

72. An opposition leader Mr. Abdulla Yameen Abdul Qayoom (leader of People's Alliance and a Member of Parliament) was arrested and taken to a nearby island at around midnight by the Maldives National Defence Force (MNDF), on July 15th, 2010. The reason for his arrest as stated by the government was for his protection due to unstable environment in the country, and the fact that there was a violent protest in front of his house. It is imperative to note that none of his family members were given any kind of protection from the unstable environment or from the protest in front of their house. The consequence of this arrest led Mr. Yameen's lawyer file a case in the Criminal Court on behalf of him, requesting the court to rule the arrest as unlawful. Criminal Court ordered MNDF to present Mr. Yameen to court on July 15th, 2010, which the government and the military did not abide. Thus, Criminal Court decided to continue the case in the absence of Mr. Yameen. The Prosecutor General and HRCM stated that the arrest of Mr. Yameen was unlawful³¹. After restricting his freedom of movement for 8 days, he was released on July 23rd, 2010. There were no charges presented against him regarding this arrest. On 22 July 2010, Mr. Yameen lodged a complaint at the Civil Court stating that MNDF does not have the power to withhold his civil rights. On 25 August 2010, Civil Court ruled that MNDF does not have the power to withhold the civil rights of Mr. Yameen³². On 16 August 2011 the Civil Court ruled that Mr. Yameen to be compensated with Mrf 244,031.25 (USD 15,825.64) and Maldives Police Service to pay the compensation. Referring to the verdict of Supreme Court on 11 July 2010 that ordered the release of Mr. Yameen³³, the Civil Court referred to the Article 58 of the Constitution on compensation. Although Civil Court ordered to pay the compensation to the court within 30 days from 16 August 2011, this ruling is now being appealed by the government.

73. The State should take effective measures to avoid such incidents of arbitrary arrest as this infringes the human rights of the persons involved and may create dangerous precedents. In addition, in cases of arbitrary arrests compensation has to be made to the victims

Article 12: Freedom of Movement

Hindrance to Free Movement

74. Article 41 of the present Constitution provides freedom to enter, remain in and leave the country, and to travel within the country. Since 2011, there have been a total of 7 cases lodged to HRCM, concerning restrictions imposed on freedom of movement within the country. The nature of such cases include MNDF Coast Guard halting boats carrying protestors who wants to join a political protest in the capital city, and restriction of civilians getting into an island for reasons of old rivalry or factional dispute existing between islands. There have also been several media reports that groups of people are being continuously obstructed free movement from one island to the other because of political rivalry. There are reports that government officials are also denied access to some islands obstructing development projects and the freedom of movement.
75. Factors as mentioned earlier under article 8; employment within the worksite, abandonment and confiscation of legal documents, residing in a foreign country and communication barrier all limit free movement of the migrant workers who seek employment in the Maldives. Confiscations of passports of the migrant workers are a common practice by the employers. The government ministries continue to withhold the passport of the expatriates for the purpose of safe keeping.
76. Provisions of article 22 (3) of the Disability Act (2010) states that people with disabilities also has the right to use public roads same as rest of the pedestrians. Additionally, article 23 of the same act states that when people with disabilities travel on any public or private transport system, they shall be given special care and assistance. There shall be no additional charges levied for such service enhancements or to uplift the walking equipments of the people with disabilities. Maldives also has ratified the Convention on the Rights of the Persons with Disability in January 2010.
- 77.** *The Baseline Assessment on Activities Addressing Rights of Persons with Disabilities* undertaken by the HRCM in 2010 drew conclusion that, one of the major service gaps for people with disabilities is limited access to premises and to public transportation. The assessment further states that the roads, pavements, road signs and traffic lights are not designed as friendly for persons with disabilities. The assessment also states that limited access to premises is a probable reason why few people with physical disabilities are able to seek employment. The assessment proposed 25 recommendations, from which 3 recommendations are directly or indirectly aimed at free movement of disabled persons.

78. State must ensure protection and free movement for all people living in the Maldives. No state institution or individuals should restrict freedom of movement within the country or abroad except by restrictions imposed by law. State must cease to withhold the passports of migrant workers for the intention of safe keeping, as this is a grave systematic violation, restricting the freedom of movement of migrant workers.

Article 14: Equality before the Law & Article 26: Legal Protection of the Law

Independence of Judiciary

79. The present Constitution guarantees an independent judiciary in the Maldives and is crucial for maintaining equality before law and providing legal protection of the law. However, due to shortfalls in the system, the judiciary as a whole is often questionable at various grounds. System gaps include important laws, regulations and procedures necessary to establish permanent courts with the means to carry out their functions effectively being not in place; courts are not provided with sufficient and trained judges and adequate resources to handle the prosecutions of the ever-increasing amount of cases submitted to them; some of the judges, prosecutors and lawyers are criticized of being found incompetent in fulfilling the crucial role of providing a fair and just trial.

80. International Commission of Jurists (ICJ), in their report *Maldives: Securing an Independent Judiciary in a Time of Transition*, has made a number of recommendations to build the competency of the judiciary.

81. It is noteworthy that a UNDP project named *Access to Justice* is being carried out from June 2011 till end of 2013, aimed at strengthening the capacity of justice sector, with a particular focus on applying the human rights based approach to enable equitable access to justice.³⁴ A huge reform in the justice sector is needed to bring the necessary changes and to strengthen the judiciary, giving importance to specific areas of issues, as highlighted in the ICJ Report, in order to provide the public with fair and impartial judgments.

82. The State should implement the recommendations given by International Commission of Jurists (ICJ) in its report *Maldives: Securing an Independent Judiciary in a Time of Transition*

Pending Important Legislation

83. One of the core factors affecting the delivery of justice fairly and efficiently by judges and magistrates is the pending of important legislations in the parliament. Penal Code as well as

other important bills including Evidence Act, Criminal Procedure Code, Civil Procedure Code, Right to Information Bill, Witness Protection Act and Bill on Anti-Torture is still pending in the parliament. There is no legislation that defines discrimination. The only significant improvement in the area of legislation since HRCM submitted its document for list of issues for Committee on Civil and Political Rights (CCPR) in 2011 is the enactment of Domestic Violence Act (DV Act) on April 23, 2012. The DV Act is an important step towards gender equality and non-discrimination in the Maldives.

84. The state should prioritize passing important legislations that are pending in the parliament which are crucial for delivery of justice fairly, consistently and efficiently.

Interference and Influence

85. Often the judiciary is being subjected to inappropriate interference with the judicial process compromising its ability to exercise its professional responsibilities with independence. Furthermore, individual judges and judicial process are being publicly criticized by both the executive and legislature which has an intimidating effect on them. Judges are concerned over Maldivian media criticizing the judiciary without verifying the information they get, which they believe, would lead to people having misconceptions about the judiciary. Below are some known incidences of interference of the executive and the legislature with the judiciary.

- a) On January 16, 2012, Maldives National Defense Force (MNDF) arrested and detained Chief Judge of Criminal Court on the orders of President and the Minister of Defense and National Security, ignoring the Criminal Court, High Court and the Supreme Court orders to release the judge. The Chief Judge was kept in secret detention at a military training base and his whereabouts had been concealed to the family for nearly 48 hours. The Judge was under military custody till February 7, 2012.
- b) On August 2, 2010, by the request of the President, Police surrounded the Judicial Services Commission (JSC), blocking any member or its staff from entering the commission. It was reportedly done to prevent the reappointment of 160 judges before the August 7th deadline when the commission revealed that 160 sitting judges have been made permanent after amending the criteria. The Police Integrity Commission ultimately concluded that the Maldives Police Service was negligent in cordoning off the JSC in this manner.³⁵
- c) On August 7, 2010, the President unilaterally declared the Supreme Court bench defunct. He issued a decree appointing a four member temporary appellate bench to oversee administrative aspects of the Supreme Court.³⁶

- d) Maldivian National Defense Force (MNDF) confiscated the keys to the Supreme Court pending the conclusion of the interim period of the Constitution and took control of the Supreme Court premises.³⁷

86. Some lawyers have expressed their concern to HRCM on the issue of Parliament influencing the judiciary, in particular, the process of the appointment of the Supreme Court bench. The lawyers suspected that the then governing party (Maldivian Democratic Party (MDP)) and the main opposition party (Dhivehi Rayyithunge Party (DRP)) came into terms to appoint equal number of judges to represent both parties on the bench..

87. The State party should be accountable for the inappropriate interference of the Executive and Legislature to the Judiciary and make sure that no such interferences happen in the future.

Non Abiding Court Rulings

88. There are incidences where the executive, the legislature, as well as other authorities refuse to respect and abide by the rulings and decisions of the judiciary, if the court rules against them.

- a) On January 16, 2012, Maldives National Defence Force arrested the Chief Judge of Criminal Court of the Maldives, and refused to obey court orders from Criminal Court, High Court and the Supreme Court to release the judge. The Judge was kept in detention for 21 days without charge.
- b) On 15 July 2010, Opposition Member of Parliament was detained by the Maldives National Defence Force (MNDF) and placed under ‘protective custody’, which was later pronounced as unconstitutional by Chief Judge of Civil Court. His lawyers requested and obtained a writ of habeas corpus but the MDNF refused to obey the court order.
- c) In July 2010, police criticized in the media about the criminal court judges who suspended two police lawyers due to contempt of court,³⁸ as they represented police in court cases of two Parliament Members.

89. The State party should take appropriate actions to ensure that court rulings are respected by all citizens in the jurisdiction of the State without exception.

Security of Members of Judiciary

90. Some judges and lawyers informed HRCM that members of the judiciary and their families often receive threats and are at times attacked due to objectionable verdicts and processes of trials. There were incidents when some staff members of criminal court were attacked during criminal proceedings, inside the court, by persons brought in for trial. The Judges' Act which was ratified in August 2010 obligates the security forces of the State to lay down procedures to provide security to the judges except the Chief Justice, whose security is to be provided by Maldives National Defence Force (MNDF). However, it is not clear whether such procedure has been laid down by any responsible authority to provide the needed security and physical protection to the persons of judiciary.

91. The following incidents highlightsome acts of violence againstofficialsof the judiciary.

- a) On March 20, 2012, Chief Justice's car was damaged by a group of protesters in the Capital City.³⁹
- b) On March 8, 2012, a magistrate court Judge was attacked and his leg broken by unknown assailants.⁴⁰
- c) On January 3, 2011, Presidential Member of the Judicial Service Commission (JSC), AishathVelezinee, was stabbed four times on her back in the capital city by a group of people.⁴¹
- d) On August 1, 2010, the President of Judicial Service Commission (who was alsoSupreme Court judge) was attacked by a mob.

92. Many of the judges are in fear of being attacked as there are frequently reported incidents, in the media, of brutal attacks which lead to deaths and devastating results which could make the judges dealing with criminals feel insecure about their own safety. Maldives, being a small community where almost everyone knows everyone else, judges and prosecutors can easily be targeted and their safety and rights violated.

93. The State should take steps to provide security forofficials working in the judiciary and raise awareness on the inherent right to life and security of persons and promote respect for human rights of all.

Competency

94. The judges and prosecutors of the judiciary are not properly appraised to determine their competency. As the Judges' Act states that every judge should prosecute all types of cases, they have to work outside their area of expertise leading to further incompetency, since

some are specialized in only Shari'ah while others in common law. It is important to highlight that there were no requirements established by law for qualification of a legal practitioner till August 10, 2010, merely pre degree level of familiarity with Shari'ah Law was considered sufficient, resulting in limited education and practical experience among judges. This resulted in shortage of legally qualified people in civil, common and international law.

95. The Judges' Act granted a seven-year period for judges to enhance their qualifications and the judiciary currently provides educational programs and training opportunities for its staff to improve their competency.

96. The State should ensure that officials working in the judicial system are provided education and training they require to improve their competency and better equip them to apply the Constitution and interpret the legislations of Maldives.

Transparency

97. Judicial Service Commission (JSC) of Maldives established as an independent and impartial body, mandated with properly vetting and reappointing non-Supreme Court judges and magistrates are constantly being accused and criticized by media and non-governmental organizations as well as persons within the judiciary for failing to work towards the independence of the judiciary, and for its lack of proper procedure and transparency.

98. The transparency of judges as well as JSC is in fact, questionable as some judges have failed to submit their income and property statements to JSC. Likewise, JSC had failed to take the appropriate actions against those judges. The Article 53 of the Maldivian Constitution, states that every judge shall annually submit to the Judicial Service Commission, a statement of all property and monies, owned business interests and all assets and liabilities. The Auditor General's Report 2010 of JSC, shows that 17 judges have failed to submit their annual financial statements to JSC and Auditor General's Office had given a directive in its report to JSC to take appropriate actions against those judges.⁴²

99. The State should review any existing rules of procedure that hamper transparency in the judiciary and establish mechanisms that make way for a transparent judiciary.

The State should investigate all accusations against judiciary and judicial officials that would hamper or affect the conduct of fair and impartial trials and take appropriate legal action.

Inconsistency

100. The Constitution stipulates to uphold Islamic Shari'ah in the Maldives. Nevertheless, there is no single version or text on Islamic Shari'ah that is codified and readily available for reference. Therefore, despite the fact that Maldives pursues Islamic Shari'ah there are inconsistencies in applying Shari'ah law. There have been incidents that some of the absolute rulings given in the Shari'ah are strictly abided by the judiciary while the others are not.
101. Some Judges and Lawyers have informed that inconsistency in judicial decision-making at the trial and appellate levels is common in the judiciary of Maldives. There are no specific procedures and regulations on the acceptance of evidence submitted to the courts; it is solely left at the discretion of the judge to decide to give importance to evidence or confession of the person prosecuted. Different judges give precedence to different facts in the same kind of prosecutions. Some Judges informed HRCM that, even after discussing the case with one another, often judges are unable to come to the same agreement and decision on a verdict in similar cases.
- 102. The State must codify and harmonize Shari'ah Law and common law in accordance with the Constitution and enact important laws leaving no room for inconsistencies in judicial decision making.**

Delays and Denials of Justice

103. Delaying and denying of justice is another persisting issue in the judiciary. There is a need to increase the capacity of the judicial system to efficiently administer case load in order to speed up the judicial process. An average of 20-30 cases is being submitted to Civil Court daily for prosecution which was handled by eight judges and only 30-40 cases reach a verdict per month (i.e. 1-2 cases per day). Juvenile court currently has only one judge who has to handle all the juvenile delinquent cases including the administrations related to them.
104. Statistics of Judicial Sector shows that number of pending cases increase year to year, and HRCM notes that there are backlog of cases in the courts, some of which have been pending in the courts for years. At the end of 2008, there were 1031 cases pending in Criminal Court which increased to 1240 cases by the end of 2009 and to 1766 cases by the end of 2010.
105. HRCM was informed that one of the reasons for backlog of cases in Criminal Court is the inability of the Prosecutor General's Office (PGO) to assign lawyers to criminal cases. It appears that lawyers refuse to accept cases from PGO on retainer basis as the lawyer's fees

for handling such a case is very low compared to what they get for private practicing. Currently, a lawyer in private practice earns about more than MRf25000 (US\$1621.27) per case while the amount paid by the PGO is fixed and is about MRf5000 (US\$324.25) per case.

106. There are many incidents where suspects of crimes, including those who were arrested for murder, child abuse, rape, gang violence and smuggling drugs, have been released by the court for not having enough evidence against the suspects. HRCM have been informed that they had to release those suspects due to absence of enough evidence. Some lawyers have expressed their concern over police not properly following the investigative process and having no way of verifying the forensic evidence produced by Police. Some lawyers raised questions about professionalism of police and its investigators.
107. Withholding information leads to obstruction to justice in criminal cases. Sometimes, the prosecutors do not get all the documents and evidence related to the case, denying the accused the opportunity of a fair trial. HRCM has learned that sometimes prosecutors have to get a court order to acquire the missing documents. Similarly, lack of witness protection programs and mechanisms contributes to the denial of justice in Maldives. Often witnesses of a crime scene refuse to appear before the court to give their testimony for fear of reprisal.
- 108. The State should expedite the swift passage of an efficient Witness Protection Act and ensure that processes are set in place to enable swift and fair justice without discrimination. An independent forensic laboratory for investigative purposes needs to be established with full functional capacity.**

Prosecution and Enforcement of Judgment

109. In the criminal justice system the decision to prosecute an accused is made by a judge after a preliminary inquiry of the evidence provided by the responsible authority. Most of the criminal cases are sent to the PGO by police and often cases sent by police are rejected by the PGO on grounds of inadequate evidence. According to the *Annual Statistical Report 2010* of Maldives Police Service, of the 1851 cases sent to prosecution 682 cases were rejected and only 75 cases reached a verdict.
110. Like many developing countries, Maldives has a serious problem with the enforcement of court judgments. Often the law enforcement authorities are unable to enforce the court rulings for suspected reasons of political connections, corruption, mismanagement, etc. According to Maldives Police Service in 2010 alone, 523 people were arrested more than once on different criminal charges and investigated.⁴³

111. There are no effective rules of procedure to address inefficiencies and unfairness that may be alleged to weak enforcement of judgments in the justice system.

112. The State should ensure that judgments by the courts are enforced and no influence of any kind prevents justice from being served.

Openness of Court Proceedings to the Public

113. Although, court proceedings are open to the public, except some specific cases like family issues and child related issues, the courts do not have adequate chambers for those proceedings; most of the court rooms can accommodate a maximum of 6-7 persons at a time. Some Judges have informed HRCM that the judiciary has been working with the state to arrange better court houses since 2009, but the issue remains unresolved.

114. The State must provide court houses with adequate chamber so that court proceedings can be made open to the public.

Juvenile Justice System

115. Juvenile justice system is one of the core areas of the judiciary that need to be strengthened. Persons involved in the juvenile justice system are not given professional trainings and they are not given training on relevant international standards. The court is not provided with adequate chamber and appropriate setting for the trial of juveniles. Furthermore, there are no probation officers to ensure that the child meets/fulfils the probation terms, when the court orders the juvenile to be placed on probation.

116. Although there is correctional treatment available for juvenile offenders, only a limited number can have access to them. The Correctional Training Centre in *FeydhooFinolhu* (only center of this kind in Maldives), under Juvenile Justice Unit (JJU) of Ministry of Home Affairs, managed by Maldives Police Service, is unable to accommodate all the juvenile offenders and the center houses only male offenders. Furthermore, juvenile offenders and delinquents are in the same correctional center which should ideally be managed by professionals suited for this type of work other than police officers.

117. Age of criminal responsibility of juveniles in Maldives is set between 10-15 years, in which a child can be held responsible for crimes like murder, fornication, terrorism and drug abuse if she or he has reached puberty or turned fifteen years of age by the time of the crime. Juveniles above 15 years are held accountable for all categories of crimes, if committed.

118. The State must take appropriate steps to strengthen juvenile justice system of Maldives. State must refer to international standards and best practices in developing any mechanism for juvenile justice. The State should review entrusting the management of Juvenile detention/correctional facility to an appropriate authority.

Accessibility to Justice System

119. The Justice System of Maldives is not fully accessible to the disabled person and migrant workers. Although, the courts have a list of translators whom they use in court proceeding, the courts do not have their own translators, interpreters and assistive devices for persons with disabilities. Some lawyers have raised their concern stating that these translators are not competent and the courts do not cross examine them. Some judges have informed HRCM that in cases where interpreters are needed for the court proceedings, the defendants have to bring their own interpreters. The trial courts (Criminal Court, Family Court, Civil Court and Juvenile Court) are situated on the first floor and above in the Justice Building in the capital, which does not provide adequate access for persons with disabilities.

120. The system fails to provide a conducive environment that offers safety and confidence to both parties in settling family matters in situations where one of the involved parties and family members threaten one another. Even in divorce cases where a spousal abuse is involved, the victimized spouse has to stay in the same island with the abusive spouse, with the possibility of getting further abused as these cases do not get transferred to Courts in the capital or another island.

121. The State should develop accessibility standards and create an enabling environment in the courts so that the justice system would be fully accessible to the public. State should take urgent measures to strengthen the judiciary and to provide the constitutionally guaranteed independence. The JSC should evaluate judges and magistrates for their eligibility and competence in applying constitutional law, ensuring equality before the law, and applying human rights standards when interpreting domestic legislations. Judiciary must further utilize the allocated budget to properly perform its functions.

Article 17: Right to Privacy

122. The present Constitution ensures everyone the right to respect for private and family life, home and private communications (article 24). The Constitution further guarantees that residential property shall be inviolable, and shall not be entered without the consent of the resident, except to prevent immediate and serious harm to life or property, or under

the express authorization of an order of the Court (article 47(b)). However, there were instances where law enforcement officials violated these constitutionally guaranteed rights. It is also observed that the right to freedom of expression guaranteed by the Constitution is being misused to defame various public figures. Likewise, it has become a common occurrence to report unfound allegations on television channels, radios and in print media. Furthermore, public rallies organized by political parties have also become a common place to infringe people's privacy. Following are areas that need to be improved to ensure the right to privacy guaranteed and obligated in the Constitution and ICCPR.

Communications Monitoring

123. The public have been suspicious and accusing authorities for monitoring communication between individuals. However, until July 2010, no clear evidence to favor such allegations has been submitted. In July 2010, with the leakage of private conversations between some members of Parliament and other politicians, personal conversations are no longer believed to be private. The issue became known when three recordings of telephone conversations between members of Parliament appeared on the internet in July 2010 and the local television stations including national television, broadcasted them. The only authorities that can legally monitor communication between individuals and groups are MPS and MNDF. Often both these authorities are being suspected for the leakage of private conversations between members of Parliament and other politicians as well as other individuals.
124. With the new found freedom of media in the country, incidents of media violating the right to privacy is also becoming more common and violations of privacy by media are generating fear among public about the illegal monitoring of private communications of individuals by the law enforcement authorities. Although, MPS had investigated the above mentioned cases of the leaked audio clips, their findings are not made public, adding up to the fear and uncertainty among them. The HRCM has expressed concern in its *Annual Report 2010* about publicizing "personal telephone calls" and "other types of private conversation" between people by the media and also about the MPS not disclosing their findings in relation to the investigation.
- 125. The State must ensure right to privacy and that private communications are not monitored illegally and released to the general public by the authorities.**

Intrusion into Private Life and Homes

126. In the current Constitution, entry and search of private property and vessels are restricted to a court order and this has been the normal practice. However, there are reported instances of law enforcement authorities invading people's private life without prior permission. HRCM is currently investigating a case where police allegedly invaded a woman's privacy while she was breastfeeding her child. Police apparently were looking for a suspect in the case of a burning down of police buildings and courthouses in Addu City on February 8, 2012. HRCM had conducted an investigation on the conditions and treatment given to those taken into police custody in connection with the riots in Addu City on February 8, 2012. Some of the detainees had informed HRCM that police have invaded their homes without any warning or notice or court order and used foul language in front of their family members.

127. The State must ensure right to privacy and that public officials follow strict regulations and take legal action against authorities and public officials who violate the constitutionally guaranteed rights.

Honour and Reputation

128. Even though right to privacy is guaranteed by the Constitution and also from ICCPR which the Maldives is party to, the citizens of the Maldives are becoming victims of violation of privacy. Often honour and reputation of people are jeopardized and violated by the media intentionally or otherwise. The media has failed to draw a fine line between freedom of expression and right to privacy and continues to broadcast and disseminate information which would damage the reputation of individuals. Police on rare occasions, have given wrong information to the media and hence, information with pictures of citizens have been publicized labeling them as criminals and later an apology afforded in the media saying it was a mistake.⁴⁴ But this is a grave issue as the person's reputation will by then be blemished and the person emotionally affected. Members of Parliament, often misuse their privileges and immunity by debating about people's personal lives in the chamber, which is broadcast live on the media, which intentionally or not damages the person's reputation.

129. The State must ensure that all citizens within its jurisdiction respect the rights of others including private and family life and take measures to ensure that political parties and state authorities observe a code of conduct that fosters respect for others.

Article 19: Freedom of Expression

130. The Constitution guarantees that everyone has the freedom to acquire and impart knowledge and information (Article 29). The Constitution also assures the media its freedom and clearly guarantees journalists the right to protect sources (Article 28). However, there are no laws which guarantee freedom of expression and right to information in the Maldives. A Bill on Right to Information has been pending in the Parliament since 2009 and is under review by Social Committee of Parliament. Although the “Roadmap for the Reform Agenda”, formulated in 2006, identified passing of a Freedom of Press Bill as one of the goals, so far no work has been done to draft such a bill. Furthermore, working on a Freedom of Press Bill is not included in the legislative agenda of the Attorney General’s Office.
131. Despite, the lack of important legislations, Maldivian media currently enjoys an environment that is conducive to exercise their constitutional rights and press freedom which had improved from the beginning of 2008. However, incidents of government attempts to interfere and obstruct media freedom occur frequently. Also, politically charged violence against journalists and media outlets have increased recently. Furthermore, there are lots of ethical issues within the media that jeopardize exercising their freedom and independence.
132. MPS sometimes reacts with force against journalists who cover demonstration, especially those organized by the main opposition party. Citing one incident, on October 25th, 2010, MPS attacked and briefly detained some journalists who were covering an opposition party (Dhivehi Rayyithunge Party) protest rally. This act was condemned by HRCM stating that MPS used force in the specific incident in ways which may have caused physical injury to the journalists⁴⁵⁴⁶. Maldives Journalist Association (MJA) has been constantly condemning the actions of police, alleging that journalists are often beaten with batons, sometimes handcuffing and detaining them. Maldives Broadcasting Commission (MBC) through media expressed its concern over the fact that journalists covering the rallies are being arrested by police. The justifications given by police for their actions were that some of the journalists covering the demonstration engaged with police in a confrontational spirit and disrupt police work in maintenance of public order.
- 133. The State should act to guarantee freedom of expression to the extent provided in the Constitution. The State should ensure that media and press adopt a code of ethics that shall restrain from irresponsible reporting and defamation.**

Access to Information

134. The Constitution of Maldives states that all information concerning government decisions and actions shall be made public, except information that is classified as State secrets by a law enacted by the People’s Majlis (Article 61(c)). However, access to information is a major challenge faced by journalists and the public which hinders freedom of expression.
135. State institutions and government offices fail to provide public with timely, accessible and accurate information. Information of public interest is often not displayed regularly, even on the websites of the state institutions. HRCM received information from media professionals that they have at times difficulty obtaining information from government offices; information requested sometimes take months to deliver or does not get delivered at all. The Bill on Right to Information pending in the Parliament, when enacted, can help the media in this aspect to some level. However, MJA informs that the Bill could also be used to restrict information. Furthermore, it does not obligate institutions and organizations other than those under the government to provide information.
136. Also, HRCM received information from media persons that they have neither been consulted in drafting the Bill, nor have they been given any opportunity to comment on the Bill. However, Transparency Maldives, a civil society organization, is working with the Social Committee to revise the Bill. Likewise, in 2012, Transparency Maldives have launched a program named ‘Access to Information’, funded by UNDP Maldives, which aims at creating awareness and interest among the public about the right to information.
137. Until recently, there were state controlled media in Maldives and journalists and people working in the field informed HRCM that the government usually provides information related to its decisions and whatever it wants to promote only to those media. Television Maldives (TVM) and Voice of Maldives (VOM) were the only government controlled media in the country which had been controlled by Maldives National Broadcasting Corporation (MNBC), a government corporation formed by former President. According to Civil Court, those media were supposed to be under the control of Maldives Broadcasting Corporation (MBC), the public broadcaster. However, former government defied the court order and refused to let MBC run the state media. MBC had been at loggerheads with MNBC for control over the public media assets since 2009. When the current government came into power in 2012, it has transferred all the assets of those media to MBC.
- 138. The State must prioritize enacting the legislation concerning right to Information. The State must develop a mechanism that ensures public bodies disseminate a wide range of key information in a manner that is easily accessible to the public, including local and foreign media without discrimination.**

Censorship and Bias

139. Ratification of the RTI bill would not solve the problems faced by media. There are other factors which affect the freedom of expression; media generally depends on advertisers who try and influence the information disseminated to the public. Although, there are newspapers and broadcasters which are not State-controlled, most are run by politicians who control and influence the contents produced. Self-censorship is very common in Maldivian media. Most of the newspapers and media outlets are biased towards or against the ruling government.
140. Most of the journalists as well as persons working at all levels of the media are of the opinion that private media can and have the right to be biased. Expressing their view on this issue to HRCM some media persons stressed that self-censorship and bias is not at all an issue. Furthermore, the media are of the opinion that only those who support their political ideology would and should watch or receive the information they provide.
- 141. The State must promote an independent and responsible media with an environment free from political control and pressure.**

Responsibility of Media

142. Though media have a responsibility to help strengthen and support democratic process, sometimes the media of Maldives misuse the freedom guaranteed in the Constitution (Article 28) and propagate baseless information to the public, which trigger unrest or violence in the country. Often media tend to forget the responsibilities and duties bestowed upon every citizen in the Constitution (Article 67). A devastating incident happened when a private TV station disseminated unverified information which alleged that a protester was killed by law enforcement officials, in the Capital City, during a protest against the current government on February 8, 2012, a day after the previous government was overturned. This erroneous information possibly had resulted in infuriating the protesters gathered at Addu City, which lead to burning down of Police buildings and courthouses in the City. HRCM had investigated the incident that happened in Addu City and found out that the TV station had created incitement to hatred and disorder among the public in this specific incident. The Commission had recommended Maldives Broadcasting Commission to take legal actions against such media as well as to promote responsible and unbiased journalism in the country.
143. There are instances of broadcasting media failing to maintain code of conduct for which Maldives Broadcasting Commission, state broadcaster of Maldives had taken appropriate actions. It is common for the media in Maldives to air live coverage of political rallies and

demonstrations. Often, in these rallies and demonstrations the activists address the demonstrators in foul language which is inappropriate for broadcasting. HRCM was informed by the Maldives Broadcasting Commission that the Commission had tried to come to terms with those media to censor such addresses by using a delay of few seconds. At times, some broadcasters have complied with the request, however, other broadcasters have been refusing to use delay and Maldives Broadcasting Commission has been unable to resolve this issue till date.

144. The State must take necessary actions to ensure that the media respect the accepted norms and values of the society. The State must take measures to prevent media from inciting hatred, intolerance and violence.

Attacks on Journalists and Media

145. Lately in Maldives, politically charged and gang related violence against journalists and media outlets has become a major issue. Media outlets and journalists have informed the authorities that they have been receiving threats by activists as well as political figures; intimidating them to cease dissemination of news and reports which discredit them. Politicians often publicly criticize media in ways that could arouse public hatred towards journalists as well as media outlets. Within the last two years, a reporter and a newspaper technician were attacked and injured by unknown assailants, two media channels were vandalized by a group of unidentified persons and several journalists summoned to police headquarters for questioning regarding sources, etc. Below are some identified incidences of violence against journalists and violations of freedom of expression.

- a) On June 4, 2012, a journalist and blogger was stabbed in the neck near his house in Male' by an unidentified person.⁴⁷
- b) On March 19, 2012, protesters of the opposition Maldivian Democratic Party (MDP) attacked VTV smashing the glasses of VTV building and MJA reported that staff of VTV were harassed and injured. During the same protest, a videographer of "Haveeru" daily, one of the leading newspapers in the country, was attacked by the protesters, by snatching his press card and smashing his camera.⁴⁸
- c) On February 6, 2012, group of people forced themselves into VTV (a private TV station) which was broadcasting live footages of clashes between the then ruling MDP and oppositions. The group destroyed equipments of the TV station and put the station on fire. Journalists who were in the field covering the clash got attacked and injured by the protesters.⁴⁹

- d) On January 27, 2012 four journalists covering a protest were attacked by a group of people who had their faces covered. On the same night DhiTV (a private TV station) was vandalized.⁵⁰
- e) On May 1, 2011, police apprehended two journalists from “Haveeru” daily and from the Sun Media who were covering a rally against economic hardship in the country, and were later released.⁵¹
- f) On March 21, 2011, a newscaster at the Maldives National Broadcasting Corporation’s (MNBC) Channel One was stabbed early in the morning by two unknown persons on a motorcycle, while he was heading home after watching a football match. Although it is unclear of the intention of the attackers, there is room for suspicion that it was an attack aimed at media.⁵²
- g) On March 15, 2010, Four men forcibly entered DhiTV, a privately run TV station, and attacked five senior officials, shortly after the station aired a report on its 2 o’clock news claiming that a gang leader arrested for gang related crimes has been released to house arrest. Three hours after the alleged gang attack on DhiTV, a Haveeru (a daily newspaper) employee was stabbed in the back.
- h) On February 25, 2011, two journalists of “Haveeru” daily, was summoned to the police station regarding the explicit pornography racket reported in the newspaper, which allegedly involved some top government officials and political figures. The journalists were questioned about the sources they had used and the content of the allegedly pornographic videos. The Criminal Court of Maldives reportedly issued a search warrant against the two journalists to check their work premises and other work related locations concerning them including their household premises.⁵³
- i) On January 30, 2011, Supreme Court obtained affirmation from a Journalist “Haveeru” daily not to publicize any issue through media of the hearing, dealing with the name of an election candidate; the Election Commission had put forward the Supreme Court for elimination with reference to the then up-coming local Council Elections.⁵⁴
- j) On August 30, 2010, the offices of the privately owned TV broadcaster, VTV, were vandalized by unknown persons.⁵⁵
- k) On August 25, 2010, the President of the municipal administration (newly elected Mayor of Male’ city) in the Maldives’ capital city of Male has reportedly attacked a DhiTV (a privately owned TV station) cameraman on August 25,

snatching his camera while he was on assignment inside municipal council premises.⁵⁶

- l) On October 25, 2010, police attacked and briefly detained some journalists who were covering an opposition party (Dhivehi Rayyithunge Party) protest rally. HRCM condemned this act.^{57,58}
- m) On August 5, 2010, a female video journalist from VTV was disrupted by a parliament member and ruling Maldivian Democratic Party (MDP) Parliamentary Group Leader, while she was filming an interview of another member of the parliament near the a Parliament Committee room, repeatedly warning her to leave the area without delay.
- n) On March 8, 2010, private television station DhiTV was forced to leave a General Meeting of the ruling Maldivian Democratic Party.⁵⁹
- o) On January 28, 2010, police ordered Dhi-fm visual radio to shut down its transmission while it was carrying out the live coverage of the protest held in front of Presidential residence, “Muliage”.⁶⁰

146. Maldives Media Council (MMC) is the body established under Maldives Media Council Act (15/2008), entrusted of finding an appropriate solution for these problems. The main aim of MMC is “to preserve, promote and maintain the freedom of press, within the legal frame work of the Country and to encourage the growth of a sense of responsibility, public service, ethics and a high standard of professionalism among all those engaged in the profession of journalism”. So far the council has not been successful in taking steps to provide effective solution for the problems journalists face in obtaining and disseminating information to the public. Also, the council is so far unsuccessful in achieving its aim of encouraging high standard of professionalism among journalists. Finance Committee of Parliament has proposed to abolish Media Council on the ground that, the council had been unable to perform its duties and responsibilities to a satisfactory level. The issue is being debated in Parliament.⁶¹

147. The State must take appropriate legal actions against law enforcement officials who use violence against persons working in the media. The State should provide adequate protection for journalists and media outlets against attacks and other forms of harassment and must take measures to ensure that all such incidents are investigated and prosecuted. The State must make sure that the authorities refrain from intimidating and forcing to reveal their original source. State should take appropriate legislative and administrative measures to provide an environment for exercising the constitutionally guaranteed freedom of expression.

Article 21: Freedom of Assembly

148. Article 32 of the Constitution states the right to peaceful assembly is guaranteed for everyone and without any prior permission. Article 16 of the Constitution, guarantees to all persons, subject on to reasonable limits prescribed by a law enacted by the Parliament should not be contrary to fundamental rights and freedoms in the Constitution and not contrary to any tenets of Islam. Apart from the Constitution, right to assembly is governed by a domestic regulation, namely “Regulation concerning Assembly” which was enforced on April 15th, 2006. Upon ratification of the present Constitution in 2008, the regulation came under the “General Regulations Act”, ratified in 2008.

Hindrances to Peaceful Assembly

149. The “Regulation concerning Assembly” contradicts the article on assembly in the Constitution, as regulation requires at least three persons representing the organizers of public assemblies to submit a written form fourteen days prior to every gathering to the MPS, while the Constitution guarantees peaceful assembly without any prior notice. On April 25, 2012 the High Court invalidated Article 4, 6, 7, 8(c), 13 and a part of Article 3 citing contradiction with the Constitution. The aforementioned articles required that the person organizing the demonstration be identified and informed in advance, the provision for MPS to deny permission to conduct demonstrations, imposing conditions on the freedom of assembly, setting time limits for the duration of demonstrations, and the prerequisite of giving MPS prior notice of the demonstrations.

150. Furthermore, at the fifteenth Human Rights Council a Resolution on Right to Freedom of Peaceful Assembly and of Association was adopted which decided to create the first-ever Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. This resolution was jointly introduced by Maldives. However domestic laws and regulations have not been brought in line with this resolution.

151. HRCM notes that there are inconsistent practices by MPS in dispersing the protests. Following lists some of the recent incidents which demonstrate unfair dispersal of demonstrations.

- a) *A series of protests which were held for 1 week from April 30, 2011, blaming the government for the worsening economic plight, and because the commodity prices had increased almost to double. Protesters were dispersed by MPS using force and many were reportedly injured and arrested though later released. A total of 8 protests were carried on 7 consecutive days. The first demonstration of this series which lasted for almost 13 hours was dispersed by riot geared police*

using tear gas where both public and police personnel were injured⁶². In this series of demonstrations MPS had placed restrictions and used force to disperse them, arresting journalists, imposing limitations and restrictions on media coverage. These protests had appeared in the Washington Post on the list of “Biggest protests and crackdowns of the decade”⁶³ (May 2011).

- b) On December 23rd, 2010, parents from Arabiyya School gathered in front of President’s Office protesting the issue of relocating the construction of a new school building. On demanding to meet with the President, Political Advisor of the President met with the representatives of the parents. Even after the meeting, the parents were not willing to leave the area without meeting the President, and the parents referred to a similar incident where President met with the protesting sports persons who assembled in front of Presidential residence and how the issue was resolved peacefully. However, that this dismissed using force, including pepper spray.⁶⁴*
- c) On July 14th, 2010, according to Minivan News, some reporters claimed that during the MDP led demonstrations calling for Mr. Abdulla Yameen Abdul Gayoom’s (Member of Parliament) and Mr. Gasim Ibrahim’s (Member of Parliament) arrest, the MNDF and MPS beat the gathered protestors with their batons. MPS spokesperson reported that nine police officers and six civilians were injured during the riots.⁶⁵*

152. Series of demonstrations held from January 16 to February 6, 2012 following the unlawful arrest of Chief Judge of Criminal Court were monitored by HRCM. The following highlights the observations of HRCM.

- a) Use of force by Police was found to be inconsistent and especially discriminatory towards some political parties.*
- b) Disproportionate and unnecessary force was used by Police when dispersing demonstrations.*
- c) Police allowed some politicians to influence the decisions Police during demonstrations.*
- d) Some detained demonstrators were tortured at the time of arrest, and this was validated by visible signs on their body observed by HRCM officials.*
- e) Police obstructed the work of media persons during demonstrations and in the process some sustained injuries.*

- f) *Contrary to the Police Act, female protesters were handled and arrested by male police officers.*
- g) *There were clear inconsistencies in the duration the police took to issue warnings to the demonstrators before dispersing the demonstrations.*
- h) *On some occasions HRCM officials were denied access to detainees.*
- i) *Some detained demonstrators informed that they were tortured by MNDF officials at the time of arrest, and this was validated by visible signs on their body observed by HRCM officials.*
- j) *The telecommunication connections were terminated near the demonstration site on some occasions using jamming equipment.*
- k) *Demonstrating detainees were not informed of their rights upon arrest and HRCM observed that in some cases families of detainees were not informed about the detention as required by the Police Act.*
- l) *Excessive, unnecessary and disproportionate use of pepper spray on protestors was observed by HRCM.*
- m) *The standard operating procedures of police were not respected during these demonstrations.*
- n) *Water cannons were used by the MNDF to disperse the demonstrators in the absence of a provision to use water cannons as a means to disperse demonstrations in the current police regulation on Use of Force and Fire Arms.*
- o) *On some occasions Police denied protestors the Freedom of Assembly.*
- p) *Even though the Police are able to control the large crowds of protestors, there are times the assistance of MNDF is sought to disperse a small crowd of demonstrators.*

153. The march of MDP protestors towards the Republic Square on February 8, 2012 came to a halt, when riot police stopped them near Maldives Monetary Authority building and sprayed tear gas into the crowd, without prior warning. Although, it was at the entry to a restricted area to have assemblies under the Regulation on Assemblies the police action taken in dispersing the protestors was unnecessary and disproportionate. Many of the demonstrators were baton charged indiscriminately, and pepper sprayed directly on the face, resulting in increased number of injuries among the protestors. A number of protestors were also taken into police custody at the Dhoonidhoo Detention Centre. HRCM

conducted an investigation on the events of that day. Following are the findings of the investigation of which a report was shared with relevant authorities on 28th May 2012:

- a) While Article 7(a) and 11 of the Police Act (No. 5/2008) clearly prohibits any form of torture, cruel, inhuman, degrading treatment and punishment, the HRCM's investigation into the events of February 8, 2012 is conclusive of the fact that police used excessive, unnecessary, disproportionate force in dispersing the demonstrators.
 - b) The HRCM notes that the actions of the protesters did not reach the level of those to be restrained using less lethal weapons as stated in the Article 14 of the Police Act. However, it was noted that the protesters including those who did not resist being arrested or those who were not a threat to the Police or a civilian, were all controlled using batons and tear gas.
 - c) According to the Article 10 (a), (b) and (c) of the Regulation on Use of Force and Firearms, protesters should be advised to stop their actions and warned before weapons are used to give sufficient time to disperse and leave the area. It was noted that the protesters were advised by police before they disperse the crowd. Nevertheless, the protesters were not given enough time to leave the area nor were they given the warning that force and weapons will be used to disperse them. In addition to this, even though Article 10 (4) states that if the situation is such that the Police have to use force and weapons to disperse protesters without giving them prior warning, the HRCM is of the opinion that the circumstances of that day did not require the Police to disperse the crowd without prior warning. HRCM also notes that the actions of the Police were unlike any other seen before in dispersing a protest.
 - d) HRCM notes that the police responded with physically and mentally harmful force towards some political activists who did not show any resistance. Although the Police Act states that female arrestees should be handled by female police officers, it was noted that a disproportionate number of male officers were involved in arresting female protesters in ways which were not only mentally and physically harmful but also degrading.
- 154. State should expedite the enactment of the new bill on the Right to Assembly. State should take action against those officers who violate the laws without affording them impunity. State needs to review the existing public order training to incorporate international best practices and human rights standards. In addition, the State needs to disseminate information and raise awareness on the rights and responsibilities with regard to Freedom of Assembly.**

Article 22 : Freedom of Association

Operation of Associations

155. According to Article 2 of the NGO Act (1/2003) it is mandatory for organizations to be registered in the country. In addition, the Article 37 of this Act states that it is at the discretion of the registrar to impose a penalty of any amount not greater than MRF 500 (US 32.42\$) on such organizations that do not comply with the Act. Moreover, those who fail to register organizations would be imposed a penalty of 2 to 5 years imprisonment, banishment or house arrest.

156. In order to facilitate the Freedom of Associations, it is imperative that State remove the requirement for mandatory registration of associations.

Establishment of Trade Unions and Challenges in exercising the right to Collective Bargaining

157. The present Constitution includes a chapter of fundamental rights and freedoms, which guarantees freedom of association. On April 15, 2009, the Maldives has reaffirmed its commitment to protect the trade unions and comply with international labor standards, by becoming a member of ILO. However, 3 years after becoming a member, the Maldives is yet to become party to the core ILO conventions.

158. While monitoring implementation of the recommendations put forward by HRCM on its *Rapid Assessment of the Employment Situation in the Maldives (2009)*, it was observed that some progress towards drafting a law on Industrial and Labor relations has been made. In the absence of trade unions, at present it is merely workers' associations that undertake the roles of the trade unions. Since workers' associations are registered under community organizations, the legal gap in defining the functions and mandate of associations remain an obstacle, especially when associations play a key role in defending employees' rights during the times of negotiation with employers.⁶⁶

159. Focus group discussions held with different associations revealed that its members remain intimidated to disclose their membership to employers. One association expressed discontent, claiming that the Ministry of Home Affairs initially rejected its registration at the request of the Ministry of Human Resource Youth and Sports. However, the Ministry of Home Affairs denied rejecting registration of any association in general. Another concern expressed by associations operating as unions include limited opportunity given by government authorities in voicing out the rights of employees even though the government accepts establishment of unions. However, unions lack the opportunity to represent the employee and participate in the mediation process during dispute resolution.

160. HRCM notes that members of Tourism Employees Association of the Maldives (TEAM), who participate in strikes, have faced reprisals such as being sacked, blacklisted in the sector and ending up unemployed. TEAM also mentioned that even at present there are such victims who are still looking for employment in the tourism industry.

161. Right to strike is another important area of concern with regard to collective bargaining. Article 31 of the Constitution guarantees that every person employed in the country and all other workers have the freedom to stop work and strike in order to protest, while Article 32 guarantees freedom of peaceful assembly without prior notice of the State. Article 16 (a) of the Constitution guarantees rights to all persons, in a manner that is not contrary to any tenet of Islam, the rights and freedoms contained within this Chapter, subject only to such reasonable limits prescribed by a law enacted by the Parliament in a manner that is not contrary to this Constitution. Any such law enacted by the Parliament can limit the rights and freedoms to any extent only if demonstrably justified in a free and democratic society. Conversely, a new “Regulation on Dispute Resolution between Employer and Employee” enforced in April 2011 comprises of issues of grave concern, as the regulation infringes workers’ right to strike. The following include limitations of this regulation:

- a) *The regulation is administered according to the Employment Act which remains silent regarding the right to strike.*
- b) *The grievance procedure to be followed prior to conducting a legal strike remains as an impediment.*
- c) *The regulation outlines strike as work stoppage, yet prohibits strikers from interrupting services they should provide.*
- d) *The professions excluded from right to strike include employees working in the field of telecommunication, health, water and electricity and air traffic control.*

162. Low income, lack of transparency in the distribution of service charge and issues relating to overtime work are amongst the major reasons of strike in the tourism industry. Following are some of the recent prominent incidents of strikes that were conducted.

- a) *In March 2011, employees of Conrad Maldives, Rangali Island Resort (Hilton Worldwide) opted to strike at the resort site over matters relating to discrimination of income between local and expatriate (European) employees. Representatives of LRA, Ministry of Tourism, along with the representatives of Crown Company, which owns the resort, was present to discuss the striker’s grievances. The strikers were able to find a resolution and return to work on the following day. As a result of the strike, the employees were informed that an*

increment of income would be across the board, and in the future the resort would perform an external auditing of accounts.

- b) *In August 2010, more than 150 Maldivian and expatriate employees working at Kurumba Maldives Resort conducted a strike, protesting of low income (issue of distribution of service charge from guests and no overtime pay), work discriminations (between local and expatriate staff), poor staff facilities and food. The protesting strikers revealed that the situation remained the same for the past 38 years. Initially, four employees presented a petition to the management expressing an interest to demonstrate strike actions, which resulted in dismissal of the four staff. The protest was resolved when owner of the resort, Universal Group, withdrew the requirement to take prior-authorization for striking on the privately owned island. A total of 19 employees were taken into State custody. Members of TEAM confirmed that they provided legal assistance in representing these 19 employees in the criminal court and many of them are now blacklisted in the resorts for having affiliations with the association.*
- c) *In April 2010, 157 staff of Shangri-La Villingili went on strike following the dismissal of four staff, when they were playing games on a PlayStation, inside a vacant villa and caught by the security personnel who conducted an investigation on the matter. According to the handbook of the management, such incidents would entail issuing a warning letter only. Initially 64 employees, who protested were also dismissed. On arrival to the site, Maldives Police Services informed the strikers to vacate the island within 10 minutes or they would use force, and suggested to continue the strike in the close by island of Feydhoo. The employees continued the strike throughout the week until Shangri-la management dismissed 14 employees, namely 10 leaders of the strike and 4 villa hosts. Rests of the employees were invited back to work.*
- d) *In February 2010, employees at the Centara Grand Island Resort conducted a strike action claiming that employees did not receive the service charges as agreed to them by the management. The management justified this by claiming that the room revenue was low. Following the visit by the representatives from Ministry of Human Resource, Youth and Sports, the resort increased the service charge allocated to employees. It is important to note that the management of the resort consulted with members of TEAM and permitted them to embark the resort.*
163. The above incidents prove existence of problems in the current system of employment, and in many cases it is detrimental to both employees and the employers; employees end

up losing their jobs and employers face issues of work stoppage. In this context, it is important to create grounds for the betterment of the work environment.

- 164. The State needs to expedite the facilitation of the provision for the establishment of trade unions and the right of collective bargaining in industrial disputes, which would then pave way to consultative approaches (such as tripartite consultations) rather than a one way approach (such as strike).**

Article 23- Family Rights

165. Marriage and having a family is a constitutional right under the article 34(a) of the Constitution (2008). Article 24 of the Constitution stipulates that each and everyone's family life has to be respected. It also states that family is the fundamental unit, and is entitled with special protection by the State and the Society. According, to Article 4(a) of Family Act, the minimum age requirement for marriage is 18 years. However, Article 4(b) says that the registrar can decide to marry a person under the age of 18 years, considering the maturity, physical health and financial stability of the person. However, under Article 21 of the law on the protection of the rights of Children (9/91), parents are urged to advise their children and make them aware of the negative consequences of early marriage and to discourage marriages of children before the age of 16 years.

166. Forced marriages are prohibited under the Article 63 of the Family Act. If a person is found to be guilty under this Article, he or she can either be charged with a fine of MRF 1,000/- (USD 64.85) up to MRF 5,000/- (USD 324.26), or the person can be charged with banishment up to six months. Family Court reported that till date they had not received any complaints regarding forced marriages. In addition, no complaint or case has yet been brought to the attention of HRCM regarding forced marriages. However, the Family Court has highlighted the issue of multiple Identification Cards per single person as it can lead to multiple marriages of a single person without being noticed by the relevant authorities. HRCM was informed of an incident where one person presented two national Identification cards (ID) at different occasions for the purpose of marriage. This issue of multiple ID cards was also discerned by other authorities at the time of Elections. Often, the IDcard is the sole document which is used to prepare other identification documents such as passports. Hence, Passports can also be issued for every ID card without the knowledge of the respective authorities which could create further issues.

- 167. State should strengthen the processes of verification and issuance of National Identity documents.**

Occurrences of Unregistered Marriages

168. Article 19(a) of Family Act states that, marriages solemnized in the Maldives, marriages solemnized abroad between Maldivians and marriages solemnized between a Maldivian and foreign national, shall be registered in accordance with the provisions of this Act. Furthermore, Article 22 states that, when a Maldivian national contracts a marriage abroad in a country where there is an official representative office of the Maldives, the marriage should be registered within two months from the date of contract of the marriage, at that office, in accordance with the provisions of this Act and the Regulations made under it. If a marriage was contracted in a country where there is no official representative office of Maldives, in compliance with this section, the marriage should be registered in Maldives within six months from the date of contract of the marriage. According to article 62, it is an offence to remain in an unregistered marriage (without conforming to section 19 and section 22 of this Act). The offender shall be fined with MRF1,000 (US \$ 64.85).
169. Due to a recent emergence of religious conservative ideologies in Maldives, it is enforcing the practice of contradictory viewpoints on the registration of marriages. These include strict instructions on following marriages according to some religious conservative ideologies that do not comply with the Maldivian Law. As per the aforementioned provisions of the Family Act, such marriages cannot be recognized as a valid marriage according to the Maldivian Law. It also complicates the divorce process of such marriages as they are considered illegal. This even leads the women (as bearer of the child) in the so called marriage to bear all the punishments entitled in Islamic Shari'ah, including flogging for fornication since the marriage will be illegal according to the domestic law. Family Court is aware of the fact that couples do solemnize marriage in other countries, and subsequently chooses to register the marriage in the country. However, Family Court has not yet recognized any marriage that was solemnized within the jurisdiction and later applied for registration.
170. One of the media articles reported acknowledgment by the officials of Ministry of Islamic Affairs of the existence of unregistered marriages.⁶⁷ Family Court further confirmed in the same article that they have been dealing with some cases of private marriages. HRCM also has identified issue of unregistered marriages in their monitoring visits to the atolls.
- 171. State should acknowledge and address the emerging grave issues of private marriages as it may lead to various other societal problems and even become a gateway for human trafficking. The State should undertake all appropriate measures in order to address the issue, especially from the viewpoint of those who are at the most disadvantaged; children born to these unregistered marriages.**

Article 24: Rights of the Child

Birth Registration of Children

172. The Article 2 of the Law on Registration of Births and Deaths in Maldives (7/1992) requires that application for birth registration be made within 7 days of birth of the child. According to Article 6 of this law, the responsibility of registration lies with the father, the mother and with the closest guardian. Article 7, stipulates if birth registration is not done within the time frame as specified in article 2 of this law, then a penalty of MRF 05.00 (US\$ 0.32) is charged from the parents and thereafter an additional MRF 1 (US\$0.06) will also be charged from them for each exceeding day excluding public holidays. Article 8 (a) further states, application for birth certificate is to be presented to the relevant authorities within six months of child's birth. Nevertheless, in 2009, the Maldives Demographic and Health Survey (MDHS) conducted by Ministry of Health revealed that "93 percent of children were registered, 89 percent had a birth certificate, and 3 percent were registered but did not have a birth certificate. Also, this survey indicated that coverage of birth registration varies between 86 percent in the South region and 97 percent in the North region."⁶⁸
173. A child's birth registration, birth certificate or national identification number not only helps to protect the identity of the child It also facilitates access to other rights and entitlements for the child. Birth certificate is necessary to get enrolled in pre-school and such details are required to apply for certain social benefits. Moreover, a national identification card is required to acquire free medical services from national health insurance scheme (Aasandha, January 1, 2012) established by the government.
174. Therefore, the importance of documenting birth registration, birth certificate and national identification number, by all stakeholders that deal with child rights issues is crucial in order to further assist in securing the identity of the child and to strengthen the coordination mechanism between all stakeholders working towards protection of rights of the child. It is significant to note that not all stakeholders, dealing with child abuse victims and children in conflict with law, document status of birth registration, birth certificate or national identification number. While, it is understood that services cannot be restricted to those children who do not have identification documents, it is important that the service providers work towards establishing a mechanism to provide identification to those children who do not have proper identification. Maintaining consistency in recording the disaggregated data on children amongst all stakeholders that deal with child rights issues would lay down concrete steps to preserve identity of the child and facilitate other entitlements for the child.

Cases lodged regarding: "Non Registration of Birth"				
Year	Average age	Gender		Total number of cases where the child's birth registration was not done
		Females	Males	
2008	2	2	1	3
2009	0	0	0	0
2010	9	2	1	3
2011	13	0	1	1

Source: Ministry of Gender, Family and Human Rights

175. State should document and verify all the essential data of a child at a disaggregated level by all the relevant stakeholders dealing with child rights issues to enhance effective coordination amongst them. The State should establish a monitoring mechanism to ensure that all children are registered and have access to birth certificates.

Challenges faced to the Protection of Child

176. Article 35 of the present Constitution stipulates that children and young people are entitled to special protection and special assistance from the family, the community and the State. The article further states children and young people shall not be harmed, sexually abused, or discriminated against any manner and shall be free from unsuited social and economic exploitation. The Law on Protection of the Rights of the Children (9/1991) in Article 25 elaborates on prohibition of exploitation of children and acts detrimental to the integrity of the child. Parliament also passed a legislation on Special Measures Against Perpetrators of Child Sexual Abuse in Maldives (12/2009) in November 2009, to address gaps in the existing legal framework to curb the grave issue of increasing child sexual abuse in the Maldives. This Act provides for the conviction of offenders for up to twenty five years of imprisonment and also denies alleged perpetrators the right to remain silent, which otherwise is permitted in the Constitution.
177. HRCM conducted a policy review on the legislations protecting and promoting the rights of the children in 2011. The objective of this review was to identify legislative gaps in protecting and promoting rights of the child from a human rights perspective. Following are the legislative gaps identified with regard to protecting and promoting the rights of the child.

Law on Protection of the Rights of the Children (9/1991):-

- a) *The Law on Protection Rights of the Children* emphasizes on the responsibilities vested upon the government, parents and general public. Article 16 of this law stipulates on prevention of exploitation and of acts detrimental to the integrity of children. Moreover, Article 25 of this law stipulates on the prohibitions of exploitation of children and acts detrimental to the integrity of the children. However, according to this law Prevention and Prohibition of exploitation and acts detrimental to the integrity of the child are not vested upon as one of the duties of the state but as one of the duties of parents and general public only.
- b) What is more striking is that this law guarantees protection only to Maldivian children.
- c) Furthermore, there are no provisions on the implementation of rights stipulated within this law. For instance this law does not encompass any penalties for those who violate the rights stipulated within the law.

Special Measures Against Perpetrators of Child Sexual Abuse in Maldives (12/2009):-

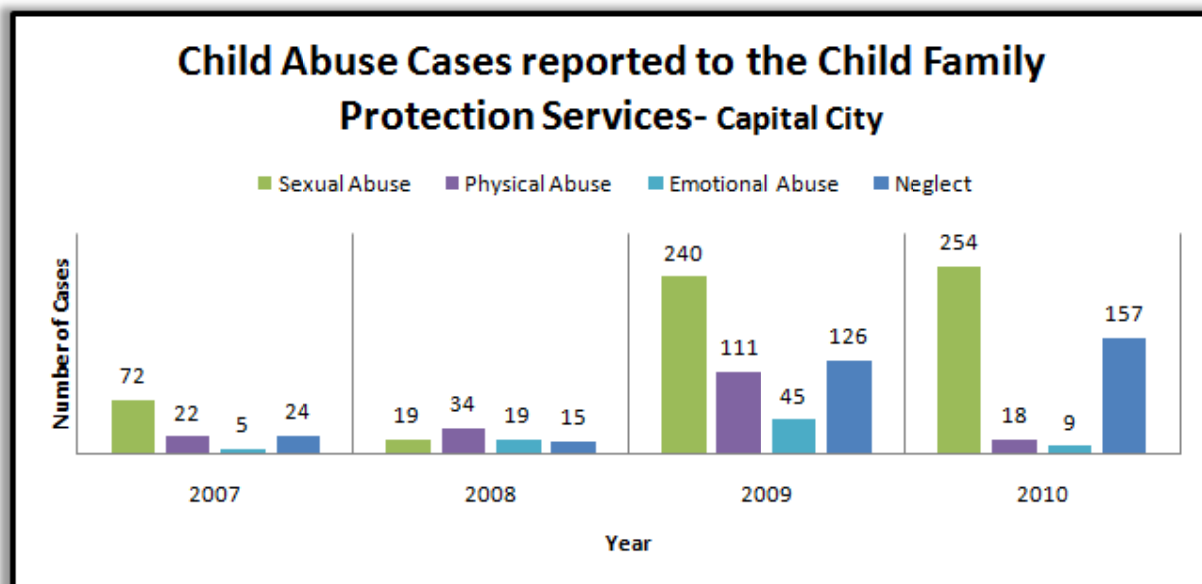
- d) As per the requirement of this Act, there are 5 types of evidences that are required to present to the court to convict the offender. FCPD has raised concern about the difficulties of presenting the 5 types of evidences to court (i.e. an official document authenticating child being sexually abused, results of scientific analysis, testaments of eye witness, results of forensic analysis, and video recordings of testaments/evidence). This policy review also brought to light the need to formulate different standards for each of the available evidences to be presented to the courts in order to convict perpetrators of child sexual abuse.
- e) Children who are in a marital relationship as per Islamic procedures are exempted according to article 14 of this law. This policy analysis highlights that even children in a marital relationship should not be in any way exempted from the rights guaranteed to children.
- f) The Article 57 of the law stipulates that child sexual offender's registry be published. This article also stresses that comprehensive information on the child sexual offender's registry shall be published on the website so that general public can access this information easily and use of national identification card number through short message service of mobile phones to identify a child sexual abuse offender. This article further state that objective of such a registry is to eliminate the possibility of re-offence by the child sexual offenders and to

safeguard the general public from such offenders. Nevertheless, so far the State has fallen short to compile and publish child sexual offenders' registry.

- 178. The State should address the aforementioned legislative gaps in the draft Juvenile Justice Bill, and amend existing *Family Law* and *Law on Protection of the Rights of the Children*.**

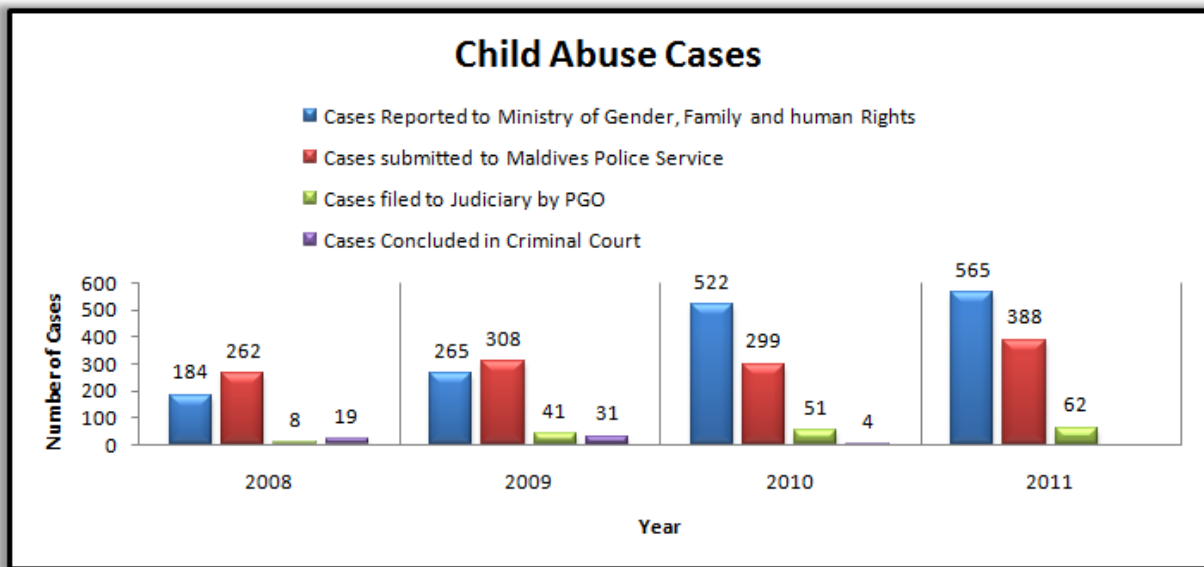
Physical Abuse and Neglect of Children

179. The Law on Protection of the Rights of the Children (9/1991) does not explicitly prohibit physical punishment in a domestic setting. The Article 18 of this law stipulates that no child shall, even as a measure of discipline subjected to punishment which may cause physical injury or which may be detrimental to the health of the child. Yet, this law does not impose any penalty on this. Particularly in 2010, there has been a drastic increase in the number of physical abuse cases reported to the Child, Family Protection Services of Department of the Gender and Family Protection Services (Ministry of Gender, Family and Human Rights, May 2012). The documentation of Family and Children Service Centers (FCSC) established in the Atoll levels by former Ministry of Gender (2007) needs to strengthen so that the collected data at national level can be used to assess the behaviour of children, for instance development of violent habits of children, increase in juvenile violence. Moreover, it could also contribute to formulate policy decisions towards creating public awareness targeting families and teachers on areas of concern.
180. Since 2009, HRCM has taken an initiative in marking the "World Day of Prevention of Child Abuse" in collaboration with government stakeholders and civil society, and the campaign focused on the theme of child neglect. The main objective of this campaign is to create awareness on child neglect amongst relevant government authorities, civil society organizations and the general public. Statistics from MoGFHR shows that a significant number of children suffer from neglect. Despite this, child neglect in the past received less attention than other types of maltreatment. One explanation could be that neglect is difficult to identify and society is still not aware of the acts and the consequences of this issue. Also, it is imperative to note that according to the *Law on Protection of the Rights of the Children*, neglect is an offence; however, there is no penalty for this offence. The establishment of child help line facilitated increase in awareness among the public and there has been a drastic increase in the reported cases of neglect as well.



Source: Ministry of Gender, Family and Human Rights

181. The Article 24 of the Act on Special Measures Against Perpetrators of Child Sexual Abuse elaborates age 13 as the minimum age of sexual consent. Article 25 stipulates that the consent regarding sexual act would not be considered unless proved otherwise. This Act provides for the conviction of offenders for up to twenty five years of imprisonment and also denies alleged perpetrators the right to remain silent, which otherwise is permitted in the Constitution. The enactment of this law along with the establishment of a Child Help Line increased the number of child abuse cases lodged with the MoGFHR. The current State machinery to deal with the rights of the child needs to be adequately resourced, staffed and strengthened. The FCPD units established in the atoll based police stations are also understaffed (there is only one investigator assigned in the atoll based police stations for child rights issues). Family and Children Service Centre (FCSC) were established in the atolls by Ministry of Gender for the purpose of extending its services to the atolls and each centre in the atoll is responsible for its service delivery to all the islands in the respective atoll. However, due to lack of human and financial resources and professional competency of its staff, these centers experience difficulty in fulfilling its mandate and carrying out awareness and outreach programs, falling short to meet the objectives of establishment of these centers.



Source: Ministry of Gender, Family and Human Rights

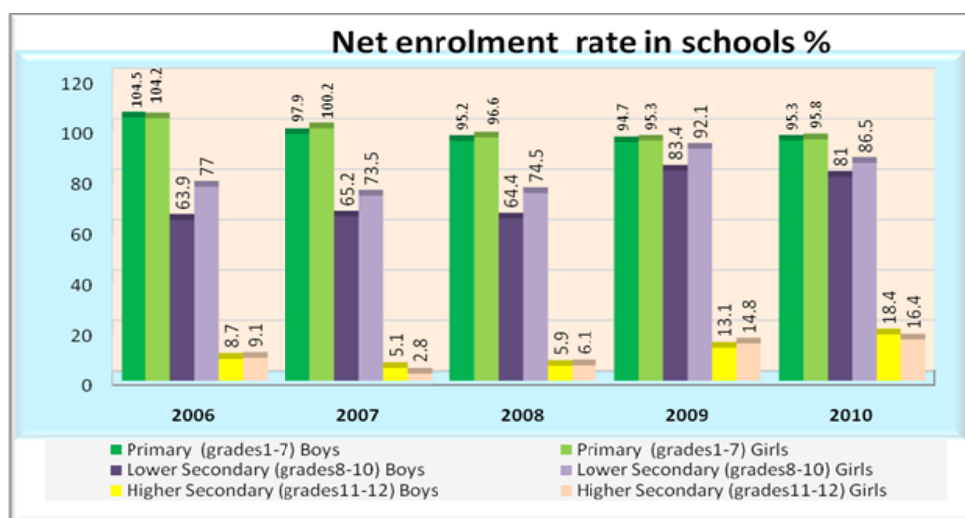
182. A significant proportion of the child population in the Maldives is subjected to child abuse. Yet, only a small fraction of the reported victims end up getting justice due to systemic failures leaving children re-victimized. The constraints faced in convicting offenders of child abuse include difficulties in obtaining evidence, issues faced in the interpretation of evidence by courts, matters relating to the medico-legal reports, prevailing societal attitudes to treat child abuse matters as a private matter, issue of stigmatization and legal age of consent. FCPD also expressed its concern about the delay in prosecution of cases and the fact that victims of child abuse are at many times, forced to withdraw the charges by their parents, as the perpetrator is usually a close relative or a family member responsible for providing financial support to the family. In such instance, when the victim of child abuse is denied testimony in the court, the charges against the perpetrator has to be dropped even when the evidences presented to the court substantiate that the child has been sexually abused. Another concern is the release of the perpetrators into the same community as that of the victims. In addition for those children abused in their family no institution yet exists to offer safe protection as safe homes during the course of the investigation and trial.

183. State should address these aforementioned issues as well as strengthen rehabilitation measures for the child abuse victims and also to further intensify periodic awareness programs, targeting concerned parties including parents, teachers, judges and lawyers regarding child rights.

Decrease in School Attendance

184. Article 36 of the present Constitution stipulates that everyone has the right to education without discrimination of any kind. Article 15 of the Law on Protection of the Rights of Children states that parents should, to the best of their ability and within the means available to them, take appropriate measures to ensure proper upbringing and well-being of their children, and to facilitate their education to a reasonable standard and their requisite religious education.

185. The illustration below shows that net enrolment rate in schools from year 2006 to 2010⁶⁹.



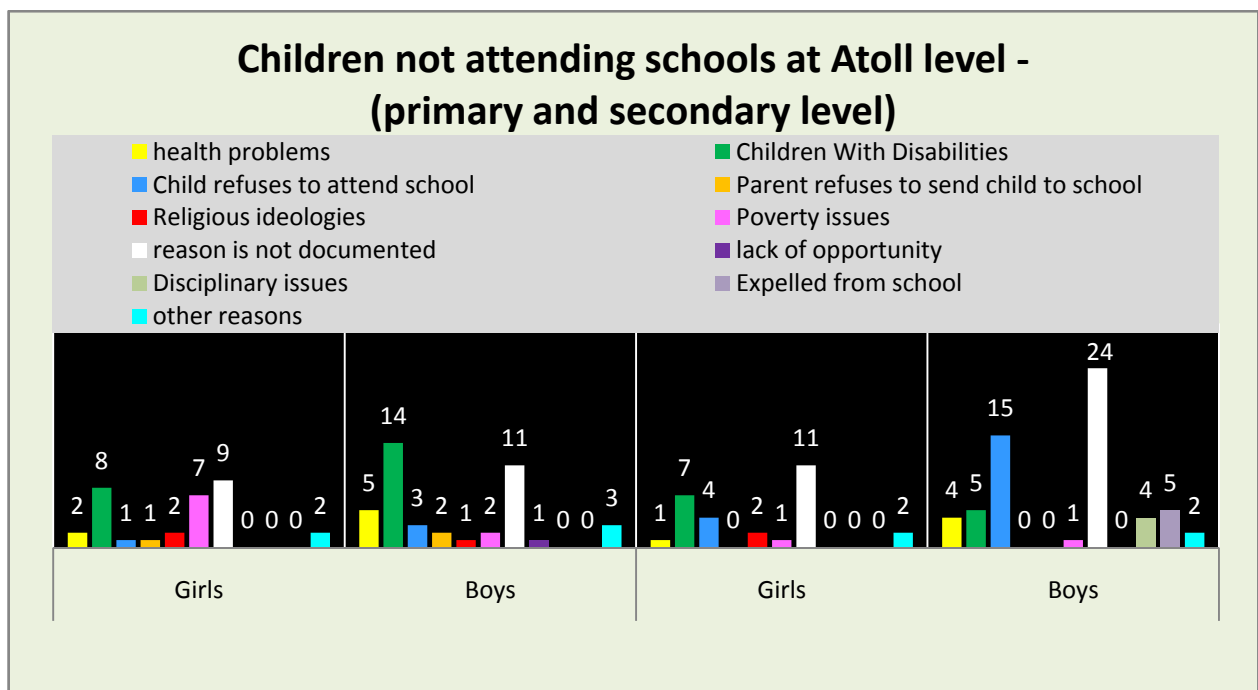
Source: School Statistics 2010, Ministry of Education⁷⁰

186. The enrolment rate of girls in primary education, lower secondary education and higher secondary education are somewhat higher than boys. According to the School Statistics of 2010, there is Net Enrolment Rate (NER) of 95.5 percent at primary level, 83.6 percent at lower secondary level (NER for girls at lower secondary is 86.5) and 17.4 percent at higher secondary. The Gross Enrolment Rate (GER) at lower secondary is 117 percent (GER for girls at lower secondary is 122.9 percent), indicates a possible over aged and under aged student due to early or late enrolment and also maybe of grade repetitions⁷¹. There is also the possibility of students being vulnerable to drop out prior to school completion. Thus, it is imperative to collect data pertaining to school attendance rates to fully comprehend the issues of accessibility to education.

187. From the year 2011, there are a total of 26 cases lodged at HRCM pertaining to Right to Education. These cases range from denial of right to education, suspension as a disciplinary measure or student being asked to stay at home until further notice, placement issues, lack of availability of basic services, such as issues of availability of teachers, malfunctioning of

school toilets, no electricity etc, and state failing to provide access to education for children with disabilities. Following is a case that was lodged at HRCM in 2011, on denial of the right to education:-

- a) *A 13 year old girl, who was gang-raped (where one of the perpetrators included a classmate), was suspended from school by the school board, until Police concludes investigation and judiciary issues a verdict on the case. In the event of her suspension one of the alleged perpetrators belonging to the same class as the victim was not held in suspension. During the investigation, HRCM consulted all the relevant stakeholders involved in the case, including FCSC, Police Station, Province Office of the Atoll, with the school board and with MoE advising them on immediate measures that need to be taken. When the proposition by HRCM to immediately remove her from suspension was disregarded, HRCM exercised its powers by issuing a directive to MoE to immediately implement HRCM's recommendation. Initially, MoE disregarded the directive issued by HRCM; however, following HRCM's 2nd request to an appointment with the Minister of Education, the 2 children involved in the case were informed that they could attend the school.*
188. A brief paper on “the issue of Children not being vaccinated and not allowed to attend schools in Maldives” was undertaken by HRCM in 2011 to comprehend the reasons as to why students do not attend schools. The greatest limitation to this paper was inability to obtain proper statistics on the school drop-out rates. No statistics have been maintained on the school drop-out rates in Male’ by the State, although, statistics were available on the drop-out numbers in atoll schools. The findings of this analysis revealed that as of March 8, 2011 there are a total of 213 children not attending schools in the atolls and out of which 124 were boys and 71 girls (i.e. pre-school, primary and secondary level included). Moreover, among these 213 children the highest numbers of children not attending schools were children with disabilities standing at 19 per cent. Out of the 21 atolls in the country only 12 islands in 14 atolls established Special Education Needs (SEN) classes for children with disabilities.⁷² Even on the 12 islands that had established SEN classes, not all children with disability were found to be attending these classes.
189. Children are also subjected to neglect and discrimination by parents or teachers. There is no penalty imposed on this law on protection of the rights of the child. FCPD is aware that there are cases where children are neglected by school teachers, and they are concerned that this could be a factor that leads to drop-out rates in schools.
190. The data from the HRCM’s analysis shows children not attending school at only primary and secondary level from the atoll based schools (preschool data not included).



Source: Analysis done using data obtained from Ministry of Education

191. The main reasons documented by MoE regarding children who do not attend to schools at primary and secondary level at atoll based schools are due to reasons such as disabilities of a child, health related issues, poverty issues, religious ideologies and for various other reasons parents simply do not send their children to schools. In addition to these, some children refuse to attend schools, especially at secondary level.

192. The report on cases lodged at JJU in 2011, revealed that 82% of children in conflict with the law were not attending schools while only 12 % attended schools. It was reported that 37% of these children dropped-out from 8th grade (lower secondary) and only 8% of these children end up completing schools.

193. **State should study the issue of children dropping out of schools and address the issue as deprivation of a good education hinders one’s social and economical development. State should ensure that the relevant legislations with provisions of penalty for such actions are encompassed in a law. State should take the responsibility to strengthen the national documentation of data on education and undertake a thorough assessment to find out the reasons of school drop-outs.**

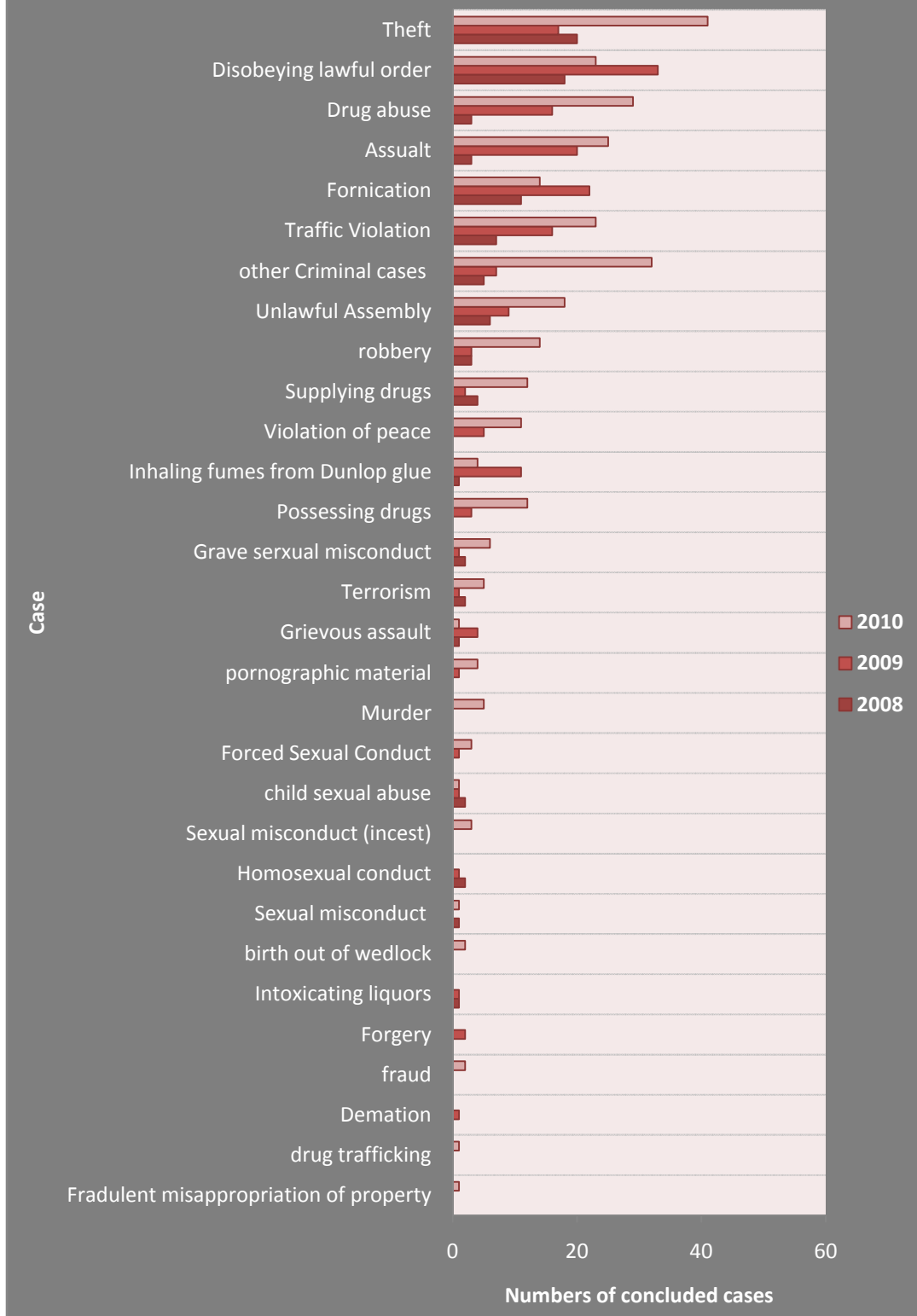
Rehabilitation of Juvenile offenders

194. Article 8 of the Law on the Protection of Rights of the Children stipulates that efforts must be made to discourage children from misbehaving and violating rules and regulations on the streets and in public places. The Government must organize, in such manner as is

possible at the time, the rehabilitation and upbringing of children who are not reformed by such efforts. In addition, the article 9 of this law stipulates that a special procedure must be established for the investigation, adjudication of and the imposition of punishment, wherever necessary, for offences committed by children. Furthermore, preference shall be given to rehabilitation of children, who are considered minor in Shari'ah, without imposing punishment on such children.

195. As per the Article 6 of Regulations on Trials, Investigations and Sentencing for Child Offenders(children from the attainment of 15 years of age till 18 years of age) should bear the criminal liability in respect of all offences committed by them. Furthermore article 5 stipulates that a minor from the attainment of 10 years of age till completion of 15 years of age should be liable to bear criminal responsibility only if minor commits an offence for which *hadd* is prescribed in Islam (i.e. apostasy, revolution against the State, fornication, falsely accusing a person of fornication and consumption of alcohol) and unlawful intentional killing of human beings, other offences related to homicide and participate in that and all offences related to drugs.
196. According to Regulations on Trials, Investigations and Sentencing for Child Offenders are sentenced in line with what is prescribed in the law in consideration with the child's age, offence committed and on gravity of the offence. Also the offences are limited to fine, house arrest, banishment or jail. Likewise, the judge has discretion to place the minor in juvenile detention centre or rehabilitation centre or placed under house arrest in the programs stated, such as vocational training, programs conducted by Ministry of Youth and Sports or units of the rights of children or other government organizations or nongovernmental organizations, ward or island development programs and to study in any school or education centre. The penalty handed to a minor for the offence is two thirds of the smallest penalty stated in the law pertaining to that offence. However, such rehabilitation opportunities will not to be granted for offenders above 18 years of age. There are no frameworks established in order to govern these discretions given to judges. This legislation does not address the proper reintegration measures for children in conflict with the law.
197. Juvenile delinquency has increased over the few years, thus resulting in imprisonment and re-offence. The highest numbers of cases concluded by Juvenile Court include those related to theft and disobeying of lawful order. The second highest number of cases concluded includes assault, drug abuse, fornication, traffic violations and other criminal cases. This is followed by cases related to unlawful assembly, robbery and supplying of drugs. Following graph shows details of concluded criminal cases by the Judiciary.

Details of concluded criminal cases by Judiciary -under 18



Source: Justice Sector Statistics, 2008, 2009, 2010, Department of Judicial Administration

198. Juvenile delinquency is a critical issue that requires speedy reform of the juvenile justice system in the country. In past years there has been rapid increase in the cases of substance abuse and gang violence. Discussions held with relevant stakeholders revealed that some reasons why juveniles come in conflict with the law are related to issues of educational system, negative peer pressure, parenting issues and parental neglect, congested housing, lack of knowledge of legislations, mental health issues, involvement in gangs and becoming victims of organized crimes, lack of recreational facilities and lack of job opportunities. The JJU's report published in year 2011 indicated that the most number of cases submitted were pertaining to 17 year olds, even though the average age of juvenile delinquents ranges from 16 to 18 years. An important finding is that 43 percent of the cases of children in conflict with the law were from broken homes, while 6 percent were children born out of wedlock. In addition, it was reported that the girls in conflict with the law were also involved in crimes such as substance abuse and sexual misconduct.
199. Some of the existing gaps in the juvenile justice system of the Maldives include; lack of detention facilities for children in conflict with the law, minimal or no formal recognition of community rehabilitation during and after detention (rehabilitation opportunities are guaranteed for drug offences). There is a correctional training centre for boys established in 2009 with the objective of offering life skills programs and vocational training. However, there are no such facilities for girls. It is also significant to note that there are insufficient trained staffs to deal with the child offenders, as well as weak coordination between rehabilitation and criminal justice system. In addition, societal attitudes towards these juveniles needs to be changed in order to successfully reintegrate them to the society.
200. The new Drug Act (17/2011) is considered a milestone achieved in guaranteeing the rehabilitation and the treatment the drug abuser requires. This act gives prominence to treatment; distinction can be made amongst drug abusers and drug traffickers. A helpline was also launched in 2011, targeting general community specially drug users. The ratification of this law has paved way to establish a Drug Court in the country, although this court is not fully functional yet. Important to note that prompt measures need to be implemented in the area of drug prevention.
201. **State should take swift measures to implement the provisions in the Drug Act as drug abuse is one of the pressing issues in among juvenile offenders. Since the present basis for harsh sentencing is derived from the current Penal Code, it is imperative that the Penal Code reflect particular provisions for juvenile justice in accordance with international human rights principles.**

State should ensure that the Juvenile Justice Bill is consistent with international human rights standards and encompass a mechanism to undertake systematic assessment of the juvenile offender, and provide comprehensive provisions to guarantee appropriate treatment and rehabilitation opportunities.

Article 25: Right to Vote and to Run for Public Office

202. The Article 26 of Constitution guarantees that "... every citizen of the Maldives, eighteen years of age or older has the right: (a) to vote in elections, and in public referendums, which shall be held by secret ballot; (b) to run for public office; (c) to take part in the conduct of public affairs, directly or through freely chosen representatives."

203. The following table shows the laws and regulations on right to vote and to run for public office.

List of Legislations Ratified / Enacted				
#	Legislation	Passage Date	Ratified / Enacted Date	Related Election
1	Regulation on Political Parties		5-Jun-05	All
2	Constitution	26-Jun-08	7-Aug-08	All
3	Elections Commissions Act (8/2008)	24-Aug-08	25-Aug-08	All
4	Elections Commissions Regulations		23-May-10	All
5	General Elections Act (11/2008)	15-Sep-08	15-Sep-08	All
6	Presidential Elections Act (12/2008)	16-Sep-08	16-Sep-08	Presidential Election
7	Presidential Elections Regulation		22-Sep-08	Presidential Election
8	Amendment 1 to the Regulation on Presidential Elections		30-Oct-08	Presidential Election
9	Electoral Constituencies Act (1/2009)	9-Feb-09	10-Feb-09	Parliamentary Elections
10	Parliamentary Elections Act (2/2009)	10-Feb-09	15-Feb-09	Parliamentary Elections
11	Parliamentary Elections Regulation		18-Feb-09	Parliamentary Elections
12	Decentralization Act (7/2010)	28-Apr-10	17-May-10	Local Council Elections
13	Local Council Elections Act (10/2010)	12-Jul-10	29-Jul-10	Local Council Elections
14	Local Council Elections Regulation		2010	Local Council Elections
15	Amendment 1 to the Decentralization Act (21/2010)	29-Aug-10	9-Sep-10	Local Council Elections
16	Amendment 1 to the Local Council Elections Regulation		27-Oct-10	Local Council Elections
17	Amendment 2 to the Local Council Elections Regulation		18-Apr-11	Local Council Elections
18	Amendment 2 to the Decentralization Act (2/2011)	28-Dec-10	17-Jan-11	Local Council Elections
19	Parliamentary Elections Regulation (2012/R-8)		23-Feb-12	Parliamentary Elections

Source: Domestic Observations of Presidential Elections, 2008, Domestic Observations of the Parliamentary Elections, 2009, Domestic Observations of Local Council Elections 2011, Elections Commission 2012, <http://gazette.gov.mv/new/home.php>, Gazette, 2012

204. The Act on Elections Commission was ratified on August 25, 2008 and members were appointed on September 4, 2008. The first multi-party presidential election was held in October 2008. The legislations relating to the elections were enacted in September 2008 followed by establishment of Elections Commission making the processes and procedural arrangements pertaining to the October 2008 presidential election difficult and challenging.

Therefore, a nationwide voter education and awareness campaign was conducted by HRCM jointly with Elections Commission, civil society and private and State media. Elections Commission conducted several workshops and trainings, to train the election officials and local NGOs conducted trainings for election observers. HRCM monitored the election and issued its recommendations to the Elections Commission. HRCM and international observers along with domestic observers concluded that presidential election was free and fair.

205. Elections conducted after the ratification of new Constitution in 2008.

Elections Held in Maldives		
#	Name of the Election	Date of Election
1	Presidential Election Round 1	8 th October 2008
2	Presidential Election Round 2	28 th October 2008
3	Parliamentary Elections 2009	9 th May 2009
4	Referendum on consolidating islands	9 th October 2010
5	Local Council Elections 2011	5 th February 2011
6	Continues Local Council Bi-elections	2011, 2012
7	Parliamentary Bi-Election 2012	14 th April 2012
<i>Source: Elections Commission</i>		

206. It is to be noted that both the Parliamentary and Local Council Elections failed to meet the constitutional deadline. The constitutional deadline of Parliamentary election was 15th February 2009. However, it was held on May 9, 2009. The constitutional deadline of Local Council Elections was 1st July 2009. Yet, it was held on 5th February 2011. This was mainly because of the delays in passing the necessary legislations to conduct the elections. For these two elections, Elections Commission conducted training programs for the election officials. A voter education and awareness campaign was also conducted jointly by HRCM, Elections Commission, and Civil Society for the public. HRCM monitored both these elections and issued its recommendations to the Elections Commission.

207. HRCM notes that the Elections Commission implemented many recommendations set forth by HRCM following the pre-election monitoring exercise conducted by HRCM. However, the recommendations made regarding the persons with disabilities facing challenges in exercising their right to vote, and the elderly and others who required assistance in voting being taken undue advantage of by their assistants need to be fully addressed.

208. The Regulation on Political Parties of 2005 has been amended 8 times, the last being on January 18, 2009. Under this regulation it is difficult to hold political parties accountable and regulate their functioning and due to several legal challenges, legislation on Political Parties is much needed. Election Commission does not possess much power to take action even if a party is not politically active. The Elections Commission is the mandate holder for distribution of State allocated funds for the political parties and they are mandated to oversee the functioning of political parties. However, when Elections Commission withheld funds for some inactive Political Parties, it was challenged at the court and they were ordered to release the budgetary allocations for all of the parties.

209. Currently Maldives has 15 Political Parties registered at the Elections Commission. Below is the list of Political Parties with the number of members in the party as of May 6, 2012.

List of Political Parties in Maldives			
#	Name	Registered Date	Number of Members
1	Maldivian Democratic Party (MDP)	26-Jun-2005	48428
2	Dhivehi Rayyithuge Party (DRP)	21-Jul-2005	28313
3	Adhaalath Party (AP)	18-Aug-2005	5961
4	Islamic Democratic Party (IDP)	12-Dec-2005	3529
5	Maldivian Social Democratic Party (MSDP)	25-Dec-2006	1940
6	People's Party (PP)	26-Dec-2007	1762
7	Maldivian National Congress (MNC)	26-Dec-2007	1513
8	Social Liberal Party (SLP)	2-Dec-2007	669
9	Jumhooree Party (JP)	3-Aug-2008	5548
10	People's Alliance (PA)	3-Aug-2008	2546
11	Maldivian Labour Party (MLP)	4-Sep-2008	911
12	Guameelthihaad (GI)	4-Sep-2008	2559
13	Dhivehi Qaamy Party (DQP)	27-Jan-2009	2267
14	Maldives Reform Movement (MRM)	22-Mar-2011	2523
15	Progressive Party of Maldives (PPM)	27-Oct-2011	15429
<i>Source: Elections Commission, 2012</i>			

210. The State should take necessary and appropriate measures to ensure the right to vote of vulnerable groups such as persons with disabilities, the elderly and those who require assistance in voting. The State should enact a law on political parties and revise the existing *Political Party Regulation*.

¹Emma Fulu., 2007. *The Maldives Study on Women's Health and Life Experiences, Initial results on prevalence, health outcomes and women's response to violence* [Online] Ministry of Gender and Family. Available at: <http://sgdatabse.unwomen.org/uploads/Survey%20-%20Maldives%20-%202007.pdf> [Accessed on 27th May 2012].

²*Id.*

³Maldives Police Service, 2010. *Statistical Report 2010*, Maldives: Maldives Police Service

⁴Penal Code, Chapter one effective from 21/4/1975, Chapter two effective from 21/4/75, Chapter three effective from 1/1/67, Chapter four effective from 1/7/68, Chapter Four Amended (13/2009)

⁵Human Rights Commission of the Maldives, 2009. *A Desk Review on Health Sector of Maldives*. Maldives: Human Rights Commission of the Maldives

⁶World Health Organisation <http://apps.who.int/nutrition/landscape/report.aspx?iso=mdv>

⁷Centre for Community and Disease Control, 2011. *Annual Communicable Disease Report 2011*, Ministry of Health and Family.

Available at: http://www.health.gov.mv/PDF/Annual%20Communicable%20Disease%20Report_2011.pdf

[Accessed on 27th May 2012]

⁸Ministry of Health and Family, 2011. *The Maldives Health Statistics 2011*, Maldives: Ministry of Health and Family.

Available at: http://www.health.gov.mv/PDF/The_Maldives_Health_Statistics_2011_FINAL.pdf [Accessed on 27th May 2012]

⁹*Id.*

¹⁰Human Rights Commission of the Maldives, 2011. *Press release given by the Human Rights Commission to Celebrate World Health Day 2011*. [press release], 7th April 2011, Available at:

<http://www.hrcm.org.mv/dhivehi/news/newsarchive/7Apr2011.pdf> (Dhivehi) [Accessed on 28th May 2012]

¹¹Department of National Planning, 2010. *Millennium Development Goals – Maldives Country Report, 2010*. Ministry of Finance and Treasury. Available at:

http://www.undp.org.mv/v2/downloads/4d9051c4586a3_MDGs%20Maldives%20Country%20Report%20-%202010.pdf [Accessed on 27th May 2012]

¹²Maldives Police Service. 2012. Releasing the case report of killing a person. Maldives Police Service [Online] 26th March 2012. Available at: <http://www.police.gov.mv/page/25470> Accessed on: 2nd June 2012.

¹³Criminal Court, 2011. *Records of Murder for the past 10 years*. Maldives: Criminal Court. Available at:

<http://www.criminalcourt.gov.mv/index.php/home/247--10-14-> (Dhivehi) [Accessed on 28th May 2012]

¹⁴Miyadhu., 2012. *Death Penalty amendment presented to the Majlis for the second time*. Miyadhu, [Online] 10th April 2012. Available at: <http://www.miadhu.com/2012/04/local-news/death-penalty-amendment-presented-to-the-majlis-for-the-second-time/> [Accessed on 27th May 2012]

¹⁵United Nations, 2007. *General Assembly adopts landmark text calling for moratorium on death penalty*. [press release], 18th December 2007, Available at: <http://www.un.org/News/Press/docs/2007/ga10678.doc.htm> [Accessed on 27th May 2012]

¹⁶<http://hrcm.org.mv/publications/otherreports/LaleYouthInternationalSchoolReport6July2010Dhi.pdf> (Dhivehi)

¹⁷ NPM is an independent detention monitoring body established under OPCAT- optional protocol for the prevention of torture. The main purpose of NPM is to establish a system of regular visits to places of detention in order to prevent torture and other ill treatment within the facility. In Maldives, NPM was established within the HRCM in December 2007. Apart from prisons, places of detentions visited by the NPM also include custodial, residential rehabilitation facilities, juvenile residential centres and psychiatric facilities. The last steps of the current monitoring approach is to hold constructive dialogues with the relevant state authority and discuss the issues of concern and following recommendations directly in order to obtain a target time lines for action.

¹⁸Home for People with Special Needs – a state residential facility in the island of K. Guraidhoo for three vulnerable groups: geriatric patients, people with special needs, and psychiatric patients

¹⁹Information obtained through a meeting with the State Minister for Department of Penitentiary and Rehabilitation Services by HRCM on May 2011

²⁰Human Rights Commission of the Maldives., 2009. *Rapid Assessment of the Employment Situation in the Maldives*. [online] Human Rights Commission of the Maldives Available at:

<http://www.hrcm.org.mv/Publications/otherreports/TheEmploymentSituationintheMaldivesEng.pdf> [Accessed on 28th May 2012]

²¹U.S. Department of State, 2012. *Tier 2 Watch List*, US: U.S Department of State. Available at:

<http://www.state.gov/documents/organization/143187.pdf> [Accessed on 29th May 2012]

- ²²Ministry of Human Resource, Youth and Sports., 2012. *Statistics of Ministry of Human Resource, Youth and Sports-20112*, Maldives: Ministry of Human Resources, Youth and Sports.
- ²³Human Rights Commission of the Maldives., 2009. *Rapid Assessment of the Employment Situation in the Maldives*. [online] Human Rights Commission of the Maldives Available at: <http://www.hrcm.org.mv/Publications/otherreports/TheEmploymentSituationintheMaldivesEng.pdf> [Accessed on 28th May 2012]
- ²⁴*Id.*
- ²⁵Sun., 2011. *17 People Arrested for migrating immigrants illegally*. Sun, [Online] 21st July 2011. Available at: <http://www.sun.mv/9319> [Accessed on 29th May 2012]
- ²⁶Minivan., 2012. *Government to cease issuing work permits to Bangladeshi nationals launches registration effort*. Minivan, [Online] 12th January 2012. Available at: <http://minivannews.com/society/government-to-cease-issuing-work-permits-to-bangladeshi-nationals-launches-registration-effort-30695> [Accessed on 29th May 2012]
- ²⁷ Human Rights Commission of the Maldives., 2009. *Rapid Assessment of the Employment Situation in the Maldives*. [online] Human Rights Commission of the Maldives Available at: <http://www.hrcm.org.mv/Publications/otherreports/TheEmploymentSituationintheMaldivesEng.pdf> [Accessed on 28th May 2012]
- ²⁸Haveeru Daily., 2011. *Controller warns Maldives should fear rising expatriate population*. Haveeru Daily, [Online] 18th January 2011. Available at: <http://www.haveeru.com.mv/english/details/33790> [Accessed on 12th June 2012]
- ²⁹Haveeru Daily., 2010. *Over 2,700 expatriates deported*. Haveeru Daily, [Online] 4th February 2010. Available at: <http://www.haveeru.com.mv/english/details/28663> [Accessed on 29th May 2012]
- ³⁰ U.S. Department of State., 2010, 2011. *Trafficking in Persons Report, 2010, 2011*. U.S. Department of State, [Online] Available at: <http://www.state.gov/j/tip/rls/tiprpt/2011/164228.htm> and <http://www.state.gov/j/tip/rls/tiprpt/2010/142755.htm> [Accessed on 1st June 2012]
- ³¹Haveeru Daily., 2010. *Political unrest continues as armed forces refuse to take Yamin to court*. Haveeru Daily, [Online] Available at: <http://www.haveeru.com.mv/english/details/30978> [Accessed on 12th June 2012]
- ³² Civil Court., 2012. *Case Report: case number 1820/MC/2010*. Maldives: Civil Court, Available at: http://www.civilcourt.gov.mv/reports/1820_MC_2010.pdf [Accessed on 12th June 2012]
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