

HUMAN RIGHTS COMMISSION OF MALDIVES (HRCM)

Shadow Report under ICERD

In Response to the Maldives Government's Report under the Convention

July 2011



Human Rights Commission of the Maldives

List of Abbreviations

HRCM	Human Rights Commission of the Maldives
ICC	International Co-ordination Committee of National Human Rights Institutions
APF	Asia-Pacific Forum
NPM	National Preventive Mechanism
ICERD	International Convention on the Elimination of all forms of Racial Discrimination

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Introduction

The Human Rights Commission of Maldives (HRCM) is a constitutional and statutory body functioning to protect, promote and monitor human rights in the Maldives. HRCM is an independent legal entity with a separate seal, possessing power to sue and suit against and to make undertakings in its own capacity. HRCM is seven years old and comprises of five Commission Members and fifty five staff members. Members are elected by the People's Majlis (Parliament) upon nomination by the President of the State.

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 (APF) of National Human Rights Institutions.

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.

The HRCM is pleased to present its first shadow report on the International Convention on the Elimination of all forms of Racial Discrimination (ICERD).

Maldives Acceded to the International Convention on the Elimination of All Forms of Racial Discrimination on 24th April 1984. The combined initial and 2nd periodic State report to the committee was submitted on 1st September 1987. In the 55th Session of the CERD held in August 1999, Maldives was reviewed in the absence of a report as no report from State was submitted from 1992 onwards. However, again in February 2010, the Maldives submitted the State periodic report along with the Common Core document

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 racial discrimination. The main areas covered in this report about the ICERD, relate to Domestic law, Government policies, training of Public Officials, Complaints Mechanisms and Awareness creation.

It may be noted that although, Maldives still remains a homogenous country, belonging to one nationality it has become a host for thousands of migrant workers and hundreds of tourists from different nationalities. Thus, Maldives can now be considered a country where multi-racial people live or reside, may it be for pleasure or for economic reasons. Therefore, this new trend of influx and the inadequate support systems may cause or lead to concerns that need to be dealt with in accordance with the ICERD.

Incorporating the Convention to Domestic Law

Article 17(a) of the new constitution of Maldives, which came in effect in 2008, prohibits discrimination of any kind including race, national origin, colour, sex, age, mental or physical disability, political or other opinion, property, birth or other status, or native island. However, there is no anti-discriminatory law to define and prohibit different forms of discrimination. Racial discrimination is not codified and recognized as an issue by the judiciary and by law enforcement authorities of Maldives making it impossible to recognize its existence and to report such cases. It is important that the Convention be given full effect, by the State, in the domestic legal order.

Recommendation

1. Enact domestic anti-discriminatory legislation and policies which should incorporate the provisions, prescriptions and spirit of the Conventions.

Taking Effective Measures

Under Article 2(1) (c), the Convention obliges States parties to the Convention to take effective measures to review public policies at all levels and to amend legislation which has the effect of creating or perpetuating racial discrimination wherever it exists.

The State has stated in the paragraph 1 of the fourth periodic report (CERD/C/203/Add.1) that "no form of racial discrimination exists in the Maldives based on race or any other differences among the population", and that "therefore, no specific legislation is required to implement the provisions of the Convention".

Although Maldives is a small homogeneous society of people with same origin and nationality, many non-nationals live and work in the country. Hostility and reported cases of ill-treatment faced by migrant workers are increasing, although the basis of such treatment is ambiguous. The negative attitudes faced, at times, by migrant workers from locals are a noticeable concern. The effect is basically felt by all or most migrant workers and they are forced to live and work in harsh conditions¹. The employment assessment conducted by HRCM in 2009 made apparent that migrant workers especially those in the labour category work and live in inhumane conditions². No survey has ever been taken by the Government or by any source to understand whether racial discrimination or racism towards migrant workers exist in Maldives. Moreover, no data has ever been collected in that regard, which makes the government incapable of certifying non-existence of racial discriminations in the Maldives.

Articles 1 (4) and 2 (2) of the Convention provides for the implementation of special measures to combat racial discrimination. But the Maldives does not consider the possibility of prevalence of racial

discrimination in the country and therefore, no statutory obligation is laid by public authorities to take positive measures against racial discrimination. As a result, neither government nor private institutions in Maldives implement affirmative policies to prevent discrimination from taking place.

The migrant workers' population in Maldives is more or less equal to one third of its actual population^{3 4}. They are from different nationalities and economic statuses, comprising mostly from Bangladesh, India, Philippines, Sri Lanka and some other South-East Asian countries. Consequently they are from different cultural, religious and ethnic backgrounds which raise the urgent need to develop a culture of respect and tolerance. The State has fallen short to take significant measures to create tolerance and understanding among the locals about the cultural practices of non-citizens and the importance of equal and humane treatment to all migrant workers.

Due to the increasing trend of looking down on migrant workers and the increase in intolerance, tension is observed to be emerging amongst locals, which can be seen in the recently reported media articles regarding migrant workers spending their leisure time at the Republic Square⁵. According to the media article the discussion came under an agenda item titled "Making a decision on the nuisance and bother of 'Bangalhun' [derogatory term for Bangladeshis] at the Republic Square and the problem of Bangalhun sleeping inside the old museum at Sultan Park".

The Male City Council convened a steering committee to discuss ways to "deal with nuisance of migrant workers congregating around Republic Square". HRCM was made aware of this, when it received a letter containing highly discriminatory language from the City Council inviting the Commission to be part of the steering committee. On 7th July 2011, HRCM met with the council expressing concern about any possible discriminatory measures as a result of such a policy decisions.

NPM reports highlight that discriminatory practices towards migrant workers exist in state managed places of detention. For Instance, NPM visits to Maafushi jail (2010), the Immigration Detention Centre (2009), and the custodial (2011 – reports currently being developed) reveals a clear pattern with regard to the differential treatment towards migrant workers. NPM team observed these acts of differential treatment 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. Further, although no formal case has been reported, several migrant detainees informed the disrespectful language they were addressed in and the similar manner that they were treated.

Recommendation

- 2- Develop a system to collect disaggregated data related to migrant workers in order to understand their status and identify any existence of racial discrimination.
- 3- Conduct researches and monitor racist attitudes and enact measures to help tackle negative attitudes towards migrant workers.
- 4- Establish a helpline and counseling services for victims of discrimination.

Training Public Officials

Article 5 of the Convention obligates the State parties to provide equality in the enjoyment of rights. Although the State has ratified the Convention, it has not taken adequate action to ensure that rights are equally protected and facilitated in the context of the Convention.

The obligations vested upon the State by the Convention can only be fulfilled by giving the appropriate training to public officials at all levels. However, the aforementioned officials and members of local councils lack awareness and training in non discrimination and anti-racist measures.

As the number of migrant workers in Maldives increase every year, there is a need for mainstreaming anti-racism at all levels of the government. As a result of the efforts made by HRCM to mainstream human rights, the President's Office has appointed human rights focal points in line ministries. The appointed focal points were given a general training by HRCM on the requirements of Conventions ratified by the Maldives but no noticeable efforts or actions are undertaken to ensure rights of migrant workers. Nevertheless, it is imperative to highlight that focal points should consider applying the principles of human rights in their daily work and in their policies and strategies. Moreover, no concrete actions or concerted efforts have been observed in this area and there have been no specific programs and or awareness raising activities to increase tolerance and non-discrimination.

Visits by NPM to detention facilities have made apparent that there is lack of awareness and policies regarding sensitivity towards people of different nationalities in Maldives. For instance, State documents/letters sent to migrant workers deprived of their liberty were in the local language. Such practices also act as impediments to access to justice and right to information.

Recommendation

- 5- Ensure measures and rules to prohibit differences in treatment towards migrant workers by employers in providing accommodation, meals and fringe benefits.
- 6- Conducts specially designed training programs for public officials, especially those in the judiciary and law enforcement agencies, on anti-racism, and seek assistance from professionals and institutions in this field, local or international, in developing such programs.
- 7- Sanction with rules and resources the human rights focal points in all the ministries in a way that they will be able to fulfill the functions assigned to them.

Prohibiting Incitement to Racial Hatred

Article 4 of the Convention prohibits dissemination of ideas based upon racial superiority or hatred as well as incitement to racial discrimination and incitement to racially motivated crimes. The State as a party to the Convention has obligations to enact legislations to penalize such acts.

Content of Intolerance and incitement to racial hatred are being openly expressed against non-nationals in the internet social media as well as newspapers⁶ and comments published under news articles in well-

known online newspapers. Usually this type of intolerance is towards South Asian labourers. This type of discrimination may lead to hate crimes against non-nationals. There are many reported incidents⁷ of crimes against migrant workers, although the real motives behind those crimes are not clear⁸.

A well-known case of cyber discrimination is the Facebook base hate groups⁹, which uses derogatory terms such as “Bangaalhi”, etc, where many Maldivians express their hatred towards migrant workers in Maldives. This word is used in a way that it implies that such workers are looked down upon as lower standard of human being. Web administrators of Facebook block such groups when abuses are reported but, every now and then such groups are created on Facebook.

Communication Authority of Maldives has informed HRCM that a bill on ‘computer misuse’, which covers cyber crimes, was sent to Attorney General’s Office in 2009 and was pending there ever since without submitting to the Parliament for enacting. This shows the inactivity to proactively create an environment where racial discrimination can be minimized which is part of the obligation on the State under ICERD.

The Committee in its concluding observation¹⁰ requested the State to provide information on the ‘situation of migrant workers and foreigners’ in Maldives’ and, in particular, whether they enjoy the protection of the Convention.’ However, the State has not provided sufficient information in its report regarding the inhumane conditions¹¹ migrant workers live in and work at in the Maldives.

Recommendation

- 8- Enact legislations on incitement to hatred and cyber crime that lead to forms of racial discrimination
- 9- Enact the bill prohibiting cyber crime aligning it with the Convention

Revise Complaints Mechanisms

There is no mechanism for complaining and reporting of cases of racial discrimination. In fact, racial discriminations cannot even be reported and filed in police or any other public office as the Maldives Police Service does not have indicators to recognize any form of discrimination as a crime. It is important to highlight that since racial discrimination is not explicitly stated in the domestic legislations, there is no punishment prescribed for racial discrimination and as such it is not condoned in the society.

Maldives Police Service has informed HRCM that no statistics of racial discrimination has ever been recorded. HRCM is also distressed to learn that discrimination of any kind is not codified into the system. It is important to revise the complaint mechanism in various public offices including police and bring necessary changes to them so that any form of racial discrimination could be reported and investigated. Although complaint mechanisms are established in most of the public offices, racial discrimination is not

codified and identifiable through this mechanism. Furthermore, the officers handling complaints have no training in this field.

Recommendation

- 10- Introduce rules and regulations with descriptions or indicators of racial discrimination and measures to identify incidence of racial discrimination and prevent it.

Creating Awareness about the Convention

The State has done nothing significant to create awareness among the general public specifically about the rights provided by the Convention or even of the fact that Maldives is party to the Convention. The Convention had never been translated to the local language and the government has done little, if at all, to incorporate the provisions of the Convention to the educational system. HRCM is currently working with Ministry of Education to incorporate human rights into the national school curriculum.

There is a need to carry out a strong media strategy to curb the growing phenomenon of inciting hatred. Additionally, there is a need to disseminate information about the Convention to the general public through the media and the civil society. It is also imperative that private and public sector need to be informed and educated about the rights guaranteed for all people as well as their obligations under the Convention.

Recommendation

- 11- Translate the convention into the local language and make the translation available to the public free of cost.
- 12- Create anti-racism awareness among public by conducting campaigns aimed at persons of all levels of the society.
- 13- Expedite the process of incorporation of human rights into the national school curriculum
- 14- Observe International Day of Elimination of Racial Discrimination nationwide with awareness raising activities.

¹Human Rights Commission of Maldives, 2009, Rapid Assessment of the Employment Situation in the Maldives. Available at: <http://www.hrcm.org.mv/Publications/otherreports/TheEmploymentSituationintheMaldivesEng.pdf> (31 July 2011)

²Human Rights Commission of Maldives, 2009, Rapid Assessment of the Employment Situation in the Maldives. Available at: <http://www.hrcm.org.mv/Publications/otherreports/TheEmploymentSituationintheMaldivesEng.pdf> (31 July 2011)

³Department of National *Planning, 2010*, Statistical YearBook 2010, Table 3.3, Population by islands census 2000,2006 and registered population 2009. Available at: <http://planning.gov.mv/yearbook2010/yearbook.html> (31 July 2011)

⁴Statistical information obtained from Ministry of Human Resource Youth and Sports.

⁵Minivan News (online Newspaper), 2011, News: ' Council discusses "nuisance and bother" of expatriates in Republic Square', Available at <http://minivannews.com/society/male-city-council-discuss-nuisance-and-bother-of-expatriates-congregating-in-republic-square-23497> (1st August 2011)

⁶Haama Daily (Online newspaper), 2009, A news article (in Dhivehi language) about migrant workers taking control of jobs in the capital city. The article describes migrant workers as untidy and smelly people and accuses them as the reason for emergence of many social problems in Maldives. Available at: <http://www.haamadaily.com/index.php?news=12826> (18 July 2011)

⁷Asian Tribune (Online Newspaper), 2010, News: 'Bangladeshi worker stabbed to death in Male'...'. Available at: <http://www.asiantribune.com/news/2010/11/26/bangladeshi-worker-stabbed-death-male%E2%80%99-fellow-workers-fear> (19 July 2011)

⁸Haveeru Daily (Online), 2007, Report: 'Attacks against expatriates almost a daily occurrence'. Available at: <http://www.haveeru.com.mv/english/?page=details&id=17912> (15 July 2011)

⁹Facebook group, 2008, kick bangaalhees, <http://www.facebook.com/group.php?gid=10011220939&v=wall> (19 July 2011)

¹⁰United Nations Human Rights, Office of the High Commissioner for Human Rights, 1999, Concluding Observations of the Committee on Elimination of Racial Discrimination. Available at: <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/A.54.18,paras.314-320.En?Opendocument> (20 July 2011)

¹¹Human Rights Commission of Maldives, 2009, Rapid Assessment of the Employment Situation in the Maldives. Available at: <http://www.hrcm.org.mv/Publications/otherreports/TheEmploymentSituationintheMaldivesEng.pdf> (20 July 2011)