



**Report on the**

**Optional Protocol to the Convention on the Rights of the Child on the  
Sale of Children, Child Prostitution and Child Pornography**

**Prepared by: Human Rights Commission of the Maldives**

**Maldives**

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## 1.0 Summary of Introduction

This report was prepared in line with the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which was ratified by the Maldives on 10<sup>th</sup> May 2002. To prepare the report, HRCM consulted with the relevant stakeholders, including the government authorities and the NGOs that were consulted during the formulation of the state report. Furthermore, this report emphasizes on some of the Commission's concerns regarding certain matters referred to in the state report as well as new issues which have surfaced since the submission of the state report in October 2007.

The sale of children, child prostitution and child pornography are all classified under the area of 'sexual misconduct' by relevant legislation and therefore, there are limited laws, administrative measures or social policies and programmes aimed specifically at these issues. During consultation, the relevant State authorities and other key stakeholders were doubtful of whether there were any reported cases of sale of children. However, all parties unanimously agreed that child prostitution and child pornography were becoming significant concerns in our society, particularly with the high number of drug abuse cases, and therefore joint collaboration was essential to ensure that the rights of the child are protected. Since the number of cases filed under 'sexual misconduct' has been increasing year by year, it can be presumed that the offences proscribed in the Optional Protocol are increasing as well.

The increase in the number of reported cases of 'sexual misconduct' may also be an indication of the increasing level of awareness among the general public. However, consultations with the authorities reveal that many people are reluctant to officially report such cases for a number of reasons and that there is still a lot to be achieved in the way of sensitizing the public to these issues. Considering the gravity of such offences and the potential of the growing threat of child exploitation in the country today, it is important that laws and administrative measures to deal with these issues be established. It should be noted that the newly ratified constitution makes specific reference to the protection of children, though substantial legislations and regulations need to follow in order to provide adequate protection for the full range of offences stated in the Optional Protocol. Furthermore, it is vital that a situation analysis, which can later be followed by awareness programmes based on its findings, be conducted on the offences proscribed in the Optional Protocol.

## **2.0 Measures adopted by the State to implement the provisions of the Optional Protocol**

### **A. Legal Framework (Articles 1,2 and 3)**

Maldives has seen considerable changes since the State report was submitted to the Committee last year, including many new developments in the legislative framework of the country. Including the passing of the newly ratified constitution which explicitly protects the rights of the child under its article 35 on the special protection to the children, young, elderly and disadvantaged groups. Article 35 (a) states:

*Children and young people are entitled to special protection and special assistance from the family, the community and the State. Children and young people shall not be harmed, sexually abused, or discriminated against in any manner and shall be free from unsuited social and economic exploitation. No person shall obtain undue benefit from their labour.*

However, much legislations need to follow in order to address the specific issues covered under the Optional Protocol. While some of the offences proscribed under CRC and the Optional Protocol may be indirectly covered under Islamic Sharia and the general laws of the country, this Commission believes it is vital that the offences are specifically defined and addressed in domestic legislation and punishment for the crimes be aggravated when a minor is involved so as to align the domestic legislation with the provisions of the Optional Protocol. For instance, there are currently no provisions in domestic law that specifically address the issues of sale of children, child prostitution and child pornography as defined in the Optional Protocol, much less any provisions that expressly prohibit these acts as required under Article 1. The transfer of organs of a child for profit and the engagement of a child in forced labour – offences proscribed under Article 3 – also remain unaddressed within domestic legislation. Discussions with State parties revealed that clearer, more defined legislation would assist them in conducting investigations and building stronger cases against offenders, particularly in cases relating to sale of children, child prostitution and child pornography, thus, upholding the rights of the child.

These offences are currently categorized together under one term – sexual misconduct- and this Commission believes that such ambiguity takes away from the gravity of these individual crimes and prevents relevant authorities from giving them as much attention as they need to. This also makes it

hard to determine the extent of the individual offences proscribed in the Protocol within the country today as the sale of children, child prostitution and child pornography are all classified under the banner of 'sexual misconduct' and no statistics exist for these offences separately. This Commission recognizes that the proposed amendments to the Rights of the Child Act of the Maldives incorporates these elements by defining and criminalizing these offences in line with CRC and the Optional Protocol, and would recommend expediting the process of amending the Act.

The State report identifies that a number of issues such as the emerging sex tourism and increasing production of pornographic materials are real concerns for the government; however, in preparation of this report, it was found that little had been done to address these issues one year since the submission of the State report. Furthermore, efforts need to be made to address other concerns raised in the report such as the increasing drug use and resultant prostitution by minors and children selling sexual favours for sundry items. The Commission recommends immediate action in tackling these issues before they accelerate to an unmanageable extent.

This Commission acknowledges that the Ministry of Gender and Family is now taking measures to deal with the issue of the increasing amount of pornographic material on the internet. Any website with such material that is reported to the Ministry is referred directly to Minister of Transport and immediate action is now taken to disable the site. In addition, the focus of the Ministry's activities to mark this years Day for prevention of Child Abuse on November 19th is going to be on the misuse of the internet and will provide information to parents and children about the dangers of the internet. Such activities need to be carried out on a wider scale and focus specifically on the issue of child pornography on the internet and other joint measures taken to counter the problem at its beginnings.

The sections 16 and 25 of the Law on the Protection of the Rights of the Child provides general measures against the offences proscribed within the Optional Protocol, namely by introducing an obligation on the part of the parents and the general public to protect children from "acts detrimental to the integrity of children and acts of sexual abuse, exploitation and oppression against children". However, discussion with relevant key stakeholders revealed that more specific laws that better define the crimes as stated in the Optional protocol are needed to secure the rights of the children from exploitation. For example, according to the Maldives Police Services, the general nature of this Law and the lack of any additional provisions that specifically address the offences create serious difficulties in investigating and convicting offenders. Therefore, there is an urgent need to revise the Law on the

Protection of the Rights of the Child in order to introduce specific crimes as proscribed under the Optional Protocol. Furthermore, currently, the penalty for violating these offences is exile, imprisonment or house detention for a term not exceeding 6 months or a fine not exceeding MRF 150. The Commission considers this to be outdated and the penalty needs to be revised immediately, particularly given the gravity of such offences and in order to comply with Article 3 of the Optional Protocol which states that these offences be made punishable 'by appropriate penalties that take into account their grave nature'.

The state report cites Provision 173 of the Rules relating to conduct of judicial proceedings, which governs the general offence of 'committing sexual misconduct' as covering 'most instances where a child is exploited for sexual purposes' but admits that there were shortcomings in the provision and that work was being done to revise it. The provision has since been revised and the penalty for sexual misconduct with a child is now imprisonment for three to six years, regardless of the sex of the offender, and 19 to 39 lashes as decided by a judge. While the changes in the form of removal of different sentences for men and women and the punishment of imprisonment rather than exile are positive steps, the Commission believes that the sentence may still be insufficient for particularly grave offenders and that this provision needs to be further reviewed and revised to provide for such instances.

It should be acknowledged that the Ministry of Gender and Family is currently in the process of addressing many of these issues through the drafting of a Children's Act, which would replace the current Law on the Protection of the Rights of the Child and cover instances of sexual exploitation. A draft of the Act has now been prepared and following initial consultations with key stakeholders, it is now in the process of being revised. However, it is not believed that this Act would be ready before mid-2009 and considering its significance in terms of improving adherence to the Optional Protocol, the importance of expediting its passing should be emphasized.

The Commission would also like to note that, since the submission of the State report, the Employment Bill has come into effect as of 10 July 2008. It should be noted that at the time the State report was submitted, section 6 of the Bill prohibited the employment of children less than 18 years of age except for a training related to their education or upbringing. However, the final law as it was passed by the Parliament has reduced the minimum age to 16 years of age.

## **B. Measures to establish jurisdiction over offences specified in the Optional Protocol (Article 4)**

The Penal Code of the Maldives states that the Code is applicable to the State of Maldives and its territory, including foreign nationals that may be present within its geographical boundaries. Furthermore, the Penal Code covers instances where a Maldivian commits such offences proscribed under the Code, outside the State of Maldives. However, the current Code does not extend jurisdiction to crimes committed against Maldivians in other countries. As stated in the State Report, this violation of the Optional Protocol is rectified under the proposed revisions to the Penal Code.

This further emphasises that that the passing of the proposed penal code needs to be hastened in order for the country to adhere more closely to the provisions of the Optional Protocol and this Commission would like to encourage the coordination of the relevant authorities in order to ensure the bills are passed in a timely manner and discourage any delays in these matters.

## **C. Measures to confiscate or seize goods used in the commission of crimes proscribed in by the Optional Protocol (Article 7)**

At the time the state report was prepared there were no specific rules pertaining to the seizure or confiscation of materials, assets and other instrumentals used to commit or facilitate offences under the Optional Protocol or the proceeds derived from such offences, as stated in article 7. However, the criminal procedures bill recently passed by the Parliament includes relevant rules as per Article 7. Under Section 24 of the new criminal procedures code, evidence of an offence, proceeds of an offence and instruments of crime may be searched for and seized by law enforcement officials. Furthermore, under Section 212 of the code, courts may order that a defendant forfeit the proceeds of, or contraband involved in an offence for which he has been convicted, if it finds by a preponderance of evidence that there is a connection between the property being sought to be forfeited and the offence. Therefore, this Commission would like to commend the state for their efforts to ensure the current criminal procedures code is in line with the provisions of the protocol.

#### **D. National Measures to protect the rights and interests of child victims (article 8)**

The responsibilities of the Ministry of Justice has recently been replaced by two independent institutions set up by the Parliament, namely the Department of Justice and the Judicial Administrative Services.

The state report highlights the proposal by the Ministry of justice for the incorporation of provisions for testimonial evidence of child witnesses into the criminal procedures bill. However, this Commission finds it concerning that the newly passed criminal procedures code still lacks any rules pertaining to the area of child witnesses. Furthermore, the judicial system needs to be made a more child-friendly environment where the court systems are better equipped to deal with the special needs of child victims and child offenders.

Discussions with key stakeholders raised concerns regarding the national measures undertaken in the protection of the rights of the child and these are listed below.

- One of the most pressing issues facing relevant authorities is that of inadequate resources, especially that of human resources. All parties consulted revealed the need for further training of staff to sensitize them to the particular needs of children in order to provided them with adequate support services. While this Commission recognizes that measures are being taken by all authorities to develop their own capacity, it is necessary to emphasize the importance of such staff training and encourage the government to aid these authorities in overcoming the shortage of qualified personnel in the area of child rights in the Maldives. Special attention needs to be paid to the sensitization of staff within the judicial system so that cases involving children are handled appropriately and the rights and interests of child victims are sufficiently protected.
- The state report highlights a number of projects that were underway by various authorities during the preparation of the State report in late 2007. Many of these projects remain behind schedule and considering the significance of several of these projects, this Commission believes measures need to be taken to expedite implementation to ensure full compliance with the CRC and its Optional Protocol.



One such programme cited in the state report is the joint effort by the Ministry of Gender and Family and the Attorney General's Office to incorporate international human rights law - and especially child rights law - into domestic legislation. This Commission recognizes the transitional stage which Maldives is going through and the efforts which have been made to develop the country's institutional and legislative framework, particularly with the passing of the newly ratified constitution. However, the legislative framework falls short of the requirements needed to adhere fully to the provisions of the Optional Protocol and in order to achieve this, effort needs to be placed on hastening the passing of relevant bills such as the Draft Children's Act and other necessary regulations.

Another vital joint project initiated by the Ministry of Gender and Family and the Attorney General's Office is to conduct a situation analysis of the children in Maldives, particularly in relation to child prostitution, with a view to developing an action plan on how to affectively address this concern. While this activity was planned to be carried out in the last quarter of 2008, due to various difficulties, including limited human resource capacity, the Ministry may be forced to delay the activity.

- One primary concern observed by all consulted parties is the lack of adequate facilities to house or provide support services for child victims. The State report presented plans by the Family and Child Protection Services unit of the Ministry of Gender and Family to establish Social Protection Centres in different atolls. This Commission would like to commend the Ministry for having established Family and Children Service Centers in all the 20 atolls in Maldives. Currently work is underway to strengthen the human resources in these centers, including social workers, counselors and also the centres' capacity to provide temporary shelters for victims and provide support. Though significant State finances have been utilized in establishing these centers, more resources are further needed to improve the services provided by these centers through the establishment of accommodation blocks and office structures in atolls where the centres are operating in rented spaces. At the time the State report was prepared, the Family and Child Protection Unit (FCPU) of the Maldives Police Services had planned to establish FCPU in three of the atolls. Currently only one FCPU has been established in Addu Atoll and the unit itself expressed concerns over the slow progress of the project. Considering the lack of rehabilitation centres and Police buildings with child-

friendly investigations rooms, there is a great urgency to hasten the implementation of the project.

- The State report states that the Seventh National Development Plan gives priority for the development of an institutional framework and the establishment of a multidisciplinary protection system for children. However, little work has been done to effectively implement this project. The NGOs that were consulted in preparation of this report identified that this activity was crucial for the effective implementation of the Protocol, and further expressed their interest in contributing to the system, particularly in cases where their expertise may be used by the State. This Commission acknowledges that technical work on a National Child Protection Database is being carried out by the FCPU and is expected to be completed by the end of 2009. However, the progress of formulating the database is limited and this Commission would like to emphasize the importance of expediting the project, considering its importance.
- Consultations also revealed that a number of authorities were concerned about the role of parents and teachers in the protection of the rights of children. Apathy on the part of parents needs to be overcome and teachers need to be trained to identify changes in behaviour that may indicate deeper problems. This commission feels that considering their roles as primary caregivers for children, awareness programmes need to be conducted with a focus on the role of parents and teachers need to be trained for such instances so that the rights and interests of child victims may be better protected.

#### **E. Measures to promote awareness, prevent offences and assist victims (Article 9)**

While there are awareness programmes on general rights of the child conducted by the Ministry of Gender and Family and other relevant authorities, the fact that the sale of children, child prostitution and child pornography are not legally or statistically ascertained as ongoing practices in the Maldives means these issues remain unaddressed in awareness and preventive programmes. This also means there are no laws, administrative measures or social policies and programmes aimed specifically at these issues as required by article 9. Discussions with key stakeholders affirmed that though it may still remain controversial to discuss, there has been increase in the number of child exploitation cases in the country today. Furthermore, given this increase and the gravity of such offences, this Commission recommends that such laws, administrative measures and,

especially, awareness programmes be conducted on the offences proscribed in the Optional Protocol.

Discussions with stakeholders revealed the importance of introducing awareness raising programmed in schools for children, emphasizing on the prevention tactics such as introducing education on behaviours of perpetrators of such offences, building the confidence of the children in order to assert their views, touching or acts that should not be allowed by anyone including family members and such reporting mechanisms that are accessible for children.

This Commission would also like to note that the assistance provided to child victims in the areas of social reintegration and physical and psychological recovery remains inadequate. During consultation, all parties unanimously agreed that greater attention needs to be placed on the social reintegration of children caught in incidences of exploitation. Thus far, there are limited mechanisms to reintegrate child victims. Discussions with the NGO Society of Health Education (SHE) and the Ministry of Education indicated that while counseling services are available to the general public and within schools, efforts need to be made to improve the quality and confidence of such services. Currently, all counselors remain on the same level and conduct counseling for all manners of victims, regardless of their levels of qualification. This Commission believes that in order to improve the current situation, it is important for the State to establish a board of counselors which would screen, accredit and categorize levels of counselors and develop a Code of Ethics for counselors, in order to improve and maintain the quality of recovery assistance to child victims of exploitation.

It should also be noted that, as mentioned in the state report, the laws of the country do not provide for any compensation for victims. There are also no measures aimed at prohibiting the production and dissemination of material advertising the offences proscribed in the Optional Protocol. These two issues need to be addressed in order to adhere more closely with the Article 9 of the Optional Protocol.

### 3.0 Concluding Comments

Although the Commission acknowledges that while these issues have not yet reached the levels of being epidemic concerns, all key stakeholders consulted in the preparation of this report agreed that child prostitution and child pornography, particularly in cases relating to drug abuse, are real concerns in our small community and has been increasing in recent times. Thus, strong measures need to be in place to ensure that these issues are combated at its early stages and the rights of the child are protected. The following are some key observations put forward by this Commission as vital requirements in ensuring the full implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

- Complete the situation analysis of children in the Maldives in order to overcome the lack of understanding on the exact gravity of the sale of children, child prostitution and child pornography. Better understanding of the current situation needs to be established in order to formulate effective measures to combat the situation.
- Specifically name and address the offences proscribed in the Optional Protocol within domestic legislation.
- Expedite the passing of relevant legislation such as the proposed penal code and evidence bill.
- Review legislation regarding the rights of children such as the Law on the Protection on the Rights of the Child with a view to revising them to adhere more closely to the provisions of the Optional protocol.
- Expedite the passing of the Children's Act
- Take measures to counter the growing problem of child pornography on the internet.
- Take measures to ensure the judicial system is made a more child-friendly environment where the court systems are better equipped to deal with the special needs of child victims and child offenders.
- Take measures to develop the capacity, in particular that of human resources, of relevant authorities.
- Expedite the establishment of Family and Child Protection Units under the Maldives Police Services within the atolls.

- Take measures to overcome the financial difficulties associated with the establishment of temporary shelter for victims in the Family and Children Service Centres.
- Expedite the establishment of the National Child Protection Database.
- Conduct awareness programmes for children aimed specifically on signs and behaviours of perpetrators as well as building their confidence in order to assert their views.
- Conduct awareness programmes aimed specifically at the role of parents.
- Provide training for teachers to identify and deal with behavioural problems that may indicate deeper problems.
- Conduct awareness programmes specifically on the offences proscribed within the Optional Protocol.
- Establish a board of counselors which would screen, accredit and categorize levels of counselors in order to improve and maintain the quality of recovery assistance to child victims of exploitation and establish a Code of Ethics for counselors registered to be working in the Maldives.