

Keynote Address

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Committee of the 3rd International HR Conference

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Keynote Address

The 3rd International HR Conference~ 2016

**NATIONAL HUMAN RESOURCE POLICY
FORMULATION AND IMPLEMENTATION:
A FIDUCIARY TRUST AND A DUTY ON
GOVERNMENTS**

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Salutations

Honorable Vice Chancellor of the prestigious University of Sri Jayewardenepura, Professor Sampath Amaratunge; The Dean of Faculty of Management Studies and Commerce, Dr. U. Anura Kumara; Distinguished Chairperson of this Conference Professor, Hemantha Kottawatta, (the Head of Department of Human Resource Management of University of Sri Jayewardenepura), Distinguished Speakers of this conference, Ladies & Gentlemen, I wish you all a very fruitful afternoon at this auspicious Third International HRM Conference 2016, organized by the Faculty of Management Studies & Commerce and hosted by the University of Sri Jayewardenepura of Sri Lanka.

Appreciations

Before we proceed with the subject matter of this conference i.e. HRM, on behalf of all the attendees to this auspicious Conference, I would like to express our heartfelt gratitude and appreciation to this world renowned University of Sri Jayewardenepura of Sri Lanka, for the warm and hospitable welcome we received and more importantly, for providing this invaluable conference platform to discuss and deliberate on the various critical issues concerning HRM in present times.

This Conference is indeed a golden opportunity for all of us to exchange our well researched and thought-out findings on HRM related matters, keeping in mind that “*Human Resource Management Research (HRMR) is a systematic activity to find answers for specific questions in relation to a particular HRM problem that has been specified lucidly*” as stated by Senior Prof. Dr. H.H.D.N.P. Opatha at the very 1st International HRM Conference in 2014.¹

In fact, the organizer’s purpose of this 3rd HR International Conference is also to create a forum of creating and disseminating new insights of knowledge in the part of developing farsighted leaders of the HRM educational field. There is no doubt that various stakeholders, researchers, educators, learners, academics, professionals and policy makers can gain valuable ideas, concepts, theories, research findings and applications in the

¹1st International HRM Conference, 2014, Department of Human Resource Management. University of Sri Jayewardenepura. Sri Lanka.

HRM field for their advancement. When we analysis the themes² selected for paper presentation to this 3rd HR Conference, it is very clear for all of us that HRM is such an important discipline which touches the lives of people from all walks of life since HRM is inter-related to various aspects of human life and behavior.

Therefore, this is the perfect forum for sharing practical insights of HRM issues with academics and professionals in the field of HRM, reminding ourselves that “*Human Resource Development (HRD) Concept has to move from Narrow Organization (HRM) Based to Wide Socioeconomic Perspective*” as stated by Dr. Muhammad Tariq Khan at the 2nd International HRM Conference.³

In this regard, moving towards the external factors affecting HRM, I wish to submit to this 3rd HR International Conference that “***national human resource policy formulation and implementation is a fiduciary trust and duty on national governments***”, the breach of which brings about serious consequential disruptions to HRM endeavours of private and public institutions. At this juncture, allow me to submit an abstract of my paper to this Conference as follows:

² General HRM Areas, Global HRM, Labour Law, Human Capital, Human Geography, HR Accounting/HR Costing, Work Psychology, Counseling, Organizational, Behaviour, Gender Issues, Human Ecology, Anthropology, Sociology, Social Security, HRIS, HR Governance and Green HRM.

³ 2nd International HRM Conference, Vol.2, No.1, 17th October 2015. Department of Human Resource Management, University of Sri Jayewardenepura.

NATIONAL HUMAN RESOURCE POLICY FORMULATION AND IMPLEMENTATION: A FIDUCIARY TRUST AND A DUTY ON GOVERNMENTS

Dr. Abdullah Shiham Hassan

Abstract

The consequential effect of national policy formulation and implementation regarding human resource management (HRM) of private and public institutions have been presented in this research paper by analyzing samples taken from national policies on employment and environment in the context of Republic of Maldives. The analysis has been presented basically through two perspectives. From first perspective, the effect of national policies on HRM has been viewed through the external factors affecting HRM, rather than the internal factors of HRM. On the contrary, the second perspective involves the effects of national policies on HRM internally within the legislations related to employment as well as externally through environmental factors.

The overall focus of the above said two perspectives is to analyze how national policy-making shortcomings related to human resource management (HRM) within any given country can be disruptive for HRM endeavours of not only private entities but public entities as well, especially when such policies are not in line with the respective HRM needs of such institutions. The findings would demonstrate the outcomes of shortcomings by governments to properly administer and implement national policies regarding human resource and how this could totally jeopardize the well-established human resource management procedures and endeavors of private and public institutions. The underlying reason for the effect of public policy on HRM of institutions has been identified and analyzed as the existence of the fiduciary relationship between governments and citizens whereby the institutions managed by the citizens are legally bound by any defective public policies.

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1. Introduction

Generally whenever human resource management is discussed, it is quite usual to focus on what has or has not to be done within organizations and entities in order to upgrade their HRM⁴ However, what goes on outside organizations do have consequential negative effects on the HRM activities of organizations. In this regard, I would like to highlight the effect of government policy-making defects with regard to issues related to human resource management (HRM) within any given country. In fact, government policy-making defects have been quite disruptive for HRM endeavours of not only private entities but public entities as well, especially when such policies are not in line with the respective HRM needs of the particular sector of the economy. Furthermore, this dilemma of HR mismanagement is aggravated by some Governments' inability to properly administer national policies regarding human resource whereby the well-established human resource management procedures and endeavors of private and public institutions eventually gets totally jeopardized. Therefore, such external factors affecting HRM should be scrutinized and attended consistently.

In fact, as stated by Sajeewanie and Opatha,⁵ factors affecting the practice of SHRM in an organization can be identified in two categories: external factors and internal factors. External factors affecting the practice of SHRM may include Social, Cultural, Political and Economic factors.

- Changing economic conditions directly influence all operations of any organization, including its human resource activities. Also the human resource laws and regulations of governments have become increasingly important to employees (Milkovich and Boudeau, 2000).
- According to Gratton et al (1999) the significance of environmental and contextual factors has been long acknowledged in shaping human resource strategies, and in the ability of the company to realize these strategies. The growth of the concept of a strategic approach to managing people can be attributed to rapid

⁴ Human resource management (HRM) can be defined as the effective use of human resources in an organization through the management of people-related activities.

⁵ T. L. Sajeewanie and H.H.D.N.P .Opatha, "Relationships between Human Resource Manager-related Factors and Practice of Strategic Human Resource Management in Sri Lankan Listed Firms." Sri Lankan Journal of Human Resource Management, Vol. 1, No. 1, 2007.

environmental changes that have taken place over the last two decades. These environmental influences operate at a general level, and at a more specialized level concerned with the organization's own significant environment.

Although the emphasis here is on external factors, we have to analyze the external factors in view of internal factors affecting the practice of SHRM.

- According to Budhwar (2000), the general HRM policies and practices (such as selection, development, performance evaluation) are determined by a set of traditional contingent variables (such as age, nature and size of the organization).
- According to Khatri (1999) the four most important factors for managing HRM strategically are business strategy, organizational culture, competency levels of HR managers, and presence of HR strategy.

2. Fiduciary Relationship between Governments and Citizens

Fiduciary duties arise in the context of a trust relationship.⁶ A fiduciary is a person or corporation that stands in a position of trust to another person or corporation, with corresponding duties. The breach of that duty is compensable in damages. In the last several decades, the law relating to fiduciary duties in a civil context has expanded and has been clearly defined. It is therefore important to look at whether these developments have had any impact on provincial/municipal liability.

*Lac Minerals Ltd v International Corona Resources Ltd*⁷ is a leading Supreme Court of Canada decision on the nature of fiduciary and confidential relationships that can be created in the course of business, together with appropriate remedies for restitution when such relationships are breached. The Supreme Court of Canada has set out the following three conditions that must be present for a fiduciary relationship to exist:⁸

1. The fiduciary has scope for the exercise of some discretion or power;

⁶*Fiduciary Duties in Government/Municipal Liability Litigation*. Charles M. K. (Chuck) Loopstra. January 1, 2006.

⁷*Lac Minerals Ltd. v. International Corona Resources Ltd.* 1989 CanLII 34, [1989] 2 SCR 574 (11 August 1989)

⁸*Ibid.*

2. The fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests; and,
3. The beneficiary is subject to peculiar vulnerability in the exercise of that discretion or power.

The noteworthy aspect is that the Court is reluctant to impose fiduciary duties on arm's-length commercial parties, and that such duties should not supplant or amplify other more appropriate causes for action. The fiduciary relationship, if one exists, involves a duty of loyalty, the utmost of good faith, and the avoidance of self-dealing or conflict.

In this regard, human resource management procedures and endeavors of private and public institutions eventually gets totally jeopardized because the institutions managed by the citizens are legally bound by the defective public policies and are obliged to comply with the administrative procedures that are laid out by their respective governments due to the fiduciary relationship between governments and citizens.

The traditional view has been that governments do not owe a fiduciary duty to its citizens. The turning point occurred in 1984 when the Supreme Court of Canada observed that although fiduciary duties generally arise only with regard to obligations originating in a private law context, there is nothing in principle to prevent the Crown from acting as a trustee. Dickson J. stated:⁹

"...that where by statute, agreement, or perhaps by unilateral undertaking, one party has an obligation to act for the benefit of another, and that obligation carries with it discretionary power, the party thus empowered becomes a fiduciary. Equity will then supervise the relationship by holding him to the fiduciary's strict standard of conduct."

3. Human Resource Policy Implications for HRM Maldives

No country can perhaps claim to be self sufficient in their human resource capacity and access for foreign human resource may vary from country to country depending on their respective needs. Furthermore, wherever the employments are lucrative, the more foreign inflow of human resource would occur, just as the fish moves to the water naturally. However, what

⁹*Lac Minerals Ltd. v. International Corona Resources Ltd.* 1989 CanLII 34, [1989] 2 SCR 574 (11 August 1989)

is unnatural may be when that the water gets so badly polluted due to the disproportionate or unbearable number of fish that moves into the water pond at a given moment in time. To be very precise and direct to the issue of concern, no country should voluntarily or involuntarily be burdened with the inflow of foreign human resource, to the extent the inhabitants become vulnerable in various aspects of their lives.

3.1. Migrant Workers¹⁰

The fact of the matter is that the most pressing employment issue or challenge facing the Maldives today is the issue of migrant or, as is commonly referred to in the Maldives, expatriate workers. The governmental authorities are unable to confirm the total number of migrant workers. The concerned Ministry publishes the figure for legal migrant workers but estimates the figure to be much higher as the databases are not accurate. The current situation with respect to migrant workers was created by the unprecedented economic growth of the past two decades and the inability to train Maldivians for the jobs that were being created.

- The growth in per capita income of the Maldives and the relative affluence compared to other South Asian countries provided opportunity to employers in the Maldives to gain from relatively low wages demanded by migrant workers.
- The number of companies and agencies providing recruitment services grew. The procedures established for issuing work permits required substantial paper work thereby increasing the demand for the services of employment agencies. Eventually the processing of work permits of foreign workers through employment agencies became mandatory.
- The demand for foreign workers in the Maldives gave many workers in neighboring countries an impression of affluence in the Maldives and hence, of lucrative jobs.
- Many foreign workers, especially Bangladeshi nationals are promised high wages and good jobs by employment agents in Bangladesh and sometimes by Maldivian employment agents and pay large sums of money as commission to such agents to secure jobs. In most cases, foreign workers sell all their belongings and sometimes belongings of their spouses or family in order to pay

¹⁰Maldives Migrant Worker System Assessment Report -2015. Advocacy and Legal Advice Centre (ALAC) of Transparency Maldives (TM).

commission to employment agents. Many such workers, on their arrival in the Maldives, find out that the situation is not what they were promised. The pay is much lower and the job that was specified is not available. Such migrant workers are forced to accept the jobs available at whatever pay that is offered so that they could earn back the sum paid as commission. Many are either illiterate or unable to communicate in English and thus, unable to express their grievance to any authorities. Some workers who sell their belongings and travel to the Maldives expecting a good job with a good salary are abandoned.

Migrant workers undoubtedly contribute to the economy of the Maldives

- Tourism and construction industries have become dependent on migrant workers for their sustenance. Some industries, such as tourism and construction, which heavily rely on migrant workers, cannot be sustained without migrant workers. Tourist resorts require resort owners and operators to maintain a ratio in employing foreigners, such ratios are not maintained and enforcement of the ratio does not appear a priority of the concerned authority.
- Maldives has continued to depend on foreign teachers since teaching in English medium began. Maldives has not been able to train sufficient number of accountants for the increasing number of companies and enterprises and has not been able to train adequate number of doctors or nurses to operate its hospitals and other health services without contribution from migrant workers.
- Migrant domestic workers have become a regular feature of Maldivian households: In fact it is difficult to imagine how household work could be managed without migrant domestic workers in many households today. In the absence of childcare facilities, migrant domestic workers have become the childcare “system”.
- Migrant workers in traditional fishing sector: Migrant workers in the Maldives today are engaged in work in all economic activities, including the traditional fishing sector. Some of them have formed groups on their own and carry out work on contract basis in Male’ and in the atolls.

- Migrant workers often solicit work to clean vehicles at parking areas: Migrant workers wait at parking areas and solicit work to wipe or clean parked vehicles. On weekends and public holidays, migrant workers fill the public parks in Male' and other major population centers, causing alarm and ringing warning bells of the looming social crisis.
- Similar to other countries which are host to migrant workers, migrant workers in the Maldives also do not enjoy much social protection and are vulnerable to exploitation.

However, the status of migrant workers employed in the categories of senior management, professions and skilled workers is different from other categories of migrant workers and they enjoy a status similar to nationals, if not at times better. Mention must also be made here of the fact that the *International Convention on the Protection of the Rights of All migrant Workers and Members of their Families* is the only convention so far not ratified or acceded to by the Maldives from the nine core international human rights treaties.

Following are issues that call for urgent action from a human rights perspective with respect to migrant workers:

(I) Inadequate Housing:

The Ministry of Tourism has made regulations concerning the construction of housing for staff on tourist resorts and potential developers of resorts when submitting bid proposals make specific proposals for staff housing on resorts. Other than the regulations of the Ministry of Tourism, there are no regulations governing housing provided to employees. There are no mechanisms for monitoring staff housing or accommodation provided to employees by employers.

Their complaints are not heard by any authority and there is no authority to which they could submit their complaints. Such activities of employment agents in the Maldives and agents in the source country amount to human trafficking as defined in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime. Such trafficking is one of the primary causes for the increase in the number of illegal immigrants. The concerned authorities can only make a guess of the number of foreign workers in the Maldives. The

exclusivity given to employment agencies to process work permits of foreign workers is one of the main reasons for the increase in the number of foreign workers both legal and illegal.

Except for a very few government owned corporations and one or two private companies, housing provided to migrant workers by employers is inadequate and often not suitable for human habitation. Such accommodation facilities over crowded, lacking in proper ventilation and without adequate sanitary facilities and in most cases without fresh water or with limited amounts of fresh water.

(ii) Non-payment of wages:

Many instances of non-payment of wages to migrant workers by their employers are reported daily. There have been cases of migrant workers gathering at the relevant Ministry in protest and other forms of protests over non-payment of wages.

(iii) Illegal migrant workers:

Local daily newspapers carry several notices of government authorities asking for information relating to the whereabouts of migrant workers, which is indicative of the magnitude of the issue of illegal migrant workers.

- The number of migrant workers soliciting work at parking areas and harbor areas of Male' and several other islands or sitting idle at parks are evident of the defects in the laws and regulations relating to foreign workers and of the weaknesses or indifference to enforcement by relevant authorities.
- Many of the illegal foreign workers are workers who have been sponsored by some employer and processed by an employment agency and then been abandoned or foreign workers who have come under tourist visas with the assistance of a compatriot and who has not been able to yet find work.
- Illegal workers engage mostly in low paying day jobs or find something to do for any sum, however little that may be.
- Illegal migrant workers are also vulnerable at their work sites where the migrant workers were not paid their wages for several months.
- Exploitation by unscrupulous employers as they would be reluctant to resist it because of their illegal status and their situations

undergo little monitoring by any authority, often leading to gross violations of the rights of these human beings.

- Migrant workers who arrive legally also contribute to the problem of illegal migrant workers by earning commission from their friends and relatives at home to assist them in coming to the Maldives to seek work with promises of good jobs that pay well.
- Male' with its limitations of available housing and other facilities and the high costs of living place the illegal migrant worker in a very serious situation of deprivation, where the migrant worker has to seek assistance from a compatriot for temporary shelter and food.
- This leads to an increase in the debt already incurred to pay commissions to agents. Illegal migrant workers burden the already stretched out economic resources and social services of the Maldives.

Recommendations of the experts on these issues are as follows:

1. Consider establishing a separate bureau for expatriate workers with the responsibilities to issue quotas to employ expatriate workers and work permits, to collect and maintain statistics with respect to expatriate workers and to deal with complaints of and other matters relating to expatriate workers.
2. Consider ratification of or accession to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
3. Consider requiring registration of expatriate workers employed in islands other than Male' at the island office or at the administrative office of the island concerned.
4. Consider requiring entry visas be obtained from the Maldivian High Commission/Consulate in the country concerned for nationals of countries subject to trafficking in order to prevent human trafficking. Maldivian High Commission/Consulate concerned could check the permission issued for the employment of the applicant and/or other relevant documentation prior to issuing the visa.
5. Include provisions in a housing code setting minimum standards for accommodation of workers.
6. Consider amending the requirement to engage an employment agency for processing work permits of expatriate employees. Such

a measure would allow principal employers in the country to process work permits of their expatriate employees on their own and discourage trafficking by some measure.

7. Conduct regular inspections of work sites and accommodation provided to migrant workers to ensure that national standards are complied with
8. Ensure that tourist resorts maintain the agreed ratio of Maldivian and expatriate employees.

3.1.5. Membership of International Labour Organisation (ILO)

After Maldives becoming a member of the ILO in May 2009, it must be the primary priority of the government of Maldives to ratify and fully implement the eight core conventions and to bring its labour law and practice in line with international labour standards. The government of Maldives could request from ILO¹¹ for and obtain assistance in establishing national labour standards in line with international labour standards, drafting relevant laws and regulations, establishing and organizing trade unions and setting a culture of dialogue between employers and employees, establishing mechanisms to resolve labour disputes, strengthening labour administration and technical assistance in a number of other matters related to labour relations, thereby providing for better protection of employees' and employers' rights.

Recommendations of experts on these issues have suggested as follows:

1. Consider ratification of/accession to ILO Conventions.
2. Complete the procedures for becoming a member of the International Labour Organization without further delay.

3.2. Enforcement of the Employment Act of Maldives

With regard to enforcement of the Employment Act 2008, little, if any, has been done to implement the Act. The institutions provided for in the Act have not started to properly function. Few of all the parties were aware of the existence of the Labour Relations Authority created under the Act. The

¹¹ The International Labour Organisation (ILO) was founded in 1919 and became a specialized agency of the United Nations in 1946. It currently has 182 member states. The ILO serves the needs of working women and men by bringing together governments, employers and workers to set labour standards, develop policies and devise programmes. Its tripartite structure makes the ILO unique among world organisations because employers' and workers' organisations have an equal voice with governments in all its deliberations.

Employment Tribunal has not issued its rules of procedure, although a date for the issue of the same was expressly stipulated in the Act. Courts refuse to accept cases relating to employment disputes and people involved in employment disputes are denied justice.

Few employers have, in fact, concluded employment agreements in accordance with the Act. Even government corporations are only in the process of bringing their employment agreements in line with the Act. Many private companies have not taken any steps to enter into employment agreements with their employees. Small employers such as shop owners and workshop operators do not show any intention to enter into such agreements. The same is true with respect to job descriptions, which too the law requires to be given to each employee in writing.

Law enforcement is generally weak in the country and prevailing attitude of impunity in the country is the main reason for non-enforcement of the Employment Act. According to others, the Act was formulated without proper consultation with the principal employers in the country and thus the interests of industries with high numbers of employees were not taken account of. Such employers argue that it is impractical to implement the Act and if they were forced to do so, they will not be able to bear the resulting costs and hence, their business will suffer.

Maldives Association of Tourism Industry insists that the Employment Act does not take into consideration the rights of employers and for the most part protects only the employees. MATI has undertaken considerable work to review the Act by engaging lawyers to compare the Act with legislation of other countries and has submitted its concerns to competent government authorities calling for the amendment of the Act. Some of the issues raised by MATI are:

- Ambiguity of provisions terms and phrases.
- Inclusion of Friday as an official public holiday is unworkable.
- Annual paid leave of one month may be unworkable for the tourism industry.
- Over time rates, particularly those for Friday and other public holidays are not appropriate for tourism industry.
- A number of employment agreements are based on company best practices and the implementation of the Act would result in resorts having to rewrite their agreements.

- Calculations/guidelines for wages should be at the discretion of the employer and should not involve intervention by the Minister.
- Granting an extra day in place of every public holiday falling into the period of leave is not in the best interests of the employer.
- Need to ascertain whether minimum wage will be fixed separately for different industries or whether a national minimum wage will be fixed.
- In the tourism industry, employees are free to move about as the employer is compelled to maintain a local expatriate ratio, where there is a severe shortage of skilled or even semi-skilled employees to fill the growing demand for labour.
- Employers are not at liberty to state the reasons for dismissal of the employee or to include employer's comments in the reference and this contribute to the mobility of employees from one employer to another for petty increases in salary.
- All industry/segment heads should be included as members of the Employment Tribunal.
- The period of 45 days given for the implementation of the Act was too short as a number of management companies are based outside the Maldives.

Similar concerns were also expressed by the Maldives Association of Construction Industry (MACI) Maldives National Chamber of Commerce and Industry and by almost all the employers.

Although a few of the government controlled corporations and a number of private employers have taken some steps towards compliance with the Act, by and large the Employment Act of 2008 has been ignored by employers in general.

Recommended solutions of the experts on these issues are as follows:

1. Review and amend the Employment Act for the purpose of facilitating the implementation of the same. For this purpose, there is an urgent need to consult with the existing employers' associations and employees' associations, government controlled companies, Civil Service Commission, individual employers who are not members of any employers' association, the principal employers in the country, employees who are not members of any

employees' association in order to obtain their views on the Act and to ascertain reasons and obstacles to its implementation.

2. Consider holding a national conference on human resources/employment/labour. Such a conference should be participated by employers' associations, employees' associations, major employers, managers of human resources of major employers and selected employees that would represent a cross section of employees. Such a conference could be initiated and held by the competent government authority and participation by ILO could be requested. Deliberations at such a conference would assist identify the concerns of employers and employees relating to the Act and the practical issues of implementation of the Act and would assist address such concerns and resolve such issues. Such a conference could also be a forum for exchanging ideas and information among managers of human resources and would be a start to establishing a mechanism for tripartite consultations.

3.3. Employment Agreement

Article 13 (b) of the Employment Act expressly states that there shall be a written employment agreement (consisting of one or several documents) between every employer and employee. However, employment agreements are not a common practice for Maldivian employees. The Civil Service employees have a symbolic agreement that dates from the initial introduction of employment agreements in 1994. Employment agreements are yet to be signed by all members of the Civil Service in line with the new Employment Act.

All employers sign employment agreements with all their expatriate employees as it is a requirement for them to process work permits/visa for foreign employees. Some larger private companies do sign employment agreements with their Maldivian employees as well. However, in both cases, the employees are not familiar with the contents of their agreements and in most cases do not have a copy of their employment agreements. Many employers employing a few employees, such as shop owners, work shops and garage operators, restaurant and café operators do not sign employment agreements with their Maldivian employees. Most employers employing a few employees consider the requirement to sign an employment agreement with every employee an additional administrative cost, which they do not seem eager to take.

It has been noted that there is a general belief among the smaller employers especially in the atolls, that such provisions of the law will not be implemented. Such employers are of the view that it is the employment agreement that gives rights to an employee and that if such an agreement is not signed, there would be no obligation to provide such rights to the employee and employees would not have a basis for making claims with respect to their employment. As a result, the lack of employment agreements often leads to unfair dismissal and abuse of employee rights by irresponsible employers. This is further supported by the fact that the majority of employment related complaints to the Human Rights Commission of the Maldives are about unfair dismissal.

Although no exceptions are made in the law, the Employment Act does not seem to address the employment situation of fishers engaged in fish harvesting. Fishers do not enter into employment agreements with owners of fishing vessels and in view of the informal manner in which vessels are operated for fish harvesting, it may not be practical for owners of such vessels relationship as envisaged in the Act to enter into a formal employment

Recommendations of experts on these issues have been as follows:

1. Review the requirement to sign written employment agreements by every employer with every employee and amend the Employment Act accordingly. As generally with contracts, employment contracts could also be in writing, oral, express or implied. All employers in every employment situation should be required to at least maintain the minimum standards required by the law, whether the employment contract is written, oral, express or implied.
2. Consider developing employment agreement forms with standard minimum terms and conditions for various sectors/categories of employment. Such agreement forms could help employers comply with the requirements of the Act with respect to employment agreements and could serve as a mechanism for promoting employment standards set in the Act.

3.4. Disputes and Strikes

Article 31 of the Maldivian Constitution states that every person employed in the Maldives and all other workers have the freedom to stop work and to

strike in order to protest. This newly granted constitutional right to strike combined with the pro- democracy activities of the past 4 to 5 years in the Maldives have emboldened many Maldivians and are on the verge of a work stoppage or a strike whenever any dispute arises with an employer. The Teachers' Association of Maldives TAM has taken action to protest the fact that teachers have not been given a pay increase as promised to them by the relevant authorities. Tourism Employees Association of Maldives (T.E.A.M) organised a nation wide industry strike to demand an amendment to the Employment Act to extend the scope of Chapter 4 of the Act to employees of tourist resorts. The Act was amended to that effect prior to the date set for the strike. T.E.A.M again organised a work stoppage at a luxury tourist resort managed by an internationally renowned hotel chain to protest working conditions, failure to implement the Employment Act and to demand the removal of one of the executives at the resort. The dispute was settled with intervention and mediation at the highest level of the government. Since and prior to that, work stoppages have taken place with and without the involvement of T.E.A.M at a number of tourist resorts for various reasons, mostly related to working conditions, wages, implementation of the Employment Act or treatment by individual executives. Although there have been occurrences of work stoppages at individual work places even prior to the constitutional grant of the right to strike and before the pro-democracy movement took up momentum, the Maldives has not seen protests at the work place at such frequency and on such a scale ever, causing alarm to employers and scaring away potential investors.

The threat of work stoppages and strikes to tourism and construction industries is unsettling for many investors. The threat of such action, and the reasons for and manner of such work stoppages and strikes would also have a discouraging effect on potential foreign investors at a time when the government is about to undertake or is planning major development projects with involvement by foreign investors. The threat of such action by members of the civil service, such as doctors, state lawyers and nurses destabilizes the functioning of the government. However, efforts by the Civil Service Commission, competent government authorities, employers' associations and individual authorities to prevent work stoppages and strikes by resorting to interpretation of relevant provisions of the Constitution, the Employment Act and other legislative acts is both controversial and counter productive.

The right granted in the Constitution to strike as a means of protest is unambiguous. Hence, in the current environment of democratic reform in the country the attitude should be to provide, facilitate and guarantee the rights granted by the Constitution and restrictive interpretations should be avoided.

Recommended solutions of the experts on these issues have been as follows:

1. Labour Relations Authority should be strengthened to enable it to immediately initiate talks with parties to current disputes and function as a mediator to such disputes.
2. Consider establishing an Advisory and Conciliation Service which will provide advice, assistance and facilities for mediation to various parties involved in employment disputes with a view to reaching a settlement. The purpose will be to discuss and negotiate a settlement between disputing parties and avoid costly strikes and work stoppages. Such an Advisory and Conciliation Service should function until a Trade Union and Labour Relations Act is formulated and enacted and such a Service and other mechanisms for settlement of employment disputes are established under such law.

3.5. Dispute Settlement

Chapter 10 of the Employment Act provides for the establishment of an Employment Tribunal and contains provisions relating to the powers of the Tribunal and the composition of the Tribunal. The Amendment Act amended Clause 86 of the Employment Act relating to the composition of the Employment Tribunal providing for the qualifications for office of members of the Tribunal, appointment and termination of members of the Tribunal and financial matters of the Tribunal. Article 87 of the Employment Act stipulates that rules of procedure of the Tribunal shall be published within three months from the date of entry into force of the Act.

However, although the Tribunal was appointed towards the end of December 2008, the rules of procedure of the Tribunal are yet to be issued and hence, the Tribunal has not started to function. Although the Tribunal has not yet started to function, the Civil Court and other Courts with jurisdiction to hear employment related cases have since the entry into

force of the Employment Act refused to accept or hear employment related cases, thereby denying those with labour/employment disputes access to justice.

Recommended solutions by the experts are as follows:

1. Issue and publish the rules of procedure of the Employment Tribunal and take appropriate measures to commence the functioning of the Employment Tribunal without delay.
2. Review the Employment Act in order to amend it to provide for employment cases to be filed and heard in island courts. Many employees in the atolls will not be able to afford to travel to Male' or to engage lawyers to submit their complaints to a single employment tribunal sitting in Male' and as a result will be denied the right to submit complaints and grievances as provided for in the Employment Act. Hence, the jurisdiction of island courts to hear employment disputes where it is impractical or unreasonably costly to submit employment disputes to the Employment Tribunal should be reaffirmed in the Employment Act.
3. Formulate and enact a law on Trade Unions and Labour Relations and in such a law provide for mechanisms for the settlement of employment disputes. Such mechanisms should include an Advisory and Conciliation Service, which will provide advice, assistance and facilities for mediation to various parties involved in employment disputes with a view to reaching a settlement. A law on Trade Unions and Labour Relations should provide procedures for addressing employee grievances and mechanisms for conciliation. Such a law should also provide for arbitration as an alternative mechanism for settling employment disputes.

3.6. Residency at Workplace

Maldives being a nation of small islands with small isolated communities poses unique development challenges. Such challenges need to be addressed taking into consideration the unique geography of the Maldives, the small size of the population, the cost of providing services to small isolated communities and the cost of transportation from island to island. Tourism, which provides most job opportunities in an organised work environment, is based on facilities organised on uninhabited isolated islands. Tourism in the Maldives is based on the concept of isolated islands developed as tourist resorts. Industrial works, in most cases, are carried out

on isolated uninhabited islands. Separate uninhabited islands are also leased for agricultural purposes. Hence, all tourist resorts, industrial works and agricultural undertakings require their employees to reside on or at the work sites, i.e. at “staff quarters” on the resort island, industrial or Factory Island or the agricultural island.

This situation is very similar to that of international seafarers. Although the employees on tourist resorts of Maldives or on islands where industrial works are carried out may not be subject to extreme weather conditions or rough oceans, they are subject to all other harsh conditions of work faced by seafarers. Having to work on isolated islands while residing on such islands, at work sites for extended periods of time, such workers are vulnerable and subject to social exploitation, abuse, non- payment of wages, non-compliance with contracts, and exposure to poor diets and living conditions. Humans being social beings, require a family life in a community environment. Maldivians, who are compelled to spend most of their life at work sites on uninhabited islands, and their families are deprived of a family life and as a consequence contribute to the innumerable social problems facing the nation today. The Constitution of the Maldives echoes in its Article 34, the recognition provided to the family as the natural and fundamental group unit of society and the requirement for special protection to be accorded to the family by society and the State provided for by Article 16 of the Universal Declaration of Human Rights, Article 10 of the International Covenant on Economic, Social and Cultural Rights and Article 23 of the International Covenant on Civil and Political Rights. The government needs to take urgent action to accord the special protection that it is obliged to provide to the family under the Constitution and the relevant international instruments.

Furthermore, the arrangement of economic activities on isolated uninhabited islands and workers having to reside on the same are discouraging female workers and educated youth from seeking employment on such islands. Hence, urgent action is needed to find a solution to the economic and social issues resulting from the present arrangement of compelling workers to reside at work sites on isolated uninhabited islands.

Recommendations of experts are as follows:

1. Review the current policies and arrangements requiring employees of resorts and islands with industrial and agricultural projects to reside on such islands and consider establishing housing facilities in nearby inhabited islands for employees to reside with their families. Providing housing/accommodation for employees of tourist resorts and islands with industrial and agricultural projects in nearby inhabited islands with their families and facilitating commuting between the inhabited island and the island where the person is employed would increase the productivity of the employees and prevent the social and employment problems that result from keeping all the employees confined to the staff quarters at the work site for extended periods of time.
2. Consider inclusion in the broader national housing policies, and hence, the national development agenda, the issue of providing housing for employees of resorts and islands with industrial and agricultural projects in nearby inhabited islands, so that such employees could relocate their families to such inhabited islands. The objective of such effort would be to facilitate workers to return to their families after work every day so that they could spend their leisure time with their families, which will contribute to the strengthening of families and avoiding the social problems that are associated with children growing up without their fathers at home. It would further encourage females to seek employment at tourist resorts and other such islands. Implementation of International Labour Standards.

4. Implementation of International Labour Standards

4.1. Freedom of Association

The principle of freedom of association is enshrined in the Constitution of ILO and lies at the center of the ILO's values. It is also a right proclaimed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The fundamental ILO conventions relating to freedom of association set forth the right of workers and employers to establish and join organisations of their own choosing without previous authorization.

Article 30 of the Constitution of the Republic of Maldives grants everyone the freedom to form associations and societies, including the right to establish and participate in any association or society for economic, social, educational or cultural purposes and the right to form trade unions, to participate or not participate in their activities. This is the first mention of trade unions in any law of the Maldives and is a fundamental departure from the earlier position that trade unions did not have a role in the Maldivian society since there was no unemployment in the Maldives and complaints regarding working conditions were not a common occurrence in the Maldives.

The Employment Act of the Maldives does not mention trade unions and there is no law on trade unions in the Maldives. The existing organisations/associations active in the area of workers' rights were registered with the Registrar of Associations at the Ministry of Home Affairs under the Law on Associations (Law No.1/2003). Hence, such associations do not have a status different from other non- governmental organisations and do not have the legal capacity to function as trade unions and to enter into negotiations or take action on behalf of workers they represent. Some employers and the existing employer's associations, Maldives Association of Tourism Industry (MATI) in particular, question the competency of such employee's associations to represent their employees.

The Teachers' Association of the Maldives (TAM), Tourism Employees' Association of Maldives (T.E.A.M) and Fishermen's Association are among the most active associations that have been established to protect and promote the interests of the employees of the respective profession. T.E.A.M has taken a lead role on a number of occasions in organizing work stoppages to protest working conditions and working hours. Similarly, the Teachers' Association has taken action to protest low wages and has been making their case to the concerned government authorities. The actions of such associations are hindered by the uncertainties with respect to their status, mandate and in general, due to the lack of a law prescribing their role, functions and procedures for them to engage with employers and employer's associations to negotiate terms of employment.

Recommended solutions for the way forward are as follows:

1. Formulate and enact a law on trade unions or workers' associations. Such law should provide for the free organisation of employees' associations and prevent the dissolving or suspension of such associations by administrative authority and should grant such organisations the right to establish and join federations, with the right to affiliate with international organisations of workers and employees.
2. Engage a consultant (perhaps with the assistance of ILO) to assist in the establishment of trade unions and to advise workers' groups in the establishment, functions, operation and management of trade unions.

4.2. Collective Bargaining

The Right to Organise and Collective Bargaining Convention of 1949 provides for measures to be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with the aim of regulating terms and conditions of employment by means of collective agreements. Freedom of association and sound collective bargaining practices together ensure that employers and workers have an equal voice in negotiations and that the outcome will be fair and equitable. Collective bargaining allows workers and employers to negotiate a fair employment relationship and prevents costly labour disputes.

The concept of collective bargaining is unknown in the Maldives. In the absence of functioning workers' associations and laws on trade unions and labour relations, it is not surprising that the concept of collective bargaining is yet to be introduced to the Maldives. The organisation and establishment of employers' and workers' associations is a prerequisite for sound collective bargaining.

The recent discussions held between Maldives Association of Tourism Industry and Tourism Employees' Association of Maldives, which currently appear to represent the interests of employers and employees of tourism industry respectively, should be taken as a positive development indicative of the need for a formal mechanism for such negotiations.

Recommended solutions of the experts are as follows:

1. Organise workshops/seminars on collective bargaining and collective agreements with simulation exercises for employers and employees.
2. Formulate and enact a labour relations act (Law on Trade Unions and Labour Relations, to provide for the regulation of relations between employers and workers and their trade unions and the prevention and settlement of any differences or disputes arising from their relationship and generally to deal with labour disputes.

4.3. Forced Labour

Forced Labour Convention of 1930 prohibits all forms of forced or compulsory labour, which is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” Exceptions are provided for work required by compulsory military service, normal civic obligations, as a consequence of a conviction in a court of law, in cases of emergency, and for minor communal services performed by the members of a community in the direct interest of the community. The convention also requires that the illegal extraction of forced or compulsory labour be punishable as a penal offence, and that ratifying states ensure that the relevant penalties imposed by law are adequate and strictly enforced. Forced labour today is universally condemned.

The Constitution of the Maldives in its Article 25 (a) states that no one shall be held in slavery or servitude, or be required to perform forced labour. Article 25 provides exceptions for compulsory military service, service required in cases of emergency or calamity threatening the life or well-being of the community, and service required pursuant to a court order. This provision of the Constitution of the Maldives is almost identical to the prohibition contained in the Forced Labour Convention of 1930.

Article 3(a) of the Employment Act of 2008 very categorically states that no person shall be compelled or forced into employment and defines forced employment as any service or labour obtained from a person under threat of punishment, undue influence or intimidation, and does not include services or labour performed of his own volition by any person. Labour carried out by, or services obtained from a person under the control and supervision of the relevant State Authority in pursuance of a court order or

labour or services obtained to the extent deemed reasonable in instances of emergencies which may pose risk to the life or well being of the entire population or a section of the population are excluded from the definition of forced employment.

However, illegal extraction of forced or compulsory labour is not a punishable penal offence under any law of the Maldives. The employment Act prohibits forced labour as a principle to be followed by employers and provides for filing a complaint with the Employment Tribunal in the event of non-conformity to the principle. In case of such complaint, the Employment Act empowers the Employment Tribunal to issue an injunction or an order to reinstate the employee or to restore a benefit to the employee or to pay compensation.

Although the prohibition of forced labour appeared in a statute for the first time only in 2008, forced labour in the form of coercive recruitment has not been evident in the Maldives.

- However, some girls and boys who migrate to Male' from outer islands for educational purposes are compelled to work as domestic workers. The house work done by such children cannot be said to be voluntary in the cases where their continued stay in such houses depends on such children obediently doing house work as required by the owners of houses.
- No evidence was found of men, women and children being tied to work through debt or of trafficking in women and or children or of their being sold into forced prostitution or other work places as may be found in some other South Asian countries. However, some cases of girls
- Some domestic workers, especially migrant female domestic workers are at times trapped in situations of forced labour, and are in many cases restrained from leaving the employers' home through threats and other means.
- Although the situation of migrant workers who work as labourers in the Maldives is grim, and may not technically be defined as bonded labour or forced labour, questions may be asked as to whether such labourers are free to leave their employment at will. Some migrant workers from neighboring countries pay large sums as commissions to get employment and may not be in a position to

leave their employment before they are able to earn back at least the amount paid as commission.

Recommended solutions for the way forward are as follows:

1. Prescribe punishment in law for forced labour and for holding workers in bondage.
2. Conduct regular inspections of work sites to ensure elimination of forced.

4.4. Bonded Labour and Child Labour

The Minimum Age Convention of 1973 sets the general minimum age for admission to employment or work at 15 years, 13 years for light work and 18 years (16 under certain strict conditions) for hazardous work. It further provides for the possibility of initially setting the general minimum age at 14 (12 for light work) where the economy and educational facilities are insufficiently developed. The Worst Forms of Child Labour Convention of 1999 defines as a “child” a person under 18 years of age and requires states to eliminate the worst forms of child labour, which, inter alia, include work which is likely to harm the health, safety or morals of children.

Chapter 3 of the Employment Act of the Maldives deals with child labour. Article 6 of the Employment Act prohibits the employment of a minor under the age of sixteen except for the purpose of training in relation to such minor’s education. The Article makes an exception for children participating, with their consent, in work undertaken by their families. Article 7 of the Employment Act prohibits the employment of a child (below 18 years of age) in any work or employment that may have a detrimental effect on a child’s health, education, safety or morals due to the work or job undertaken or the conditions of work. Article 8 of the Act requires parental consent be obtained for employing minors. Article 9 of the Act prohibits the employment of a minor during school hours of such minor and after 11.00 pm at night. Those who employ minors are required to maintain a register of minors employed containing their names, addresses and dates of birth (Article 10 of the Employment Act). Article 11 of the act requires a medical fitness test prior to employing minors on vessels and further such tests for continued employment on vessels. The punishment that the Act prescribes for violation of the provisions of the Act relating to child labour (a fine of Rf 1000 to Rf 5000) does, however, seem to lessen the gravity of such offences and the harm that such

violations could cause to a child. Instances where household poverty and broken family circumstances forced children to seek employment in the informal sectors and were subject to exploitation. Note also must be made here of the under aged children who migrate to islands other than islands of their birth for educational purposes and are placed in situations where they are forced to work as informal domestic workers in exchange for accommodation and food.

Recommended solutions for the way forward are as follows:

1. Labour Relations Authority and Department of Child and Family Protection should conduct a joint survey to assess the situation of child labour in order to determine measures to be taken to eliminate child labour.

4.5. Equality of Opportunity and Treatment

Freedom from discrimination is a fundamental human right and is essential for workers to choose their employment freely, to develop their potential to the full and to reap economic rewards on the basis of merit. The Equal Remuneration Convention of 1951 requires parties to the convention to ensure the application of the principle of equal remuneration for men and women workers for work of equal value. The Discrimination (Employment and Occupation) Convention of 1958 defines discrimination as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. It requires ratifying states to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in these fields. This includes discrimination in relation to access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 17 (a) of the Constitution of the Maldives states that everyone is entitled to the rights and freedoms included in Chapter 2 of the Constitution (Fundamental Rights and Freedoms) without discrimination of any kind, including race, national origin, colour, sex, age, mental or physical disability, political or other opinion, property, birth or other status, or native island. Further, Clause (b) of the same Article states that special

assistance or protection to disadvantaged individuals or groups, or to groups requiring special social assistance, as provided in law shall not be deemed to be discrimination. Article 37 (b) of the Constitution provides for equal remuneration for work of equal value and for equal opportunity for promotion. Article 4(a) of the Employment Act prohibits discrimination amongst persons carrying out equal work either in the granting of employment, determination of remuneration, increase in remuneration, provision of training, determination of conditions and manner of employment, dismissal from employment or resolution of other employment related matters, based on race, colour, social standing, religion, political beliefs or affiliation with any political party, sex, marital status, family obligations, and in so far as it does not contravene the provisions of the Act, age or disability. Article 4(b) provides that the implementation of any principles, activities or programmes for assisting those disadvantaged would not be deemed discrimination. Article 4(c) of the Act states that consideration of matters such as educational qualifications required for employment, aptitude, experience and such other matters directly related to employment would not amount to discrimination. Violations of the prohibition of discrimination would as per the Employment Act (Article 5) entail an order by the Employment Tribunal to perform or cease to perform an act or to reinstate an employee or to restore a benefit or advantage denied to a person or an order awarding compensation.

The language used both in the Constitution of the Maldives and the Employment Act to prohibit discrimination is similar to that used in international instruments prohibiting discrimination. However, apart from the mere prohibition contained in the Constitution and the Employment Act, no measures have been taken to prevent discrimination at the work place. The government has no policies announced publicly to prevent or to address issues of discrimination or to provide equal opportunities in employment.

The following issues relating to discrimination at the work place and preventing equal opportunity have been highlighted:

(i) Women are prevented from working in tourist resorts: Tourist resorts in the Maldives are developed on isolated uninhabited islands and in most cases quite far from inhabited islands. Hence, staff cannot commute daily to resorts from inhabited islands and are required to stay for extended

periods of time at staff quarters on the resort. It is not socially acceptable for young unmarried women to stay on resort islands for extended periods of time and married women and women with children cannot stay for extended periods on resort islands away from families.

(ii) Absence of child care facilities: Since there are no child care facilities in the Maldives and schools function on shift basis, women with children can work only if they have sources of income other than their monthly wages (monthly wages are low in the categories in which most females are employed, such as clerical and secretarial jobs, pre-school and primary school teachers and cleaners) to pay for child care workers at home. Hence, many female employees are forced to quit from their jobs with the birth of the first child.

(iii) No access for physically disabled: There is no work place in the Maldives with accesses for physically disabled. Hence, very few people with physical disabilities are able to seek employment. There are very limited facilities for education and training available for disabled persons.

(iv) Some vacancy announcements are targeted only to foreigners. The current labour regulations require public announcements be made for vacancies prior to applying for permission to employ foreign workers. The announcements are to specify monthly wages of the announced job. Most of the announcements in certain job categories are made with wages that are too low for Maldivians to accept. However, although not acceptable to Maldivians, such wages are the normal wages being paid to migrant workers in those job categories.

(v) Specific allowances: Specific allowances are paid to Maldivians which are not paid to workers of other nationalities.

(vi) Senior executives of other nationalities favour their compatriots: In some tourist resorts managed by foreign companies with foreign nationals as senior executives and in other establishments managed similarly by foreign companies, Maldivian employees have complained of being mistreated, discriminated against in favour of employees – compatriots of the senior executives. Similar cases have been reported concerning foreign supervisors at some establishments managed by Maldivian companies.

(vii) Certain benefits are not paid to Maldivians: Migrant workers are provided housing by employers while Maldivian workers of the same category are not provided with housing nor are they given any allowance or benefit in lieu thereof. Foreign employees are provided a return ticket to their country annually, while such a benefit is not generally available to Maldivians who may be from another atoll or island.

(viii) Discriminatory attitude towards employees of certain nationalities: There have been reports of ill treatment of workers of certain nationalities and categorizing certain types of work for workers of certain nationalities.

(ix) Discouragement of certain persons: Women wearing head scarves for religious reasons are not employed at some work places and employees of certain establishments are not permitted to get married and pregnancies are either discouraged or getting pregnant would entail termination of employment or change of job.

Recommended solutions for the way forward are as follows:

1. Establish day care centers and other child care facilities in order to facilitate women with children to participate equally in the labour force.
2. Require work places to provide easy access to physically disadvantaged.
3. Review the complaints regarding discriminatory practices and conduct programmes to both employers and employees to create and increase awareness with respect to discrimination at work places.
4. Introduce training programmes for physically and mentally handicapped persons in order to train them for employment.
5. Conducts a survey of benefits awarded to employees, local and foreign and require employers to revise all benefits and allowances to ensure that such allowances and benefits do not contravene the principle of equal remuneration for work of equal value.

4.6. Tripartite Consultation

The principle of tripartism in the formulation of standards and policies dealing with labour matters is dialogue and cooperation between governments, employers, and workers. ILO is based on the principle of tripartism and international labour standards are created and supervised

through a tripartite structure at ILO. Tripartism with regard to ILO standards is also important at the national level. Through regular tripartite consultations, governments can ensure that ILO standards are formulated, applied and supervised with the participation of employers and workers. Employers and workers shall be represented on an equal footing on any bodies through which consultations are undertaken, and consultations shall take place at least once every year.

At present, there is no institutional framework for tripartite consultations in the Maldives. However, discussions between employers and employees with the government acting in a mediatory role have produced positive results.

The principle of tripartism in the formulation of standards and policies dealing with labour matters can be applied in the Maldives only after workers' associations and employers' associations are established under the necessary legal framework. Hence, in order to facilitate the required institutional framework for tripartite consultation, it is imperative that the Maldives become a member of ILO. The institutional framework for tripartite consultation would also facilitate social dialogue on social and economic issues. The consultation mechanisms must be provided for in law.

Recommended solutions for the way forward are as follows:

1. Complete the procedures for becoming a member of ILO and seek the assistance of ILO to establish the institutional framework for tripartite consultation.
2. Provide for tripartite consultation in the law to be formulated and enacted on Trade Unions and Labour Relations

4.7. Labour Administration

International labour standards are usually applied through national law and policy. Hence, it is vital that a viable and active labour administration system be maintained that will be responsible for all aspects of national labour policy formulation and implementation. The Labour Administration Convention of 1978 requires states to ensure the organisation and effective operation in their territory of a system of labour administration, the functions and responsibilities of which are properly coordinated. The labour administration system is to be responsible for the formulation,

implementation and supervision of national labour standards, employment and human resource development, studies, research and statistics on labour and provide support for labour relations. Participation by workers and employers and their respective organisations in relation to national labour policy is also to be ensured.

In the Maldives, the first mandate given to a governmental authority relating to labour administration in any sense was the mandate to manage labourers in the government service. The mandate was given in the 1970s and early 1980s to the department that undertook major government projects or tasks involving the largest number of labourers: first to the authority that was in charge of administering Male' harbor and port and then to the department undertaking public works projects. In the early 1990s, with the need to regulate the inflow of foreign workers, the mandate was given to the Ministry of Trade, industries and labour. Today, after being with the Ministry responsible for national planning and development and then with the Ministry responsible for higher education and human resources, the mandate is with the newly created (November 2008) Ministry of Human Resources, Youth and Sports. However, the Ministry's primary function in relation to labour administration appears confined to the issuance of permissions to foreign workers and to the issues arising in respect of foreign workers. The Ministry does not have the resources or policies in place to effectively address the wider labour and employment issues and challenges facing the nation. The demands of the other functions delegated to it in respect of youth and sports, which also require financial and other resources have a limiting effect on its ability to address national labour and employment issues.

The Employment Act of 2008 provides for the establishment of a Labour Relations Authority to observe compliance with the Employment Act and the regulations enacted under the Act, to implement the administrative measures required to ensure adherence to the Act and the regulations, to create awareness for the implementation of the Act, to provide technical information and advice to employers and employees and to advise the Minister of issues arising due to matters that are not provided for in the Act and regulations and of unfair advantages taken from such issues or matters. The Labour Relations Authority is also given the power to make regulations governing employer and employee relations.

Recommended solutions for the way forward are as follows:

1. Strengthen the Labour Relations Authority by providing separate office premises, financial and other resources adequate for it to properly carry out the mandate given to it by law
2. Establish a Bureau of Labour Statistics within the Labour Relations Authority to collect, maintain and analyze labour

4.8. Labour Inspection

Proper application of labour legislation depends on effective labour inspection. Labour inspectors must examine how national labour standards are applied in the workplace and must advise employers and workers on how to improve the application of national law in such matters as working time, wages, occupational safety and health, and child labour. Labour inspectors would also be in a position to bring to the notice of national authorities loopholes and defects in national law. Labour inspectors have an important role in ensuring that labour law is applied equally to all employers and workers. The Labour Inspection Convention of 1947 requires ratifying states to maintain a system of labour inspection for workplaces in industry and commerce.

The Employment Act, having provided for the establishment of a Labour Relations Authority to ensure compliance with the Act mandates officials of the Labour Relations Authority to inspect work places from time to time (Article 77). The Act empowers employment officials to enter and inspect work places without prior notice for compliance with the Act, to interview employees, to require submission of records, books, registers and other documents required to be maintained in relation to employment, to make copies of the same, obtain information relating to working conditions, working hours and wages and to inspect records of work place accidents and illnesses. Such officials also have the authority to require employers to take measures to comply with the Act. Further the Act also requires employers to facilitate the work of labour inspectors. The Act also imposes a duty on labour inspectors to duly report to the Minister on their findings.

However, the provisions of the Employment Act relating to labour inspection, with all the powers and authority vested in labour inspectors remain as they were enacted without any attempt at implementation.

Recommended solutions for the way forward are as follows:

1. Establish a Labour Inspectorate or a section or a unit for labour inspection within the Labour Relations Authority and employ labour inspectors to carry out the duties bestowed on labour inspectors by the Employment Act.
2. Provide adequate financial resources to the Labour Relations Authority to establish a labour inspectorate and to employ and train labour inspectors in order to enable them to properly carry out their duties.

4.9. Employment Policy

The Employment Policy Convention of 1964 requires ratifying states to declare and pursue an active policy designed to promote full, productive and freely chosen employment. ILO promotes international standards on employment policy which, together with technical cooperation programmes, are aimed at achieving full, productive and freely chosen employment. It dedicates a large part of its programme to creating greater opportunities for women and men to secure decent employment and income. ILO standards on employment policy provide a framework for designing and implementing such policies, thereby ensuring maximum access to jobs needed to enjoy decent work. Every country is to devise its own policies to bring about full employment.

Recommended solutions for the way forward are as follows:

1. Develop a national employment agenda setting forth strategies, both short term and long term, to boost employment and to replace the migrant labour force. Such strategies should include economic strategies to promote small and medium enterprises in the atolls to increase job opportunities in the islands and strategies for need based vocational and skills training. Development projects and large foreign investment projects should incorporate planning for employment as a compulsory component.
2. Commence work experience programmes, life skills programmes and career guidance in schools and other educational institutions to improve work ethic of school leavers and young graduates.

4.10. Employment Promotion

The Employment Policy Convention of 1964 sets out the goal of full, productive and freely chosen employment. Strategies for attaining this goal

are contained in other ILO instruments. The Employment Service Convention of 1948 requires ratifying states to establish and operate an employment service that is accessible to everyone, free of charge both to workers and employers. The Private Employment Agencies Convention of 1997 provides for cooperation between private and public employment services, general principles to protect jobseekers against unethical or inappropriate practices, and protection of workers under subcontracting arrangements and workers recruited from abroad. The Vocational Rehabilitation and Employment (Disabled Persons) Convention of 1983 sets forth the principles of national policy for the vocational rehabilitation and employment of persons with disabilities and provides for the setting up and evaluation of vocational guidance, vocational training, placement and unemployment services for persons with disabilities. In the area of employment promotion, there are a number of ILO Recommendations such as the Older Workers Recommendation of 1980 which recommends that older workers should enjoy equal opportunity and treatment without discrimination on the grounds of age and Job Creation in Small and Medium-Sized Enterprises Recommendation of 1988 which suggests members to adopt measures appropriate to national conditions to promote small and medium-sized enterprises, in regard to their importance in promoting employment and sustainable economic growth.

Recommended solutions for the way forward are as follows:

1. Develop practical programmes for integrating new labour market entrants into the labour force.
2. Develop programmes for rehabilitation and integration of disabled into the labour market.
3. Organise and hold an employment fair as a periodical regular event which will bring the employers, employees, their respective organisations and government authorities together to promote employment.

4.11. Vocational Guidance and Training

Education and training make people employable and allow them to gain access to decent work and to escape poverty. In order to attain full employment and sustained economic growth, countries need to invest in education and human resources development. Countries can help ensure workers maintain and improve their employability by providing basic education, core work skills, and lifelong learning opportunities, which will

result in a more skilled and productive workforce. ILO standards encourage countries to develop sound human resources practices and training policies which are beneficial to all. The Human Resource Development Convention of 1975 requires ratifying states to develop policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services. For this purpose, states are further required to develop complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training, and to extend them gradually to young persons and adults, including appropriate programmes for the disabled. Because of the current importance of this topic, in 2004 the International Labour Conference adopted an updated Recommendation concerning Human Resources Development: Education, Training and Lifelong Learning.

Chapter 7 of the Employment Act of the Maldives which is dedicated to Training and apprenticeship contains three Articles. Article 69 provides for an agreement to be signed between the employer and the employee prior to the commencement of any formal training programme and Article 70 of the Act provides for a similar agreement to be signed with respect to any apprenticeship. Article 71 provides for the submission of complaints to the Employment Tribunal in the event of violation of any such agreement.

The main reason for low employment among Maldivian youth and new labour market entrants is the lack of training and the skills required for the jobs that are being created. The mismatch between the needs of the employers and the training that is being provided is cited by employers as a reason for unemployment among Maldivians. The representatives of employers' associations in tourism and construction industries emphasized the need for skilled workers in those industries and the lack of training for Maldivians to acquire the necessary skills for such jobs. Among the areas with such needs included carpentry, masonry, plumbing, electrical wiring, building supervision and operation of heavy equipment.

Recommended solutions for the way forward are as follows:

1. Formulate national strategies and a plan for technical education and vocational training in consultation with employers and the existing training institutions.

2. Review the existing training facilities to ascertain whether additional facilities are required to provide vocational training or whether the required training could be provided at the existing facilities.
3. Expand vocational training in the atolls. Match the training opportunities to the number of school leavers in the atoll. Consider providing assistance to students for accommodation and living to facilitate participation by students from islands other than the island where the training is provided.
4. Consider concluding agreements for employment between employers and training institutions prior to commencing training programmes to obtain commitment to employ graduates of such institutions.

4.12. Employment Security

The termination of employment results in loss of income to the worker which impacts the well being of the worker and his/her family. Today's globalization and the employment flexibility sort by many countries destabilize traditional employment patterns and many face termination of employment at some point during one's professional lifetime. Events or circumstances such as the current global financial crisis force employers to terminate large numbers of employees to ensure survival of their businesses in such circumstances. Hence, the flexibility to reduce staff during such economic crisis and to dismiss unsatisfactory workers is a necessary measure for employers to sustain their businesses and to keep them productive. ILO standards on termination of employment seek to find a balance between maintaining the employer's right to dismiss workers for valid reasons and ensuring that such dismissals are fair and are used as a last resort, and that they do not have a disproportionate negative impact on the worker. The Termination of Employment Convention of 1982 sets forth the principle that the employment of a worker should not be terminated unless there is a valid reason for such termination connected with the worker's capacity or conduct or based on the operational requirements of the undertaking, establishment or service. Reasons for dismissal which shall not be considered valid include those based on union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, or absence from work during maternity leave.

Article 21 of the Employment Act states that an employee shall not be dismissed from employment without showing appropriate cause as to failure to maintain work ethics, inability to carry out employment duties and responsibilities related to the proper functioning of his work place, even after measures have been taken to discipline the employee or upgrade skill deficiencies. The same Article lists a number of reasons which shall not be considered reasonable causes for terminating an employee or to determine that a worker is failing to maintain work ethics, which include employee's race, colour, nationality, social standing, religion, political opinion, affiliation with any political party, sex, marital status, familial responsibilities, disability, pregnancy, exercise of any right under the Act, temporary failure to report to work for a period of time due to illness or injury and membership of a workers association or participating in any lawful activities of such association.

Article 22 of the Employment Act states that employees may not be terminated without due notice as specified in the Act except in the circumstances specified in the Act. Article 23 of the Act states that an employee may be terminated without notice if an employee's work ethic is deemed unacceptable and further continuation of employment is on reasonable grounds seen by the employer as unworkable. An employee's work ethics is to be deemed unacceptable if further continuation of employment is likely to be detrimental to the employer or to the work place or if the employee has committed fraud.

In Article 28, employees are given the right to complain to the Employment Tribunal concerning their termination and Article 27 stipulates that it would be an obligation of the employer to prove to the Tribunal that the termination was for cause. The Tribunal has the authority to order reinstatement of the employee if the termination was not for cause. Failure to implement and enforce the Employment Act, non-compliance by employers with the requirement to sign employment agreements and the lack of mechanisms for settlement of employment disputes make employment very insecure in the Maldives and render the provisions of the Employment Act relating to employment security meaningless. Hence, unfair dismissals are fairly common in the Maldives.

Recommended solutions for the way forward are as follows:

1. Review the Employment Act with a view to strengthening the guarantees provided for in the Act as employment security .The Act provides for dismissal of employees if the employer deems it likely that the continuation of an employee’s employment is detrimental to the employer or to the work place, without any mention of how that would be determined by the employer.
2. The Employment Tribunal must begin to function and the jurisdiction of island courts to hear employment disputes must be reaffirmed.

4.13. Social Policy

The ILO Constitution, in the Declaration of Philadelphia, states that “*all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity*” and that the fulfillment of this objective “*must constitute the central aim of national and international policy*”. Relevant ILO standards provide a framework for creating social policies which ensure that economic development benefits all those who participate in it. The Social Policy (Basic Aims and Standards) Convention of 1962 sets forth the general principle that all policies shall be primarily directed to the well-being and development of the population and to the promotion of its desire for social progress. Furthermore, the improvement of standards of living shall be regarded as the principal objective in the planning of economic development. It also provides additional requirements concerning migrant workers, agricultural producers, independent producers and wage earners, minimum wage-fixing and payment of wages, non-discrimination, and education and vocational training.

The Constitution of the Maldives in its Article 23 in stipulating economic and social rights lays down the basis for economic and social policies. The Constitution provides that the state shall, by reasonable measures within its ability, achieve the progressive realization of providing adequate and nutritious food and clean water, clothing, housing, good standards of health care, physical and mental, a healthy and ecologically balanced environment, equal access to means of communication, the state media, transportation facilities, and the natural resources of the country, the establishment of a sewage system of a reasonably adequate standard on

every inhabited island and the establishment of an electricity system of a reasonably adequate standard on every inhabited island that is commensurate to that island.

Recommended solutions for the way forward are as follows:

1. Ensure that all economic and social policies are made in order to achieve the goals set in the Constitution and the progressive realization of the right to work granted in the Constitution.

4.14. Wages

The Protection of Wages Convention of 1949 provides that wages be paid in legal tender at regular intervals and in cases where partial payment of wages is in kind, the value of such allowances be fair and reasonable. Further, workers are to be free to dispose of their wages as they choose and in cases of employer.

Article 37 of the Constitution for the first time grants the right to every Maldivian citizen to engage in any employment or occupation and entitles everyone to just and safe conditions of work, fair wages, equal remuneration for work of equal value, and equal opportunity for promotion. Further, the same Article grants the right to rest and leisure, including limits on hours of work and periodic holidays with pay and in order to provide this right to each employed person, this Article requires the maximum number of working hours and the length of paid holidays to be determined. After the entry into force of the Constitution of 2008 with these new criteria for the economic and social development of the country, it is fundamental that all policies be made to achieve the goals set in the Constitution as the corner stone for all policies to be made by any incoming government.

The Minimum Wage Fixing Convention of 1970 requires states to establish a minimum wage fixing machinery capable of determining and periodically reviewing and adjusting minimum wage rates having the force of law. Article 37 of the Constitution provides for fair wages and equal remuneration for work of equal value. Article 50 of the Employment Act requires all employees, except temporary employees, to be paid wages on at least a monthly basis and temporary employees to be paid on a daily basis in general. Article 56 of the Act provides for the establishment of a Pay Advisory Board which is to review and ascertain the manner of

employment of employees in commercial ventures and other work places and is to advise the Minister on minimum wages payable for all such employment. Article 59 provides that the Minister may, after review by the Pay Advisory Board, issue an order to establish, amend or terminate a minimum wage or remuneration in respect of certain employment. Such orders establishing minimum wages are to be reviewed by the Pay Advisory Board once every two years.

Although the Employment Act provides for the setting of minimum wages and the establishment of a Pay Advisory Board, no minimum wages have been set for any category of employment and the Pay Advisory Board has not begun to function. The wage and salary structure of employees of various occupations are under pressure due to the increase in monthly wages of certain categories of employees. The demand for higher wages due to the increase in the wages of some and the resulting socio- economic imbalances are acute. Wage issues are keeping the Civil Service and some professions under severe constraint. The threat of protests and work stoppage is disrupting the provision of essential public services and destabilizing public order.

In the Maldives non-payment of wages to migrant workers remains a problem, which requires immediate intervention by the government authorities to ensure that all employees are paid wages regularly. The assessment team interviewed several migrant workers who complained of not having been paid monthly wages for over eight months.

Recommended solutions for the way forward are as follows:

1. Pay Advisory Board should start to function.
2. Consultations must be begun to set minimum wages for different categories of employment and/or sectors of employment. It must be noted that such consultations should be tripartite and hence, for this purpose too, it is urgent that workers' and employers' associations be provided a legal basis to function. It must also be noted that minimum wage schemes are an effective tool in the efforts to alleviate poverty and in the Maldives it would also be a tool in managing or dealing with the issue of migrant workers.

4.15. Working Time

The regulation of working time is one of the oldest concerns of labour legislation. Already in the early 19th century it was recognized that working excessive hours posed a danger to workers' health and to their families. Today, ILO standards on working time provide the framework for regulated hours of work, daily and weekly rest periods, and annual holidays. These instruments ensure high productivity while safeguarding workers' physical and mental health. The very first ILO Convention, Hours of Work (Industry) Convention adopted in 1919 and Hours of Work (Commerce and Offices) Convention of 1930 limited hours of work and set the general standard at 48 regular hours of work per week, with a maximum of 8 hours per day and provided for adequate rest periods for workers. The Forty-Hour Week Convention of 1935 and the Reduction of Hours of Work Recommendation of 1962 set out the principle of the 40-hour workweek. The Weekly Rest (Industry) Convention of 1921 and the Weekly Rest (Commerce and Offices) Convention of 1957 set the general standard that workers shall enjoy a rest period of at least 24 consecutive hours every seven days. Holidays with Pay Convention of 1970 provides that every person to whom the convention applies shall enjoy at least three working weeks of annual paid holiday for one year of service.

Article 37(c) of the Constitution of the Maldives grants everyone the right to rest and leisure, including limits on hours of work and periodic holidays with pay. Clause (d) of the same Article further states that everyone has the right to spend time at rest and leisure and that in order to provide this right to each employed person, the maximum number of working hours have to be determined as well as the length of paid holidays.

Article 32 (a) of the Employment Act states that no employee shall be required to work more than forty eight hours a week. It further states that this principle does not include overtime carried out in accordance with the Act. Article 32 (b) states that no employee shall be required to work more than six consecutive days a week without being provided with twenty four consecutive hours of leave. The Article provides flexibility to employees of tourist resorts, tourist vessels and uninhabited islands designated for industrial projects to provide in their employment agreements to accumulate the weekly off days and to work an extra 2 hours a day, which will be paid as overtime hours. Article 33 of the Act gives the Minister the discretion to determine the maximum number of working hours per day.

The Act further provides for a break of at least thirty minutes for meals after every five consecutive hours of work (Article 35) and a break of 15 minutes for prayers without disrupting work or alternatively a break of 15 minutes after every four consecutive hours of work (Article 36). Article 37 of the Act provides for overtime work and states that employees shall work over time only as specified in the employment agreement and shall be paid one and a quarter times the employee's hourly wage and for work on Fridays and public holidays at one and a half times the employee's hourly wage.

Article 39 of the Act states that every employee is entitled to thirty days of paid leave upon completion of one year of employment. The Act further provides for 30 days paid sick leave per year (Article 42) (the employer is not required to grant sick leave for more than two consecutive days without a medical certificate, which has to be submitted when the employee returns to work), a paid leave of 10 days a year to attend to important obligations such as tending to a family member during illness (Article 47) and five days of paid leave on the occasion of the circumcision of a child (Article 49).

Some employers expressed concern with the provision of annual sick leave of 30 days with pay and the option of taking sick leave without a medical certificate. The law requires a medical certificate only in case of sick leave for more than two consecutive days and some employers are of the view that any sick leave should require submission of a medical certificate. Employers complained that this creates difficulties in managing working hours of employees who work on shifts. However, many of the employees interviewed complained about employees not being given adequate time for rest between shifts and having to work for more than six days without a rest period of consecutive twenty four hours. Employers have found that application of hours of work and weekly rest days provided for in the Act pose practical difficulties to crew members of marine vessels.

Recommended solutions for the way forward are as follows:

1. Hold consultations with employers and employees and their respective associations for the purpose of reviewing hours of work, rest days per week and sick leave without medical certificate, provided for in the Act and the concerns of employers with a view to amending the Act to facilitate implementation of the same.

2. Review the new practices of working time such as compressed workweeks, staggered working time arrangements, annualized working hours, flexitime and on call work to ascertain the suitability of such concepts to resolve work time related issues in tourist resorts and other industries with specific concerns.

4.16. Occupational Safety and Health

ILO Constitution sets forth the principle that workers should be protected from sickness, disease and injury arising from their employment. The ILO has adopted more than 40 standards specifically dealing with occupational safety and health, as well as over 40 Codes of Practice. Nearly half of ILO instruments deal directly or indirectly with occupational safety and health issues. ILO standards on occupational safety and health provide essential tools for governments, employers, and workers to establish such practices and to provide for maximum safety at work. The Occupational Safety and Health Convention of 1981 provides for the adoption of a coherent national occupational safety and health policy, as well as action to be taken by governments and within enterprises to promote occupational safety and health and to improve working conditions. This policy shall be developed by taking into consideration national conditions and practice. The Occupational Health Services Convention of 1985 provides for the establishment of enterprise- level occupational health services which are entrusted with essentially preventive functions and which are responsible for advising the employer, the workers and their representatives in the enterprise on maintaining a safe and healthy working environment.

Article 72 of the Employment Act requires employers to implement measures for the safety and protection of employees at the work place without charging any fees from employees, which measures shall include implementation of a safe work place and procedures, procurement of secure tools and machinery for carrying out work, and ensuring the continued safety of the same, provision of safe materials to work with, provide protective equipment and safety equipment in the event that the nature of work is such that it is not possible to eliminate or control health hazards arising out of work, provide education and training to employees on the use of protective gear and safety equipment and disseminate to employees information on all issues of related concern, conduct regular health checks for employees engaged in work involving chemical or biological materials that may cause a hazard to physical health of

employees involved in any work that may cause physical ill health, provide or arrange for appropriate medical care for employees injured while carrying out employment, arrange the facilitation of first aid to employees in the case of emergencies and accidents.

Article 73 of the Act obligates employees to maintain safe work practices at work, to avoid danger to the safety and well being of the employee and co-workers which may be caused by inattentiveness to safety and security measures, assist the employer and co-workers in maintenance of measures to ensure health and safety in the work place, use safety equipment and protective gear as instructed in accordance with the training and education provided for use of such equipment and gear. The employee is further required to report to the employer any damage or loss of protective gear or safety equipment and to inform the employer or supervisor immediately of the occurrence of any incident which may cause danger and which the employee is unable to resolve, and of any accidents or damages sustained or occurred at work. The employee can abstain from work if he has reason to believe that the work may cause damage to his health and the Minister is to be notified of any accidents or death within 48 hours.

However, although the Employment Act requires employers to implement safety measures, there are no national standards for such measures and hence, such measures would be at the discretion of employers. Some employers that have adopted international quality standards for their enterprises and undertakings or employers who have to comply with EU requirements due to their exports to Europe have adopted safety and health standards that comply with such requirements. However, employers without such a requirement have not taken measures to ensure safety and protection of employees at the work place. The assessment team found that little attention was paid to safety and health at the work place at most sites visited by the team.

Although no statistics are available on work related accidents and deaths in the Maldives there are cases of work related diseases and fatal and non-fatal work related accidents in the Maldives and such illnesses and accidents cause suffering to families of such workers.

Recommended solutions for the way forward are as follows:

1. Develop national standards for occupational safety and health and develop codes of practice to provide guidance on safety and health at work in certain sectors such as construction, boat building and repair, agriculture, operation of heavy machinery, marine works and harbor works.
2. Conduct a survey of work related accidents and deaths in the Maldives to address the causes of such accidents and illnesses and to take appropriate measures to prevent the same.

4.17. Social Security

Social security systems protect people from the insecurities related to making a living through work. They provide for basic income in cases of unemployment, illness and injury, old age and retirement, invalidity, family responsibilities such as pregnancy and childcare, and loss of the family breadwinner. Such benefits are important not only for individual workers and their families but also for their communities as a whole. In addition to enhancing productivity by providing health care, income security and social services, by such measures, social security systems contribute to the dignity of the individual and also promote gender equality through the adoption of measures to ensure that women who have children enjoy equal opportunities in the labour market. ILO standards on social security provide for different types of social security coverage under different economic systems and stages of development. Social security conventions offer a wide range of options and flexibility clauses which allow the goal of universal coverage to be reached gradually.

The Social Security (Minimum Standards) Convention of 1952 lays down the minimum standard for the level of social security benefits and the conditions under which they are granted. It covers the nine principal branches of social security, namely medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors' benefits. To ensure that it could be applied in all national circumstances, the convention offers states the possibility of ratification by accepting at least three of its nine branches and of subsequently accepting obligations under other branches, thereby allowing them to progressively attain all the objectives set out in the convention. The level of minimum benefits can be determined with reference to the level of wages in the country concerned. Temporary exceptions may also be envisaged for countries whose economy

and medical facilities are insufficiently developed, thereby enabling them to restrict the scope of the convention and the coverage of the benefits granted.

Article 38 of the Constitution states that every one engaged in employment with the State shall have the right of pension as provided by law. There is no law on pensions yet and pension is granted only to employees of the state, which as a rule include only the members of the civil service. There is no pension scheme for private sector employees.

Article 35 of the Constitution states that children, young people, the elderly and disadvantaged persons are entitled to special protection and assistance from the family, the community and the State. The details of the special protection stated in the constitution are yet to come.

The only form of social security available to employees in the Maldives is the pension available to employees of the state or government employees. Now there is medical care benefits, sickness benefits, unemployment benefits, employment injury benefits, family benefits, maternity benefits, invalidity benefits or survivor's benefits are available to Maldivian employees.

Recommended solutions for the way forward are as follows:

1. Formulate and enact a law on pensions for employees of both the public and private sectors, providing for appropriate pension schemes for all employees.
2. Consider the adoption of benefits schemes as incentives to Maldivian employees.

4.18 Maternity Protection

Pregnancy and maternity are an especially vulnerable time for working women and their families. Expectant and nursing mothers require special protection to prevent harm to their or their infants' health, and they need adequate time to give birth, to recover, and to nurse their children. At the same time, they also require protection to ensure that they will not lose their job simply because of pregnancy or maternity leave. Such protection not only ensures a woman's equal access to employment, it also ensures the continuation of often vital income which is necessary for the well being of her entire family. Safeguarding the health of expectant and nursing mothers

and protecting them from job discrimination is a precondition for achieving genuine equality of opportunity and treatment for men and women at work and enabling workers to raise families in conditions of security.

The Maternity Protection Convention of 2000 is the most up-to-date international labour standard on maternity protection, although the earlier relevant instruments – the Maternity Protection Convention, 1919 (No. 3), and the Maternity Protection Convention (Revised), 1952 (No. 103) – are still in force in certain countries.

Maternity Protection Convention of 2000 provides for 14 weeks of maternity benefit to women to whom the instrument applies. Women who are absent from work on maternity leave shall be entitled to a cash benefit which ensures that they can maintain themselves and their child in proper conditions of health and with a suitable standard of living and which shall be no less than two thirds of her previous earnings or a comparable amount. The convention also requires ratifying states to take measures to ensure that a pregnant woman or nursing mother is not obliged to perform work which has been determined to be harmful to her health or that of her child, and provides for protection from discrimination based on maternity. The standard also prohibits employers to terminate the employment of a woman during pregnancy or absence on maternity leave, or during a period following her return to work, except on grounds unrelated to pregnancy, childbirth and its consequences, or nursing. Women returning to work must be returned to the same position or an equivalent position paid at the same rate. The standard also provides a woman the right to one or more daily breaks or a daily reduction of hours of works to breastfeed her child.

Article 43 of the Employment Act states that female employees shall be granted sixty days maternity leave based on a medical certificate specifying the estimated date of giving birth issued by a licensed practitioner.

- Such leave does not commence until thirty days prior to the estimated date of giving birth. Maternity leave is to be granted to female employees in addition to other leaves.
- Female employees on maternity leave are also entitled to all the rights and benefits granted under the employment agreement such as the right to a promotion.

- No employee on maternity leave is subject to any lessening of rights conferred by the employment agreement or in calculating the duration of employment for due promotion.
- Employees on maternity leave are to be paid wages on the same day salary payments are made in the normal course of business even while the employee is on maternity leave.
- A further leave of twenty eight days (in addition to the maternity leave) is granted to an employee where a licensed practitioner certifies of the employee's inability to return to work either due to the ill health of the mother or the baby. Such leave can be granted prior to the estimated date of delivery or after delivery.
- The employer has the discretion not to pay the employee for the duration of any such leave. Employees have the right to return to work to the same position held with the same benefits upon expiry of the maternity leave unless the position no longer exists at the work place due to economic, professional or organisational purposes or unless the employee is incapable of continuing to work in the same job (Article 44). Article 45 provides that upon return to work after completing of maternity leave, the employee shall be entitled to two daily breaks of thirty minutes each to attend to the needs of the child. No deductions from pay shall be made for such breaks and an employee is entitled to such breaks until the child is one year. Article 46 provides for an unpaid leave of up to one year for the mother or father upon expiry of maternity leave. Fathers are entitled to three days of paid leave on the occasion of the birth of a child (Article 48).

Maternity leave is provided to female employees requiring such leave as provided for in the Act.

- However, female employees are unable to return to work after child birth due to the non- existence of child care facilities in the country and because not many can afford child care workers to attend to children while mothers are at work.
- Further, no information is available on the effects of the provisions of the Employment Act relating to maternity leave on the employment of female workers.

Recommended solutions for the way forward are as follows:

1. Establish child care facilities to enable female workers to continue in their jobs after child birth.
2. Conduct a survey to ascertain whether the provision of maternity leave in the Employment Act has had any negative impact on the employment (hiring) of female workers.

4.19. Migrant Workers¹²

Poverty and unemployment in many developing countries force many to seek work elsewhere, while demand for labour, especially unskilled labour is increasing. As a result, millions of workers and their families travel to countries other than their own to find work.

Although migrant workers contribute to the economies of their host countries, they are accorded little social protection and are vulnerable to exploitation and human trafficking.

- Although less vulnerable to exploitation, the departure of skilled migrant workers has deprived some developing countries of valuable labour needed for their own economies. ILO standards on migration provide tools for both migrant sending and receiving states to manage migration flows and to ensure adequate protection for this vulnerable category of workers.
- The Migration for Employment Convention (Revised) of 1949 requires ratifying states to facilitate international migration for employment by establishing and maintaining a free assistance and information service for migrant workers and taking measures against misleading propaganda relating to emigration and immigration. The Convention contains provisions on appropriate medical services for migrant workers and the transfer of earnings and savings. The Convention requires States to apply to migrant workers treatment no less favourable than that which applies to their own nationals in respect to a number of matters, including conditions of employment, freedom of association and social security.

¹²Maldives Migrant Worker System Assessment Report -2015. Advocacy and Legal Advice Centre (ALAC) of Transparency Maldives (TM).

The Migrant Workers (Supplementary Provisions) Convention of 1975 provides for measures to combat clandestine and illegal migration while at the same time setting forth the general obligation to respect the basic human rights of all migrant workers. It also extends the scope of equality between legally resident migrant workers and national workers beyond the provisions of the 1949 Convention to ensure equality of opportunity and treatment in respect of employment and occupation, social security, trade union and cultural rights, and individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within a ratifying state's territory.

Article 62 of the Employment Act requires the Minister to, within six months from the date the Act comes into force, to publish regulations to govern the employment of foreigners in the Maldives, carrying out of such employment, employment and dismissal of foreigners and other related matters. Article 63 of the Act provides for complaints by foreigners or on their behalf to the Employment Tribunal alleging breaches of the employment agreement.

4.20. Seafarers

Seafarers are frequently exposed to difficult working conditions. Since ships that seafarers work on are both their home and workplace for prolonged periods of time living and working conditions are of primary importance. Seafarers are exposed to many unique occupational risks such as exposure to extreme weather conditions, the possibility of wrecking and sinking and the carriage of toxic materials and chemicals. Having to work far from home, seafarers are vulnerable to social exploitation and abuse, non-payment of wages, non-compliance with contracts, and exposure to poor diet and living conditions.

To protect the world's seafarers and their contribution to international trade, the ILO has adopted over 60 conventions and recommendations. ILO's maritime standards deal with almost all aspects of work in relation to seafaring including protection of children and young persons, vocational guidance and training, safety and health, security of employment and social security. They also cover specific subjects related to the particular employment situation of workers in the maritime industry, such as articles of agreement, wages, hours of work and manning, recruitment and placement, certification of qualification, and identity documents.

The Merchant Shipping (Minimum Standards) Convention of 1976 and its Protocol of 1996 provide general standards for the protection of seafarers. These instruments require a ratifying state to draw up laws or regulations governing safety standards. States must also ensure that provisions of laws and regulations are substantially equivalent to conventions enumerated in the appendix to the Convention (covering freedom of association and collective bargaining, minimum age, social security, safety, health and welfare, certificates of competency, and repatriation of seafarers), in cases where they have not ratified the corresponding instruments.

Although seafaring is a vital domestic economic activity for the Maldives as it is comprised of small islands, and maritime transport of passengers and cargo is a daily activity essential for the sustenance of the nation employing a large percentage of employed Maldivians, Maldives does not have any regime for the protection of seafarers or employees of marine vessels. The Employment Act, having initially excluded employees of marine vessels from the scope of Chapter 4 of the Act later amended the Act to extend the scope of Chapter 4 to such employees.

- However, employers express their concerns in implementing the provisions of the Employment Act relating to working hours, overtime, leave and other issues with respect to employees of vessels and believe that the Act should be amended to accord the special protection that the employees of marine vessels need.

Recommended solutions for the way forward are as follows:

1. Consider amending the Employment Act to provide for formulating regulations to govern the employment relations of employees of marine vessels until a law is formulated to govern the employment of seafarers.
2. Consult ship owners and operators of passenger and cargo vessels and employees of vessels to obtain their views relating to the amendment of the Employment Act to provide for the formulation of regulations governing the employment relations of employees of marine vessels.

4.21. Fishers

Fishing is one of the world's earliest industries and today provides a livelihood for millions of families around the globe. Millions of people are

engaged in capture fishing and aquaculture worldwide. Like seafarers, fishers are exposed to significant hazards, including rough weather at sea, crushing waves, powerful and dangerous machinery, hooks and shark bites. Fishing is also a very diverse industry, ranging from highly organised commercial deep-sea fishing operations to the more common small-scale and artisan fishing. The majority of fishers still belong to the informal sector. The wage payment system is normally based on a share in the value of the catch. To respond to the specific needs of workers engaged in fishing, the ILO has developed standards specifically aimed at providing protection for the men and women who work in this sector.

The Medical Examination (Fishermen) Convention of 1959 provides that no person shall be employed in any capacity on a vessel if he or she is not fit enough to be employed at sea. The Fishermen's Articles of Agreement Convention of 1959 provides that articles of agreement (contracts) shall be signed both by the owner of the vessel or his authorized representative and by the fisher. The agreement shall clearly state the respective rights and obligations of each of the parties and shall, among other things, specify the voyage or voyages to be undertaken, the capacity in which the fisher is to be employed, the amount of his or her wages, and the termination of the agreement.

In the Maldives too, fish harvesting is considered an informal sector and the wage pay system is based on a share of the catch or a share in the value of the catch. However, due to the importance of the fishers be accorded appropriate fishing industry and their contribution protection in line with the relevant to the national economy, it is vital that international standard.

Recommended solutions for the way forward are as follows:

1. Consult owners of fishing vessels, captains of fishing vessels and fishers across the country to obtain their views on regulating employment relations of fishers and providing them special protection in view of the special circumstances of their employment.
2. Consider amending the Employment Act to provide for the particular situation of the employment relations of fishers.

4.22. Dockworkers

The dock industry in many countries is an important link in the transport network that requires constant upgrading in order to respond to the demands of international trade. The growing transport volume, the increasing sophistication of infrastructure, the widespread use of containers, and the intensity of capital investment required for the development of dock activities have led to profound reforms in the sector. Once relying on mostly occasional and low- skilled labour, dock work today requires more highly skilled workers who are increasingly registered workers. ILO standards deal with the need for specific protection due to safety and health hazards to which dockworkers are exposed during their work, and the impact of technological progress and international trade on their employment and the organisation of work in ports.

The Dock Work Convention of 1973 deals with new methods of work in docks and their impact on employment and the organisation of the profession with the objectives of protecting dockworkers in their professional life through measures relating to the conditions of their access to and performance of work and foreseeing and managing in the best possible manner, through appropriate measures, fluctuations in the work and the workforce required for it. The Occupational Safety and Health (Dock Work) Convention of 1979 requires ratifying states to take measures with a view to providing and maintaining workplaces, equipment and methods of work that are safe and without risk of injury to health; providing and maintaining safe means of access to any workplace; providing information, training and supervision necessary to ensure protection of workers against risks of accident or injury to health at work; providing workers with personal protective equipment and clothing and any life-saving appliances reasonably required; providing and maintaining suitable and adequate first-aid and rescue facilities; and developing and establishing proper procedures for emergency situations which may arise. Maldives with dependence on foreign exports for its sustenance, must give due consideration to the protection and well being of those working at its ports. At present there are no laws or regulations formulated for the protection of such workers.

Recommended solution is to formulate standards and regulations to provide for the occupational safety and health of employees of Ports/dockworkers.

4.23. Indigenous and Tribal Peoples

The most recent ILO standards on the subject of indigenous and tribal peoples set out principles and provide a framework for governments, organisations of indigenous and tribal peoples, and non-governmental organisations to ensure the development of the peoples concerned, with full respect for their needs and desires.

Recommended solutions to disseminate information on the relevant conventions.

4.24. Other Specific Categories of Workers

International labour standards in most cases have universal value and apply to all workers and all enterprises. Some standards mentioned earlier cover specific industries, such as seafaring. Finally there are a number of standards dealing with work-related issues in very specific sectors of economic activity (plantations, hotels, restaurants) or concerning specific groups of workers (nursing personnel, home workers).

In this regard, three conventions are of particular importance to the Maldives. The Nursing Personnel Convention of 1977 requires states to adopt measures appropriate to national conditions to provide nursing personnel with education and training and with working conditions, including career prospects and remuneration, which are likely to attract persons to the profession and retain them. Although this Convention was drawn up taking into account the fact that many nurses are migrant workers who face particular challenges, it is relevant to the Maldives because of the high number of migrant workers working as nurses and the need to train Maldivian nurses.

The Working Conditions (Hotels and Restaurants) Convention of 1991 is equally important. This convention, created for the purpose of improving the working conditions of workers in hotels and restaurants and bringing them closer to those prevailing in other sectors, provides for reasonable hours of work, overtime provisions, rest periods, and annual leave.

- The employment situation in the tourism industry of the Maldives warrants a closer scrutiny of this convention in order to determine viable measures to address current challenges within the industry.

- Employees of tourist resorts revealed the need to formulate standards specific to tourist resorts.

The Home Work Convention of 1996 aims to promote equality of treatment between home workers and other wage earners, particularly in relation to freedom of association, protection against discrimination, occupational safety and health, remuneration, social security, access to training, minimum age for admission to work, and maternity protection.

- In the Maldives, a large number of foreigners or migrant workers work as home workers and live at the homes in which they work and live, in cramped or overcrowded rooms.
- They are often paid very low wages and in most cases do not adhere to an 8 hour working day.
- In Male', households continue to informally employ young females barely over, and sometimes under, the age limit who come to Male' from rural areas for various purposes, such as education.
- They constitute a particularly vulnerable category of workers on account of their often informal status and lack of legal protection, their isolation and weak bargaining position.

Recommended solutions for the way forward are as follows:

1. Review the relevant Conventions and consider setting specific standards for certain specific groups of workers, such as doctors, nurses, employees of tourist resorts, restaurants and home workers.
2. Consider amending the Employment Act, if necessary, to provide for the setting of specific standards for specific groups of workers as stated in Recommendation 30.1.
3. Consult doctors, nurses and workers of other specific groups to obtain their views on setting specific standards with respect to their employment.

Conclusions and Final Recommendations¹³

1. After becoming a member of the ILO in May 2009, it must be the primary priority of the Maldives to ratify and fully implement the

¹³International Trade Union Confederation (ITUC). *Internationally Recognized core Labour Standards in the Maldives*. Report for the WTO General Council Review of the Trade Policies of Maldives. (Geneva, 26 and 28 October, 2009)

- eight core conventions and to bring its labour law and practice in line with international labour standards. Labour law should be drafted, using the available expertise of the ILO, to protect the fundamental rights of workers in the Maldives, including the right to form and join trade unions, the right to collective bargaining, and protection from acts of anti-union discrimination.
2. The ILO should assist the government in ensuring law and practice facilitates the establishment of unions and to advise regarding the functioning and management of trade unions.
 3. The new Constitution and the Employment Act of 2008 represent a welcome step in terms of recognition of freedom of association and the right to strike but differences between law and practice are still evident and must lead to more strict enforcement by the government.
 4. Workers' right to collective bargaining is not addressed in the Constitution or in the Employment Act and should be integrated accordingly now that the Maldives is a member of the ILO.
 5. The government should establish day care centres and other child care facilities in order to facilitate participation of women with children equally in the labour force.
 6. A labour inspectorate should be established in the Maldives to ensure that labour law applies equally to all employers and workers in matters pertaining to working time, wages and child labour.
 7. The Maldives must bring its legislation into line with the ILO conventions on forced labour. Tougher and dissuasive sanctions must be provided for to ensure that the rights of migrant workers are protected.
 8. Any inhumane working conditions of female domestic workers that approximate to forced labour must be ended.
 9. In line with the undertakings by the Maldives at the WTO ministerial conferences in Singapore and Doha, and its obligations as a member of the ILO, the Maldivian government must provide regular reports to the WTO and the ILO on amendments to its legislation and on its programmes for implementation of all the core labour standards.
 10. The WTO should draw the attention of the Maldivian authorities to the commitments they made on respecting the core labour standards at the WTO ministerial conferences in Singapore, Geneva and Doha. The WTO should ask the ILO to intensify its

work with the Maldivian government in these areas and to provide a report for the WTO General Council at the forthcoming review of trade policies.

5. Environmental Issues Requiring Green HRM in Maldives

Just as much as Green Human Resource Management (Green HRM) is a novel concept in the Sri Lankan context as highlighted by Senior Prof. Dr. H.H.D.N.P. Opatha at the 1st HR Dialogue,¹⁴ in the Maldives context I would say it is a much more novel concept because of the fact that among the Small Island Developing States (SIDS), Maldives has been recognised as being environmentally vulnerable to climate change, waste and pollution because they tend to be a small set of resources and have delicate fragile land and marine eco-systems and a relatively high vulnerability to natural disasters.¹⁵

In fact, the Maldives has a very unique geography. It consists of over 1,100 coral islands, with about 192 of these inhabited. The islands are dispersed over approximately 35,000 square miles (FAO 2008), and have an average elevation of just 1.5 metres above sea level – making it the lowest country in the world. These islands are grouped into a double chain of 26 atolls. For administrative purposes, the Maldives government has organised these atolls into 19 administrative divisions and 2 cities. The atolls consist of a large, ring-shaped coral reef supporting numerous small islands. Some of the larger atolls are approximately 30 miles long from north to south, and

¹⁴ Proceedings of the HR Dialogue – 2013

¹⁵ The Maldives' geographical location and structure makes it highly vulnerable to environmental pressures and shocks. Similar to some other SIDS,¹⁵ the low-lying atolls of the Maldives are at the mercy of the impacts of increasing ocean temperatures namely the El Niño weather system, which has resulted in the bleaching and death of coral over the past 25 years and changing migratory patterns of tuna fish. The islands also suffer from beach erosion, storm surges, flooding and unpredictable rainfall – over recent years, the onset of both the dry and the wet season have become increasingly unpredictable – resulting in water shortages on local islands. The country has also experienced severe natural disasters, such as the violent monsoon winds in May 1991, which created tidal waves that damaged thousands of houses and piers, flooded arable land, uprooted thousands of fruit trees, and caused US\$30 million worth of damage (FAO 2008). In addition, the 2004 tsunami severely damaged a number of local islands, resulting in the migration of some of the population to neighbouring or 'safe' islands, and significantly damaged a number of tourist resorts and the tourism industry infrastructure, which affected demand and revenues in the short term.

can be wide as 19 miles from east to west, but no Individual Island is longer than 5 miles.¹⁶

Therefore, undoubtedly Green HRM in Maldives has tremendous potential to serve the individual, society and business. However, insufficient attention at all sector levels in SIDS has been given to stakeholders' perspectives about what affects their responses to environmental issues.¹⁷ Studies have revealed that Government Motivation is the key determinant in influencing the ability of stakeholders in the Maldives to respond to environmental issues, which concern them most, (e.g. climate change, disaster risk, and waste management).¹⁸ A number of problems emerged due to insufficient government motivation: political corruption; lack of stakeholder awareness and education; human resource situation; lack of stakeholder communication; lack of stakeholder motivation; lack of transparency and accountability and lack of appropriate fiscal and monetary action. These issues influenced and were affected by a number of capacity issues: awareness/education; technology; communication/network of interaction; human resources; including institutional structure and financial Issues.¹⁹

Since Green HRM is the side of HRM that is concerned with transforming normal employees into Green employees so as to achieve environmental goals of the organization and finally to make a significant contribution to

¹⁶ Furthermore, the islands are highly variable, with no two being even remotely similar. The topography of the islands is often determined by wind and wave action; some areas may be higher due to the accumulation of sand and gravel, and in other areas the beach may be eroded up to the line of vegetation. None of the islands have hills, but some have dunes, small lakes and/or marshes. Uninhabited islands' are often covered in bushes and coconut trees, and may have mangroves growing along the waterline. In addition to this vegetation, inhabited islands often also contain banana, papaya, mango, breadfruit and citrus trees, and other plants planted by families for personal consumption and for selling if grown in sufficient quantities. The soil quality is often poor and deficient in nitrogenous nutrients and micronutrients, particularly iron, manganese and zinc (FAO 2008), and is being further diminished by increasing salination of the water lens of islands; this adversely affects agricultural productivity. Moreover, as populations grow the land area available for growing food diminishes, leading to increasing food insecurity.

¹⁷ *Key Determinants of Stakeholders' Response to Environmental Issues in the Maldives*. Thesis submitted in partial fulfillment of the requirements for a Doctor of Philosophy. University of Brighton. MAY 2013.

¹⁸ Ibid.

¹⁹ Ibid.

environmental sustainability, the policies, practices and systems that make employees of the organization Green for the benefit of the individual, society, natural environment, and the business has to be seriously undertaken in Maldives, so that the purpose of Green HRM. i.e to create, enhance and retain Greening within each employee of the organization can be achieved, by harnessing maximum individual contribution on each of the four roles, i.e., preservationist, conservationist, non-polluter, and maker.

In order to highlight why Green HRM is so important to Maldives, it can be reiterated that Greening is essential for the following:

1. To avoid or minimize global warming.
2. To avoid or minimize natural disasters such as Acid rains, red rains, Tsunamis, flooding, hurricanes, droughts etc owing to informal, harmful and greedy usage of natural resources for production and consumption.
3. To avoid or minimize health diseases owing to pollution.
4. To avoid or minimize harms to animals and other natural creatures.
5. To ensure appropriate balance of relationships among plants, animals, people, and their environment.
6. To ensure survival of humans and business organizations for a prolonged period of time.

The above reasons are general reasons for Greening. As far as a particular organization is concerned a phenomenon called Corporate Social Responsibility (CSR) exists. CSR is defined as the extent to which an organization will strive to improve the overall welfare of society. It is an obligation to the general society. According to Certo and Certo (2008), CSR is the managerial obligation to take action that protects and improves both the welfare of society as a whole and the interests of the organization. Four specific reasons are given below for CSR:

1. The organization gets natural resources including materials, people and water from the environment in which it is operating. Hence it has to show gratitude to give something to protect and improve the environment.
2. The organization causes to pollute the environment (air, sand, noise etc.). The polluted environment will be a danger to the organizational members in future. Environmental pollution will

threaten the survival of all. Hence it needs to be stopped, or at least minimized by various CSR activities.

3. The people of the society and the government will make demands to the organization to conserve resources for future generation, to protect and improve prevailing conditions of the environment where all citizens live.
4. Through CSR activities an organization can enhance its image as a good corporate citizen which will make people appreciate the organization and consequently customers will become loyal and employees will become loyal. Also the organization

Thus, every organization gets obligatory to perform corporate environmental management and therefore there are environmental goals to be achieved by the organization or environmental requirements (some are as per ISO 14001 and others may be legal requirements relevant to the environment) to be met by the organization. There can be no corporate environmental management without employees and their related performance. Green HRM becomes necessitated in order to provide environmentally friendly products and operations, to manage corporate environmental programs successfully, and to overcome implementation challenges of corporate environmental programs (Milliman and Clair, 1996). Distinguished policies in recruitment, performance appraisal, training and development, employee relations and reward systems are considered powerful tools for aligning employees with a company's environment strategy (Renwick, 2008) and therefore Green HRM can decisively contribute to successful environmental management (Jackson et al, 2011). It is not an exaggeration to mention here that the employees are the key to success or failure of eco- activities of an organization.

In fact Green HRM is important not only at the organizational level but also at the employee or individual level. An employee has a private life in addition to work life and therefore he or she is an employee at the work life domain and a consumer at the private life domain. Environmentally friendly behaviour in both life domains is facilitated. Greening will be beneficial for the employee to give a significant individual contribution to successful corporate management and to become a good citizen giving a significant contribution to environmental sustainability.

As highlighted by Senior Prof. Dr. H.H.D.N.P. Opatha at the 1st HR Dialogue,²⁰ in order to achieve organizational environmental goals or Greening, Green human resource requirements need to be identified. There are four categories of Green human resource requirements, i.e. Green competencies, Green attitude, Green behaviours and Green results. Though these major types of Green human requirements are related they can be distinctly treated.

5.1. Climate-change-related challenges to HRM in Maldives

5.1.1. Storm Surges and Flood Risks

One of the anticipated outcomes from climate change is the increased intensity and frequency of extreme weather events, and rising sea levels. Current projected magnitudes indicate that low-lying deltas, coral atolls and reefs are particularly at risk from the high winds, high precipitation, high waves, storm surges and flooding of cyclones and increased sea levels (UNEP, 2004, p.9); therefore these occurrences are anticipated to disproportionately influence the economic and social development of SIDS (Granger, 1997; IPCC, 1998).

5.1.2. Coral Reefs

A large proportion of the land area occupied by SIDS is coastal, and many industries are located here; therefore threats to these areas, such as sea level rise, storm surges and flooding, are likely to be a significant problem that SIDS face. Beach and coastal erosion is the most common response of shorelines to sea level rise, flooding and storm surges.

Atoll islands, such as the Maldives, are dependent on coral for their survival as it is the framework that supports the island. On many island atolls and low reef islands, beaches are maintained by sand produced from productive reefs. Reefs are a very important natural resource for many SIDS (Nurse and Sem, 2001, p.857). Not only do reefs produce sand, they also are a source of food and building materials, and often act as natural breakwaters along coasts, thus minimising wave impacts in storms and

²⁰Proceedings of the HR Dialogue – 2013. Department of Human Resource Management, University of Sri Jayewardenepura. Sri Lanka.

cyclones. In addition, they are a tourism resource; for example, encouraging scuba diving. Furthermore, it is estimated that coral reefs support up to 25% of all marine life, which indicates it is important for biodiversity (ESCAP, 2010, p.24). Damage or destruction to coral reefs, therefore is a severe threat to the very survival of SIDS. Coral reefs are facing threats from both climate- and non-climate-related stressors. Sea level rise alone does not pose the greatest long-term threat to the survival of atoll islands, but the incapacity of coral reefs to keep pace with this sea level rise (Reaser et al., 2000).

5.1.3. Mangroves and Sea Grasses

Other common features of SIDS' coastal areas are mangroves and seagrasses. Mangroves not only act as nesting places for birds and other animal life (Commission on Sustainable Development, 1996), but they also play an important in protection of coastlines against tides, cyclones, and storm surges, and are filters against the introduction of exotic insects (Menendez and Priego, 1994; Suman, 1994). Mangroves are, however, threatened by sea level rise. Furthermore, indiscriminate diving, fishing and boating, mainly originating from the tourism sector, could also contribute to mangrove damage. This loss and destruction of coastal mangroves could result in increased rates of coastal erosion and flooding (Mimura et al., 2007).

Seagrasses provide habitats for many marine fish. There are a number of effects of increased GHG emissions that impact seagrasses: firstly, increases in sea-surface temperature are predicted to negatively affect seagrasses; secondly, Short and Neckles (1999) claim that changes in temperature are likely to alter sexual reproduction patterns and growth rates; thirdly, a rise in sea level would mean that there would be a reduced quantity of light reaching seagrass beds due to greater water depth, which would stunt plant productivity; and finally, increased carbon dioxide in the sea is likely to impact different species differently, and so change the competition between species (Beer and Koch, 1996). Seagrasses also face threats from other sources; for example, they are highly sensitive to land-based pollution and runoff (Edwards, 1995).

5.1.4. Biodiversity

SIDS frequently has a rich, unique biodiversity due to relatively high endemism caused by ecological isolation (Mimura et al., 2007, p.700).

Human livelihoods and well-being in SIDS are highly reliant on SIDS' distinct ecosystems services; for example, their income tends to be determined by the value of local amenities, fisheries and flows of tourists drawn to the destination partly because of its unique biodiversity (Wong et al., 2005). Therefore, loss of biodiversity is a significant economic threat to SIDS, and, as the extinction of species can affect the dynamic interactions of ocean, coral, land and vegetation (UNEP, 2004, p.14), it is also a substantial environmental threat. Biodiversity faces a number of challenges from both the effects of increases in GHG emissions, and directly from anthropogenic activities. An increase in temperature due to increased GHG emissions can have a significant impact on the biodiversity of SIDS.

5.1.5. Water Resources

The scarcity of fresh water is frequently a limiting factor for both the social and economic development in SIDS (Mimura et al., 2007; Nurse and Sem, 2001). Many SIDS rely completely on a single source - for example, the Maldives and Tuvalu rely on rainwater; Barbados and Kiribati depend on groundwater; the Seychelles depends on rivers; and Singapore relies on surface reservoirs and imports (Nurse and Sem, 2001, p.860). This heavy reliance on one source makes SIDS particularly sensitive to changes in their freshwater supplies, most of which are dependent on rainfall for replenishment and to maintain adequate levels. Therefore, water resources in SIDS are highly vulnerable to changes in rainfall (IPCC, 2001), and it is likely that water demand will not be met in times of low rainfall.

5.1.6. Agriculture and Fisheries

Subsistence agriculture in SIDS – with crops such as sweet potato, bananas and coconuts – is crucial to SIDS' economies, nutritional status, local food security and social well-being (Nurse and Sem, 2001, p.863). Dependence on the local ecology for food production varies between SIDS.

5.1.7. Tourism

Tourism is a highly climate -sensitive economic sector (Gössling and Hall, 2006; Becken and Hay, 2007). It is predicted that the effects of climate change and climate-related environmental and societal change will have substantial impacts on tourism destinations. However, the manifestations of climate change are likely to generate differing impacts in different markets and geographic regions. According to the Alliance of Small Island States

(AOSIS) (2009), Climate Change poses the most serious threat to the survival and viability of island destinations.

5.1.8. Health

Inhabitants of SIDS in tropical locations often suffer acute health problems; their tropical location makes them prone to climate-sensitive diseases, such as injury and mortality as a consequence of extreme weather events common in these areas.

5.2. Non-Climate-Change-related Challenges to Maldives

5.2.1. Pollution and Waste Management

The issue of waste disposal and waste management has become a significant issue in the discourse related to the Maldives, especially as tourism expands and local consumption increases; being geographically dispersed, the islands find it difficult and very costly to dispose of waste in a way that minimises the impact on the environment. With only one main rubbish collecting island near the capital, named ‘Thilafushi’, which is not an engineered waste management centre, many tonnes of rubbish are being deposited and buried, creating an ever-expanding land mass composed of garbage. The impact of this has resulted in increasing fumes and smoke being blown towards the capital Male’, rubbish in outer atolls tend to be thrown into the sea because there is no facility in the region to manage and sort the waste.

5.2.2. Tourism-related Environmental Issues

The unique geographical limitations that SIDS confront mean that tourism can be more damaging to the environment than similar tourist numbers in larger destinations; as McLaren (2003) describes it, the ‘carrying-capacity’ of the destination is often reached and exceeded rapidly. The impact of tourism on the environment includes pressure on natural resources (Jules, 2005), pollution and waste generation (Neto, 2002), and damage to ecosystems (Neto, 2002). Alternatives forms of tourism, specifically ecotourism, are being attempted, but evidence suggests that these may still be damaging to the environment.

5.3. Limits and Barriers to Green HRM in Maldives

5.3.1. Political Will

The lack of will of policymakers to undertake adaption (Smit & Pilifosova, 2001; Clar et al., 2012) has been attributed to a number of reasons

including uncertainty about long-term costs and benefits (Berrang-Ford et al., 2011; Nilsson & Swartling, 2009). The lack of awareness, knowledge and evidence of, and certainty about, issues such as climate change and sea level rise make it difficult for policymakers to reach an agreement and has resulted in disputes over which areas to prioritise. Generally, issues perceived as political priorities crowd out areas that are perceived as less relevant or serious (Storbjörk, 2010).

Political will can be affected by the lack of accountability of politicians, power struggles and political clashes between political parties and within the government and a change of government (Dodds, 2007). The lack of political will has resulted in hazard adaptation policy considered 'politically and administratively infeasible' (Clar et al., 2012, p.9) and can result in the formulation of policies that are not implemented adequately - namely, 'symbolic policies' (Newig, 2007). The monitoring and evaluation of policy requires experience due to the complex nature of impacts and outcomes. Therefore the lack of political will or commitment results in a disinterest in the evaluation of policies although these can also be hindered by resource issues (Clar et al., 2012, p.10).

The lack of political commitment can also be due to a lack of adequate leadership (Moser & Ekstrom, 2010). It has been identified that leaders may pose barriers in two ways: when they are not part of, or present in, the process or when they limit, hinder or stop the process. Committed leaders ideally facilitate, support and guide the adaptation process when the process being undertaken is unfamiliar or new active leadership is important and thus leaders can help maintain momentum of the adaptation process (Ekstrom et al., 2011, p.49) Moser (2009) argues that policies are ineffective if policymakers do not have the motivation, the authority, or the skills to lead adaptation.

5.3.2. Institutional

Responsibilities among stakeholders are inadequate or unclear as a result of the way institutions are set up and how roles and responsibilities are defined and allocated (Clar et al., 2012). This can be true at different levels in a community; for example the local community may not take action or initiative regarding environmental issues because they are waiting for central government to take responsibility (Amundsen et al., 2010), but it could also be due to resource issues. Dealing with and developing

strategies to tackle environmental issues is complex and requires both vertical and horizontal government interaction and communication, as when roles and responsibilities are inadequate and unclear, action is hindered. When responsibilities are known and clear, action could nonetheless be negatively affected by those responsible, who lack the will or experience difficulties in getting the cooperation of other actors (Adger et al., 2005; Storbjörk, 2010). Issues related to the environment may not be even brought into decision making or policy formulation due to the way institutions operate, communicate and are organised.

5.3.3. Regulatory

Laws and regulations may hinder action due to limitations resulting from planning laws; thereby increasing time, resources and costs involved in the implementation of policy. For example DCEE (2011, p.ii) mentions that regulatory barriers occur where regulations such as Building Codes do not take climate change into account, or where standards or codes reduce resilience to climate impacts. Policy and government intervention may not always be the best option to lead to effective adaptation. Type of intervention requires consideration, including examination of risks and costs of action versus inaction. Laws and regulation cannot act as barriers alone but operate with a number of others such as the ones discussed above.

The policy and regulatory environment in which the private sector operates influences decision making significantly. Regulation can compel companies to take adaptation into account. Regulations that have been implemented for other reasons such as building standards, water temperatures limits, water quality standards, price ceilings and security regulations will influence adaptation choices of the private sector. However, consistency and predictability of regulation should be present if it is to encourage adaptation (Agrawala et al., 2011, p. 43).

5.3.4. Physical Environment

Human action and climate change can potentially damage the natural environment by leading to the depletion of available natural resources. This can result in the increased vulnerability of communities dependent on their environment. Human action can be managed through controlling the use and the way it is used whereas climate change is less predictable and more

variable, and it is therefore more difficult to manage the consequences (Berkes & Jolly, 2001).

Climate Change can damage the ecology, result in the loss of species, and reduce the ability of eco-systems to cope and regulate themselves. SIDS' ability to adapt to climate change will depend on the rate and magnitude of climate change. If Climate change affects the natural functioning of an eco-system, natural adaptation could become inhibited. This may lead to a limited set of response options left for SIDS and eventual migration out of their national territories in a worst case scenario (Barnett & Adger, 2003; Barnett, 2005).

5.3.5. Human Resources

SIDS tends to have small populations; therefore finding enough employees can be difficult. Moreover finding staff with the right technical qualifications and abilities is another barrier, to effective environmental management. As mentioned earlier, political disinterest and lack of financial resources may affect the ability of policymakers to measure the impact and outcomes of policy, but policy could also be affected by the lack of technically qualified employees (Burch, 2010; Jones, 2010). The lack of training, education and human resource investment hindered the development of human resources to meet the technical needs of adaptation which was required. For example, Robinson and Gore (2005, pp.113-114) found that staff in Canadian municipalities often felt that there was a lack of training to deal with climate change and inadequate staff numbers to deal with the workload.

5.3.6. Technology

Uncertainty about environmental issues contributes to the limiting of responses; similarly, uncertainty, and lack of knowledge about the feasibility, long-term costs and benefits implications of technology result as a barrier (Tol et al., 2006; Mailla et al., 2005.). Technology may not be equally transferrable to all stakeholders, situations and environments - therefore strategies of adaptation may be beneficial in one context, but ineffectual, or cause and/or exacerbate vulnerabilities in other contexts (Adger et al., 2007).

5. Conclusion

Observations from the scenario in Maldives tell us that circumstances may change from time to time and from country to country, although the principles behind the policies are universal and acceptable to all countries. Therefore, policy makers of no country should feel totally complacent about the consequences of shortcomings in their administration and implementations of policies with regard to human resource management. Furthermore, what we can observe is that “delay defeats the purpose” of policies and legislations when they are not properly administered or implemented accordingly and in time.

In general, the Maldivian example highlighted that any meaningful and sustainable HRM of institutions could be undertaken by harmonizing public policies and legislations related to HRM in line with the most appropriate public policies that comprehensively support the ideal goals of HRM of private and public entities.

As highlighted by T. L. Sajeewanie and H.H.D.N.P. Opatha,²¹ the field of HRM has undergone tremendous changes and growth over the past 200 years (Butler et.al, 1991). Broadly HRM has gone through several stages of the development (from Welfare during 1900s through Personnel Administration during 1940s, Personnel Management-the developing phase during 1950s, Personnel Management-the mature phase during early late 1960s & 70s to HRM/ Strategic HRM during 1980s & 90s) (Opatha, 1997). It is viewed as a change or development driven by fundamental environmental changes (particularly in product market conditions), which were not capable of being adequately responded to by the traditional concerns, orientations and power of personnel management function (Beaumont, 1992). In the past few years, the roles of HR professionals were often viewed in terms of transition from operational to strategic, qualitative to quantitative, policing to partnering, short term to long term, administrative to consultative, functional oriented to business oriented, etc. (Ulrich, 1997).

²¹T. L. Sajeewanie and H.H.D.N.P. Opatha, “Relationships between Human Resource Manager-related Factors and Practice of Strategic Human Resource Management in Sri Lankan Listed Firms.” Sri Lankan Journal of Human Resource Management, Vol. 1, No. 1, 2007.

Hence, what is most needed today is to establish regular contact between HRM professionals of various industries and their regulators of their respective governments, in order to refresh, revise, repair or renew or if necessary enact new legislations regarding upgrading of HRM of various institutions. Therefore, in my opinion, the best option is through these international conferences backed by university programs, because these conferences can best achieve the following goals: offer a platform to present HR issues and solutions of the HR professionals; share the different views, analysis, perceptions of HR issues and solutions presented by the HR professionals at the HR Professional Session; cultivate the knowledge sharing among the professionals, academics and the students in the HRM field; develop explorative research studies in HRM for the future investigations.

Therefore, I strongly support HR dialogue to be continued vigorously because HR dialogue is an academic and professional forum of knowledge sharing in the field of Human Resource Management, which brings new ideas, thoughts, concepts, exercises and practices in the HRM field. Undoubtedly, HR Professional Sessions would create the forum of sharing practical insights of HRM issues with academics and professionals in the field of HRM because the professionals are free to express their ideas, concepts, new theories and applications. A.A. Arulrajah,²² states that there is a “*Contribution of Human Resource Management in Creating and Sustaining Ethical Climate in the Organisations*”. Namnso Bassey Udoekanem²³ states²⁴ that human resources development is essential for the development of human capital which is one of the important factors necessary for the achievement of sustainable economic growth in any nation (Harbison, 1973; World Bank, 1974 and Peters, 2011). Harbison (1973) supported this assertion.²⁵

²² A.A. Arulrajah “*Contribution of Human Resource Management in Creating and Sustaining Ethical Climate in the Organisations*“.2015, Vol. 5, No. 1 – Sri Lankan Journal of Human Resource Management.

²³ (Department of Estate Management and Valuation Federal University of Technology, Minna, Niger State, Nigeria)

²⁴ Sri Lankan Journal of Human Resource Management Vol.4, No.1, 2013

²⁵ “Human resources, not capital constitute the ultimate basis for the wealth of nations. Capital and natural resources are factors of production; human beings are the active agents who accumulate capital, exploit natural resources, build social, economic and political organizations and carry forward national development. Clearly, a country which is unable

In this regard, the Maldives should recognize that its people are its biggest asset, and invest in training, professional development and peer review. Therefore, it is critical that the Human Resources Strategy (HRS) for the Maldives should target the increase in Maldivians participating in the existing few industries, extending the skills and knowledge to extend careers and establish higher service levels, diverse the opportunity for meaningful participation and ensure the regulatory environment, enforcement and control meet the requirements towards development.

The biggest bottle-neck identified even in the largest tourism industry is the lack of interest to enter the industry and the lack of motivation to remain, and grow, with the industry. The current available data suggest that the Maldives are unlikely to meet future demand for local staff members and are likely to fall short of localisation targets based on current quota divisions.

In fact, many excellent plans and guiding principles for tourism development have been produced but effective control (enforcement) is not sufficiently addressed. To avoid this with regards to the Human Resource Development Strategy, the policy makers in Maldives should adhere to a more pro-active role through improved communication channel between government and the industry. To help the Maldives achieve its quality objectives, the implementation of the strategy will have to include: continuously reviewing the quality of all industry-wide systems and processes; promoting knowledge management across the industry as a whole; monitoring the Continuing Professional Development of all staff; supporting the industry to uphold standards of professional practice.

“Dheviange Phitai”

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to develop skills and knowledge of its people and to utilize them effectively in the national economy will be unable to develop anything else”.

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