



Institute on Statelessness and Inclusion

**Submission to the Human Rights Council at the
36th Session of the Universal Periodic Review**

(Third Cycle, April/May 2020)

Republic of Maldives

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Introduction

1. The Institute on Statelessness and Inclusion (ISI) makes this submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in the Republic of Maldives.
2. This submission focuses on statelessness and the right to a nationality in the Maldives, in relation to:
 - I. Religions Discrimination and denial of the Right to Nationality
 - II. Displacement: Climate Change & Natural Disasters;
 - III. Attribution of Nationality: Religious Practices and Birth Registration;
 - IV. Displacement: Human Trafficking and Forced Labour.
3. ISI¹ is an independent non-profit organisation committed to an integrated, human rights-based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made over 50 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 35th UPR Sessions.

The Maldives' Universal Periodic Review under the Second Cycle

4. In 2015, during the 22nd Session of the UPR Second Cycle,² the Republic of Maldives (presented their State Report.³ The Report did not directly address issues of statelessness. However, issues including human trafficking and migration, certain religious practices and birth registration, which have been identified as potential causes of statelessness, indicate that certain factors in the Maldives may lead to increased risk of statelessness.

¹ For more information, see www.institutesi.org. For more information on the Institute's UPR advocacy, see <http://www.statelessnessandhumanrights.org/upr-universal-periodic-review/resources-database>.

² United Nations Human Rights Council, *Meeting Highlights for the 22nd Session*, <<https://www.ohchr.org/EN/HRBodies/UPR/Pages/MeetingsHighlightsSession22.aspx>>.

³ A/HRC/WG.5/22/MDV/1 - The Republic of Maldives, *National Report Submitted in accordance with paragraph 5 of the annex to the Human Rights Council resolution 16/21, 2015*, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/079/28/PDF/G1507928.pdf?OpenElement>> ("**Report**").

5. Some extracts from the report which highlight such concerns are set out below:

- I. *"The Maldives has remained a Muslim country for the last 800 years, and the social framework, historic and traditional values have evolved over the decades, to be intricately tied to Islamic practises. **Given this context, the Constitution of the Maldives not only stipulates Islam as the State religion, but also requires that every Maldivian should be a Muslim.**"*⁴
- II. *"Attitudes towards public life of women have also been changing due to religious approaches taken by some. Child marriages outside of courts, female genital mutilation and circumcisions, refusal to immunise babies, and rising acceptance of violence have been reported. **Marriages outside of court—which are illegal—means women, once divorced, cannot seek child support, or register their children. Non-vaccination excludes children from formal schooling.**"*⁵

6. During the Second Cycle Portugal recommended that the Maldives ratify the 1951 Convention relating to the Status of Refugees, and the 1967 Protocol; the 1954 Convention relating to the Status of Stateless Persons; and the 1961 Convention on the Reduction of Statelessness.

This recommendation was noted.⁶

7. While this was the only recommendation directly on statelessness, a number of other relevant recommendations were also made:

- I. **Asylum-seekers - refugees:** Germany recommended that the Maldives ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.⁷ This recommendation was noted.
- II. **Freedom of religion and belief:** A number of countries recommended that the Maldives remove religious restrictions that currently prevent non-Muslims from becoming citizens, including Italy which recommended that the Maldives: *"Remove legal provisions that restrict the right to freedom of religion or belief, including article 9(d) of the Constitution, which bars non-Muslims from being Maldivian citizens."*⁸ Recommendations on this issue were noted.
- III. **Trafficking:** A number of states expressed concern with regard to protections for migrant workers and the continued need to implement effective measures against human trafficking.⁹ These recommendations were supported by the Maldives.
- IV. **Rights of Child:** Paraguay and Namibia recommended that the Maldives remove discrimination against children born outside of court sanctioned marriages. These recommendations were noted.

⁴ Ibid 13 (emphasis added).

⁵ Ibid 19 (emphasis added).

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

The Maldives' International Obligations

8. The Maldives is not a signatory to either the 1954 Convention relating to the Status of Stateless Persons, nor the 1961 Convention on the Reduction of Statelessness.
9. The Maldives has international obligations to protect the right to a nationality and protect the rights of stateless persons on the basis of other UN and regional treaties to which it is a party. These include, among others, the International Covenant on Civil and Political Rights (ICCPR - article 24.3), the Convention of the Rights of the Child (CRC - articles 2, 3, 7 and 8), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW - article 9), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD - article 5(d)(iii)), and the Convention on the Rights of Persons with Disabilities (CRPD - article 18). Furthermore, the right to a nationality is protected in Article 15 of the Universal Declaration on Human Rights.
10. Although the Maldives has ratified each of the above human rights treaties, reservations have been placed in relation to the ICCPR (on article 18 – freedom of thought, conscience and religion); CEDAW (on article 16 – equality in marriage and family relations), the CRC (on all clauses related to adoption and article 14.1 - freedom of thought, conscience and religion)
11. At the time of its Report, the Maldives indicated it was considering accession to the International Convention on the protection of the Rights of All Migrant Workers and Members of their Families (**ICRMW**). As of October 2019, the Maldives is yet to accede to the Convention. The Maldives is also currently a member of the Ad Hoc Group for the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (**Bali Process**).¹⁰
12. In December 2018, the UN Committee against Torture recommended, with respect to non-refoulement obligations, that the Government of the Republic of Maldives:
 - I. comply with its obligations not to expel, return or extradite a person to another State where there is substantial evidence to believe the person would be in danger of being subject to torture;
 - II. ensure that decisions concerning expulsions or deportation are subjected to judicial review on an individual basis;
 - III. provide for the right for persons concerned to effective judicial remedy, including the possibility to appeal the decision, and ensure that the appeal has suspensive effect;
 - IV. detain persons who may be subject to expulsion only as a measure of last resort; and
 - V. in its next report, provide the Committee with information on the number of persons who have been expelled, extradited or deported, and to which countries; on the number of

¹⁰ See *The Bali Process* < <https://www.baliprocess.net/>>; See also UN High Commissioner for Refugees, *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Republic of Maldives* (October 2014), 2 <<https://www.refworld.org/country,,UNHCR,,MDV,,554752984,0.html>> ("**Human Rights Compilation**").

cases where decisions to expel a person have been overturned or quashed by judicial authorities applying the principle of non-refoulement; and on other measures taken to ensure that application of the non-refoulement principle in practice.¹¹

13. In March 2016, the UN Committee on the Rights of the Child stated that it is concerned about

"the discrepancy between article 20 of the Constitution, on equality of all citizens, and article 9(b), which requires citizens to be Muslims and provides that non-Muslims are excluded from obtaining citizenship".¹²

14. In February 2015, the UN Committee on the Elimination of Discrimination against Women stated:

I. "The Committee is concerned that the State party's nationality laws establish different conditions for women and men as regards the transmission of nationality depending, notably, on religion and marital status, which may have a disparate impact on children born out of wedlock to foreign mothers."¹³

15. The Committee recommended that the Maldives revise its nationality laws in order to remove discrimination against foreign women who have children with Maldivian men out of wedlock with regard to the transmission of nationality.

16. In September 2011, the UN Committee on the Elimination of Racial Discrimination recommended, with respect to citizenship requirements, that the Government of the Republic of Maldives:

- I. ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization;
- II. comply with article 5(d)(vii) of the Convention, and its obligation to ensure that all persons enjoy their right to freedom of religion without any discrimination on racial or ethnic grounds; and
- III. consider changing its Constitutional provisions in line with the Convention.¹⁴

17. The Committee also raised concerns about hostility against non-citizens and mistreatment of migrant workers by employers and noted a lack of information on refugees and asylum-seekers,¹⁵ recommending that Maldives ratify UN statelessness, refugee and migrant worker conventions.

18. The Committee also raised concerns that the Maldives was a possible destination for migrant workers being trafficked into the labour market, especially women for the purpose of commercial sexual exploitation, and recommended that the Maldives:

¹¹ UN Committee against Torture, *Concluding Observations on the Initial Report of Maldives*, 67th sess, UN Doc CAT/C/MDV/CO/1 (19 December 2018).

¹² UN Committee on the Rights of the Child, *Concluding Observations on the combined fourth and fifth periodic reports of Maldives*, 71st sess, UN Doc CRC/C/MDV/CO/4-5 (14 March 2016).

¹³ UN Committee on the Elimination of Discrimination against Women, *Concluding Observations on the combined fourth and fifth periodic reports of Maldives*, 60th sess, UN Doc CEDAW/C/MDV/CO/4-5 (11 March 2015).

¹⁴ UN Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the Convention - Concluding observations of the Committee on the Elimination of Racial Discrimination*, 79th sess, UN Doc CERD/C/MDV/CO/5-12 (14 September 2011) 3.

¹⁵ Ibid.

- I. continue to strengthen domestic laws with respect to human trafficking; and
- II. ratify the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.

Religious Discrimination and the Right to a Nationality

19. The legal framework for nationality in the Maldives can be found in the Constitution of the Republic of Maldives (**Constitution**). The Constitution was ratified in 2008, establishing democracy with the separation of the three powers: the executive, legislature and judiciary.¹⁶
20. The Constitution contains a provision that all Maldivians should be Muslims, therefore imposing a citizenship criteria that is discriminatory on the basis of religion and excluding non-Muslims from obtaining citizenship. Section 9 of the Constitution states:

(a) The Following persons are citizens of the Maldives:

- 1 Citizens of the Maldives at the commencement of this Constitution;*
- 2 Children born to a citizen of the Maldives; and*
- 3 Foreigners who, in accordance with the law, become citizens of the Maldives.*

(b) No citizen of the Maldives may be deprived of citizenship.

(c) Any person who wishes to relinquish his citizenship may do so in accordance with law.

(d) Despite the provisions of article (a) a non-Muslim may not become a citizen of the Maldives.

21. The retention of such a Constitutional provision undermines the right to a nationality and is contrary to principles of international law, which prohibits discrimination in relation to the right to a nationality (see for example, Article 7 of the CRC, when read in combination with Article 2 of the CRC).

Displacement: Climate Change & Natural Disasters

22. Climate change poses a substantial threat to people living in low lying areas likely to be impacted by rising sea levels, with livelihood and ability to inhabit certain regions under siege. There is a noted possibility of forced displacement as a result of climate change, and this factor carries a heightened risk of statelessness.
23. The Republic of the Maldives is an archipelago of 1,192 coral islands, forming 26 atolls. Of the

¹⁶ The Commonwealth, *Maldives: Constitution and Politics*, <<http://thecommonwealth.org/our-member-countries/maldives/constitution-politics>>.

1,192 coral islands, there are 188 regularly inhabited islands, 109 resort islands and 128 industrial and other islands.¹⁷ The average elevation above sea level is only 1.5 meters,¹⁸ with more than 80% of the islands in the Maldives being one meter or less above sea level.¹⁹

24. Sea level rises are known to be accelerating,²⁰ and given the Maldives' elevation the anticipated impact of climate change will likely be severe, with significant portions of the state likely to become inundated and uninhabitable. In its Report, the Maldives indicated that climate change poses both "developmental and existential challenges".²¹
25. Although the country has established a Climate Change Policy Framework,²² as a low-lying island state it remains at a high risk. Specific concerns have been previously identified. Forced displacement is one such risk,²³ with the 2004 tsunami having resulted in internal displacement issues.²⁴ Solutions to climate change-induced statelessness are somewhat unique as the stateless persons' homeland may be non-existent (i.e. totally submerged), and possibilities including cession of territory by other States has been considered.²⁵
26. Climate change-induced statelessness raises complex questions about the concept of statehood and nationality. Addressing these questions requires cooperation at an international level. Climate change adaptation plans such as the Maldives' National Adaptation Programme²⁶ go some way to addressing practical concerns, however greater participation by the Maldives in the statelessness space, including ratification of key treaties, would likely go some way to opening meaningful dialogue around management of the imminent forced displacement risks faced by its citizens.

Religious Practices and Birth Registration

27. According to a 2018 report by the US State Department, the Maldives' Constitution does not make any express references to or preservations for religious freedoms.²⁷ This observation aligns with the current reservations placed by the Maldives on Article 18 of the ICCPR and Article 14.1 of the CRC which seeks to protect the enshrined State religion (Islam) and the flow-on discriminations that attach as a result. A lack of religious freedoms (i.e. discrimination on the basis of religion) has a direct correlation with citizenship (and therefore potential statelessness) in the Maldives.

¹⁷ Republic of Maldives National Bureau of Statistics, *Maldives-Populations and Housing Census 2014*, (5 November 2014) 15.

¹⁸ John H. Knox, *Linking Human Rights and Climate Change at the United Nations*, 33 Harv.ENVTL.L.REV. 477, 480 (2009).

¹⁹ UN Committee Against Torture, *Initial Report submitted by Maldives under article 19 of the Conventions, due in 2005*, UN Doc CAT/C/MDV/1 (17 October 2017) 6.

²⁰ See for example, United Nations: Climate Change, *Global Sea Level Rise is Accelerating - Study* (13 February 2018), <<https://unfccc.int/news/global-sea-level-rise-is-accelerating-study>>

²¹ Report, 2.

²² Ibid 21.

²³ Susin Park, *Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States* (2011), 10 <<https://www.unhcr.org/en-au/protection/globalconsult/4df9cb0c9/20-climate-change-risk-statelessness-situation-low-lying-island-states.html>>

²⁴ Ibid 2.

²⁵ Ibid 18.

²⁶ United Nations Development Program, *Climate Change Adaptation: Maldives*, <<https://www.adaptation-undp.org/explore/maldives>>.

²⁷ United States Department of State, *2018 Report on International Religious Freedom: Maldives* (21 June 2019) <<https://www.state.gov/reports/2018-report-on-international-religious-freedom/maldives/>>.

28. In the Maldives citizenship is obtained through parents,²⁸ i.e. *jus sanguinis* and can therefore also be obtained where children are born overseas.²⁹ Despite an obligation to immediately register all births, registered births would tend to only include children born of Muslim parents. Consequences of unregistered births are long-term and include denial of education, as the government requires identity documents in order for children to participate in schooling or access to government services.³⁰ Moreover, there is a noted practice of non-recognition of inter-religious marriages³¹ (and children born thereof), as well as children born to other non-recognised unions such as unregistered child marriages.³² For example, the US State Department has reported that in 2018 there were several alleged instances where registration of a child was refused in cases where the child had one foreign parent.³³
29. While the denial of birth registration does not amount to statelessness, there is a "crucial" link between birth registration and statelessness, with birth registration operating as a key form of proof of the link between the individual and the State. In addition to an immediate heightened risk of statelessness, bar later conversion to Islam, continued denial of birth registration to non-Muslim children substantially impacts future participation in crucial stages of development including education. Denial of a child's right to nationality is a serious issue warranting further action by the Maldives.

Displacement: Human Trafficking and Forced Labour

30. More widely known as a popular tourist destination, the United Nations has referred to the Maldives as "*a destination country for forced labour*".³⁴ Despite the introduction of anti-trafficking laws, the Maldives' trafficking profile remains raised, with persons forced into the jurisdiction, as well as the Maldives being a source of trafficked persons, both with regard to forced labour and sex trafficking.³⁵
31. According to a recent report by the US State Department there are estimated to be around 65,000 undocumented foreign workers in the Maldives, with men from Bangladesh and India in high risk groups, whilst women from across a number of regions are subject to sex trafficking, as are some local women and children.³⁶
32. While the Maldives Report to the UPR indicated steps towards addressing human trafficking, more recently concern has been expressed that the current trafficking laws are not reflective of

²⁸ United States Department of State, *2018 Country Reports on Human Rights Practices: Maldives* (13 March 2019), <<https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/maldives/>>

²⁹ Republic of the Maldives Permanent Mission to the United Nations, *Births, Deaths and Marriages*, <http://maldivesmission.ch/consular-affairs/births-marriages-and-deaths/>

³⁰ United States Department of State, *2018 report on International Religious Freedom: Maldives* (21 June 2019) <<https://www.state.gov/reports/2018-report-on-international-religious-freedom/maldives/>>

³¹ Human Rights Compilation, 4.

³² Report, 16, 19.

³³ United States Department of State, *2018 Country Reports on Human Rights Practices: Maldives* (13 March 2019), <<https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/maldives/>>

³⁴ United Nations Situation Report: International Migration in South and South-West Asia, *Human Trafficking*, <<https://sitreport.unescapsdd.org/maldives/human-trafficking>>

³⁵ United States Department of State, *2019: Trafficking in Persons Report: Maldives*, (20 June 2019), <<https://www.state.gov/reports/2019-trafficking-in-persons-report-2/maldives/>>.

³⁶ *Ibid.*

the 2000 UN TIP Protocol, i.e. the Protocol to Prevent, Suppress and Punish Trafficking in Persons, with those laws failing to implement "standard operating procedures" for victim identification and protection.³⁷ Concerning local practices identified in the US report included employers holding employee passports (including Government departments) and indications of corruption to the benefit of local traffickers.³⁸ In light of these findings, further improvements to local laws appear necessary to address the risk of the Maldives as a location for human trafficking and forced labour, including steps to address potential corruption.

Recommendations

33. Based on the above analysis, the co-submitting organisations urge reviewing States to make the following recommendations to the Maldives:

- I. Reform Maldivian law to remove all provisions that discriminate on the basis of religion, (including reforming article 9(d) of the Maldivian Constitution, which bars non-Muslims from being Maldivian citizens).
- II. Ensure that all children born on the territory of the Maldives, are registered at birth without discrimination, including children whose parents are non-Muslim.
- III. Take all necessary steps to address human trafficking and forced labour risks.
- IV. Withdraw its reservations to the ICCPR (on article 18 – freedom of thought, conscience and religion); CEDAW (on article 16 – equality in marriage and family relations), the CRC (on all clauses related to adoption and article 14.1 - freedom of thought, conscience and religion).
- V. Accede to and fully implement the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

³⁷United States Department of State, *2018: Trafficking in Persons Report: Maldives* (28 June 2018), 290, <<https://www.state.gov/wp-content/uploads/2019/02/282802.pdf>>.

³⁸ Ibid 290.