

**The Special Rapporteur's thematic report on the impact of mega-projects on the human rights to water and sanitation**

**QUESTIONNAIRE**

***1. How do mega-projects contribute towards the progressive realization of the human rights to water and sanitation?***

1.1 In 2008, the Maldivian Constitution in force then was completely overhauled to create a new instrument, comprising of a plethora of rights. Article 23 of the Constitution provides every citizen, inter alia, the right to clean water and adequate sanitation facilities such as the establishment of a sewerage system of a reasonably adequate standard on every inhabited island. The Article requires the State to take reasonable measures within its ability and resources to achieve the progressive realization of the aforesaid rights.

1.2 The water and sanitation sector is a high priority area included in the National Development Agenda which ensures that the right to water and sanitation is addressed. The State puts robust efforts through donor finance, either by loan or grants, and also allocates government Public Service Infrastructure Project (PSIP) funds towards the provision of water supply and sewerage facilities in the islands every year.

1.3 The Maldives has in the past adopted various models to ensure that mega-projects contribute to the provision of clean water or establishment of sewerage systems in the islands. From 2008 to 2012, under Public-Private Partnerships (PPPs), various projects such as development of housing or luxury villa islands, were awarded on the condition of developing sewerage networks on designated inhabited islands. From 2008 to 2016, under Law Number 2/99 (Tourism Act of Maldives), islands were leased to joint ventures between the Government and investors, on the condition that they would complete a Corporate Social Responsibility (CSR) component on an inhabited island, which included development of sewerage networks and provision of clean water. A regulation formulated under the Tourism Act of Maldives stipulates that investors would be leased islands/lands/lagoons for development of tourist resorts/hotels/guest houses on the prerequisite that they would spend on a CSR project which costs between \$500,000 (Five Hundred Thousand US Dollars) to \$1,000,000 (One Million US Dollars).

**Stage 1: Macro-planning**

***4. What type of participatory processes have been implemented by your Government to***

***inform the public and the affected population and to facilitate the discussion on the option to include or not include mega-projects in national development policies?***

4.1 Public are encouraged to participate and share concerns in the project planning stage through the elected island councils. Section 23(b) of Law Number 7/2010 (Decentralisation Act) states that islands councils have the responsibility of formulating development plans of the island and they should do so with public participation. Such participation is ensured through public consultations carried out by the island councils. Government only formulates the national development agenda after taking into account the development plans of the islands submitted by the island councils as per the Decentralisation Act.

4.2 Additionally, public consultations are carried out by the Environmental Protection Agency (EPA) in the assessment process of the Environmental Impact Assessment Report (EIA) which developers are obligated to submit under Law Number 4/93 (Environment Protection and Preservation Act of Maldives). The EIA process is opened for public commenting during the initial stage, and if EIA is not approved by the EPA, which decision takes into consideration the public comments, the project would be discontinued.

**5. *What challenges exist to ensure transparency and participation as well as access to information in the macro-planning stage? How have they been addressed and guaranteed, if any?***

5.1 After the landmark victory by President Ibrahim Mohamed Solih in the 2018 Presidential Elections, Government has prioritized inclusion of the public in policy formulation as well as ensuring transparency in all levels of decision making.

5.2 Criticisms faced by the previous administration includes lack of transparency as well as access to information with regard to projects run by the Government. This was coupled with allegations of corruption at high levels of the administration, specifically with regard to infrastructure projects run during the past 5 years. President Solih's Government came to power with numerous promises, including restoring a system of governance in Maldives that respects basic tenets of democracy, eliminate political and external influence within state institution and mostly, eradicate corruption at all fronts. This is further enhanced by the zero-tolerance policy against corruption adopted by this administration and the creation of the Presidential Commission on Corruption and Asset Recovery, empowered to investigate occurrences of corruption from January 2012 to November 2018.

5.3 Efforts are being made by the Ministry of Environment to review the process of community participation to enhance participation and transparency in the macro-planning stage of projects. This is also being done through a Legal Audit carried out by the Attorney General's Office, which includes reviewing the Decentralisation Act. The result of the review includes amendments which enhances the participation of the community in formulating development plans by making it mandatory for island councils to hold public consultations on a regular basis.

5.4 Furthermore, the Ministry of Finance currently publishes weekly financial statements, in order to fulfil the pledge of transparency vowed by this administration.

5.5 Additionally, although Law Number 1/2014 (Right to Information Act) is in force, one of the challenges faced by the public during the past administration was the gap between the law and its implementation. President Solih's Government has vowed to eliminate these gaps and ensure full implementation of all the laws in force in the Maldives.

## **Stage 2: Planning and designing**

***6. What measures have been adopted by your Government to ensure that the framework on the human rights to water and sanitation is implemented in the planning and designing phase, both within and outside of the territory of the State? Please provide information on the challenges or good practices faced during the planning and designing stage to respect, promote and fulfil the human rights to water and sanitation.***

6.1 The Environment Protection and Preservation Act of Maldives requires an EIA report to be submitted to the relevant Ministry before implementing any project that may have a potential impact on the environment. Regulation Number 2012/R-27 (Regulation on the Preparation of the Environmental Impact Assessment Report) determines the guidelines on preparing all EIA reports in the Maldives. Section 6 of the Regulation conditions the inclusion of a part on water, and also a part on the relationship between the natural resources and the people living in the area. Approval for projects would not be granted without evaluating the EIA report. Additionally, failure to submit the EIA report is considered a breach of the Act, and has a penalty of a fine no more than MVR 100,000,000 (One Hundred Million Maldivian Rufiyaa) depending on the gravity of the breach.

6.2 The following practices are also observed in the planning and designing phase of tourist facilities:

6.2.1 During the evaluation stage of the development concept of a tourist resort, the establishment of environmental components such as powerhouse, desalination

plant and sewerage treatment plant are compulsory for the approval of the development concepts of the resort. Approvals for construction of the resort would not be granted unless those components are completed.

6.2.2 Additionally, during the initial mobilization stage, before the physical construction of permanent structures begins, the mobilization permit is only granted on the condition that the developer will develop temporary structures for workers such as power house, desalination plant and accommodation facilities.

6.2.3 The Regulation on the Protection and Conservation of Environment in the Tourism Industry further makes it mandatory to establish a system for sewerage treatment in tourist operating facilities. Failure to comply with this Regulation will impose a fine, taking into consideration the seriousness of non-compliance, between MVR 1000 and MVR 10,000 in the first instance, and between MVR 50,000 to MVR 100,000 if non-compliance is repeated. Ministry of Tourism also has the power to revoke any operating licenses if non-compliance occurs more than once.

6.3 The Regulation on the Protection and Conservation of Environment in the Tourism Industry stipulates the following conditions in order to regulate the quality and storage of water:

6.3.1 For the purpose of provision of clean and safe water sufficient for use in the resort, every resort shall have a desalination plant. The plant shall be registered with Maldives Water and Sanitation Authority in accordance with the "Regulation on Desalination Plants", and shall comply with such regulation in the operation of the desalination plant.

6.3.2 The quality of water generated from the desalination plant shall not be lower than that set by the relevant government authority. Daily logs relating to the quality of water shall be recorded and maintained.

6.3.3 Clean and safe water that would be sufficient for 5 days, for use of tourists and staff and for all its purposes, shall be stored at every resort, Picnic island, marina or other place made for tourists.

6.3.4 No resort, picnic island or marina shall do any activity that would contaminate the water table of the island.

6.3.5 Ground water taken from any resort, picnic island or marina shall not be used

for drinking by guests or staff, and shall not be supplied to guest rooms or toilets of guest rooms or for use by staff.

6.3.6 Drinking water shall be stored safely in a manner that it is not contaminated. The quality of drinking water shall not be lower than that set by the relevant government authority.

6.3.7 Any type of oil (e.g. used engine oil) or any other chemical which may damage the environment shall not be drained to the ground.

6.4 Sewage from all tourist resorts or marinas are also required to be disposed in a manner that is least harmful to the environment.

6.5 The Ministry of Tourism conducts inspections during the development stage as well as upon the issue of operation license to ensure the availability of safe drinking water and sanitation in tourist operating facilities. Random routine inspections are also conducted annually to ensure that there is an availability of safe drinking water and sanitation in tourist operating facilities.

6.6 Environment Protection and Preservation Act of Maldives states that the Ministry of Planning has the authority to terminate any project that may have an undesirable impact on the environment.

**7. *What legal and policy framework is in place to clarify the roles and human rights obligation and responsibilities of actors involved in the planning and designing stage? What legal and policy framework is in place to regulate actors - both within and outside of the territory - to perform in accordance with human rights obligations and responsibilities and to conduct human rights assessments of impacts of such projects?***

7.1 In addition to the right enshrined in the Maldives Constitution, the National Water Sewerage Policy (NWSP) published in 2017, has a primary focus to enhance the livelihoods of all Maldivians by providing access to safe water and sewerage facilities.

7.2 The NWSP presents a set of 9 goals and associating objectives and strategies, that give precedence to ensuring access to safe water and sewerage services for all. Ensuring access to safe water supply and adequate sewerage services, and adopting cost-effective, environmentally friendly and appropriate technologies are the main two goals to achieve under the NWSP.

7.3 Under the NWSP, the responsibilities of the key institutions/actors are as follows:

- 7.3.1 Ministry of Environment is required to formulate policies and legislations related to water supply and sewerage, give approval to appropriate concepts and technologies for water and sewerage projects and implement public water supply and sewerage infrastructure projects.
- 7.3.2 The EPA is required to formulate and enforce national wastewater disposal guidelines, enforce licensing and registration of water supply and sewerage systems, carry out water quality tests on public water supplies for compliance monitoring and regulate the utilities in the water and sewerage sector.
- 7.3.3 The Utility Companies are required to provide safe water supply and sewerage services to island communities in compliance with laws, regulations and standards set by Government of Maldives and operate, monitor and maintain water supply and sewerage infrastructures in islands for sustainable delivery of its services.
- 7.3.4 The Health Protection Agency (HPA) is required to ensure safety of water source and its suitability for human consumption and free from micro-organisms, develop Water Safety Plan (WSP) and guidelines and monitor and evaluate WSP implementation.
- 7.3.5 The Ministry of Health is required to facilitate in promoting good sanitation practices and to carry out water quality testing for compliance.
- 7.3.6 Ministry of Tourism is required to ensure compliance with desalination regulations, ensure compliance with wastewater disposal guideline and ensure compliance with dewatering regulation.
- 7.3.7 The EPA is also required to carry out water quality test on public water supplies for compliance monitoring.
9. *What consultation and participation processes are in place during the planning and design phase? Please provide information on measures adopted by your Government to ensure the active, free and meaningful participation of affected populations in such processes.*

See no. 4.1 and 4.2 above

### **Stage 3: Licensing and Approval**

***10. What licensing or approval procedures are in place for construction and operation? What actors are involved in granting licensing or approval for mega-projects and how does the existing procedures related construction and operation of mega-projects incorporate a human rights perspective?***

10.1 The main mega-projects carried out in the Maldives either relate to construction of infrastructure, such as housing, or development of tourist resorts. Both of these projects have separate approval mechanisms for construction and operation. Housing projects are overseen by the Ministry of Housing and Urban Development, and other infrastructure projects by the Ministry of National Planning and Infrastructure. Tourism related projects are overseen by the Ministry of Tourism.

10.2 Approvals are given to development concepts and detailed drawings/designs at the initial stage, before construction by the relevant Ministry. Once the development concepts are approved, approval is given to begin construction. During the construction period and during operation, regular inspections are carried out in accordance with respective agreements between the Government and the developer / lessee. If there are any non-compliance of any laws of the Maldives, construction or operation can be immediately stopped by the relevant authorities, in accordance with Maldivian Law. In all types of projects carried out in the Maldives, EIA reports are evaluated and approved by the EPA.

10.3 The Regulation on the Protection and Conservation of Environment in the Tourism Industry, requires any activity in an island or place leased for the purpose of tourism which may adversely affect the vegetation or fresh water lens of the island to be carried out after obtaining permission from the Ministry of Tourism.

**Stage 4 – 6: Construction, Short-term operation, and Long-Term operation**

***14. What legal and policy framework is in place to clarify the roles and human rights obligations and responsibilities of actors who are involved in the construction, short- and long-term operation phases? What legal and policy framework exists to regulate, oversight and monitor their performance from a human rights perspective?***

14.1 All actors involved in construction, short- and long-term operation phases are obligated to respect and comply with all the environmental laws of the Maldives, as well as the respective legislations applicable to the projects being carried out. The main legislation governing construction was enacted in April 2017, and is known as Law Number 4/2017 (Construction Act). The Act covers areas such as licensing and inspections and detailed steps which need to be taken if the construction being carried out creates health risks or poses danger. The Act also lists out the categories of

persons/entities involved in construction, who need to be registered, and sets out procedures of penalizing such registered persons/entities if in breach of the Act.

14.2 With regard to regulating, overseeing and monitoring their performance from a human rights perspective, the Human Rights Commission of the Maldives (HRCM) acts under Law Number 6/2006 (Human Rights Commission Act), and has the mandate of overseeing and ensuring the protection of all human rights of the citizens under the Maldives Constitution, Islamic Shari'ah and regional and international Human Rights conventions/treaties ratified by the Maldives.

14.3 The Commission possesses the power to inquire into and investigate complaints of infringement of human rights or foreseeable infringements of human rights of a person or persons filed at the Commission by a person or persons or a representative acting on their behalf. In that regard, a person can file a complaint where he or she feels that there is an infringement of a right with regard to a specific project taking place. HRCM can also investigate matters on their own initiative.

14.4 The Commission's mandate is an additional protection, as the Ministries responsible for the projects would undertake regular inspections and ensure aspects such as safety of workers, etc. For example, the Ministry of Tourism would regulate, oversee and monitor the performance of actors in construction and operation of tourist resorts in accordance with the Tourism Act of Maldives, while the Ministry of Housing and Urban Development or Ministry of National Planning and Infrastructure would regulate, oversee and monitor the performance of actors in construction of housing or other infrastructure projects in accordance with the Construction Act.

***15. What procedures and aids to access remedy are available when negative impacts of mega-projects amounts to violation or abuse of the human rights to water and sanitation?***

15.1 As detailed in 14.3 above, the HRCM is mandated to investigate all violations or abuse of human rights and forward it to the relevant state authority for action. These include forwarding it for additional investigation by the Maldives Police Service, or forwarding to the Prosecutor General's Office for prosecution.

15.2 Individuals affected by the negative impacts of mega-projects also has the right to obtain civil remedies by application to the civil justice system of the Maldives. Since the human rights to water and sanitation are enshrined in the Maldivian Constitution, violations of these rights will trigger the same procedures of remedy as any other fundamental right in Chapter 2 of the Constitution of the Republic of Maldives.