

ACCESS TO JUSTICE FOR CHILDREN: MALDIVES

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

The CRC was signed by the Republic of the Maldives (the “Maldives”) in August 1990, and ratified in February 1991. The Optional Protocols to the CRC on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography were ratified in January 2005 and June 2002 respectively.¹

The ratification of international treaties does not automatically make them enforceable in the Maldives. Article 93 of the Constitution provides that citizens shall only be required to act in compliance with international treaties which have been ratified by the state *and* provided for in laws enacted by the Maldivian parliament.²

B. Does the CRC take precedence over national law?

As the ratification of international treaties does not automatically make them enforceable in the Maldives,³ the CRC does not take precedence over national law. However, the enactment of the Law on the Protection of the Rights of Children in 1991 was effectively a direct response to the CRC, and as a result some of the provisions of the CRC have become part of national law in the Maldives.⁴

C. Has the CRC been incorporated into national law?

The CRC has not been directly incorporated into national law. However, the provisions of Article 68 of the Constitution require courts to consider international treaties in interpreting constitutional rights provisions.⁵ The

¹ United Nations Treaty Collection, available at: http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en.

² Constitution of the Republic of Maldives, 2008, Article 93, available at: <http://www.maldivesinfo.gov.mv/home/upload/downloads/Compilation.pdf>.

³ Ibid.

⁴ Law on the Protection of the Rights of Children, Law No. 9/91; For further information on the relationship between domestic and international law in the Maldives, see: Kai Bruns, in: Minivan News, *Comment: The Maldives – a case study in contemporary diplomacy*, 29 August 2013, available at: <http://minivannews.com/politics/comment-the-maldives-a-case-study-in-contemporary-diplomacy-63729>.

⁵ Constitution of the Republic of Maldives, 2008, Article 68; For further information, see: CRIN, *Maldives: National Laws*, 2 March 2012, available at: <http://www.crin.org/resources/infodetail.asp?ID=27510>.

Law on the Protection of the Rights of Children was enacted in 1991 after the country ratified the CRC, and provides some legal basis for the protection of children's rights in the Maldives, but does by far not address all aspects of the CRC.

In its review of the State party's performance under the Convention in 2007, the UN Committee on the Rights of the Child reiterated its concern regarding the need to amend the Law on the Protection of the Rights of the Child to fully comply with the provisions and principles enshrined in the Convention.⁶

The legal system of the Maldives is based partly on Sharia (Islamic law), and partly on the common law tradition. Article 10 of the Constitution of the Maldives states that Islam is to be the religion of the Maldives, on which all laws are based, and that no law or right may be inconsistent with the stipulations of Islam.⁷ Civil law is used in most cases, but it is subordinate to Islamic law, which is applied in matters not covered by civil law and in cases involving divorce or adultery.⁸

D. Can the CRC be directly enforced in the courts?

According to Article 93 of the Constitution, the CRC cannot be directly enforced in the Maldives' domestic courts as the ratification of international treaties does not make them automatically enforceable.⁹

Some relevant obligations derived from the CRC can be found in national laws, including in the Penal Code,¹⁰ the Family Law Act,¹¹ the Human Rights Commission Act,¹² the Special Provisions to Deal with Child Sex Abuse Offenders,¹³ and the Law on the Protection of the Rights of Children.¹⁴

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⁶ UN Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of the Maldives*, CRC/C/MDV/CO/3, 13 July 2007, para. 12, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMDV%2fCO%2f3&Lang=en.

⁷ Constitution of the Republic of Maldives, 2008, Article 10.

⁸ See: <https://freedomhouse.org/report/freedom-world/2013/maldives#.VQxD3tZhVKQ>.

⁹ Constitution of the Republic of Maldives, 2008, Article 93.

¹⁰ Penal Code, Act Number 1/81, available at <http://www.agoffice.gov.mv/pdf/sublawe/PC1.pdf>. Please note that at the time of writing, a new Penal Code had been discussed in the Maldives' parliament, but it had not yet taken effect or been translated from Dhivehi into English. This report therefore refers to the previous version of the Penal Code, enacted in 1961. We endeavour to update this report as soon as the new Penal Code is available in English. As of March 2015, the enactment of the new Penal Code was scheduled for 13 April 2015, see: <http://www.haveeru.com.mv/news/59808>. For more information, see e.g.: Debra Cassens-Weiss, in: ABA Journal, *Maldives enacts criminal code based on draft by law prof and students*, 6 June 2014, available at: http://www.abajournal.com/news/article/maldives_enacts_criminal_code_based_on_draft_by_law_prof_and_students.

¹¹ Family Law Act, Law No. 4/2000, available at: <http://www.agoffice.gov.mv/pdf/sublawe/Family.pdf>.

¹² Human Rights Commission Act, Act No. 6/2006, available at: <http://www.hrcm.org.mv/publications/otherdocuments/HRCMActEnglishTranslation.pdf>.

¹³ Special Provisions to Deal with Child Sex Abuse Offenders, Law No. 12/2009, available at: <http://agoffice.gov.mv/pdf/sublawe/CSAO.pdf>.

¹⁴ Law on the Protection of the Rights of Children.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

There do not appear to be any examples of documented cases from domestic courts in the Maldives referencing the CRC.

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Challenges can be brought in the domestic courts over violations of children's rights, but the procedure for these is not entirely clear due to a lack of a Civil Procedure Code or other procedural provisions. The Family Law Act and the Law on the Protection of the Rights of Children also do not contain any provisions which address the possibility of children bringing legal challenges.

The Constitution provides that “anyone whose rights or freedoms, as guaranteed by [Chapter II of the Constitution], have been infringed or denied may apply to a court to obtain a just remedy”.¹⁵ The Constitution also states that “[e]veryone has the right to retain and instruct legal counsel at any instance where legal assistance is required”.¹⁶ It is unclear whether children will only be permitted to bring civil lawsuits through a “next friend” or “litigation friend”.¹⁷ However, the Constitution entitles children to “special protection and special assistance from the family, the community and the State”.¹⁸

With respect to criminal matters, prosecutions in the Maldives are carried out by the Prosecutor General, under Section 15 of the Prosecutor General's Act.¹⁹ There are no provisions allowing for private prosecutions. Any person who has suffered a violation of their rights which amounts to a crime may complain to the Prosecutor General, who only has a duty to order an investigation into the complaint of criminal activity, should he or she deem it desirable.²⁰ The UN Special Rapporteur on the independence of judges and lawyers in 2013 raised several concerns about the role of the Prosecutor General, including regarding his independence and the lack of a specific code of conduct for prosecutors.²¹ The Special Rapporteur also referred to worrying allegations concerning selectivity and bias of prosecutions services

¹⁵ Constitution of the Republic of Maldives, 2008, Article 53(a).

¹⁶ Ibid.

¹⁷ These are terms used in other common law jurisdictions (e.g. England, Australia, Ireland) for a person who voluntarily helps a child in legal matters, particularly by filing a lawsuit.

¹⁸ Constitution of the Republic of Maldives, 2008, Article 35(a).

¹⁹ Prosecutor General's Act, Law No. 9/2008, section 15, available at: <http://www.agoffice.gov.mv/pdf/sublawe/PG.pdf>.

²⁰ Prosecutor General's Act, section 15(f).

²¹ *Report of the Special Rapporteur on the independence of judges and lawyers Gabriela Knaut*, UN Human Rights Council session 23, A/HRC/23/43/Add.3, 21 May 2013, sections 69-76, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/43/Add.3.

in prosecuting cases, and a severe reluctance to give explanations to the media on his actions.²²

Complaints can also be lodged with the Human Rights Commission of the Maldives,²³ which was established in 2003 and whose powers were strengthened by amendments to the Human Rights Commission Act in 2006.²⁴ The Human Rights Commission's mandate includes receiving complaints regarding alleged human rights violations which includes children's rights violations.²⁵ Yet, the UN Committee on the Rights of the Child has noted with concern the many challenges faced by the Human Right Commission, including its difficulties in attaining a fully independent status and to recruit staff.²⁶

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

As indicated in the above section, the procedure for children bringing cases in court is not entirely clear due to a lack of a Civil Procedure Code or other procedural provisions, and neither the Family Law Act nor the Law on the Protection of the Rights of Children contain any provisions which address the possibility of children bringing legal challenges.

Although the law of the Maldives does not explicitly prevent children under a certain age from bringing cases themselves, children under the age of 16 are not permitted to give testimony in court.²⁷ This restriction suggests that the courts may be reluctant to allow children younger than 16 to bring cases by themselves, although there are no documented instances in which this has been confirmed.

The Family Law Act and Law on the Protection of the Rights of Children deal with parental responsibilities and duties. Although neither of these laws explicitly states that a parent should act in the capacity of representative of a child in legal proceedings, the Family Law Act contains the following provisions regulating guardianship over a child: Guardianship is divided into Principal Judicial Guardian, Judicial Guardians, and Lawful Guardians.²⁸ The Principal Judicial Guardian is the father of the child. Judicial Guardians are those to whom guardianship is transmitted in accordance with the principles of Shariah law based upon paternal relations of the child. Lawful Guardians are those who may be appointed by Court as the guardians of the child in circumstances where neither the Principal Judicial Guardian nor Judicial Guardians are available. Irrespective of who is entrusted with the

²² Ibid., section 73.

²³ See: <http://www.hrcm.org.mv/Homepage.aspx>.

²⁴ Human Rights Commission Act 2006, available at: <http://www.hrcm.org.mv/publications/other/documents/HRCMActEnglishTranslation.pdf>.

²⁵ Human Rights Commission Act, Article 21.

²⁶ UN Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of the Maldives*, para. 18.

²⁷ See: http://www.unicef-irc.org/portfolios/documents/410_maldives.htm.

²⁸ Family Law Act, Articles 47-48.

custody of the child, the Principal Judicial Guardian of the child until he completes 18 years of age shall be his father.²⁹

The recently enacted Domestic Violence Act 2012 contains provisions which suggest that the courts may expect the parent of a child under the age of 16 to act in the capacity of legal guardian and bring cases in the child's name. Section 19(b) of the Act states that "where the application for a protection order is being made by a minor, then such application shall be made by the minor's parent, guardian, relative or caretaker of the child concerned...or the minor may make their own application for such order".³⁰ The Act also refers to "persons with disabilities", which includes persons who "lack...mental capacity to make decisions related to personal welfare, or inability to judge the nature and importance of such matters"³¹, and goes on to provide that such persons "shall make their application for a protection order through the person's parent, guardian or caretaker of the person concerned"³² which suggests that children may be viewed as lacking "mental capacity" for bringing legal proceedings.

C. In the case of infants and young children, how would cases typically be brought?

In the case of infants and young children, due to a lack of procedural provisions, it must be assumed that cases would be brought in the same way as outlined in section II.B. above.

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

As there is no government funded legal aid system in the Maldives, children or their representatives are not eligible to receive free or subsidised legal assistance in order to bring cases.

According to the Constitution, "the State shall provide a lawyer for an accused person who cannot afford to pay for a lawyer where "serious criminal cases" are concerned,³³ but research suggests that the government of the Maldives is not fully in compliance with its constitutional obligations to provide this free criminal defence guaranteed by the Constitution.³⁴ However, this provision only covers the area of criminal law and does not mandate the state to provide similar support in cases concerning civil litigation.³⁵

²⁹ Ibid.

³⁰ Domestic Violence Act, section 19 (b).

³¹ Domestic Violence Act, section 22.

³² Domestic Violence Act, section 22.

³³ Constitution of the Republic of Maldives, 2008, Article 53(b).

³⁴ UNDP, *Options for Legal Aid Programming in the Maldives*, 7 August 2014, available at: http://www.mv.undp.org/content/maldives/en/home/library/democratic_governance/ResearchPaper.html.

³⁵ Ibid., p. 5.

Free legal advice can be obtained through the Human Rights Commission of the Maldives which provides some free or subsidised legal aid services,³⁶ and through non-governmental organisations which offer different legal aid services, for example in corruption cases.³⁷

The United Nations Development Programme has stated its intention to focus on establishing a functioning legal aid programme in the Maldives.³⁸

- E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

The lack of a Civil Code and Civil Procedure Code in the Maldives means that no clear indication is given as to any conditions or limits on children or representatives bringing cases, aside from those set out in existing legislation, such as the Constitution. There are plans to enact a Civil Procedure Code, which has been drafted and was apparently submitted to Parliament in June 2011.³⁹ However, as of March 2015, the Civil Procedure Code had still not been enacted.

III. **How can children's rights violations be challenged before national courts?**

- A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Legal challenges by children and their representatives must be initiated according to the provisions of the Constitution and the Judicature Act. The Judicature Act lays out the general framework of the judiciary in the Maldives and the jurisdiction of the courts.⁴⁰ As there is no Civil Procedure Code, various elements of legal proceedings relating to children are not clear, as pointed out in sections II.A. and II.B. above, e.g. whether children need to file proceedings through a “next friend” or “litigation friend”, or whether they can file proceedings by themselves.

Legal challenges by children and/or their representatives can be filed in the Supreme Court if the Court has inherent jurisdiction to adjudicate the issues. This applies to the following cases:

- An issue with legal reasons which may send the country into a constitutional void or remove it from the constitutional framework; or

³⁶ Further information on the types of legal aid available from the Human Rights Commission is available at: <http://www.hrcm.org.mv/Homepage.aspx>.

³⁷ See: <http://transparency.mv/en/advocacy>.

³⁸ *United Nations Development Assistance Framework UNDAF 2011-2015 – Action Plan – Republic of Maldives*, available at: http://countryoffice.unfpa.org/maldives/drive/undaf_action_plan_2011_2015_maldives.pdf.

³⁹ See: <http://suoodanwar.com/draft-of-civil-procedure-code/>.

⁴⁰ Constitution of the Republic of Maldives, 2008, Articles 42-61; Judicature Act of the Maldives, Article 33(a) (concerning the administering of cases in the High Court) and Chapter 7, “General Procedures” (concerning general information on bringing court matters), available at: <http://www.mvlaw.gov.mv/pdf/ganoon/chapter1/22-2010eng.pdf>.

- A dispute between two powers or institutions of the State regarding the interpretation of the Constitution; or
- A constitutional issue concerning public interest of the nation.⁴¹

Legal challenges can also be filed in the High Court if the Court has original jurisdiction over the case. The High Court has some original jurisdiction for cases relating to violations of the Constitution:

- Cases submitted in relation to a law or a part of a law which contradicts the Constitution;
- Case submitted in relation to a regulation created under a law and if this regulation or part of this regulation is seen to contradict the Constitution or a law.⁴²

All other challenges must be lodged with the Superior Courts where these have jurisdiction, or otherwise with the Magistrate Courts. Superior Courts are first instance courts located in the capital Malé and include the Criminal Court, Civil Court, Family Court, Juvenile Court and Drug Court.⁴³ Magistrate Courts exist on each inhabited island of the Maldives, except in Malé.⁴⁴

Complaints can also be lodged with the Human Rights Commission of the Maldives,⁴⁵ whose mandate includes receiving complaints from individuals regarding alleged human rights violations,⁴⁶ despite concerns over its independence and lack of resources.⁴⁷ The Human Rights Commission is also empowered to bring cases in its own name where it is convinced that there have been human rights violations.⁴⁸

The Maldives has signed and indicated its intention to ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure which would allow children, groups of children or their representatives to bring a complaint before the UN Committee on the Rights of the Child if they believe their rights under the Convention have been violated by their State and they have exhausted all domestic remedies for seeking justice.⁴⁹ But so far the Maldives has yet to ratify the treaty.

B. What powers would courts have to review these violations, and what remedies could they offer?

The Constitution states that the courts should provide a “just remedy”.⁵⁰ However, there is little indication in the legislation of what form such a

⁴¹ Judicature Act, Article 11.

⁴² Ibid., Article 37.

⁴³ Ibid., Article 53.

⁴⁴ Ibid., Article 63.

⁴⁵ See: <http://www.hrcm.org.mv/Homepage.aspx>.

⁴⁶ Human Rights Commission Act, Article 21.

⁴⁷ UN Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of the Maldives*, para. 18.

⁴⁸ Human Rights Commission Act, Article 3.

⁴⁹ See: <http://www.ratifyop3crc.org/aboutop3crc/>.

⁵⁰ Constitution of the Republic of Maldives, Article 65.

remedy might take in cases of child rights violations. Pending the introduction of a modernised Penal Code, civil remedies and criminal punishments are not currently separated in Maldivian law. Islamic law separates remedies, but categorises punishments into either physical retaliation (generally as a criminal punishment) or monetary compensation (generally as a civil punishment). The judge retains the discretion to require monetary compensation as part of any punishment.⁵¹

There is no set procedure for judicial review in the Maldives, and independent watchdogs note that there is “no adequate judicial review”.⁵²

The Human Rights Commission Act of 2006 provides that the Human Rights Commission has the following powers:⁵³

- To inquire about cases that occurred subsequent to the enactment of the law, and cases that occurred prior to the enactment of the law but not before 1 January 2000 (with exceptions); cases may involve government officials or private persons;
- To summon witnesses and persons related to complaints filed and obtain their statements; instruct persons being questioned in an ongoing inquiry not to leave Maldives except upon its permission, among others;
- To seek amicable settlement of cases, or refer them to courts if no amicable settlement is possible, or send a report of the inquiry on the cases with recommendations to appropriate government agencies;
- To inspect without prior notice any premises where persons are detained under a judicial decision or a court order.⁵⁴

All citizens and persons within the jurisdiction of the Maldives are required to obey summons issued by the Commission, provide information or submit documents, as well as to act or refrain from doing any act as may be required by the Commission.⁵⁵ Failure to follow the orders of the Commission may either result in house arrest or dismissal from office in case of public officials.⁵⁶

But as noted by the UN Committee on the Rights of the Child, the Human Right Commission faces many challenges, including difficulties in attaining a fully independent status and to recruit staff,⁵⁷ which hinders it in carrying out its powers listed above.

C. Would such a challenge have to directly involve one or more individual

⁵¹ For a discussion on remedies in Maldivian law, see p. 14 of *Final Report of the Maldivian Penal Law and Sentencing Codification Project, Volume 2: Official Commentary*, prepared by Paul H. Robinson and the University of Pennsylvania Law School, available at <https://www.law.upenn.edu/fac/phrobins/draftislamicpenalcode/finalreportmplscpv02.pdf>.

⁵² See <http://www.freedomhouse.org/report/freedom-world/2013/maldives>.

⁵³ Human Rights Commission Act, Articles 21-22; Asia-Pacific Human Rights Information Centre, *The National Human Rights Commission - The Maldives*, FOCUS March 2007 Volume 47, available at: <http://www.hurights.or.jp/archives/focus/section2/2007/03/the-national-human-rights-commission---the-maldives.html>.

⁵⁴ Ibid.

⁵⁵ Human Rights Commission Act, Article 26(a).

⁵⁶ Ibid., Article 26(b).

⁵⁷ UN Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of the Maldives*, para. 18.

child victims, or is it possible to challenge a law or action without naming a specific victim?

Challenges can be brought by the Humans Rights Commission in its own capacity without naming victims.⁵⁸ The Commission may also conduct investigations into possible cases of human rights violations, and such investigations may be conducted in public or in closed sessions to maintain the privacy or anonymity of persons concerned.⁵⁹

Research suggests that all other challenges require the involvement of individual child victims as there is no provision for popular or collective action in the laws of the Maldives.

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Due to the lack of a Civil Procedure Code in the Maldives, the procedure required to bring collective action remains unclear. The Judicature Act defines “parties of interest in a case” as “any person who may be directly affected by a verdict, ruling or decision of a court and any person who has the discretion to file a case to the courts as per this Act and the regulations created under this Act”.⁶⁰ Theoretically, this could mean that a number of victims can take collective action if all of them are likely to be directly affected by a verdict, ruling or decision of a court. Yet, there do not appear to be any documented cases of collective action being brought in the Maldivian courts in relation to children’s rights.

As regards the naming of victims, judges presiding over cases in the Maldives have discretion to conduct a closed trial or to have part of a trial closed from the public if they consider it to be in the interests of protecting the rights of a child involved in the case, or to protect the interest of a separate party who has suffered as a consequence of a crime committed by another.⁶¹

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

There are no provisions allowing for NGOs to bring challenges to potential human or children’s rights violations in front of the Maldivian courts and there does not appear to be any documented evidence of NGOs filing cases or intervening in cases involving children’s rights violations.

The Human Rights Commission possesses the power to sue and to make undertakings in its own capacity.⁶² The Commission also has the power to

⁵⁸ Human Rights Commission Act, Article 3.

⁵⁹ Human Rights Commission Act, Article 22(b)(7).

⁶⁰ Judicature Act, Article 99 (a).

⁶¹ Judicature Act, Article 71(b)(2).

⁶² Human Rights Commission Act, Article 3.

make inquiries and investigations into cases involving government officials or private persons, and may summon witnesses and persons related to complaints filed and obtain their statements.⁶³ Following an investigation, the Commission may seek amicable settlement of cases, or refer them to courts if settlement is not possible.⁶⁴ The Human Rights Commission may also intervene in cases where a judge deems a human rights infringement to have occurred, or where it has reason to believe such an infringement is foreseeable in an ongoing trial. In such cases, the Human Rights Commission may inquire into the matter and submit a report to the judge.⁶⁵

Despite these powers, however, questions have been raised as to the independence and resources of the Commission, its effectiveness, and its willingness to actually carry out investigations or refer cases to the courts.⁶⁶

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

According to the Judicature Act, the judiciary of the Maldives consists of the Supreme Court, the High Court and the Lower Courts. The Lower Courts comprise the Superior Courts in Malé and Magistrates Courts on each inhabited island.⁶⁷ Complaints must be lodged with the Superior Courts as courts of first instance,⁶⁸ or otherwise with the Magistrate Courts. The High Court and Supreme Court have original or inherent jurisdiction over certain constitutional questions,⁶⁹ as outlined in section III.A. above, and serve as courts of first instance for cases relating to these issues.

The Magistrates Courts operate on the outlying islands and have jurisdiction over general civil and family matters up to an amount of Rf. 5,000,000.⁷⁰ Additionally, unless otherwise specified, the Magistrates Court of an island is to be the first instance court for cases relating to that island.⁷¹ A judge is stationed on every island with a population of more than 500 people.⁷²

⁶³ As provided by the First Amendment to the Human Rights Commission Act; For further details see: <http://www.hrcm.org.mv/aboutus/about.aspx>.

⁶⁴ Asia-Pacific Human Rights Information Centre, *The National Human Rights Commission - The Maldives*.

⁶⁵ Human Rights Commission Act, section 21(g).

⁶⁶ See *Maldives – European Community Country Strategy Paper 2007-2013*, available at: http://eeas.europa.eu/maldives/csp/07_13_en.pdf.

⁶⁷ Judicature Act, Article 2.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, Articles 11 & 37.

⁷⁰ *Ibid.*, Schedule 5, 2(h).

⁷¹ *Ibid.*, Schedule 5, 3.

⁷² *Ibid.*, Article 64(a).

Cases in Malé are first heard in one of the Superior Courts, which include the Civil, Criminal, Family, and Juvenile Courts.⁷³ The jurisdictions of these four courts are set out in detail in Schedules 1-4 of the Judicature Act.

Due to the lack of civil or criminal procedure codes, there are no detailed provisions on court filing procedures available. The Judicature Act provides only basic provisions, such as that the court has the power to “summon parties to the court...and request [parties] to submit any document needed by the court”.⁷⁴

There are a number of ways in which a complaint can be lodged with the Human Rights Commission:⁷⁵

- Via a toll free telephone service;
- In writing;
- By submitting a hard copy complaint form provided on the Commission’s website;
- By email;
- By Fax.

A complaint can be made to the Human Rights Commission in Dhivehi or English and staff can help with writing complaints.⁷⁶ Complaints should include the following information:⁷⁷

- The complainant’s name, address and telephone number;
- Who the complainant is complaining about and their contact details;
- The facts underlying the complaint (what happened, when it happened and who was involved);
- What law might have been breached and how;
- Whether a complaint has been made anywhere else.

B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

As there is no government funded legal aid system in the Maldives, children or their representatives are not eligible to receive free or subsidised legal assistance in order to bring cases.

According to the Constitution, “the State shall provide a lawyer for an accused person who cannot afford to engage one” where “serious criminal cases” are concerned,⁷⁸ but research suggests that the government of the Maldives is not fully in compliance with its constitutional obligations to

⁷³ Ibid., Article 53 (b).

⁷⁴ Ibid., Article 72.

⁷⁵ See: http://www.hrcm.org.mv/complaint/How_to_lodge_a_Complain.aspx.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Constitution of the Republic of Maldives, 2008, Article 53(b).

provide free criminal defence.⁷⁹ However, this provision only covers the area of criminal law and does not mandate the state to provide similar support in cases concerning civil litigation.⁸⁰

Free legal advice can be obtained through the Human Rights Commission which provides some free or subsidised legal aid services,⁸¹ and through non-governmental organisations which offer different legal aid services, for example in corruption cases.⁸²

The United Nations Development Programme has stated its intention to focus on establishing a functioning legal aid programme in the Maldives.⁸³

In her 2013 report on the Maldives, the UN Special Rapporteur on the independence of judges and lawyers voiced concern that legal aid is only mandated by the Constitution in “serious criminal cases”, and criticised that “access to justice can become especially difficult for vulnerable members of the society, such as children...who have to face difficulties compounded with discrimination”.⁸⁴ The UN Special Rapporteur therefore recommended that “a comprehensive programme of free legal aid should be institutionalised at the national level and sufficient funds should be allocated to it, with the technical and financial support of the international community”.⁸⁵

- C. **Pro bono / Financing.** If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

There is no bar association or other mechanism promoting an active culture of pro bono amongst lawyers in the Maldives. News reports suggest that a bar association was set up by a group of local prominent lawyers in April 2013, but was then dissolved in June 2014 by the Ministry of Home Affairs.⁸⁶

Several NGOs with a particular focus on children's rights are in operation in the Maldives and may be able to offer legal advice, representation, or other forms of assistance. They include:

⁷⁹ UNDP, *Options for Legal Aid Programming in the Maldives*, 7 August 2014, available at: http://www.mv.undp.org/content/maldives/en/home/library/democratic_governance/ResearchPaper.html.

⁸⁰ *Ibid.*, p. 5.

⁸¹ Further information on the types of legal aid available from the Human Rights Commission is available at: <http://www.hrcm.org.mv/Homepage.aspx>.

⁸² See: <http://transparency.mv/en/advocacy>.

⁸³ *United Nations Development Assistance Framework UNDAF 2011-2015 – Action Plan – Republic of Maldives*, available at: http://countryoffice.unfpa.org/maldives/drive/undaf_action_plan_20112015_maldives.pdf.

⁸⁴ *Report of the Special Rapporteur on the independence of judges and lawyers Gabriela Knaul*, para. 84.

⁸⁵ *Ibid.*, para. 114.

⁸⁶ Sun Maldives Online, *Home Ministry dissolves Maldives Bar Association*, 24 June 2014, available at: <http://www.sun.mv/english/23036>.

- Care Society;⁸⁷
- Huvadhoo Aid;⁸⁸
- Rights for All.⁸⁹

Additionally, some law firms in the Maldives have established pro bono programmes, such as Suood Anwar & Co⁹⁰ and Praxis Law Firm.⁹¹

In her 2013 report on the Maldives, the UN Special Rapporteur on the independence of judges and lawyers voiced serious concern about the absence of an independent self-regulating bar association or council that oversees the process of admitting candidates to the legal profession, provides for a uniform code of ethics and conduct, and enforces disciplinary measures, including disbarment.⁹²

D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

Due to the lack of an updated Penal Code and the complete absence of a Civil Procedure Code, there is no clear indication of timing regarding how soon after a violation a case would have to be brought. The previous Penal Code, which was enacted in 1961, did not contain any references to statutes of limitation.⁹³

Among the key recommendations submitted as part of the ‘Report on the Criminal Justice system of the republic of Maldives - Proposals for Reform’ prepared at the request of the Attorney General of the Maldives by Paul H. Robinson and Colin S. Diver, Professors of Law at the University of Pennsylvania Law School, for the United Nations Development Program in 24 July 2004 were the publication of criminal procedural rules, including published trial procedures and evidentiary rules.⁹⁴ As of March 2015, the enactment of the new Penal Code based on these recommendations was still pending and was scheduled for 13 April 2015.⁹⁵

In her 2013 report on the Maldives, the UN Special Rapporteur on the independence of judges and lawyers called for “an integrated system of case management, which includes jurisprudence and data from all courts” to be

⁸⁷ See: <http://www.caresociety.org.mv/web/eng/index.html>.

⁸⁸ See: <http://www.huvadhooaid.org/>.

⁸⁹ See: <http://www.crin.org/organisations/viewOrg.asp?ID=4190>.

⁹⁰ See: <http://suoodanwar.com/>.

⁹¹ See: <http://praxislawfirm.com/practice-areas.html>.

⁹² *Report of the Special Rapporteur on the independence of judges and lawyers Gabriela Knaul*, para. 87.

⁹³ For a copy of the Penal Code of 1961 translated into English, see: http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=MDV&p_classification=01.04&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY.

⁹⁴ Paul H. Robinson and Colin S. Diver, Professors of Law, University of Pennsylvania Law School, *Report on the Criminal Justice system of the republic of Maldives - Proposals for Reform*, 24 July 2004, paras. 2.1 & 2.9., available at: http://www.maldivesculture.com/index.php?option=com_content&task=view&id=51&Itemid=42.

⁹⁵ See: <http://www.haveeru.com.mv/news/59808>.

set up, in order to “render the functioning of the justice system more consistent and transparent.”⁹⁶

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The Constitution makes some brief provisions regarding evidence, with Article 52 stating that “no confession shall be admissible in evidence unless made in court by an accused who is in a sound state of mind”.⁹⁷ Article 52 also provides that statements and evidence must not be obtained by compulsion or other unlawful means, and that in cases where this has happened, such statements or evidence will not be admissible.⁹⁸ But it is unclear in how far these constitutional provisions are applied in the courts across the Maldives, and there are no procedural codes detailing evidentiary rules.

The recommendations submitted as part of the ‘Report on the Criminal Justice system of the republic of Maldives - Proposals for Reform’ prepared at the request of the Attorney General of the Maldives by Paul H. Robinson and Colin S. Diver, Professors of Law at the University of Pennsylvania Law School, for the United Nations Development Program in 24 July 2004 stressed that the single most important reform of the Maldivian justice system would be to articulate a set of comprehensive rules governing the operation of courts in adjudicating criminal cases, including rules of evidence to govern the introduction and implications of evidence during trials.⁹⁹ Published trial procedures and evidentiary rules have so far not existed in the Maldives.¹⁰⁰

UNICEF notes that the Maldives has begun to lay the foundation for fulfilling children’s rights through proposed legislation with several new child-related policies under development, such as the Evidence Act.¹⁰¹ However, as of March 2015, the Maldives still lacks an Evidence Act, something that was highlighted in the UN Special Rapporteur’s report on judicial independence in the Maldives in 2013. The Special Rapporteur noted that one major challenge for the fair, impartial and consistent delivery of justice is the lack of some basic pieces of legislation, such as the Evidence Act.¹⁰² Different reasons have been given for the delay of the Act, such as translation issues and difficulties in coordination between parliament and the Home Office.¹⁰³ The Special Rapporteur also noted that the current Penal

⁹⁶ *Report of the Special Rapporteur on the independence of judges and lawyers Gabriela Knaul*, para. 111.

⁹⁷ Constitution of the Republic of Maldives, 2008, Article 52.

⁹⁸ Constitution of the Republic of Maldives, 2008, Article 52.

⁹⁹ Paul H. Robinson and Colin S. Diver, para. 2.1.

¹⁰⁰ Paul H. Robinson and Colin S. Diver, para. 2.9.

¹⁰¹ See: http://www.unicef.org/maldives/children_3429.htm .

¹⁰² *Report of the Special Rapporteur on the independence of judges and lawyers Gabriela Knaul*, para. 33.

¹⁰³ Mohamed Naahee, in: Minivan News, *MP ‘Colonel’ Nasheed blames Home Minister Jameel for evidence bill delay*, 24 March 2013, available at: <http://minivannews.com/politics/mp-%E2%80%99-nasheed-blames-home-minister-jameel-for-evidence-bill-delay-55055>.

Code is “mostly incomplete and outdated, and do[es] not reflect the modern living conditions of the Maldives”.¹⁰⁴ It was also noted that a draft Penal Code, an Evidence Act and a Criminal Procedure Code have been “pending for years” before parliament. The draft Penal Code has still not been enacted as of March 2015, despite having been submitted to Parliament in 2006.¹⁰⁵

As an illustration of the doubts that can arise regarding admissible evidence, a US Department of State report from 2010 noted that “due to the absence of an Evidence Act”, there was “uncertainty” in a case as to whether a recording of a personal telephone call would be admissible as evidence in court.¹⁰⁶

Respect for the views of the child in judicial proceedings in the Maldives is very limited and only applies to custody cases.¹⁰⁷ While the Family Law Act provides children with the right to be heard in custody cases,¹⁰⁸ the UN Committee on the Rights of the Child has voiced concerns that gaps exist between the law and practice.¹⁰⁹

In its most recent periodic report to the UN Committee in January 2015, the government of Maldives conceded that in practice, while Family and Juvenile Courts in Malé tend to hear testimony from children, this is still not the norm in the Magistrate Courts on the many islands which form the Maldives.¹¹⁰

Judges in the Maldives have discretion to conduct a closed trial or to have part of a trial closed from the public if they consider it to be in the interest of protecting a child implicated in the case.¹¹¹ This was illustrated in a prominent case in 2013, where international outcry was sparked by the sentencing of a 15-year-old girl in the Juvenile Court to flogging for engaging in sexual activities outside of marriage. The judgment was eventually quashed by the High Court. Throughout the case, the girl’s anonymity was preserved.¹¹²

¹⁰⁴ *Report of the Special Rapporteur on the independence of judges and lawyers Gabriela Knaul*, para. 33.

¹⁰⁵ For further information, see e.g.: Mohamed Naahee, in: Minivan News, *Amputation for theft added to draft penal code*, 30 March 2013, available at: <http://minivannews.com/politics/amputation-for-theft-added-to-draft-penal-code-55388>.

¹⁰⁶ U.S. Department of State, *2010 Human Rights Report: Maldives*, 8 April 2011, section 1.f., available at: <http://www.state.gov/j/drl/rls/hrrpt/2010/sca/154483.htm>.

¹⁰⁷ UN Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of the Maldives*, para. 44.

¹⁰⁸ Family Law Act, Article 44(b).

¹⁰⁹ UN Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of the Maldives*, para. 44.

¹¹⁰ *Combined third and fourth periodic reports of the Maldives to the UN Committee on the Rights of the Child*, CRC/C/MLD/4-5, 28 January 2015, para. 90, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMDV%2f4-5&Lang=en.

¹¹¹ Judicature Act, Article 71(b)2.

¹¹² BBC News, *Maldives girl's 100 lashes sentence overturned*, 22 August 2013, available at: <http://www.bbc.co.uk/news/world-asia-23792120>.

The Human Rights Commission may also conduct its investigations into possible cases of human rights violations in closed sessions to maintain the privacy or anonymity of persons concerned.¹¹³

Some accommodation has been made to deal with evidence presented by children in court. In proceedings relating to child sexual abuse, testimony of the child is to be obtained through a video-recorded interview, which is to take place in a familiar environment for the child, away from the court or the police station, and in the presence of familiar or trusted persons. Translation or interpretation services are available where the child has a disability.¹¹⁴ Additionally, the law forbids disclosure to or by the media of information about the child in such cases, and such cases are not to be held publicly.¹¹⁵

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Article 42(a) of the Constitution provides that “everyone is entitled to a fair and public hearing within a reasonable time”, and Article 51(b) specifies that “everyone charged with an offence has the right to be tried within a reasonable time”.¹¹⁶

Prior to the enactment of the Constitution in 2008, a number of independent reports had raised concerns over the handling of court cases in the Maldives. In a 2005 report, Justice Marcus Einfeld of Australia drew attention to the “entirely unsatisfactory” situation with the court system in the Maldives, speaking of “completely dysfunctional case listing and management systems.”¹¹⁷ The UN Special Rapporteur’s report suggests that, following enactment of the Constitution in 2008 and ratification of new legislation, such as the Judicature Act, the current situation is better, though there appears to still be much room for improvement.¹¹⁸

- G. Appeal. What are the possibilities for appealing a decision to a higher court?

The right to appeal is enshrined in the Constitution, which states that “everyone related to a matter has the right to appeal a conviction and sentence, or judgment or order in a criminal or civil matter”.¹¹⁹

The High Court is the Court of Appeal for all decisions in civil and criminal cases made by the Lower Courts.¹²⁰ Article 43 of the Judicature Act provides

¹¹³ Human Rights Commission Act, Article 22(b)(7).

¹¹⁴ Special Provisions to Deal with Child Sex Abuse Offenders, Article 48.

¹¹⁵ Judicature Act, Article 54.

¹¹⁶ Constitution of the Republic of Maldives, 2008.

¹¹⁷ Justice Marcus R. Einfeld, *Strengthening the Maldivian Judicial System*, Draft discussion paper, June 2005, available at: <http://www.mvlaw.gov.mv/pdf/publications/9.pdf>.

¹¹⁸ Note also, however, criticisms that Ms Knaul’s report drew from the Maldivian Parliament’s representative to the Judicial Service Commission, MP Gasim Ibrahim, who accused Ms Knaul of inaccuracy and not fully verifying reports compiled for her. For further information, see: http://www.maldivesculture.com/index.php?option=com_content&task=view&id=282&Itemid=42.

¹¹⁹ Constitution of the Republic of Maldives, 2008, Article 56.

¹²⁰ Judicature Act of the Maldives, Article 31(a).

the circumstances in which decisions of the Lower Courts and tribunals can be appealed to the High Court.¹²¹ Appeals to the High Court must be carried out in accordance with Article 38 of the Judicature Act (where the matter was originally decided by a Lower Court) or Article 39 (where the matter was decided by a tribunal).

The Supreme Court is the final court of appeal for cases from the High Court, but only matters that contest High Court decisions “on grounds of breaching the Constitution, a law or a regulation made pursuant to a statute” may be appealed to the Supreme Court.¹²²

- H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Having a legal system heavily influenced by common law, the Maldives places great importance on judicial precedent. Judicial precedent is enshrined in the Constitution, which provides that “lower courts shall follow the decisions of a higher court”.¹²³ Consequently, a negative decision by a higher court may be likely to have long-term impacts on interpretation of children’s rights in the Maldives. Any decision that could potentially conflict with Islamic law would also likely be very controversial.

Political backlash and repercussions have been noted especially in relation to juvenile justice decisions. The UN Special Rapporteur on the independence of judges and lawyers noted that, with regard to criminal sentencing of children, that “Shari’a has sometimes been applied in contradiction with the fundamental human rights protected in the Constitution and international instruments to which Maldives is a party”.¹²⁴ The Special Rapporteur also gave examples of “cases of children sentenced to flogging in September 2012 and February 2013, and a person sentenced to death in December 2012 for a crime committed while she was below 18 years of age”.¹²⁵

Despite such sentences, the Maldivian government has stated its commitment to upholding the rights of children, and the President was said to be “overjoyed” at the High Court’s quashing of the 15-year-old girl’s flogging sentence in 2013.¹²⁶ At the time, the President’s spokesman stated publicly that “it is the government’s policy to protect victims, but we ha[ve] to do it within the framework of the law”.¹²⁷

- I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

¹²¹ Judicature Act of the Maldives, Article 43.

¹²² Judicature Act of the Maldives, Article 9(c) and 12.

¹²³ Constitution of the Republic of Maldives, 2008, Article 143(b).

¹²⁴ *Report of the Special Rapporteur on the independence of judges and lawyers Gabriela Knaul*, para. 35.

¹²⁵ *Ibid.*

¹²⁶ BBC News, *Maldives girl's 100 lashes sentence overturned*.

¹²⁷ *Ibid.*

Enforcement of court judgments in the Maldives has come into question, due to the failure of some defendants to fulfill the terms of court judgments.¹²⁸

Criminal judgments in particular can be met with a great deal of controversy. The UN Special Rapporteur on the independence of judges and lawyers noted in 2013 that “when judgments do not go the way people want, judges are pressured and publicly berated”,¹²⁹ and also called into question “the lack of victim and witness protection mechanisms”.¹³⁰

However, the recent and ongoing reform of the justice system following enactment of the new Constitution in 2008 suggests that some progress is being made, and the government has voiced its commitment to abide by its obligations under the UN Convention on the Rights of the Child. For instance, the UN Special Representative of the Secretary General on Violence against Children noted that, in her discussions with government officials and members of the judiciary, among others, during a visit to the Maldives in 2013, there was a “strong reaffirmation of the international commitments undertaken by the Maldives to safeguard the rights of the child and ensure the implementation of the Convention on the Rights of the Child and other international human rights conventions ratified by the country”.¹³¹

V. Additional factors. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

It is relevant to consider the particular nature of the geographical configuration of the Maldives when discussing factors and difficulties impeding the implementation of the UN Convention on the Rights of the Child in the country.¹³² The Maldives are comprised of 1,190 coral islands grouped into 26 atolls, and the country faces challenges in implementing adequate programmes and services for children living in atolls, which are in many instances isolated and difficult to reach.¹³³

The legal system of the Maldives has elements of Islamic (Sharia) law as well as English common law.¹³⁴ There are certain innate conflicts between the two systems that have caused some debate in the Maldives and elsewhere. The stipulations of Islamic law in other common law jurisdictions have been held to be “wholly incompatible” with human rights legislation.¹³⁵ On the contrary, other leading lawyers and legal scholars argue that Sharia law can be compatible

¹²⁸ For instance, see: <http://www.mira.gov.mv/EnglishNews.aspx?newsid=141>.

¹²⁹ *Report of the Special Rapporteur on the independence of judges and lawyers Gabriela Knaul*, para. 66.

¹³⁰ *Ibid.*, para. 68.

¹³¹ *Visit to the Maldives of the United Nations Special Representative of the Secretary General on Violence against Children, Marta Santos Pais*, 3-8 May 2013, available at: [http://srsg.violenceagainstchildren.org/sites/default/files/events/Statement_SRSG_Santos_Pais_Maldives_8_May_2013_\(2\).pdf](http://srsg.violenceagainstchildren.org/sites/default/files/events/Statement_SRSG_Santos_Pais_Maldives_8_May_2013_(2).pdf).

¹³² UN Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic reports of the Maldives*, para. 5.

¹³³ *Ibid.*

¹³⁴ See: <http://www.bbc.co.uk/news/world-asia-21595814>.

¹³⁵ See media report on a prominent 2008 UK House of Lords Judgment, available at: <http://www.theguardian.com/world/2008/oct/23/religion-islam>.

with the toughest human rights legislation.¹³⁶ This debate remains prominent in international law across many jurisdictions, but is of greater relevance to the Maldives than to most other countries due to the fusion of Sharia law and the common law tradition in the Maldivian legal system.

The protection of children's rights is a particularly pressing issue in the Maldives because of the proportion of the population that is under 18 years of age. As of June 2006, 43.4% of the population was under 14 years old, and the average age was 17.9 years.¹³⁷

When contemplating legal action to challenge a violation of children's rights, it may also be relevant to consider concerns that have been raised about transparency and politicisation in the judiciary of the Maldives.¹³⁸ In October 2014, the UN Office of the High Commissioner for Human Rights expressed concern over the Supreme Court's prosecution of five members of the Maldives' Human Rights Commission.¹³⁹ In March 2014, the Supreme Court dismissed the country's four top election commissioners, giving each a six-month jail sentence and three-year suspension for "disobeying orders".¹⁴⁰ Claims that the judiciary's decisions are politically motivated were also voiced in March 2015, when the Criminal Court sentenced the former president to 13 years in prison for terrorism-related charges.¹⁴¹

This report is provided for educational and informational purposes only and should not be construed as legal advice.

¹³⁶ See: <http://www.theguardian.com/world/2012/jan/16/sharia-law-compatible-human-rights> and <http://themediaproject.org/article/shariah-law-compatible-human-rights>.

¹³⁷ See: http://www.unicef.org/maldives/Making_Child_Rights_work_in_the_Maldives.pdf.

¹³⁸ See *Report of the Special Rapporteur on the independence of judges and lawyers Gabriela Knaul*; OHCHR, 'Maldives: "No democracy is possible without fair and independent justice," UN rights expert', 19 March 2015, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15725&LangID=E>.

¹³⁹ See: <http://jurist.org/paperchase/2014/10/un-rights-office-condemns-maldives-prosecution-of-human-rights-commission-members.php>.

¹⁴⁰ See: <http://www.bbc.co.uk/news/world-asia-26508259>.

¹⁴¹ See: <http://www.theguardian.com/world/2015/mar/14/former-maldives-president-mohamed-nasheed-jailed-for-13-years>.