

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 36th Session

REPUBLIC OF MALDIVES

I. BACKGROUND INFORMATION

Maldives is not a Party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*. There is no asylum adjudication system in the country; neither are there any national refugee protection mechanisms in place. Maldives is not party to the *1954 Convention relating to the Status of Stateless Persons* nor to the *1961 Convention on the Reduction of Statelessness*. There is no national legislation guiding prevention and reduction of statelessness or the protection of stateless persons.

A small country of almost 2,000 islands spread across the Indian Ocean, the Maldives has been undergoing democratic transition since 2008. It has faced challenges in consolidating democratic institutions and culture, including the respective roles of the judiciary, executive, parliament, independent institutions and civil society.

The Maldives remains prone to human rights impact from climate change and natural disasters. Over the years, it has engaged positively with the international human rights system with a number of treaties ratified and a standing invitation to Special Procedures. In recent years, Maldives acceded to several key international human rights instruments.

The Government of Maldives reported in January 2019 that 144,607 migrants were on a work visa, while more than 63,000 were estimated to be living as irregular migrant workers. These are mainly migrants from Bangladesh and India entering the construction and service sectors who, whether documented or undocumented, are left vulnerable to fraudulent recruitment, confiscation of identity and travel documents, non-payment of wages and debt bondage. The Maldives is known to be a destination country for human trafficking, including sex trafficking and especially forced labour. The trafficking of Maldivian children within the country is also an issue.

Over the past years, the Maldives has received a handful of persons who have expressed their intention to claim asylum after being detained by the immigration authorities for irregular entry or departure. UNHCR is not physically present in the Maldives and operates remotely from New Delhi, India.

UNHCR is not aware of the exact number of asylum-seekers in the Maldives and whether they have been deported or travelled on to other countries, as there is yet to be established a regular information sharing platform between UNHCR and the Government of Maldives, so that a comprehensive and nationally owned response mechanism can be built.

In order to develop conducive asylum systems in the Maldives which allows for collaborative and comprehensive response including capacity development, UNHCR had preliminary

dialogue with the Maldivian authorities in the past and recently initiated efforts to restart the discussion. At this moment, the outcome is difficult to predict at this juncture as the concept of a national refugee protection framework is nascent to the Maldivian authorities.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR Recommendations supported by the Government no. 141.66: “Expediently implement the Anti-Human Trafficking Act and provide facilities and necessary assistance to the victims, in particular women and children” (Sri Lanka) and **no. 141.69:** “Continue efforts for the full implementation of the Anti-Human Trafficking Act, in order to identify child victims of trafficking and provide legal assistance to them” (Albania)

Maldives maintained efforts to address the problems related to trafficking in persons, by setting up a hotline for trafficking victims to report cases, a case management system and a pre-departure screening system for Bangladeshi migrant workers. The Government also established a working level anti-trafficking unit within the Ministry of Economic Development. The Government of Maldives also took part in the Global Compact for Migration consultative process.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Creation of a refugee protection framework

Linked to 2nd cycle UPR Recommendations not supported by the Government No. 143.16: “Ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, as previously recommended” (Germany); and **No. 143.17:** “Ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness” (Portugal)

The accession to the *1951 Refugee Convention* and the establishment of a national legal framework on asylum would enable the Government of Maldives to adequately protect asylum-seekers and refugees, in line with its international obligations. UNHCR stands ready to work closely with the Government and the National Human Rights Commission to meet existing and potential challenges of displacement as well as the management of individual asylum claims including on immediate capacity enhancement.

Recommendation:

UNHCR recommends that the Government of Maldives:

- a) Articulate a national refugee protection framework through the development of administrative orders/instructions and asylum adjudication or registration structures so as to allow asylum issues to be dealt with in an immediate, constructive, collaborative and rights-based manner.

Issue 2: Prevention of statelessness and protection of stateless persons

Linked to 2nd cycle UPR recommendation no. 143.17 not supported by the Government: “Ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness” (Portugal)

Maldives is not a State party to either the *1954 Convention relating to the Status of Stateless Persons* or the *1961 Convention on the Reduction of Statelessness*. Accession to the *Statelessness Conventions* would establish a framework to prevent and reduce statelessness and avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment for stateless persons. The *1954 Convention* ensures minimum standards of treatment for stateless persons in respect to a number of fundamental rights. These include, but are not limited to, the right to education, employment, housing and public relief. Importantly, the *1954 Convention* also guarantees stateless persons a right to identity and travel documents and to administrative assistance.

Furthermore, the *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties. An increase in the number of State parties to the two *Statelessness Conventions* is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of these rights.

The Constitution of Maldives contains a number of provisions that give rise to discrimination based on religion or belief. The discriminatory provisions in the Constitution that all Maldivians should be Muslims are of particular concern. They exclude non-Muslims from obtaining citizenship or from accessing public positions. Furthermore, the Laws governing marriage and citizenship do not confer equitable rights to women. By law, a Maldivian woman cannot marry a non-Muslim foreigner unless he converts to Islam first. A Maldivian man, however, can marry a non-Muslim foreigner if the foreigner is Christian or Jewish. A Maldivian man cannot marry a non-Muslim foreigner who is not Christian or Jewish unless the woman converts to Islam prior to marriage. According to the *Citizenship Act*, marriage to a national does not confer any right to apply for nationality. The Law also envisages that an applicant for Maldivian nationality should renounce his/her citizenship, thus making him/her stateless if Maldivian Citizenship is not granted. The Government interprets the conversion by a Muslim to another religion as a violation of Islamic law, which could result in punishment, including loss of the convert's citizenship.

Recommendations:

UNHCR recommends that the Government of Maldives:

- a) Consider acceding to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*;
- b) Take steps to draft and adopt national legislation guiding prevention and reduction of statelessness as well as the protection of stateless persons; and
- c) Continue its legislative, institutional and socio-economic reforms to provide an effective framework to address gender mainstreaming, violence against women, religious intolerance and risk of creation of statelessness, particularly with regard to citizenship.

Issue 3: Migration and trafficking in persons

Linked to 2nd cycle UPR recommendations supported by the Government No. 141.125: "Take all necessary steps in the areas of legislation and political measures to protect migrant workers from abusers, traffickers and unscrupulous employers and to guarantee the non-discrimination of noncitizens with regard to conditions and requirements to access the labour market" (Honduras); **No. 141.66:** "Expediently implement the Anti-Human Trafficking Act and provide facilities and necessary assistance to the victims, in particular women and children" (Sri Lanka); and **No. 141.69:** "Continue efforts for the full implementation of the Anti-Human Trafficking Act, in order to identify child victims of trafficking and provide legal assistance to them." (Albania)

Despite significant progress achieved by the Government in addressing trafficking in persons, a number of shortcomings continue to undermine the protection of victims of trafficking and other persons. Reportedly domestic and foreign victims in Maldives are exploited for forced labour and sex trafficking.

The national legal framework does not provide sufficient clarity on the treatment of asylum-seekers, victims of trafficking and migrants as there are no systems in place to identify different categories of persons in a mixed movement context. Numerous reports point to incidents of exploitation of migrant workers through fraudulent recruitment practices, withholding of wages, confiscation of passports and mistreatment by their employers. National instruments, including the *Anti-Human Trafficking Act 12/2013* are also silent on protection mechanisms for victims of trafficking who may have international protection needs and who fear persecution or other serious harm upon return to their country of origin. There are no safeguards in place to ensure that these victims have access to fair and efficient asylum procedures, to determine their claims and identify an appropriate durable solution. Another gap in the legal framework is the absence of a mechanism to ensure that victims of trafficking who lack identity documents are able to establish their identity and nationality in order to prevent statelessness.

Moreover, shelters to accommodate trafficking victims and support services have insufficient response capacity. Lack of resources and capacity appear to be a challenge faced by authorities in establishment of effective institutional mechanisms and implementing the Anti-Human Trafficking Act.

Recommendations:

UNHCR recommends that the Government of Maldives:

- a) Ensure current efforts towards implementing the Anti-Human Trafficking Act prescribe access to fair and efficient asylum procedures for victims of trafficking who may be in need of international protection; and
- b) Establish procedures to identify and support asylum-seekers amongst the broader categories of migrants who may otherwise be at risk of persecution if deported.

Additional protection challenges

Issue 4: Upholding the principle of non-refoulement

In the absence of any national asylum systems or corresponding adjudication structures in the Maldives, it is likely that some asylum-seekers may have been refouled upon arrival, without having the opportunity to present a claim for protection in violation of international standards.

Recommendations:

UNHCR recommends that the Government of Maldives:

- a) Ensure respect for the right to seek asylum by enabling effective and unhindered access to its territory and full compliance with the principle of non-refoulement.

Issue 5: Detention of asylum-seekers

UNHCR lacks information on the number of persons deprived of liberty among asylum-seekers or migrants who may be in need of international protection if returned. There is no established system between the Maldives and UNHCR to regularly share information on this issue. Mechanisms to regularly share updates with UNHCR on migration trends whether on asylum-seekers in detention, migrants in detention are also missing. The absence of these mechanisms hinders the possibility to ensure an effective response to the protection challenges posed by the detention of these categories of persons.

Recommendations:

UNHCR recommends that the Government of Maldives:

- a) Ensure the detention of persons in need of international protection is only used as a measure of last resort and, where necessary, for as short a period as possible, and apply alternatives to detention; and
- b) Establish a regular information sharing platform with UNHCR to enable early identification of asylum-seekers and establishment of appropriate response mechanisms.

UNHCR

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