



ngo group for the crc

STATE PARTY EXAMINATION OF MALDIVES'S INITIAL REPORT ON THE OPSC AND THE OPAC

50TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

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The Maldives ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) on 10 May 2002. On the 26th of January 2009, the Committee on the Rights of the Child (the Committee) examined the Maldives's initial report on the implementation of the OPSC.

Discussion on the OPSC

Opening Comments

Regarding the new state structure, Ms Jameel stated that the responsibilities of agencies changed since 2004. For instance, the Ministry of Justice no longer existed. The separation of powers brought unexpected changes in the sense that dialogue had become increasingly difficult with some partners, including the judiciary. She suggested that the prosecution of sex offenders challenged the gaps and weaknesses in the judicial system and that amendments to regulations on sexual offences attracted controversy when passed. Though amendments had given some hope, and non-custodial sentences were replaced with custodial sentences, only a few suspects had been charged and tried under the new system. The Department of Child and Family Protection was engaged in dialogue with key institutions of the State. While Maldives had no official records on the sale of children, the potential danger of commercial sexual exploitation could not be overlooked given that tourism was the biggest industry. Unofficial records pointed to higher rates of forced prostitution which did not appear to be organized or run by criminal syndicates. Moreover, despite regional instruments to protect children, a lack of information and denial among stakeholders made the issue particularly sensitive. Nevertheless, international cooperation helped facilitate capacity building, such as better combating on-

line sexual exploitation of children. They worked with Child Helpline International and Child Line India and were an active member in the South Asian Forum on Violence against Children.

Maldives was currently working on a comprehensive study on commercial sexual exploitation of children to better form policy and was promoting the establishment of juvenile justice. They planned to send relevant bills to the parliament in 2009 and would begin preparing policy and judiciary groups based on the international standards for training on family and child centred investigation. In addition, Ms. Jameel explained that they were supporting capacity building of NGOs for protection of the rights of the child and that they were pleased to have a constructive discussion with the Committee.

Ms Yanghee Lee, the Country Rapporteur on the OPSC, thanked the head of the delegation for her summary and congratulated the new government for embarking on colossal changes and taking this opportunity to engage with the state in putting children's issues at the forefront. She noted that the present government did not take part in drafting the report, and that the report did not follow the reporting guidelines, and asked if any members of the delegation took part in the process. She also enquired about the national children protection database, and asked if it would include all provisions of both optional protocols. Ms Lee said the role of the Ministry of Health and Family and the National Council for the Protection of the Rights of the Child was not clear, and asked how these two entities coordinated with one another and made themselves accessible to children.

Ms Lee asked whether there was a national plan of action for this particular protocol, and enquired about what was being done in the area of prevention. Regarding prohibition of prostitution, she requested an update on the penal code and asked if it would include all offences provided by the OP. Finally, she asked for more clarification on Ms. Jameel's comment that the judiciary exercised independence "at an unreasonable level".

General measures of implementation

Regarding the Rapporteur's questions about preparation of the report, the delegation explained that it embarked on a consultation process that involved stakeholders. The state compiled the report, received final comments, and then sent it to the Committee. The Committee had also enquired about the NGOs that collaborated with the state. The delegation responded that there was active civil society participation, but it only began recently following the establishment of the new government. There were three NGOs consistently working with the state, none of which were specialized on child rights.

The Committee requested information about Maldives' data collection system and research practices. The delegation replied that there were very few comprehensive research mechanisms in the country. The National Child Protection Database (NCPD) was launched with UNICEF two years ago. The concept paper and system requirements for 2008 were completed, and the state planned to have a dialogue on the software for the database and begin training in the first quarter of 2009. In addition, during 2006-2007 a nationwide study on women's life experiences was conducted to better understand incidences of violence against women and children in the country. The data had been widely used, but the research did not incorporate different forms of sexual exploitation, pornography, sale of children, etc. The delegation said that undertaking a comprehensive research or situation analysis on the issues in the OPSC was a priority for the upcoming

year, and that resources were allocated for the project. In addition, the state planned to collaborate with UN agencies to better influence laws and programming.

The Committee enquired about the new Ministry of Health and Family and expressed concern that the work previously done by the Ministry of Gender and Family, in particular on children's issues, could get lost in such a large department. The delegation responded that they shared this concern, given that they had worked for women and children's rights for 14 years and were now "wiped off the map". They had taken every opportunity to talk with executives and to lobby for visibility. Nevertheless, the delegation said it would be grateful if the Committee issued a recommendation about reinstalling the Ministry of Gender and Family.

In response to the Rapporteur's comment regarding the independence of the judiciary, the delegation stated that they were pleased the judiciary was independent as previously there were times when powerful people influenced trials involving children. The delegation was concerned about the "arrogant" response of the judiciary to the discussion of child rights issues.

The Committee enquired about the national action plan and its implementation. The delegation explained that the plan for 2001-2010 was being implemented through other action plans. For instance, the education and health sectors had their own plans. The child protection action plan was carried out through different means, including the Department of National Planning and Development. Family and child centres provided implementation at the community level.

The Committee asked whether the National Council for the Protection on the Rights of the Child was still functioning and who was representing the council. The delegation explained that it was a policy group that advised other counterpart agencies in child rights and oversaw the implementation of national action plans for children. It also played a role in implementing international treaties. The new government had not yet engaged with the Committee, as new policies and ways of business did not lend much attention to continuing this work. The delegation explained that the composition of the council was likely to change, although its mandate would stay the same. All the ministries relevant to child rights (education, health, national development and planning) would be represented there.

Legislation and definitions

The Committee enquired about the age of consent. The delegation explained that unfortunately the concept of consent had always been a controversial issue and that when a child reached puberty, judges assumed she had the cognitive maturity to consent. The delegation said it would like to discuss this with the judiciary, as children in the criminal justice system had encountered judges who exercised discrimination. The Committee asked if the state could offer assistance in training judges. The delegation replied that they had engaged with the Judicial Service Commission who had the mandate of educating the judiciary. They received good support and planned to collaborate with them again in the future. The Committee asked if there had been further legislation about the age of consent. The delegation responded that following a case in which a 12 year old girl's rapist was not convicted because the victim did not scream, they called all concerned parties to take part in the discussion on amending regulation 173. The

stipulated age of consent was raised to 16, but no case had been prosecuted since May 2008 under this law.

The Committee stated that it was imperative to have legislation criminalising sexual intercourse with a child below certain age. The delegation agreed that one of the major issues was the lack of so called positive law, but that many good laws were likely to get passed in the parliament in the following year or two which could dramatically change the situation. A new parliament would be elected in March, which meant they would need to start working with parliamentarians all over again. The delegation said that it was working with Defence for Children International to put the right requirements in the child protection bill and that they made sure that all priority bills, policies and action plans are given due priority in the new constitution. The delegation promised to ensure that the child protection bill was in accordance with international treaties. The Committee asked to what extent the OPSC was addressed in the reform to the criminal code. The delegation said that not all the concepts and issues from the OPSC were incorporated, but that there would be an opportunity to raise this upon their return.

The Committee asked if legislation covered the issues related to transporting organs. The delegation said that they had never heard of any such practice but that they would put this in the upcoming child protection bill. Also, the Committee enquired about the mention of forced labour in legislation. The delegation said it was considered a form of exploitation, and that the Employment Act stipulated a minimum working age of 16.

The Committee asked how international treaties were perceived compared to national policies. The delegation explained that national legislation was held with more respect than treaties, which were ideally implemented through administrative means but sometimes posed challenges. However, consent from parliament would give the treaty an impetus to be implemented in the country, and increasing number of parliamentarians was aware of international treaties. The Committee asked if this meant that the parliament had to approve all ratified international treaties. The delegation replied that treaties ratified in the future had to be discussed and approved in the parliament, but that this was a positive thing as many more people got to know about the treaties.

Coordination and monitoring

The Committee asked if the Human Rights Commission (HRC) would continue its work under the new government and whether it would be fully independent. The delegation answered positively, although it thought it was necessary to have something within the administration to monitor the Convention, too. The Committee enquired about the ombudsman in the HRC and whether it was able to receive complaints from children. The delegation explained that the HRC had its own independent mandate and that they did not have an ombudsman yet. The Department of Child and Family Protection handled complaints for children, but the delegation acknowledged that the HRC needed to have a child-friendly procedure whereby children could report issues directly with the HRC.

The Committee requested information on who was responsible within the new administration for implementing and monitoring the OPSC, including combating the current trend of child marriages throughout Maldives. The delegation replied that the Child and Family Protection Authority was previously the body that coordinated and monitored the implementation of the Convention, but currently this occurred in the

Planning, Monitoring and Research section of the Department of Child and Family protection. In addition, cases of marriage were monitored by the independent judiciary rather than the Ministry of Gender and Family. The delegation said it would look into the number and types of cases in courts involving marriages of children under the age of 18.

The Committee enquired about the connection between prostitution and drugs. The delegation replied that the new government had promised to combat drug trafficking, in part through a special drug enforcement unit that would receive more resources along with drug rehabilitation services. A separate children's drug rehabilitation facility was planned.

The Committee asked if there were enough trained social workers in the country. The delegation replied that there were not enough social workers even though they had run programs to train social workers and counsellors in the past three years. They must have been deployed across the country and the state had found it difficult to provide services in such a scattered manner, given the enormity of the problem and competing priorities. A request was submitted to the new government for more funds to train personnel.

The Committee noted that the head of delegation seemed capable of pushing important child rights issues through. She agreed that she did hold a strategic position and assured the Committee that she had put pressure on the government to resolve issues and had engaged with the media to voice these issues.

The Committee enquired about the measures taken to combat corruption. The delegation was not concerned about corruption but assured the Committee that it would be dealt with swiftly and effectively should it arise.

Dissemination and training

The Committee enquired about the dissemination of the Convention. The delegation said that they produced information using the mass media but that this was not sufficient. The materials were widely distributed, but there were many challenges such as lack of resources, time and human capacities. Furthermore, the state covered the CRC in all trainings for stakeholders and sometimes for groups of parents and NGOs, though it was unclear how the two protocols were disseminated in this context.

The Committee asked about raising awareness of OPSC-related laws among families, child protection services, and police units. The delegation said it needed technical assistance and new strategies in mobilizing the media and other resources. It assured the Committee that the provisions of the CRC were included in everyday programs for stakeholders and that the next priority was set at targeting the OPs.

Services for victims

The Committee enquired about the status of the help line. The delegation said that the government changed when the help line was ready to be launched but that it should be functioning before the end of 2009. The Committee asked about lack of trust with police. The delegation clarified that help lines had not been fully used because the public was not aware of this service.

The Committee asked about protection from abusers in the main island. The delegation said that there were family and children service centres established in 20 atolls to provide temporary protective care. The previous year, the state placed trained personnel in these

centres and worked with police and health care facilities to assist victims. In many cases children had been brought to a state care facility in the capital, even though the delegation acknowledged that moving the abuser was preferable. The problem was that if the perpetrator did not prosecution, perpetrators and victims often lived on the same island and in the same neighbourhoods, so removing the child from the abusive environment seemed to be the only option until more successful criminal justice systems were in place.

The Committee asked what sort of support roles the police provided in rehabilitating victims of sexual exploitation. The delegation responded that police collaborated in investigating and removing children from abusive environments to protective alternative environments. They also provided physical protection for the child and supported social workers when needed.

Adoption

The Committee requested information on adoption practices, noting that no real protection was provided to impoverished children adopted into middle class families. It also enquired about cases of international adoption and if the state was considering ratifying the Hague convention. The delegation replied that there was no known case of international adoption and that adoption was not allowed in legislation for religious reasons. The previous monitoring mechanism was implemented through the Child and Family Protection Authority, now the Department of Child and Family Protection. The delegation said it needed to establish procedures to institutionalize the process, which could be put into the child protection bill.

The delegation was concerned about certain child transport activities that happened in the name of providing a better life for the child. In these cases, state officials did visit islands and met with the involved stakeholders and children, but there was no systematic monitoring in place. Additionally, the delegation said it planned to visit islands that practised informal fostering and illicit transport of children.

Closing Remarks

Ms Lee, the Co-Rapporteur for the Maldives, said the Committee was excited about the recent changes in the Maldivian government and felt that the head of the delegation was “on the top of issues”. She recommended a more holistic, child rights based approach throughout the implementation and monitoring of the Convention and the Protocol.

Ms Jameel, the head of the delegation, thanked the Committee for the informative and interactive dialogue and said that she had a better understanding of appropriate questions for the military. She also appreciated the importance of accelerating legal reforms. She mentioned that the following week they plan to sign a work plan with UN agencies.