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Working Paper Series 1:

# **OPTIONS FOR LEGAL AID PROGRAMMING IN THE MALDIVES**

**United Nations Development Programme  
Maldives**

The views expressed in this publication are those of the author(s) and do not necessarily represent those of the United Nations, including UNDP, or their Member States.

## **Acronyms**

ADR	Alternative Dispute Resolution
AGO	Attorney General's Office
DJA	Department of Judicial Administration
HRCM	Human Rights Commission of the Maldives
IGP	Integrated Governance Programme
INGO	International Non-governmental Organization
MEMS	Maldives E- Court Management System
MoU	Memorandum of Understanding
MVR	Maldivian Rufiyaa
NGO	Non-governmental Organization
UK	United Kingdom
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund

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## **Foreword**

Legal Aid is regarded as one of the fundamental essentials needed in ensuring equity before the law, the right to legal counsel, the right to fair trial and in the principle of access to justice at large. Jurisdictions across the world have placed a significant importance towards this element primarily to ensure that no person should be barred from attaining justice based on his economic situation.

The Maldives, amidst having undergone a significant constitutional overhaul to accommodate modern democratic principles, is yet to establish a functional Legal Aid mechanism for smooth implementation of Legal Aid. The Article 53(b) of the Maldives Constitution now obligates the state to provide legal defence to indigent defendants who cannot afford a lawyer. However, this provision largely covers the area of Criminal Law and does not mandate the state to provide similar support in cases concerning civil litigation.

This working paper, 'Options for Legal Aid Programming in the Maldives', aims to explore mechanisms for the government of Maldives fulfil its constitutional obligations to provide free criminal defence in cases of serious criminal offences. It attempts to identify the needs, challenges, and the way forward towards establishing a legal framework, that would facilitate the smooth functioning of Legal Aid. This is also a part of UNDP's Integrated Governance Programme (IGP)'s multiple diagnosis studies carried out in 2012 to identify gaps and provide options for the government of Maldives in strengthening rule of law and access to justice.

While significant challenges remain toward such a framework, it must also be noted that Legal Aid is more than an obligation of the state to provide its citizens with free legal representation but it also involves the ability of citizens themselves to resolve disputes and obtain benefits.

Therefore it is imperative that Legal Aid must be targeted to vulnerable citizen regardless the case they have at hand, whether of criminal or civil nature. The government needs to ensure the establishment of a financially feasible, sustainable and an accessible Legal Aid mechanism that is backed by proper resources required for its smooth functionality.

On this note, the UNDP would like to thank an independent consultant, Mr. Richard H. Langan II for undertaking this commissioned study that would provide guidance for the government of Maldives in establishing Legal Aid service in the Maldives. We also would like extend our gratitude to all national partners, in particular, the Attorney General's Office, for providing valuable inputs during the research phase.



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# **Executive Summary**

## **Background**

The Maldives, despite an amended Constitution, does not yet have a proper legal aid mechanism for implementation of legal aid. This study explores mechanisms for the Government of the Maldives to fulfil its Constitutional obligations to provide free criminal defence in cases of serious crimes.

**Access to Justice:** Empowering citizens to claim their rights by providing them with effective legal assistance strengthens all areas of democratic governance, and offers the potential to resolve peacefully localized grievances and low-level disputes before they lead to larger-scale violence.

## **Current Situation of Legal Aid**

**Criminal Cases:** The State is required to provide legal defence to indigent defendants who cannot afford a lawyer. In reality, there are only a few lawyers on the roster of availability, and state contracts provide them only minimal compensation per case. A mandate for lawyers to provide pro bono services is needed, and a regulated system to monitor the timeline between detainment, request for a lawyer, and legal representation. If only two to three per cent of registered non-government lawyers served in the capacity of appointed counsel, the State would meet its obligations. Awareness raising and follow-up training regarding rights to legal aid would benefit both the public and the police.

There are a number of challenges to the system outside of awareness raising. Guidelines and income verification to determine State responsibility to provide legal defence is too complicated and do not reflect the realities of people's ability to hire a lawyer. Given that all the lawyers are resident in the capital Male' it poses problems for those living in the islands to access the services of legal counsel. This raises the problem of the lack of standards for lawyers. A pilot legal aid program placing at least one lawyer in each major atoll, or mobile lawyers, could work.

**Civil Cases:** Similar to criminal cases, but the provision of legal defence does not include State assistance. The result is that most defendants, living remotely, do not have access to a lawyer unless it is a major case.

**Counselling, Advice and Dispute Mediation:** Many disputes are handled intra-family or with Island Council and senior community member intervention. There is an on-going need for information and assistance, including for migrant workers.

**Survivor Legal Services and Counselling:** There are currently limited services for survivors of domestic violence, sexual and other abuse.

**Public Outreach, Education and Legal Information:** Even though internet access is widely available it is not used by people to access information about laws and procedures. Legal information initiatives are needed to reach the public.

## **Types of Legal Aid Delivery Mechanisms and Appropriateness**

In an ideal situation this would include elements of the following: (1) paralegals; (2) pro-bono services of practicing lawyers; (3) State-funded initiatives/State legal aid bodies; (4) public interest litigation (usually by INGOs/local NGOs); and (5) informal justice mechanisms.

There is no single model for the provision of legal aid delivery. It requires partnerships, a coordinating mechanism and various legal aid providers to address both criminal and civil legal aid. Even if provided at the atoll level, it would be cost prohibitive given the complicated geography in the Maldives. Effective delivery will require a combination of mechanisms and legal aid partnerships, possibly managed under a ‘commission model’ with stakeholder representation.

## **Possible Options for Legal Aid**

Under the Constitution, the State has to provide legal aid for those who cannot afford the services of a lawyer in serious criminal cases. Currently this is administered by the Attorney General’s Office.

*National Legal Aid Commission:* A longer-term initiative aimed at coordinating all forms of criminal and civil legal aid and outreach. It could act as a legal services corporation (public-private NGO).

*Legislative Reforms:* A longer-term initiative including regulation of the legal profession and implementation of judicial education through a Bar Council and the development of a Code of Conduct and Ethics for Lawyers.

*Public Defender Office:* A longer-term initiative aimed at protecting constitutional guarantees of due process.

*Mechanisms to Create a Bar Council and Cadre of Lawyers:* A Bar Council would serve as a focal point for all issues affecting lawyers and the legal profession. It would engage in public informational and outreach as a longer-term initiative.

*Roster of Lawyers:* Institute a system of compulsory pro bono legal services.

*Low-level First Instance Legal Assistance:* Shorter-term initiatives including creation of help desks, hotlines, awareness campaigns, trainings, service provision, visits, and legal clinics.

*Legal Aid Clinic and Mobile Services:* To include legal assistance by less expensive paralegals through public-private partnerships and NGOs.

*Trial Monitoring:* Essentially a civil society watchdog function.

*Pursue Legal Information Initiatives:* A variety of outputs including publications, trainings, outreach and education.

## **Current and Planned Legal Aid Initiatives**

The current and planned legal aid initiatives of Transparency Maldives and the Human Rights Commission of the Maldives may offer additional models and lessons for national partners in going forward, as well as areas of potential joint programming or partnership.

## **1. Introduction**

The Government of the Maldives introduced a series of reform initiatives in 2004. As part of this process, a new Constitution was adopted in 2008 to establish a system of democratic governance and separate the powers of the Executive, Legislature and Judiciary branches. Despite these measures, the transition to democracy has been difficult, with the country facing many challenges in consolidating the process.

As part of the national efforts towards democratisation, there was significant focus on promoting human rights and strengthening the Maldives Justice Sector in line with national obligations under various international human rights treaties and the Maldives National Development Plan. According to Article 53 of the Constitution of the Republic of Maldives, everyone has the right to retain legal counsel at any point where legal assistance is required (Article 539(a)); and in serious criminal cases, the State is mandated to provide a lawyer for the accused who cannot afford to engage one (Article 53(b)).<sup>1</sup> In addition, several statutes such as the Domestic Violence Act contain discreet provisions on legal aid.

While the 2008 Constitution provides for legal aid by the State for ‘serious crimes,’ the Maldives has yet to establish a proper legal aid system, or a legal framework for the implementation of legal aid. Statute does not enumerate on the types of ‘serious criminal cases mentioned in the Constitution, though guidelines from the Attorney General’s Office (AGO) list the crimes that qualify for free legal aid from the State. The AGO also maintains a roster of lawyers to provide fee legal aid to qualifying criminal defendants.

Members of the judiciary reported that AGO-funded legal aid lawyers frequently fail to appear on behalf of their clients. AGO-contracted lawyers are paid a very minimal fee per case, an insignificant fee for services expected.

Beyond the State’s obligation to provide citizens with legal representation in serious criminal cases, is the broader concept of legal aid as linked to access to justice and the ability of citizens to resolve disputes and obtain State benefits.

## **2. Purpose and Methodology**

The main purposes of this study is: (1) to survey the existing mechanisms in the Maldives for the provision of legal aid; (2) to identify and describe linkages between various legal aid providers and funding mechanisms; and (3) to make recommendations on appropriate models for legal aid in the Maldives based upon international comparative studies.

As the paramount obligation of the State is to provide ‘State-funded legal aid,’ this study explores mechanisms for the Government to fulfil its Constitutional obligations to its citizens in the form of free criminal defence in cases of serious crimes. The study also explores ideas and options for partnerships between the government, civil society and the international donor community to provide legal assistance in both criminal and civil cases.

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<sup>1</sup>‘Functional Translation of the Constitution of the Republic of Maldives 2008,’ Hussain, D., Ministry of Legal Reform, Information and Arts, Maldives, 2008.

Based upon a document review, independent research and key informant interviews completed in the Maldives (December 2012), it is determined that the key issues for legal aid in the Maldivian context included the following: (1) the legal system of the Maldives and the interplay between *Sharia*, or criminal and civil law; (2) current gaps in primary legislation (e.g., lack of a Criminal Procedure Code and an Evidence Act) (3) the acute need for legal services outside of Malé in remote island areas, and the challenges presented in delivering such assistance across such vast distances; (4) the respective roles and responsibilities of the various actors in the justice chain in the provision of legal aid (e.g., judges, police, AGO, prosecutors and lawyers); (5) the role of local councils; (6) available budget allocations for free legal aid and mobilization of resources; and (7) inconsistent political will to fund a comprehensive free legal aid system

The study methodology followed the Terms of Reference (see Annex 1).

In order to facilitate stakeholder interviews and information gathering, a study questionnaire was designed and distributed to stakeholders in advance of interviews (see Annex 2).

Study limitations included: (1) availability of stakeholders and lack of clearly defined roles and responsibilities; (2) lack of a legal framework upon which to base firm conclusions and recommendations; (3) lack of information and specificity regarding funding sources and budgets

### **3. UNDP's Approach to Access to Justice**

UNDP's approach to access to justice includes: (1) effective, responsive, accessible and fair justice systems promoting the rule of law, including both formal and informal processes, with due consideration to the rights of the poor, women and vulnerable groups (i.e., women, children, migrant workers, people living with HIV and AIDS); (2) a focus upon individuals, poor and disadvantaged; (3) promotion of legal empowerment; (4) national capacity development and institutional reforms; (5) national ownership; and (6) supporting a variety of legal aid stakeholders, both State and NGOs, in legal representation and community-based advocacy and information.

UNDP, through its Integrated Governance Programme (IGP), recently discussed the idea of training local councils on the islands to have paralegals and provide low-level dispute resolution, mediation and legal assistance. As mediation links to such concepts of legal assistance and access to justice, UNDP commissioned a study on Alternative Dispute Resolution (ADR) and Mediation in the Maldives, completed in 2012. UNDP's initiatives in this sector interrelate with other aspects of the UNDP Maldives Democratic Governance Programme, including Strengthening Local Democracy and Governance; Enhancing Civic Engagement in the Maldives; Building an Efficient, Service-Oriented and Transparent Administration; and Support to Civil Society. Together with donor support, the Ministry of Health and Family , the Judiciary, AGO, the Human Rights Commission of the Maldives and other NGOs are key partners in the IGP.

Empowering citizens to claim their rights by providing them with effective legal assistance strengthens all areas of democratic governance, and offers the potential to resolve peacefully localized grievances and low-level disputes before they erupt into

larger-scale violence. This is especially important for the poor and disadvantaged in Maldivian society. Women are specific beneficiaries, as they often do not have independent income sources necessary to procure legal assistance.

## **4. Current Situation of Legal Aid in the Maldives by Category of Legal Aid**

Locations where legal aid and assistance is needed in the Maldives include: (1) police stations; (2) courts; (3) prisons; (4) during trials and hearings; (5) on islands and in neighbourhoods; (6) in the aid of specialized victims (e.g., first responders, doctors and hospitals, police, judges, social workers); and (7) in society and the public at large (e.g., through education, information, outreach).

These locations involve criminal and civil matters, legal advice, counselling and information (detailed below, as they exist in the Maldives).

### **A. Criminal Cases**

#### *AGO-appointed Article 53(b) Counsel*

Article 53(b) of the 2008 Constitution requires the State to provide legal defence to indigent defendants who cannot afford a lawyer. Once the accused is before the judge, if he or she does not have a lawyer, the judge adjourns the hearing until a lawyer is appointed. In other cases (non-Article 53(b)), the defendant is told that they have a right to a lawyer if they so chose. Civil cases rarely use this device. In criminal cases, if the person lacks a lawyer in a non-Article 53(b) case, then the judge may get involved and intercede on the defendant's behalf.

The AGO is the governmental authority charged with procuring legal counsel for Article 53(b) defendants. AGO office guidelines list the 'serious crimes' qualifying for Article 53(b) legal representation. The AGO reportedly maintains a roster for this purpose containing the names of lawyers who have agreed to be available for Article 53(b) cases. There are currently only a few lawyers on the roster, who are paid a minimal fee per case on a contract case-by-case basis.

The AGO reports that the volume of Article 53(b) cases was relatively small during 2010-2012. Despite this, the State faced challenges in providing legal counsel to all those persons accused of serious crimes who qualified for support. For example, it was stated by stakeholders that in 2011-2012, the AGO was unable to find a lawyer in six Article 53(b) cases. The reasons provided by the AGO for this lapse included the fact that lawyers did not want to defend persons accused of particularly heinous or unpopular crimes (e.g., mothers killing their children, persons killing police officers). Other stakeholders stated that the lawyers had no incentive to represent indigent defendants at such a low fee, compared to what they can make in private practice. Many stakeholders stated that there was a need for a Legal Profession Act to mandate lawyers to provide *pro bono* services. A current draft bill for such an Act is being developed and will soon be submitted to parliament. There is also a need to regulate legal fees in order to increase the possibility of people affording their own legal representation. Now, many lawyers charge high fees without actually doing the work, and there is no recourse

against such negligence. As per the Constitution, the police cannot detain a defendant for more than 24 hours without bringing them before a judge. Many people in the islands are unaware of their right to legal counsel when taken into custody and thus does not avail the use of one. Thus, establishing some type of legal aid to defendants by a Malé-based lawyer or legal helpdesk telephonically until the defendant can meet with a lawyer in person.

Police state that they currently have a computerized database that shows whether a defendant has requested a lawyer. According to the police, defendants do not usually request the assistance of a lawyer during the pre-arrangement or investigation stages. Rather, it is when a defendant goes to court and hears the charges against them that they realize their liberty is at stake, and request a lawyer. Statistics compiled by the Department of Judicial Administration of the Maldives show that in 2011 there were 2,521 criminal cases in the Maldives. Of these, lawyers did not represent in 779 cases. Lawyers represented before the first hearing in only 44 cases, and after the first hearing in 1,698 cases.<sup>2</sup>

The police have around 12 lawyers on staff. These lawyers work in the Police Legal Department in an administrative capacity precluded from representing individual criminal defendants. Domestic violence is handled by the Family and Children's Department of the police, who claim to provide mediation in some cases of dispute. However, levels of awareness among the police as to the importance of providing legal aid remain low. Both the Crime Investigation Department and Serious and Organized Crimes Department at the central level are well aware of legal aid, but other units and new recruits are not necessarily aware. This could be partly due to the average age of police recruits (22 years old). There is a definite need for basic and follow-up training to include units on human rights.

There are approximately 600 registered lawyers in the Maldives, but only an estimated 300 are actively practicing. Of these 300, approximately half are government lawyers precluded from representing private parties or defendants. Of the other half, most are engaged in commercial private practice, do not represent criminal defendants and maintain very high fees. Thus, the number of non-government lawyers able to represent private clients who are willing to take on criminal cases is relatively few. The handful of private lawyers that do accept criminal clients charge high fees impossible for indigent defendants to pay. Thus, criminal defendants sometimes rely upon networks of criminal gangs or political party patronage in order to meet the cost of legal representation and fees.

Concerning the unmet need for AGO-appointed Article 53(b) counsel, if only two to three per cent of the registered non-government lawyers served in the capacity of AGO-appointed Article 53(b) counsel in 2011-12, the Maldives would have met its constitutional obligation to provide legal aid to its citizens.

#### *General Right to Counsel Article 53(a)*

As per Article 53(a) of the constitution, all criminal defendants have a general right to counsel from the moment that they are taken into custody. In general, courts and police

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<sup>2</sup>Justice Sector Statistics 2011 at page 225, Table 39: 'Usage of Lawyers 2011,' Department of Judicial Administration, Supreme Court of the Maldives, June 2012. Similar lawyer usage was reported for defendants in both family law cases and civil law cases in 2011, with most requests for legal assistance being made after the first hearing.

seem to be aware of their roles and the fact that criminal defendants have both a general right to counsel (Article 53(a)), and a right to free legal counsel in serious crimes if they cannot afford counsel (Article 53(b)).

In the police, regulations are quite strict. If someone requests a lawyer, the police will not continue investigation until the lawyer is hired or appointed. Defendants under arrest may make one phone call. This works rather smoothly in the capital Malé as most criminal defendants in Malé hire lawyers. There are no mechanisms to monitor lawyers, and the police face problems when lawyers fail to appear on behalf of their clients.

The law requires that a defendant appear before a judge for arraignment within the first 24 hours of custody. A judge can prolong the detention up to another 15 days. On average, police in Malé take 30 to 40 defendants before a judge every day. Some of these are within the first 24 hours, others are reappearing to continue the detention or to order release. In the islands and atolls (even in Addu with a population of 30,000 persons), there are virtually no lawyers, and majority of criminal cases are conducted without lawyers, while those lawyers who does provide legal counsel are those who come from Male' for specific cases. This raises the question of whether people in the islands are getting fair trials. These cases are almost never appealed because this would require (1) people knowing their rights; and (2) having the assistance of a lawyer; and (3) most people cannot afford to file an appeal, particularly as the appeal courts are only in Malé. In most cases, defendants accused of serious crimes are also taken to Malé where it is easier to access a pool of lawyers.

In the Maldives there is clearly a need for legal advice and representation at various points in the initial stages of the criminal justice chain (e.g., at the police station upon arrest, during interviews, at the court on first appearance).

#### *Challenges of the Current System*

Many stakeholders interviewed were of the opinion that the current AGO guidelines and indigence tests (income verification) are too complicated in Article 53(b) cases. Currently, in order to qualify for AGO legal assistance a defendant must have an income that is less than 2,000 MVR per month. Very few people in the Maldives would meet this definition of indigence as it is so far below the poverty line.

At present, the State provided legal aid and right to counsel is, in the opinion of the police, nearly non-functional. The system is such that a defendant communicates need for a lawyer to the AGO through the police. It is then up to the police to document need and provide information to the AGO. The police also feel that the system is too complicated in cases of Article 53(b) cases. For example, the income verification procedures take a great deal of time, as records do not exist for many forms of income. Additionally, some defendants refuse to supply willingly their financial information to the police, and banking institutions are reluctant to cooperate in providing financial information necessary to satisfy requirements. One stakeholder stated, "If we are to improve the system, it must be streamlined and the burden must be on the financial institution to quickly supply minimal information to the police and make it more available. The Banking Act Article 42 is very clear and requires the bank to provide information to the police upon their request, but financial institutions often fail to cooperate. The administrative burden on the police in this process should be lessened."

As mentioned above, there are no law firms and a negligible number of lawyers on most of the islands. Meanwhile, the police serve everywhere (even on islands where they only patrol). If arrested, often the only option is for the defendant to call the capital and ask a lawyer to come to the island. The reality is that most lawyers in Malé will not travel to an island without charging exorbitant travel fees.

The police, judges and prosecutors report that they have difficulties working with lawyers in general. Most lawyers want their clients to remain silent, in order to minimize the necessity of the lawyer to make repeat visits to the police station to be present during questioning. Prosecutors see many defendants in court who would benefit from cooperating with police or prosecutors, who remain silent instead and are never able to benefit prosecutorial discretion not to prosecute or to reduce the charges.

The lack of standards for lawyers is currently causing problems for national security, the legal system, and the courts and for the defendants themselves. Maldives is a middle-income country, but the fact is that the average citizen cannot afford a lawyer. Most lawyers will charge between 5000 to 10,000 MVR per hearing in the court for general offenses. For drug offenses, some lawyers currently charge as much as 30,000 MVR for 20-minute hearings and, according to judges, are often unprepared to represent. Many cases involve criminal gangs and they appoint lawyers for their members. Other defendants turn to their political party to fund a lawyer, which perpetuates a system of political patronage.

The police estimate that if the AGO were to launch a pilot programme for legal aid, then it would require at least one lawyer in each major atoll. Larger atolls would require more than one legal aid lawyer, yet some atolls only have a few crimes per year and another atoll could cover these. Crime statistics could serve as a guide to where to place legal aid lawyers. Another approach according to the Human Rights Commission would be to place at least three lawyers in two or three major atolls and then eventually roll out the programme after incorporating lessons learned. Some stakeholders cited the model of the Prosecutor General's office that uses mobile prosecutors from atolls to islands. This is a new initiative and appears to be working.

Meanwhile, the Department of Judicial Administration (DJA) stressed the need to use the government's own information technology network. A network is established and used on the islands, connecting the entire country via Internet and underwater cable. The courts are implementing Maldives E-Court Management System (MEMS), an application developed for the management of the court system, and that may offer possibilities through video conferencing and Skype to link the islands and atolls with qualified legal aid lawyers in Malé and elsewhere. A dedicated connection between the Malé courts and the atoll courts is already in the development stage. The DJA has contracted the project to a local telecom company. By the end of January 2013, all the atolls were connected, and by end of 2013, the goal was to connect all the islands with population over 2000 persons.

## B. Civil Cases

With civil cases, the situation is similar to criminal cases, without State assistance. Citizens who live on the remote islands do not have access to a lawyer in most cases, yet nonetheless they use the courts for more substantial civil matters such as cases of land disputes, divorce, etc. In some instances, the Island Councils report that they

provide advice to citizens on how to go to court. Some citizens of the islands do hire lawyers, but this is expensive and relatively rare due.

Most major civil cases (e.g., those involving more than five million MVR) go to Malé and litigants hire lawyers there. This is both a factor of the jurisdiction of the courts and the extra expense that bringing a lawyer to the islands would entail.

As stated above, the Prosecutor General's office is currently instituting mobile prosecutors that travel from the atolls to the islands and this appears to be working. Legal aid lawyers and paralegals might be able to travel in a similar manner to the islands in order to liaise with the Island Councils and render legal advice.

### **C. Legal Counselling, Advice and Dispute Mediation**

The statistics from the Department of Judicial Administration shows that in the islands, nearly 100 percent of cases do not involve lawyers. Many islands in the Maldives have small populations. Most people know each other and families are inter-related. Disputes are handled predominantly on an intra-family basis or with the intervention of the Island Council or senior members of the community. There remains an on-going need for information and assistance with such issues as procuring identity cards, vital records, land registration, etc.

All migrant workers do not have any support for legal aid and information. This is an area which is highly neglected. Many migrant workers in the Maldives are victims of trafficking. When police catch them they put them in detention and then deport them, sometimes without even being able to collect the money they have earned, their passports, etc. Thus, there is currently a need to create legal services for migrant workers.

### **D. Survivor Legal Services and Counselling**

There are currently no services in the Maldives for survivors of crimes such as rape, child abuse, etc. Survivor services require highly trained practitioners and social services. Obviously, issues such as domestic violence, rape and child abuse are highly sensitive issues and left for qualified lawyers.

Survivor services could include: (1) paralegal services to assist survivors of crimes, especially women who are victims of domestic violence and in cases of child abuse or abuse of minors; (2) courts at the prisons to expedite remands; (3) regular judicial visits to prisons; (4) regular paralegal visits to prisons (legal aid days at prisons); (5) law clinics; and (6) special advocates and paralegals for juvenile offenders. These could be combined with judicial and police education with the goal of diverting juvenile offenders from the adult offender population and link-ups with social services and parents. It is important to realize that a juvenile defendant can be a survivor of crime at the same time he or she can be a perpetrator of crime. This is often the situation in drug abuse cases.

### **E. Public Outreach, Education and Legal Information**

Island Councils state that they have relatively little information about laws. Topics such as the Domestic Violence Act are new and not openly discussed. The new Domestic Violence Act makes it necessary to report, and there is a great need for more

awareness. There is some internet access on the islands, but use rates are expensive, deterring would-be users. Meanwhile, prisoners have little access to legal information.

Legal information initiatives can be incorporated into the Island Councils. This does not necessarily require paralegals, but one council or staff member can handle it. If paralegals were hired it could be very costly.

## 5. Types of Legal Aid Delivery Mechanisms and Appropriateness

Each of the above aspects of legal aid, namely the State's minimum obligation to provide criminal defence to indigents, and the broader concept of access to justice and provision of general legal awareness, legal counselling and legal assistance by civil society and/or government entities, requires a high-level of coordination on the part of various stakeholders in legal aid. In an ideal situation this would include elements of the following: (1) paralegals; (2) pro-bono services of practicing lawyers; (3) State-funded initiatives/State legal aid bodies; (4) public interest litigation (usually by INGOs/local NGOs); and (5) informal justice mechanisms.

### *Comparative Models of Legal Aid Delivery*

There is no single model to deliver legal aid. The organization of publicly funded legal services in each country is a product of local culture and history. It is nearly impossible to apply solutions from other jurisdictions to the Maldives, especially given the unique geography.

A comprehensive system of legal aid can be expensive. Few governments in the world can afford to fund such a system entirely on their own and find an adequate number of lawyers to participate. It requires partnerships, a coordinating mechanism and various legal aid providers to address both criminal and civil legal aid. It also necessitates community-based legal services and legal information, education and awareness raising.

In the Maldives, finding cost effective solutions to legal aid is all the more important, given the fiscal status of the government and isolated small islands population. . Formal legal aid options such as a Public Defender office require political will and high levels of funding. For example, if the Maldives were to opt to create a Public Defender office it would require staffing similar to the Prosecutor General's office. These entities would then be subject to budget negotiations and cuts in the same way as all other government agencies.

Even if the State were to provide legal aid only at the atoll level, it would be very costly. Around 98% of lawyers are practicing in Malé. Thus, at present, any legal aid scheme involving lawyers would be costly due to the travel involved. In addition, the reality is that lawyers based in Malé could not commercially sustain a practice at the atoll level alone.

Practical legal aid delivery mechanisms to consider include the following: (1) private practitioners (paid on a case-by-case basis); (2) in-house duty counsel (salaried full-time and part-time staff at courts and/or police stations); (3) legal services corporation (salaried full-time); (4) public defender offices; and (5) contracted services (NGO or bar

association contracts with public defender, legal services corporations or the government). Each of these delivery mechanisms has advantages and disadvantages (see Annex 3).

Many jurisdictions have separate schemes for criminal legal aid and civil legal aid. This is the case in Singapore, for example, where free legal aid for certain categories of non-capital criminal cases are provided to poor and needy citizens under the Criminal Legal Aid Scheme of the Law Society of Singapore (i.e., the bar association). The Law Society uses private lawyers who agree to volunteer their time to represent indigent defendants on a *pro bono* basis. A culture of *pro bono* service is well established and promoted within Singapore's legal community.

Also in Singapore, in capital cases where the defendant cannot afford a lawyer, the State assigns a lawyer. Meanwhile, a separate scheme exists in Singapore for civil legal aid for indigents run by the Legal Aid Bureau. The Legal Aid Bureau applies both means and a merits criterion.<sup>3</sup>

South Africa, Australia and Ontario, Canada, take the position that poverty and social welfare law cases are automatically entitled to assistance without a means test, particularly for clients at walk-in law clinics. Many jurisdictions including the Netherlands grant some amount of legal aid (i.e., 30 minutes) free of charge to all persons, regardless of indigence.

Effective delivery of legal aid in the Maldives will require a combination of mechanisms and legal aid partnerships. In general, most jurisdictions find that full-time or part-time salaried lawyers are in general a better option than contracted lawyers. Many jurisdictions find that Community Law Centres (UK), Law Clinics (Ontario, Canada) or Legal Centres (Australia) provide a good mechanism for civil legal services. Such centres can be funded through grants and operate as a magnet for other funds.

The following excerpt from a paper presented at a conference of the European Forum on Access to Justice held in Budapest on 5-7 December 2002 provides an overview of the various models of quasi-governmental bodies for legal aid established by some jurisdictions such as UK, Netherlands, South Africa, and Quebec, Canada:

"Most governments have found it helpful to establish an intermediate body, closely linked but formally independent of government, to administer legal aid. The advantage of such an arrangement is that it helps to preserve the independence of decision-making in individual cases and distances government from political attack in cases that are controversial e.g. the grant of legal aid to a person accused of grisly serial murders. The Dutch were one of the last large jurisdictions into the fold, creating regional legal aid boards in 1994. In the UK, the three domestic jurisdictions were among the first to establish national legal aid schemes after the Second World War: the Law Societies (the professional bodies for solicitors) that conceived the idea initially managed them. However, in England, the Law Society was replaced by a Legal Aid Board by the Legal Aid Act 1988 which was 'to achieve a central strategic role for legal aid'. The board had a membership which included nominated places for various stakeholders, particularly the professional bodies. In its turn, it

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<sup>3</sup>Information about Singapore's legal aid schemes can be found at the websites for the Singapore Law Society and Legal Aid Bureau, respectively: [www.lawsociety.org.sg/](http://www.lawsociety.org.sg/) and <http://app2.lab.gov.sg/>. The Law Society also has a variety of other legal advice outreach services (i.e. a service to pair NGOs with lawyers).

was replaced by a Legal Services Commission set up under the Access to Justice Act 1999.”<sup>4</sup>

A commission or board is a widespread mechanism used to manage legal aid. Quebec has its Commission des Services Juridiques formed after the model of the US Legal Services Corporation (though this has only a civil engagement). Ontario, where the legal profession until transferred to Legal Aid Ontario by the Legal Aid Services Act 1998 managed legal aid, may have been the latest to switch. Most provinces in Canada have similar arrangements, as does Australia. South Africa has a Legal Aid Board.

The ‘commission model’ involves: (1) a government department responsible for resources and policy; (2) an independent but government appointed commission responsible for implementing that policy to a greater or lesser extent depending on local circumstances; and (3) practitioners who are paid directly or indirectly by the commission. Jurisdictions take different views about appointment of commissioners. Some create reserved places for stakeholder groups, as was the case with the English Legal Aid Board. Others give greater discretion. The provisions in the English Access to Justice Act 1999 are good examples of wide powers given to the appointing minister:

“(3) The Commission shall consist of (a) not fewer than seven members, and(b) not more than twelve members; but the Lord Chancellor (Minister of Justice) may by order (change either number) (4) The members of the Commission shall be appointed by the Lord Chancellor; and the Lord Chancellor shall appoint one of the members to chair the Commission.(5) In appointing persons to be members of the Commission the Lord Chancellor shall have regard to the desirability of securing that the Commission includes members who (between them) have experience in or knowledge of(a) the provision of services which the Commission can fund as part of the Community Legal Service (effectively civil legal aid) or Criminal Defence Service (effectively criminal legal aid);(b) the work of the courts;(c) consumer affairs;(d) social conditions; and(e) management.”<sup>5</sup>

The highpoint of direct stakeholder representation probably came in the Legal Aid Commissions of New South Wales and Victoria in the early 1990s. Their constitutions allowed places for the professional bodies, consumer groups, legal centres, etc. Ultimately, governments replaced both with smaller bodies appointed with less strings. A tighter approach is evident in Israel’s Board of the Public Defender, which has five members: (1) the Minister of Justice; (2) a retired Supreme Court judge;(3) a criminal lawyer selected by the national Bar Association; (4) a criminal lawyer appointed by the Minister of Justice with the consent of the chair of the Bar Association; and (5) a criminal law scholar.

A compromise between executive power of appointment and some degree of professional input can be seen in the provisions for appointment to Legal Aid Ontario (the Law Society of Upper Canada is the Bar Association for the province), which states that:

“The board of directors of the Corporation shall be composed of persons appointed by the Lieutenant Governor in Council as follows: (1) One person, who shall be the

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<sup>4</sup> Smith, Roger. “Legal Aid: Models of Organisation.” 5 December 2002.<http://www.justice.org.uk/images/pdfs/legalaid.pdf>.

<sup>5</sup> Smith, Roger. “Legal Aid: Models of Organisation.” 5 December 2002.<http://www.justice.org.uk/images/pdfs/legalaid.pdf>.

chair of the board, selected by the Attorney General from a list of persons recommended by a committee comprised of the Attorney General or a person designated by him or her, the Treasurer of the Law Society or a person designated by him or her and a third party agreed upon by the Attorney General and the Treasurer of the Law Society or persons designated by them. (2) Five persons selected by the Attorney General from a list of persons recommended by the Law Society. (3) Five persons recommended by the Attorney General.”<sup>6</sup>

## **6. Possible Options for UNDP and Government Partners to Consider for Legal Aid**

It is the distinct impression of stakeholders interviewed, including UNDP itself, that UNDP and other donors should support the Government in both top-down and bottom-up approaches. UNDP and donors should initially go after the ‘low hanging fruits’ (e.g., establish a legal aid clinic and information centre in Malé on a pilot basis, with mobile legal aid and information initiatives in the islands) and then commence longer-term legal aid objectives in a sequenced manner (e.g., legislative reforms, establishment of a Bar Council and the regulation of the legal profession, drafting of a code of conduct and mandated *pro bono* requirements).

A fundamental question is whether legal aid should be under control of the Judiciary or the AGO. More than likely, the AGO will retain primary responsibility, but the Judiciary should also have a defined role. Courts need to draw a bright line between basic information on court procedures and giving legal advice. Courts currently can provide basic filing information and forms, fees, procedure, etc., but cannot engage in the provision of substantive advice. Courts in the islands and atolls are very small and need guidance from the Supreme Court or the DJA on proper procedures. There needs to be an access point for lawyers at the AGO or the courts to obtain legal aid information and procedural issues. This can be provided inexpensively via a hotline that lawyers can call. Courts can also provide facilities at the courthouse for lawyers (e.g., a private conference room that a lawyer can rent for a small fee to meet with a client).

Meanwhile, the DJA notes that there are approximately 50 retired magistrates that could be used as legal advisors in Malé and the atolls. They are entitled to retirement benefits and in the opinion of the DJA, this should imply a responsibility to fulfil some duties. In most of the magistrate courts, the citizens come to the court and the magistrates actually guide them through court processes (e.g., in cases of marriage, family, and criminal matters).

The DJA further notes that for the islands, councillors, local workers and NGOs that can act as paralegals should be the focus of UNDP and donor support. The key issue is the cost of these services, from the practical point of training 200+ councillors to act as paralegal, plus training materials, etc.

The Supreme Court initiated a mediation pilot that is a result of the 2008 National Strategic Development Plan to install an alternative dispute resolution (ADR) mechanism in the courts.

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<sup>6</sup>Smith, Roger. “Legal Aid: Models of Organisation.” 5 December 2002. <http://www.justice.org.uk/images/pdfs/legalaid.pdf>.

A number of possible **legal aid options** for the Maldives are discussed below. The options appear in no particular order, but in general, longer-term (top-down) options appear first, followed by shorter-term (bottom-up) approaches. It is difficult to estimate at this time the costs involved, given that detailed information is not available from the stakeholders concerned as to available budgetary resources over the next several years.

### **A. Creation of a National Legal Aid Commission**

A national legal aid commission mechanism would fulfil a coordinating function for all forms of legal aid with different divisions for criminal legal aid and civil legal assistance, including outreach. It could act as a legal services corporation (public-private NGO with salaried lawyers). UNDP and partners should reference the models of the various foreign jurisdictions discussed above (e.g., Singapore, UK, South Africa, Australia.) to determine what model they want to adopt for the Maldives, with the caveat that there is no one right way to approach legal aid. Ultimately, the design of a National Legal Aid Commission in the Maldives will be a function of the amount of budgetary resources available and the commitment of stakeholders. The institution of such a mechanism in the Maldives would not necessarily preclude the formation of a separate public defender's office. One advantage of a National Legal Aid Commission is it could independently fundraise and be tasked with a variety of legal aid functions, and partner with a Bar Association, NGOs and law schools. It could also promote awareness of legal aid and conduct outreach and education activities. This is a longer-term initiative expected to take three to five years to establish.

### **B. Legislative Reforms**

Legal reforms are currently a threshold issue in the Maldives for legal aid. Foremost among these is regulation of the legal profession. The above situational analysis mentions the numerous problems faced by citizens in obtaining competent and affordable legal representation. The Maldives must pass a Legal Profession Act and Code of Conduct and Ethics for Lawyers, and strengthen this by passing additional administrative orders of the AGO and court, setting forth lawyer duties to serve in Article 53(b) cases at minimal compensation. Needed is implementation of judicial education and continuing legal education for members of the Bar on rendering effective Article 53(b) assistance. This will require creation of a Bar Council and further the need for a Code of Conduct and Ethics for Lawyers.

There should be a statutorily mandated obligation of all lawyers to serve in Article 53(b) cases if ordered to do so by the AGO and court. This should be backed-up by contempt of court procedures for lawyers who refuse to fulfil their duty. Unless the State fulfils minimal constitutional obligations to its citizens to provide legal representation in serious criminal cases to persons who cannot afford to hire a lawyer, nothing else will fall into place. The government, UNDP and donors should not underestimate the importance of addressing Article 53(b) cases and establishing ethical guidelines and codes of conduct for the legal profession. The fact is that at the end of the day, paralegals or non-lawyers cannot meet this constitutional guarantee. In addition, reforms of the Penal Code, Code of Criminal and Code of Evidence all need to be developed. Such legislative reforms are longer-term and expected to take three to five years to establish.

### **C. Public Defender Office (Government office with salaried lawyers acting as the opposite of the Prosecutor General's office)**

A Public Defender Office can mirror the Prosecutor General to protect constitutional guarantees of due process. It can serve as an advocate for defendant rights. It is entirely funded by the State budget and, therefore, more susceptible to political influence than a Legal Aid Board. A public defender's office should nonetheless probably be initiated in the Maldives, if even for only a narrowly defined set of crimes. This is a longer-term initiative expected to take three to five years to establish.

### **D. Explore Mechanisms for the Creation of a Bar Council and a Cadre of Lawyers Who Will Go to the Islands on a Regular Basis**

A Bar Council would serve as a focal point for all issues affecting lawyers and the legal profession. It would have a disciplinary committee for sanctioning lawyers who violated principals of professional ethics. The Bar Council could also oversee, in conjunction with the Judiciary, the regulation of the legal profession, standards of examination and licensing of lawyers, legal education and continuing legal education in the Maldives. A legal advisory service of the Bar Council could be established on each major atoll. Justice centres at atoll courts could provide a full range of legal and paralegal services to indigent clients. The Bar Council could also engage in public information and outreach activities such as training for Island Councils and women's councils on basic legal forms, and in establishing a national hotline for legal assistance and outreach. Lawyers could participate in law school clinical legal education programs. This is a longer-term initiative expected to take two to three years to establish.

### **E. Maintain a Roster of Lawyers and Pay them on Contract**

This is the current system utilized by the AGO, albeit in a very limited form, and is not working well as outlined above. In order for such a system to work properly, a statute must regulate the legal profession with a component of compulsory legal service at a minimal fee. Sanction of contempt of court for lawyers that fail to appear on behalf of a client should back this up. There should also be automatic referrals for disciplinary hearings and fines, suspension from the practice of law or revocation of law license. This is a longer-term initiative expected to take two to three years to establish.

### **F. Explore Various Mechanisms to Provide Low-level First Instance Legal Assistance and Advice within the Criminal Justice System**

Such mechanisms could include the following: (1) the creation of legal aid help desks at police stations in partnership with civil society; (2) establish of a national legal aid hotline (in case of arrest); (3) hold know your rights public information campaigns; (4) engage in public-private partnerships (AGO and Bar Council); (5) encourage NGO paralegals; (6) promote necessary statutory reforms to permit paralegals to represent, advise, and make appearances in non-serious crimes; (7) strengthen procedural guarantees; (8) provide judicial education to enhance judge's ability to enforce right to counsel due process guarantees; (8) provide training to the police on the significance of legal aid and right to counsel; (9) support special advocates and/or paralegals for juvenile offenders, combined with judicial and police education with the goal of diverting juvenile offenders from the adult offender population and link-ups with social services and parents; (10)

provide paralegal services to assist survivors of crimes, especially women who are victims of domestic violence and in cases of child abuse or abuse of minors; (11) install courts at the prisons to expedite remand caseload; (12) conduct regular judicial visits to prisons; (13) conduct regular paralegal visits to prisons (legal aid days at prisons); and (14) host law clinics. Many of these outputs are shorter-term initiatives expected to take six months to two years to establish.

## **G. Establish a Legal Aid Clinic and Information Centre in Malé with Mobile Legal Aid and Information Clinics Conducted in the Islands**

This could draw upon paralegals, volunteer lawyers, the Island Council members with training, women's development committees, etc. A lawyer, or trained non-lawyers and paralegals can provide legal assistance for non-serious crimes. Paralegal services are cheaper than lawyers and can reduce the amount of time that the lawyer has to spend on the case, thereby making legal representation more cost effective. Public-private and NGO partnerships can provide an alternative to dependence upon legal services procured with the assistance of political parties or criminal networks. This is a shorter-term initiative expected to take six months to two years to establish.

## **H. Trial Monitoring**

Such monitoring is necessary to ensure that the public and civil society can fulfil a limited watchdog function over the courts and lawyers. Trials can be monitored for adherence to constitutional due process guarantees and basic standards of international best practice. NGOs and volunteer lawyers (Bar Council) and law school clinics can do this. Distribution of fair trial manuals to judges and training for journalists to effectively report on trials can be parallel activity. This is a shorter-term to medium-term initiative expected to take one to three years to establish.

## **I. Pursue Legal Information Initiatives**

The outputs could include the following: (1) UNDP could support a copy of the official Gazette to be published on a website; (2) UNDP could support a copy of the official Gazette to be mailed to each island; (3) Women Development Committees and women councillors could be trained to conduct outreach on domestic violence; (4) the Island Councils could be trained in basic forms, remedies, and locations of courts and offices; (5) police could conduct community policing and provide communities with basic legal information; (6) paralegals could conduct outreach; (7) radio and television informational programs could be developed on rights and remedies; (8) civic education for youth; (9) clinical legal education/law clinics; and (10) legal information services for prisoners. Tools and publications (e.g., posters, handbooks, manuals, know your rights cards) could be streamlined and redesigned, and new interview forms for incarcerated juveniles and other prisoners designed. Many of these outputs are shorter-term initiatives expected to take six months to two years to establish.

Each of the above options would require much more in-depth situational analysis, comparative research and client needs surveys in both Malé and in the atolls. UNDP and partners are encouraged to utilize such available resources as the International Legal Resource Center (a partnership of UNDP and the American Bar Association) for in-put and legislative analysis.

Whatever the courses chosen, it is clear that the Maldives cannot afford to wait any longer to begin the process of reforming its legal profession and providing basic legal information, counselling and representation to its most needy citizens and vulnerable groups, including women and juveniles.

## **7. Current and Planned Legal Aid Initiatives of Transparency Maldives and the Human Rights Commission**

The current and planned legal aid initiatives of Transparency Maldives and the Human Rights Commission of the Maldives may offer additional models and lessons for UNDP to support Government initiative, as well as areas of potential joint programming or partnership.

### *Transparency Maldives*

The NGO Transparency Maldives is currently implementing an innovative legal advice centre. This centre opened in June 2012 and focuses primarily on persons who have a legal issue related to an incidence of corruption. There are not many corruption cases and most of the cases that it receives are family and land matters. Nonetheless, lawyers advise these clients as such cases can subject people to needing to pay bribes to officials.

Transparency Maldives has entered into memorandum of understandings (MoU) with police, customs and immigration sectors, and is in the process of signing more MoUs with local government authorities and the Prosecutor General's office. Some cases have involved dealing with government ministries (e.g., gender, fisheries). In general, government ministries are cooperative with Transparency Maldives and want to sign MoUs.

Transparency Maldives implements two mobile justice initiatives in Vaavu Atoll (five islands) and in the South Addu Atoll (three islands). It tries to have a focal point on the islands and atolls where it travels to provide legal services. Transparency Maldives announces times and places that it will be on the island and then it goes there for a day. It also goes around the island announcing its presence on a loudspeaker. Despite these outreach measures, to date there are no cases of corruption processed in the islands because in small communities people are hesitant to use lawyers. There was anecdotal evidence, however, of misuse of public property for private gain, and the Island Council in Vaavu did come up with cases.

Transparency Maldives also interviews migrant workers, most lacking (papers and complaining that employers held papers and that they were being held in forced labour situations.

Transparency Maldives maintains two lawyers on staff for its Legal Advice Centre. One full-time lawyer makes about half what he could make in private practice (1000 USD equivalent per month). He is 24 years old and right out of law school. The other part-time lawyer is more senior and paid the equivalent of 1,300 USD per month, but this is for two to three days per week only as he has a private practice as well.

Transparency Maldives has had 60 clients in the past six months, clients with valid corruption cases, and have provided legal counselling services to around 300 people. The organization is cautious about expanding the programme too quickly. Transparency Maldives estimates that it needs two years to assess the achievements of the initiative. Furthermore, it feels that mobile justice in the islands is better than a permanent presence (i.e. with three of four visits in each year on each island). If expanded, Transparency Maldives states that it would open an office on Addu Atoll first.

As a side note, Transparency Maldives mentioned that in the Maldives, many lawyers actually do take several *pro bono* cases per year, but these are usually for family members, friends, or friends of friends. The practice is in no way systematized or regulated.

#### *The Human Rights Commission of the Maldives*

The Human Rights Commission of the Maldives (HRCM) is currently exploring ways to provide legal aid. HRCM has documented many cases of women needing assistance with divorce, custody issues and violation of due process. HRCM has no regional offices at the time and operates only from the capital Malé. HRCM recently initiated mobile legal clinics to take services to the islands. HRCM wants to be able to provide legal support in the islands. If and when an HRCM legal aid system is initiated, it will apply mainly to complainants of the HRCM system.

HRCM states, however, that until the legal profession is regulated by statute and a *pro bono* requirement established under law, HRCM must pursue this unsystematically. HRCM already has a pool of HRCM-supportive lawyers and HRCM hopes to rely on these lawyers. In order to accomplish the above plan, it would entail getting lawyers on board, but this has not been worked out to date at the AGO with Article 53(b) cases. In the case of a mother accused of murdering a child who qualified for Article 53(b) legal aid, the AGO never identified a lawyer to represent her, and after a year the judge ordered the case to proceed without legal aid for the defendant. HRCM already has lawyers in the legal department, but it is not clear whether these lawyers can be tasked with providing legal assistance to the HRCM complainants.

HRCM is an independent commission, but it is State funded. In 2011, its budget was 22 million MVR (over \$1 million US). Its proposed 2012 budget is 30.3 million MVR. In 2011-2012, HRCM received 600 to 700 human rights-based complaints. Of 600 to 700 cases, on average about 500 are investigated further. HRCM liaises with State agencies in certain cases and in other cases, such as police brutality, works independently. HRCM makes recommendations to the police or to the offending ministry for remedial action and redress. HRCM can also submit a brief to court. Other times the HRCM performs mediation. One of the key problems noted is a lack of a clear mechanism to find redress.

The majority of HRCM complaints are work related (i.e. right to work, right to health, education, housing, clean water, etc.). HRCM does get a significant number of human rights complaints from the islands via hotline, fax and email submissions. HRCM has an advocacy department that conducts public outreach and awareness and thematic issues like child issues and women's rights.

HRCM recommends that any pilot legal aid initiative go to the most remote islands to assess what their true needs are. HRCM reports that there is a sense of hopelessness amongst people in the most remote islands. They do not feel that the State really exists for them. There is a deep sense of hopelessness among women in particular on these islands, often subject to religious fundamentalism.

HRCM acts as the National Prevention Mechanism, and in their prison visits found some defendants languishing in pre-trial detention for three years. Fifty people in custodial detention awaited trial for two to three years. The police complain that they are not equipped to house these defendants this long. Meanwhile, the prison system will not accept these defendants as prisoners until after conviction at trial. The criminal courts also have a backlog of pre-trial detention. The Prosecutor General's office often must send cases back to the police, because the police failed to perform the investigation correctly. All these delays result in defendants held in overcrowded custodial detention centres for long periods.

## **Annex 1**

### **Terms of Reference for International Legal Consultant to Conduct a Study on Legal Aid in the Maldives**

#### **Objectives and Background**

Maldives had been undergoing a series of reform initiatives introduced by the Government since 2004. The Constitution was amended to establish a system of democratic governance. The new Constitution provides for the first time the separation of powers between the Executive, the Legislature and the Judiciary. However, the transition to democracy has been difficult with the country facing significant challenges in consolidating initial progress.

As part of the national efforts towards democratisation, there has been significant focus on promoting human rights and strengthening the justice sector.

According to Article 53 of the Maldivian Constitution, everyone has the right to retain and instruct legal counsel at any instance where legal assistance is required and in serious criminal cases, the State is mandated to provide a lawyer for the accused who cannot afford to engage one.

While the provision of legal aid provided by the State exists in the new constitution for serious crimes, the country has not yet established a proper legal aid system nor has a legal framework as to the functioning of such a scheme been established.

UNDP is seeking a Legal Consultant to conduct a study on Legal Aid suitable for the Maldives and provide recommended options.

#### **Tasks and Responsibilities**

The Consultant will be required to do the following:

- Conduct review of existing reports, national legal framework and international reports on best practices of providing legal aid.
- Conduct consultations with government departments, the Judiciary, non-State actors, Lawyers and other stakeholders on the Legal Aid, including field visits.
- Examine the current provision of legal aid in the country and identify the opportunity and challenges in the system.
- Prepare a draft report on the study of Legal Aid including appropriate cost effective approaches suitable for the Maldives
- Conduct a validation workshop for the report with stakeholders
- Prepare the final report on feasibility study of Legal Aid in the Maldives with identified options for Legal Aid suitable for the Maldivian context

#### **Deliverables**

At the end of the contract, the following shall be delivered to the satisfaction of UNDP:

- Consultation workshop for Report Validation
- Report on assessment of legal aid in the Maldives and recommended legal aid options for the country, including costing and options

### **Duration and Organizational Setting**

The time period envisaged is 2 weeks.

The legal Consultant will be contracted by UNDP, and will report to the UNDP project coordinator in coordination with the AGO. The consultant will be based at the Attorney General's Office.

### **Required Skills and Qualifications**

To be eligible for this position, the applicant must demonstrate the following eligibility criteria:

- A minimum of Masters Degree in Law, Public Policy, Political Sciences, Human Rights or related field,
- At least 10 years of professional experience in the field of law or other relevant field
- A minimum of three years experience in legal analysis and assessment is required.
- Experience in drafting policy documents, and conducting research and analysis especially with developing national legal aid policy framework would be an added advantage.
- Fluent in written and spoken English

### **Competencies**

- Proven analytical and inter-personal skills
- Research and evaluation skills including ability to synthesize information
- Excellent oral, and effective presentation and report-writing skills
- Ability to work under with minimum supervision, while meeting deadlines
- Ability to manage conflicting ideas and views from diverse groups
- Excellent social and communication skills
- Excellent computers skills required

## **Annex 2**

### **Questionnaire for Legal Aid Stakeholders**

Dear Stakeholder:

According to Article 53 of the Maldivian Constitution, everyone has the right to retain and instruct legal counsel at any instance where legal assistance is required and in serious criminal cases, the State is mandated to provide a lawyer for the accused who cannot afford to engage one.

UNDP Maldives is currently conducting an assessment of legal aid in the Maldives. Please help us by answering the following questions in as much details as possible. Please submit responses via email to Nasheeth Thoha at UNDP: [nasheeth.thoha@undp.org](mailto:nasheeth.thoha@undp.org)

Thank you.

UNDP Maldives

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#### **Key Questions on Legal Aid in the Maldives:**

1. How is legal aid currently delivered in the Maldives?
2. What is the normative framework for legal aid in the Maldives? (Please provide reference to key provisions in the Constitution; laws and regulations or by laws).
3. How is the normative framework for legal aid actually implemented in practice?
4. What are the respective roles of the following actors in the legal aid process in the Maldives:
  - a. Courts and judges
  - b. Police
  - c. Prisons
  - d. Lawyers and the Bar Association
  - e. Ministry of Justice
  - f. Attorney General
  - g. NGOs
  - h. Law schools/paralegals/volunteers

5. Is there currently a central mechanism for receiving citizen's requests for legal aid and assigning the cases to a legal aid lawyer?
6. What is estimated to be the total number of citizens requiring legal aid each year in the Maldives? What percentages (%) of court cases involve a request for assistance of legal aid?
7. How many citizens benefited from legal aid in the years 2010, 2011 and 2012? How were these cases distributed geographically (i.e. Male; other Atolls?). Is the demand for legal aid increasing or decreasing?
8. What are the main categories of cases that require legal aid? Do certain groups or geographic areas in the Maldives require special types of legal aid?
9. How are citizens informed about the availability of legal aid? What office do they go to or telephone number do they call to request legal aid? What forms are clients required to fill out?
10. How do Government of Maldives ministries themselves respond to citizens' complaints? (i.e. maternity benefits; health care; etc.).
11. How is the provision of legal aid related to the function of the Ombudsman?
12. What is the total budget for legal aid in the Maldives in 2012? Who controls the budget and how is it allocated?
13. Does the Maldives have pluralistic justice systems? What are the roles of traditional authorities and religious leaders in resolving disputes?
14. What is the role of ADR (mediation) in legal aid?
15. What is the role of community politicians (i.e. mayors or village councils in resolving disputes and providing legal assistance)?
16. What is the best way to provide legal aid to remote islands?
17. What is the best way to design a pilot for a legal aid programme? How much will such a pilot cost?
18. What new laws must be passed in the Maldives in order to make a system effective and to implement it?
19. What new skills and training will lawyers, judges, police and prosecutors need in order to implement a system of legal aid? How much will such training cost?
20. What should the role of UNDP be in this process going forward?
21. Please provide any additional information that you believe is relevant to the establishment of legal aid in the Maldives.

## Annex 3

### Types of Legal Aid Delivery Mechanisms: Relative Advantages and Disadvantages

Type of Delivery Mechanism	a) Private Counsel (Judicare)(paid on case-by-case basis)	b) In-house duty counsel (salaried full time/part time)(at courts and/or police stations)	c) Legal Services Corporation (salaried full-time)	d) Public Defender Office	e) Contracted services (NGO or bar association signs contract with Public defender/Legal Services Corporation or Government)
<b>Funding</b>	State/pro-bono	State	State-Non-profit (Quasi-public non-profit corporation)	State	State-Non-profit-pro-bono
<b>Advantages</b>	Theoretically cheaper in jurisdictions with a well regulated legal profession. Funding on a case-by-case basis so for monitoring on an interim basis. Does involve the private bar association in the provision of services.	Can be cost advantages where a duty officer can take on many cases at the same time (i.e. a duty officer at a busy court).	Legal Services Corporation can be an effective public-private partnership. Can include different divisions (criminal; civil; community legal services; education and outreach; victims units); can be adjusted based upon annual budgets; can build-up a high esprit de corps.	Can mirror the prosecution to protect constitutional guarantees of due process. Can serve as an advocate for defendant rights.	Is subject to the same Advantages and Disadvantages of the sources that supply lawyers to it (whether private bar or NGOs). Allows the State to replace a non-performing NGO with another NGO if desired.
<b>Disadvantages</b>	Quality control problems if lawyers left to their own devices	Can be quality control problems due to the isolated nature of duty officers, lack of coordination, low status, difficulty representing clients	Can be subject to political interference; need to raise funds from various sources; can be viewed as a low-paying option for lawyers/difficulties in attracting and retaining staff.	Is subject to government budget and control limitations. May be seen as having low prestige.	Can allow government to transfer responsibilities. Can lead to lower quality representation and routine representation if not effectively supervised.

Type of Delivery Mechanism	a) Private Counsel (Judicare)(paid on case-by-case basis)	b) In-house duty counsel (salaried full time/part time)(at courts and/or police stations)	c) Legal Services Corporation (salaried full-time)	d) Public Defender Office	e) Contracted services (NGO or bar association signs contract with Public defender/Legal Services Corporation or Government)
		across the justice sector (i.e. at police station, then court, then during custody), etc.			
<b>Maldives context?</b>	Abusive fee structures and lack of regulation of private lawyers have hindered this and make it unworkable in practice until a bar association is created and the legal profession regulated by law.	Could work on a pilot basis by placing duty counsel at male courts and several atolls plus Male police stations.	Legal Services Corporation. Probably the most sustainable mechanism, especially for civil legal aid. Should likely begin to be explored by UNDP and the donor community as an ultimate option for the Maldives.	Probably is an idea that should be explored, but it is difficult to introduce only on a pilot basis (due to equal protection concerns) and will require a significant commitment of State budget to achieve.	Would likely require creation of a bar and legal profession before the idea could be fully explored. Could be explored on a pilot basis in the interim by contracting one or more NGOs to provide limited legal services.