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**Local Implications of International Human Rights
Treaties: The Impact of a CEDAW Right to Public Life in
the Republic of Maldives**

A thesis
submitted in fulfilment
of the requirements for the degree
of
Doctor of Philosophy in Law
at
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Marium Jabyn



THE UNIVERSITY OF
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ABSTRACT

In 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) codified women's rights to equality in both private and public spheres of life, and introduced it as a global norm. It stipulated not only that women should not be discriminated against, but also that women should be equal recipients in the allocation and enjoyment of human rights. To this end, it imposed obligations on States Parties and provided multiple approaches towards achieving women's equality. In general, the international community has invested over six decades in constructing a 'global' system of human rights where consenting sovereign States Parties have agreed on a 'universal' standard of rights to be protected and promoted within and beyond their national borders. Despite 'universal' commitments to human rights treaties, expressed through ratification, and many times through creating the required national legislation and policy changes, human rights goals are yet to be achieved.

Using a CEDAW right to public life, this thesis examines the two aspects of treaty implementation: integration into domestic norms and enforcement of treaty norms through treaty enforcement mechanisms established by the UN. By illustrating gaps in 'rights-in-principle' and 'rights-in-practice', this thesis offers an insider's perspective on the tensions between a CEDAW right to public life and the domestic situation in the Republic of Maldives. Rights-in-principle is measured through an analysis of domestic legal instruments, identifying the extent to which CEDAW has been incorporated into legislation, government policy and initiatives. Data for the rights-in-practice measure was collected through semi-structured interviews conducted with purposively selected participants, representing both State and non-State actors. The information gathered through interviews was analysed both manually and using the NVivo-10 Software. The data was then interpreted using the capabilities theory, examining how limited capabilities arising out of gendered practices, cultures and structures affect the successful local implementation of a CEDAW right to public life.

The findings from the rights-in-practice segment of the research demonstrate a highly gendered world, where links between political power and male leadership are seen as natural and women ideally suited to roles either within the domestic sphere or a caretaking role. Participation in public life is also dependent on class (family status), property ownership and resources, and affiliations with political parties. However, the belief in socially distinct roles is a dominant feature within the local, and heavily affects women's lives and their autonomy. Gender based differences, it is argued, is rooted in deep cultural and religious beliefs and change is often resisted by the local community. It is also anticipated that fast growing religious fundamentalism in the Maldives will significantly impact women's rights in the near future. Thus, while CEDAW, and its articulation of a right to public life, embodies a framework for substantive equality that aims to entitle, enable and empower women to pursue the CEDAW right to public life, the State has yet to ensure a right to public life, as envisaged by the Convention.

The thesis acknowledges that a CEDAW right to public life has had an impact, but mainly at a formal level, changing domestic law and policy, but has had limited impact on the achievement of equality for women. The situation in the Maldives is further compounded by the nature of the international human rights platform, which is primarily based on State consent, leading to limited intercultural dialogue between CEDAW and its States Parties and little pressure on the States Party, which further cements the status quo. Ad hoc procedures, lack of committed personnel to draft treaty reports, and low level of civil society engagement in the process, also significantly affects effective treaty implementation. Thus, both 'local struggles' and the existing structure of the international human rights treaty enforcement mechanisms poses challenges for the pursuit of a CEDAW right to public life.

This thesis is a much-needed exploration of how local cultures appropriate and enact international human rights law, and will be of enormous value to persons working with international human rights particularly in the Maldivian context, and also at the global level. It makes both theoretical and methodological contributions to international human rights law in the area of human rights and treaty compliance.

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My heart-felt gratitude goes to my husband, every member of my family, and my husband's family, a constant source of love, concern, support and strength.

Last, but not the least, I am thankful to the Commonwealth Scholarship Scheme for funding this doctoral research in New Zealand.

DEDICATION

This thesis is dedicated to my wonderful husband, *Muaviyath Idris*
&
my dearly beloved mother, *Aminath Waheedha*.

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LIST OF ABBREVIATIONS

ACC	Anti-Corruption Commission (Maldives)
ADB	Asian Development Bank
CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CPRW	Convention on the Political Rights of Women
CRC	Convention on the Rights of the Child
CSC	Civil Services Commission
CSW	Committee on the Status of Women
DAW	Division for the Advancement of Women (United Nations)
DEDAW	Declaration on the Elimination of All Forms of Discrimination against Women
ECHR	European Convention on the Protection of Human Rights and Fundamental Freedoms
ECOSOC	Economic and Social Council (United Nations)
GA	General Assembly (United Nations)
GDP	Gross Domestic Product
GGI	Gender Gap Index
GNP	Gross National Product
HRC	Human Rights Committee (United Nations)
HRCM	Human Rights Commission of the Maldives
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHR	International Human Rights
IWRAW	International Women's Rights Action Watch
JSC	Judicial Services Commission
MoGF	Ministry of Gender and Family (Maldives)
MP	Member of Parliament
NGO	Non-governmental organization
NHRI	National human rights institutions
NWC	National Women's Committee
OHCHR	Office of the UN High Commissioner for Human Rights
SSB	Support Services Branch (of OHCHR)
TC	Committee against Torture
UDHR	Universal Declaration of Human Rights
UNDAF	United Nations Development Assistance Framework
UNDG	United Nations Development Group
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Fund for Population Activities
UNIFEM	United Nations Development Fund for Women
VCLT	Vienna Convention on the Law of Treaties
WHO	World Health Organization

GLOSSARY OF TERMS

Accession	Acceptance of a treaty by a State
Adoption	A process by which a state agrees to international law; with regard to treaties, adoption usually refers to the initial diplomatic stage at which a treaty is accepted; in order to become effective, after adoption a treaty usually must be ratified by the legislature.
Beijing Declaration and Platform for Action	Consensus document emerging from the 1995 Fourth World Conference on Women in Beijing, reviewing and reaffirming women's human rights in all aspects of life; signed by representatives at the conference and morally but not legally binding.
Commission on Human Rights	A UN commission comprising a group of representatives of different countries that deal with situations involving human rights and fundamental freedoms anywhere in the world. Special rapporteurs report to this commission or its subcommissions.
Commission on the Status of Women (CSW)	Body formed by the Economic and Social Council (ECOSOC) of the United Nations as the principal UN policymaking body for women; monitors implementation of the Beijing Platform for Action.
Committee on the Elimination of Discrimination against Women	The treaty-monitoring body created by the Convention on the Elimination of All Forms of Discrimination against Women to monitor state compliance with that convention.
Common core document	A document submitted by a State Party to the Secretary-General containing information of a general nature about the country which is relevant to all the treaties, such as information on land and population, on the political structure, on the general legal framework within which human rights are protected in the State, and on non-discrimination, equality and effective remedies. It constitutes the common initial part of all the State reports to the treaty bodies.
Concluding observations	The observations and recommendations issued by a treaty body after it has considered a State Party's report.
Convention/ Covenant/ Treaty	Binding agreement between States; used synonymously with treaty and covenant. Legally, there is no difference between a treaty, a convention or a covenant. All are international legal instruments which, in international law, legally bind those States that choose to accept the obligations contained in them by becoming a party in accordance with the final clauses of these instruments.
Covenant	Binding agreement between States; used synonymously with convention and treaty.

Declaration	Document stating agreed-upon standards but which is not legally binding.
<i>Dhivehi</i>	Local language of the Maldives.
Discrimination	Used to mean distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. (Article 1, CEDAW 1979).
General comment	A treaty body's interpretation of human rights treaty provisions, thematic issues or its methods of work.
<i>Ḥadīth</i>	The collections of the reports claiming to quote what the prophet Muhammad said verbatim on any matter.
<i>Majlis</i>	National Parliament of the Maldives.
<i>Mauzoon</i>	A person who is authorised and appointed to solemnize marriages by an official authority.
<i>Muslim</i>	A person who practices Islam as a religion.
National human rights institutions (NHRIs)	Increasingly recognized as an important part of any national human rights protection system, these are independent domestic institutions created to promote and protect human rights within the State.
<i>Non-Governmental Organisation (NGO)</i>	Organizations formed by people outside of government.
Protocol	Supplemental addition to a treaty; when States parties can still agree to the main treaty without signing on to the protocol, this is known as an optional protocol.
<i>Qur'ān</i>	The Holy Book of Muslims.
<i>Ranin</i>	Dhivehi word for Queen.
Recommendation	Different to a Concluding Observation, this is a formal recommendation or decision issued by a treaty body on specific matters or resolutions of a more general nature, such as those resulting from a day of general discussion.
Reservation	A reservation is a statement, however phrased or named, made by a State by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that State.

State Party report	The report that each State Party to a human rights treaty is required, under the provisions of that treaty, to submit regularly to the treaty body, indicating the measures it has adopted to implement the treaty and the difficulties it has encountered.
<i>Sunnah</i>	The sayings and conduct of Prophet Muhammad.
UN Charter	Document of the United Nations (signed 1945; entered into force 1945) which spells out the rules for the UN and reStates some of the basic principles of international law.
Written response/ Replies to list of issues	A State Party's written replies to a treaty body's list of issues and questions submitted before the session at which its report will be considered. Written responses to a list of issues supplement the State Party report or bring it up to date.

CHAPTER ONE

INTRODUCTION

This thesis emerged out of an initial concern to understand the seemingly limited ability of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to enhance women's participation in public life in the Maldives. The Maldives joined the United Nations (UN) on 21 September 1965 and became a States Party to CEDAW in July 1993. Over the last two decades, the Maldives has made multiple attempts at legislative reform, to align its domestic law with internationally accepted human rights norms. Law and policy have also been revised to address acute areas of concern, particularly those relevant to women's issues such as maternity, family, child abuse, domestic violence and sexual harassment.

In 2012, Maldives was also the only Millennium Development Goals (MDGs)¹ *plus* country in South Asia.² It ranks relatively high in education and health, and has a zero gender gap in education, performing at par with countries such as Australia (Figure 1). Given their educational achievement, women's participation in public life is relatively limited.³ The Maldives was ranked 52 out of 146 in gender inequality due to inequality between men and women in three main areas;

¹ The world's time-bound and quantified targets for addressing extreme poverty, hunger, disease, lack of adequate shelter, and exclusion-while promoting gender equality, education, and environmental sustainability.

² Human Rights Council, Working Group on the Universal Periodic Review *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council resolution 16/21 - Maldives* (A/HRC/WG.6/22/MDV/1 United Nations General Assembly 2015) at 17. Also see, United Nations *Consideration of Reports Submitted by States under Article 18 of the Convention on the Elimination of All forms of Discrimination against Women: Combined Fourth and Fifth Periodic Reports of States Parties- Maldives* (CEDAW/C/MDV/4–5 2012) at 2.

³ Megan Ritchie, Terry Ann Rogers and Lauren Sauer *Women's Empowerment in the Political Processes in the Maldives* (International Foundation for Electoral Systems 2014) at 7.

reproductive health, empowerment and economic activity.⁴ Overall equality was affected due to continuing and increasing gender inequality in the Maldives. Although Maldives is still faring better in terms of its South Asian neighbours, gender inequality in the Maldives had increased from 0.288 in 2008 to 0.32 in 2011.⁵ The same trend was also noted in the Gender Gap Index (GGI). Maldives slid down eight ranks from ninety-first in 2008 to ninety-ninth in 2011.⁶

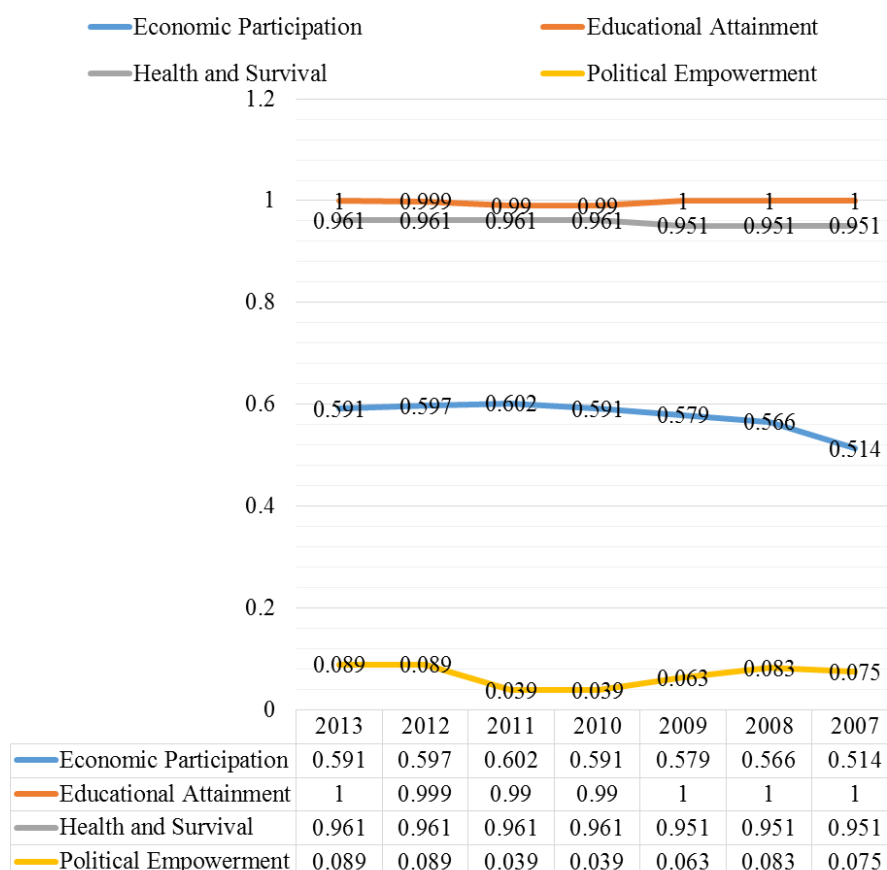


Figure 1: Global Gender Gap Index 2006-2013

Source: The Global Gender Gap Report 2013, at 271.

⁴ United Nations, above n 2, at 2.

⁵ At 2.

⁶ At 2.

Recent research from the Maldives corroborate these findings and suggest that perceptions of inferiority, attitudes, and patriarchal culture are affecting women's participation in public life. These studies also indicate that public acceptance of *gender equality*,⁷ has dropped significantly in the last ten years. Given these local trends, this thesis seeks to understand the influence, if any, of a CEDAW right to public life on women's participation in public life in the Maldives.

Before going into a discussion of women and public life in the Maldives, the following section offers a background of the Maldives, its people, and political and legal systems.

1.1 The Republic of Maldives

The Republic of Maldives (herein after referred to as the Maldives), is a unitary democratic republic with a population of 350,759.⁸ The country has an area of 500 square miles (1,300 km²) distributed across 1190 small islands and is located south of India and west of Sri Lanka in the Indian Ocean (Figure 2).⁹ Geographically, the Maldives has a number of natural atolls, a few islands, and isolated reefs. Prior to 1978, the Maldives was a heavily product-based economy.¹⁰ Today, it is a world

⁷ Gender equality does not imply that women and men are the same, but that they have equal value and should be accorded equal treatment. It is used in this thesis to mean sexual equality or equality of the genders, with the view that both men and women should receive equal treatment and not be discriminated against based on their gender. "Gender equality is achieved when women and men enjoy the same rights and opportunities across all sectors of society, including economic participation and decision-making, and when the different behaviours, aspirations and needs of women and men are equally valued and favoured". Gender Equality Division, Department of Justice and Equality, Republic of Ireland, www.genderequality.ie, accessed at 7.00 a.m., 31 Jan 2016

⁸ Department of National Planning, Republic of Maldives "Statistical Yearbook of Maldives 2012" (2012) Department of National Planning, Republic of Maldives <www.planning.gov.mv>.

⁹ Bruce D Cain "Review - The Dhivehi Language: A Descriptive and Historical Grammar of Maldivian and Its Dialects, by Sonja Fritz" (2004) 46 *Anthropological Linguistics* 352.

¹⁰ Urmila Phadnis and Ela Dutt Luithui "The Maldives Enter World Politics" (1981) 8 *Asian Affairs* 166 at 166.

renowned tourist destination with several international brand names in its portfolio.¹¹ Tourism also makes the chief contribution to the national GDP.¹²

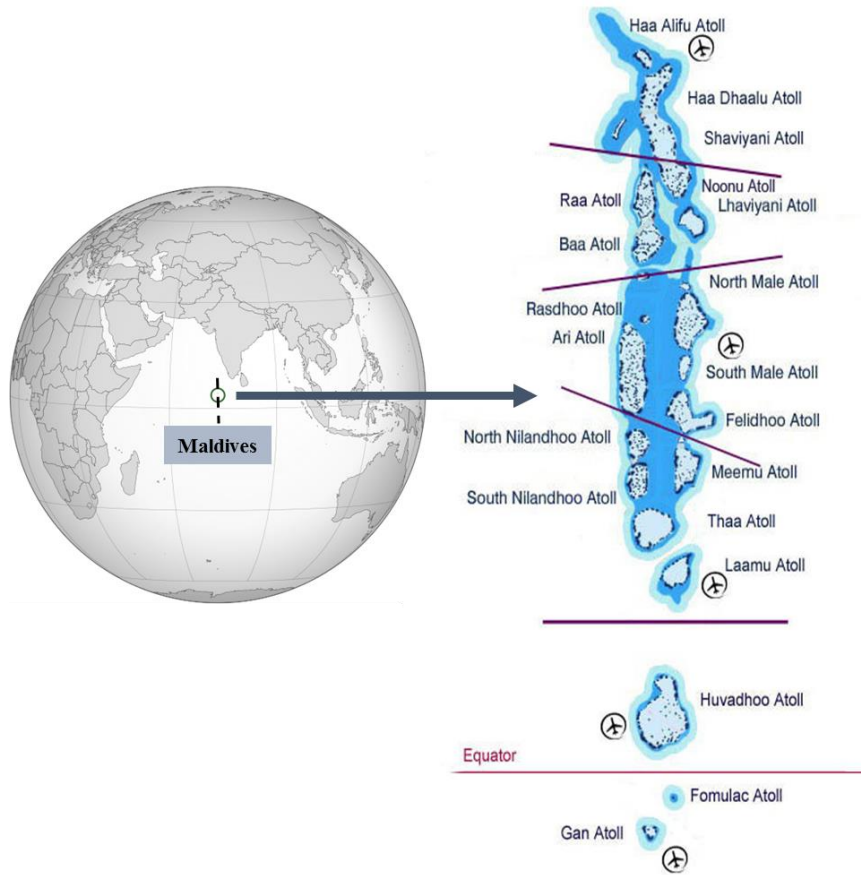


Figure 2: Geographical Location of the Maldives and Country Map

Source: Globe, Wikipedia (www.wikipedia.org). Map of the Maldives, www.scubascuba.com.

¹¹ See, Suresh Kumar Kundur “Development of Tourism in Maldives” (2012) 2 International Journal of Scientific and Research Publications 1.

¹² Katrina Brown and others “Environmental carrying capacity and tourism development in the Maldives and Nepal” (1997) null Environmental conservation 316; Jack Carlsen “Post-Tsunami Tourism Strategies for the Maldives” (2006) 10 Tourism Review International 69; ADB *Maldives: Country Snapshot* (Asian Development Bank 2014).

Lying only five feet above sea level, Maldives is the flattest country in the world,¹³ and is seriously at risk of being affected by climate change,¹⁴ in particular, erosion, global warming, and sea level rise.¹⁵ Moreover, perhaps due to poor soil quality across the country, agriculture has never been a main industry in the Maldives. Limited natural resources, often compounded by demographic factors, makes the Maldives very vulnerable to global economics and politics.¹⁶ Despite its various environmental, economic and developmental challenges, the Maldives has committed to becoming carbon neutral by 2020.¹⁷

1.1.1 The People of the Maldives

Modern day Maldivians identify themselves as a homogenous group. The genetic make-up of Maldivians however, has very diverse origins.¹⁸ Whilst genomes from the Maldives have huge similarities with neighbouring countries such as India, Pakistan and Sri Lanka, the most abundant haplogroups in the East are almost completely absent in the Maldives.¹⁹ Haplogroups more predominantly common in upper-caste populations in West Asia and Y-STR haplotypes that are identical or near identical to certain types of Y chromosomes Eurasia, from Central Europe

¹³ The country with the lowest high point is Maldives, with a maximum elevation above sea level of 2.4 m. Guinness World Records, available on <www.guinnessworldrecords.com>, accessed at 4:43 pm, 13/01/2016.

¹⁴ Department of Climate Change and Energy, Ministry of Housing, Transport and Environment *National Assessment Report 2010* (Ministry of Housing, Transport and Environment, Maldives 2010) at 5.

¹⁵ Jon Bowermaster “Maldives, Ground Zero for Climate Change Impacts” (2011) National Geographic <www.newswatch.nationalgeographic.com>.

¹⁶ Phadnis and Luithui, above n 10, at 167.

¹⁷ Department of Climate Change and Energy, Ministry of Housing, Transport and Environment, above n 14, at 5.

¹⁸ Jeroen Pijpe and others “Indian Ocean Crossroads: Human Genetic Origin and Population Structure in the Maldives” (2013) 151 *Am J Phys Anthropol* 58 at 64.

¹⁹ At 64.

to India, are found in the Maldivian gene pool.²⁰ Maldivians also speak a unique language, Dhivehi,²¹ the youngest Indo-European and Indo-Aryan language.²²

The mixed ethnic group, who now identify themselves as ‘Other South Asian Muslim’ is a mix of African, European, Arabian and Asian ethnicities. Many travellers first came arrived in the Maldives, or were washed on to the shores of an island during a voyage.²³ African slaves were brought to the Maldives between the fifteenth century and the mid-nineteenth century from places such as Hijaz,²⁴ and later married within the indigenous population.²⁵ Maldivian cultural music, *Bodu Beru* (big drum), with its song (*baburu lava*) and dance (*baburu neshun*) a current tourist attraction, may have originally come from Africa.²⁶ In this way, ethnic influences from the African and Arabian Peninsula came to exist in the Maldives and were assimilated into the population.²⁷ Distinct indigenous groups are no longer identifiable in the Maldives.

Compared to how old the Maldives is, there is an ominous lack of literature on the Maldives.²⁸ From its little known history, it is claimed that the first settlers of the

²⁰ At 64.

²¹ Sonja Fritz *The Dhivehi language* (Ergon, Würzburg, 2002).

²² For a comprehensive background of the language, see, Sonja Fritz *Beiträge zur Südasiensforschung* (Heidelberg: Südasiens-Institut, Würzburg: Ergon Verlag, 191, 2002) A special internet edition of the book “The Dhivehi Language. A Descriptive and Historical Grammar of Maldivian and Its Dialects” by Sonja Fritz (2002), available on <http://titus.uni-frankfurt.de/personal/sf/sf_2002a.pdf>; Also see, Ludwig Paul *Persian Origins: Early Judaeo-Persian and the Emergence of New Persian* (Collected Papers of the Symposium, Göttingen 1999) (Otto Harrassowitz Verlag, Wiesbaden, 2003); Yumna Maumoon *A General Overview of the Dhivehi Language* (National Centre for Linguistic and Historical Research, Male’, Maldives, 2002).

²³ For example, see Albert Gray and Albert Gray (translators) Francois Pyrard *The Voyage of Francois Pyrard VI* (Kessinger Publishing, LLC, 2007).

²⁴ Shihan de Silva Jayasuriya and Angenot Jean-Pierre *Uncovering the History of Africans in Asia* (Brill, Leiden, Boston, 2008) at 12-13.

²⁵ At 12–13.

²⁶ At 13.

²⁷ At 137.

²⁸ In some accounts it is well over 3000 years old. See Pijpe and others, above n 18, at 58. Also see, Naseema Mohamed “Note on the Early History of the Maldives” (2005) 70 *Archipel*, Parcourir Les Collections 7 at 7.

Maldives were known as *Dheyvis*, and arrived in the Maldives sometime between 269-232 B.C from *Kalibanga* in India.²⁹ The next people to have arrived were the *Redi* and *Kunibee*, also from India, *Mahrast*. Aryans came to the Maldives between fifth and sixth centuries, before Emperor Asoka established his Kingdom in India.³⁰ These people did not originally come from India, but had come to India from another country.³¹ Whilst these groups mostly occupied South Maldives, the Northern parts of the country were occupied later, by tribes known as *varam* from Southern India and populated the islands of *Nolhivaram*, *Kuruhinnavaram* and *Giravaram*.³² Later on, people from Serendib (Sri Lanka) also came to the Maldives and settled in the south.³³ Buddhism is said to have been introduced to the Maldives by Emperor Asoka, around the third century B.C.³⁴ Throughout its history, Maldives has been constantly under the threat of regional powers, particularly Indian influences.³⁵ Maldives was then known as *Dheeva Mahal*.³⁶

The Maldives was converted to Islam in 1153 A.D.³⁷ The unconfirmed conversion story,³⁸ is a ‘romantic emplotment,’ which claims that an Arabian traveller saved the Maldives from a sea-demon, who came out of the sea once a month threatening to destroy everything unless a virgin was sacrificed.³⁹ It is also claimed that the conversion may have been facilitated by other existing factors such as the positive

²⁹ Mohamed, above n 28, at 7. Original reference, Dhoondeyri Don Maniku (translator) Shihabuddine Ahmed *Kitab fi Athaari Meedhoo el-Qadimiyyeh, c 1650-1687*.

³⁰ Mohamed, above n 28, at 8.

³¹ At 8.

³² These may be present day ‘Nolhivaram’, ‘Hinnavaru’ and ‘Giraavaru’, At 8.

³³ At 8.

³⁴ At 9.

³⁵ See the influence of Chola emperors in the region, At 9.

³⁶ At 9.

³⁷ For details on the conversion of Maldives to Islam, see, Rizwan A Ahmad “The State and National Foundation in the Maldives” (2001) 13 Cultural Dynamics 293.

³⁸ Clarence Maloney *People of the Maldive Islands* (Orient Longman, Mumbai, Chennai, 1980) at 101.

³⁹ Ahmad, above n 37, at 298.

influences from the Arab travellers, compared to the effect of the maritime powers of Southern India.⁴⁰

1.1.2 Interactions with Global Colonial Powers

Foreign relations has always been key for the Maldives, primarily because of its geostrategic position which not only attracts friendly admirers but also the rivalry and competition of the major global and regional powers.⁴¹ Most Indian Ocean island States, whether they were colonised or not, they were under ‘secure political control’ of the colonial powers.⁴²

In the more recent history, and apart from Indian and regional influences, Maldives has been under three of the world’s most influential colonial powers: the Portuguese, Dutch and the British.⁴³ Portuguese made two attempts to take over the island nation, the second of which they succeeded after killing Sultan Ali VI.⁴⁴ In 1558, the Portuguese thereby became the first colonial powers to rule the Maldives.⁴⁵ In the mid-seventeenth century, the Dutch had gained power over the Portuguese in Ceylon (Sri Lanka) and exercised control over the Maldives, although were not directly involved in the local affairs of the Maldives.⁴⁶ Maldives were constantly under threat particularly by regional powers such as rulers of Southern India. Malabars attacked the Maldives a couple of times, so the Maldives asked for

⁴⁰ Hassan Ahmed Maniku “Conversion of Maldives to Islam” (1986) 31 Journal of the Royal Asiatic Society Sri Lanka Branch 72 at 72.

⁴¹ Phadnis and Luithui, above n 10, at 166.

⁴² At 298.

⁴³ For a historical overview, see Chandra Richard De Silva *Portuguese Encounters with Sri Lanka and the Maldives* (Ashgate Publishing, Ltd, Burlington, 2009).

⁴⁴ Royston Ellis *Maldives* (Bradt Travel Guides, Connecticut, US, 2008) at 19.

⁴⁵ Also see, *Dhivehi Thaareekh - Maldives History* (1981) at 1–3; Husnu Al Suood, *The Maldivian Legal System* (Maldives Law Institute, Male’, 2014) at 16–17.

⁴⁶ Al Suood, above n 45, at 17.

protection from the Dutch.⁴⁷ Malabars were finally successful in 1752, took over the capital island, and ruled for four months before they were defeated by the locals.⁴⁸ This then led to the French Defence Treaty established between the French forces in Pondicherry, India and the Maldives.⁴⁹ By the end of the eighteenth century, Britain had become the regional power and following the Dutch-Ceylon relationship, it too continued to have linkages with the Maldives. Britain was also interested in the Maldives due to its geographic location in South Asia, a key attraction for naval powers.⁵⁰ The British Eastern fleet used the most southerly of the string of islands, Addu Atoll, as a secret base for its operations. Then, in 1887, Maldives became a British Protectorate, and pledged to have no collaborations with any other foreign powers, without the consent of the British.⁵¹ Technically, Maldives was never a British colony.

1.1.3 Political Systems and Governance Structures

For most of its known history, the Maldives was a monarchy ruled by kings and queens reigning until death or abdication. Between 1953 and 1968, the country shifted between a sultanate system and a republic system, to finally become a republic in 1965.⁵² ‘Drifting’ between autocracy and democracy,⁵³ the legal and political system of the Maldives has seen immense change since independence in 1965. In more recent times, Maldives has witnessed a major overhaul in its system of politics and governance.⁵⁴ Currently, the administrative divisions of the

⁴⁷ *Dhivehi Thaareekh - Maldives History*, above n 45, at 20–36.

⁴⁸ At 151–190.

⁴⁹ At 184.

⁵⁰ Al Suood, above n 45, at 18.

⁵¹ At 18.

⁵² Phadnis and Luithui, above n 10, at 168.

⁵³ Jacob Ashik Bonofer “The Challenges of Democracy in Maldives” (2010) 3 IJSAS 433 at 433.

⁵⁴ Aishath Raniya Sobir and others *Maldives Human Development Report 2014 -Bridging the Divide: Addressing Vulnerability, Reducing Inequality* (Ministry of Finance and Treasury and the United Nations Development Programme 2014) at 23.

Maldives consist of cities, atolls, and islands; each administered by their own local council, which is also directly linked to the central government in Male'.⁵⁵

Post-independence, the longest serving ruler has been President Qayoom,⁵⁶ who was President of the Republic from 1968 to 2008. The parliament nominated the single candidate who had to be confirmed by a public vote in a yes-no referendum. During the six terms in office of Qayoom's regime, the State had seen both economic and educational development. However, all political activity was closely monitored by the State and civil and political rights were limited. Furthermore, together with political activities, the State also closely monitored the Islamic practices of its citizens, making sure that the version of Islam followed was State confirmed. The autocratic style of governance then sparked a civil uprising that demanded more freedom, mostly in relation to civil and political rights of Maldivians.⁵⁷ September 2003 is identified as a key date, when the killing of inmate Evan Naseem in a prison cell led to mass demonstrations in Male' demanding political reform and freedom.⁵⁸ It also led to the National Reform Agenda 2004, the first political parties,⁵⁹ and also to the 2008 Constitution. These reforms were also in line with international demands to integrate democracy into the local governance framework.⁶⁰ Through galvanising the public into political activism, demanding internationally accepted systems of governance and human rights, introduction of political parties and amending the national constitution to incorporate separation of powers, Maldives stepped into a new era of democratic change.⁶¹

⁵⁵ Decentralization Act 2010.

⁵⁶ Bonofer, above n 53, at 433.

⁵⁷ Samatha M *Political Developments in the Maldives* (Indian Council of World Affairs 2015).

⁵⁸ Tom Masters *Maldives* (Lonely Planet, 2009) at 24; See official government report, Presidential Commission *Investigative Findings on the Death of Hassan Evan Naseem* (President's Office 2003).

⁵⁹ Masters, above n 58, at 24.

⁶⁰ Bonofer, above n 53, at 434.

⁶¹ President Nasheed's Speech at the Opening Ceremony of the Sixteenth SAARC Summit. As referred to by Bonofer, at 436.

Key to this development was the ambitious agenda of the 2008 Constitution which now embodied a full separation of powers, establishment of a Supreme Court of the Maldives as a final court of appeal,⁶² and guarantee of fundamental human rights, mirroring Maldives's commitments under international human rights instruments. The first multi-party elections in 2008 ended the thirty-year rule of President Qayoom and gave Maldives its first democratically elected president, Mohamed Nasheed. The promises of the 2008 Constitution were, to say the least, ambitious. Resources were limited, and the public was restless. Hence, there was increased activism within the public in the form of different interest groups, often coming out of political parties.

Severe political infighting, constant restructuring of the administrative machinery, growth of fundamentalism and growing intolerance towards religious freedom and expression, challenges to sustainable economic issues, indolence on the part of the administrators and external pressure has been a part of the democratic transition process.⁶³ Between 2008 and 2012, multiple demonstrations took place in Male', essentially as opposition to economic development programmes introduced by President Nasheed and his strategies to bring in quick changes, raised public concerns on the delivery of the democracy goal. Events such as the arrest of MP Abdulla Yamin (the current President) and MP Gasim Ibrahim, the summoning and questioning of the Interim Chief Justice Abdulla Saeed by the National Defence Force (MNDF) and military leaders, and the arrest of the Chief Judge of the Criminal Court Abdulla Mohamed, and the lock down of the Supreme Court and Department of Judicial Administration, later became the major reasons leading to the February 2012 mass demonstrations in Male',⁶⁴ resulting in the President's resignation. The rest of the Presidential term (2012 Feb to 2013 Nov) was completed by his Vice-President, Mohamed Waheed Hassan Manik.⁶⁵ In 2013,

⁶² Prior to 2008, the President was the supreme authority of justice in the country. See Article 39, Constitution of the Republic of Maldives, 1998.

⁶³ Bonofer, above n 53, at 437.

⁶⁴ See Hassan Saeed *Democracy Betrayed* (Dhivehi Qaumee Party, Male', Maldives, 2012).

⁶⁵ President Nasheed alleged that he was forced from office by a coup, and that the 'overthrow' was orchestrated to bring down the first democratically elected government. However, the facts of the

Maldives had new Presidential elections as scheduled, and Abdulla Yamin became the new President. No single candidate, including President Nasheed, who got the highest number of votes, was able to get fifty percent or more votes in the first round of the Presidential election. In 2008, Nasheed became the President after his coalition won the majority votes in the election. This coalition dismantled soon after he took his oath. In 2013, these smaller political parties formed a coalition with President Yamin, finally winning him the election in a second round. The nationwide election was monitored by global rights groups and election monitors, and was declared ‘inclusive, free and fair’.⁶⁶

Over the last decade, demonstrations, rallies, and politically motivated activism in general has tripled and become a part of the Maldivian culture. Previously, a population that only talked about politics in secret, now talks about it on public podiums, surrounded by large gatherings. Religious activism has also increased since, particularly with the introduction of political parties, and the open and available platforms for religious groups to operate. Turbulence, itself, is not uncommon in democracies.⁶⁷ Maldives is going through processes and periods of socio-political and legal change, often using legal responses to confront the actions of the past regimes,⁶⁸ but is not moving into a state of peace from a state of conflict

case do not bear out this assertion. An exhaustive report by the Commonwealth in August 2012 found there was no coup, and that in fact Nasheed resigned voluntarily. The inquiry took six months to compile and interviewed 293 witnesses who gave more than 200 hours of statements. Fifteen of these witnesses gave more than one interview. See, Neil Merrett “Commonwealth-backed report a ‘whitewash’: former president | Minivan News” *Minivan News - Online version* (Male’, Maldives, 28 January 2013) <www.minivannewsarchive.com>; Hassan Saeed “There was no coup in the Maldives, and no cover-up” *The Guardian* (25 September 2012) <www.theguardian.com>; *Report of the Commission of the National Inquiry Maldives, CONI Report* (Government of the Republic of Maldives 2012).

⁶⁶ Commonwealth Observer Group *Maldives Presidential Election 7 September 2013 and Re-run of Maldives Presidential Election 9 November 2013 and Maldives Presidential Run-off Election 16 November 2013* (Commonwealth 2013) at 66.

⁶⁷ Bonofer, above n 53, at 436.

⁶⁸ Ruti G Teitel “Transitional Justice Genealogy” (2003) 16 *Harv Hum Rts J* 69 at 69.

and is not attempting to correct large-scale past abuses, ensure accountability, serve justice and reconciliation.⁶⁹

1.1.4 The Maldivian Legal System

It has been argued that the influence of major colonial powers on the socio-political and legal structure in the Maldives remained comparatively limited.⁷⁰ According to Suood, colonial powers did not interfere with the domestic legal system, because of which the Maldives continued to be governed by age-old customs and Islamic Shari'ah.⁷¹ The same reason, he argues, is why up until the late 1950s, the Maldivian legal system was largely underdeveloped and lacking in 'structured systems' for law enforcement.⁷² The present day legal system – laws and systems for law enforcement – in the Maldives however, shows strong evidence in support of the influence of the different colonial legacies.

The Maldivian legal system at present, is a mixed system, incorporating both English Common Law and Islamic Shari'ah Law.⁷³ The first integration of English Common Law principles into the codified body of law were made in 1988 in the formation of the first limited liability companies.⁷⁴ Between 1991 and 1996, the Parliament passed the Contract Act, the Sale of Goods Act, Negotiable Instruments

⁶⁹ Maldives therefore, is not going through a transitional justice period. Post-war in 1945, transnational justice was associated with intense interstate cooperation, war crime trials, and sanctions, the best example of which was the allied run Nuremberg Trials. The second phase, starting in 1989, was concerned with democratic transitions and modernisation of different States. In its third phase, transitional justice moves to become a 'paradigm of rule of law', mainly in an attempt to deal with pervasive conflict as a foundation for the emerging laws of terrorism. G Teitel, above n 68, at 70-72.

⁷⁰ Phadnis and Luithui, above n 10, at 167; Also see, Kamala Visweswaran *Perspectives on Modern South Asia* (John Wiley & Sons, West Sussex, UK, 2011).

⁷¹ Al Suood, above n 45, at 19.

⁷² At 31.

⁷³ Paul H Robinson *Final Report of the Maldivian Penal Law & Sentencing Codification Project: Text of Draft Code (Volume 1) and Official Commentary (Volume 2)* (ID 1522222 Social Science Research Network 2006); Al Suood, above n 45.

⁷⁴ Al Suood, above n 45, at 88.

Act, the Companies Act and the Partnership Act, with little to no difference, were entirely based on English Law.⁷⁵ In family matters, prior to the 2002 Family Act, judges applied rulings from the *Qur'ān* and *Hadīth*, and in the absence of a ruling in these texts, judges referred to legal opinions of various Islamic jurists. After the 2002 Act, the process changed to a civil law system.⁷⁶ Although this law was primarily based on the Malaysian Family Law Act, the procedural aspects of this legislation is also heavily influenced by persons trained in England.⁷⁷ Many of these changes are quite recent.⁷⁸ As can be seen, Common Law is particularly influential in many areas of commercial law in the Maldives. On the other hand, crimes, family and inheritance, are exclusively governed under a codified body of Shari'ah Laws.

According to Cooke (2005), the legal system in the Maldives is transitioning from a pre-modern Islamic to a modern Islamic/Common Law system.⁷⁹ Changes towards this end only began happening in the last 25 years, after Maldives became a global economic partner.⁸⁰ In 2004, Professor Paul Robinson noted that Maldivian law, Shari'ah law, and shared Maldivian community values appeared to be in conflict,⁸¹ and not all Maldivian laws strictly followed Islamic Shari'ah.⁸² Cooke also argued that the existing system is in many ways a “triple legal and administrative system in operation; pre-modern, state modern and market modern ... a tripartite system which is setting up unavoidable conflicts within society and the bureaucracy”.⁸³

⁷⁵ At 88.

⁷⁶ At 87.

⁷⁷ For details, see at 87.

⁷⁸ Sobir and others, above n 54, at 23.

⁷⁹ Elizabeth Cooke *Modern Studies in Property Law* (Hart Publishing Co, Oregon, 2005) at 303.

⁸⁰ At 303.

⁸¹ Robinson, above n 73.

⁸² At 3–4.

⁸³ Cooke, above n 79, at 303.

Economic development is still rapid while legislative reform still needs to catch up.⁸⁴ Moreover, even with new reforms in Contract Act, Companies Act and a Tourism Act, these have to be applied by a pre-modern legal system and the missing link is the congruence of laws, practices and a legal culture.⁸⁵ In terms of the democratic promise of the 2008 Constitution, to introduce internationally accepted human rights norms and justice mechanisms, major changes still need to take place in terms of legal and judicial reform.⁸⁶

1.1.5 Women and Public Life

Maldives is amongst the few countries in the world, a few other developed countries, to have achieved gender parity in education.⁸⁷ Modernization created systematic changes in gender roles in the Maldives and with industrialisation, more women were educated and more women came into the labour force. Women in the Maldives occupy influential decision-making roles in the State: as ministers, permanent secretaries, commissioners, ambassadors, parliamentarians, judges, magistrates and directors of State-owned companies. There are more women in public life, in comparison to the past.

By 1932, women in the Maldives had achieved the right to vote.⁸⁸ The first woman to the national parliament was nominated immediately after the ratification of the 1953 constitution.⁸⁹ Overall, voter turnouts are extremely high in the Maldives, and

⁸⁴ At 303.

⁸⁵ At 303.

⁸⁶ For a timeline of political developments in the Maldives, see Figure 3.

⁸⁷ See World Economic Forum *The Global Gender Gap Report 2013* (World Economic Forum 2013).

⁸⁸ Razee, 2000, at 2.

⁸⁹ “A short constitutional history of the Maldives” *Minivan News - Online version* (Male’, 22 December 2013) <www.minivannews.com>.

the gender difference is significantly minimal.⁹⁰ The following Table 1.1 shows voter turn-outs in various elections between 2009 and 2014.

Table 1. 1: Number of Males and Females in Senior Government Positions and Parliament as at October 2012

<i>Election</i>		<i>Percentage Turnout (Women)</i>	<i>Percentage Turnout (Men)</i>	<i>Percentage Turnout (Total)</i>
2014	Parliamentary election	49.05	50.05	78.08
2013	Presidential election (Round 1)	49.15	50.85	91.41
2013	Presidential election (Round 1)	49.40	50.60	84.20
2011	Local Council Elections	49.88	50.12	72.11
2009	Parliamentary election	49.23	50.77	79.22

Source: Megan Ritchie, Terry Ann Rogers and Lauren Sauer, Women's Empowerment in Political Processes in the Maldives, IFES Study Report, 2014, at 16.

In 1985, women accounted for 21 percent of the government sector and were more concentrated in the lower ranks.⁹¹ In 1989, there were only two major decision-making roles occupied by a woman in the Maldives: Director of the Office for Women's Affairs under the Ministry of Health and Education,⁹² and in the national parliament. There was only one woman out of the 46 members of the Parliament in 1989.⁹³ At time of CEDAW ratification there were very few women (3 out of 50) on the National Parliament⁹⁴ and there were no female judges in the Maldives, although technically, these positions were available to both men and women.

⁹⁰ Ritchie, Ann Rogers and Sauer, above n 3, at 16.

⁹¹ Office for Women's Affairs - the Republic of Maldives *Status of Women: Maldives* (UNESCO Pricipal Regional Office for Asia and the Pacific 1989) at 24.

⁹² At 35.

⁹³ At 34.

⁹⁴ United Nations *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Initial Reports of States Parties- Maldives* (CEDAW/C/MDV/1 1999) at 6.

Women's participation in decision-making has been steadily rising since the establishment of the first national women's machinery. More so, after the Beijing Conference in 1995, the Maldives, like many other countries in the world, was geared towards more female inclusion to the public decision-making bodies. Women's participation in the labour force has been improving significantly at the same time.⁹⁵ By 2005, women had stepped into traditionally male dominated areas of work such as architecture, construction, finance, and tourism.⁹⁶ Women's participation in employment sectors had shown a significant shift to include more diverse areas of work such as taxi driving, flying aeroplanes, and taking on positions as judgeships and parliamentarians.⁹⁷ Gender awareness programmes aimed at different government departments and the general public had been significantly increased and more studies were being planned to understand gender bias in the Maldives.⁹⁸

In 2006, women comprised 59 percent of the national labour force and by June 2014, women exceeded men by 12 percent in the civil service.⁹⁹ In 2007, the President appointed the first female judge to the civil court.¹⁰⁰ The first female judge to the High Court was appointed in 2011 with a huge majority vote.¹⁰¹ The only JSC member who refrained from voting, did not vote on the basis that none of the four sects of Islam, according to him, allowed females judges.¹⁰² Between December 2014 and September 2015, one of the Civil Court judges (the first female

⁹⁵ Ingrid Quinn *Women in Public Life in the Maldives - Situational Analysis* (United Nations Development Programme 2010) at 16.

⁹⁶ United Nations *Consideration of Reports Submitted by States under Article 18 of the Convention on the Elimination of All forms of Discrimination against Women: Combined Second and Third Reports of States Parties- Maldives* (CEDAW/C/MDV/2-3 2005) at 19.

⁹⁷ Quinn, above n 95, at 16-29.

⁹⁸ United Nations, above n 96, at 19.

⁹⁹ "Women Exceed Men by 12 Percent in Civil Service" *Sun Online* (6 September 2014) <www.sun.mv>.

¹⁰⁰ Gabriela Knaut *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, A/hrc/23/43/Add3 (2013) at 17.

¹⁰¹ Ahmed Nazeer "JSC appoints High Court Judges, including the First Woman to the Post" *Minivan News - Online version* (Male', 20 January 2011) <www.minivannewsarchive.com>.

¹⁰² Nazeer, above n 101.

judge in the country) has resigned and the other remaining judge is under a temporary suspension awaiting a decision on a disciplinary case at the JSC. Taking disciplinary action against judges is very rare in the Maldives,¹⁰³ but since 2008, there have been a few cases involving female judges in general. It is unclear if there are gender issues within the organisation.¹⁰⁴

In 2009, there were five women in the 77-member parliament. While 213 women competed in the February 2012 local council elections, only 53 of the 1,098 elected councillors were women, with one serving as a council president and five as council vice presidents. Furthermore, only 59 women have been elected to office in the 2014 local council elections compared to 1,025 men. At the end of September 2013, there were three women in the 17-person cabinet. Women were also working as members of the Human Rights Commission, the Civil Services Commission, Anti-Corruption Commission, Police Integrity Commission, the Employment Tribunal, and the Capital Market Development Authority. Women's participation in the executive branch overall, is significantly higher in comparison to their participation in the legislative and judiciary of the Maldives.¹⁰⁵ In April 2014, the first woman received parliamentary approval to become the Governor of the Maldives central bank, Maldives Monetary Authority (MMA). She is the first woman ever to have been considered for the position of the MMA Governor. As at May 2013, there were altogether eight women in the judiciary, i.e. in the high court, superior courts and the magistrate courts in the Maldives,¹⁰⁶ with no female representation on the Supreme Court bench.

¹⁰³ Mohamed Saif Fathih "Judicial Watchdog Tight-lipped on Suspension of Civil Court Judge" *Maldives Independent* - by Minivan News <www.maldivesindependent.com>.

¹⁰⁴ Several sex tapes appearing to show Judge Hameed fornicating with three foreign women was leaked on social media. JSC refused to suspend him despite recommendations by several sub-committees. JSC then decided to dismiss the case on the basis of insufficient evidence (despite video tapes), and President Yamin appointed Judge Hameed as the Chairperson of JSC; See Fathih, above n 103.

¹⁰⁵ See Table 1.1.

¹⁰⁶ Knaul, above n 100, at 17.

1.2 Maldives, a States Party to CEDAW

Maldives ratified CEDAW in 1993 and to its Optional Protocol in 2006. Apart from CEDAW, Maldives is also party to multiple other international human rights instruments on the promotion and protection of human rights. It has been argued that ratification of the CEDAW Convention was amongst the steps it was making in terms of women's development, and an initiative to create more gender equality for women in the Maldives.¹⁰⁷

A right to public life incorporated into CEDAW articles 7 and 8, discussed in Chapter Two, seeks to ensure women's equality with men in voting, eligibility for election, participation in policy formulation and implementation; and participation in non-governmental organizations and associations concerned with public and political life.¹⁰⁸ The achievement of CEDAW articles 7 and 8 however, is based entirely on CEDAW's framework of equality, seeking to entitle, enable and empower women (provided in articles 1 to 5 of the Convention), to pursue CEDAW rights.¹⁰⁹

Since Maldives became party to CEDAW, legal and institutional changes have taken place in the Maldives, which may or may not, be directly resulting from CEDAW ratification. The first institution of what could be the beginning of a national women's machinery appeared during the UN Decade for women when Maldives created a Preparatory Committee under the National Planning Agency to coordinate activities to celebrate the UN Decade for Women.¹¹⁰ The Preparatory Committee later became the first National Women's Committee (NWC) in the Maldives and had a mandate to work towards the cultural, social and economic

¹⁰⁷ United Nations, above n 94, at 3–4.

¹⁰⁸ CEDAW 1979, General Recommendation No. 23.

¹⁰⁹ A detailed discussion of the CEDAW right to public life and CEDAW's framework for substantive equality in article 1-5 is discussed in Chapter Two.

¹¹⁰ United Nations, above n 94, at 6.

well-being of women's lives in the Maldives.¹¹¹ The first Island Women's Committees (IDC) were created in 1979, to function under the NWC.¹¹² IDCs were voluntarily bodies, and mainly engaged with clean-up campaigns, construction and maintenance of mosques in the respective islands.¹¹³ These women took part in key discussions and decisions that were indirectly related to island development, but their participation was more communal than political.¹¹⁴

The entire machinery developed into an Office for Women's Affairs, then into the Department of Women's Affairs in 1989, and finally became the Ministry of Women's Affairs in 1993, soon after signing to be a States Party to CEDAW. A National Women's Council still existed at the Presidential level to advise on policy matters.¹¹⁵ As a result of these structural changes, 'women's equality' was identified as a key developmental area in the Fifth National Development Plan (1997-1999) with particular emphasis on "broadening the role of women in society and ensuring their full participation in the development process".¹¹⁶

The Ministry of Gender and Family (MoGF) was restructured following the Cabinet reshuffle of July 2005 to focus on gender, child protection and family. Its mandate is to formulate policy guidelines, establish standards, undertake monitoring and evaluation and encourage NGOs, CBOs and the private sector to deliver services to women, children and families, while measures to close identified gender gaps are mainstreamed through the line ministries. Policies and strategies regarding gender, child protection and family services in the Seventh National Development Plan (7NDP) reflect a results-based approach to closing gender gaps. Key goals in the plan aimed to: (i) develop institutional frameworks and establish a multi-

¹¹¹ At 6.

¹¹² In 2001, the island development committees were reformulated to work towards gender equality, as opposed to general national developmental projects; also see Jayalakshmi Gopalan "Women in Politics in South Asia" [2012] at 11.

¹¹³ At 11.

¹¹⁴ At 11.

¹¹⁵ United Nations, above n 94, at 6.

¹¹⁶ At 6.

disciplinary protection system for children and vulnerable women; (ii) develop institutional framework and establish support services for children and families in particularly difficult circumstances; (iii) support the strengthening of the justice and legal system to protect the rights of children and women; (iv) promote the health and wellbeing of families; (iv) promote policies for the social inclusion of the elderly and people with special needs and safeguard their well-being within the community; (v) develop mechanisms to increase economic and socio-political participation of women; and (vi) mainstream gender and child rights concerns.¹¹⁷

The 2008 National Gender Equality Policy follows from the fundamental principle of Equality enshrined in the 2008 Constitution. The vision of this policy is to create a just society, where women enjoy fundamental rights and freedoms on a basis of equality of men and women, attain equal benefits from democracy and development both in public and private life.¹¹⁸ The gender policies in the Maldives, to this effect, have a very broad scope and a holistic approach to gender inequality.¹¹⁹

- a) To develop and activate the necessary policy, legislative and institutional framework ... so that women and men enjoy fundamental human rights and rewards of democracy on a basis of equality of men and women;
- b) To empower women to facilitate their equal access to available opportunities with equal outcomes/results on a basis of equality of men and women;
- c) To cultivate a culture of non-discrimination and respect for women's human rights, so that women enjoy human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field on a basis of equality of men and women;
- d) To eliminate all forms of discrimination against women.

¹¹⁷ ADB *Maldives - Gender and Development Assessment* (Asian Development Bank 2007) at 3.

¹¹⁸ Maldives Government Document *National Gender Equality Policy and Framework for Operationalisation* (President's Office, Republic of Maldives 2009) at 11.

¹¹⁹ Quinn, above n 95, at 8.

Similar to this, the 2009-2013 Maldives Strategic Action Plan, (SAP) also treated gender as a cross-cutting theme.¹²⁰

The Human Rights Commission of the Maldives (HRCM) has a special mandate to monitor human rights in the Maldives. According to the Constitution, HRCM is an independent and impartial body (art. 189) vested with a mandate to promote respect, protection, development and attainment of human rights and monitor and assess the observance of human rights (art. 192 (a)) in the Maldives. HRCM also has the power to investigate and to report on the observance of human rights; to take steps to secure appropriate redress where human rights have been violated; to carry out research, and to educate the public; and to exercise such additional powers and functions prescribed by law (art. 192 (b)).

Over the years, HRCM has increasingly used human rights treaties and engages with the relevant ministries to follow up on concluding observations and recommendations from the CEDAW Committee. The developing human rights work of the Commission however, is not encouraged. In 2014, the Supreme Court of the Maldives initiated a *suomoto* case against HRCM for claiming that the judicial system was being controlled and influenced by the Supreme Court.¹²¹ According to the Supreme Court, HRCM's UPR submission was unlawful, biased, encouraged terrorism and undermined judicial independence.¹²² The Court then issued an 11-point guideline that, among others, bars the HRCM from directly communicating with foreign organizations without government oversight.¹²³ Human rights experts, UN Special Rapporteurs on the Independence of Judges and Lawyers, Gabriela Knaul, and on the Situation of Human Rights Defenders, Michel Forst, notes that the Supreme Court's decision in this matter was "purely and simply

¹²⁰ United Nations, above n 2, at 3.

¹²¹ Fathmath Aruma "Supreme Court undermining HRCM authority: MDP" *Haveeru Online* (Male', Maldives, 23 September 2014) <www.haveeru.com.mv>.

¹²² ICJ *Justice Adrift: Rule of Law and Political Crisis in the Maldives* (International Commission of Jurists and South Asians for Human Rights 2015) at 16.

¹²³ At 16.

an act of reprisal” against the HRCM “for its legitimate cooperation with the UN human rights system and its mechanisms” and “that the verdict was an undue interference into the independent work of the commission and their right to share information freely with the UN”.¹²⁴

1.2.1 Entering Reservations to Article 7(a)

Maldives ratified CEDAW on the condition that the Government of Maldives will not be complying with any provisions of the Convention, which Maldives considered was ‘against Shari’ah’. The initial reservation to this effect noted:¹²⁵

The Government of the Republic of Maldives will comply with the provisions of the Convention, except those which the Government may consider contradictory to the principles of the Islamic Sharia upon which the laws and traditions of the Maldives is founded.

Furthermore, the Republic of Maldives does not see itself bound by any provisions of the Convention which obliges to change its Constitution and laws in any manner.

The Government of Maldives also had objections to the wording of Article 1, the definition of discrimination against women, claiming that the guarantee of sex equality, at least in the Maldives, will be subject to Islamic law / Shari’ah.¹²⁶

The Maldivian Government believes that Islam recognises that men and women – as human beings created by Almighty Allah – should enjoy all basic rights in society. The constitution of Maldives grants equal rights before the law within the framework of Islamic Shari’ah.

¹²⁴ SunMV “UN calls on Supreme Court to reconsider verdict against HRCM” *Sun Online* (19 June 2015) <www.sun.mv>.

¹²⁵ United Nations *Multilateral Treaties Deposited with the Secretary-General: Volume I, Part I, Chapters I-VII* (United Nations, New York, 2009) at 342.

¹²⁶ United Nations, above n 94, at 8.

Furthermore, on 23 June 1999, Maldives submitted ‘modifications’ to its initial reservations, expressed in the following words:¹²⁷

1. The Government of the Republic of Maldives expresses its reservation to article 7 (a) of the Convention, to the extent that the provision contained in the said paragraph conflicts with the provision of article 34 of the Constitution of the Republic of Maldives.
2. The Government of the Republic of Maldives reserves its right to apply article 16 of the Convention concerning the equality of men and women in all matters relating to marriage and family relations without prejudice to the provisions of the Islamic Sharia, which govern all marital and family relations of the 100 percent Muslim population of the Maldives.

The above modification to Maldives’s reservations were objected to,¹²⁸ although not in time, by concerned States Parties.¹²⁹ One such party, Germany, noted that the expression above was neither a withdrawal nor a partial withdrawal of the original reservations to CEDAW, but constituted a new reservation to articles 7 (a) (right of women to vote in all elections and public referenda and be eligible for elections to all publicly elected bodies) and 16 (elimination of discrimination against women in all matters relating to marriage and family relations) of the Convention, and not only extended and reinforced the original reservations,¹³⁰ but was also against the VCLT rules on reservations, which allowed States Parties to enter reservations only at the time of signing, ratifying, accepting, approving or acceding to a treaty.¹³¹ Furthermore, Germany also noted that States Parties are only allowed to totally or partially withdraw original reservations and cannot submit new reservations or

¹²⁷ UN *Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW/SP/2010/2 United Nations 2010) at 30; Also see, United Nations, above n 125.

¹²⁸ These were received after the 60-day period and therefore were officially recorded as ‘communications’ rather than ‘objections’ to the reservations.

¹²⁹ Palitha Kohona “Reservations: Discussion of Recent Developments in the Practice of the Secretary-General of the United Nations as Depositary of Multilateral Treaties” (2014) 33 *Georgia Journal of International & Comparative Law* 415 at 429.

¹³⁰ United Nations, above n 125, at 342.

¹³¹ At 342.

extend or add to old reservations, after committing to the treaty.¹³² In 1994, Finland objected to Maldives's initial reservations because of their overly broad and non-specific nature, and in 1999 noted that the elements of the 'modifications' to the initial reservations were still objectionable.¹³³ Despite reservations being against the 'object and purpose' of CEDAW, and that reservations to a human rights treaty can only be entered at the time of signature, ratification, accession to a treaty, the UN Secretary-General accepted these reservations expressed by the government of Maldives.¹³⁴ The reservation to article 7(a) was withdrawn in 2010.

It has been argued that reservations to article 7(a) were felt necessary because the domestic law did not allow women in all publicly elected bodies, and as such, contradicted the equality provisions in CEDAW.¹³⁵ However, similar reservations to other instruments, such as ICCPR, stipulating the supremacy of the domestic constitutional law, does raise concerns as to the intentions of the Maldives's ratification of international human rights instruments.¹³⁶

1.2.2 Commitment to CEDAW Norms

In 2010, the Maldives confirmed that there are no *de jure* barriers for women in the Maldives, but *de facto* discrimination exists due to "religious influence and a government that had, until recently, been characterised by strong, centralised patriarchal rule".¹³⁷ The 2015 UPR National Report demonstrates remarkable achievements in terms of Maldives's commitment to women's rights. It notes that since 2010, key bills for women's rights have been passed by the national

¹³² At 342.

¹³³ At 342.

¹³⁴ Kohona, above n 129, at 430.

¹³⁵ United Nations, above n 94, at 4.

¹³⁶ United Nations, above n 125, at 218.

¹³⁷ Human Rights Council Working Group on the Universal Periodic Review *National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1 - Maldives* (A/HRC/WG.6/9/MDV/1/Rev.1 United Nations General Assembly 2010) at 6-7.

parliament, including the Domestic Violence Prevention Act 2012, Sexual Offences Act 2014, Sexual Harassment and Abuse Prevention Act 2014 and the Penal Code 2015.¹³⁸ Although women's participation in the labour force is lower in comparison to men in general,¹³⁹ there are no cultural prejudices against working women, and men and women receive equal pay for equal work.¹⁴⁰ Lack of childcare facilities is identified as the biggest challenge to women in the labour force.¹⁴¹ A number of initiatives, including amendments to the Civil Service Regulation to allow 60 days of paid maternity leave (some government agencies such as MMA, allow up to 6 months of paid maternity leave), were introduced recently. In 2014, an amendment also introduced flexible working hours for pregnant women and women with children under the age of three to work from home.¹⁴² See Figure 3 for law and political reform summary between 1993 and 2016.

¹³⁸ Human Rights Council, Working Group on the Universal Periodic Review, above n 2, at 14.

¹³⁹ Department of National Planning *Increasing Female Labour Force Participation in the Maldives* (Ummeedhee Press Printers and Publishers, Male', Maldives, 2009) at 19–22.

¹⁴⁰ Human Rights Council, Working Group on the Universal Periodic Review, above n 2, at 15.

¹⁴¹ At 15.

¹⁴² At 15.

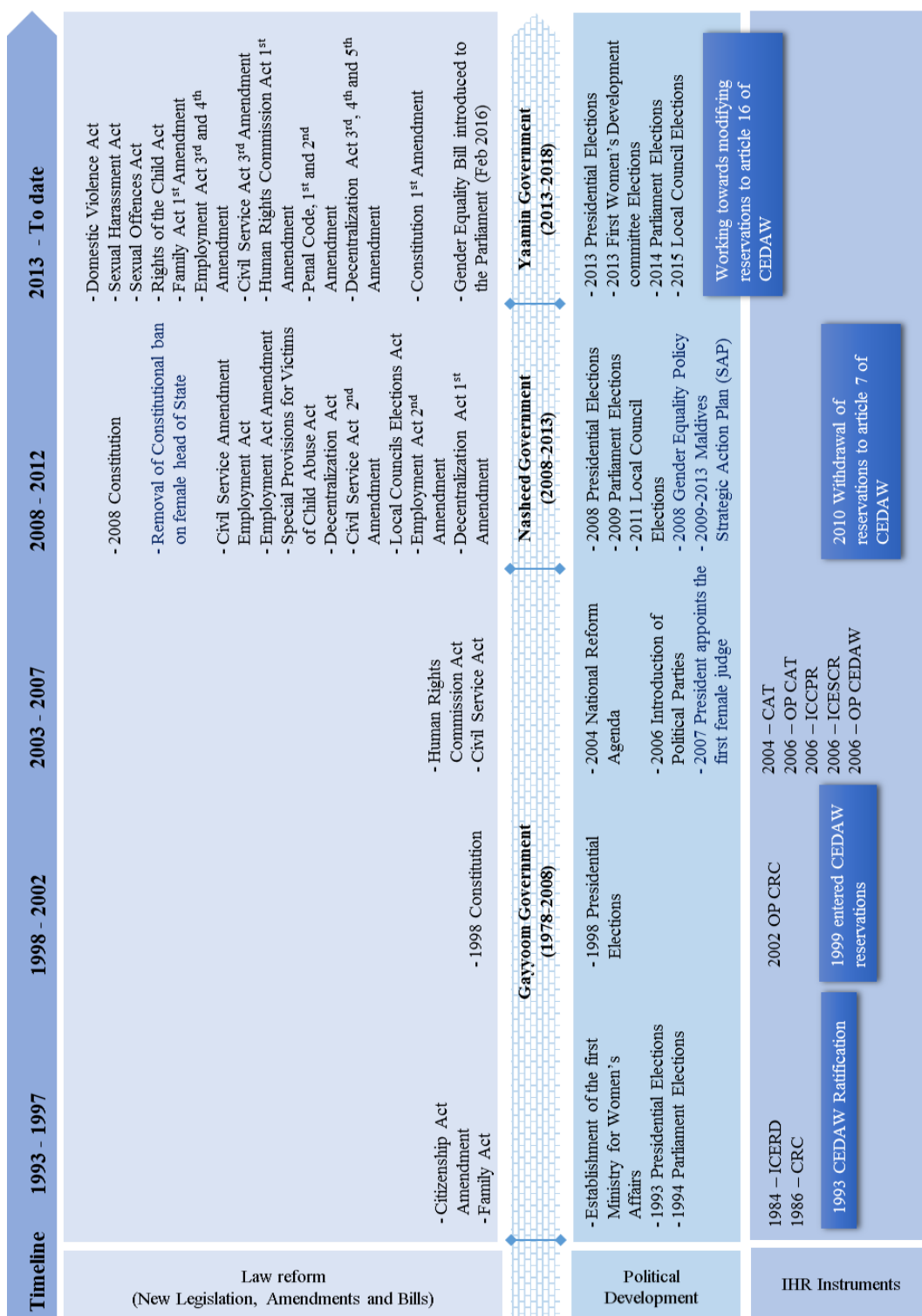


Figure 3: Law Reform, Political Developments and CEDAW between 1993 (CEDAW Ratification) and 2016

Source: IHR (international human rights) instruments - UN Website (www.treaties.un.org), political development and law reform – CEDAW reports and MVlaw (Maldives Law) Website (www.mvlaw.gov.mv)

Over the past two decades, the Government's approach to gender development has changed from a focus on empowerment and integration to one of gender equality and mainstreaming. Gender based budgeting and gender based development is now a key focus of the planning authorities, although, these are still in the very early stages of development. The States Party intends to tackle gender inequality through gender mainstreaming in all areas and by taking strategic action on empowerment and advancement in specific sectors.¹⁴³ For example, amongst initiatives to empower women, the government reserved 40 percent of small and medium-sized enterprises (SME) loans for female entrepreneurs in 2010 and also create CEDAW specific legislation.¹⁴⁴ The government has been trying since 2008 to introduce gender mainstreaming as a concept within the Government offices and towards that objective, has appointed gender focal points within each government ministry.

The Maldives is also committed to re-introduce temporary special measures (TSMs) into the electoral structures,¹⁴⁵ and increase the numbers of women on national boards,¹⁴⁶ to ensure increase in women's participation in public life. However, previous efforts to introduce quotas in the parliament, national councils and also political parties to ensure more female participation in decision-making have failed in the parliament, which has been argued to indicate a lack of political will to create gender equality.¹⁴⁷ The government also acknowledges that a change in mind-sets with regards to the role of men and women in society,¹⁴⁸ needs to be addressed.¹⁴⁹ The government aims to achieve this through public awareness

¹⁴³ Human Rights Council Working Group on the Universal Periodic Review, above n 137, at 7.

¹⁴⁴ At 7.

¹⁴⁵ Human Rights Council, Working Group on the Universal Periodic Review, above n 2, at 14.

¹⁴⁶ At 15.

¹⁴⁷ Hope for Women, NGO Maldives *Maldives NGO Shadow Report to the Committee on the Elimination of All Forms of Discrimination against Women* (Hope for Women 2012) at 6.

¹⁴⁸ Human Rights Commission of the Maldives *Six Years On -The "Rights" Side of Life: Second Baseline Human Rights Survey* (Human Rights Commission of the Maldives 2012); Human Rights Commission of the Maldives *The "Rights" Side of Life: A Baseline Human Rights Survey* (Human Rights Commission of the Maldives 2006).

¹⁴⁹ Human Rights Council, Working Group on the Universal Periodic Review, above n 2, at 15.

programs, media campaigns and sensitising workshops focused on religious teachings, women's rights and responsibilities.¹⁵⁰

The constitutional premise of the Maldives adheres to the dualist theory and views international law and national law as two separate and independent legal systems.¹⁵¹ Thus, a treaty does not have any effect in local law unless the necessary enabling legislations have been passed by the Parliament. However, the Constitution requires judges to refer to international treaties Maldives has ratified, in interpreting and application of the fundamental rights in the Constitution.¹⁵² Local courts have been inconsistent in the application of these rules. For instance, the High Court in *Mohamed Shareef v. Indian High Commission (2011)*¹⁵³ decided that Maldivians are not under an obligation to follow the VCDR (Vienna Convention on Diplomatic Relations) as it has not been incorporated into domestic law.¹⁵⁴ In another case the following year in 2012, the same court applied provisions of an international convention in the absence of domestic legislation.¹⁵⁵ CEDAW does not play any role in the local courts. There is no evidence to claim that the CEDAW Committee has ever been referred to at all by the judiciary. Unless a desk review of court decisions is conducted, it is difficult to gauge how CEDAW has been used as an independent basis on which the substantive outcome of cases in domestic courts has hinged. Much more frequently, however, courts have used the treaties as interpretative guides to clarify legislative provisions, such as those of the national bills of rights in the Constitution.

¹⁵⁰ At 15.

¹⁵¹ Art. 93 (a) Treaties entered into by the Executive in the name of the State with foreign states and international organizations shall be approved by the People's Majlis, and shall come into force only in accordance with the decision of the People's Majlis. (b) Despite the provisions of article (a), citizens shall only be required to act in compliance with treaties ratified by the State as provided for in a law enacted by the People's Majlis Constitution of the Republic of Maldives (2008).

¹⁵² Art 68, Constitution of the Republic of Maldives 2008.

¹⁵³ *Mohamed Shareef v Indian High Commission*, High Court Case No. 2011/HC-A/235 (us 2013).

¹⁵⁴ Al Suood, above n 45, at 119.

¹⁵⁵ *Fathmath Hussain v Northern Health Services Corporation Ltd*, High Court Case No. 2012/HC-A/167 (us 2012).

Although women's involvement in decision-making is not a new thing for the Maldives, participation in key positions within the State did not mean that women enjoyed equal rights in public life in the Maldives.¹⁵⁶ Women are increasingly appointed to the cabinet and being given high profile positions in the government. However, despite the legislative developments since CEDAW ratification and a formal recognition of a right to public life in the 2008 Constitution, women continue to be largely underrepresented in public life in the Maldives. Table 1.2, 1.3, 1.4 and Figure 4, 5 and 6 demonstrates the underrepresentation of women in decision-making positions in the Maldives.

Table 1. 2: Women in Major Decision-Making Positions within the State

Positions within the State	Womens Participation in Comparison to Men	
	Number of Women	Percentage
Cabinet Ministers	3 out of 17	17.65 %
State Ministers	5 out of 35	15.3 %
Deputy Ministers	10 out of 63	15.87%
Parliament Members	5 out of 85	5.88 %
Local Council Members	61 out of 1118	5.46 %
City Council Members	2 out of 17	11.76 %
Atoll Council Members	3 out of 138	2.17 %
Judges and Magistrates	7 out of 185	3.78 %
High Commissioners	1 out of 11	9.09 %
Human Rights Commission	2 out of 5	40 %
Anti-Corruption Commission	1 out of 5	20 %

Source: Megan Ritchie, Terry Ann Rogers and Lauren Sauer, Women's Empowerment in Political Processes in the Maldives, IFES Study Report, 2014, at 15.

¹⁵⁶ Office for Women's Affairs - the Republic of Maldives, above n 91, at 34.

Table 1.3: Number of Males and Females in Senior Government Positions and Parliament as at October 2012

Participation of Men and Women	Parliament Members	Ministers	State Ministers	Deputy Ministers	Ambassadors
Male	72	13	25	45	10
Female	5	3	7	4	2
Percentage females	6.9%	23%	28%	8.88%	16.6%

Source: ICPD Beyond 2014, Maldives Operational Review 2012: Progress, Challenges and Way Forward, Department of National Planning, Maldives, at 43.

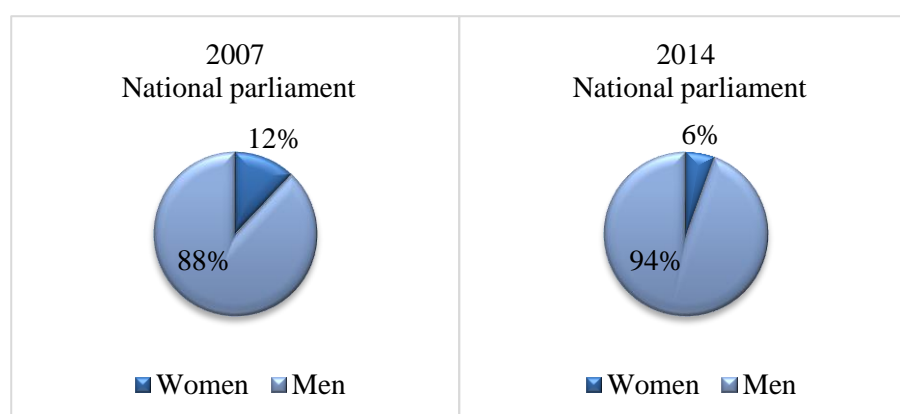


Figure 4: Women's Participation in the National Parliament between 2007 and 2014 (5 year term)

Source: Qualitative Assessment: Perceptions about Women's Participation in Public Life in the Maldives, IFES Study, 2015, at 17.

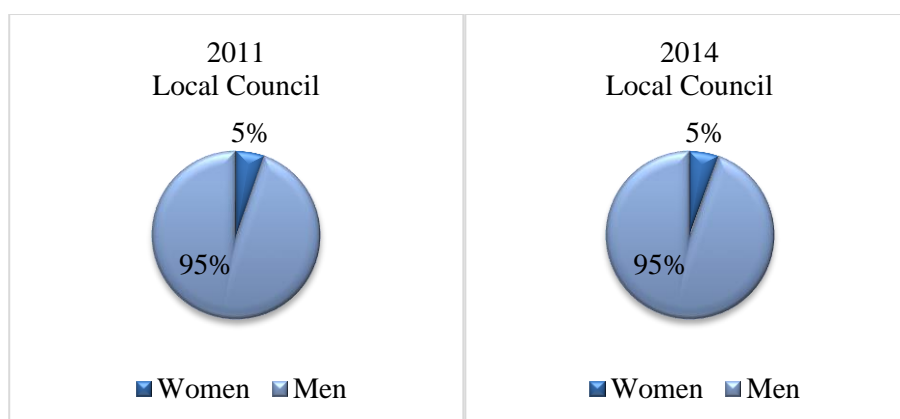


Figure 5: Women's participation and in the Local Councils between 2011 and 2014 (3 year term)

Source: Qualitative Assessment: Perceptions about Women's Participation in Public Life in the Maldives, IFES Study, 2015, at 17.

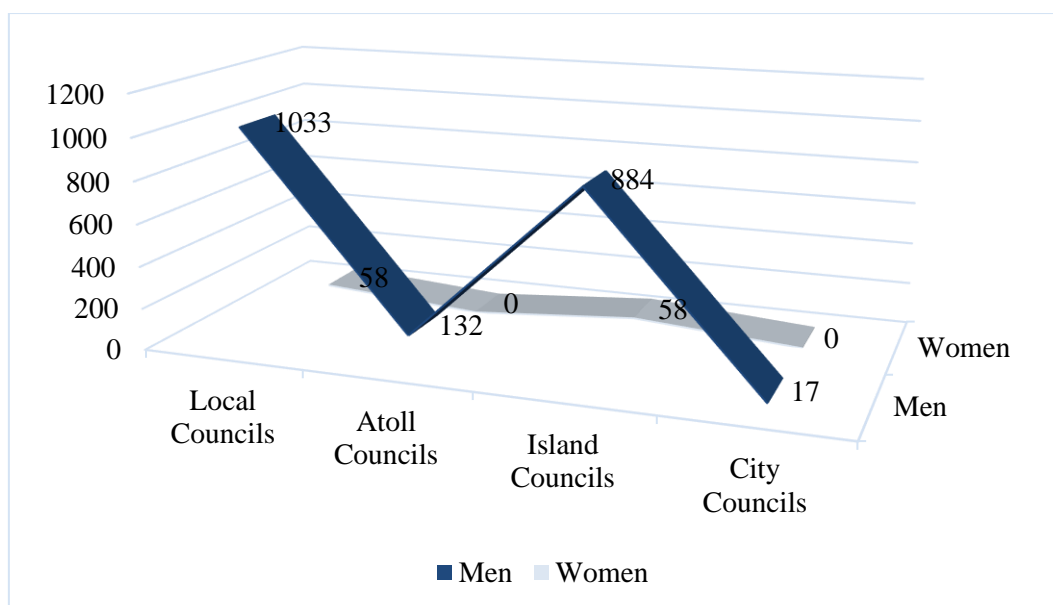


Figure 6: Women's Representation at the Various Local Council in 2013

Source: Statistical Year Book of the Maldives 2014, Political Parties and Elections, Table 20.8: Local Council Members by Sex, 2013. (Available at www.planning.gov.mv) accessed at 02.02.2016, 12.25 p.m.)

There is significant inequality in public life between men and women. Whilst there are more women in comparison to men in the Civil Service (Table 1.4. below), only a few of them are in decision-making positions.

Table 1. 4: Participation of Men and Women in the Civil Service

Year	2006	2007	2008	2009	2010	2011
Male	19,793	20,840	11,421	11,444	10,460	8,083
Female	12,889	14,364	12,572	12,628	11,379	8,821
Total	32,682	35,204	23,993	24,072	21,839	16,914

Source: Maldives Civil Service Statistics, 30 June 2011.
(Note: Statistics does not include temporary, contracted and expatriates).

Table 1. 5: Civil Service Employees by Official Ranking in 2010

In Percentage	Support and General Service	Managerial Services	Executive Managerial	Permanent Secretaries
Male	50	58	66	69
Female	50	42	34	31

Source: Civil Service Commission (Official Website), Republic of Maldives. (www.csc.gov.mv, accessed at 27 April 2015, 09.22 a.m.)

Almost 75 percent of women in the civil service work in lower ranks.¹⁵⁷ Moreover, women are more concentrated in feminine fields of work.¹⁵⁸

In the civil service, over 52% of the total employees are female but the majority belongs to junior employment categories. Women are mostly represented in stereotypical roles such as education (72 percent), health (68 percent), manufacturing (65 percent) and agriculture (64%) (MDG Maldives Country Report 2010). Women are significantly less in sectors such as engineering, construction and the armed forces.

Likewise, women's representation in the parliament, judiciary and the executive branch, both in elected or non-elected positions, remains largely unchanged. Women's engagement at the decision-making levels in the judiciary is the most limited in comparison to the parliament and the executive branch of the government.

In the case of the Maldives, it is unclear whether or not the changes to law and policy took place as a result of treaty ratification. The last twenty years have also

¹⁵⁷ Akjemal Magtymova "Equality for women is progress for all" (8 March 2014) Haveeru Online <www.haveeru.com.mv>. Bureau of Public Affairs Department Of State The Office of Website Management *2013 Human Rights Reports: Maldives* (US Department Of State, Bureau of Public Affairs 2014) maldives|

¹⁵⁸ UNFPA Department of National Planning *ICPD Beyond 2014 - Maldives Operational Review 2012: Progress, Challenges and Way Forward* (Department of National Planning 2014) at 43. Also see Quinn, above n 95, at 11; Virginia A Miralao *Women's Status in the Maldives: Trends from Secondary Data Sources* (MDV/88/W02 Department of Women's Affairs 1991) at 41.

been a time of immense political and law reform in general, which appears to have had some effect on the access to justice and human rights in the country. It appears that CEDAW has been a driver for change, particularly in the area of public life, removal of the Constitutional bar, and the withdrawal of reservation to Article 7. The extent of CEDAW's usage by the States Party and the domestic NGOs, in advocating for gender equality and CEDAW rights, remains unclear.

1.2.3 The Problem: Culture, Religion and/or Political Transitions

The Maldives has had female rulers in the past. The earliest available literature indicates that there was a woman (unnamed - either as the ruler or the wife of the ruler) who was in charge of the national treasury in the ninth century,¹⁵⁹ and a female ruler in the early tenth century (916 A.D.).¹⁶⁰ The first named female ruler pre-Islam was *Dhamahaaru* or *Dhamharaa* who ruled the Maldives in the eleventh century.¹⁶¹ The Maldives continued to have female rulers even after Islam. From 1347 to 1380, the Maldives was ruled by one of its most renowned leaders: *Al-Sulthana Khadheeja Rehendhi Kabaindhi Kilege Siree Raadha Abaarana Mahaaradhun*.¹⁶² *Rehendhi Kadhija* first came to the throne in 1341, after the death of her brother, *Al-Sulthan Ahmed Shihabuddheen* and was queen until 1344.¹⁶³ Travellers often found it odd¹⁶⁴ that the Maldives had a female as head of state.¹⁶⁵ During *Khadheeja's* reign, her husband, *Mohamed Jameel*, served as Prime

¹⁵⁹ National Centre for Linguistic and Historical Research *Dhivehi Raajjeyge Rahunnaai Ranin - The Kings and Queens of the Maldives* (National Centre for Linguistic and Historical Research, Male', Maldives, 2010) at 6.

¹⁶⁰ At 7.

¹⁶¹ At 7.

¹⁶² Office for Women's Affairs - the Republic of Maldives, above n 91, at 33.

¹⁶³ National Centre for Linguistic and Historical Research, above n 159, at 43.

¹⁶⁴ Office for Women's Affairs - the Republic of Maldives, above n 91, at 33.

¹⁶⁵ National Centre for Linguistic and Historical Research *Dhivehi Thaareekhah Au Ali Kameh - New Light on the History of the Maldives* (National Centre for Linguistic and Historical Research, Male', Maldives, 1988) at 157.

Minister (*boduvazeeru*).¹⁶⁶ Maldivians lived a prosperous life during her reign.¹⁶⁷ Goods were imported from countries such as Sri Lanka, India and Africa.¹⁶⁸ In 1344, Mohamed Jameel became Sultan and ruled for four months, when he passed due to natural causes in December 1344.¹⁶⁹ After his death, *Rehendhi Khadheeja* became the queen for a second time, and ruled from 1344 to 1354 A.D.¹⁷⁰ She also ruled for a third term, from 1356 to 1359 A.D.¹⁷¹ In 1359, *Rehendhi Khadheeja*'s half-sister, *Al-Sulthana Fathimath Raadhafathi Kanbaidhi kilege Siree Soama Abaaruna Rehendhi* also ruled the country for four months.¹⁷² From 1609 to 1613, Maldives was also ruled by a female, *Al-Sulthana Kalhu Kamanaafaanu (Thukkamanaafaanu)*.¹⁷³ These rulers inherited their throne. Women also filled important responsibilities in an advisory role to the king. These women were often related to the king, his wife, his mother and his sister and advised the king on matters of culture and royal protocols (*Izzathuge Kankan*) in the palace.¹⁷⁴ Some studies claim that the original settlers of the Maldives followed a matriarchal system, and mostly belonged to the island of *Giraavaru*.¹⁷⁵ The people of *Giraavaru* had different social practices to the rest of the Maldivian population.¹⁷⁶ For example, they had a female as their island chief whilst the rest of the islands in the Maldives had male island chiefs.¹⁷⁷

¹⁶⁶ National Centre for Linguistic and Historical Research, above n 159, at 44.

¹⁶⁷ At 44.

¹⁶⁸ At 45.

¹⁶⁹ At 46–47.

¹⁷⁰ At 47.

¹⁷¹ National Centre for Linguistic and Historical Research, above n 159, at 51.

¹⁷² At 54.

¹⁷³ At 130.

¹⁷⁴ Hussain Salahuddin *Bodu Thakurufaanu Vaahaka - The Story of Bodu Thakurufaanu* (Novelty Press, Male', Maldives, 1998) at 231. Also see, *Qaanoonaai Aadha Kaadha - Law and Custom* at 18, 19, 20.

¹⁷⁵ The Maldives Royal Family "An Indigenous People Wiped Out" (2014) The Maldives Royal Family <www.maldivesroyalfamily.com>.

¹⁷⁶ The Maldives Royal Family, above n 175; Also see Ruk Ahmed "Glimpse of Past Matrifocal Society in the Maldives" (2010) *Rehendhi* <www.rehendhi.wordpress.com>.

¹⁷⁷ Differences were also found in the genetic make-up of these two groups. Whilst 18 percent of the Maldivian population had a chance of carrying thalassemia, the people of *Giraavaru* had a zero

According to François Pyrard de Laval, the foremost accept authority on the history of the Maldives, the Maldivian society in general was a gender-based, class-based society, where both men and women had to fulfil distinct roles. Women occupied a domestic role, while men performed a more social, decision-making role. He described several aspects of the local culture.¹⁷⁸ A woman's hair could never be cut, even after her death. Men had an option of keeping their beards or growing them, but if one decided to have a beard, he must follow status based beard rules laid down by the crown, with particular styles reserved only for judges, *Naibs* (deputies), chiefs, *Mudhimun* (the one who recites the prayer call in the mosque) or persons who had performed a *hajj* (pilgrimage to Mecca, Saudi Arabia). Body hair indicated male strength, and men with little hair, were considered less manly, or feminine. Boys were clothed when they underwent circumcision and girls were clothed when they started menstruating or when their breasts grew.¹⁷⁹ Women wore heavy silver jewellery, were very invested in beautification,¹⁸⁰ and covered their heads when they went outside their homes.¹⁸¹ Men could only wear rings (jewellery) on their thumbs.¹⁸² Women rarely went out during the day,¹⁸³ and were mainly involved in food preparation. A man who cooked was considered less manly and feminine.¹⁸⁴

Pyrard also noted that under the prevailing class system, only the king's male officers, and men of upper classes could have long hair.¹⁸⁵ Women who belonged to socially lower families needed a special written permission from the king to wear

percent chance of being a thalassemia carrier. Referred to Dr. Abdulla Waheed, The Maldives Royal Family, above n 175.

¹⁷⁸ *Pyrard Ge Galamun Dhivehi Raajje - Maldives by Pyrard* (1995) at 97, 98 and 101.

¹⁷⁹ At 100.

¹⁸⁰ At 192.

¹⁸¹ At 188-189.

¹⁸² At 190.

¹⁸³ At 189.

¹⁸⁴ At 197.

¹⁸⁵ At 97.

jewellery.¹⁸⁶ Also people of higher status also did not eat at the same table with people of lower status.¹⁸⁷ He also noted that whilst most people walked bare feet, some people removed their slippers if they meet someone of a higher class/status.¹⁸⁸ Despite Islamization, colonial ‘influences’ and increased involvement with the world communities, the elites in the class-based system predominated the government and social life, and supported the political structure in the Maldives.¹⁸⁹

The twentieth century did not bring much difference to this social structure. For example, whenever the islands had foreign visitors, the men in the communities received them and placed them in designated homes. But it was the women in the house who then took on the responsibility of providing meals and other accommodation related services.¹⁹⁰ In some other aspects, the gender difference is less prominent in the Maldives, in comparison to its Asian neighbours. Fulu in 2014 argued that concepts such as honour killing are completely unheard of in the Maldives.¹⁹¹ Moreover, though violence against women exists, honour and shame are not used to justify violence against women in the Maldives.¹⁹²

Although education has been treated as an essential commodity customarily and both boys and girls were given basic educational training starting with pronunciation of alphabets, Dhivehi, English or Arabic, the first formal school was introduced only for boys in 1927 (Madhrasathul Saniyya). The social arrangement of the private and public lives of the people of the Maldives was re-organized after Islam and subjects in schools were also arranged to accommodate the new ideology.¹⁹³ Both boys and men had started travelling to neighbouring and Middle

¹⁸⁶ At 190.

¹⁸⁷ At 193.

¹⁸⁸ At 186-187.

¹⁸⁹ Phadnis and Luithui, above n 10, at 168.

¹⁹⁰ National Centre for Linguistic and Historical Research, above n 165, at 149–150.

¹⁹¹ Emma Fulu *Domestic Violence in Asia* (Routledge, Abingdon, Oxon, 2014) at 56.

¹⁹² At 56.

¹⁹³ Situation of Women in the Maldives, 1999 Report.

Eastern countries for higher education even before the establishment of this school. The first formal school for girls was introduced in 1933, but they were unable to travel for higher education until mid-twentieth century (1946). Women's participation in the employment sector saw a considerable change after access to education became universal.¹⁹⁴

Women who had access to positions of power during the earlier periods were mostly women from the nobility.¹⁹⁵ They represented a certain class of powerful families in the country. Although women had suffrage rights in 1932, and had a constitutional right to vote in 1953,¹⁹⁶ over 4000 women protested for women's freedom in the Maldives in 1962 demanding rights to participate in the political process.¹⁹⁷ This indicates that although there were a few women in key positions of the government, women's autonomy in the public sphere has been an area of concern.

Whilst most Islamic States resist ideals such as democracy, the Maldives is unique in having embraced democracy, albeit with assistance and pressure from Western and Asian partners.¹⁹⁸ As a country, the Maldives is often described as non-extremist.¹⁹⁹ The Maldives views Islam as a democratic religion that allows electoral platforms, public engagement and voice to serve the individual and collective interests of its people.²⁰⁰ However, as a constitutionally defined Sunni Muslim State, no law in the Maldives can contradict Islamic Shari'ah.²⁰¹ Shari'ah forms the fundamental basis of the local legislative system, the Constitution and other laws and policies in the Maldives, restricts gender equality, and the

¹⁹⁴ Office for Women's Affairs - the Republic of Maldives, above n 91, at 4.

¹⁹⁵ Razee, at 3.

¹⁹⁶ Office for Women's Affairs - the Republic of Maldives, above n 91, at 34.

¹⁹⁷ At 36.

¹⁹⁸ Bonofer, above n 53, at 435.

¹⁹⁹ At 443.

²⁰⁰ At 436.

²⁰¹ Art 70 (c); also see art. 19, 27, 36 (c), 67 (f), 70 (b)(2), Constitution of the Republic of Maldives (2008).

government enforces these restrictions.²⁰² A process of Islamization has been in place since 1153 A.D. The pattern of governance after Islamisation of the State, has become increasingly fine-tuned to suit the Islamic teachings of the Arab travellers who came to the Maldives in the early nineteenth century. Men in the newly introduced system were presented as the more ideal leaders, and women to ideally play a secondary role in State governance. These changes combined with the South Asian heritage, and women in the Maldives took a backseat in the local political affairs of the country.

Despite many people who argue that men and women in the Maldives have equal opportunities to education and positions of leadership, factors such as mobility due to family relations, and limited economic independence have also affected women significantly for a long time.²⁰³ For example, in the 1980s, becoming a parliament member was not a sustainable choice for a woman because it required living in the capital city, a life unaffordable to most Maldivians. Particularly for women, living away from their family responsibilities was not possible. The situation makes it difficult for them to have equal freedom to apply for scholarships and travel to other countries, even if the opportunity is open to both male and female candidates. Similarly, even today girls do face more restrictions when traveling out of their birth islands or abroad for higher education.²⁰⁴ This had initially reflected on the percentage of women with tertiary qualifications in the Maldives.

Women today are as qualified as men in the Maldives to pursue leadership positions.²⁰⁵ However, women's participation in public life, is very poor. The Global Gender Gap Report ranked Maldives's political empowerment at 101 in

²⁰² For a discussion of religious freedom in the Maldives, see United States Department of State *Report on International Religious Freedom – Maldives*, www.refworld.org, accessed at 13:10, 2015-08-10.

²⁰³ IFES *Qualitative Assessment - Perceptions about Women's Participation in Public Life in the Maldives* (International Foundation for Electoral Systems 2015) at 42; Ritchie, Ann Rogers and Sauer, above n 3; See, Quinn, above n 95.

²⁰⁴ Quinn, above n 95, at 10.

²⁰⁵ At 10.

2013²⁰⁶ and 120 in 2014.²⁰⁷ These figures show that there is a high level of inequality between men and women when it comes to participating in decision-making positions.

These difficulties are associated with socially constructed gender roles (Table 1.6), and women also had to compete against a general belief that men were more suited for leadership.²⁰⁸ Recent studies in the Maldives indicate that gender inequality in the Maldives stems from gender based roles and structures which charges men with a principal function to sustain households, protect and care for their wives, and children and women with reproductive functions and household chores.²⁰⁹ Families, therefore, prefer women and girl children to perform all household chores, take care of children and the elderly. To this date, women are restricted by socially preferred jobs, usually determined by families, such as teaching and nursing.

Table 1.6: Socio-cultural Barriers to Women's Low Participation in the Labour Force

Reasons for Being Unemployed	Number of Women	Number of Men
Unable to find suitable employment	40	51
Due to household chores	22	0
Due to lack of opportunities	12	15
Still studying	8	10
Due to health issues	5	7
Objections to work by family members	3	2
Income from other sources	2	1
Other reasons	8	16
Total	100	100

Source: Household Income and Expenditure Survey 2009-2010, Male', Department of National Planning (Statistics Division), 2012, at 45.

²⁰⁶ World Economic Forum, above n 87, at 19.

²⁰⁷ World Economic Forum *The Global Gender Gap Report 2014* (World Economic Forum 2014) at 11.

²⁰⁸ Office for Women's Affairs - the Republic of Maldives, above n 91, at 34.

²⁰⁹ Asian Development Bank *Maldives Gender Equality Diagnostic of Selected Sectors* (Asian Development Bank 2014) at 5.

Certain sectors are extremely hostile to women. For example, women judges are subjected to patronizing attitudes from the other members of the judiciary.²¹⁰ Women are also assigned cases with limited jurisdiction,²¹¹ and a woman has yet to assume the position of a chief judge in the Maldives. Although a woman has temporarily filled in the position of a chief judge at the Civil Court, she was never made permanent. A judicial appointment policy followed by the Judicial Services Commission now requires the first vote to be cast on the female candidate in case of a tie between a male and a female candidate.²¹² This gave the first woman the opportunity to successfully become a member of the High Court. These provisions in the regulation which requires giving a priority to women, is viewed by some, within the judiciary itself, as a violation of the Constitution and the Labour Act.²¹³

In 2009, a survey looked at, amongst other factors, education, and wealth quintile and employment status of women,²¹⁴ and measured women's autonomy and status within the family by measuring their participation in household decision making, their acceptance of wife beating, and their opinions of the conditions under which a wife should be able to deny sex to her husband.²¹⁵ The results of which 46 percent of the married women at the time of the survey being employed,²¹⁶ showed that women's engagement and participation in family-decisions involving how the family income is spent is quite significant at present. Two out of three women made such decisions jointly with their husbands and 29 percent women made decisions on their own.²¹⁷ 84 percent of women who make joint-decisions with their husbands

²¹⁰ Knaul, above n 100, at 17.

²¹¹ At 17.

²¹² At 17.

²¹³ Nazeer, above n 101.

²¹⁴ Ministry of Health and Family (Maldives) and ICF Macro *Maldives Demographic and Health Survey 2009* (MOHF and ICF Macro 2010) at 147.

²¹⁵ At 150.

²¹⁶ At 147.

²¹⁷ At 148.

have gained above secondary education qualifications.²¹⁸ Young married women between the ages 15-19 were the most likely group to have all their family decisions made by the husband.²¹⁹ Only very few women who participated in this research (four percent) said that family decisions are solely made by their husbands.²²⁰ Thus, women contributed well to family decisions. Moreover, they also contributed significantly towards the household income.²²¹

Recent studies on various related subjects such as women and election, finances and elections, gender equality and human rights, indicate that cultural and religious factors coupled with the fluidity of the political structure in the Maldives, are the main factors affecting women's participation in decision-making in the local context (Summary of studies and findings are provided in Table 1.7). Participation appears to have been limited by a combination of legal, political, economic and cultural factors. In fact, recent studies indicate that two-thirds of the public did not support the idea of gender equality.²²² The more widely accepted reason for women's underrepresentation in public life is often explained to be women 'arriving late' to education, acquiring employable skills and hence late to positions of power within the State. In the previous system of education and the low priority given to girls' higher education, there was a big difference between the number of men and women qualified for many of the posts in the country. Although the Maldives was going through multiple changes in terms of governance and administration of the State and there were many positions available, women, with basic religious, arithmetic and language qualifications²²³ were not qualified to fill these positions. Women at the time did have fewer employable skills due to

²¹⁸ At 148.

²¹⁹ At 149.

²²⁰ At 148.

²²¹ See At 147–148.

²²² Neil Nevitte *Democracy at the Crossroads* (Transparency Maldives 2013) at 8.

²²³ Helen Seidler *The Survey of Island Women: Republic of Maldives 1979* (National Planning Agency, Government of Maldives In collaboration with The Overseas Education Fund USA 1980) at 32.

inadequate educational qualifications for jobs.²²⁴ Women were further restricted from freely participating in the labour force due to early marriage and child birth.²²⁵ Even when they had jobs, many women left these jobs after marriage, or after giving birth, to take care of their families.²²⁶

Table 1. 6: Studies in the Area of Women and Public Life in the Maldives

Year	Title and Source	Methodology	Main Findings
2015	Perceptions about Women's Participation in Public Life in the Maldives, Perception Study, IFES, 2015.	Qualitative focused group discussions and individual interviews	<ul style="list-style-type: none"> - Increased negative perceptions and attitudes towards women's participation in public life (39); - Women has a primary responsibility in car-giving and domestic affairs and women live within socially defined roles – dual roles often leave little time for community engagement (39); - Socio-cultural, religious, socio-economic and socio-political dynamics compromise women's accessibility and engagement within public life (40). The structural changes to IWDC's have undermined women's contributions at the local level (41); - Participants were unsure of the religious position on women holding public office, and supported women becoming head of state and judge (41). - Mobility is an obstacle for women (42).
2014	Women's Empowerment in the Political Processes in the Maldives, Megan Ritchie, Terry Ann Rogers and Lauren Sauer, (IFES - USAID study)	Qualitative Desk review, Stakeholder and field interviews and focus group discussions	<ul style="list-style-type: none"> - Women's mobility, financial resources and vote buying, negative portrayals of women by the media, religious beliefs and cultural perceptions on gender roles, lack of confidence, networking in public space, lack of child care, physical electoral violence and voter intimidation, violence against women, lack of TSMs are obstacles to women's participation.

²²⁴ Miralao, above n 158, at 37.

²²⁵ At 37.

²²⁶ Office for Women's Affairs - the Republic of Maldives, above n 91, at 24.

2014	Money and Elections in the Maldives, Perceptions and Reality	Qualitative Survey interviews	-	38% women are interested in politics (1, 7) and 82% women strongly or somewhat agreed that voting gives them a chance to influence decision-making in the Maldives (9).
2014	Political Finance and Participation of Women in Maldivian Elections, Magnus Ohman	Consultation Document based on the IFES Women's Empowerment in the Political Processes 2014 Study	-	Major obstacles include: - Gender equality is not an accepted notion (2); Women are less supportive of gender equality than men (2); Funding, resources for elections (3) and political party attitudes (5).
2013	Democracy at the Crossroads – Results of the 2013 Maldives Democracy Survey, Neil Nevitte, Transparency Maldives Study	Qualitative Survey	-	Politics is the most pressing problem (8). Two-thirds of the public do not support gender equality (8) 72% of the survey participants said men make better leaders. (26). Overall, trust in institutions, cynicism and confidence are key issues. (8-9).
2012	UNCT (UN Country Team) Maldives Performance Indicators for Gender Equality and Empowerment of Women, Luis Gorjon, UNDP Maldives	Qualitative Used performance indicators drawn after a desk review of literature, initiatives, interactions with UNCT agencies	-	Existing political situation prevents govt. from properly defining role of women's machinery, resource and accomplish mandate (7); - Gender equality and women's empowerment is a new concept and achievement (10); - Gender equality appeared first in UNDAF 2011-2015 (10); - Gender equality is a new concept for the government – good monitoring needed to address gaps and implementation (11).
2011	The Rights Side of Life: Six Years On, HRC Maldives	Qualitative Survey based 1150 questionnaires – 607 males and 543 females	-	One third of the respondents considered that human rights conflicted with religion (2); - Women were more likely than men to think there was a conflict and rural dwellers more likely than urban dwellers (2); - Significant drop in the support for women's equality from the 2006 survey, support for child custody to women dropped from 90 (in 2006) to 60 per cent (in 2011) (2); - Nearly 83% of men in 2005 strongly agreed or agreed that women should have equal rights in family matters, dropped to 67.3% in 2011. Women's agreement also dropped from 85.9% to 80.7% (2);

			<ul style="list-style-type: none"> - Men's support for women to take part in politics and government dropped from 73% to 58%.
2011	Women in Public Life in the Maldives: Situational Analysis, Ingrid Quinn	Qualitative Desk review, In-depth interviews and focus group discussions	<ul style="list-style-type: none"> - Constitution guarantees equality and freedom. (24); - Existing structural, functional and cultural barriers lead to inequality in the political, economic and social spheres (24); - Patriarchy is reflected in the institutional structures, budgetary allocations, rules and processes (24); - Limited opportunities and awareness of the new systems in place create frustrations and disempowerment (24); - Restructuring leading to fewer state owned entities means women receive less support to engage in public life (24); - Conservative Islam is taking a strong hold (24); - Mobility, lack of flexible working options with the State, lack of facilities such as day care and high domestic burden (24).
2007	One Step Forward, Two Steps Back: A Social Representations Approach to Women and Politics in the Maldives, Athifa Ibrahim, London School of Economics and Political Science.	Qualitative In-depth interviews and focus group discussions	<ul style="list-style-type: none"> - Political reform and socio-religious movements in place. Identified existing unequal power relations that intensified and legitimised inequality in the public sphere (57); - Identified need for future research on the role of women in politics from an Islamic perspective (58); - Challenges outweighed Maldives's achievements in the area of political participation. Emphasis placed on civic education and awareness raising (58).
2006	The "Rights" Side of Life: First Baseline Human Rights Survey, HRCM-UNDP Maldives	Qualitative Survey Based 1095 questionnaires 749 from rural dwellers and 346 from urban households 413 male and 682 female	<ul style="list-style-type: none"> - Except in questions of divorce, large majorities of both men and women respondents support the concept that women should have equal rights with men in family matters, courts, inheritance, custody, divorce, work and politics (10); - 44.9% "strongly agree" and 45.0% "agree" that a good wife always obeys her husband even if she disagrees (10); - Women's rights to equality was ranked 8th in a list of 22, as the most important human rights (30).

People expected the Head of State to be a strong leader who would be able to decide on all matters related to the lives of the people of the Maldives.²²⁷ This was ideally a man. The accepted interpretation of Islamic law in the Maldives limited women's participation in key decision-making functions within the State such as becoming the president or a judge.²²⁸ Although gender equality in the Maldives is better in comparison to other South Asian countries, it does harbour socio-cultural and religious values that are discriminatory towards women in general. The significance of gendered roles in the Maldivian society can also be seen in the employment trends since the mechanisation of the fishing industry and the introduction of tourism in the Maldives.²²⁹

Coupled with gender-role restrictions, such culturally induced predispositions would further inhibit women's entry into the labour force. In brief, while methodological shortcomings suggest some caution in interpreting current participation rates, the downward trend in LFPRs (labour force participation rate) and occurring mostly among women indicate increasing gaps in genders' shares of production activities and economic benefits.

Prior to the introduction of tourism in the late 1970s and the mechanisation of the fishing industry in the 1980s, women in the Maldives were actively involved in the economic sector through their participation in the processing of the fish; cooking, preservation and sale of fish products.²³⁰ Women were also involved in craft-making²³¹ and generated an income from the sale of such items. They were also occupied with gathering firewood, twining rope, weaving mats for the beds, maintaining a vegetable garden for the house, and although these activities contributed substantially to the household income, they were not considered as

²²⁷ Including the "supreme right to propagate the religion of Islam in the Maldives". At 34.

²²⁸ At 34.

²²⁹ Quinn, above n 95, at 11. Also see Miralao, above n 158, at 37.

²³⁰ Quinn, above n 95, at 11.

²³¹ Miralao, above n 158, at 37.

economic activities in national statistics.²³² Thus, women's participation in the labour force declined significantly in the 1970s with the sudden boom in the economy.²³³ Both the introduction of fisheries and tourism affected women's participation in income generating activities. After the introduction of the fisheries industries, fishermen started selling their fish direct to the fishing industries. There was no fish for the women to cook, hence leading to the decline in women's participation in traditional economic activities.

Gender roles also restricted women from being employed in the tourist resorts because that would include travel and being away from home for long periods of time. Tourism provided the opportunity for men to work in resorts and hotels, thus leaving the women behind with the children. Men were rarely able to visit their homes due to the geographical location of the islands and difficulties with transport. The women then took significant control over their lives, in making key decisions for their children and the elderly, but these roles were limited to their lives inside their families and homes. Prior to 1990s, families could survive without either of the spouses being employed due to the ready availability of fish.²³⁴ This justified why women did not need regular employment in the Maldives.²³⁵ Many of these women who used to be involved in the fisheries industry are from outside the capital and have become self-employed through other home-based projects such as small plantations or agriculture projects.²³⁶

Although traditionally a woman's primary role revolved around her functions as wife and mother,²³⁷ Maldivian women were incredibly free in comparison to women in other South Asian countries as well as other Muslim countries. For example, women in the Maldives did not practice veiling nor have restrictions on

²³² Office for Women's Affairs - the Republic of Maldives, above n 91, at 22.

²³³ Miralao, above n 158, at 37–38.

²³⁴ At 37.

²³⁵ At 37.

²³⁶ Quinn, above n 95, at 11.

²³⁷ Office for Women's Affairs - the Republic of Maldives, above n 91, at 4.

their mobility prior to 1989.²³⁸ Women were actively involved in education, the upbringing of their children and also influenced decision-making related to their families.²³⁹ A study conducted in 1979 showed that almost two thirds of married women were involved in key decisions pertaining to their children's education, income and property.²⁴⁰ Despite these characteristics,²⁴¹ women were seen as persons who needed protection from men.²⁴² Women were discouraged from participating in traditionally male dominated areas of work such as fishing.²⁴³

The above analysis shows that although the Maldives has made significant advancements in some developmental areas, no significant progress in terms of achieving gender equality and empowerment for women has been made.²⁴⁴ CEDAW reports from the Maldives claim that the Maldives has been committed to ensuring gender equality, both formal and substantive, but socio-cultural and religious discrimination against women in many walks of life, has kept women behind.²⁴⁵ Whilst socio-cultural norms have limited women's participation in the workforce, community and public life, conservative thinking and religious fundamentalism severely affects women's lives today.²⁴⁶ Gender stereotyping continues to be a key barrier preventing women from political participation in the Maldives.²⁴⁷

²³⁸ At 4.

²³⁹ At 5.

²⁴⁰ Seidler, above n 223, at 32.

²⁴¹ Clarence Maloney claimed that Maldivian women were not as shy as most West Asian women. Office for Women's Affairs - the Republic of Maldives, above n 91, at 4.

²⁴² At 4–5.

²⁴³ At 23.

²⁴⁴ Department of National Planning, above n 158, at 44.

²⁴⁵ United Nations, above n 2, at 4–5. Ministry of Foreign Affairs, Government of Maldives *Maldives UPR National Report* (A/HRC/WG.6/9/MDV/1/Rev.1 2010) at 5.

²⁴⁶ Department of National Planning, above n 158, at 44.

²⁴⁷ Athifa Ibrahim "One Step Forward, Two Steps Back: A Social Representations Approach to Women and Politics in the Maldives" (Master of Arts Thesis, London School of Economics and Political Science, Institute of Social Psychology, 2007).

1.3 Conclusion: Research Gaps, Questions and Contributions

In recent years, since the adoption of the 2008 Constitution, the Maldives has shown positive commitments to addressing gender-based violence with the creation of key legislation focusing on the protection of women. However, it is unclear whether the domestic law in the Maldives is in conformity with CEDAW norms in public life. Whilst the Maldives is committed to introduce TSMs to eliminate structural discrimination, to accelerate *de facto* equality, it is unclear why CEDAW recommendations on TSMs have not been adopted by the States Party.

Studies in the Maldives since the 1980s have consistently identified gender based structures and attitudes as a key barrier to women's development and inclusion in decision-making in the Maldives. Stereotypes, attitudes and stigmatisation appear to be recurring themes in national human rights reports and studies, limiting women's equality and rights in the Maldives. Gender, religion and class appears to be significant parts of the local culture. Despite these, there are limited studies in the Maldives focusing on the impact of these structures on human rights, and particularly on the implementation of human rights instruments such as CEDAW.

Research in this area is significantly limited in the Maldives and arguments made are often based on anecdotal evidence. By identifying gaps in *de jure* (rights-in-principle) and the problems to attain *de facto* (rights-in-practice) equality in the area of a CEDAW right to public life, and also those associated with treaty enforcement mechanisms at the local level, it is expected that this thesis will contribute to an area of limited knowledge in the Maldives, and hence will be a novel contribution. The impact of CEDAW is thus measured using a unique instrument (discussed in Chapter 4), which looks at treaty internalisation, and treaty enforcement mechanisms.

- Treaty internalisation:
 - How has a CEDAW right to public life been integrated and given effect in the domestic law? Is there formal equality?
 - What restricts / prevents the successful impact of a CEDAW right to public life (substantive equality) at the domestic level?

- Treaty enforcement mechanisms:
 - Does CEDAW reporting contribute to treaty impact in the Maldives?
 - What factors affect treaty reporting processes?

It is anticipated that, through a better understanding of the local issues to a CEDAW right to public life, the issues and challenges for implementation will become more visible, and more informed decisions on better achievement of equal rights can be made both by the government and the UN bodies. This also leads to a better utilisation of resources and possible benefits to the society at large and to other countries in understanding the complexities of implementing CEDAW at the domestic level. In any case, the findings of this study will open a window to a complex reality that is little known, raising a series of questions that can be answered only by further research.

THESIS STRUCTURE

Chapter One of the thesis has identified the research problem, the research questions, and also provided background information on the local context. This background information is important to conceptualise the research problem in a holistic manner.

Chapter Two identifies the key definitions and frameworks within which this research is framed. It identifies a right to public life in CEDAW through an analysis of the CEDAW provisions and other international human rights instruments. This chapter then examines CEDAW's frameworks for formal and substantive equality.

Chapter Three is a review of the existing literature on the theories and empirical investigations on human rights implementation and integration. The chapter further examines socio-cultural and religious, particular emphasis on Islam (since the Maldives is a Muslim State), and the implications for women's rights. The analysis of previous research, particularly barriers, lead to the development of the unique research framework to investigate CEDAW impact in the Maldives.

Chapter Four explains the research methods and methodology adopted in this research. The literature review informed the unique instrument developed in this chapter to measure the impact of a treaty at the domestic level.

Chapter Five, Six and Seven discusses the findings. Chapter Five and Six discusses the findings from the research instruments rights-in-principle and rights-in-practice, showing the issues with formal and substantive equality in the Maldives, and discussing in depth, the barriers to the integration of international human rights norms at the local level.

Chapter Seven then examines, through an analysis of the CEDAW reports, COs and CEDAW Committee recommendations, and interviews from the rights-in-practice measure, to demonstrate how treaty enforcement methods established by the UN (treaty reporting and complaints mechanisms), have affected the implementation of rights at the local level.

Chapter Eight concludes the thesis by providing a summary of the research findings, theoretical and methodological contributions of the study, strategies for CEDAW implementation in the future, limitations, and future research prospects in the area.

CHAPTER TWO

A CEDAW RIGHT TO PUBLIC LIFE

There is no explicit ‘right to public life’ in CEDAW. This chapter identifies a right to public life through a textual analysis of CEDAW provisions, and finds that specific rights relevant to free and equal participation in the public affairs of one’s country recognised under both the UDHR and the ICCPR have been intelligently broken down into more achievable rights, and incorporated into articles 7 and 8 of the CEDAW Convention. These articles assert that women should have equal rights to vote, representation and participation vis-à-vis men. CEDAW creates a framework for the achievement of these rights through specific provisions that recognise and facilitate formal rights and through a matrix of positive and negative rights aimed at the achievement of substantive equality for women’s public lives. CEDAW also embodies a transformative model to ensure equality, obligating States Parties to entitle, enable and empower women, to ensure guarantee of rights espoused in the Convention.

2.1 Defining a Public Life

In 1962, Jürgen Habermas coined and defined the term public sphere as “a space, or multiplicity of spaces, in which citizens are able to discursively interact in order to exert some influence over public policies and issues of public concern”.²⁴⁸ Habermas identified three distinct spheres in his framework; the private sphere, the public sphere, and spheres of public authority.²⁴⁹ This theory of the public sphere

²⁴⁸ Wayne Clark “Public Sphere and the Academic Conference: Deliberation, Communication and Participation, The” (2006) 6 JIJIS 15 at 16; also see Jürgen Habermas *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (translated by Thomas Burger with the assistance of Frederick Lawrence) (MIT Press, Cambridge, Mass, 1991).

²⁴⁹ Habermas, above n 248, at 30–31.

explains how public opinion is formulated²⁵⁰ and how it legitimises State action²⁵¹ in participatory democracies.²⁵² The public sphere is the communicative sphere between the private sphere and the sphere of public authority transferring information in the form of public opinion.²⁵³ Although discussions and contributions from the public sphere directly connected with how the State operates and functions, the State was not a part of the public sphere.²⁵⁴ This understanding of the ‘public sphere’ is different to the meaning of the ‘public sphere’ and/or ‘public life’, often used interchangeably in international human rights law.

Public/private is often used in international law to provide distinctions between the State and society (private ownership) and also distinctions between the non-domestic and domestic life.²⁵⁵ This characterisation of the public sphere is similar to the historical understanding of the term demonstrating a life outside homes as opposed to private spheres or private lives.²⁵⁶ In both of these situations, the word ‘public’ refers to the State.²⁵⁷ In international law, ‘public’ in this sense is seen and understood as a ‘sphere’ that is easily accessible by the State, as opposed to the private sphere, which requires justification for any intrusions by the State.²⁵⁸

Similarly, CEDAW also uses ‘public’ to mean ‘lives’ outside the ‘private’ sphere, i.e. family.²⁵⁹ Participation in this aspect of life represents something beyond mere

²⁵⁰ Chandra Mukerji and Michael Schudson *Rethinking popular culture* (University of California Press, Berkeley, 1991) at 398.

²⁵¹ Seyla Benhabib, as referred to by Craig J Calhoun *Habermas and the Public Sphere* (MIT Press, US, 1992) at 87.

²⁵² Habermas, above n 248, at 87.

²⁵³ At 31.

²⁵⁴ Mukerji and Schudson, above n 250, at 398. Calhoun, above n 251, at 57. Also see Habermas.

²⁵⁵ Anne Phillips *Feminism and Politics* (Oxford University Press, New York, 1998) at 117; Also see Susan B Boyd *Challenging the Public/private Divide* (University of Toronto Press, Toronto, 1997) at 4–8.

²⁵⁶ Ruth Gavison “Feminism and the Public/Private Distinction” (1992) 45 Stanford Law Review 1 at 7.

²⁵⁷ Phillips, above n 255, at 117.

²⁵⁸ At 117. Gavison, above n 256, at 73.

²⁵⁹ See CEDAW General Recommendations in general. At <www.un.org>.

exposure to the outside world, to affect all the people in the nation;²⁶⁰ as in participation in government, interests of a society such as governance, public service and occupational aspects as opposed to private affairs.²⁶¹ It refers to the exercise of political powers within the legislative, judicial, executive and administrative and also all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. The concept also includes many aspects of civil society, including public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life.²⁶²

2.2 What is a Human Right to Public Life?

Having a right invokes multiple understandings of what a person can and cannot do. The word ‘rights’ itself, implies a higher force, in recognising dignity and respect,²⁶³ giving a sense of entitlement to the individual,²⁶⁴ and exists even against the collective interests of a social group.²⁶⁵

When people hear the phrase ‘human rights,’ they think of the highest moral precepts and political ideals. And they are right to do so. They have in mind a familiar set of indispensable liberal freedoms, and sometimes more expansive principles of social protection. But they also mean something more. The phrase implies an agenda for improving the world, and bringing about a new one in which the dignity of each

²⁶⁰ For example public law, see general definition of “public” in Merriam Webster Dictionary available online at <www.merriam-webster.com/dictionary/public>

²⁶¹ CEDAW 1979, Gen. Recomm. 23.

²⁶² CEDAW 1979, Gen. Recomm. 23.

²⁶³ See discussion in Hugo Adam Bedau “Anarchical Fallacies: Bentham’s Attack on Human Rights” (2000) 22 Hum Rts Q 261.

²⁶⁴ Paulos Z Eleutheriadēs *Legal Rights* (Oxford University Press, New York, 2008) at 1.

²⁶⁵ Ronald Dworkin *Taking Rights Seriously* (Gerald Duckworth & Co Ltd, London, 1977) at xi.

individual will enjoy secure international protection. It is a recognizably utopian program: for the political standards it champions and the emotional passion it inspires.... It promises to penetrate the impregnability of state borders... offering victims the world over the possibility of a better life... Human Rights in this sense have come to define the most elevated aspirations of both social movements and political entities – state and interstate. They evoke hope and provoke action.²⁶⁶

The UDHR establishes human rights as a common standard of achievement; a basic framework to claim rights for individuals.²⁶⁷ Normative and aspiration based, this definition views human rights as a universal moral right, something which everyone everywhere ought to have, simply because he or she is human.²⁶⁸ Often also understood as ‘natural rights’,²⁶⁹ these universal claims to human rights are based on the inherent dignity²⁷⁰ and sacredness²⁷¹ of the human person.²⁷² Scholars argue that in general, human rights are those rights which are believed to be the very rights that should be granted to a person by virtue of human birth,²⁷³ key to living a life of dignity and worthy of a human being,²⁷⁴ and does not necessarily have to be found in any international human rights instrument. Prior to WWII, there were no

²⁶⁶ Samuel Moyn *The last utopia* (Belknap Press of Harvard University Press, Cambridge, Mass, 2012) at 1.

²⁶⁷ Rex Martin and James W Nickel “Recent Work on the Concept of Rights” (1980) 17 *American Philosophical Quarterly* 165 at 175.

²⁶⁸ Alan S Rosenbaum *The Philosophy of Human Rights: International Perspectives* (Greenwood Press, Connecticut, United States, 1980) at 140. Maurice William Cranston *What are human rights?* (Bodley Head, London [u.a., 1973) at 36.

²⁶⁹ Jack Donnelly “Human Rights as Natural Rights” (1982) 4 *Human Rights Quarterly* 391. Jack Donnelly “The Relative Universality of Human Rights” (2007) 29 *Human Rights Quarterly* 281.

²⁷⁰ Universal Declaration of Human Rights

²⁷¹ See Michael J Perry “The Idea of Human Rights and the Matter of Rights-Talk” (1994) 28 *Suffolk U L Rev* 587.

²⁷² At 590–591; For alternate views, see Upendra Baxi *The future of human rights* (Oxford University Press, New Delhi; New York, 2006).

²⁷³ Donnelly, above n 269, at 391.

²⁷⁴ Jack Donnelly *Universal human rights in theory and practice* (Cornell University Press, Ithaca, 2013) at 15.

‘universal’ standards of human rights.²⁷⁵ International human rights treaties and conventions offered the first inclusive set of standards for human rights that aspired to be universal in its application.²⁷⁶ This was mainly an attempt to define what States could and could not do,²⁷⁷ and has the potential to protect interests or confer control on a state of affairs.²⁷⁸ Human rights have since been written down in a widely endorsed set of international undertakings,²⁷⁹ and are found in the law.²⁸⁰ All human rights claims therefore, must be ideally based on an international human rights instrument,²⁸¹ although it does not need necessarily to appear in the list of written rights.²⁸²

Theoretically speaking, the existence of a human right does not depend on the availability or the accessibility of such rights within individual circumstances,²⁸³ enforcement mechanisms,²⁸⁴ or abilities to exercise them.²⁸⁵ In this regard a human rights claim may articulate a basic human need without specifying correlative obligations on the part of the government to implement these needs.²⁸⁶ Human rights therefore extends beyond liberties and rights enjoyed in virtue of membership in a particular political framework to support rights in social welfare²⁸⁷ and

²⁷⁵ Jack Donnelly “Human Rights: A New Standard of Civilization?” (1998) 74 *International Affairs* (Royal Institute of International Affairs 1944) 1 at 11.

²⁷⁶ At 14.

²⁷⁷ Leif Wenar “The Nature of Human Rights” in Andreas Follesdal and Thomas Pogge (eds) *Real World Justice* (Springer Netherlands, 2005) 285 at 286.

²⁷⁸ Joel Feinberg and Jan Narveson “The nature and value of rights” (1970) 4 *J Value Inquiry* 243 at 243–257. Martin and Nickel, above n 267, at 165.

²⁷⁹ Alison Brysk *Globalization and human rights* (Univ of California Press, Berkeley, Calif [u.a, 2002) at 3.

²⁸⁰ Ben Golder *Re-reading Foucault* (Routledge, Oxon; New York, 2013) at 188.

²⁸¹ Donnelly, above n 275, at 16.

²⁸² On a discussion of how gender-based violence, not included in the list of rights of women in CEDAW became a “human right”, see, Sally Engle Merry *Gender Violence* (1st ed, Wiley-Blackwell, Malden, MA; Oxford, 2008) at 77–100.

²⁸³ Donnelly, above n 269, at 398.

²⁸⁴ Maurice Cranston “Are There Any Human Rights?” (1983) 112 *Daedalus* 1 at 12.

²⁸⁵ Rosenbaum, above n 268, at 139.

²⁸⁶ At 140.

²⁸⁷ At 140.

justice.²⁸⁸ As entitlements, human rights reflect various human interests that are based on principles of social justice²⁸⁹ and play a key role in creating social change.²⁹⁰ Increasingly, human rights also has ‘political appeal’, allowing rights claims that have not been previously recognised by governments.²⁹¹ Human rights in this conception makes the creation of a full list of all human rights in any legal or non-legal rights instrument impossible.²⁹²

According to the views above, human rights cannot be limited only to civil liberties or rights of citizens,²⁹³ and it creates a structure that has a bearing on future societies.²⁹⁴ Although it is a particular type of social practice, founded on a particular conception of being human, human rights are still subject to implementation mechanisms, although not necessarily domestic legal frameworks.²⁹⁵ Contemporary practice therefore, identifies human rights with a set of explicit political norms that only make sense in certain institutional contexts. Human rights get their distinctive content not from essential features of humanity, but in practice, more from institutionalised relations between individuals and their governments and other political agents.²⁹⁶ Thus, in the modern world, human rights are time-bound and run by predictable threats.²⁹⁷ Human rights in this context define boundaries for state action and behaviour towards their citizens and a

²⁸⁸ Cranston, above n 284, at 12.

²⁸⁹ Charles Beitz “What Human Rights Mean” (2003) 132 *Daedalus* 36.

²⁹⁰ Donnelly, above n 274, at 9.

²⁹¹ Martin and Nickel, above n 267, at 176.

²⁹² Cranston, above n 284, at 13; Also see Philip Alston “Conjuring Up New Human Rights: A Proposal for Quality Control” (1984) 78 *Am J Int’l L* 607 at 614–615.

²⁹³ Rosenbaum, above n 268, at 140–141.

²⁹⁴ as quoted by Beitz, at 44 Rex Martin *A System of Rights* (Clarendon Press, 1993) at 74–75, as quoted by Beitz, at 44

²⁹⁵ Donnelly, above n 274, at 17.

²⁹⁶ Upendra Baxi *The Future of Human Rights* (Oxford University Press, New Delhi; New York, 2006).

²⁹⁷ Beitz, above n 289, at 44.

violation of these human rights justifies a remedial action.²⁹⁸ At times permitting²⁹⁹ and even necessitating³⁰⁰ international interference.

Human rights continue to serve a multitude of roles. Whilst at times they may form the basis of foreign interventions into domestic affairs, the bigger tasks for human rights today is in setting standards and aspirations for political debate, domestic politics, international treaties and international and global organisations.³⁰¹ They are best understood as individual freedoms and autonomies³⁰² in relation to the State.³⁰³ If enforceable, a human right is therefore a “structure that gives autonomy to its holder”,³⁰⁴ for instance rights within a political framework.³⁰⁵ This autonomy is the “capacity of human beings to reason self-consciously, to be self-reflective and to be self-determining.”³⁰⁶ This “involves the ability to deliberate, judge, choose and act upon different possible causes of action in private as well as public life, bearing the democratic good”.³⁰⁷ These rights protect individuals from being deprived of their autonomy in various ‘sites of power’.³⁰⁸ Rights safeguards individuals from being deprived from their autonomy.³⁰⁹ They create spaces for action and at the same time constrains action.³¹⁰ They provide both opportunities

²⁹⁸ At 44.

²⁹⁹ Wenar, above n 277, at 285.

³⁰⁰ At 286.

³⁰¹ See Rex Martin and David A Reidy *Rawls's Law of Peoples* (1st ed, Wiley-Blackwell, Malden, MA, 2006) for a defense of Rawls' interpretation.

³⁰² See David Held *Democracy and the Global Order* (Polity Press, Great Britain, 1995).

³⁰³ Carl Wellman in *A New Conception of Human Rights*, in Eugène Kamenka and Alice Erh-Soon Tay *Human rights* (E Arnold, London, UK, 1978) at 56.

³⁰⁴ Wellman as quoted by Martin and Nickel, above n 267, at 171.

³⁰⁵ Held, above n 302, at 146.

³⁰⁶ At 146.

³⁰⁷ At 146.

³⁰⁸ (1) The body, (2) welfare, (3) culture, (4) civic associations, (5) economy, (6) violence, and the (7) State. At 192–193.

³⁰⁹ At 192–193.

³¹⁰ At 154.

and duties.³¹¹ They afford to people “the ability to act, in principle, as the author or maker of one’s own life, in public and private realms.”³¹²

The principle of autonomy dictates that everyone must be allowed to “enjoy a common structure of political action across each of the sites of power,”³¹³ and ensure the realisation of a fixed scheme of human rights,³¹⁴ where “free equal members of the political community are required to be engaged in the decision-making process.”³¹⁵ A demand for a human right (rights claim) to public life implies that if women enjoy this right, they will live richer and fuller human lives.³¹⁶ To this end, a claim to a right to public life advances certain values that are the most basic to all human beings; liberty, equality and security.³¹⁷ Realising this right is of paramount importance³¹⁸ to women’s rights, social justice and political legitimacy.

2.3 A Right to Public Life in International Human Rights Law

As an international human rights norm, the UDHR, ICCPR and CEDAW all recognise a right to public life. International law recognises participation in public life as a fundamentally important principle that supports democratic governance and justice.³¹⁹ This is addressed through a number of specific provisions in human rights conventions addressing key issues such as voting, representation of countries and participation in civil society. These provide support to the idea of participation

³¹¹ At 154.

³¹² At 151.

³¹³ At 191.

³¹⁴ At 153.

³¹⁵ At 146.

³¹⁶ Donnelly, above n 274, at chapter 1, The Concept of Rights.

³¹⁷ At 17.

³¹⁸ Cranston, above n 284, at 14.

³¹⁹ CEDAW 1979, See Preamble to the Convention.

in the public sphere of their country as a fundamental element of a person's life.³²⁰

Article 21 of the UDHR states:

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives; (2) Everyone has the right of equal access to public service in his country; (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

A more in-depth acknowledgement of these international human rights norms was included in Article 25 of the ICCPR:³²¹

Every citizen has the right and the opportunity: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and (c) to have access, on general terms of equality, to public service in his country.

The right to take part in the conduct of the public affairs in ICCPR has been interpreted by the HRC to mean “all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.”³²² States Parties to ICCPR must ensure that all rights in the Convention are “ensured to all individuals within its territory ... without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”³²³ Similar provisions that

³²⁰ See generally UDHR 1948, ICCPR 1966, and CEDAW 1979.

³²¹ ICCPR 1966, art 25.

³²² Annotation by the Secretary-General of the Draft International Covenants on Human Rights, UN GAOR, 10th Session., Supp. No. 19, (1955), at 173.

³²³ ICCPR 1966, art 26.

address equality of the sexes in the engagement and involvement and representation of their countries in the public sphere have been incorporated into a number of regional human rights instruments such as the American Convention on Human Rights, African Charter of Human and People's Rights and the European Charter of Human Rights.

2.4 A CEDAW Right to Public Life

As mentioned above, there is no specific right to public life in CEDAW. However, rights incorporated in articles 7 and 8 of the Convention recognize that a woman is equal in status and rights to that of a man within all spheres of life. Inspiration for these rights in articles 7 and 8 was drawn mainly from The Declaration on the Elimination of All Forms of Discrimination against Women (DEDAW) and the Convention on the Political Rights of Women (CPRW).³²⁴ As such, the initial discussion on the political rights of women started with the rights in article 4 of DEDAW.³²⁵ These rights complemented the enumerated rights in article 25 of ICCPR.³²⁶

The first efforts to create specific rights for women in the public sphere of their countries were made in 1953 through the International Convention on the Political Rights of Women (ICPRW). This Convention created equal rights for women in political life.³²⁷ This was the first international expression of its nature giving women equal rights to vote in all elections,³²⁸ to be eligible for election to all publicly elected bodies³²⁹ and to hold public office and to exercise all public

³²⁴ Convention on the Political Rights of Women, art 1, 2 and 3 and DEDAW, art 4.

³²⁵ Lars Adam Rehof *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women* (Martinus Nijhoff Publishers, 1993) at 94.

³²⁶ See submissions by the Philippines, at 94.

³²⁷ Ingrid Westendorp, Maastricht Centre for Human Rights and Seminar *The women's convention turned 30* (Intersentia, Cambridge, 2012) at 164.

³²⁸ CPRW, art 1.

³²⁹ CPRW, art 2.

functions³³⁰ on equal terms with men.³³¹ Building on the principle of equal rights for men and women,³³² this Convention recognised that “everyone has the right to take part in the government of his country, directly or indirectly through freely chosen representatives, and has the right to equal access to public service in his country”.³³³ However, to achieve these political rights for women was a major challenge in the presence of widespread discrimination against women in other areas of life.³³⁴

New efforts to eliminate discrimination against and create equal rights for women were made through the Declaration on the Elimination of All Forms of Discrimination against Women (DEDAW) in 1966. Established in 1946, the United Nations Committee on the Situation of Women (CSW) initiated this process. Through this Declaration the United Nations accepted that discrimination against women was a complex problem in need of a comprehensive, holistic approach. By the twenty-eighth year of CSW’s establishment (1974), work on a Women’s Convention had already begun.³³⁵ The Convention was adopted by the GA on 18 December 1979 and demonstrated the first global effort to create equal rights for women.³³⁶ The rights elaborated in the CEDAW were specifically crafted for women, although the basis of the rights found in CEDAW were all covered under UDHR, and its two consecutive documents, ICCPR and ICESCR. Articles 7 and 8 of the CEDAW Convention provides the following:

Article 7: States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the

³³⁰ CPRW, art 3.

³³¹ CPRW, art 1, 2 and 3.

³³² DEDAW, Preamble, para 1.

³³³ DEDAW, Preamble, para 2.

³³⁴ DEDAW, Preamble, para 4.

³³⁵ Rehof, above n 325, at 9.

³³⁶ See UN Doc. E/CN.6/591 (1976); UN bodies, international organisations and women’s groups submitted comments and drafts whilst the final drafts also underwent multiple working group sessions and a styling committee to become what it is today.

country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8: States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 7 of the Convention begins by stating that States Parties must take all appropriate measures to eliminate discrimination against women in the *political and public life* of the country. The set of rights created through articles 7 and 8 includes a woman's right to participate in the political process of their country and internationally. It embodies a list of rights; to vote, representation, participation in the formulation and implementation of policy of their countries, and opportunities to represent the government internationally. This list of women's rights in the political and public life of the country is, however, not an exhaustive list. The appearance of the word 'in particular' is evidence of this.

The overall structure of the article 7, read together with the preamble provides evidence of a broader issue the article 7 is intending to address: women's participation in decision-making across all levels of the public sphere to affect the life of their countries. The specific list created in article 7, on successful implementation, will contribute to the achievement of a right to public life. Achievement of all these rights is crucial to meaningful participation in the public life but is in no way the only rights necessary to achieve equality in public life. The rights listed in articles 7 and 8 therefore, are not an exhaustive list of rights and other measures crucial to ensure the equality envisaged by CEDAW may be

identified.³³⁷ This obligates States Parties to ensure that women have equal opportunities and freedom to participate in the political and public life of their country on equal terms with the men.

The basic understanding behind the enumerated list of rights in article 7 is providing women legal and social space within the public sphere of their countries. It is not merely the right to vote, stand for election, hold public office and partake in public functions.³³⁸ By providing for additional rights to be involved in the ‘formulation and implementation of government policy’ and ‘participation in non-governmental organisations and associations concerned with the public and political life’, scope and value is added to the list of political rights provided under article 7 of the Convention.³³⁹ Moreover, a closer review of the articles 7 and 8 reveal CEDAW’s attempt to minimise the gap between women’s private and public lives.

Evidence towards a CEDAW right to public life can also be obtained from the legislative history on the formulation of the rights in articles 7 and 8 of the CEDAW Convention.³⁴⁰ The first drafts of the now article 7 were vague and only required the States to provide women with the opportunity to participate in the political and social life of their country.³⁴¹ Initial drafts from the Philippines and USSR did not enumerate any specific electoral rights but included provisions on women’s participation in all spheres of national life.³⁴² The draft submitted by Pakistan however enumerated electoral rights and stressed women’s participation in “policy making and planning in the federal and provincial governments.”³⁴³ Comments and suggestions from India, Belgium, USSR, Australia and Mexico also supported to include women’s participation in “public office” and “public functions at all levels

³³⁷ Julie Mertus *Local Action, Global Change* (Paradigm Publ, Boulder, Colo [u.a, 2008) at 258.

³³⁸ Westendorp, Maastricht Centre for Human Rights and Seminar, above n 327, at 168.

³³⁹ At 168.

³⁴⁰ At 166; General Recommendation No.23, under 8, 10 and 12.

³⁴¹ Rehof, above n 325, at 94.

³⁴² At 94.

³⁴³ At 95; UN Doc. E/CN.6/606, at 2, 4.

of the government”.³⁴⁴ The substance of this article remained unchanged throughout the drafting process. Most of the initial drafts submitted by the member States of the UN and other interest groups had a side heading for these rights reading ‘political rights’ which were removed in the final draft.³⁴⁵ The final rights enumerated in articles 7 and 8 thus aimed to address women’s marginalisation within the public sphere.³⁴⁶

Articles 7 and 8, concerning women’s right to participation in public life therefore, give effect to the “*right to participate in public affairs*” in article 26 of ICCPR.³⁴⁷ Clarifications on the scope of obligations arising from these articles can also be derived using the meanings given to the “conduct of public affairs” that appear in the article 25, ICCPR.³⁴⁸ ICCPR Article 25 recognizes that every citizen should have the right and the opportunity, without undue restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives; and to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage. The “right to take part in the conduct of the public affairs” has been interpreted by the Human Rights Committee to mean “all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.”³⁴⁹ ‘*All levels*’ in this text refers to all levels of participation within the State not limited to “national and local” as well as “regional and provincial” levels.³⁵⁰ A closer analysis of these texts indicates that these articles

³⁴⁴ At 96–97.

³⁴⁵ For example The Draft CEDAW from Indonesia, art 6 and Draft CEDAW from the All-African Women’s Convention, art 8.

³⁴⁶ Westendorp, Maastricht Centre for Human Rights and Seminar, above n 327, at 166.

³⁴⁷ Mertus, above n 337, at 258.

³⁴⁸ Marsha A Freeman, Beate Rudolf and Christine Chinkin *The UN Convention on the Elimination of All Forms of Discrimination Against Women* (Oxford University Press, 2012) at 218. also see Andrew Byrnes and Jane Connors “Enforcing the Human Rights of Women: A Complaints Procedure for the Women’s Convention” (1995) 21 *Brook J Int’l L* 679.

³⁴⁹ Annotation by the Secretary-General of the Draft International Covenants on Human Rights, UN GAOR, 10th Session., Supp. No. 19, (1955), at 173.

³⁵⁰ UN Doc. E/CN.6/591, Annex I, at 62.

have a broader mandate; to enhance women's participation in public life,³⁵¹ as opposed to simply being able to participate in the electoral process.³⁵²

The Committee obviously sees political participation as a much broader topic, **which is about the influence of women in decision-making and their actual participation on all levels of public life.** ... The obligation ... extends to all areas of public and political life and is not limited to those areas specified in subparagraphs (a), (b) and (c). The political and public life of a country is a broad concept. **It refers to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers.** The term covers all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. The concept also includes many aspects of civil society, including public boards and local councils and the activities of organisations such as political parties, community-based organisations and other organisations concerned with public and political life.

Given the positions and uses of the term above, public life in this thesis, is used to mean positions of leadership and decision-making within the State, which includes positions within the legislative, judiciary, executive, also including public boards, local councils, political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life of the country. Where States Parties to the CEDAW Convention provide a system of law to protect and ensure the enumerated rights in articles 7 and 8, a claim to a right to public life is also reasonable as these enumerated rights serve to achieve women's equal participation in decision-making.³⁵³ These rights are universally ratified with some exceptions entered as

³⁵¹ Westendorp, Maastricht Centre for Human Rights and Seminar, above n 327, at 166.

³⁵² At 168; General Recommendation No. 23, para.5.

³⁵³ Cranston, above n 284, at 14.

reservations to articles 7 and 8.³⁵⁴ This international human rights norm would challenge existing institutions, practices, or norms – especially legal practices.³⁵⁵

2.4.1 The CEDAW Context, Preparatory Work and the Subsequent Document

Currently regarded as customary international law,³⁵⁶ the Vienna Convention on the Law of Treaties (VCLT)³⁵⁷ lays down the general rules of treaty interpretation. The rules related to interpreting human rights treaties stipulated in VCLT are similar to modern approaches to legislative interpretation,³⁵⁸ although VCLT stresses adopting a more textual approach.³⁵⁹ These rules emphasize giving ordinary meaning to treaty text in light of their context, object and purpose.³⁶⁰ As such, the object and purpose is only determined in order to identify the ordinary meaning of the terms used.³⁶¹ However, the approach does consider the text and also the context of the treaties in giving treaty terms their intended meanings. The meaning of context in this regard includes its text, preamble, annexes and:³⁶²

- (a) Any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

³⁵⁴ At 14; Given example - it is not dependant on the situation of women in the world any particular situation in the world. For instance a “right to a holiday with pay” cannot be a universal right because of the global differences in “wages, stipends, salaries, or other regular allocations”.

³⁵⁵ Donnelly, above n 274, at 12.

³⁵⁶ Naigen Zhang “On International Law of Treaty Interpretation (Sur Le Droit International De L’Interpretation Des Traites)” (2010) 6 Canadian Social Science 1 at 7.

³⁵⁷ VCLT 1969, art 31 and 32.

³⁵⁸ Richard Gardiner *Treaty Interpretation* (Oxford University Press, New York, 2008) at 190.

³⁵⁹ At 146; also see International Law Commission *Report of the International Law Commission on the Work of the Second Part of Its Seventh Session, Monaco, 3-28 January 1966* (A/6309/Rev.1 1996) at 217–227.

³⁶⁰ VCLT 1969, art 31, para 1.

³⁶¹ Gardiner, above n 358, at 190.

³⁶² United Nations *Vienna Convention on the Law of Treaties* (1969) at art 31, para 2.

(b) Any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

Although the ordinary meaning of words used in the treaties can be quite simple and easy to interpret, the implied meanings can only be illuminated with the help of the object and purpose of a particular treaty.³⁶³ Thus, a textual approach does not mean that the interpretation is entirely based on the literal text.³⁶⁴ Although primarily based on text, treaties must be interpreted as a whole.³⁶⁵

This aspect of primacy of the text has been recognised by international tribunals in a number of recurring situations. First it seems to be generally recognised that an interpretation that does not emerge from the text cannot be accepted, however plausible it may be in view of the circumstances, unless a failure to do so would lead to an obviously unreasonable result. Accordingly, tribunals have usually rejected otherwise reasonable interpretations because to accept them would have been tantamount to rephrasing or otherwise altering the actual text.³⁶⁶

The context plays a critical role in the formulation of the text,³⁶⁷ and much of the context is also carried in the preparatory work of the treaty and also other subsequent documents. Moreover, because these international human rights documents are made out of consensus,³⁶⁸ understanding the intentions of the law makers is crucial to implementing the provisions in the future.³⁶⁹ Hence, to avoid

³⁶³ Gardiner, above n 358, at 144.

³⁶⁴ Zhang, above n 356, at 7.

³⁶⁵ Gardiner, above n 358, at 144.

³⁶⁶ R Hakan Berglin "Treaty Interpretation and the Impact of Contractual Choice of Forum Clauses on the Jurisdiction of International Tribunals: The Iranian Forum Clause Decisions of the Iran-United States Claims Tribunal" (1985) 21 *Tex Int'l L J* 39 at 44.

³⁶⁷ *Web Journal of Current Legal Issues - Web-JCLI-2006-3.pdf* at 5.

³⁶⁸ Alan Phillips and Allan Rosas (eds) *Universal Minority Rights* (Åbo Akademi University Institute for Human Rights, Gezeliusgatan, 1997) at 36.

³⁶⁹ *Brett v Brett* (1826) 3 Add 210; 162 ER 456, 458-9; as cited by Anne Winckel "Contextual Role of a Preamble in Statutory Interpretation, The" (1999) 23 *Melb U L Rev* 184 at 194.

undesired interpretation and application of treaty terms, due consideration also needs to be given to preparatory work of the treaty and the circumstances of its conclusion³⁷⁰ and also to take into account other subsequent agreements or practices regarding the interpretation of the terms of the treaty that has been agreed by the parties.³⁷¹ Similarly, a proper interpretation of treaty rights must also recognise former human rights commitments made by States Parties in order to achieve consistency in the collective enforcement and application of fundamental human rights.³⁷² States Parties are allowed to use other material sources such as customary rules or general principles of law to interpret unclear, open-text and silent provisions in a human rights treaty.³⁷³ Moreover, the interpretation of the treaty may be modified in a way that better achieves the needs of a treaty.³⁷⁴ Means of treaty interpretation outlined in the VCLT are, however, interdependent to ensure that the meaning is still relevant to the conventional language and also the context of the treaty.³⁷⁵ However, interpretations “not derived from text cannot be justified by referring to general custom, usage, or even recognised rules of international law unless sufficiently supported by the text.”³⁷⁶

Despite the importance of consistency of the language for implementation and enforcement of human rights, there is no fixed mechanism within the international human rights framework to interpret treaty terms.³⁷⁷ For example, States Parties ratifying human rights conventions are at liberty to enter reservations, and are also

³⁷⁰ Ulf Linderfalk *On the Interpretation of Treaties The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties* (Springer, New York, 2010) at 2–3; also see Anthony Aust *Modern treaty law and practice* (2nd ed, Cambridge University Press, Cambridge, 2007) at 197.

³⁷¹ VCLT 1969, art 31, para 3 (a) and (b).

³⁷² For example, prior to CEDAW, the 1952 Convention on the Political Rights of Women also provided for equal political rights for women; VCLT 1969, art 30.

³⁷³ VCLT 1969, art 31, para 3 (c); also see the Oil Platform Case (Iran v. United States of America) (Merits) I.C.J. Reports 2003, at para. 41.

³⁷⁴ Linderfalk, above n 370, at 3.

³⁷⁵ *On the Interpretation of Treaties* (Springer, 2007) at 8.

³⁷⁶ Berglin, above n 366, at 44.

³⁷⁷ John S Gibson *Dictionary of international human rights law* (Scarecrow Press, Lanham, Md [u.a., 1996) at 13.

allowed to “include their own understandings of specific rights, words and provisions.”³⁷⁸ Similarly, States Parties may adopt different methods to interpret terms in human rights treaties and Conventions.³⁷⁹ Many countries often refer to local constitutions and original drafting documents when interpreting treaty rights. Due to this, the meaning and scope of terms and phrases, may vary across countries.

At present, looking at the text, the intention and the underlying overall objective of the treaty is the dominant hermeneutic approach to treaty interpretation. A comprehensive exercise to interpret treaty rights involves multiple steps. Treaties must be interpreted to achieve a certain goal and must consider extrinsic materials that give value and meaning to treaty text.³⁸⁰ General principles of law and customary law should be used to identify those goals and purposes and hence assist the interpretation of treaties.³⁸¹ VCLT rules support the interpretation of “evolving provisions” within human rights treaties and also allow the application of contemporary developments in law.³⁸² This requires a proper reading of the text, with an intention to further the legislative goals within the context of the Convention and also in light of other considerations such as the distinctive features of international human rights law.³⁸³ These approaches are useful to unpack the CEDAW provisions and identify rights because they promote the general legislative purpose underlying the terms and place more emphasis on the spirit of the treaties rather than the letters.³⁸⁴ Thus, the adopted approach to reading rights not only allows identifying the legislative intent of the drafters of articles 7 and 8, but also

³⁷⁸ At 13; See the example of the United States interpretations of the provisions to ICPR in 1992.

³⁷⁹ At 12–14.

³⁸⁰ Gardiner, above n 358, at 177–178.

³⁸¹ See *George Pinson Case (France v. United Mexican States)* Award of 13 April 1928, UNRIAA, Vol. V, at 422.

³⁸² In the *Island of Palmas Case*, Judge Huber claimed that “a juridical fact must be appreciated in light of the law contemporary with it”. *The Netherlands v. United States of America*, Award of April 14, 1928, UNRIAA, Vol. II, at 845.

³⁸³ Richard A Posner “Legislation and Its Interpretation: A Primer” (1989) 68 *Neb L Rev* 431 at 443.

³⁸⁴ Paul Denham, Jacqueline Martin and Robin Otter *A modern introduction to law* (Edward Arnold, London, 1983) at 20.

reveals that reading articles 7 and 8 of the Convention as political rights of women not only undermines both its meaning and significance, but also becomes an insufficient guarantee of a woman's equal right to a public life.

A proper reading of the CEDAW rights requires the reading of specific rights in CEDAW articles 7 and 8, and apart from its own preamble, these articles should be read together with other human rights instruments such as the UDHR and ICCPR, the *travaux préparatoires*, and the general recommendations of the CEDAW Committee. The substantive provisions of the Convention then, must be read together with the preamble,³⁸⁵ to fully understand the key ingredients in the specific provisions.³⁸⁶ True textual meaning is derived from the CEDAW text and its site of production.³⁸⁷ Any approach that disregards the legislative history of CEDAW will be most likely to lead to a misreading of the CEDAW rights.³⁸⁸

2.4.1.1 CEDAW Structure, Object and Purpose

There was limited enthusiasm to have a Convention focusing on the elimination of discrimination against women.³⁸⁹ Moreover, agreeing on a common standard on one of the most controversial topics at the international level³⁹⁰ was not easy for the CSW, the only body led by enthusiastic feminists within the entire UN framework.³⁹¹ The CSW spent six years drafting, debating and amending, after they

³⁸⁵ A-G v Prince Ernest Augustus of Hanover [1957] AC 436. As referred to by Winckel, above n 369, at 189.

³⁸⁶ A-G v Prince Ernest Augustus of Hanover [1957] AC 436. As referred to by Winckel, above n 369, at 189.

³⁸⁷ At 17; also see Macherey 1978, 133, 150.

³⁸⁸ Arthur W Murphy "Old Maxims Never Die: The Plain-Meaning Rule and Statutory Interpretation in the Modern Federal Courts" (1975) 75 Colum L Rev 1299 at 1300.

³⁸⁹ Laura A Donner "Gender Bias in Drafting International Discrimination Conventions: The 1979 Women's Convention Compared with the 1965 Racial Convention" (1993) 24 Cal W Int'l LJ 241 at 243.

³⁹⁰ Rehof, above n 325, at 2.

³⁹¹ Fraser, Arvonne S. The Convention on the Elimination of All Forms of Discrimination Against Women (The Women's Convention) Anne Winslow *Women, politics, and the United Nations* (Greenwood Press, Westport, Conn, 1995) at 77.

invited member States to provide feedback on the circulated first draft of the Convention.³⁹² The International Labour Organisation (ILO) had concerns that some of the rights within the CEDAW convention were overlapping the rights provided in the Conventions of ILO.³⁹³ Parties involved in the drafting of the Convention had diverse views on the rights and freedoms that should be granted to women through this Convention.³⁹⁴ Most of the issues under discussion had to confront the ideological stances of the member States, led by males at all levels of the decision-making process. Rehof argues that CEDAW was born in an era of superpower confrontation and ideological battles, particularly conflicts with Islamic conceptions of law, religion and women, and western emphasis on individual and enforceable rights belonging to women.³⁹⁵ According to Laura Donner, “nations did not have the same level of commitment to a convention outlawing sex discrimination,” and this lack of commitment reflected a long history of discounting women’s equality.³⁹⁶ Enthusiasm was also limited on the side of the UN General Assembly,³⁹⁷ and no sense of urgency or a need to prevent discrimination against women.³⁹⁸ On the positive side, CEDAW’s development over a number of years allowed it to stock-take the situation of women in many countries in a comprehensive manner and address women’s concerns in different parts of the world through a single document,³⁹⁹ despite the difficult task in drafting the treaty provisions.

³⁹² Donner, above n 389, at 244–245.

³⁹³ At 245.

³⁹⁴ Rehof, above n 325.

³⁹⁵ At 2.

³⁹⁶ Donner, above n 389, at 244.

³⁹⁷ At 245.

³⁹⁸ Donner, above n 124, at 245 and 246.

³⁹⁹ Donner, above n 124, at 244. (Many countries were however, committed on eliminating the great barriers, at least the formal barriers that prevented women from equal enjoyment of lives outside their homes)

Achieving a common standard for women's rights was not an easy,⁴⁰⁰ especially after the failure of the Convention on the Political Rights of Women in 1952.⁴⁰¹ Many countries were hesitant to create a second document of the same nature. Apart from the UN member countries, International Treaty Bodies also were reluctant to the idea of separate Convention for women.⁴⁰² These circumstances contributed to the unjustified length of time taken to finalise the CEDAW Convention.⁴⁰³ These were also perhaps why the CEDAW Convention did not provide any specific articles on domestic violence, rape or other significant issues that were a huge part of women's experiences even at the time of the drafting of the Convention.⁴⁰⁴ These influences within the international human rights framework continue to refuse to accept "women battering or female genital mutilation" as transgressing a "right to life, liberty and security of the person" or as "cruel, inhuman, or degrading treatment."⁴⁰⁵ Moreover, all the rights and freedoms embodied within the international human rights instruments, with the exception of those based on women as mothers and wives; make a false assumption that there will be equal access to these enumerated rights and freedoms.⁴⁰⁶

The aim of the CEDAW Convention is evident in its title: eliminating all forms of discrimination against women,⁴⁰⁷ the major goal of this Convention being, the

⁴⁰⁰ Rehof, above n 325.

⁴⁰¹ Westendorp, Maastricht Centre for Human Rights and Seminar, above n 327, at 164.

⁴⁰² Warwick McKean *Equality and Discrimination under International Law* (Oxford, Clarendon Press 1983) at 189-190.

⁴⁰³ Roberta Jacobson The Committee on the Elimination of Discrimination Against Women, in the United Nations and Human Rights: A Critical Appraisal, Philip Alston (ed) (Oxford University Press, Oxford, 1992) at 445.

⁴⁰⁴ Samantha Power and Graham T Allison *Realizing Human Rights: Moving from Inspiration to Impact* (St Martin's Press, New York, 2000) at 28; also see Julie Peters and Andrea Wolper *Women's Rights, Human Rights* (Routledge, New York, 1995).

⁴⁰⁵ Jo Lynn Southard "Protection of Women's Human Rights under the Convention on the Elimination of All Forms of Discrimination against Women" (1996) 8 Pace Int'l L Rev 1.

⁴⁰⁶ Catharine A MacKinnon *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press, Massachusetts, 1987).

⁴⁰⁷ Anne Hellum and Henriette Sindig Aasen *Women's Human Rights: CEDAW in International, Regional and National Law - Studies on Human Rights Conventions* (Cambridge University Press, New York, 2013) at 95.

elimination of all forms of inequalities between men and women⁴⁰⁸ in both the public and private spheres of life.⁴⁰⁹ Broadly divided, the purpose of the Convention is threefold: “to ensure full equality of women before the law; to improve the *de facto* position of women; and to modify gender-based stereotypes” and provide political and legal approaches to enhance women’s equality and freedom through guaranteeing individual rights, giving social support to women and enhancing social and cultural change.⁴¹⁰ As such, the CEDAW framework brings incredible value to the cause of women’s rights, in its attempts to create sex-equality.⁴¹¹ The added value of this Convention is manifested in its Preamble, which outlines the object and purpose of the specific Convention.⁴¹²

The CEDAW Convention begins by drawing the reader’s attention to the equality of men and women as a fundamental element in the UDHR. The Preamble states that CEDAW recognises that the UDHR and the subsequent UN conventions, resolutions, declarations and recommendations promote equality of men and women⁴¹³ in “economic, social, cultural, civil and political rights,”⁴¹⁴ but also acknowledges that despite these various instruments extensive discrimination against women continues to exist.⁴¹⁵ Human rights in the instruments should be granted equally to all people, by virtue of being born human.⁴¹⁶

The Preamble draws attention to the areas of discrimination prevalent in societies and highlights the inequality in women’s “participation” in the “political, social,

⁴⁰⁸ Lisa R Pruitt “Deconstructing CEDAW’s Article 14: Naming and Explaining Rural Difference” (2010) 17 Wm & Mary J Women & L 347 at 350.

⁴⁰⁹ At 349.

⁴¹⁰ Hellum and Sindig Aasen, above n 407, at 95.

⁴¹¹ At 96.

⁴¹² Phillips and Rosas (eds), above n 368, at 36.

⁴¹³ CEDAW 1979, Preamble para 4-5.

⁴¹⁴ CEDAW 1979, Preamble para 3.

⁴¹⁵ CEDAW 1979, Preamble para 6.

⁴¹⁶ CEDAW 1979, Preamble para 2.

economic and cultural life of their countries” and that these factors make more difficult “the full development of the potentialities of women in the service of their countries and of humanity.”⁴¹⁷ The Convention recognises discrimination against women as a major challenge to women’s equality with men.⁴¹⁸ It requires appropriate action such as legislation to guarantee political, economic, social, cultural rights.⁴¹⁹ As a specific Convention targeting women’s exclusion from certain rights, CEDAW emphasizes the prohibition of:⁴²⁰

...distinction, exclusion, or restriction between sexes which “has the purpose or effect of impairing or nullifying the recognition, enjoyment, or exercise by women ... of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Similar to all human rights instruments, CEDAW also underpins core human rights values such as “non-discrimination, equality of individuals as a human beings, the inherent dignity of each person, and the rights to self-determination, peace and security.”⁴²¹ The Convention incorporates equal rights in education, employment, marriage and child rearing, voting and representation and participation in the public life of one’s country. To this effect, CEDAW is strongly grounded on achieving equality in both private and public spheres of life on equal terms with men.⁴²²

The Preamble further recognises that discrimination against women is largely based on women’s primary responsibilities towards their family; in “the upbringing of children” and the “role of women in procreation,”⁴²³ and that these bases must be

⁴¹⁷ CEDAW 1979, Preamble para 7.

⁴¹⁸ CEDAW 1979, art 1.

⁴¹⁹ CEDAW 1979, art 3.

⁴²⁰ CEDAW 1979, art 1.

⁴²¹ Savitri Goonesekere and Rangita De Silva-De Alwis “Women’s and Children’s Rights in a Human Rights Based Approach to Development” (UNICEF, New York, 2005) <www.unifem.org>.

⁴²² Southard, above n 405, at 9-10. (Sex difference is understood and reflected in CEDAW as a “difference” between men and women).

⁴²³ CEDAW 1979, Preamble para 13.

changed to achieve full equality between men and women.⁴²⁴ Having read and understood these facts, States Parties then made an agreement to implement the principles in CEDAW by adopting measures to achieve this particular purpose: to eliminate “discrimination in all its forms and manifestations through the articles.”⁴²⁵ Specific attention is also drawn to the mention of “life of their countries” and “service of their countries and of humanity.”⁴²⁶ The Preamble paragraph here is specifically talking about women’s participation in the life of their countries and is thus not talking about the private spheres of women’s lives and signifies a prime intent of the convention to enhance women’s participation in the “life of their country” which is the public sphere.

These ideas were being put forward as early as 1848 at major international platforms.⁴²⁷ CEDAW gives recognition to these arguments by requiring a State to guarantee women, “the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men ... in all fields, in particular in the political, social, economic and cultural fields” by taking “all appropriate measures, including legislation.”⁴²⁸ For example, the right to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; to participate in non-governmental organisations and associations concerned with the public and political life of the country;⁴²⁹ and the opportunity to represent their

⁴²⁴ CEDAW 1979, Preamble para 14.

⁴²⁵ CEDAW 1979, Preamble para 15-16.

⁴²⁶ CEDAW 1979, Preamble para 7.

⁴²⁷ “Participants at the first Women’s Rights Convention, in Seneca Falls in 1848 announced “We hold these truths to be self-evident; that all men and women are created equal; that they are endowed by their Creator with certain inalienable rights.” John Stuart Mill declared in 1869 “that the principles which regulates the existing social relations between the sexes – the legal subordination of one sex to the other – ought to be replaced by a principle of perfect equality.” Friedrich Engels in 1884 argued the necessity of creating “real social equality ... (as well as) legally complete equality of rights.”- Angela R Miles “Feminism, Equality, and Liberation” (1985) 1 Can J Women & L 42.

⁴²⁸ CEDAW 1979, art 3.

⁴²⁹ CEDAW 1979, art 7.

governments at the international level and to participate in the work of international organisations,⁴³⁰ must all be granted, on equal terms with men.⁴³¹

CEDAW also creates specific rights for women that are based on the physiological make-up of women which relates to childbearing.⁴³² These provisions reflect the voice of cultural feminists, who stressed the difference between men and women and argued that this difference can only be addressed through specific rights.⁴³³ Preston and Ahrens argue that these “traits and characteristics are not only important but must be taken into account in order for women to enjoy full equality.”⁴³⁴ For this reason, equality for women cannot be achieved through formal equality alone; the removal of legislative provisions that discriminate against women;⁴³⁵ rights and opportunities on paper have no value to these oppressed women who are in no position to claim them.⁴³⁶ Rebecca J Cook argues that traditional and cultural feminine traits such as child-bearing, breast-feeding and pleasure-giving (sexual) re-emphasize patriarchal stereotypes and disempower women from claiming equality in public life.⁴³⁷ Women need to be free from oppression from men and to have choice and control over their reproductive and sexual functions; both of which were traditionally structured and controlled by men.⁴³⁸ In this regard, CEDAW aims to create “actual, social, legal, and economic equality” for women.⁴³⁹

⁴³⁰ CEDAW 1979, art 8.

⁴³¹ CEDAW 1979, art 7 and 8.

⁴³² R Christopher Preston and Ronald Z Ahrens “United Nations Convention Documents in Light of Feminist Theory” (2001) 8 Mich J Gender & L 1.

⁴³³ Southard, above n 405; Preston and Ahrens, above n 432.

⁴³⁴ On the argument for specific rights to maternity. See Preston and Ahrens, above n 432.

⁴³⁵ Preston and Ahrens, above n 432. Hilary Charlesworth “The Mid-Life Crisis of the Universal Declaration of Human Rights” (1998) 55 Wash & Lee L Rev 781, at 784.

⁴³⁶ Charlesworth, above n 435.

⁴³⁷ Rebecca J Cook “International Human Rights and Women’s Reproductive Health” (1993) 24 Studies in Family Planning, at 256, 260-261.

⁴³⁸ Catharine A MacKinnon “Difference and Dominance” in Katharine T Bartlett and Rosanne Kennedy (eds) *Feminist Legal Theory* (Westview Press, US, 1991) at 91.

⁴³⁹ Preston and Ahrens, above n 83, at 10; MacKinnon, above n 438, at 87-91.

CEDAW's incorporation, formal recognition and acknowledgement of a woman's place outside her home is invaluable to the development of women's rights. However, in order to achieve the desired social transformation in women's public lives through legal or social changes, more emphasis needs to be placed on how we read the rights embodied in the CEDAW Convention.⁴⁴⁰ Many countries were motivated to minimise the stigmatisation of women as primary child bearers⁴⁴¹ and emphasize that child-rearing were responsibilities of both parents.⁴⁴² More importantly, States believed that "women assuming a full part in all spheres of state and local life" was a fundamental element to the "general development and prosperity of the countries."⁴⁴³

The drafters aimed to produce a common standard of rights⁴⁴⁴ that would be accepted by the UN member States.⁴⁴⁵ These considerations were necessary to institute a framework to "promote and protect and assume and assert international responsibility for national human rights, that is, rights within national societies."⁴⁴⁶ These acknowledgements and understandings formed the basis of CEDAW's substantive provisions, supporting equal rights of women in both private and public life.⁴⁴⁷ The current regime establishes a minimum standard of achievement for member States and encourages compliance with international human rights standards.⁴⁴⁸

⁴⁴⁰ For a discussion on new methods see Michael P Van Alstine "Dynamic Treaty Interpretation" (1998) 146 University of Pennsylvania Law Review 687 at 714–715.

⁴⁴¹ UN Doc. A/32/218, p.6 and Annex I, p.1; and UN Doc. A/C. 3/32/WG.1/CRP.2, P.5.

⁴⁴² See Denmark, Norway, the Netherlands, Finland and Sweden's proposal in UN Doc. A/C.3/32/WG.1/CRP.2, at 5, as referred to by Rehof, above n 125, at 40.

⁴⁴³ Rehof, above n 125, at 32.

⁴⁴⁴ Catherine Tinker "Human Rights for Women: The UN Convention on the Elimination of All Forms of Discrimination against Women" (1981) 3 Human Rights Quarterly 32 at 43.

⁴⁴⁵ Westendorp, Maastricht Centre for Human Rights and Seminar, above n 327, at 454.

⁴⁴⁶ Power and Allison, above n 404, at 8.

⁴⁴⁷ Erich Schweighofer *Legal knowledge representation* (Kluwer Law International, The Hague; Boston, 1999) at 158. Phillips and Rosas (eds), above n 368, at 36.

⁴⁴⁸ Power and Allison, above n 404, at 8.

The CEDAW text represents a powerful historical political activity to provide rights that were historically denied to women, based on their sex.⁴⁴⁹ Some critics argue that the Preamble to CEDAW is a political declaration⁴⁵⁰ and creates a divergence from the “central issue – the elimination of discrimination against women.”⁴⁵¹ Human rights conventions often use certain language, often towards a purpose, so that everyone can agree on the proposal of rights and obligations under specific treaties. Similarly, CEDAW also uses soft language and multiple approaches to achieve formal and substantive equality for women. Such language gives latitude to fill in the gaps within those rights with a view to afford more protection to human beings.⁴⁵² The CEDAW Preamble, in this instance, signifies the comprehensiveness of the thought process that went into the formulation of the Convention. This text represents and reflects a social reality that cannot be ignored in the analysis of the embodied rights. The rights in the final draft of the Convention were carefully crafted to affect this historical situation and were an extraordinary beginning to new opportunities and public services for women.⁴⁵³ Thus, the draft documents, amendments, debates and dialogues that arose within the Committee on the Status of Women (CSW), UN member states and the review committees can provide useful evidence to the adoption of the final provisions. This history is a definite

⁴⁴⁹ Pruitt, above n 408, at 350.

⁴⁵⁰ Reanda, Laura, “The Commission on the Status of Women” in: *The United Nations and Human Rights: A Critical Appraisal*, ed. Alston, Philip (Clarendon Press: Oxford, 1995) pp. 265 – 303, at 287.

⁴⁵¹ Noreen Burrows “The 1979 Convention on the Elimination of All Forms of Discrimination against Women” (1985) *Neth, Int’l L.R.* at 423.

⁴⁵² For extensive discussions, see Darren Rosenblum “Unsex Cedaw, or What’s wrong with Women’s Rights” (2011) 20 *Colum J Gender & L* 98 at 114–115. Laboni Amena Hoq “The Women’s Convention and Its Optional Protocol: Empowering Women to Claim Their Internationally Protected Rights” (2000) 32 *Colum Hum Rts L Rev* 677; Julie A Minor “Analysis of Structural Weaknesses in the Convention on the Elimination of All Forms of Discrimination against Women, An” (1994) 24 *Ga J Int’l & Comp L* 137.

⁴⁵³ Pruitt, above n 408, at 350.

guide to the legislative meaning behind the CEDAW provisions⁴⁵⁴ that allows the identification of object and purpose.

2.4.1.2 General Recommendations and Concluding Comments

The proper reading of CEDAW rights should be based on the adopted language,⁴⁵⁵ however, the general recommendations to the Convention also offer a helpful insight into the rights in CEDAW. They recognise the historical subordination of women, and provide evidence to support the argument that CEDAW was created with an initial focus to minimise the gap between men and women in the achievement of their rights within the public and private spheres. Evidence to this claim can be found in the treaty language used in many texts. More specifically, CEDAW general recommendation 23 states:

Public and private spheres of human activity have always been considered distinct, and have been regulated accordingly. Invariably, women have been assigned to the private or domestic sphere, associated with reproduction and the raising of children, and in all societies these activities have been treated as inferior. By contrast, public life, which is respected and honoured, extends to a broad range of activity outside the private and domestic sphere. Men historically have both dominated public life and exercised the power to confine and subordinate women within the private sphere.

This recommendation emphasized that States Parties to the Convention must ensure that local constitutions and legislations comply with the Convention articles and “take appropriate measures to eliminate discrimination against women in the political and public life of the country.”⁴⁵⁶ The recommendation exhibits an understanding of public life generally as lives outside homes, but more specifically the words “respected and honoured” indicate that public life is “public service” or

⁴⁵⁴ James M Landis “Note on Statutory Interpretation, A” (1929) 43 Harv L Rev 886 at 889.

⁴⁵⁵ See Rehof, above n 325.

⁴⁵⁶ CEDAW 1979, art 7.

positions in politics, civil/community services or the same in the field of business that have a wider contribution or impact on the society or country at large. The recommendation also proclaims an understanding and belief that women have been historically “excluded from political life and the decision-making process” (referred to as “public life” alternatively in the text) that has resulted in ineffective addressing of issues related to women as well as the democratic governance of the State. General recommendation 25 further claims that the Convention “targets discriminatory dimensions of past and current societal and cultural contexts which impede women’s enjoyment of their human rights and fundamental freedoms” and further that CEDAW “aims at the elimination of all forms of discrimination against women, including the elimination of all the causes and consequences of their *de facto* or substantive inequality.”

The United Nations has continuously highlighted and emphasized the importance of women’s equality in decision-making. In 2000, the Security Council adopted a resolution that stressed the importance of these objectives for world peace and security.⁴⁵⁷ During the 58th Session of the General Assembly, another resolution was adopted that:⁴⁵⁸

... urged Governments, the UN system, NGOs and other actors to develop a comprehensive set of policies and programmes to increase women’s participation in decision-making, including a conflict resolution and peace processes by addressing the existing obstacles facing women in their struggle for participation.

An analysis of the Convention Preamble, articles, Committee Observations indicates that a right to participate in public life means a guarantee to enjoy rights

⁴⁵⁷ *On Women, Peace and Security* (SC Res 1325, S/RES/1325 (2000)).

⁴⁵⁸ Report of the Expert Group Meeting *Equal Participation of Women and Men in Decision-Making Processes, with Particular Emphasis on Political Participation and Leadership* (EGM/EPDM/2005/REPORT 2005) at 6; *Women and Political Participation* (GA Res A/RES/58/142 (2004)).

in articles 7 and 8 of CEDAW, on an equal basis with men. This guarantee should mean that:

- women can effectively and fully participate in the public life of their country by free and full participation in public life on an equal basis with others, directly or through freely chosen representatives, including;
 - the right and opportunity to vote freely and be elected, inter alia, by ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
 - by protecting women's rights to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and support facilities for child care where appropriate; and
 - guaranteeing the free expression of the will of women as electors and to this end, and actively promote an environment in which women can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including participation in non-governmental organizations and associations concerned with the public life of the country, and in the activities and administration of political parties, forming and joining women's organizations to represent women at international, national, regional and local levels.

2.5 Realising a Right to Public Life: CEDAW's Paradigms and Frameworks of Equality

Under-representation of women within the political and public life of their countries is considered a violation of CEDAW article 7.⁴⁵⁹ The right to public life is a basic

⁴⁵⁹ "... recruiting, financially assisting, and training women candidates on leadership and negotiation skills, amending electoral procedures, developing campaigns directed at equal participation, establishing benchmarks, setting numerical goals and timetables, and establishing quotas targeting for women for election and appointment to public positions such as the judiciary or other

liberty that can only be enjoyed by a citizen who is formally and substantively equal. Every individual within a society must have equal basic liberties as citizens (speaking, political liberty, freedom of speech and assembly etc.) and social and economic inequalities must be fairly arranged by allowing equal access to certain offices or positions to everyone, despite their social background, ethnicity or sex.⁴⁶⁰ States Parties to the Convention are under an obligation to ensure all human rights and fundamental freedoms to women on an equal basis to men,⁴⁶¹ and to adhere to CEDAW's universal standard in the treatment of their citizens.⁴⁶² The principles incorporated into CEDAW are directly derived from the UDHR, and are based on freedom, equality and dignity.⁴⁶³ Principles of rights embodied in the human rights conventions, including CEDAW, are based on the fundamental values of equality and dignity, and involve participation, autonomy and freedom of all human beings.⁴⁶⁴ Equality in such a sense requires autonomy and capacity to make life plans and life choices with free will.⁴⁶⁵ In the case of women's right to public life, freedom and autonomy are restricted through an interplay of legal and practical barriers embedded in culture and tradition.

2.5.1 Principles of Non-discrimination and Equality

International law is based on two fundamental principles; non-discrimination and equality. The international human rights regime claims that everyone is born equal,⁴⁶⁶ and that every being has a right to enjoy their private lives as well as be

professional groups that play an essential part in the everyday life of all societies.” Freeman, Rudolf and Chinkin, above n 348, at 214.

⁴⁶⁰ John Rawls *A Theory of Justice* (Harvard University Press, 1971).

⁴⁶¹ CEDAW 1979, art 3.

⁴⁶² Richard B Lillich “Invoking International Human Rights Law in Domestic Courts” (1985) 54 U Cin L Rev 367 at 371.

⁴⁶³ UDHR 1948, art 1.

⁴⁶⁴ Anne Hellum and Henriette Sinding Aasen *Women's Human Rights: CEDAW in International, Regional and National Law* (Cambridge University Press, United Kingdom, 2013) at 98.

⁴⁶⁵ At 98.

⁴⁶⁶ UDHR 1948, art 2.

equally involved in the public life of their countries. The equality principle was also included in article 7 of the Declaration stating “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.⁴⁶⁷ ICCPR states:⁴⁶⁸

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Likewise, CEDAW also expresses rights in both negative and positive form.⁴⁶⁹ Equality and anti-discrimination legal norms are designed to combat a complex set of different wrongs, which take various forms across the different controlled grounds of discrimination and in different social contexts.⁴⁷⁰ Some scholars argue that non-discrimination and equality are equivalent concepts⁴⁷¹ and two sides of the same coin.⁴⁷²

⁴⁶⁷ UDHR 1948, art 7.

⁴⁶⁸ ICCPR 1966, art 26.

⁴⁶⁹ Simone Cusack and Lisa Pusey “CEDAW and the Rights to Non-Discrimination and Equality” (2013) 14 Melbourne Journal of International Law 54 at 57; WA McKean *Equality and discrimination under international law* (Clarendon Press ; Oxford University Press, Oxford; New York, NY, 1983) at 285.

⁴⁷⁰ Johannes Morsink *The Universal Declaration of Human Rights* (University of Pennsylvania Press, Philadelphia, 1999) at 113–114; also see Colm O’Cinneide “Fumbling towards Coherence: The Slow Evolution of Equality and Anti-Discrimination Law in Britain” (2006) 57 N Ir Legal Q 57.

⁴⁷¹ A. Lester (Lord Lester of Herne Hill) and S. Joseph, “Obligations of non-discrimination,” in D. Harris and S. Joseph (eds), *The International Covenant on Civil and Political Rights and the United Kingdom* (Oxford: Clarendon Press, 1995) at 565; W. McKean, *Equality and Discrimination under International Law* (Oxford; Clarendon Press 1983, at 288.

⁴⁷² See for example, A.F. Bayefsky, “The Principles of Equality and Non-Discrimination in International Law, *Human Rights Law Journal*, 11/1-2 (1990) at 1, n 1; J. Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia, PA: University of Pennsylvania, 1999) at. 45; P. Hunt, *Reclaiming Social Rights: International and Comparative Perspectives* (Aldershot Dartmouth Publishing, 1996), at 92.

The principle of equality is used to encourage because it fosters a type of equality that appears to reject all inequalities in a system. At the same time, the concept of non-discrimination (negative equality) plays a vital role in the achievement of CEDAW's goals,⁴⁷³ which cannot be achieved by a pure formal approach. This is perhaps why a majority of international law instruments express equality in the negative form; non-discrimination.⁴⁷⁴ Where positive equality would require that everyone be treated in the same, negative equality would allow differences in treatment unless they are based upon a number of expressly prohibited grounds.⁴⁷⁵ The non-discrimination principle in CEDAW is markedly important because it recognises "the importance of addressing women's specific experiences of discrimination."⁴⁷⁶ Essentially, the difference between rights to non-discrimination and equality would be between whether 'to act' or to refrain from acting.⁴⁷⁷

2.6 CEDAW's Transformative Model for Women's Equality

Equality is a multi-functional concept,⁴⁷⁸ and conceptions of equality vary depending on individual contexts.⁴⁷⁹ International law adopts two main approaches to equality: formal and substantive equality.⁴⁸⁰ Formal equality aims to create equality at a more formal level by having neutral laws prescribing equal treatment of all people regardless of circumstances, on the understanding that all have the

⁴⁷³ Gillian MacNaughton "Untangling Equality and Non-Discrimination to Promote the Right to Health Care for All" (2009) 11 Health and Human Rights 47 at 1. McKean, above n 469, at 285.

⁴⁷⁴ MacNaughton, above n 473, at 48.

⁴⁷⁵ Matthew CR Craven *The International Covenant on Economic, Social, and Cultural Rights* (Oxford University Press, Oxford, 1995).

⁴⁷⁶ Cusack and Pusey, above n 469, at 59.

⁴⁷⁷ MacNaughton, above n 473, at 1.

⁴⁷⁸ O'Cinneide, above n 470, at 59.

⁴⁷⁹ Catherine Albertyn, Sandra Fredman and Judy Fudge "Introduction: Substantive Equality, Social Rights and Women: A Comparative Perspective" (2007) 23 S Afr J on Hum Rts 209 at 5; also see Amartya Sen *Inequality reexamined* (Harvard University Press, New York, 1992).

⁴⁸⁰ Mertus, above n 337, at 32.

same rights and entitlements. Its underlying logic is that everyone is equal and should be treated equally.

Having the same set of laws for everyone may create more inequality than equality. For example, equality cannot be ensured by passing a law that states “no one shall sleep under the bridges” or “beg on the streets and steal bread.”⁴⁸¹ Individuals are in different places and have varying capacities to abide by such rules, and by refusing to acknowledge the rich and the poor, the law is bound to create more inequality than equality. Hence, equality cannot be magically created by a piece of law (formal equality). Treating people in unequal situations in the same way would perpetuate inequality rather than addressing inequality.⁴⁸² When dealing with historically subservient groups such as women, the approach to equality needs to be both formal and substantive.⁴⁸³ Real change requires the positive promotion of equality,⁴⁸⁴ and may demand unequal treatment favouring the disadvantaged.⁴⁸⁵

To address this flaw in formal equality, and also to ensure rights protection, CEDAW embodies a framework for substantive equality. This provides for differently situated persons⁴⁸⁶ and aims to achieve equality of opportunity as well as equality of results.⁴⁸⁷ Equality in the new vision thus means a restructuring of the society based on new relationships between men and women.⁴⁸⁸ This would also mean that any special measures to raise women from a previously disadvantageous

⁴⁸¹ Sandra Fredman *Discrimination Law* (2nd ed, Oxford University Press, Oxford, 2011) at 1.

⁴⁸² Mertus, above n 337, at 33.

⁴⁸³ Sandra Fredman *Human Rights Transformed* (Oxford University Press, Oxford, 2008).

⁴⁸⁴ Sandra Fredman “Providing Equality: Substantive Equality and the Positive Duty to Provide” (2005) 21 S Afr J on Hum Rts 163 at 166.

⁴⁸⁵ Sen, above n 479.

⁴⁸⁶ Dr Nicholas Mark Smith *Basic Equality and Discrimination* (Ashgate Publishing, Ltd, Surrey, 2013) at 119.

⁴⁸⁷ Mertus, above n 337, at 33.

⁴⁸⁸ Sandra Fredman “Beyond the Dichotomy of Formal and Substantive Equality: Towards New Definitions of Equal Rights” in Ineke Boerefijn (ed) *Temporary Special Measures: Accelerating de Facto Equality of Women Under Article 4(1) UN Convention on the Elimination of All Forms of Discrimination Against Women* (Hart Publishing, Oxford, 2003) at 115.

position would be an integral part of equality, rather than an exception.⁴⁸⁹ Hence, CEDAW does not only aim to create formal equality for women.⁴⁹⁰

The methodology adopted in CEDAW recognises that a purely formal approach to equality is insufficient because it fails to acknowledge and consider women's difference bearing the effects of past discrimination. Equality is to be achieved through the elimination of discriminatory practices against women and taking of positive measures to support future equality. The CEDAW model thus emphasizes the creation of laws, and the enabling environments for the achievement of CEDAW rights. The achievement of equality would require, being aware of gendered differences of men and women's lives that may entail same treatment or different treatment to overcome inequality.⁴⁹¹ The transformative model of equality thus requires formal equality entailing gender neutral treatment at all times; equality of opportunity, which recognises that women do not always have the same opportunities as men; and equality of results, which focuses on outcomes and requires changes to the underlying structures causing inequality.⁴⁹²

In *The Concept of Substantive Equality and Gender Justice in South Asia*, Goonesekere argues that substantive equality, closely linked with the human rights approach to gender equality⁴⁹³ is the key idea in CEDAW.⁴⁹⁴ This gives the Convention the ability to address past and present disadvantage for women,⁴⁹⁵ in

⁴⁸⁹ At 115.

⁴⁹⁰ At 116.

⁴⁹¹ UN Doc A/59/38 *General Recommendation 25 on Temporary Special Measures* (CEDAW/C/2004/WP.1/Rev.1) at para 8; *ICESCR General Comment 16 on Equality between Men and Women* at para 7, 8 and 14.

⁴⁹² Reg Graycar and Jenny Morgan "Thinking about Equality" (2004) 27 at 835; also see Sandra Fredman "Beyond the Dichotomy of Formal and Substantive Equality: Towards a New Definition of Equal Rights" in Ineke Boerefijn (ed) *Temporary Special Measures: Accelerating de Facto Equality of Women Under Article 4(1) UN Convention on the Elimination of All Forms of Discrimination Against Women* (Hart Publishing, Oxford, 2003) at 111.

⁴⁹³ Savitri WE Goonesekere "The Concept of Substantive Equality and Gender Justice in South Asia" (2011) Field Office ESEAsia <www.asiapacific.unwomen.org> at 7.

⁴⁹⁴ At 15.

⁴⁹⁵ Ineke Boerefijn *Temporary Special Measures* (Intersentia nv, 2003) at 115.

diverse contexts.⁴⁹⁶ To ensure *de jure* and *de facto* equality with men, States must ensure that there is no legal discrimination against women and also ensure that women are protected against discrimination. CEDAW obligations require improving the *de facto* position of women and addressing prevailing gender based discriminatory practices and persisting gender stereotypes.⁴⁹⁷ Substantive equality obligations ensure both identical treatment between men and women, and, non-identical treatment where necessary (e.g. protection of maternity rights).⁴⁹⁸ Achieving substantive equality in this manner will require investing in research to identify the issues, investing in training government employees to carry out their responsibilities without engaging in stereotyping or discriminatory behavior, establishing clear standards and incentives for the private sector to do the same, and monitoring the implementation of laws designed to address discrimination.⁴⁹⁹ Thus, CEDAW's equality model is transformative for women's rights.⁵⁰⁰

Aiming to cater for such multiple types of equality, CEDAW embodies a methodology to achieve a potentially transformative type of equality that encompasses formal equality – requiring the passage of equality legislation - and equality of opportunity via the removal of barriers to women's advancement and the equality of results.⁵⁰¹ The programmatic approach⁵⁰² in CEDAW imposes three

⁴⁹⁶ At 26.

⁴⁹⁷ Simone Cusack and Lisa Pusey “CEDAW and the rights to non-discrimination and equality” (2013) 14 Melbourne Journal of International Law 54+ LegalTrac at 4. General Recommendation 25, UN Doc A/59/38, annex I [4].

⁴⁹⁸ Hanna Beate Schöpp-Schilling, Expert Member of the CEDAW Committee “The Role of the Convention on the Elimination of All Forms of Discrimination Against Women and its Monitoring Procedures for Achieving Gender Equality in Political Representation” (paper presented to International Institute for Democracy and Electoral Assistance (IDEA)/CEE Network for Gender Issues Conference, The Implementation of Quotas: European Experiences, Budapest, Hungary, 22 October 2004) at 2.

⁴⁹⁹ Marsha Freeman “The Convention on the Elimination of All Forms of Discrimination against Women in the United States: Whether, When, and What If?” (2014) 2014 Michigan State Law Review 227 at 235.

⁵⁰⁰ Hellum and Aasen, above n 464, at 105.

⁵⁰¹ Fredman, above n 488, at 111; See Rikki Holmaat, The CEDAW: A Holistic Approach to Women's Equality and Freedom in Hellum and Aasen, above n 464, at 95.

⁵⁰² Lisa R Pruitt “Migration, Development, and the Promise of Cedaw for Rural Women” (2008) 30 Mich J Int'l L 707 at 735; also see Noreen Burrows “The 1979 Convention on the Elimination of

main obligations on the States Parties; to entitle, to enable and to empower women (Figure 7).⁵⁰³ These obligations are to:

- a) Ensure full equality of women before the law and protection against discrimination in the public as well as the private sphere;
- b) Improve the de facto position of women; and
- c) Address prevailing gender relations and the persistence of gender-based stereotypes.

Holmaat's also argues that in order to implement CEDAW rights and achieve its objectives, States Parties to the Convention must adopt the following strategies:⁵⁰⁴

- a) A strategy of giving individuals a legal right (entitlement) to equal treatment before and in the law (an individual rights strategy; IRS);
- b) A strategy of providing social support to those persons or groups of persons who have least opportunities to lead a meaningful life as a human being, for example to those who are disabled or poor, and/ or who are discriminated against on the grounds of (*inter alia*) sex (a Social Support Strategy; SSS); and
- c) A strategy to take away the structural causes of such discrimination through a process of social and cultural change (Strategy of Social and Cultural Change; SSCC).

All Forms of Discrimination against Women" (1985) 32 Netherlands International Law Review 419 at 447.

⁵⁰³ CEDAW General Recommendation No.25 on Temporary Special Measures, See Art. 4(1), CEDAW 1979.

⁵⁰⁴ Hellum and Aasen, above n 464, at 110.

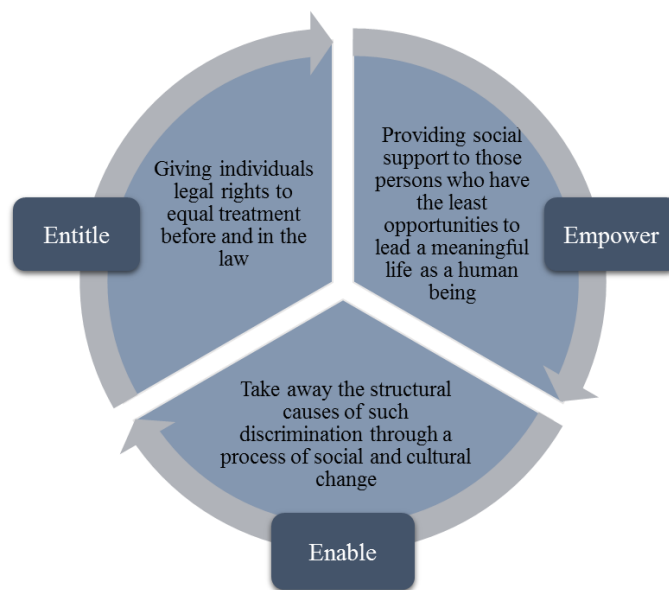


Figure 7: CEDAW's Model for Substantive Equality

In order to ensure women enjoy equal rights in public life, States Parties under CEDAW are obligated to, firstly, remove legal barriers directly or indirectly discriminating against women and enact legal provisions protecting women against discrimination in the public and private spheres. Secondly, women's position should also be improved through policies and programmes and thirdly, by addressing the prevailing gender relations and the persistence of gender based stereotypes affecting women.⁵⁰⁵ The rights and non-discrimination principles incorporated into articles 1 to 5 of the Convention are central in the achievement of the right to public life included in articles 7 and 8 of the Convention. The Preamble to the Convention thus starts with this premise, expressly stating that these practices are a violation of the equality and dignity principles of human rights.⁵⁰⁶

Achievement of substantive equality under article 7 (a) would require women to benefit from the same opportunities that men benefit from in participating in public life. This can be achieved through equality of results by adopting quotas or by equality of opportunities where women have the same chances of winning a seat in

⁵⁰⁵ CEDAW 1979, General Comment 25.

⁵⁰⁶ Hellum and Aasen, above n 464, at 99.

a public body.⁵⁰⁷ The idea of equality in this vision is to have meaningful use of the right to political participation which would require States Parties to create “encouraging, supportive and enabling conditions for such participation.”⁵⁰⁸

Achievement of substantive equality under article 7 (b) would entail that women have equal access to and the capabilities to pursue positions in public service, which requires the state to take into consideration that women’s lives will be different from those of men.⁵⁰⁹ Thus, the conditions for the realisation of these rights must be favourable and gender-sensitive.⁵¹⁰ Furthermore, with a possible shift towards neo-liberalism, substantive equality also requires a redistribution and recognition of rights within the social and economic sphere of women’s lives.⁵¹¹ Considering a history of disadvantage, achieving women’s equality in public life thus becomes a multi-layered process. Equal participation in public life cannot be achieved unless women are able to fully enjoy civil and political rights and also fulfil economic and social needs.⁵¹² Equality in this sense would provide each woman the ability to make choices for herself, free from legal and social restrictions. The threefold paradigm of substantive equality will ensure that women achieve substantive equality with men in all areas of life.

A right to public life, given the vague constructions and plural meanings attributed to it, expresses a shared ideal and has a useful purpose to claim a universal validity. This right, expressed in the UDHR, ICCPR and also in CEDAW, has two parts: an election part and a take part clause.⁵¹³ The election segment of this right is more specific and provides for rights to vote and be elected. The participation clause is broader and applies to participation in decision-making at all levels of the State

⁵⁰⁷ Beate Schöpp-Schilling, Expert Member of the CEDAW Committee, above n 498.

⁵⁰⁸ Freeman, Rudolf and Chinkin, above n 348, at 210.

⁵⁰⁹ At 210.

⁵¹⁰ At 210.

⁵¹¹ Albertyn, Fredman and Fudge, above n 479, at 210.

⁵¹² Mertus, above n 337, at 259.

⁵¹³ Henry J Steiner “Political Participation as a Human Right” (1988) 1 Harv Hum Rts YB 77 at 86.

structure. For women, these rights within a right to public life cannot be achieved without adhering to other rights and non-discrimination clauses in CEDAW. The general obligations of States Parties are listed under articles 1-5 and article 24 of the Convention, and forms the interpretive framework to achieve equality in the rights listed in articles 6-16,⁵¹⁴ including rights to non-discrimination and equality in the area of public life (listed in articles 7 and 8). Substantive equality in public life can thereby only be achieved through the elimination of systemic discrimination to achieve substantive equality; positive steps to achieve equality; the adoption of temporary special measures where appropriate; recognition of compounded forms of discrimination; and the implementation of effective mechanisms to promote remedies and accountability.

A right to public life cannot be implemented without the guarantees provided in article 1, non-discrimination based on sex. Under article 1, discrimination is:⁵¹⁵

... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women ... of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2 of CEDAW “condemns discrimination against women in all its forms” and requires States Parties to first and foremost, recognise the equality of the sexes and prohibit discrimination against women in all its forms, within their constitutions and legislations to give proper effect to the provisions of the Convention.⁵¹⁶ This provision also requires States to abolish and repeal any existing laws and regulations that are discriminatory against women.⁵¹⁷ States are further required to

⁵¹⁴ Cusack and Pusey, above n 497, at 4.

⁵¹⁵ Art 1, UN Women “Convention on the Elimination of All Forms of Discrimination against Women” (1 February 2014) UN women <www.un.org>.

⁵¹⁶ CEDAW 1979, art 2 (a), (b) and (c).

⁵¹⁷ CEDAW 1979, at art 2 (f), (g).

ensure compliance of these standards by all persons, organisations, enterprises, public authorities and institutions within the State.⁵¹⁸

Articles 3 to 5 of the CEDAW Convention carry transformative potential; in requiring the taking of all measures to ensure “the full development and advancement” of women and requiring “modifications in the social and cultural patterns of conduct,”⁵¹⁹ and also the creation of affirmative measures to enhance women’s equality. Together, these provisions of CEDAW create positive duties for the State.⁵²⁰ The enhancement of social and cultural change is to be mostly achieved through article 5 of the CEDAW convention,⁵²¹ which is critically important to achieve the transformative equalities envisioned in CEDAW article 4(1).⁵²²

The Convention also allows for the creation of special and temporary measures to create this equality between the sexes, and specifically mentions that this would not be discrimination within the meaning of the Convention.⁵²³ In addition to this, Article 5 of CEDAW requires States Parties “to abolish traditions and practices which are discriminatory to women, and to modify practices based on the notion of female inferiority.” A major portion of elimination of discrimination against women is to be achieved through the creation of marriage,⁵²⁴ reproductive rights⁵²⁵ and creating a space for women within the public sphere of the country.⁵²⁶ This framework has produced some meaningful progress in the area of women’s rights in many countries since the introduction of this Convention.⁵²⁷

⁵¹⁸ CEDAW 1979, art 2 (d) and (e).

⁵¹⁹ Fredman, above n 488, at 116.

⁵²⁰ At 116.

⁵²¹ Hellum and Sindig Aasen, above n 407, at 95.

⁵²² Fredman, above n 488, at 111.

⁵²³ CEDAW 1979, above n 516, at art 4.

⁵²⁴ CEDAW 1979, art 16.

⁵²⁵ CEDAW 1979, art 12 and 16.

⁵²⁶ CEDAW 1979, art 7 and 8.

⁵²⁷ Laura Turquet *In Pursuit of Justice: Progress of the World’s Women 2011-2012* (UN Women, United Nations Entity for Gender Equality and the Empowerment of Women, 2011).

2.7 De Jure and De Facto Equality

This effort was initiated by the United Nations Committee on the Situation of Women (CSW) established in 1946. Through this Declaration, the United Nations accepted that discrimination against women was a complex problem in need of a comprehensive, holistic approach. DEDAW was adopted by CSC in 1967 with four other resolutions. Amongst other things, these resolutions focused on the situation of women and emphasized establishing national institutions and appointing qualified women to policy making positions in the government.⁵²⁸ Such efforts were initially geared towards obtaining legal status for women and recognising their role in development.⁵²⁹ The same objectives were also emphasized in the International Women's Year in 1975, communicated as:⁵³⁰

The objectives ... were to promote equality between men and women, to ensure the full integration of women in the development effort and to recognise the importance of the increasing contribution of women to the development of friendly relations among States and the strengthening of international peace.

The purpose of all equal opportunity and anti-discrimination laws is aimed at achieving equality.⁵³¹ However, unless these rights are created within national constitutions, laws and administrative mechanisms to impose positive duties,⁵³² rights may have no actual value. As an international human rights treaty, CEDAW embodies a theory of formal equality between men and women.⁵³³ It places

⁵²⁸ Rehof, above n 325, at 6.

⁵²⁹ At 8.

⁵³⁰ At 9.

⁵³¹ O'Conneide, above n 470, at 61.

⁵³² Andrew I Cohen "Must Rights Impose Enforceable Positive Duties?" (2004) 35 Journal of Social Philosophy 264 at 264–276.

⁵³³ See Elizabeth Evatt "Eliminating Discrimination against Women: The Impact of the UN Convention" (1991) 18 Melb U L Rev 435; Southard, above n 405. Burrows, above n 502. Pruitt, above n 408. Beth A Simmons, Dobbin and Geoffrey Garrett *The global diffusion of markets and democracy* (Cambridge University Press, Cambridge; New York, 2008) at 303–305.

emphasis on identifying the legal and traditional discriminations against women as a social group and on achieving formal equality on equal terms with men.⁵³⁴

Legal equality therefore, was a key concept in the international human rights movement for women. The understanding of formal equality can still be traced to Aristotle; treating *alikes*, alike.⁵³⁵ Formal equality in one sense is important because it takes a neutral stand and presupposes that physical characteristics are unimportant in the determination of rights. This protects individuals from arbitrary decision-making processes which may or may not guarantee certain rights to an individual, for instance, as in *Sahin's* case.⁵³⁶ Formal equality takes a central stage in the modern world as it forms the conceptual basis of discrimination legislation and the equal protection clauses in national constitutions.⁵³⁷

In adhering to the principles of formal equality, CEDAW allows for one-to-one equality⁵³⁸ and also bloc-equality, i.e. by prohibiting discrimination between men and women.⁵³⁹ One-to-one equality is only applicable to certain groups of rights such as civil and political rights (for example, one person – one vote),⁵⁴⁰ whereas, bloc equality refers to equality between two groups of people, for example between the two sexes -- women and men.⁵⁴¹ CEDAW also provides for one-to-one equality

⁵³⁴ For an in-depth discussion of CEDAW's foundations on women as a group see Westendorp, Maastricht Centre for Human Rights and Seminar, above n 327.

⁵³⁵ Aristotle, 3 *Ethica Nicomachea*, 112-117, 1131a-1131b, Ackril, J.L. and Urmson J.O. (eds.), W. Ross translation, Oxford University Press, 1980.

⁵³⁶ Discussed in detail under 'substantive equality, as this case could have validly been a discrimination case – discrimination based on 'dress' – which is a violation of equality and non-discrimination principles in multiple human rights treaties.

⁵³⁷ For example, section 1(1) (a) Race Relations Act 1976; Section 1(2) (a) Sex Discrimination Act 1975; Section 1, Fourteenth Amendment to the United States Constitution.

⁵³⁸ Douglas W Rae and Douglas Yates *Equalities* (Harvard University Press, Cambridge, Mass, 1981) at 3.

⁵³⁹ MacNaughton, above n 473, at 5 also see CEDAW General Recommendation No.25 - on Article 4, Para.1, of the Convention on the Elimination of All Forms of Racial Discrimination against Women, on Temporary special measures, UN Doc. No. HRI/GEN/1/Rev.7. (2004), at. 282, paras. 3 and 4.

⁵⁴⁰ Rae and Yates, above n 538, at 21.

⁵⁴¹ At 23.

such as those rights that fall within civil and political rights.⁵⁴² For example, articles 7 and 8 requiring States Parties to grant the right to vote, and equal representation. There can be varying degrees of differences within the groups, but there must be equality between the two ‘blocs’.⁵⁴³ For example, at election time, this can mean one person one vote, but also equal opportunities to participate, and receive income and status with men (bloc equality).⁵⁴⁴ These distinctions help us understand the different ways in which CEDAW approaches equality. These features of the language-construction are helpful when considering marginalised groups and how international law can be used as an instrument of change. These factors indicate that there is a conscious effort to create space for women within the public life of the country. However, promises of formal equality do not guarantee equality for women, unless social restrictions are removed and women have the necessary support structures to pursue rights.

Historically, law played a large role in the subordination of women by giving legitimacy to social structures that organized the society around men.⁵⁴⁵ As such, social constructions supporting female inferiority and male superiority are often entrenched and given legitimacy through legal institutions.⁵⁴⁶ For this reason, equality was not possible without first achieving formal equality for women.⁵⁴⁷ Legal equality, or entitlements, are important for the achievement of the CEDAW goal. When the first U.S. constitution said “all men are equal under the law,” the concept of equality excluded enslaved men, indentured menservants and women, because these groups were not free⁵⁴⁸ – and rights belonged only to free men.

⁵⁴² MacNaughton, above n 473, at 5.

⁵⁴³ Rae and Yates, above n 538, at 35.

⁵⁴⁴ At 35.

⁵⁴⁵ Celina Romany “Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law” (1993) 6 Harv Hum Rts J 87, at 92; See Catharine A MacKinnon *Toward a Feminist Theory of the State* (Harvard University Press, 1989).

⁵⁴⁶ Romany, above n 545, at 91.

⁵⁴⁷ MacKinnon, above n 545, at 88.

⁵⁴⁸ Judith Lorber *Gender Inequality* (4th ed, Oxford University Press, New York; Oxford, 2010) at 1–2.

Women did not have the legal capacity to sign a contract, to work or to vote.⁵⁴⁹ First wave feminist theories claimed equal legal rights for women in the nineteenth century on the basis that liberal political philosophies granted women, not only the right to vote, but also key rights to their own bodies.⁵⁵⁰ Feminist movements in the late nineteenth and early twentieth century fighting towards achieving formal legal rights to voting had set the scene for political rights within the international platform.⁵⁵¹ These were “driven by a moral and political concern to identify, confront and change oppressive power relations.”⁵⁵² Feminism identified and problematized male power over women and explained that it was widespread and persistent across women’s differences.⁵⁵³ CEDAW has been largely influenced by liberal feminists,⁵⁵⁴ the first group of feminists who claimed women’s equality “as a matter of legal, political and moral right,” irrespective individual characteristics.⁵⁵⁵ The main focus of this movement was to demand formal equality through removing all the legal barriers to women’s equality.⁵⁵⁶

Within the CEDAW framework, State obligations to ensure a right to public life do not end with creation of legal rights to ensure specific rights in these provisions. States Parties are under an obligation to take all appropriate measures as required under articles 2, 4 and 5 which may include legislative, administrative and even temporary special measures, to ensure a right to public life.⁵⁵⁷ Apart from further

⁵⁴⁹ At 2.

⁵⁵⁰ This is when woman-controlled contraception became legal, giving women “greater sexual freedom before marriage and planned parenthood after marriage”. At 2-3.

⁵⁵¹ Westendorp, Maastricht Centre for Human Rights and Seminar, above n 327, at 164.

⁵⁵² Mary Maynard and June Purvis *HeteroSexual Politics* (Taylor & Francis, London, UK, 1995) at 27.

⁵⁵³ At 32.

⁵⁵⁴ Preston and Ahrens, above n 432, at 7.

⁵⁵⁵ As quoted by Preston and Ahrens, above n 432; also see Adam Thurschwell “Radical Feminist Liberalism: At the Heart of Freedom: Feminism, Sex & Equality, by Drucilla Cornell - Book Review” (1998) 51 Rutgers L Rev 745-747.

⁵⁵⁶ Kathleen Mahoney “Theoretical Perspectives on Women’s Human Rights and Strategies for Their Implementation” (1995) 21 Brook J Int’l L 799, at 803-804.

⁵⁵⁷ Freeman, Rudolf and Chinkin, above n 348, at 214.

amplifying the objectives set forth in the Preamble, these articles enumerated at the beginning of the Convention, lay down the principles of non-discrimination and substantive equality. They seek to identify, create and enforce specific measures that combat discrimination and subordination of women. This means that the realisation of the rights embodied and obligations emanating from articles 7 and 8 of the Convention have critical relationships with key concepts of equality and non-discrimination embodied in articles 2, 4 and 5 of the Convention. Effective implementation of this right depends on the removal of discriminatory provisions in the local legislations preventing women from enjoying equality in public and political life,⁵⁵⁸ the existence of equal opportunities to enter into public service and adequate policies for the domestic context.⁵⁵⁹ States Parties are required to identify and reduce “specific barriers that reduce the percentage of women in office” through supporting shared family duties, leave of absence from office and necessary day care facilities.⁵⁶⁰

Moreover, the anti-discrimination clauses in this Convention have been specifically crafted to ensure *de jure* and *de facto* equality for women. Provisions embodied in articles 1 to 5 are thus, key to the success of CEDAW because the rest of the specific rights depends on the successful guarantee of these rights.⁵⁶¹ This is because, the public private dichotomy still causes major problems in the pursuit of equality⁵⁶² on all fronts. Thus, CEDAW’s idea to not treat everyone alike, but to propose a methodology that is geared towards the achievement of substantive rights for women is critical.⁵⁶³ These methodologies are indispensable given that women’s rights are developed upon male standards⁵⁶⁴ that could potentially further

⁵⁵⁸ At 216.

⁵⁵⁹ Boerefijn, above n 495, at 26; Freeman, Rudolf and Chinkin, above n 348, at 216.

⁵⁶⁰ Freeman, Rudolf and Chinkin, above n 348, at 218–219.

⁵⁶¹ At 214.

⁵⁶² Fredman, above n 488, at 112.

⁵⁶³ At 113.

⁵⁶⁴ Catharine A MacKinnon *Feminism unmodified* (Harvard University Press, Cambridge, 1987) at 34.

stereotype, stigmatise and disadvantage women.⁵⁶⁵ The transformative equality approach seeks to restructure society into one that is no-longer male defined. As Fredman states:⁵⁶⁶

Transformation requires a redistribution of power and resources and a change in the institutional structures which perpetuate women's oppression. It requires a dismantling of the private-public divide, and a reconstruction of the public world so that child-care and parenting are seen as valued common responsibilities of both parents and the community. It aims to facilitate the full expression of women's capabilities and choices, and the full participation of women in society.

The acknowledgement of these rights does not create obligations on the State,⁵⁶⁷ and yet, the construction of rights in CEDAW provides for a working framework that can be geared towards eliminating discrimination and creating equality. However, a fuller understanding of articles 7 and 8 is required, reading them in conjunction with CEDAW's transformative framework articles (1–5). A list of States Party obligations to guarantee a right to public life, therefore includes:⁵⁶⁸

- Eliminating of direct and indirect discrimination;
- Implementation of the concepts of both formal equality and substantive or de facto equality;
- Undertaking all appropriate measures to ensure the full development and advancement of women in all fields; and
- Modification and elimination of social and cultural patterns based on prejudice, customary and traditional practices, sex-role stereotypes and the alleged inferiority or superiority of either of the sexes.

The mere production of a large number of equality and anti-discrimination laws do not necessarily provide positive results for women. Unless a purposive approach to interpretations is adopted to make sure everyone realises the bases of equality and

⁵⁶⁵ Fredman, above n 488, at 113.

⁵⁶⁶ At 115.

⁵⁶⁷ Mertus, above n 337, at 258.

⁵⁶⁸ Beate Schöpp-Schilling, Expert Member of the CEDAW Committee, above n 498, at 2.

anti-discrimination laws, such legislative developments will not be sustainable either.⁵⁶⁹ Moreover, the transformative dimensions of legislations are often ignored,⁵⁷⁰ and as such, it becomes critical to have positive duties for the State as the primary bearers of human rights duties. Moreover, we find that although achieving equality is at the heart of all anti-discrimination laws and policies, institutions; especially the courts, are still reluctant to give it meaning and interpretations that result in equality for women. This necessitates the creation of positive duties as it has the potential to act against structural inequalities within a system.⁵⁷¹

As a legal obligation, a positive duty has the potential to provide the impetus to these authorities to take action in changing practices and policies that may disadvantage particular groups in a society.⁵⁷² According to O' Cinneide, the lack of positive duties may have contributed to the limited success with gender mainstreaming and the implementation of TSM.⁵⁷³ The main problem with such soft law initiatives is that they do not create legally enforceable duties. Implementation of TSM's, in case they are soft law initiatives, depends on factors such as political good-will, organisational capacity, sustained leadership and expert advice.⁵⁷⁴ In the absence of positive duties, the main problem exacerbated will be due to the lack of clarity as to what equality principles should be applied.⁵⁷⁵

In many instances, countries have legislated on the equality of men and women, and in some unique cases, constitutions also highlight women's roles within the

⁵⁶⁹ O'Cinneide, above n 470, at 67 and 79.

⁵⁷⁰ At 66.

⁵⁷¹ Siobhan Mullally "Substantive Equality and Positive Duties in Ireland" (2007) 23 S Afr J on Hum Rts 291 at 315.

⁵⁷² O'Cinneide, above n 470, at 89.

⁵⁷³ At 88–89; also see Albertyn, Fredman and Fudge, above n 479.

⁵⁷⁴ O'Cinneide, above n 470, at 90.

⁵⁷⁵ At 90.

family as a contribution to the society.⁵⁷⁶ Similarly, a number of countries also recognise the family unit as the primary social unit which is natural and sacred.⁵⁷⁷ Jurisprudence around this area confirms that these legislative measures do not give rise to any specific positive duties.⁵⁷⁸ Mullally argues that this usually leads to limited interpretations of the equality provisions, particularly referring to the situation in Ireland, and a judiciary that is reluctant to move away from Catholic teachings on the role of women.⁵⁷⁹ He uses examples from Northern Ireland and indicates that the introduction of statutory obligations on public authorities through s 75, Northern Ireland Act 1998 has produced significant legislative reforms in Northern Ireland. The UK has also learned from Ireland's experience and created positive duties in the areas of race, disability and gender equality. Likewise, O' Cinneide examined the positive changes occurring with the establishment of positive duties through law in Northern Ireland, England and Scotland.⁵⁸⁰ He argued that the Equality Act 2010 creates a single body that will adopt an integrated perspective of equality law, use unified and clear consistent meanings for the discrimination, harassment and victimisation and, most importantly creates positive duties on public authorities to advance equality.⁵⁸¹ These examples demonstrate that progress can be achieved by incorporating positive rights and positive duties into domestic legislation, although, whether positive duties can produce substantive equality in the long run is yet to be seen.⁵⁸²

Creating positive duties is important not only because it produces a contrivance that demands accountability and sustainability in the short run, but also because it

⁵⁷⁶ Article 41.2 of the Irish Constitution states "in particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved. The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home."

⁵⁷⁷ Constitution of Ireland, art 40.

⁵⁷⁸ Case reference CJ Finley and Egan J's dictum in the Supreme Court decision of *L v L* [1992] IR 77 Mullally, above n 571, at 307.

⁵⁷⁹ At 306.

⁵⁸⁰ O'Cinneide, above n 470, at 90–91.

⁵⁸¹ Bob Hepple "The New Single Equality Act in Britain" (2010) 5 *The Equal Rights Review*, at 11.

⁵⁸² Mullally, above n 571, at 312.

fosters equality and non-discrimination.⁵⁸³ The mere creation of rights within legislation does not necessarily impose positive duties.⁵⁸⁴ Positive rights and positive duties make a big difference for women's equality in public life, for the simple reason that negative rights are merely rights of non-interference.⁵⁸⁵ Given that men still continue to dominate the public life due to social and legal discrimination,⁵⁸⁶ positive rights have the potential to demand action; steps and measures aimed at creating assistance to meet the needs in demand.⁵⁸⁷ Cohen also strongly argues that rights themselves do not create enforcement mechanisms.⁵⁸⁸ This argument appears to have evaded some practical realities because human rights, in its very normative nature, have been used by non-governmental and individual persons to claim rights from the State.

2.8 Chapter Conclusion

This chapter looked at how 'a right' to public life has been carefully crafted in CEDAW, and the value of CEDAW's transformative model of equality, incorporated in articles 1-5. The discussion shows that successful achievement of a CEDAW right to public life thus depends on the elimination of systemic discrimination to achieve substantive equality; taking of positive steps to achieve equality; the adoption of temporary special measures where appropriate; recognition of compounded forms of discrimination; and the implementation of effective mechanisms to promote remedies and accountability.

⁵⁸³ O'Cinneide, above n 470, at 93.

⁵⁸⁴ Cohen, above n 532.

⁵⁸⁵ Rowan Cruft "Human Rights and Positive Duties" (2005) 19 *Ethics & International Affairs* 29 at 30; also see Alan Gewirth *The Community of Rights* (University of Chicago Press, Chicago, Illinois, 1996).

⁵⁸⁶ Freeman, Rudolf and Chinkin, above n 348, at 211.

⁵⁸⁷ Gewirth, above n 585, at 5.

⁵⁸⁸ Cohen, above n 532, at 271.

These factors confirm that the purpose of multiple models of equality in CEDAW are aimed at achieving equality for women, and discrimination laws are a mere tool to achieve equality. Substantive equality is thus CEDAW's standard equality. The achievement of equality in this context is to achieve human autonomy, freedom and diversity, and, most importantly, freedom from not only legal discrimination, but also social discrimination such as harassment, sexist hate speech or violence against women. The present reading of rights in CEDAW helps develop a fuller understanding and appreciation of the rights in CEDAW, in particular, a woman's right to public life and how international human rights instruments have been formulated to achieve equality and rights for all persons in the world.

CHAPTER THREE

INTERNATIONAL HUMAN RIGHTS NORMS, DOMESTIC REGIMES AND WOMEN

Human rights have undoubtedly taken central stage in the modern day international order. They provide the *lingua Franca* of progressive politics and an ideal emancipatory script for justice seekers. However, there are problems at all levels of the existing human rights framework, from the understanding of its language to its implementation, which could make most of the human rights endeavours futile. These truths also force us to re-think the ambitious aspirations of the international human rights regime and what it means for groups such as women from different parts/ cultures of the world, in particular in terms of a right to a public life. Such an exploration is critical to understanding the local and global claims for a universal set of rights and the gaps in the realisation of these rights at the domestic level.

In view of these research aims, this chapter examines the theories informing the general impact of human rights treaties, and the issues affecting the realisation of international human rights norms at the domestic level, with a particular focus on Islamic contexts.

3.1 International Human Rights Norms at the Domestic Level

International human rights treaties are the modern day ideologies of freedom and equality for all human beings.⁵⁸⁹ Treaty impact at the domestic level is expected to occur in two main ways: through international norm enforcement mechanisms such as reporting, individual complaints; and internalisation of treaty norms seen through

⁵⁸⁹ Russell A Miller and Rebecca M Bratspies *Progress in International Law* (BRILL, 2008) at 839; Also see, Power and Allison, above n 404, at 3.

adoption, incorporation, or transformation of the laws, judicial decisions, policy changes, or implementation of COs at the local level.⁵⁹⁰

Treaty ratification leads to changes within domestic systems due to resulting normative pressures⁵⁹¹ and norm acceptance.⁵⁹² Norms emerge when people start to be convinced that something needs to change and use existing platforms, such as the UDHR, to proselytize and frame their ideas to reach a broader audience.⁵⁹³ Thus, norms are developed to suit different domestic political reasonings and if there is sufficient support for this norm, it reaches a tipping point.⁵⁹⁴ Other States then adopt these norms because of international pressure even where domestic pressure is absent. The norm becomes internalised over time when conformity becomes a natural part of the state's life. Norms are likely to reach a tipping point for various reasons. Sometimes they become a universal norm because they have been espoused at the right time and most often politicians will adopt norms which perpetuate their ideologies. Norms held by prominent or powerful States have more potential to reach a tipping point.⁵⁹⁵

Some norms, such as norms against bodily harm, also carry intrinsic qualities, which enhances the likelihood of their becoming an international norm.⁵⁹⁶ These norms, taken to the international platform by various entrepreneurs,⁵⁹⁷ become universal norms that ratifying States agree to enforce within their domestic

⁵⁹⁰ CH Heyns and Frans Viljoen "The Impact of the United Nations Human Rights Treaties on the Domestic Level" (2001) 23 Human Rights Quarterly 483 at 485.

⁵⁹¹ Martha Finnemore and Kathryn Sikkink "International Norm Dynamics and Political Change" (1998) 52 International Organization 887; Darren Hawkins "Explaining Costly International Institutions: Persuasion and Enforceable Human Rights Norms" (2004) 48 International Studies Quarterly 779.

⁵⁹² Finnemore and Sikkink, above n 591, at 893.

⁵⁹³ At 911.

⁵⁹⁴ At 892.

⁵⁹⁵ Martha Finnemore and Kathryn Sikkink "International Norm Dynamics and Political Change" (1998) 52 International Organization 887 at 906.

⁵⁹⁶ See generally Margaret E Keck and Kathryn Sikkink *Activists beyond Borders* (Cornell University Press, Ithaca, NY, 1998).

⁵⁹⁷ Finnemore and Sikkink, above n 591, at 893.

systems.⁵⁹⁸ These norms then become the “prevailing standard of appropriateness” that must be observed by all ratifying countries.⁵⁹⁹ Norm cascades are also possible because of a “pressure for conformity, desire to enhance international legitimation, and the desire of state leaders to enhance their self-esteem.”⁶⁰⁰ Peer pressure, a psychological need to belong to a group, embarrassment, guilt and shame, are key issues that will eventually dictate the extent to which States will comply with these international norms.⁶⁰¹

Human rights is a political ideology that applies to national political societies.⁶⁰² Treaty provisions are therefore enforced through a system of cooperative engagement and thus enforcement of international norms is highly dependent on the individual domestic systems.⁶⁰³ This indicates that the realisation of human rights depends on harnessing the treaty system to domestic constituencies.⁶⁰⁴ Making international norms part of the domestic law is the most powerful way to enforce international human rights at the domestic level.⁶⁰⁵ Studies in the past confirm that the impact of human rights treaties within a domestic system is greatest if domestic legislation has been created, i.e. the treaty norms are adopted in constitutions and statutes.⁶⁰⁶ Thus, human rights treaties are most effective when they are backed by both legislative and political support.⁶⁰⁷ States that have ratified certain international human rights treaties are more likely to have similar provisions

⁵⁹⁸ At 893–895.

⁵⁹⁹ At 895.

⁶⁰⁰ At 895, 903.

⁶⁰¹ At 903.

⁶⁰² Power and Allison, above n 404, at 8.

⁶⁰³ Eric Neumayer “Do International Human Rights Treaties Improve Respect for Human Rights?” (2005) 49 *The Journal of Conflict Resolution* 925 at 930; Andrew Moravcsik “Taking Preferences Seriously: A Liberal Theory of International Politics” [1997] *International Organization* 513.

⁶⁰⁴ Heyns and Viljoen, above n 590, at 488.

⁶⁰⁵ At 487–488.

⁶⁰⁶ Beth A Simmons “Reflections on Mobilizing for Human Rights” (2011) 44 *NYU J Int’l L & Pol* 729 at 747.

⁶⁰⁷ Beth A Simmons *Mobilizing for Human Rights* (Cambridge University Press, New York, 2009) at 12.

in their domestic legal instruments. For example, countries that are party to ICCPR have aligned their constitutions in line with the provisions of ICCPR.⁶⁰⁸ Rights achievements become possible when treaties “empower individuals, groups, or parts of the state with different rights preferences that were not empowered to the same extent in the absence of the treaties”.⁶⁰⁹ Such commitments are also associated with increased domestic litigation⁶¹⁰ leading to improved human rights outcomes.⁶¹¹

Most countries have aligned the national constitutions to international human rights treaties.⁶¹² National bill of rights or constitutional reforms are often inspired by the international human rights treaties.⁶¹³ Ratification of an international convention is also usually coupled with compatibility studies to identify legislative gaps in complying with treaty norms. Many countries consequently created or amended domestic legislation after ratification of international treaties.⁶¹⁴ International human rights treaties are also increasingly referred to and used as “interpretive guides to clarify legislative provisions, such as those of the national bill of rights”.⁶¹⁵

⁶⁰⁸ Tom Ginsburg, Zachary Elkins and Beth Simmons “Getting to Rights: Treaty Ratification, Constitutional Convergence, and Human Rights Practice” (2013) 54 *Harv Int’l L J* 61.

⁶⁰⁹ Simmons, above n 607, at 125.

⁶¹⁰ Geoff Dancy and Kathryn Sikkink “Ratification and Human Rights Prosecutions: Toward a Transnational Theory of Treaty Compliance” (2011) 44 *NYU J Int’l L & Pol* 751.

⁶¹¹ Hunjoon Kim and Kathryn Sikkink “Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries” (2010) 54 *International Studies Quarterly* 939.

⁶¹² Heyns and Viljoen, above n 590, at 500.

⁶¹³ Many of the treaty norms are mirrored in the bill of rights, and there is some (although not very clear) causal links between the treaties and the constitutional human rights provisions. This applies to Colombia (CESCR, CCPR were relied on by delegates in the Constitutional Convention who redrafted the constitution in 1991), the Czech Republic (CESCR is linked to the inclusion of socioeconomic rights; CCPR also mirrored), Estonia (although the European convention was more influential in the 1992 redraft), the Philippines (the 1987 Bill of Rights reflects the rights in CESCR and CCPR), Romania (the 1991 Constitution includes most of the rights in CESCR and CCPR, and some of those in the other treaties), Russia (a government report indicates that only one provision in the two Covenants is not affirmed in the Russian Constitution), and Spain (the 1978 Bill of Rights was drafted one year after the ratification of CCPR and CESCR, but there was little influence. At 500.

⁶¹⁴ A brief list is available at 501–502.

⁶¹⁵ At 502.

Mobilised publics and higher civil society engagement are, currently, a major reason why human rights treaties create change at the local level.⁶¹⁶ Emerging global legitimacy of human rights exerts independent global civil society effects that improve human rights practices of States Parties.⁶¹⁷ Linkage to international civil society induces countries to improve their respect for human rights.⁶¹⁸ The global human rights regime has provided a platform for international civil society to lobby against and pressure national governments to confirm to improve their human rights practices. For example, Amnesty International and Human Rights Watch has been influential in changing domestic human rights behaviour in many instances.⁶¹⁹ Many local NGOs now work with INGOs to improve domestic human rights practice, which allows the exchange of local information at an international level. States therefore comply with human rights treaties or make efforts to improve human rights practices to save themselves from a potentially embarrassing situation and loss of legitimacy amongst other countries.⁶²⁰

To this effect, a highly developed civil society within domestic systems can be of great value for the enforcement of treaty rights.⁶²¹ The violating states are then subjected to strategized pressures both at the international and domestic level, and must make critical decisions related to their trade and diplomatic engagement with the international community. Pressures of this nature can produce results even though change is slow due to the complex issues involved: unconstrained repression, rule-consistent behaviour, periods of denial, tactical concessions and

⁶¹⁶ Emilie M Hafner-Burton and Kiyoteru Tsutsui “Human Rights in a Globalizing World: The Paradox of Empty Promises” (2005) 110 *American Journal of Sociology* 1373.

⁶¹⁷ At 1378.

⁶¹⁸ Hafner-Burton and Tsutsui, above n 616.

⁶¹⁹ Chilean activists, with the help of Amnesty International and other groups, sought to publicize forced disappearances committed by their government (Clark 2001, pp. 73–74), and human rights groups in Indonesia exchanged information with the International Commission of Jurists and other international organizations to campaign for the release of political prisoners (Jetschke 1999, pp. 140–41), at 1385.

⁶²⁰ At 1385.

⁶²¹ Abram Chayes and Antonia Handler Chayes *The new sovereignty* (Harvard University Press, Cambridge, Mass, 1998) at 250. Neumayer, above n 603, at 929. Hafner-Burton and Tsutsui, above n 616.

prescriptive status.⁶²² Pressures from certain powerful States may coerce developing and under-developed States to comply with certain treaty norms due to the reliance on foreign aid.⁶²³ Likewise, the respect and compliance to treaty norms are more likely if the particular States Party has been involved in the negotiation process of the particular treaty in question.⁶²⁴

Hafner-Burton and Tsutsui confirm through their study that “civil society provides the enforcement mechanism that international human rights treaties lack, and can often pressure increasingly vulnerable governments toward compliance”.⁶²⁵ For this reason, States that have a highly sensitised civil society are more likely to have more respect for human rights. Information on human rights is more readily available today and more rights focused groups and advocates are created every day.⁶²⁶ In many countries, awareness on CEDAW is also generally higher in comparison to other human rights treaties at the domestic level.⁶²⁷ States Parties, local and international NGOs are increasingly using human rights language,⁶²⁸ while media usage is significantly less in comparison.⁶²⁹ In any case, dismissing accusations of human rights violations is increasingly becoming more difficult in the current global environment.⁶³⁰

Whether democracy facilitates human rights at the local level, remains a question. Some argue that human rights practice is seen to be most significant in countries with strong democracies.⁶³¹ At the same time, States Parties that follow strong

⁶²² Neumayer, above n 603, at 930.

⁶²³ At 931.

⁶²⁴ At 928.

⁶²⁵ Hafner-Burton and Tsutsui, above n 616, at 1385.

⁶²⁶ Heyns and Viljoen, above n 590, at 187.

⁶²⁷ At 499.

⁶²⁸ At 487; also see Hafner-Burton and Tsutsui, above n 616.

⁶²⁹ Heyns and Viljoen, above n 590, at 499–500.

⁶³⁰ Hafner-Burton and Tsutsui, above n 616, at 1385–1386.

⁶³¹ Oona A Hathaway “Why Do Countries Commit to Human Rights Treaties?” (2007) 51 *The Journal of Conflict Resolution* 588.

democratic principles have committed gross human rights violations.⁶³² Countries with mobilised publics and democratic institutions such as strong judiciaries often have better human rights practices despite ratification of human rights treaties or have their own systems of law and remedies which are independent of the requirements under international human rights treaties.⁶³³ These systems often have strong domestic institutions and do not refer to treaty rights and obligations.⁶³⁴ Thus, States Parties with stronger judiciaries are also more likely to avoid commitment to human rights treaties and violate their provisions.⁶³⁵ In some situations, ratification to treaties also deflect international pressure because it is assumed that ratifying States will comply with the treaty provisions.⁶³⁶

It has also been argued that countries that aspire to comply with their treaty commitments are unable to, because of economic and other constraints that limit capacity to uphold treaty obligations.⁶³⁷ In many cases, these treaty norms are also seen as long-term goals.⁶³⁸ These reasons contribute to the delay between ratification and implementation of the norms domestically.⁶³⁹ It is also unclear whether ratification of treaties creates any further domestic reform for countries that already have a complete bill of rights incorporated into national constitutions.⁶⁴⁰ Despite these challenges, international human rights law continues to be relevant in many domestic contexts, achieving successful internalisation through reasons of self-interest, agreement with liberal views (e.g. democracy), and

⁶³² Hafner-Burton and Tsutsui, above n 616, at 1373.

⁶³³ Daniel W Hill Jr “Estimating the Effects of Human Rights Treaties on State Behavior” (2010) 72 *The Journal of Politics* 1161 at 1165.

⁶³⁴ Simmons, above n 607.

⁶³⁵ Jr, above n 633, at 1164. Emilia Justyna Powell and Jeffrey K Staton “Domestic Judicial Institutions and Human Rights Treaty Violation” (2009) 53 *International Studies Quarterly* 149; Hathaway, above n 631.

⁶³⁶ Neumayer, above n 603, at 927.

⁶³⁷ At 928.

⁶³⁸ At 928.

⁶³⁹ Abram Chayes and Antonia Handler Chayes, *The New Sovereignty Compliance with International Regulatory Agreements* (Harvard University Press, Cambridge, MA, 1995) at 197; Neumayer, above n 603, at 928–929.

⁶⁴⁰ Heyns and Viljoen, above n 590, at 50.

communitarian ideals of States.⁶⁴¹ Unless there is an answer as to why States ratify particular human rights treaties, it will be a challenge to fully unpack treaty compliance.⁶⁴²

A process of acculturation also changes State behaviour.⁶⁴³ This was reflected in the success of the Universal Periodic Review (UPR) process (applicable to all member States), first introduced in 2008 by the UN.⁶⁴⁴ Despite individual reasons for ratification, or failures to comply with treaty provisions, the UN achieved a 100% cooperation rate from all 70 States Parties scheduled to go through the UPR process in 2009.⁶⁴⁵

In either case, ratification of international treaties brings the human rights practices of individual States Parties to an international platform, thus allowing for scrutiny and possible labelling in the case of bad human rights performance.⁶⁴⁶ The discussion above also shows that human rights treaties have gained substantive ground in what seems to be the most appealing grounds of fairness and justice in the modern legal systems across the world.⁶⁴⁷ Rights protection in this model, however, is heavily dependant on domestic law enforcement bodies,⁶⁴⁸ and the effectiveness of the international human rights enforcement mechanism.

⁶⁴¹ Harold Hongju Koh “How Is International Human Rights Law Enforced” (1998) 74 Ind LJ 1397 at 1401.

⁶⁴² Jr, above n 633, at 1165.

⁶⁴³ Ryan Goodman and Derek Jinks “How to Influence States: Socialization and International Human Rights Law” (2004) 54 Duke Law Journal 621 at 621; Also see Ryan Goodman and Derek Jinks “International law and state socialization: conceptual, empirical, and normative challenges” (2005) 54 Duke Law Journal 983+ LegalTrac.

⁶⁴⁴ Weissbrodt, D (2011), United Nations Charter-based Procedures for Addressing Human Rights Violations, in Gilbert Geoff, Francoise Hampson and Clara Sandoval *The Delivery of Human Rights* (1st ed, Routledge, Oxon, 2012) at 23.

⁶⁴⁵ Weissbrodt, At 23.

⁶⁴⁶ Neumayer, above n 603, at 927.

⁶⁴⁷ Heyns and Viljoen, above n 590, at 502.

⁶⁴⁸ Henry Shue *Basic Rights* (Princeton University Press, Princeton, NJ, 1996) at 37–38; Cohen, above n 532, at 268.

3.1.1 *Ratification of Treaties and Compliance to Treaties*

Why states ratify human rights treaties thus remains a mystery.⁶⁴⁹ Earlier empirical studies testing the impact of human rights treaties on state practice were not successful in establishing whether there was any identifiable positive effect of human rights treaties.⁶⁵⁰ These note that treaty ratification was just a matter of “window dressing”,⁶⁵¹ looking good,⁶⁵² and many a times, intending to “attract more foreign investment, aid donations, international trade, and other tangible benefits.”⁶⁵³ Some countries were/ are also compelled to ratify treaties because the domestic systems are inextricably dependent on international aid. Studies thus provided multiple plausible arguments claiming that States ratify human rights treaties for political⁶⁵⁴ and economic reasons.⁶⁵⁵ According to Posner, developing States have ratified human rights treaties for diverse reasons, at times “succumbed to pressure from western States that tied aid and other benefits (such as EU membership) to treaty ratification”.⁶⁵⁶ For these reasons, unless there was a pay off at the end, States would not ratify treaties.⁶⁵⁷ Some countries ratify treaties simply to make sure they fit in.⁶⁵⁸ All this put together, this simply means that ratification

⁶⁴⁹ Neumayer, above n 603, at 929.

⁶⁵⁰ See Linda Camp Keith “The United Nations International Covenant on Civil and Political Rights: Does It Make a Difference in Human Rights Behavior?” (1999) 36 *Journal of Peace Research* 95; see Oona A Hathaway “Do Human Rights Treaties Make a Difference” (2001) 111 *Yale LJ* 1935.

⁶⁵¹ Hafner-Burton and Tsutsui, above n 616, at 1373.

⁶⁵² Hathaway, above n 631; Hathaway, above n 650.

⁶⁵³ Oona A Hathaway *The Promise and Limits of the International Law of Torture* (ID 1131413 Social Science Research Network) at 207; Simmons, above n 606, at 741.

⁶⁵⁴ Heyns and Viljoen, above n 590, at 483.

⁶⁵⁵ Hathaway, above n 631. Jay Goodlife and Darren G Hawkins “Explaining Commitment: States and the Convention against Torture” (2006) 68 *Journal of Politics* 358; Eric A Posner “Human Welfare, Not Human Rights” (2008) 108 *Columbia Law Review* 1758; Joel P Trachtman “Who Cares about International Human Rights: The Supply and Demand of International Human Rights Law” (2011) 44 *NYU J Int’l L & Pol* 851.

⁶⁵⁶ Eric A Posner “Some Skeptical Comments on Beth Simmon’s Mobilizing for Human Rights” (2011) 44 *NYU J Int’l L & Pol* 819 at 1769; as quoted by Simmons, above n 606, at 740.

⁶⁵⁷ Trachtman, above n 655, at 23.

⁶⁵⁸ Hawkins, above n 591, at 793.

of treaties is usually backed with some form of benefit for individual states.⁶⁵⁹ Refuting this benefits argument, research also shows that ratification represents a willingness to observe certain standards,⁶⁶⁰ and influences State behaviour in positive ways.⁶⁶¹ These studies argue that ratification shapes social and cultural understandings of rights and liberties,⁶⁶² inspires domestic legal change,⁶⁶³ and improves domestic human rights.⁶⁶⁴

In 2009, after an empirical study involving one hundred countries and six UN human rights treaties, Beth Simmons argued that, increasingly, citizens, other governments, and assorted transnational advocacy groups value human rights practices, and continued non-compliance will be opposed with political backlash.⁶⁶⁵ In such scenarios, it becomes highly unlikely that no one cares about follow-up.⁶⁶⁶ Any benefits to be reaped, if they existed, will be short lived.⁶⁶⁷ According to this research, States were either sincere ratifiers or non-ratifiers,⁶⁶⁸ and regardless of the reasons for ratification,⁶⁶⁹ over a long term, human rights treaties shaped domestic politics by influencing legislative agendas, altering political coalitions, and defined the terms of acceptable state action. Treaty ratification thereby reflected and altered domestic politics⁶⁷⁰ and constrained state behaviour in many ways.⁶⁷¹

⁶⁵⁹ Simmons, above n 606, at 741.

⁶⁶⁰ Neumayer, above n 603, at 930.

⁶⁶¹ Simmons, above n 607; Simmons, above n 606.

⁶⁶² Heyns and Viljoen, above n 590, at 487; Also see Christof H Heyns and Frans Viljoen *The Impact of the United Nations Human Rights Treaties on the Domestic Level* (Martinus Nijhoff Publishers, The Hague, 2002).

⁶⁶³ Ginsburg, Elkins and Simmons, above n 608; Thania Sanchez “After Ratification: The Domestic Politics of Treaty Implementation and Compliance” (PhD Thesis, Columbia University, 2009).

⁶⁶⁴ Heyns and Viljoen, above n 662.

⁶⁶⁵ Simmons, above n 607, at 90.

⁶⁶⁶ At 60.

⁶⁶⁷ At 60.

⁶⁶⁸ Simmons, above n 606, at 741–742.

⁶⁶⁹ Simmons, above n 607, at 58.

⁶⁷⁰ At 12.

⁶⁷¹ At 13.

Testing for the influence of external factors on treaty ratification, Neilson and Simmons⁶⁷² investigated the external tangible rewards⁶⁷³ received by individual countries within one year and within five years of treaty ratification⁶⁷⁴ and intangible rewards⁶⁷⁵ received within “365 days prior to and the 365 following the exact ratification date.”⁶⁷⁶ The difference in these rewards between ratification and non-ratification episodes was then measured to determine whether external rewards was a considerable aspect of treaty ratification.⁶⁷⁷ The study concluded:⁶⁷⁸

... the notion that states have been induced to join such normatively important pacts as the ICCPR and the CAT hoping to receive external rewards from a core of wealthy, democratic countries simply does not bear empirical scrutiny ... findings do not lend substantial support to claims that States ratify human rights treaties in hopes of attracting tangible rewards in the form of international aid, trade, and foreign direct investment, or intangible rewards such as praise and acceptance in the club of ‘responsible’ countries.

In measuring the intangible rewards for the countries, this research only included press releases from the European Union on the basis that if there were any praises to be obtained, it would have had come through some European Union press release because the European Union has been a leader in the development of “the international human rights regime, has significant economic and political might, and (arguably) forms the core of the international community of law-abiding States”.⁶⁷⁹ It is however, misleading to think that there is no praise to be gained and

⁶⁷² Rich Nielsen and Beth A Simmons *Rewards for Rights Ratification? Testing for Tangible and Intangible Benefits of Human Rights Treaty Ratification* (ID 1451630 Social Science Research Network 2012) at 3.

⁶⁷³ At 15; included measurements of foreign aid, trade and foreign direct investments.

⁶⁷⁴ At 13.

⁶⁷⁵ At 16; this included measurement of incidences of praise and criticism collected from 34,334 EU press releases.

⁶⁷⁶ At 17.

⁶⁷⁷ Simmons, above n 606, at 742.

⁶⁷⁸ Nielsen and Simmons, above n 672, at 27.

⁶⁷⁹ At 16.

no shame to be felt for a non-ratifying State simply because the European Union has not done so through a press release: firstly because praise and non-praise can come in multiple ways; meetings, forums, human rights reports and statistics that is widely published; and secondly, external rewards may not be necessarily directly related to any particular treaty ratification episode. In 2012, Eric Posner also argued that Simmon's human rights mobilisation theory is faulty because it does not show compliance, only causation.⁶⁸⁰ Simmon fails to explain why liberal democracies will enter human rights treaties, but authoritarian States will not do so.⁶⁸¹ CEDAW has been equally ratified by both liberal and authoritarian regimes. Some of the arguments put forward by Simmon are particularly problematic.⁶⁸² For example, Simmon claims that human rights treaties are irreversible in common law systems, when in truth, a treaty may be reversed anytime, simply by enacting a Statute to say otherwise.⁶⁸³

Neumayer argues that powerful States such as the United States and the European States, may have a better human rights record in comparison to the less powerful States, but will not force non-complying States into compliance.⁶⁸⁴ Moreover, often times, those that are labelled as the violators are those that are most engaged with the treaty system.⁶⁸⁵ If the international human rights enforcement mechanism is not powerful enough to force countries into compliance with their treaty commitments, then international human rights treaties cannot make a difference to the state of human rights at the domestic level.⁶⁸⁶ International pressure does create pressure to ensure a certain level of commitment from non-complying countries.⁶⁸⁷

⁶⁸⁰ Posner, above n 656.

⁶⁸¹ At 820.

⁶⁸² At 820–821.

⁶⁸³ At 821.

⁶⁸⁴ Neumayer, above n 603, at 926.

⁶⁸⁵ Heyns and Viljoen, above n 590, at 489.

⁶⁸⁶ Neumayer, above n 603, at 926.

⁶⁸⁷ At 928.

... high regime standards serve many functions, such as generating political concern in low-standard countries and setting normative goals for them, communicating the intensity of preferences among regime members, and legitimating technical aid or outright transfer payments to improve the capacity to comply with the norms that might otherwise be denounced as bribes or blackmail. In this ‘managerial model’ of international regimes, the fact that sanctions against human rights offenders are rarely used, is not a problem since it is not sanctions but assistance for tackling insufficient compliance capacity that matters.

International aid and trade opportunities have played a major role in why states ratify human rights treaties. Testing the rewards theory with sanctions for human rights violations or non-compliance either by ratifying or non-ratifying States as opposed to a technical position of ratification followed by a reward, would have yielded quite the opposite results. Often, aid donors impose aid sanctions in a selective manner, often only depending on political ties, however, donors do impose aid sanctions on developing countries.⁶⁸⁸ Thereby, this may have provided another angle to test whether there are any rewards to be attained from ratification of and compliance to international human rights treaties. The rewards theory is an important investigation because the success of human rights treaties depends on the political commitment of the ratifying States, and the reasons behind ratification do contribute to how successful a treaty is once it is ratified.

Thus, theories of States and the international human rights regime continue to be highly relevant decades after their introduction, because the situation of human rights appears to be more at risk than ever before.⁶⁸⁹ Many countries that accept treaty norms have multiple challenges in enforcing them domestically due to various institutional challenges.⁶⁹⁰ Despite these, they also want to be seen as

⁶⁸⁸ Richard A Nielsen “Rewarding Human Rights? Selective Aid Sanctions against Repressive States” (2013) 57 Int Stud Q 791 at 791.

⁶⁸⁹ See Boaventura de Sousa Santos *Toward a New Legal Common Sense* (2nd ed, Cambridge University Press, Cambridge u.a, 2002); Boaventura de Sousa Santos *Toward a new common sense* (Routledge, New York, 1995).

⁶⁹⁰ Finnemore and Sikkink, above n 591, at 893.

respecting of the universal norms within the international community. For example, States want to be seen as confirming to certain values such as liberalism, because that is seen as the appropriate norm.⁶⁹¹

3.1.2 Compliance with CEDAW Rights and Approaches

CEDAW is a sincere step towards achieving equality for women in all areas of life. It is the most universally ratified human rights treaty, with up to 189 States Parties at the end of 2015.⁶⁹² Specific provisions are related to non-discrimination, creation of affirmative measures and creation of specific rights to participate in the decision-making of their countries, create the space and format to eliminate all forms of discrimination and hurdles for women's achievement of equality in public life. A number of States have established national mechanisms to advance women's rights and have also introduced temporary special measures to enhance women's involvement and participation in decision-making roles within the state.⁶⁹³ A 2010 report on the global impact of CEDAW, came to the conclusion that:⁶⁹⁴

... CEDAW has provided opportunities for countries to improve the status of women. In many countries, CEDAW has been a force to change and has created opportunities for dialogue among citizens, civil society, governmental representatives, and the global community about the gaps between the ideal and the reality of women's lives. CEDAW has been cited to protect women and girls against violence and trafficking; to prevent discrimination against women in nationality, inheritance, and property ownership; to promote women's full

⁶⁹¹ At 903–904.

⁶⁹² United Nations “United Nations Treaty Collection” United Nations Treaty Collection <www.treaties.un.org>.

⁶⁹³ Frances Raday “Gender and democratic citizenship: the impact of CEDAW” (2012) 10 Int J Constitutional Law 512 at 516.

⁶⁹⁴ International Center for Research on Women ICRW *Recognizing Rights Promoting Progress: The Global Impact of the Convention on the Elimination of All Forms of Discrimination against Women* (International Center for Research on Women 2010) at 16.

participation in the economic and political life of their countries; and to advance women's human rights by promoting equality.

This report made only one mention of the Maldives, in that the States Party adopted a “wholesale review of the family law in the wake of ratification”.⁶⁹⁵ Using data from a variety of sources such as UN reports, other UN resources such as websites, success stories, NGO and media reports, scholarly work and individual interviews,⁶⁹⁶ this report tested the impact of CEDAW on four thematic areas including women's political participation. It briefly notes that even after CEDAW, women only make one-fifth of the world parliaments in 2010, and that there is a wide gap between men and women participating in public life.⁶⁹⁷

Despite universal ratification,⁶⁹⁸ and the acknowledgement of equality in national legislation, women are underrepresented in public life globally and progress is extremely slow.⁶⁹⁹ By 1989, most countries in the world had allowed women to vote and stand for election.⁷⁰⁰ In 1893, New Zealand became the first country to grant women the right to vote.⁷⁰¹ Women in most European countries were able to vote after the Second World War, during which women had demonstrated their capabilities outside the domestic spheres.⁷⁰² Amongst a few others, Maldives granted women the right to vote prior to the Second World War.⁷⁰³ The right to vote is not necessarily connected to the right to stand for public election. Women in some

⁶⁹⁵ At 15.

⁶⁹⁶ At 3.

⁶⁹⁷ At 11.

⁶⁹⁸ UN Women, above n 515.

⁶⁹⁹ Inter-American Commission on Human Rights, *The Road to Substantive Democracy: Women's Political Participation in the Americas* (OEA/Ser.L/V/II. 2011).

⁷⁰⁰ *Women in Politics and Decision-Making in the Late Twentieth Century* (Martinus Nijhoff, Dordrecht, Netherlands, 1992) at 1.

⁷⁰¹ Philippa Mein Smith *A Concise History of New Zealand* (Cambridge University Press, Cambridge, 2012) at 107; Also see, Megan Hutching *Leading the Way* (Harper Collins Publishers, Auckland, 2010).

⁷⁰² *Women in Politics and Decision-Making in the Late Twentieth Century*, above n 700, at 2.

⁷⁰³ At 3.

countries had the right to stand for public elections before they were given the right to vote and in some cases the right to vote was granted first.⁷⁰⁴ The right to stand for election was however, visible, only on paper. In fact, in many countries, there was one woman who made it to the parliament within a few years. A legal right to hold public office has not created more space for women in national parliaments⁷⁰⁵ nor other positions of decision-making in their countries.

Progressing at only one percent per year, there were only 20 percent of women in national parliaments across the world in 2013.⁷⁰⁶ Whereas only 46 countries in the world have achieved a 30 percent for women MPs,⁷⁰⁷ there are still 37 States that have less than 10 percent women in their national parliaments.⁷⁰⁸ In 2013 there were 14.8 percent speakers of parliaments and 26.5 percent deputy speakers of parliaments,⁷⁰⁹ eight female head of States and 13 heads of governments.⁷¹⁰ In 2014, there were 17.2 percent women in ministerial positions compared to 16.1 percent in 2008. According to an IPU press release:⁷¹¹

By 1st January 2014, there were 36 countries with 30 per cent or more women ministers, a jump from 26 in 2012. With 14 women in such posts, Nicaragua heads the global table of women in executive government, followed by Sweden, Finland, France, Cabo Verde and Norway... Every country in Africa and the Americas has at least one woman in a ministerial position ... The number of women leading a Ministry of Defence has doubled from seven to 14 since 2012, the highest ever ... The number of women in charge of foreign affairs and

⁷⁰⁴ At 4–5.

⁷⁰⁵ At 5-6.

⁷⁰⁶ Human Rights Council, United Nations General Assembly *Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice* (A/HRC/23/50 2013) at 6.

⁷⁰⁷ Inter-Parliamentary Union “Progress for Women in Politics, but Glass Ceiling Remains Firm” *Press Release* (Geneva, 11 March 2014) <www.ipu.org>.

⁷⁰⁸ UN Women “Facts and Figures: Leadership and Political Participation” (20 March 2014) unwomen <www.unwomen.org>.

⁷⁰⁹ Inter-Parliamentary Union, above n 707.

⁷¹⁰ UN Women, above n 708.

⁷¹¹ Inter-Parliamentary Union, above n 707.

international cooperation has risen to 45, the highest number since 2008.

Statistics reveal that, across the world, women are underrepresented at major decision-making levels including the national parliaments,⁷¹² judiciary and the executive.⁷¹³ Many countries interpret equality in public life itself, as having a certain percentage of women in national parliaments or creation of affirmative measures to enhance women's engagement and participation. Rights in CEDAW are often reported in terms of the senior positions held by women at State level and the legal equality provided by national laws and constitutions. Thus CEDAW reports provide limited useful information for the UN bodies, national governments and development workers to actually devise alternate routes to achieve equality in the area of public life. Most human rights reports record statistics in terms of numbers and comparative analysis with the past, which falls short of recording the difficulties actual people have in terms of achieving a higher quality or equality in various aspects of life. Women all over the world experience life differently. Their freedoms and capabilities are strengthened and constrained depending on their life experiences, positions in society and family, economic powers, ethnicity and also religious practices. Moreover they are socialised to fit into different roles.

Until recently, studies to understand the impact of human rights treaties have been rare as well.⁷¹⁴ Furthermore, despite its high relevance, research studies aiming to understand the implications of international human rights treaties at the local level, and particularly for a specific vulnerable group such as women, have been very

⁷¹² Greg Power *The Global Parliamentary Report: The Changing Nature of Parliamentary Representation* (UNDP and IPU 2012) at 94.

⁷¹³ See, Frank C Thames and Margaret S Williams *Contagious Representation: Women's Political Representation in Democracies Around the World* (NYU Press, New York; London, 2013); European Commission - Directorate - General for Justice *Women and Men in Leadership Positions in the European Union* (ISBN: 978-95-79-30565-8 European Commission 2013); International Commission of Jurists *Women and the Judiciary* (International Commission of Jurists and South Asians for Human Rights 2014).

⁷¹⁴ See Todd Landman *Studying human rights* (Routledge, New York, 2006).

few.⁷¹⁵ Studies in the past have focused on the overall domestic impact of the Convention⁷¹⁶ and the impact of the Convention on a specific right or group of rights within selected States.⁷¹⁷ Studies have focused on both the general impact of CEDAW in individual countries,⁷¹⁸ and the impact of CEDAW on specific areas such as education,⁷¹⁹ working women's rights,⁷²⁰ and women's empowerment. Studies have also focused on understanding the issues around CEDAW reservations.⁷²¹

These studies note that CEDAW has been successful in terms of government acknowledgement of equal rights vis-à-vis men and the creation of formal equality.⁷²² A more holistic approach to understand the impact of CEDAW, is missing in these studies. For example, Hafner-Burton and Tsusui's 2005 study concluded that membership in CEDAW increased human rights violations – politically sponsored murder, torture, dissappearances, imprisonment etc. – but did

⁷¹⁵ Gaby Ore' Aquilar *The Local Relevance of Human Rights: A Methodological Approach* (04 Institute of Development Policy and Management, University of Antwerp 2008) at 8.

⁷¹⁶ Jessica Riggan "The Potential Impact of CEDAW Ratification on US Employment Discrimination Law: Lessons from Canada" (2011) 42 Columbia Human Rights Law Review 541 at 543.

⁷¹⁷ See Jessica Riggan "Potential Impact of Cedaw Ratification on US Employment Discrimination Law: Lessons from Canada, The" (2010) 42 Colum Hum Rts L Rev 541; Jennifer T Sudduth "CEDAW's Flaws: A Critical Analysis of Why CEDLAW is Failing to Protect a Woman's Right to Education in Pakistan" (2009) 38 JL & Educ 563; Angela M Banks "CEDAW, Compliance, and Custom: Human Rights Enforcements in Sub-Saharan Africa" (2008) 32 Fordham Int'l LJ 781; M Christina Luera "No More Waiting for Revolution: Japan should Take Positive Action to Implement the Convention on the Elimination of All Forms of Discrimination against Women" (2004) 13 Pac Rim L & Pol'y J 611; Shinohara Chika "Global Pressure, Local Results: The Impact of CEDAW on Working women in Japan" (2008) 13 Journal of Workplace Rights 449.

⁷¹⁸ Banks, above n 717, at 781.

⁷¹⁹ Sudduth, above n 717, at 563.

⁷²⁰ Chika, above n 717.

⁷²¹ See Michele Brandt and Jeffrey A Kaplan "The Tension between Women's Rights and Religious Rights: Reservations to Cedaw by Egypt, Bangladesh and Tunisia" (1995) 12 Journal of Law and Religion 105; Jennifer Riddle "Making CEDAW Universal: A Critique of CEDAW's Reservation Regime under Article 28 and the Effectiveness of the Reporting Process" (2002) 34 Geo Wash Int'l L Rev 605. Ann Elizabeth Mayer "Cultural Pluralism as a Bar to Women's Rights: Reflections on the Middle Eastern Experience" in Andrea Wolper and Julie Peters (eds) *Women's Rights, Human Rights: International Feminist Perspectives* (Routledge, New York, 1995). Rebecca J Cook "Reservations to the Convention on the Elimination of All Forms of Discrimination against Women" (1989) 30 Va J Int'l L 643.

⁷²² Raday, above n 693, at 516.

not look at the gendered nature of these violations, despite it being a significant factor affecting women's rights. In 2012, Byrnes and Freeman's global study on the impact of CEDAW used data from a variety of sources, mostly focusing on legislative reform, modifications to reservations, and references to CEDAW standards by law authorities, advocates, and courts in a domestic system (Figure 11).⁷²³ This study concluded that CEDAW impact has "often been slow and hard-won,"⁷²⁴ but fails to show how individuals experience discrimination and equality after CEDAW, which could potentially show the other side of the coin. By describing and documenting how States Parties violate and/ or comply with human rights treaties and measuring whether rights practices are improving or deteriorating, human rights studies can be used to assess how treaties affect rights behaviour and the development of policies.⁷²⁵

3.1.2.1 Locating Tensions between the International Norms and the Domestic Norms – The Issue of Reservations

Reservations reflect a significant level of tension between the international human rights norms in CEDAW, and domestic norms at the States Party level. CEDAW is the most heavily reserved human rights instrument.⁷²⁶ States Parties to human rights treaties are allowed to enter reservations to human rights instruments at the time of ratification,⁷²⁷ as long as they do not violate the 'object and purpose' of the treaty.⁷²⁸ However, neither CEDAW⁷²⁹ nor the VCLT provides a definition of 'object and

⁷²³ Andrew Byrnes and Marsha Freeman *The Impact of the CEDAW Convention: Paths to Equality* (World Bank 2012) at 4–5.

⁷²⁴ At 51.

⁷²⁵ Landman, above n 714, at 75.

⁷²⁶ Linda Keller "The Impact of States Parties' Reservations to the Convention on the Elimination of All Forms of Discrimination against Women" (2014) 2014 Michigan State Law Review 309 at 311.

⁷²⁷ A reservation is a unilateral statement to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State. Reservations should not be against the object and purpose of a treaty, VCLT 1969, art 2 (1).

⁷²⁸ CEDAW 1979, art 17.

⁷²⁹ Minor, above n 452, at 144.

purpose’ or any specific criteria to determine the validity of a reservation.⁷³⁰ Reservations allow consenting states to refrain from full compliance to a particular human rights treaty.⁷³¹ In practice, this means that States Parties can avoid full commitment to CEDAW by entering a reservation that allows the State to have *de jure* and *de facto* discrimination against women in its system.⁷³² Many of these States Parties to CEDAW continue to discriminate against women,⁷³³ and yet, these have been accepted by the CEDAW Committee. According to Minor:⁷³⁴

The Convention allows States to commit themselves to women’s equality, while simultaneously admitting that they have no intention of granting women equality. In effect, the Convention permits a State to deny basic rights to half of its national population under the guise of freedom of religion.

Parties to the CEDAW Convention, such as the Maldives, may ratify the treaty with reservations that are against the object and purpose of the treaty, and continue their CEDAW membership and domestic practices (cultural and religious) which are discriminatory against women.

Prior to 2007, there were no formal or informal mechanisms to establish validity of reservations, although other States Parties may oppose the reservations based on invalidity. In the early 1990s, the CEDAW Committee emphasized that certain articles such as articles 2 and 16,⁷³⁵ for example, are fundamental to the objective

⁷³⁰ Marsha A Freeman *Reservations to CEDAW: An Analysis for UNICEF* (UNICEF 2009) at 2.

⁷³¹ See ILC Law of Treaties, Yearbook of the International Law Commission (1962), Vol. II, 27, 65, para. 9; Mark E. Villiger “Commentary on the 1969 Vienna Convention on the Law of Treaties” (2009), art.19, para. 9.

⁷³² CEDAW 1979, art 28.

⁷³³ Rosenblum, above n 452, at 114.

⁷³⁴ Minor, above n 452, at 145.

⁷³⁵ Freeman, above n 730, at 13 See Report of the Committee on the Elimination of Discrimination against Women, Nineteenth Session, A/53/38/Rev.1 (1998), pp. 47-50. Article 2 refers to State Parties’ general obligations, including conforming constitutional provisions, adopting statutes and policies to implement the Convention, and taking “all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” .

of the Convention.⁷³⁶ The Committee also provided support to the Division on the Advancement of Women and the Centre for Human Rights on the issue of reservations.⁷³⁷ At the end of the 1990s, States were engaging in a dialogue with the CEDAW Committee (during treaty reporting) on the validity of the reservations entered to the Convention. By 2007, most of the human rights treaty monitoring bodies had declared that they would determine the permissibility of reservations to their respective treaties.⁷³⁸

The CEDAW Committee adopted its first guidelines on reservations in 2008. This guideline states that States Parties are required to provide justifications for continuing with reservations and on efforts to remove them.⁷³⁹ According to the Forty-first Session Report of the CEDAW Committee, Articles 2, 7, 9 and 16 of the Convention are central to the Convention objectives:⁷⁴⁰

States Parties that have entered general reservations which do not refer to a specific article, or which are directed at articles 2 and/or 7, 9 and 16 should report on the interpretation and the effect of those reservations. States Parties should provide information on any reservations or declarations they may have lodged with regard to similar obligations in other human rights treaties.

Human rights treaty bodies, including the CEDAW Committee, uses a practice of engaging States Parties in a process of persuasive dialogues, as opposed to legal confrontation, given the political considerations underlying submission, objection

⁷³⁶ At 13; See Report of the Committee on the Elimination of Discrimination against Women (Thirteenth Session), A/49/38 (1994), pp. 1-9.

⁷³⁷ At 4; See Report of the Committee on the Elimination of Discrimination Against Women, Thirteenth Session, A/49/38, at pp. 1-9.

⁷³⁸ At 3.

⁷³⁹ At 4 See Report of the Committee on the Elimination of Discrimination against Women, Forty-first Session, A/63/38 Supp (2008), pp. 78-83.

⁷⁴⁰ As quoted by At 4 A/63/38 Supp (2008), pp. 78-83.

and acceptance of reservations.⁷⁴¹ Although the CEDAW Committee can expect to have a dialogue on reservations during treaty reporting and monitoring under the 2008 guidelines, States Parties still have a discretion to refuse discussing the provision based on the fact that it was reserved.⁷⁴² The current system is not effective as States still submit reservations against the object and purpose of the treaty and, other States Parties are often late in objecting to these reservations, and even when against the VCLT rules, the Secretary General accepts States Party reservations.⁷⁴³

Reservations prevent the achievement of the CEDAW objective, and ‘permit’ discrimination against women at the local level.⁷⁴⁴ CEDAW has the largest number of reservations amongst human rights treaties, and is something that needs careful consideration. Some of the reservations entered by States Parties are particularly disconcerting, and are directly against the fundamental and universal values in CEDAW; reservations such as nationality, legal capacity, and equality within the family.⁷⁴⁵ In such situations, it can be rightly assumed that women in those States will not benefit from the equality provisions in CEDAW. For example, a high number of reservations have been placed to article 16 of the Convention that requires formal equality on rights to family, marriage, divorce and children.⁷⁴⁶ For instance, what does ratification of a Convention that seeks to end discrimination against women and create equality of the sexes within the private as well as the public sphere mean, if the country places a reservation to the provision that requires States Parties “to take all appropriate measures including legislation to modify or abolish existing laws, regulations, customs and practices which constitute

⁷⁴¹ See International Law Commission, [Alain Pellet’s report of] Meeting with Human Right Bodies (15 and 16 May 2007), ILC (LIX) RT/CRP.1 (26 July 2007), as quoted by At 3.

⁷⁴² At 4.

⁷⁴³ For a comprehensive discussion see, Kohona, above n 129.

⁷⁴⁴ Minor, above n 452, at 145.

⁷⁴⁵ Freeman, above n 730, at i.

⁷⁴⁶ Southard, above n 405.

discrimination against women?.”⁷⁴⁷ Countries following Islam, such as the Maldives, make the top of the ‘most number of reservations’ list, raising the question, is there a norm clash between CEDAW rights and the practice rights in the Maldives? This is explored later in this chapter.

3.1.2.2 *Obscure Conceptions and Approaches to Equality: CEDAW’s Substantive Equality Standard*

Substantive equality obligates States Parties not only to adopt laws and policies to eliminate discrimination (formal equality), but requires the achievement of factual equality through elimination of discriminatory outcomes.⁷⁴⁸ The idea of substantive equality becomes problematic in practice, particularly, when the term itself is yet unclear for those involved in its implementation. Equality itself has multiple meanings depending on context,⁷⁴⁹ which causes confusion⁷⁵⁰ on the state obligations under international human rights instruments. *Leyla Şahin’s* European Court of Human Rights Case⁷⁵¹ discussed the right to substantive equality of wearing a headscarf in Turkey. The reasoning used by the Court called into question the usefulness of the concept of substantive equality to understand the obligations of Turkey.⁷⁵²

Leyla Şahin was an enrolled student at the Istanbul University in 1998. Later that year, the University issued a circular notifying students with headscarves that they would not be added to the list of registered students and could not attend lectures or tutorials with the headscarf. Şahin challenged the circular before the Istanbul

⁷⁴⁷ CEDAW 1979, art 2(f).

⁷⁴⁸ Freeman, above n 499, at 235.

⁷⁴⁹ Matthew CR Craven *The International Covenant on Economic, Social, and Cultural Rights* (Clarendon Press, 1998) at 154.

⁷⁵⁰ Smith, above n 486, at 14. See argument on abandoning ‘equality’ due to its superfluous nature in Peter Westen *The Empty Idea of Equality* (Harvard Law Review Association, 1982).

⁷⁵¹ *Leyla Şahin v Turkey*, App. No. 44774/98, 2005-XI Eur. Ct. H.R. 39. Available at www.echr.coe.int, accessed at 7.45 am, 27.08.2015.

⁷⁵² Rachel Rebouché “The Substance of Substantive Equality: Gender Equality and Turkey’s Headscarf Debate” (2008) 24 Am U Int’l L Rev 711 at 713.

Administrative Court, arguing that the ban infringed her right to respect for private and family life, right to freedom of thought, conscience, and religion, and right to non-discrimination under the ECHR as well as her right to education under the First Protocol to the ECHR. The Istanbul Administrative Court dismissed her application, and the Supreme Administrative Court rejected her appeal. Şahin continued to wear a headscarf and was ultimately suspended from the university for a semester. She returned to the Istanbul Administrative Court and petitioned for her suspension to be set aside, but her application was dismissed again. In 1999, Şahin left Turkey and enrolled at Vienna University and pursued her case before the European Court of Human Rights. In 2004, the Court upheld the ban stating that there was no violation of a right to religious expression. The other claims were again, dismissed. On appeal to the Grand Chamber of the same Court, the Court upheld the headscarf ban and stated that Şahin's right to religious expression has been violated under Article 9 (1) of ECHR, but justified under Article 9 (2) of the same Convention, which states that such expression "shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society, health or morals, or for the protection of the rights and freedoms of others".⁷⁵³ The Court further stated that the ban was prescribed by law and legitimate because the law furthers secular interests of the State by protecting the rights and freedoms of others and maintaining public order. According to the Court, the ban embodied pluralism, secularism and gender equality.⁷⁵⁴

The majority decision ruled that the headscarf symbolised restriction, imposition and mandatory duties which were contrary to secularism.⁷⁵⁵ According to the Court, the official endorsement of a headscarf would be discriminatory towards secular Muslims and non-Muslims who did not wear headscarves. The Court also declared

⁷⁵³ ECHR, Art. 9 (2).

⁷⁵⁴ Rebouché, above n 752, at 719.

⁷⁵⁵ Leyla Şahin v Turkey [Grand Chamber Judgment], 2005 - XI, above n 751.

that the values associated with the wearing of a headscarf were incompatible with those of contemporary society.⁷⁵⁶

In deep contrast, in 2005, the CEDAW Committee expressed its concern over the Turkish headscarf ban.⁷⁵⁷ Amongst other questions, the CEDAW Committee asked why headscarves were singled out as contraband religious symbols and as the only one that potentially offended a woman's freedom of religious expression; and if the ban itself was a form of oppression, mostly singling out women from rural areas.⁷⁵⁸ Turkey's answer to the questions raised by the CEDAW Committee were explained by using regulations on dress, i.e. formal equality.⁷⁵⁹ Whilst the case demonstrates some of the issues associated with how substantive equality can be viewed from different perspectives,⁷⁶⁰ the main problem here is that it is unclear if the ban would promote exclusion of more women from education in Turkey, or whether it would promote inclusion of more women from diverse backgrounds in education. This case shows that the final decision as to what will be deemed as substantive equality, will be decided by the individual States Party.⁷⁶¹

International human rights are enforced through transnational legal processes,⁷⁶² and are based on the interactions between institutions, interpretations and internalisation of universal norms. In order to have local effect, these norms need to permeate the "consciousness of the ordinary people around the world."⁷⁶³ The success of the international human rights regime therefore, depends on its

⁷⁵⁶ Leyla Şahin v Turkey [Grand Chamber Judgment], 2005 - XI, above n 751.

⁷⁵⁷ Rebouché, above n 752, at 730.

⁷⁵⁸ At 730–731.

⁷⁵⁹ At 731; also see CEDAW/C/SR678, at 26.

⁷⁶⁰ See the views expressed in the majority judgment, the dissent and opinions of the CEDAW Committee.

⁷⁶¹ Rebouché, above n 752, at 734.

⁷⁶² Koh, above n 641.

⁷⁶³ Sally Engle Merry *Human rights and gender violence* (University of Chicago Press, Chicago, 2006) at 2; Reproduced in, Philip Alston and Ryan Goodman *International Human Rights in Context*, Henry J Steiner (ed) (3rd ed, Oxford University Press, Oxford UK ; New York, 2007) at 524.

acceptance at the local level,⁷⁶⁴ and the transition may not be free of challenges.⁷⁶⁵ For instance, although substantive equality is a valuable tool for the achievement of women's equality in both the private and public spheres, cases such as Şahin reveal deeper problems, associated with the application of substantive equality as a principle, because of underlying tensions between the idealised principles in international human rights regimes and individual rights, practiced at the domestic level, which are often based on cultural and traditional values of the individual States Party. Thus, the international human rights framework needs more support and acceptance from culturally diverse systems.⁷⁶⁶

3.2 Understanding Norm Clashes: Culture, Religion and a CEDAW Right to Public Life

One of the biggest challenges for CEDAW as an international human rights instrument has been the constant local struggles of the convention, often based on cultural and religious ideals which are in conflict with CEDAW's paradigms of equality. Culture and religion are also the reason why CEDAW is the most reserved human rights treaty to date. Such ideals challenge CEDAW, and its ideals of equality between men and women in all spheres of life.⁷⁶⁷ For instance CEDAW requires States Parties to eliminate persisting adverse norms, practices and traditions as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life.⁷⁶⁸ However, States Parties often use religion and culture to rationalise and legitimise discrimination against women.⁷⁶⁹ Reservations based on these ideals have been

⁷⁶⁴ Boaventura de Sousa Santos *Toward a New Legal Common Sense* (Cambridge University Press, Scotland, 2002) at 275.

⁷⁶⁵ Merry, above n 763, at 2.

⁷⁶⁶ Santos, above n 764, at 276; See, Abdullahi Ahmed An-Na'im *Toward An Islamic Reformation* (Syracuse University Press, Syracuse, 1990).

⁷⁶⁷ Raday, above n 693, at 515.

⁷⁶⁸ CEDAW 1979, art 2 - 5.

⁷⁶⁹ Raday, above n 693, at 516.

communicated, and accepted by the UN Secretary General, and thus, both *de jure* and *de facto* discrimination against women continues in many parts of the world.⁷⁷⁰

3.2.1 *Subordination, Sex and Social Divisions in Society*

Aristotle regarded participation in public life as a crucial element of society.⁷⁷¹ He claimed that “moral goodness and reason are attainable only through participation in public life, and this involvement is reserved to free, adult males.”⁷⁷² Aristotle, who was convinced that every society is built upon two basic spheres – private and public – argued that “man is by nature a political animal” and “good life” is only attainable through engagement in the public life of a state.⁷⁷³ This aspect of life, he argued, was for the superior beings. This superiority vested in the donor of the human life (depicted by the seed) and the one who is able to ‘mount’ (the ‘active’ component).⁷⁷⁴ He viewed women as ‘incubators’ and as mere ‘recipients’ of the ‘seed’.⁷⁷⁵ Public life was solely for the active agent -- men.⁷⁷⁶ According to Aristotle, certain groups of the human race were naturally superior to the others.⁷⁷⁷ He argued that societies had two basic classes: masters (those that were able to

⁷⁷⁰ At 517; In most systems where women’s political and civil rights are secured *de jure*, women are still grossly underrepresented in political and decision making positions. The influences on women’s right to economic equality in a global surge of neoliberalism are complex and contradictory: while we see the rise of women’s education and workforce participation, we are also aware of women’s continuing high share of poverty, wage, and promotion gaps in employment and increased exploitation and trafficking of women and girls for prostitution. Furthermore, the division of power and responsibility in the family reflects continuing gender hierarchy. In all areas, public and family, violence against women continues unabated.

⁷⁷¹ Martine Aliana Rothblatt *The Apartheid of Sex* (Crown Publishers, New York, 1995) at 65; Also see Janet Rifkin “Toward a Theory of Law and Patriarchy” (1980) 3 Harv Women’s LJ 83.

⁷⁷² Rifkin, above n 771, at 91.

⁷⁷³ Gurcan Kocan *Models of Public Sphere in Political Philosophy* (02 Eurosphere 2008).

⁷⁷⁴ Rothblatt, above n 771, at 35.

⁷⁷⁵ At 35.

⁷⁷⁶ Rifkin, above n 771, at 91.

⁷⁷⁷ John R Kroger “The Philosophical Foundations of Roman Law: Aristotle, the Stoics, and Roman Theories of Natural Law,” (2004) Wis L Rev 905 at 919.

reason) and slaves (those that were unable to reason).⁷⁷⁸ He argued that nature or God-given rules were visible within societies and must be maintained.⁷⁷⁹ Slavery and patriarchy were examples of such universal social institutions formed in accordance with the universal law, and although they appear to be unequal, these practices are just because they are based on nature.⁷⁸⁰ This natural order, he explains, was a prerequisite to natural justice.⁷⁸¹ *Naturalisation* was therefore, amongst the very first theories that supported the apartheid of the sexes.

The ideology of confining women's lives to the private sphere was built upon years of conscious social and legal regulations to control women's lives and retain them as a subordinate group. The first traces of this was seen prior to Western civilisation in the Neolithic period where inter-tribal exchange of women took place, not only to avoid wars by cementing marriage alliances, but also to increase agricultural production.⁷⁸² More women meant more women to bear children to work in the fields.⁷⁸³ Women became a resource, a commodity which could be conquered and enslaved, and whose sexual services were part of their labour; the children they had, became the property of their masters.⁷⁸⁴ By the second millennium B.C., women in Mesopotamian societies could be sold into marriage or prostitution or to advance economic interests of the family.⁷⁸⁵

Although what was commodified was women's sexuality and their reproductive function, because their bodies were controlled in such a way, they became physically and psychologically restrained in society.⁷⁸⁶ These were the beginnings

⁷⁷⁸ At 920.

⁷⁷⁹ Rothblatt, above n 771, at 35.

⁷⁸⁰ Kroger, above n 777, at 919.

⁷⁸¹ Richard Oliver Brooks *Cicero and modern law* (Ashgate, Farnham, Surrey, England; Burlington, VT, 2009) at 240.

⁷⁸² Gerda Lerner *The Creation of Patriarchy* (Oxford University Press, New York, 1986) at 212.

⁷⁸³ At 212.

⁷⁸⁴ At 212–213.

⁷⁸⁵ At 213.

⁷⁸⁶ At 214.

of the modern day gender-defined roles and social control, and became dominant during the second millennium B.C.⁷⁸⁷ Male domination thus precedes private property and the state.⁷⁸⁸ Egalitarian societies (hunter-gatherer) did have sexual divisions, and though primarily determined by child-bearing functions of the woman, had separate and equal functions for both men and women.⁷⁸⁹ Vestiges from ancient civilisations offer tantalising glimpses of lives of women and their roles in the temple, in the palace and also in the economy, also providing evidence of key roles women played outside their homes.⁷⁹⁰

In 1996, Martine Rothblatt argued that men feared equality with women for two main reasons: due to women's ability to bear children which was viewed as immortality, and also a fear of revenge from women who had suffered years of subordination and inequality.⁷⁹¹ Therefore, women's lives needed to be controlled in order to continue the apartheid in a sustainable way.⁷⁹² Rothblatt argued that evidence for men's jealousy over the menstruating and life-creating bodies of women is still evident in many customary rituals performed even today that have traditional bleeding practices involving men.⁷⁹³

Over the years, subordination of women has taken many forms and theories. Whilst most of them fail to take ground in scientific fact, they have taken shape in many societies and influence laws and practices that support female subordination. This also explains why legal change does not always bring social re-ordering.⁷⁹⁴ Children are socialised to fit into pre-determined roles constructed by individual societies as those fitting a superior-male and subordinate-female role. Human

⁷⁸⁷ At 216.

⁷⁸⁸ At 96.

⁷⁸⁹ At 29.

⁷⁹⁰ At 15.

⁷⁹¹ Women who practiced old matriarchal folklore were avoided by put to death in millions. For a discussion see, Martine Aliana Rothblatt *The apartheid of sex* (Pandora, London, 1996).

⁷⁹² Rothblatt, above n 771, at 36.

⁷⁹³ Rothblatt, above n 771, at 34.

⁷⁹⁴ Rifkin, above n 771, at 84.

geographies indicate that women were controlled and excluded from public life in this structure. Even if they did want to participate, they would not have had any time for a social life, let alone a public one. Their lives began with childbirth and ended with childbirth.⁷⁹⁵ Portraits of women as gifts, property, vessels of reproduction and evil, continue to make very obvious contributions to the development of laws and systems of governance within societies supporting limited participation of women in social and political life.⁷⁹⁶ Female subordination is therefore neither universal, nor natural.⁷⁹⁷ Feminist theory claims that patriarchy is the oppressive unjust social system that enforces gender roles.⁷⁹⁸ Male dominance is not biological, and there is no other scientific evidence to determine the superiority of men over women.⁷⁹⁹

Patriarchy, the ‘rule of the father,’⁸⁰⁰ itself is only about 2500 years old.⁸⁰¹ Historically, the term patriarchy was used to refer to autocratic rule by the male head of a family. However, in modern times, it has a wider application referring to social systems in which power is primarily held by adult men.⁸⁰² It is, therefore, untrue that women have never had a place in public life.

⁷⁹⁵ Rothblatt, above n 771, at 66.

⁷⁹⁶ Rothblatt also argued that all of these ideologies in the Greco-Roman societies have influenced the major religions including the Abrahamic faiths, Buddhism and Hinduism that creates suspicion and shame with regards to the female body. Until today, a women’s active engagement in the society is perceived “not a place for women”, less harsh than the former titles of “possessed by the devil” or “sinner”.

⁷⁹⁷ See Chapter 1 for a discussion, Lerner, above n 782.

⁷⁹⁸ Deniz Kandiyoti “Bargaining with Patriarchy” (1988) 2 *Gender and Society* 274.

⁷⁹⁹ On history, women and gender, see Rothblatt, above n 771 and Lerner, above n 782.

⁸⁰⁰ Helen Tierney *Women’s Studies Encyclopedia* (Greenwood Publishing Group, CT, United States, 1999) at 1048; Andrea O’Reilly *Encyclopedia of Motherhood* (SAGE Publications, 2010).

⁸⁰¹ Lerner, above n 782, at 212.

⁸⁰² Anthony Giddens and Simon Griffiths *Sociology* (Polity Press, Cambridge, UK, 2006) at 473; George Ritzer and J Michael Ryan *The Concise Encyclopedia of Sociology* (1 edition ed, Wiley-Blackwell, Chichester, West Sussex, UK ; Malden, MA, 2011) at 441–442; David AJ Richards *Resisting Injustice and the Feminist Ethics of Care in the Age of Obama* (1st edition ed, Routledge, Milton Park, Abingdon, Oxon, 2013) at 143.

3.2.2 *Stereotypes and Public Life*

Early childhood socialisation internalises difference and hierarchy and “plays a crucial role in reproducing inequalities and undercutting resistance”.⁸⁰³ Childhood stories, fairytales and myths all embody gender stereotypes: men as masculine, controlling, independent, worldly, assertive, rational, and tough and women as “weak, dependent, naïve, peaceful, emotional, gentle and often unpredictable”.⁸⁰⁴ Not all men, nor all women fit into this hegemonic model, but they are expected to.⁸⁰⁵ Heteronormativity asserts these distinctions between men and women and “cultivates gendered stereotypes, dichotomies, practices and institutions.”⁸⁰⁶ Furthermore, these structures are also maintained through customs, policies and legislations.⁸⁰⁷

Stereotypes exist in all cultures and affect how people are viewed in societies.⁸⁰⁸ Stereotypes help bracket complex and evolving phenomena in societies, and produce and sustain social divisions and hierarchical orders.⁸⁰⁹ Gender stereotyping provides expectations for both men and women and has long served as the key obstacle to women’s equal representation in politics.⁸¹⁰ Gender, “shapes social structures and relations ... and many other spheres in ways that entail unequal access to resources and the undervaluing of the views of certain groups”.⁸¹¹

⁸⁰³ Anne Sisson Runyan and V Spike Peterson *Global Gender Issues in the New Millennium* (4th ed, Westview Press, Boulder, CO, 2014) at 57–58.

⁸⁰⁴ At 58.

⁸⁰⁵ At 58.

⁸⁰⁶ At 59.

⁸⁰⁷ At 59.

⁸⁰⁸ At 42–43.

⁸⁰⁹ At 43.

⁸¹⁰ Richard L Fox and Jennifer L Lawless “Gendered Perceptions and Political Candidacies: A Central Barrier to Women’s Equality in Electoral Politics” (2011) 55 *American Journal of Political Science* 59 at 60.

⁸¹¹ Elaine Unterhalter “Global inequality, capabilities, social justice: The millennium development goal for gender equality in education” (2005) 25 *International Journal of Educational Development* 111 at 112.

Gender equality, which often intersects with equality in other areas of social division, thus entails reflecting critically on the causes and consequences of these gendered forms of power, value and distribution, and transforming those that do not provide women and men with lives they have reason to value.

In most modern social constructions, politics is a male function.⁸¹² Women have been either forcefully excluded via legislative and other formal impediments or are socially burdened with child and family duties so that they are unable to pursue these roles. Women's oppressed world is directly linked to their confinement to the private sphere,⁸¹³ an inviolable that is only accessible to and dominated by a man. When homes are seen as private, it allows for more violence and inequality for women because it is seen as an area that should not be interfered with or regulated by the State. For this reason, it is easy to understand how the public private binary is more problematic to women and easy to believe that there are no *a priori* boundaries in human societies.⁸¹⁴ Fraser argues that "such bracketing usually works to the advantage of dominant groups in society and to the disadvantage of subordinates".⁸¹⁵

Multiple political and social empirical studies have focused on gauging how gendered perceptions affect women's potential to participate in public life.⁸¹⁶ This body of literature shows that perceptions of politically relevant skills and traits and campaigns and electoral environments, inhibit women from pursuing political

⁸¹² Fox and Lawless, above n 810, at 60; also see Carroll 1994 and Enloe 2004.

⁸¹³ Catharine A MacKinnon *Toward a Feminist Theory of the State* (Harvard University Press, US, 1989) at 191.

⁸¹⁴ Nancy Fraser "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy" [1990] 25/26 *Social Text* 56 at 71.

⁸¹⁵ At 64.

⁸¹⁶ See, Peters and Wolper, above n 404; Lisa Duggan *The Twilight of Equality?* (Beacon Press, Boston, Massachusetts, 2012); Alice S Rossi *Gender and the Life Course* (Transaction Publishers, Hawthorne, New York, 1985); Richard L Fox and Jennifer L Lawless "Gendered Perceptions and Political Candidacies: A Central Barrier to Women's Equality in Electoral Politics" (2011) 55 *American Journal of Political Science* 59; Tuvia Melamed "Barriers to Women's Career Success: Human Capital, Career Choices, Structural Determinants, or Simply Sex Discrimination" (1995) 44 *Applied Psychology* 295; Ronald Inglehart and Pippa Norris "Cultural Obstacles to Equal Representation" (2001) 12 *Journal of Democracy* 126.

careers. Women are found to be generally less competent,⁸¹⁷ but are also stricter critics of their own competencies, taking significant measures to avoid risks.⁸¹⁸ Studies also show that whilst men tend to express their competencies more confidently from an early age,⁸¹⁹ women tend to undervalue their skills and achievements.⁸²⁰ These characteristics continue into their adult lives⁸²¹ and can have a significant impact on the choices women make, including decisions to engage in decision-making.⁸²²

Acquiring or exhibiting characteristics that if possessed by a man will be heralded by society as positive – dominance, confidence, assertiveness, and self-promotion – if possessed by a woman are seen as a negative.⁸²³ These factors of societies allowed traditional public life to be dominated with men. The prevailing attitudes and traditionally disadvantaged positions significantly affect women’s access to economic resources and decision-making bodies at all levels.⁸²⁴ Over time, whereas men become more able and confident to pursue these roles, women become less confident about these roles, preventing even highly qualified women from pursuing these roles.⁸²⁵ For these reasons, gender parity will remain a myth unless women become more confident about their abilities to run for office.⁸²⁶ Given these

⁸¹⁷ Uri Gneezy, Muriel Niederle and Aldo Rustichini “Performance in Competitive Environments: Gender Differences” (2003) 118 *The Quarterly Journal of Economics* 1049.

⁸¹⁸ James P Byrnes, David C Miller and William D Schafer “Gender differences in risk taking: A meta-analysis” (1999) 125 *Psychological Bulletin* 367.

⁸¹⁹ Frank Pajares “Gender and Perceived Self-Efficacy in Self-Regulated Learning” (2002) 41 *Theory into Practice* 116 at 116–25; also see Kristen C Kling and others “Gender differences in self-esteem: A meta-analysis” (1999) 125 *Psychological Bulletin* 470.

⁸²⁰ Fox and Lawless, above n 810, at 61.

⁸²¹ At 61.

⁸²² “Women and Political Participation”, above n 458.

⁸²³ Fox and Lawless, above n 810, at 60.

⁸²⁴ On Implementing the internationally agreed goals and commitments in regards to gender equality and empowerment of women, United Nations Commission on the Status of Women *Report on the fifty-fourth Session (13 March and 14 October 2009 and 1-12 March 2010)* (E/2010/27 (E/CN.6/2010/11)) at 51, at para 4.

⁸²⁵ Sue Thomas and Clyde Wilcox *Women and Elective Office* (Oxford University Press, New York, 2005) at 12. Fox and Lawless, above n 810, at 60.

⁸²⁶ Fox and Lawless, above n 810, at 60; Also see Jennifer L Lawless, Fox, Richard Logan and Jennifer L Lawless *It still takes a candidate* (Cambridge University Press, Cambridge, 2010).

characteristics of women, many women choose not to participate in both political and non-political decision-making functions that are already dominated by men and that can turn out to be significantly confrontational and competitive for most women.⁸²⁷ This withdrawal maintains the traditional exclusion of women from public life and prevents women from participating in the future.⁸²⁸ This means that socio-cultural and traditional stereotyping of women preserves a culture that prevents women from becoming electoral candidates.⁸²⁹

Despite comparable credentials, backgrounds, and experiences, accomplished women are substantially less likely than similarly situated men to perceive themselves as qualified to seek office. Importantly, women and men rely on the same factors when evaluating themselves as candidates, but women are less likely than men to believe they meet these criteria. Not only are women more likely than men to doubt that they have skills and traits necessary for electoral politics, but they are also more likely to doubt their abilities to engage in campaign mechanics. These findings are critical because the perceptual differences we uncover account for much of the gender gap in potential candidates' self-efficacy and ultimately hinder women's prospects for political equality.⁸³⁰

A few decades ago, women were prevented from equal participation in politics in many parts of the world through overt discrimination by voters and electoral gatekeepers⁸³¹ and also because only few women had the necessary qualifications and financial independence that was key to successful political mechanics.⁸³²

⁸²⁷ Fox and Lawless, above n 810, at 62. see Julie Dolan "The Senior Executive Service: Gender, Attitudes, and Representative Bureaucracy" (2000) 10 J Public Adm Res Theory 513; Katherine C Naff "Subjective vs Objective Discrimination in Government: Adding to the Picture of Barriers to the Advancement of Women" (1995) 48 Political Research Quarterly 535; Diane D Blair and Jeanie R Stanley "Personal Relationships and Legislative Power: Male and Female Perceptions" (1991) 16 Legislative Studies Quarterly 495.

⁸²⁸ Fox and Lawless, above n 810, at 62.

⁸²⁹ At 70.

⁸³⁰ At 59.

⁸³¹ At 59.

⁸³² At 60.

However, gendered perceptions or gender power differentials continuously reinforced through situational and structural obstacles for women's participation in public life is a bigger barrier.⁸³³ Gender continues to be used to “justify, naturalise, and institutionalise all manner of social dichotomies and hierarchies”.⁸³⁴

3.2.3 Religion in the Exclusion of Women from Public Life

Judaism, Christianity and Islam are the most widely observed religions in the world at present.⁸³⁵ A 2015 Pew study used data from 234 countries and territories and predicted that differently to what was previously believed – ‘that religions will go away like the dinosaurs’ - Islam, the world's fastest-growing faith, will leap from 1.6 billion to 2.76 billion and Christianity will increase from 2.17 billion to 2.92 billion, comprising more than 31 percent of the world's population by 2050.⁸³⁶ Thus, according to the predictions of this study, more than six out of every ten people on earth in 2050, will be either Christian or Muslim (Figure 8 and 9).⁸³⁷ This prediction alone, makes a CEDAW study within different cultural contexts, particularly religious contexts, very timely and useful for its future engagement and implementation at the local level.

⁸³³ At 60.

⁸³⁴ Runyan and Peterson, above n 803, at 55.

⁸³⁵ Pew Research Center “The Global Religious Landscape” (18 December 2012) Pew Research Center's Religion & Public Life Project <www.pewforum.org>.

⁸³⁶ Daniel Burke “The fastest growing religion in the world is ...” (4 April 2015) CNN <www.cnn.com>.

⁸³⁷ Pew Research Center *The Future of World Religions: Population Growth Projections, 2010-2050* (Pew Research Center 2015) at 8.

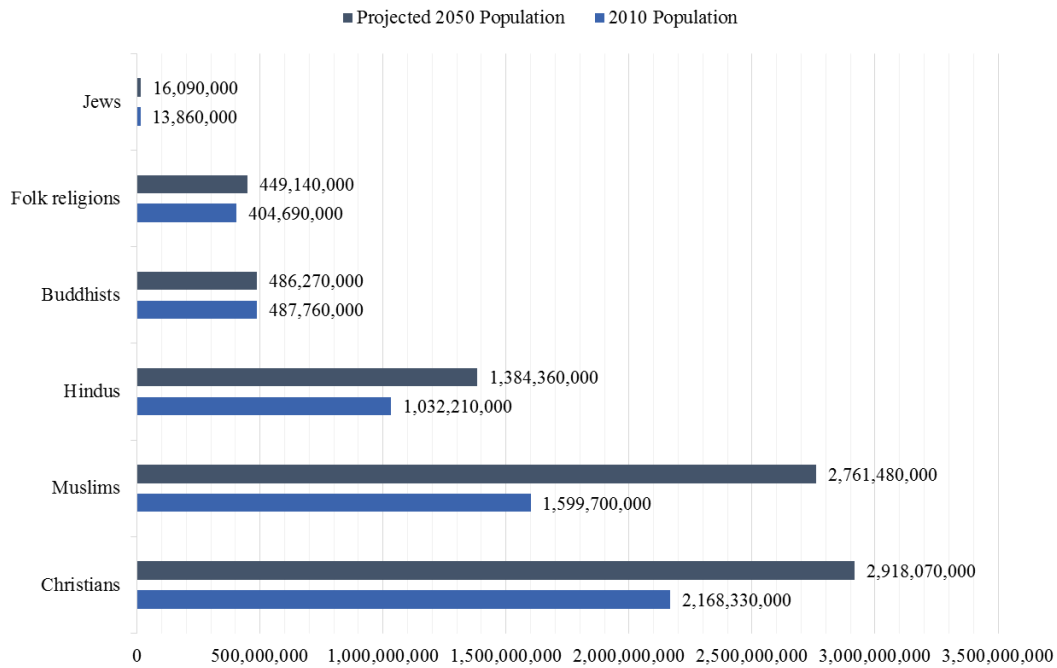


Figure 8: Size and Projected Growth of Major Religious Groups

Source: The Future of World Religions: Population Growth Projections, 2010-2051, Pew Research Center.

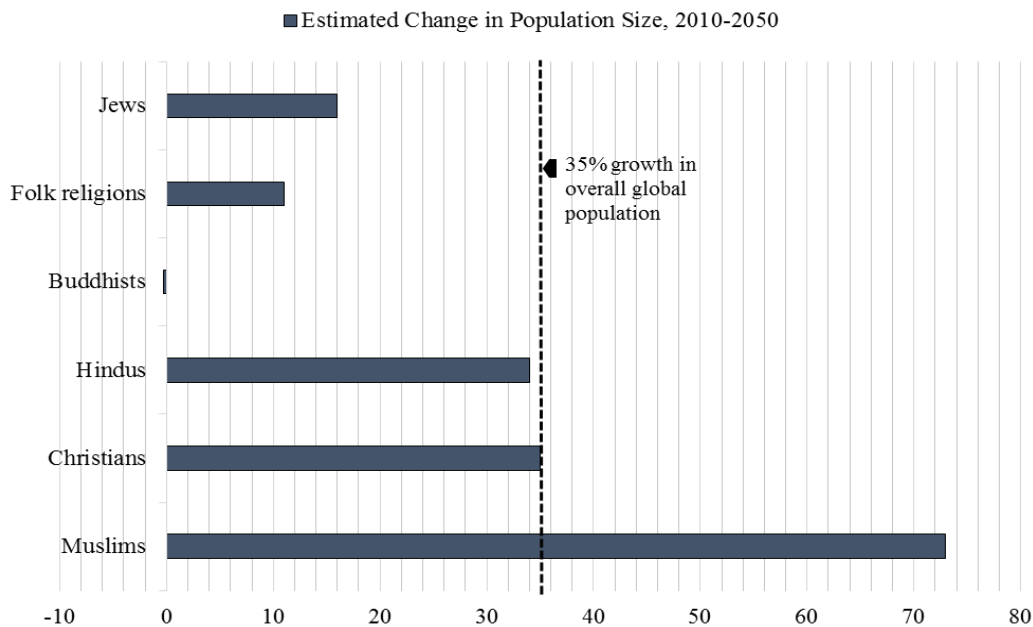


Figure 9: Islam Growing Fastest (Muslims are the only major religious group projected to increase faster than the world's population as a whole)

Source: The Future of World Religions: Population Growth Projections, 2010-2050, Pew Research Center.

Rifkin argued that law and religion reflect, preserve and also transform pre-existing patriarchal norms to serve the interests of the bourgeoisie.⁸³⁸ Subordination of women, to the extent that we see in modern societies, was thereby achieved through organized religion.⁸³⁹ Moreover, religion also gives men authority over women and makes resistance difficult, because the fear of divine punishment keeps things in place.⁸⁴⁰ Religion promised supreme compensation in the afterlife for women on condition that they obediently suffer injustice in this life.⁸⁴¹ The male is the ‘Godhead’ in the family, the primary social unit and the status of women is therefore and similarly secondary in the three major religions; Judaism, Christianity and Islam.⁸⁴² It is however, often argued that, men and women in these religions have complementary rights and duties, rather than equal rights.⁸⁴³

All polytheistic, monotheistic and quantitative patriarchy theories indicate a conscious effort to mark the difference of the sexes and more evidently, the superiority of the male over female.⁸⁴⁴ To this end, science has significantly invested in the quest to identify a superior trait that can justify female subordination.⁸⁴⁵ None have been as successful as the major religions that emphasize male superiority is God-given, depicting righteousness, inherent goodness, and truthfulness.⁸⁴⁶ Religion and culture thus position women in a subordinate role, at best, providing women with a function and a role to complement men.⁸⁴⁷ Many of the reservations made to CEDAW provide evidence to this claim.

⁸³⁸ Rifkin, above n 771, at 84.

⁸³⁹ See chapter 1, *The Devil’s Gateway: Religion and the Subordination of Women* Sheila Jeffreys *Man’s dominion* (Routledge, London, 2012) at 17.

⁸⁴⁰ At 17.

⁸⁴¹ At 22.

⁸⁴² At 21.

⁸⁴³ Nkiru Nzegwu “Gender Equality in a Dual-Sex System: the Case of Onitsha” (1994) 7 *Canadian Journal of Law & Jurisprudence* 73 at 30.

⁸⁴⁴ Rothblatt, above n 771, at 46–53.

⁸⁴⁵ At 45. Tests to determine whether there are any superior traits have included physiological, psychological and behavioural aspects of human beings.

⁸⁴⁶ At 42.

⁸⁴⁷ Raday, above n 693, at 515.

It is the most heavily reserved human rights treaty.⁸⁴⁸ States Parties following Islam have likewise placed a large number of reservations to CEDAW, granting secondary rights to women, mostly in the areas of family and decision-making within the State.⁸⁴⁹

3.2.3.1 *Islam and a CEDAW Right to Public Life: Complementary or Conflicting Norms?*

The creation of equal rights for women through an international human rights instrument is a historical moment for proponents of women's rights. However, the regulatory strength of any human rights instrument of this nature eventually lies within the domestic bodies ratifying this Convention. Many States are not fully in agreement with the enumerated rights in CEDAW and some States are unable to commit to these human rights for economic, social and cultural reasons.⁸⁵⁰ There are significant difficulties in the application of the non-discrimination principles for many reasons. These problems begin with the understanding of the terms equality and discrimination. For example, in many parts of the world, having different evidentiary burdens for men and women is not considered discriminatory.⁸⁵¹ Furthermore, even if there are sex/ gender-based distinctions, they are rarely

⁸⁴⁸ Maysa Bydoon "Reservations on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Based on Islam and its Practical Applications in Jordan: Legal Perspectives" (2011) 25 Arab LQ 51; Andrew C Byrnes and Marsha Freeman *The Impact of the CEDAW Convention: Paths to Equality* (UNSW Law Research Paper No.2012-7 Social Science Research Network 2012); Cheshmak Farhoumand-Sims "CEDAW and Afghanistan" (2009) 11 Journal of International Women's Studies 136; Ann Elizabeth Mayer "Reflections on the Proposed United States Reservations to CEDAW: Should the Constitution Be an Obstacle to Human Rights" (1995) 23 Hastings Const LQ 727; Michele Brandt and Jeffrey A Kaplan "Tension between Women's Rights and Religious Rights: Reservations to Cedaw by Egypt, Bangladesh and Tunisia, The" (1995) 12 J L & Religion 105; Brandt and Kaplan, above n 721.

⁸⁴⁹ Ann Mayer Elizabeth "Islamic Reservations to Human Rights Conventions" in *Recht van de Islam* (1988) at 25-45.

⁸⁵⁰ See Ryan Goodman & Derek Jinks "How to Influence States: Socialization and International Human Rights Law" (2004) 54 DUKE L.J. 621; Oona A. Hathaway "Do Human Rights Treaties Make a Difference?" (2002) 111 YALE L.J. 1935.

⁸⁵¹ Alda Facio and Martha I Morgan *Equity or Equality for Women; Understanding CEDAW's Equality Principles* (TM Graphic Sdn Bhd, Kuala Lumpur, Malaysia, 2009) at 10.

regarded as discrimination against women.⁸⁵² The inconsistencies in the interpretation and application of these concepts and understanding of the rights have greatly minimised its potential to address inequalities.⁸⁵³

Rights in Islam are derived from two main sources: *Qur'ān* and *Ḥadīth* (Prophetic tradition).⁸⁵⁴ What Muslims call Shari'ah today, started with the collection and gathering of authoritative records of *Ḥadīth* (actions, sayings and things upon which Prophet Mohamed was silent) and the development of a juridical methodology (*usul-al-fiqh*) “to regulate the derivation of principles and rules from the *Qur'ān* and *Ḥadīth*”.⁸⁵⁵ The developing jurisprudence was thus influenced by the surrounding political, social and demographic factors in the eight and ninth century CE.⁸⁵⁶ To understand the *Qur'ān*, references must be made to the volumes of literary criticism and hermeneutical theory forwarded by Muslim jurists. This must be well differentiated from the fact that Shari'ah, the contextual interpretation of the source, is not the command in itself.⁸⁵⁷ The process of interpretation and re-interpretation of the *Qur'ān* and *Ḥadīth*, are human, not divine.⁸⁵⁸ Consideration must also be made of the fact that women were totally excluded from taking part in this process of interpretation.⁸⁵⁹

⁸⁵² CEDAW defines discrimination in article 1 of the Convention as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

⁸⁵³ MacNaughton, above n 473, at 1; Also see for example, UN Human Rights Committee (HRC), General Comment No. 18, Non-Discrimination (1989), Compilations of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. No. HRI/GEN/1/Rev.6 (2003), at 146.

⁸⁵⁴ Abdullahi Ahmed An-Na'im “Human Rights, Universality and Sovereignty: The Irrelevance and Relevance of Sharia” (2013) 4 Glob Policy 401 at 401. Quranic Verse (al-Hashr) 59:7 states “And whatsoever the Messenger gives you, take it; and whatsoever he forbids you, abstain (from it). And fear Allah ...”.

⁸⁵⁵ At 401.

⁸⁵⁶ At 402.

⁸⁵⁷ At 402.

⁸⁵⁸ At 401, 406.

⁸⁵⁹ See, Amina Wadud *Qur'an and Women: Reading the Sacred Text from a Woman's Perspective* (Oxford University Press, New York, Oxford, 1999).

As the founding document of the religion, the *Qur'ān* was revolutionary in many aspects. It provided more protection and rights to women than any other text of its time and gave women rights to inheritance, restricted polygamy, prohibited female infanticide and gave women the ownership of *mahr* (the closest term - dowry).⁸⁶⁰ Muslim women enjoyed full legal equality, owned property and also enjoyed full rights in marriage and divorce,⁸⁶¹ at a time when most countries in the world had not introduced these in their legal systems. Thus, women enjoyed both public and the private spheres of life.⁸⁶² These features of Islam also show that *Qur'ānic* injunctions give a woman complete control over her earnings and possessions and do not require her to spend on her marriage. Islam had accorded women civil, political and property rights, including rights of inheritance. A wife under Islamic law, may seek a dissolution of the marriage on the grounds that the husband is either incapable of or is failing to maintain the marital relationship. A daughter receives only one half of the inheritance in comparison to a son. However, a son, will go on to have multiple financial responsibilities that a daughter will not have to bear. Inheritance rights are crucial for Muslim women because distribution and control of property and assets significantly affect their ability to enjoy stable and fulfilling lives and to exercise their rights.

Based on the ideology of male guardianship over females, Shari'ah law today has defined specific roles for men and women within marriage and family life.⁸⁶³ Most contradictions in terms of rights under Islam and under human rights law, exist in the area of family matters; marriage, divorce, child custody and inheritance. For example, discrimination against women can be manifested in the practice of polygamy, divorce, men being considered as the rightful and natural guardian of children, domestic violence, and travel or outside work, and a strongly emphasized

⁸⁶⁰ Guity Nashat *Women and Revolution in Iran* (Westview Press, Colorado, 1983) at 38; Also see, Ann Elizabeth Mayer *Islam and Human Rights* (1st ed, Westview Press, Colorado, 1991) at 94.

⁸⁶¹ Mayer, above n 860, at 94. Also see Wadud, above n 859, at 9.

⁸⁶² Mayer, above n 860, at 94.

⁸⁶³ An-Na'im, above n 854, at 405.

traditional gender role and stereotyped attitude towards women. Patriarchal interpretation of the Islamic Sharia law along with traditional practices and customs created an unequal situation where men get priority and superiority in the family relations which consequently put women in the situation of low self-esteem and powerlessness. Women continue to suffer profound and pervasive human rights violations, such as gender-based violence in the public and private spheres.

There is no text in the *Qur'ān* or the *Hadīth* which directly forbids women taking positions of leadership within the State such as becoming a president, a prime-minister, and minister of the state or a judge. Muslim jurists who say that women are not allowed to take on senior positions within the State, base their arguments on the following *Qur'ānic* verse:⁸⁶⁴

Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend [to support them] from their means.

Islamic jurists have in the past avoided discussing women's leadership and decision-making rights. Some argue that women are not qualified to take positions of responsibility within the State, particularly that of head of State, or becoming a judge, although women who were directly related to the Prophet, and included his wives and his daughters, have taken such positions of responsibility in the history. The *Qur'ān* has specific provisions in terms of equal education for both men and women, and also right to participate in the public life of their countries.

In 1999, Amina Wadud argued in *Qur'ān and Woman: Rereading the Sacred Text from a Woman's Perspective*, that there is no gender bias, precedence, or prejudice in the essential language of the *Qur'ān*.⁸⁶⁵ The hermeneutic methodology adopted allowed the reading of the text, its context, the grammatical constructions and the

⁸⁶⁴ Surah Al-Nisa (4), Verse 34, Qur'ān.

⁸⁶⁵ Wadud, above n 859.

text as a whole, to arrive at a better understanding of the *Qur'ānic* text.⁸⁶⁶ She claims that the lack of a proper place within historical texts for women is not in fact the absence of women's voice in history, but a critical indication of women's lack of voice from the period of Qur'ānic interpretation.⁸⁶⁷ All the text in the *Qur'ān* were revealed in a specific time in history within a specific circumstance, and are given expression relative to those circumstances.⁸⁶⁸ According to Wadud, verses in the *Qur'ān* must be analysed using the traditional method of *tafsir al Qur'ān bi al Qur'ān* (interpretation of the *Qur'ān* based on the *Qur'ān* itself). This involves the reading of the verse in light of its context, similar language and syntactical structures used elsewhere in the *Qur'ān*, overriding Qur'ānic principles in the context of discussions on similar topics in the *Qur'ān*, the context of the Qur'ānic world-view.⁸⁶⁹ Using this methodology to analyse the text, Wadud found that the *Qur'ān* itself does not have gender specific roles.⁸⁷⁰ However, some injunctions in the *Qur'ān* are related to certain cultural practices in Arabia at the time of its revelation.⁸⁷¹ For example, women from wealthy and powerful tribes were veiled to indicate protection; however, the principle informing such veiling at that time was indicating modesty and status, as opposed to representing seclusion.⁸⁷²

Mayer claims that international human rights cannot be restricted by reference to Islamic law, Shari'ah.⁸⁷³ Mayer, in *Islam and Human Rights*, argues that to view international human rights as inappropriate for Islamic countries is a misguided conception⁸⁷⁴ and there is insufficient literature to make such claims.⁸⁷⁵ Many

⁸⁶⁶ At 1 and 3.

⁸⁶⁷ At 2.

⁸⁶⁸ At 4.

⁸⁶⁹ At 5.

⁸⁷⁰ At 8.

⁸⁷¹ At 9.

⁸⁷² At 10.

⁸⁷³ Mayer, above n 860, at 64.

⁸⁷⁴ Ann Elizabeth Mayer *Islam and Human Rights* (5th ed, Westview Press, Colorado, 2013) at Chapter 1; Mayer, above n 860, at xiii–xvi.

⁸⁷⁵ Mayer, above n 860, at xiii.

countries believe that international human rights are in conflict with Shari'ah rights for women, although, the reasons for these reservations remain largely unexplained.⁸⁷⁶ According to An-Na'im, it actually should not matter whether Islamic Shari'ah is in conflict with human rights or not because there is no religious obligation to follow Shari'ah, and following it is a political decision made by the State.⁸⁷⁷ However, perceptions of Shari'ah "influence the legitimacy and practical efficacy" of the international human rights norms within these communities, the domestic law and practice.⁸⁷⁸ Islamic countries in particular, have entered reservations arguing that those provisions in CEDAW were in conflict with Shari'ah, Islamic law practiced in those States. Islamic and non-Islamic scholars alike, have argued that rights under Islamic law, are gendered. Laws on marriage, inheritance, and socially acceptable behaviour such as veiling and domestic violence for example, give superiority to men over women. Such religious practices affect the implementation of international human rights frameworks such as CEDAW at the domestic level. This necessitates transformative discourses on the conceptions of Shari'ah.⁸⁷⁹

Islam, at a doctrinal level, has both egalitarian and non-egalitarian concepts.⁸⁸⁰ There are historical narratives to support the egalitarian and humane spirits of the former Muslim rulers and the Prophet.⁸⁸¹ A good person in Islam, is the most pious person, irrespective of sex/gender. Equality as a concept, however, is different in Islam, compared with the Western conception, which views equality as absolute equality.⁸⁸² Western conceptions of human rights are based on notions of individualism, liberalism, democracy, free markets, separation of the Church and

⁸⁷⁶ See, Mayer, above n 849, at 25–45.

⁸⁷⁷ An-Na'im, above n 854, at 401.

⁸⁷⁸ At 401.

⁸⁷⁹ At 401.

⁸⁸⁰ Mayer, above n 860, at 79.

⁸⁸¹ At 79.

⁸⁸² At 80; Katerina Dalacoura *Islam, Liberalism and Human Rights* (I B Tauris, London; New York, 2003) at 39.

State, and often have little resonance in non-Western cultures. Mayer claims that there is a fundamental clash between the rights conceptions in Islam and in the international human rights treaties. Muslims often argue that although women are accorded inferior status, men and women are equal in Islam. From a Shari'ah based perspective, such discrimination against women is in line with the conception of equality. National equal protection clauses are, therefore, accordingly modified or interpreted to accommodate the forms of discrimination, permitted under Shari'ah.⁸⁸³ Moreover, Shari'ah law is largely unspecified, which gives unlimited powers to the State in terms of defining and ensuring rights to its citizens.⁸⁸⁴ Thus there is no real effort to align the conceptions of equality between Islamic law and international human rights law.⁸⁸⁵ Mayer argues that “it is disingenuous to talk about equality before the law without addressing the problems posed by discriminatory Shari'ah rules” which deny women equal rights and freedoms.⁸⁸⁶ Moreover, States Parties cannot avoid their obligations under a human rights treaty based on religion.⁸⁸⁷ Non-recognition, or the limited recognition of these norms at the local level, has a significant impact on the success of the human rights treaties at the local level, and therefore needs careful consideration in this section.

The *Qur'ān* contains verses that may be interpreted to permit or support the role of women in public life, such as its record of Queen of Sheba, without negating the validity of her role as a leader. Further, Prophetic *Hadith* provides numerous examples of women having public leadership roles. Aisha Abu Bakr, one of Prophet Muhammad's wives, actively participated in political and public life. Often accompanying the Prophet to battles, she even led an army at the *Battle of the Camel*. She is also one of the most renowned and credible narrators of the *Hadith (the life of the Prophet)*. In the more recent history of the world, a great majority of

⁸⁸³ Mayer, above n 860, at 84.

⁸⁸⁴ At 64.

⁸⁸⁵ At 80–81.

⁸⁸⁶ At 81.

⁸⁸⁷ At 81.

Muslim countries have had a strong female head of State.⁸⁸⁸ Though leadership opportunities for Muslim women are restricted by using religious texts and continue to be restricted, earlier generations had a different understanding of women's roles. Despite these traditions, and also modern developments and greater inclusion of Muslim women in public life, there are Muslims who maintain that the ideal Muslim woman should confine herself to the role of mother and wife.

3.2.3.2 *Gendered Constructions in the Qur'ān and Ḥadīth*

Human functions, such as and including participation in public life, is not gender-based in the *Qur'ān*. The text does not attribute explicit exclusive characteristics to either the woman or the man.⁸⁸⁹ While it makes references to the biological function of a woman, it does not make any references to the psychological and cultural perceptions associated with mothering.⁸⁹⁰ The *Qur'ān* does not state that a woman's primary job is child-bearing nor does it say that mothering is her function in society.⁸⁹¹ Wadud argues that the *Qur'ān* itself does not argue for stereotyped roles for either women or men, although there are multiple narratives of references to women and their lives at the time of *Qur'ān*.⁸⁹² One controversial area is the mention of *Hur-al-Ayn* in the *Qur'ān*. The word *Hur-al-Ayn* comes from the Jahiliyya Period, and referred to women with clear white/ fair skin.⁸⁹³ They were described as “sensual-youthful, virgin females with large dark eyes, white skin, and

⁸⁸⁸ A few examples include: (a) former prime minister of Pakistan Benazir Bhutto (served 1988-1990 and 1993-1996), (b) Indonesian President Megawati Sukarnoputri (elected 2001), (c) former Turkish Prime Minister Tansu Ciller (served 1993-1995) and (d) the Bangladeshi Prime Ministers Begum Khaleda Zia (first elected in 1991) and (e) Sheikh Hasina Wajed (first elected in 1996).

⁸⁸⁹ Wadud, above n 859, at 21.

⁸⁹⁰ At 22, 26.

⁸⁹¹ At 64.

⁸⁹² At 29.

⁸⁹³ 41 Edward William Lane, *An Arabic—English Lexicon*, 8 vols. (London: Librarie du Liban, 1980), Part Jim To Ta, p. 666; As referred to by Wadud, At 55.

a pliant character ...”,⁸⁹⁴ and are promised to men in the afterlife in heaven. According to Wadud, this represented what was culturally appropriate in terms of the desires of the Arabs at the time, but is no longer applicable after the migration of the Prophet to Madinah. She argued that verses in the *Qur’ān* must not be interpreted literally, especially when the message of the *Qur’ān* was completed in Madinah.⁸⁹⁵ The verses in the *Qur’ān* in the Makkan period are sometimes different from those in the Madinah period, in terms of the promises for the afterlife. The companions of heaven, in generic terms are thereby entitled to “gardens underneath which rivers flow, and pure *azwaj* [spouse], and contentment from Allah (3:15)”.⁸⁹⁶ Furthermore, to give respect,⁸⁹⁷ *Qur’ān* also does not refer to women by their names, apart from references to Mary (mother of Jesus). This is also representative of a culture where women did not have their own individual existence, independent from their husbands, fathers or brothers.⁸⁹⁸

In challenging the gross socioeconomic disparities,⁸⁹⁹ *Qur’ān* introduced many social reforms to empower the “weaker segments of the community: the poor, the orphans, women, slaves”.⁹⁰⁰ The egalitarian order “announced a severe denunciation of the economic disequilibrium and social inequalities prevalent in contemporary commercial Meccan society”.⁹⁰¹ The concept of equality in the *Qur’ān* annihilates all distinctions except for goodness and virtue (*taqwa*).⁹⁰²

⁸⁹⁴ 42 Fatna A. Sabbah, *Woman in the Muslim Unconscious*, translated by Mary Jo Lakeland from the French *La Femme dans l’inconscient Musulman* (New York: Pergamon Press, 1984), at. 95; As referred to by Wadud, at 55.

⁸⁹⁵ At 59.

⁸⁹⁶ At 55.

⁸⁹⁷ At 32.

⁸⁹⁸ For examples, see. At 33.

⁸⁹⁹ Fazlur Rahman *Major Themes of the Qur’ān* (Bibliotheca Islamica, (currently printed by Chicago University Press) 1979, at 25.

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⁹⁰¹ Rahman, above n 899, at 25.

⁹⁰² At 30; Surah al-Hujurat, 11-13, *Qur’ān*.

Fazlur argues that unless the legal enactments in the *Qur'ān* are distinguished between the moral injunctions, the understanding of the *Qur'ān* can go fundamentally wrong.⁹⁰³ For example, many Muslims argue for polygamy, but the actual text in the *Qur'ān* implies a different position. Referring to a particular context of orphaned girls, the *Qur'ān* states:⁹⁰⁴

If you fear that you may do justice to orphans, then marry from among [orphaned] women such as you like, two, three, or four. But if you fear you will not be fair [to your wives], then [marry] only one; that is the safest course...God gives you His decision concerning them, and what is being recited to you in the Book concerning orphan women to whom you do not give their due, but you would rather marry them, and [also concerning younger] and weaker children... You shall never be able to do justice among women [when you take more than one wife at a time], no matter how much you desire.

The operative words in these verses are ‘orphan’ and ‘justice’, little used by the proponents of polygamy, and indicate not only that the permission for four wives is context specific, and doing justice amongst wives, is “in the nature of things, impossible.”⁹⁰⁵

The *Qur'ān* says “and for women there are rights [over against men] commensurate with the duties [they owe men] – but men are one degree higher”.⁹⁰⁶ In a different verse the *Qur'ān* says “Men are in charge of women because God has given some humans excellence over others and because men have the liability of expenditure [on women]”.⁹⁰⁷ Fazlur argues that this is purely functional superiority and in the right interpretation, “if a woman becomes economically sufficient, by inheritance or earning, and contributes to the household expenditure, the male’s superiority is

⁹⁰³ At 32.

⁹⁰⁴ At 32; Surah Al-Nisa 2, 127 and 129, *Qur'ān*.

⁹⁰⁵ At 32.

⁹⁰⁶ At 33; Surah Al-Baqarah, 228, *Qur'ān*.

⁹⁰⁷ At 33; Surah Al-Nisa, 34, *Qur'ān*.

reduced accordingly”.⁹⁰⁸ Again, these provisions must be read in context of the historical settings.⁹⁰⁹

Women’s inequality is also seen in evidence and testimony. In financial transactions, it is argued that one man’s witness is equal to two women’s. This however, was traditional practice based on the fact that not many women were involved in financial transactions at that time.⁹¹⁰ Moreover, Qur’ānic verse 2:282 is often used to determine that the value of a woman’s testimony in court over financial transactions to be corroborated by another woman is used as a guide to say that a woman’s testimony is only half of that of a man. There are Qur’ānic verses, such as 24:6-9 where the evidence of one woman outweighs that of a man. For example, in the case a husband accuses the wife of adultery, the oath of the woman is sufficient to avert punishment.⁹¹¹

Patriarchy is a running theme in the *Qur’ān*, mostly reflecting the Arabian society at that time.⁹¹² The qualification for leadership was based on capacity for such positions in the political and the financial sphere and as such, only men in the Arabian society had privileges, experiences and other advantages, making them, often, the best suited for these positions.⁹¹³ Despite this, the *Qur’ān* never says that men are natural leaders, and furthermore, *Qur’ān*, apart from the Prophets, *Bilqis* is the only ruler *Qur’ān* uses in reference to leadership characteristics; wisdom and independence, both of which were held by a woman.⁹¹⁴

⁹⁰⁸ At 33.

⁹⁰⁹ Men in Arabia were financially responsible for their wives, earning and spending the money.

⁹¹⁰ Rahman, above n 899, at 33.

⁹¹¹ Verses 24:6-9 of the *Qur’ān* states “As for those who accuse their wives but have no witnesses except themselves; let the testimony of one of them be four testimonies, (swearing) by Allah that he is of those who speak the truth; and yet a fifth, invoking the curse of Allah on him if he is of those who lie. And it shall avert the punishment from her if she bear witness before Allah four times that the thing he sayeth is indeed false. And a fifth (time) that the wrath of Allah be upon her if he speaketh the truth.”

⁹¹² Wadud, above n 859, at 88.

⁹¹³ At 88.

⁹¹⁴ At 89.

The *Qur'ān* celebrated the rule of *Bilqis*, the Queen of Sheba, by giving special reference to her political and religious practices.⁹¹⁵ *Bilqis* and her people worshipped the sun.⁹¹⁶ The *Qur'ān* notes that when Solomon sent her a letter, starting with 'In the name of Allah', *Bilqis* practiced protocol and diplomacy, especially in the way that she reacted by sending a gift, demonstrated her worldly knowledge of peaceful politics, spiritual knowledge, the ability to take decisions independently and decide what was best for her people.⁹¹⁷ The *Qur'ān* shows that "her judgment was better than the norm, and that she independently demonstrated that better judgment."⁹¹⁸

Whilst the *Qur'ān* is silent on issues of whether women can assume positions of decision-making within the State, the majority of Islamic jurists have claimed that women cannot be judges⁹¹⁹ or heads of States. Abu Hanifa was the only major school of Islamic jurisprudence that opined that a woman can be a judge, though only in civil matters.⁹²⁰ These opinions are however, not based on the *Qur'ān* or the *Ḥadīth*.⁹²¹ In Islamic history, women have assumed all legitimate work available in society that matched their skills and expertise.⁹²²

In every epoch of Islamic history, including the time of the Prophet, one sees Muslim women engaged in every profession that suited them. They worked as nurses, teachers, and even as combatants by the side of men when necessary, in addition to being singers, hair-dressers, cooks, etc. Caliph Umar employed a lady, Shifa'bint 'Abdulla as inspector in the market at the capital [Madinah] as Ibn Hajar [Isabah] records. The same lady taught Hafsa, wife of the Prophet, how to write and read. The

⁹¹⁵ At 40.

⁹¹⁶ Verse 27:24, *Qur'an*.

⁹¹⁷ Wadud, above n 859, at 41.

⁹¹⁸ At 42.

⁹¹⁹ Mashood A Baderin *International Human Rights and Islamic Law* (OUP Oxford, Oxford ; New York, 2003) at 180.

⁹²⁰ At 180.

⁹²¹ At 180.

⁹²² Muhammad Hamidullah *Introduction to Islam* (Kitab Bhavan, New Delhi, India, 1992) at 139.

jurists admit the possibility of women being appointed as judges of tribunals, and there are several examples of the kind.

Despite these, women are excluded from public life in many Muslim countries. This analysis indicates that there is no real conflict between Shari'ah and CEDAW, in terms of a right to public life for women. Moreover, this analysis also shows that certain discriminatory practices against women amongst Muslims are not Islamic, and have no fundamental basis in the *Qur'ān* or *Ḥadīth*.⁹²³

3.2.4 Public-Private Divide in International Human Rights Law (CEDAW)

Human rights instruments recognise the equality of all persons based on their status of birth as human beings, but women's rights circle around their social identities as wives and mothers.⁹²⁴ At the time of CEDAW drafting in the late 1970s, difference was taken to be sex difference; the physiological difference between what was known as male and female genitalia and the related procreative function.⁹²⁵ CEDAW thus did not define women assuming everyone already knew what a woman is.⁹²⁶ The representing States understood women to "... include married, unmarried, widowed and divorced women".⁹²⁷ Many societies and countries still continue to believe that the private should be minimally interfered with by the State.⁹²⁸

⁹²³ Wadud, above n 859, at 65.

⁹²⁴ Southard, above n 405; See Katarina Tomaševski *Women and human rights* (Zed Books, 1993).

⁹²⁵ Christine Delphy "Rethinking sex and gender" (1993) 16 *Women's Studies International Forum* 1, at 2, as quoted from Ann Oakley, *Sex, Gender and Society* (1985) at 16.

⁹²⁶ For an alternative view and an extensive critique of CEDAW's "centrality on women" See Rosenblum, above n 452.

⁹²⁷ Rehof, above n 325, at 96.

⁹²⁸ Southard, above n 405.

Specific emphasis on equal rights to “enter into a marriage, to dissolve a marriage, and to be treated as equals during marriage,”⁹²⁹ and motherhood⁹³⁰ created more emphasis on the role and position of women in society and confines women to the private arena.⁹³¹ Sex and gender distinctions have since been brought into heavy focus through scientific research, blurring the above basic positions which were formerly relied on by instruments such as CEDAW.

International law’s obsession with the public and private comes through very strongly in the CEDAW Convention. The claims for women’s equal rights were based on the autonomy of both men and women,⁹³² and their status as human beings.⁹³³ Ideals of equal rights that shaped the legal argument in CEDAW are feminist, and are premised on the experiences of women.⁹³⁴ In embodying the historical struggles of women,⁹³⁵ this international human rights instrument, and for the very first time, acknowledged and represented women as the oppressed.⁹³⁶ It also further cemented international law ideals of the public and the private. The western philosophies of legal thought emphasize the public/ private distinction: public as a world where the State can interfere and private, a world where there has to be minimalistic State interference.⁹³⁷ Some feminists prefer to avoid the public/private divide because they believe that binaries affect the marginalised groups to a great extent than any other groups.⁹³⁸ Other feminist scholars have taken a particular interest in exploring the public/private divide because segregation and

⁹²⁹ Southard, above n 405.

⁹³⁰ Southard, above n 405.

⁹³¹ Southard, above n 405.

⁹³² Patricia A Cain “Feminism and the Limits of Equality” (1989) 24 Ga L Rev 803, at 829.

⁹³³ Miles, above n 427.

⁹³⁴ Southard, above n 405, at 9.

⁹³⁵ For a discussion, see Romany, above n 545, at 96.

⁹³⁶ Maynard and Purvis, above n 552, at 28.

⁹³⁷ Hilary Charlesworth “Public/Private Distinction and the Right to Development in International Law, The” (1988) 12 Aust YBIL 190 at 193; Katherine O’Donovan *Sexual divisions in law* (Weidenfeld and Nicolson, London, 1985) at 3.

⁹³⁸ Fraser, above n 814 referred to Jane Mansbridge and claims that “deliberation can serve as a mask for domination”.

subordination of women are justified on this basis.⁹³⁹ This distinction continues to affect women's lives more negatively than it affects men's lives. Emphasis on the public and private spheres of life prevent women from entering certain professions, and is used to justify why women's roles continue to be related to child bearing.⁹⁴⁰

The public realm of the work place, the law, economics, politics and intellectual and cultural life, where power and authority are exercised, is regarded as the natural province of men; the private world of the home, the hearth and children are seen as the appropriate domain of women.

The equality standard in CEDAW is arguably male because, equality, for the purposes of CEDAW, is to be treated like a man.⁹⁴¹ As such, the platforms on which this Convention was drafted, debated, passed and implemented are all androcentric.⁹⁴² CEDAW uses male standards to measure different aspects of women's lives, including participation and discrimination.⁹⁴³ This has also led to the interpretation of temporary special measures in CEDAW⁹⁴⁴ as special treatment or discrimination against men.⁹⁴⁵ The focus on women enshrines and furthers sexual binaries, reifies women's victim status and moreover, CEDAW's emphasized binary distorts the reality of sex identity and portrays an inaccurate picture of sex discrimination.⁹⁴⁶ Despite the diverse experiences of women across the globe depending on socio-cultural aspects, and that many discussions still centre on women, indicates that many societies still identify with women as a distinct

⁹³⁹ Gavison, above n 256, at 10.

⁹⁴⁰ Martha LA Fineman "Feminist Theory and Law" (1994) 18 Harv J L & Pub Pol'y 349 at 349.

⁹⁴¹ Southard, above n 405, at 9; CEDAW, art. 16 (e).

⁹⁴² Fleur Van Leeuwen, The United Nations and the Promotion and Protection of Women's Human Rights: A Work in Progress, in Westendorp, Maastricht Centre for Human Rights and Seminar, above n 327, at 13.

⁹⁴³ Eileen Boris "Looking at Women's Historians Looking at Difference" (1987) 3 Wis Women's LJ 213 at 215.

⁹⁴⁴ CEDAW 1979, art. 4.

⁹⁴⁵ Boris, above n 943, at 215.

⁹⁴⁶ For a full discussion see Rosenblum, above n 452.

group.⁹⁴⁷ Thus, Rosenblum is incorrect to have argued that CEDAW framework cannot correct gender discrimination. CEDAW does not aim to address a gender issue, but a sex issue.⁹⁴⁸ The word gender does not occur even once in the entire CEDAW Convention.

3.3 Women as Bearers of Islamic Culture

Fundamentalist forms of Islam direct their main attention to women. A perceived need to protect the social fabric, as a domain which represents the ‘Islamness’ of the people, focuses on resurrecting the role of women as bearers of the spiritual domain and Islamness through the concepts of women’s submission to their husbands in Islam.⁹⁴⁹ These ideals are new to most Maldivians, who have lived in their communities with little control on their mobility and freedom. Even when they chose to stay home to look after children, it was not because religion required them to. Women, according to these fundamentalist ideologies, must always be at home, submissive, docile, and serving their families. In many sections of Indian and other South Asian societies, there is “almost a paranoid fear regarding the ‘modernisation’ of women”.⁹⁵⁰ This is a new wave which appears to be taking strong hold in the Maldives and instills and facilitates exploitation of women, particularly those who are of lesser privilege. Culture in general does not constitute an integral part of the nationalist ideology of most Maldivians. Maldives is quite open to various global cultural flows.⁹⁵¹

⁹⁴⁷ Maynard and Purvis, above n 552, at 32.

⁹⁴⁸ Contemporary theorists have argued that CEDAW’s centrality on “women” is a critical flaw in the Convention and affects its ability to address gender discrimination. [See Rosenblum, above n 202; Tom Dreyfus “The Half-Invention of Gender Identity in International Human Rights Law: From Cedaw to the Yogyakarta Principles” (2012) 37 *Austl Feminist LJ* 33.]. They claim that CEDAW’s attempt to address an age-old “gender discrimination” issue has been less than a success because of its premise and emphasis on the biological sex binary [Dreyfus, above n 362, at 37]

⁹⁴⁹ Debarshi Prasad Nath and Juri Dutta “Women and Culture in India: Countering the Force of Nativity” (2012) 4 *SACS* 12 at 14.

⁹⁵⁰ At 13.

⁹⁵¹ Fulu, above n 191, at 122.

In Egypt, the Islamic movements in the 1920s grew as a reaction to modernism, but also partly as a reaction to the authoritarian regimes in Egypt and how it had dealt with Islamic movements in the past.⁹⁵² Whilst the State attempts to legitimise its actions, it is in no way able to control the spread of its support or its infiltration into the State structures and institutions.⁹⁵³ With a view to reconstructing the true community, Women in Egypt for example, were increasingly pushed into conforming to their role as symbolic antithesis to modernism, and as cultural bearers of Islamic tradition”.⁹⁵⁴ Women, were thus central to this Islamic discourse. These assertions of new identities of the true Muslim woman, and extremist Islamist injunctions, speak and shape the self, even when women were educated.⁹⁵⁵ The Islamist positions of women, primarily represented through organized groups (religion-based NGOs and political parties), promote that gender roles are divinely ordained, as legitimised through religious tradition and laws. They further claim that, “men and women were created unequal by God, so any attempt to bring equality is heretical”.⁹⁵⁶

In *Saudi-Islamic Rhetorics about Visual Culture*, Marwan Kraidy argues that Saudi Arabia is the most concerned, amongst the Arab countries, about social and cultural change. Saudi Arabia follows Salafi Wahhabism, which is “grounded in cultural and religious purity and gender separation”.⁹⁵⁷ In the Wahhabi world view, the woman is the bearer of authentic Islamic principles. The social space in Saudi Arabia is accordingly compartmentalised, with strict boundaries between private and public spaces.⁹⁵⁸ Women are, therefore, pushed into conforming to these roles,

⁹⁵² Haideh Moghissi *Women and Islam: Critical Concepts in Sociology (Volume III - Women's Movements in Muslim Societies)* (Taylor & Francis, Oxon, 2005) at 169.

⁹⁵³ At 169.

⁹⁵⁴ Darlene Juschka *Feminism in the Study of Religion: A Reader* (A&C Black, London ; New York, 2001) at 190.

⁹⁵⁵ Firdous Azim *Islam, Culture and Women in Asia* (Routledge, London ; New York, 2013) at 61.

⁹⁵⁶ At 61.

⁹⁵⁷ Christiane Gruber and Sune Haugbolle *Visual Culture in the Modern Middle East* (Indiana University Press, Indiana, 2013) at 275.

⁹⁵⁸ At 277.

and as culture bearers,⁹⁵⁹ and they continue to transmit these cultures. Often, as societies experience urbanisation and increased foreign influence, women are also found “caught at the centre of renewed definitions of cultural identity, often framed in religious terms”.⁹⁶⁰

In recent times Islamic culture has been evoked to counter Western ideologies, such as international human rights instruments, even in the Maldives. UN High Commissioner for Human Rights Navi Pillay’s visit to the Maldives in 2011 illustrated many of the deeper underlying ideals, held by individuals, groups, and government officials, in the Maldives. During her visit, Pillay noted that flogging women convicted of extra-marital sex was an inhumane and degrading form of violence against women. In a later statement from the UN, it was noted that pending more permanent changes in the law, the government and the judiciary in the Maldives should initiate a practical moratorium on flogging.⁹⁶¹ These comments on flogging, and the domestic law in the Maldives, were not well received. Protestors gathered outside the United Nations Building in Male’ to condemn UN Human Rights Chief Navi Pillay for her criticism of the Maldivian constitution, and its provisions endorsing flogging and mandating Maldivians to be Muslim.⁹⁶² Her call for a public debate on flogging,⁹⁶³ was also struck down by the Government as the Foreign Minister confirmed during an interview that the “government will not allow debates to be held in the Maldives on issues that are against the fundamentals of Islam”.⁹⁶⁴

⁹⁵⁹ Moghissi, above n 952, at 170.

⁹⁶⁰ Aryn B Sajoo *A Companion to Muslim Cultures* (IBTauris, London, 2011) at Ch 5.

⁹⁶¹ OHCHR “Opening Remarks by UN High Commissioner for Human Rights Navi Pillay at a Press Conference during her Mission to the Maldives” *News and Events, OHCHR* (United Nations, 24 November 2011) <www.ohchr.org>.

⁹⁶² Eleanor Johnstone and JJ Robinson “Maldivian Islamic groups call for arrest of UN High Commissioner on Human Rights” *Minivan News - Archive* (Male’, Maldives, 26 November 2011).

⁹⁶³ Ali Nafiz “UN rights chief calls for public debate on flogging in Maldives” *Haveeru Online - English Edition* (Male’, Maldives, November 2011) <www.haveeru.com>.

⁹⁶⁴ Ahmed Hamdhoun “Maldives Won’t Allow Debates on Anti-Islamic Issues: Foreign Minister” *Haveeru Online - English Edition* (Male’, Maldives, 26 November 2011) <www.haveeru.com>.

In 2012, the Maldivian President, Mohamed Nasheed, conceded that “an emergent religious fundamentalism had changed the way women were viewed, and treated” in the Maldives and noted that “he was distressed by religious groups who campaigned for girls to be circumcised or to be kept home from school”.⁹⁶⁵ In recent years, civil society groups have also raised the issue of female circumcision as an issue of major concern in the country. In response to this, in 2014, the Islamic group, *Salaf* published a series of articles on their webpage, on the subject of female circumcision in Islam.⁹⁶⁶ This article promotes the view that female circumcision is mandatory under Islam, and anything that has been prescribed by Allah for the Muslims, cannot be classified as mutilation. Famous Maldivian cleric, Dr. Iyaz, who is also the Vice President of the Fiqh Committee in the Maldives,⁹⁶⁷ argues that female circumcision is either mandatory or, in the least, highly recommended in Islam. In 2014, he also gave an opinion on the then proposed rape bill, and purported that a law on marital rape was un-Islamic and advised that members of parliament who voted for the Rape Bill, should repent.⁹⁶⁸

The discussion above shows that women bear culture, and fundamentalists are targeting women, to bear these values for future generations. The events happening in the Maldives at present, have already happened in other parts of the world, such as Egypt and Saudi Arabia. All, or most of the main indicators of Islamic fundamentalism in the Maldives are linked to women and tend to impose burdens on women or restrict women. Women, according to these ideals, must practice such roles to demonstrate the Islamness of the Maldivian people; the proof of its religion. If such views are to be strictly observed, gender hierarchies will be fixed in a new order in the Maldives, and introducing and implementing equality norms, such as

⁹⁶⁵ Ben Doherty “Female Circumcision Fear As Fundamentalists Roll Back Women’s Rights” *The Sydney Morning Herald* (Sydney, 25 January 2012) <www.smh.com>.

⁹⁶⁶ Abdulla Bin Mohamed Ibrahim “Anhen kudhin Khithaanu kurun: Islaamdheenugai Igraaruvefaivaa Huddha Kameh (Translation ‘Female Circumcision: A Permitted Act under Islam’” (28 February 2014) Jamiyyathu Salaf <www.jamiyyathusalaf.com>.

⁹⁶⁷ Committee advising the Ministry of Islamic Affairs on matters of Islamic Shari’ah.

⁹⁶⁸ Zaheena Rasheed “Figh Academy VP endorses female genital mutilation – Archive” *Minivan News - Archive* (Male’, Maldives, 6 February 2014) <www.minivannewsarchive.com>.

those espoused in CEDAW, will become quite impossible. Considering women as bearers of Islamic culture, this research in its evaluation of barriers (chapter 5), will examine whether women's goals to participate in public life are affected by these factors.

3.4 Women and Capabilities to Pursue CEDAW Rights

In *Women and Human Development*, Nussbaum studied the lives of women from developing countries,⁹⁶⁹ and noted that in terms of sex equality, the majority of women in the world lack support for fundamental functions of life.⁹⁷⁰ Women's lives are fraught with multiple inequalities. They are undernourished, less healthy, and more vulnerable to sexual violence, abuse and harassment, sex discrimination and do not have effective legal recourse.⁹⁷¹ Women have fewer opportunities, live in fear, and suffer from unequal social structures, which leaves them with unequal human capabilities. For example, participation in public life is directly affected by multiple other factors such as ownership of property, rights of association, mobility, full responsibilities for child and house care and religion.⁹⁷² In general, these factors prevent women from having the time and the opportunity to enjoy rights.

Focused on freedoms and opportunities, the initial capabilities approach (CA) theory was coined and proposed by Dr Amartya Sen in the 1980s.⁹⁷³ Martha Nussbaum used Sen's freedoms on human dignity and re-modelled CA as a theory of justice and fairness. The justice model of CA contains a list of capabilities: life, bodily health, senses, imagination and thought, emotions, practical reasons, affiliation, other species, play, and control over one's environment (political and material). The proposed capabilities are broad enough to incorporate the cultural

⁹⁶⁹ Martha Craven Nussbaum *Women and human development* (Cambridge University Press, New York ; Cambridge, 2000) at 1.

⁹⁷⁰ At 1.

⁹⁷¹ At 1.

⁹⁷² At 1.

⁹⁷³ Martha Craven Nussbaum *Sex and Social Justice* (Oxford University Press, Incorporated, 2000).

and societal differences amongst States,⁹⁷⁴ and resonate as a normative framework,⁹⁷⁵ similar to that of sex equality proposed in CEDAW. Such a framework offers a unique perspective to explore and understand challenges and struggles of women because of its focus on the differences, characteristics, and realities of individuals:⁹⁷⁶

... the capabilities approach suggests that the equality sought is the one which respects the range of human diversity and concerns itself with the potential of each individual to access and take advantage of goods, resources and rights guaranteed [to] them in light of the difficulties and barriers they may encounter throughout their lives.

Nussbaum's CA offers a practical guide to understanding rights in terms of capabilities and address sex equality.⁹⁷⁷ CA allows the giving of accounts of spaces within which individuals exist and allows for comparisons in wider contexts in explaining how well they function.⁹⁷⁸ By focusing on the individual, CA makes it possible to place emphasis on what people of a group or a country are actually "able to do and be"⁹⁷⁹ and to recognise diversity and peculiarities affecting the lives of individuals.⁹⁸⁰ These theories are compatible with feminist theories seeking to recognise women as equally valuable persons within society:⁹⁸¹

... the primary source of this worth is a power of moral choice within them, a power that consists in the ability to plan a life in accordance with one's own evaluation of ends ... the moral equality of persons gives them a fair claim to certain types of treatment at the hands of

⁹⁷⁴ Nussbaum, above n 969, at 34–110.

⁹⁷⁵ Stella C Reicher "Human Diversity and Asymmetries: A Reinterpretation of the Social Contract under the Capabilities Approach" (2011) 14 SUR - Int'l J on Hum Rts 167 at 168.

⁹⁷⁶ At 168–169.

⁹⁷⁷ Martha C Nussbaum "Capabilities and Human Rights" (1997) 66 Fordham L Rev 273 at 294.

⁹⁷⁸ At 279.

⁹⁷⁹ Nussbaum, above n 973, at 34. Amartya Sen *The idea of justice* (Belknap Press of Harvard University Press, Cambridge, Mass, 2009) at 232.

⁹⁸⁰ Reicher, above n 975, at 171.

⁹⁸¹ Nussbaum, above n 973, at 57.

society and politics. . . . [T]his treatment must do two . . . things [:] respect and promote the liberty of choice, and ...respect and promote the equal worth of persons as choosers.”

According to Nussbaum, capabilities are entitlements⁹⁸² that every person should have in order to enjoy a full human life. These factors determine women’s ability to achieve life goals and their choices during the course of their lives.⁹⁸³ For example, a right to political participation cannot be achieved simply by its acquiring legal status in a country. For many women it can be an acquired skill and learned behaviour,⁹⁸⁴ and perceptions of their self: the confidence in their ability to perform in the political sphere.⁹⁸⁵ Although national constitutions may guarantee an equal right to participation in public life to all its citizens, gender, directly interferes with the ability to pursue equality in public life. Formal equality alone, therefore, cannot deliver equality for women, because incorporation in legislations and policies alone does not create the necessary capabilities to pursue equality.⁹⁸⁶

... human beings differ with respect to external characteristics and circumstances, the natural environment in which they live, the number of opportunities available to them depending on the society in which they live, as well as with respect to personal characteristics, such as age, sex, and physical and mental abilities.⁹⁸⁷ Due to these differences, individuals contribute to the society collectively and enjoy the gains earned in different ways.

⁹⁸² Nussbaum, above n 977, at 279.

⁹⁸³ Nussbaum, above n 969, at 5. Reicher, above n 975, at 168.

⁹⁸⁴ Helena Catt “Now or Never - Children and Young People as Citizens: Participation, Provision and Protection” (paper presented to 6th Child and Policy Conference, Dunedin).

⁹⁸⁵ Catt, above n 984.

⁹⁸⁶ Reicher, above n 975, at 170.

⁹⁸⁷ Amartya Sen and Ricardo Doninelli Mendes trad *Desigualdade reexaminada* (Record, Rio de Janeiro, 2008) at 50–51.

This necessitates the introduction of other measures such as quotas that will enhance participation of the more vulnerable groups within the society.⁹⁸⁸ CA recognises that special efforts must be taken to “address the unequal needs of those who begin from a position of social disadvantage.”⁹⁸⁹ States must create the institutions and principles to guarantee capabilities and mechanisms to claim these for their citizens.⁹⁹⁰ These characteristics of the capabilities approach makes it a useful tool to understand sex equality.⁹⁹¹ It carries enormous significance for the attainment of universal women’s rights because it facilitates choice and seeks to examine key issues surrounding women’s lives.⁹⁹²

The capabilities approach does, in fact, seem plausible to deliver universal human (and women’s) rights as it: aspires to deal with issues raised by local tradition relativism, by advancing a conception of women’s well-being that attends fully to the rich culture and tradition of local communities, while opening up for cross-cultural examination.

Equality in one aspect of life is dependent on multiple other areas or factors that give the person the freedom and the ability to make certain choices for their lives. Thus an evaluation of women’s participation in public life must take into account the socio-cultural, religious, historical contexts which define the lives of Maldivian women.⁹⁹³ Much discussion on the underrepresentation of women in public life in the past has hinged on creating affirmative measures to enhance women’s participation in public life, which has not proven to be very successful in many contexts.⁹⁹⁴ Many local factors such as these obstruct the local translation of

⁹⁸⁸ Reicher, above n 975, at 171.

⁹⁸⁹ Martha C Nussbaum, “Beyond the social contract: capabilities and global justice an Olaf Palme lecture, delivered in Oxford on 19 June 2003” (2004) 32 Oxford Development Studies 3 at 17.

⁹⁹⁰ Nussbaum, above n 969, at 6.

⁹⁹¹ Ingrid Robeyns “Sen’s Capability Approach and Gender Inequality: Selecting Relevant Capabilities” (2003) 9 Feminist Economics 61 at 66.

⁹⁹² Martha Craven Nussbaum and Jonathan Glover *Women, Culture, and Development* (Clarendon Press, 1995) at 425.

⁹⁹³ Unterhalter, above n 811, at 114.

⁹⁹⁴ See Lisa Horner, Stokes and Rachael *Addressing Inequalities: The Heart of the Post-2015 Development Agenda and the Future We Want for All* (2012).

international norms and rights,⁹⁹⁵ and prove that ratification of international human rights instruments does not result in equal rights for groups such as women. Nussbaum's CA goes beyond these superficial understandings of ratification and implementation, and directs attention to the salient features of the situation. Some of these factors can include education, health, opportunities for employment and political expression etc. Dominant economic theories do not adequately capture these issues to make policies because most theories just capture GDP, and if GDP is on the rise, it is assumed that the quality of life is on the increase. Any crude single number does not tell us anything about distribution, and thus can cover appalling inequalities within a population. These do not tell us anything about the inabilities of any individual or group of women to enjoy the rights, freedoms and opportunities available to her in their country. Inequalities are therefore ignored when numbers are considered. This approach provides a tool to understand key elements surrounding the lives of women that define the enjoyment of a right to public life, not always available, or useful through national statistics. For example, Africa has a high GDP value and is an indication of how well the country is doing. However, this fails to highlight the massive inequalities in Africa and also the disparities between the quality of life enjoyed by the people of Africa.⁹⁹⁶

The Maldives has also achieved a formal acknowledgement of equality via the 2008 constitution, which has removed a legal bar on female heads of state. Even prior to the 2008 Constitution, Maldives had few legal restrictions for women to participate in public life. However, this did not create equality or opportunities for women in public life. It appears that legislation and policy, at present, is not sufficient to create equality. In order to give women freedom and autonomy in society, they must be “freed from the multiple, intersecting, and overarching barriers that pervade

⁹⁹⁵ Mark Goodale and Sally Engle Merry *The Practice of Human Rights* (Cambridge University Press, Cambridge; New York, 2007). Mertus, above n 337.

⁹⁹⁶ Nussbaum, above n 977, at 280–281.

patriarchal society”.⁹⁹⁷ Thus, a proper analysis of the situation must assess other dimensions of women’s lives that impact their participation in public life.⁹⁹⁸

3.5 Chapter Conclusion: Problem Areas, Gaps and Contributions to Existing Knowledge

This chapter has explored the global impact of human rights treaties, and factors that affected treaty implementation at both the global and local levels. In view of the research questions and context identified in Chapter 1, this chapter analysed two key problematic areas for women’s rights: culture and religion. In particular, it has examined the right to public life in Islam, to investigate the tensions between the global CEDAW norm and the norm within the Maldives, which follows Islam, and confirmed that Islamic norms are not necessarily in conflict with a CEDAW right to public life. It also identified that various interpretations, and the emphasis on keeping women within the domestic severely affect women’s autonomy and choice.

The literature review also showed gaps in human rights impact studies, particularly in CEDAW studies, suggesting that more fine-tuned empirical work is required to document the specific issues faced by individual States parties, and their experiences interacting with international human rights instruments. CEDAW studies in the past have focused generally on large number of States, conducting only, a limited investigation on the practice of rights at the local level. Further, no studies have been conducted using a CEDAW right to public life, and the identification of how limited capabilities related to culture and religion, will significantly affect the future legitimacy of the human rights treaty.

⁹⁹⁷ Nancy J Hirschmann *The Subject of Liberty* (Princeton University Press, Princeton, NJ, 2003) at 39.

⁹⁹⁸ For example, in assessing women’s empowerment, Kabeer (1999) measured “... (a) Access to resources, (b) agency in decision-making and (c) achievements of outcomes of value ...”. To analyse empowerment in education, Unterhalter (2005) measured “access, retention and achievement in schooling up to a certain level; secondly measuring agency in how decision-making regarding education is taken in households, schools, education ministries, or local authorities; and thirdly measuring achievements that flow from education”. Unterhalter, above n 811, at 116.

CHAPTER FOUR

MEASURING THE IMPACT OF INTERNATIONAL HUMAN RIGHTS TREATIES: RESEARCH METHODOLOGY

The existing literature on the impact of human rights instruments at the domestic level suggests that human rights can be measured in principle (i.e. as they are laid out in legal documents) and in practice (i.e. as they are enjoyed by individuals and groups). Previous studies have demonstrated treaty impact, by measuring changes in the participation of the States Parties in regional and international human rights regimes, changes brought to domestic law and policy according to treaty provisions, and also by assessing rights violations and the perceptions of rights using either a large number of countries, a comparable number or a single case study. Using a combination of these research models, this study adopted an inductive qualitative case study methodology, to illustrate and critically examine the impact of a CEDAW right to public life in the Maldives and the specific domestic issues preventing the successful realisation of this right.

This chapter describes the methodological and analytical frameworks used in the research: researcher positionalities, interpretive paradigms, qualitative designs, ethical considerations and the limitations of this study.

4.1 Qualitative Case-study Design

Empirical research on the effect of human rights in domestic practice is fairly new.⁹⁹⁹ In recent times, disciplines such as political science, sociology, economics and law have contributed abundantly to the literature on human rights

⁹⁹⁹ Simmons, above n 606, at 732. Also see Todd Landman “Comparative Politics and Human Rights” (2002) 24 Human Rights Quarterly 890; Todd Landman “Measuring Human Rights: Principle, Practice, and Policy” (2004) 26 Human Rights Quarterly 906.

measurement.¹⁰⁰⁰ Past studies have adopted multiple methods to measure human rights,¹⁰⁰¹ and have varied in design.¹⁰⁰² More recent studies adopt qualitative methodologies,¹⁰⁰³ or a mix of both quantitative and qualitative methodologies, to measure the impact of human rights treaties within different domestic contexts.¹⁰⁰⁴ Previous impact studies focused on a large number of countries, and often used quantitative data to measure impact.¹⁰⁰⁵ For this study, a qualitative case-study on the Maldives has been used.

This research measures the relationship between CEDAW ratification and women's right to a public life in the Maldives; a hundred percent Muslim State with a south Asian heritage of cultural and social values, coming out of a 30 year authoritarian rule and geared towards implementing democracy and human rights. The main purpose being, to explore the disparities in rights-in-principle and rights-in-practice relevant to the equal enjoyment of a right to public life after CEDAW ratification. The study thereby investigates the tension between State commitments to CEDAW and the actual realisation of equal rights for women in the context of the Maldives. It also seeks to confirm whether traditional stereotyping or patriarchal heteronomy are the major reasons affecting women's equality in public life. The researcher believed that a better understanding of this phenomenon would allow human rights implementers and rights advocates to proceed from a more informed perspective in terms of the achievement of equality and non-discrimination principle embodied in the CEDAW Convention.

Maldives represents a country that has ratified CEDAW (albeit conditionally) for a significant number of years and has low representation of women in public life vis-

¹⁰⁰⁰ Landman, above n 714, at 75.

¹⁰⁰¹ At 78.

¹⁰⁰² See, Landman, above n 999.

¹⁰⁰³ See studies such as Byrnes and Freeman, above n 848; Simmons, above n 607.

¹⁰⁰⁴ For a comprehensive overview, see Landman, above n 714; Also see Andrew Byrnes and Marsha Freeman *World Development Report 2012, Gender Equality and Development - Background Paper* (World Bank, 2011) at 3.

¹⁰⁰⁵ Byrnes and Freeman, above n 1004, at 3.

à-vis its men. It is a hundred percent Islamic State that incorporates principles of democratic values into its constitutional and legislative framework. Maldives is also representative of a country with traditional stereotypes because it is committed to uphold a single religion in the country and limits women's rights accordingly.

Religion has been identified as the reason for Maldives's continuation with its reservations to article 16, CEDAW, restricting the rights of women within the family. Until 2010, Maldives also had reservations to article 7 of the Convention, which requires all States Parties to take all appropriate measures to eliminate discrimination against women in public life and ensure equality with men, the right to vote, eligibility for election to all publicly elected bodies, participation in the formulation of government policy and the implementation thereof, and holding public office and performance of all public functions at all levels of government and also participation in non-governmental organizations and associations concerned with the public and political life of the country. For these reasons, the Maldives can be an ideal case to assess the impact of international human rights norms, and how other factors relevant to the achievement of rights, affects international norms.

4.2 Qualitative Methods

A methodology is the worldview-influenced lens through which the research and core concepts of the research are viewed and translated,¹⁰⁰⁶ and constitutes three key elements: standpoints; theoretical and conceptual frameworks and paradigms; and methods.¹⁰⁰⁷ Qualitative methods can provide an in-depth understanding of women and public life that far exceeds that offered by detached, statistical analyses, simply because the knowledge gained through qualitative investigations is “more informative, richer and offers enhanced understandings compared to that which can

¹⁰⁰⁶ Maggie Walter *Social research methods* (3rd ed, Oxford University Press, South Melbourne, Vic, 2013) at 10.

¹⁰⁰⁷ At 10.

be obtained via quantitative research”.¹⁰⁰⁸ This is because qualitative research focuses on the meanings, traits and defining characteristics of events, people, interactions, settings/ cultures and experience.¹⁰⁰⁹ Qualitative investigations are suitable for “exploring new topics or understanding complex issues; for explaining people’s beliefs and behaviour; and for identifying the social and cultural norms of a culture or society”.¹⁰¹⁰ It helps to keep an open mind for new data, and embrace the perspectives of a population within the context in which they live. The research is therefore mostly feminist, because its aims, in general, are to examine the implementation of CEDAW in the Maldives “so as to identify its overt or covert bearing on women.”¹⁰¹¹

This methodology thereby allows the exploration of the unique situation of the impact of CEDAW on women’s right to public life in the Maldives in a holistic fashion.¹⁰¹² The information gathered will therefore generate rich thick descriptions, in contrast to simple quantitative methods where the usual intent is to test a hypothesis to establish facts and identify relationships between variables. The qualitative method allows a true understanding of the social aspects of women’s participation in public life within culturally grounded contexts and allows a depth of understanding of issues that is not possible through the use of quantitative, statistically based investigations. Such in-depth investigations into specific issues however, often necessitates the identification of single cases or situations for focus.

¹⁰⁰⁸ Tewksbury Richard “Qualitative versus Quantitative Methods: Understanding Why Qualitative Methods are Superior for Criminology and Criminal Justice” (2009) 1 SOURCE Journal of Theoretical & Philosophical Criminology 38 at 38.

¹⁰⁰⁹ Bruce Lawrence Berg and Howard Lune *Qualitative research methods for the social sciences* (Pearson Education Limited, Boston, 2014) at 3.

¹⁰¹⁰ Monique Hennink, Inge Hutter and Ajay Bailey *Qualitative Research Methods* (SAGE Publications, London, 2010) at 10. Gina Wisker *The Postgraduate Research Handbook* (Palgrave Macmillan, New York, 2007) at 10.

¹⁰¹¹ Philip Alston and Ryan Goodman *International Human Rights* (Oxford University Press, Oxford, 2013) at 177.

¹⁰¹² For detailed discussions see Robert Charles Bogdan and Sari Knopp Biklen *Qualitative Research for Education* (Allyn and Bacon, Needham Heights, MA, 1998).

As a research methodology, case-studies are useful to investigate how things work in specific situations,¹⁰¹³ and explore complexities related to individual cases.¹⁰¹⁴ It is ideal to investigate contemporary phenomenon within real life contexts¹⁰¹⁵ because this answers the how and why questions relevant to the situation.¹⁰¹⁶ This type of study allows an extensive investigation to understand a global phenomenon, make comparisons with similarly situated countries and create recommendations that will assist in the implementation of a CEDAW right to public life in the future. Case-study methods also allow the researcher to adopt multiple research tools to a single situation to enhance the validity and reliability of the research. As such, this method is ideal to assess the rights-in-principle and the rights-in-practice at the local level.¹⁰¹⁷ Large country studies often do not allow for such comprehensive research and limit identification of core issues. The method therefore fits well for understanding the issues of women's equality in public life, CEDAW implementation in the Maldives and demonstrate the legal, political and social issues that hinder the implementation of women's rights in that context.

A right to public life is often gauged by a statistical measurement of women's participation in different decision-making positions within the political sphere, such as the national parliament and different government bodies.¹⁰¹⁸ An increase in these numbers is seen as development of the human right or participation in public life. Focusing on measuring and re-measuring a single aspect, such as participation in parliament, is misleading from a rights point of view. This view of progress

¹⁰¹³ Barry Macdonald and Rob Walker "Case-study and the Social Philosophy of Educational Research" (1975) 5 Cambridge Journal of Education 2 at 2.

¹⁰¹⁴ Robert E Stake *The Art of Case Study Research* (Sage Publications, Thousand Oaks, 1995) at xi.

¹⁰¹⁵ Helen Simons *Case study research in practice* (SAGE Publications Ltd, Los Angeles ; London, 2009) at 20. Robert K Yin *Case Study Research* (5th ed, SAGE Publications, Inc, Los Angeles, 2013) at 3–13.

¹⁰¹⁶ Yin, above n 1015, at 5.

¹⁰¹⁷ Landman, above n 714, at 78–88.

¹⁰¹⁸ UN Women "Facts and Figures: Leadership and Political Participation - UN Women – Headquarters" <www.unwomen.org>; Inter-parliamentary Union IPU "Women in Parliaments: World and Regional Averages" <www.ipu.org>.

overlooks the fact that the increase could be natural and parallel to the growing populations in countries, and the growing number of educated women. Moreover, such improvements cannot be generalised to a wider right to participation and does not indicate improving autonomy to participate in public life.

A more appropriate method to study a human right to public life should include a study of both the legal rights and women's constraints and autonomy in the exercise of their rights in relation to articles 7 and 8 of the CEDAW convention. To examine women's substantive equality in public life, the context of the lived-experiences of those to whom equality in result is due, must be examined.¹⁰¹⁹ This is the only way in which existing and past discrimination can be corrected, without which, a CEDAW right to public life cannot be successfully implemented. For this reason, methods used in previous human rights impact studies are not useful to measure right to public life, particularly to identify the gaps between rights-in-principle and rights-in-practice. A purely quantitative method is also not useful to measure a right to public life because numbers in themselves provide only superficial information on the enjoyment of rights and do not collect context specific data, to help understand underlying issues. Moreover, in order to address issues for a CEDAW right to public life, context specific information on the barriers must be identified. This type of information can best be generated from a qualitative, rather than quantitative, investigation. A qualitative case-study therefore, is an ideal research design to measure a CEDAW right to public life, and the current domestic challenges in the realisation and implementation of the right.

4.3 Research Instrumentation: Rights-in-Principle and Rights-in-Practice

This research aimed to assess the impact of a CEDAW right to public life in the Maldives by measuring the rights-in-principle and rights-in-practice. It is expected

¹⁰¹⁹ See Hanna Beate Schöpp-Schilling, Reflections on a General Recommendation of Article 4 (1) of the Convention on the Elimination of All Forms of Discrimination against Women, Boerefijn, above n 495, at 26.

that by showing the gap between rights-in-principle and rights-in-practice, the barriers to CEDAW implementation will become more visible, to the CEDAW Committee and also the States Party. The instrumentation was designed as follows.

In order to identify and measure the rights-in-principle, the study measured the changes brought to the legal, political and executive structures of the Maldives to incorporate meaningful formal legal equality for women's public lives after CEDAW ratification. The Institutional-Procedural Index (IPI) (Table 5.1) used in this study is a unique instrument based on the impact models used by Charles Humana (1992),¹⁰²⁰ Foweraker and Landman (1999) and,¹⁰²¹ Byrnes and Freeman (2012).¹⁰²²

In the early 1990s, Charles Humana produced what was the “most systematic and extensive coverage” of all attempts to classify and measure human rights.¹⁰²³ The first publication based on this method of measuring human rights was published in 1985 and covered 88 countries, and in 1992, the third publication covered a total of 104 countries.¹⁰²⁴ Humana's HFI (human freedom index) uses 40 indicators (Figure 10) to measure human freedom.

¹⁰²⁰ Charles Humana *World human rights guide* (Oxford University Press, Incorporated, Oxford ; New York; Toronto, 1992).

¹⁰²¹ Joe Foweraker and Todd Landman “Individual Rights and Social Movements: A Comparative and Statistical Inquiry” (1999) 29 *British Journal of Political Science* 291 at 295.

¹⁰²² Byrnes and Freeman, above n 1004.

¹⁰²³ United Nations Developmental Programme *Human Development Report 1991* (Oxford University Press 1991) at 19.

¹⁰²⁴ Humana, above n 1020, at 3.

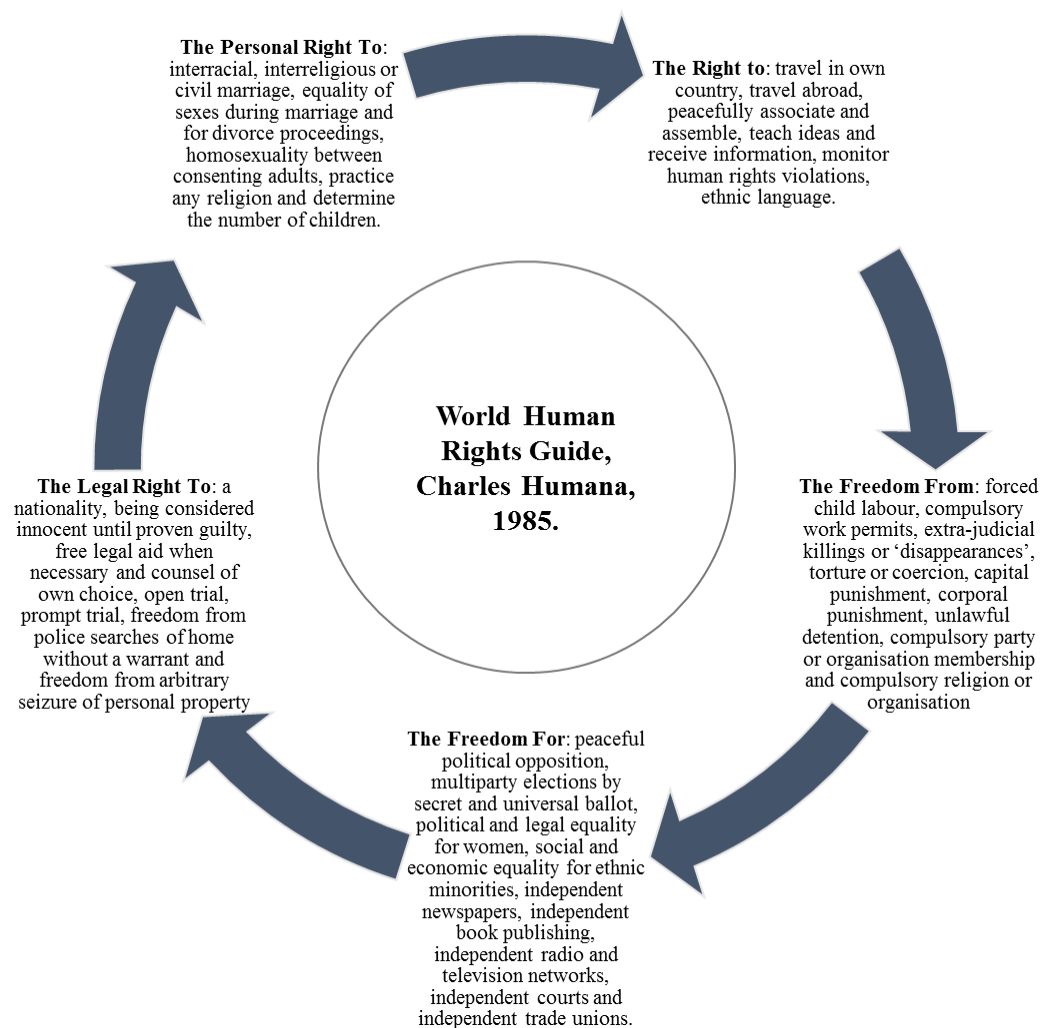


Figure 10: Charles Humana, World Human Rights Guide, 1985.

In 1999, Foweraker and Landman also used indicators, an institutional procedural index (IPI), to measure citizenship.¹⁰²⁵ This tool measured three aspects of a right to citizenship: (1) *forms*: the extent to which certain normative attributes of citizenship are embodied in the constitutions of different regimes; (2) *practices*: the degree to which the practices and policies of these regimes conform to these participants; and (3) *struggles*: the extent to which social movements and popular political organisations aim to make the practices so conform, or promote this as a contingent result through pressing their demands in terms of rights.¹⁰²⁶ Identifying

¹⁰²⁵ Foweraker and Landman, above n 1021, at 291.

¹⁰²⁶ At 293.

the specific impact of a treaty at the domestic level is not easy. Changes in the enjoyment of rights and freedoms may well have been caused by other factors existing at the domestic level.¹⁰²⁷ In view of these, Byrnes and Freeman (2012) developed an index (Figure 11) that looked at specific legislations and policies, but also the references to CEDAW Convention, or to its reporting, or communications procedures, that have “stimulated or contributed to domestic reform” and through this exercise, the study “identified cases in which the impact of the CEDAW Convention is seen in legal reform”.¹⁰²⁸

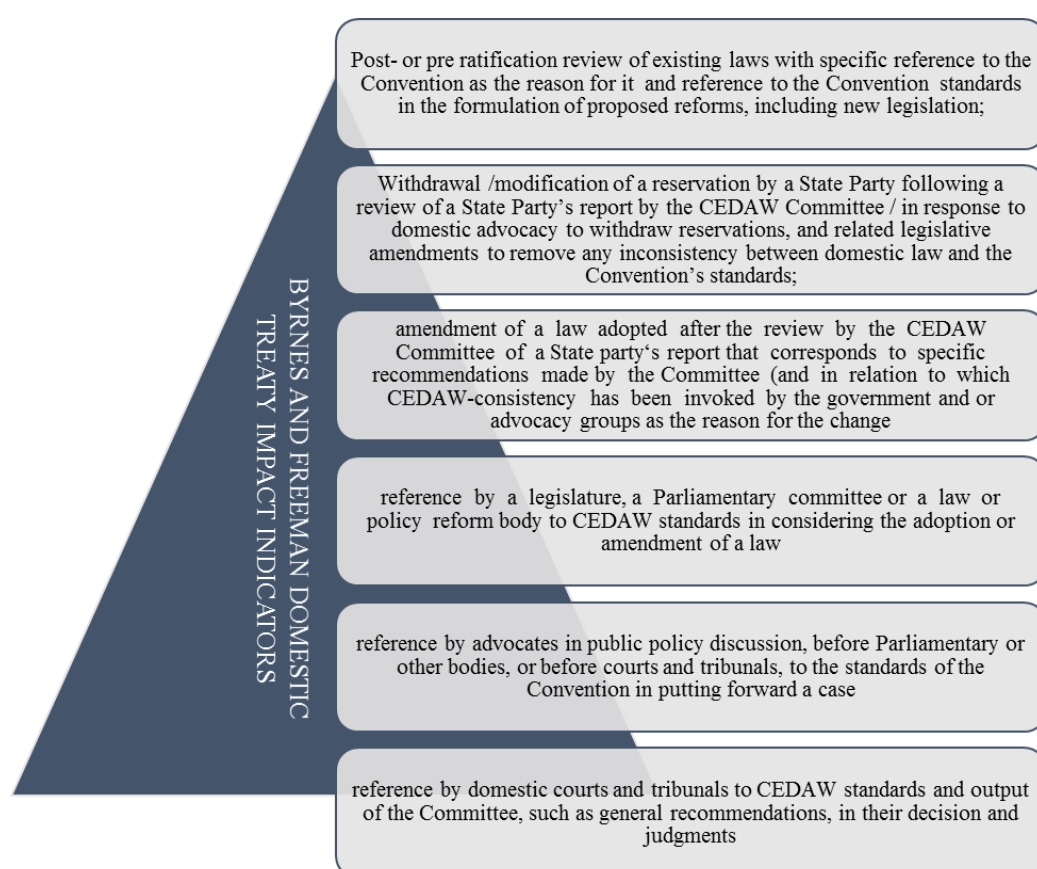


Figure 11: Byrnes and Freeman, Indicators to Measure Impact of CEDAW at the Domestic Level

Source: Byrnes and Freeman, *The Impact of the CEDAW Convention: Paths to Equality*, World Development Report 2012, at 4-5.

¹⁰²⁷ Byrnes and Freeman, above n 1004, at 4-5.

¹⁰²⁸ At 3.

Measurement models are not free of research problems. In fact, most quantitative measurements of rights and freedoms are rough approximations and mostly measures violations of rights and freedoms rather than State efforts to implement human rights.¹⁰²⁹ According to Sally E. Merry, indicators are being increasingly used to measure human rights and social justice ideals such as rule of law, violence against women, and economic development.¹⁰³⁰ However, although indicators are highly regarded globally for their simplification of assessment,¹⁰³¹ measuring equality and justice with mathematical figures in itself is problematic because it “ignores individual specificity and context in favour of superficial and standardized knowledge”.¹⁰³² While indicators demonstrate exponential growth, at the same time, they also mask a certain truth.¹⁰³³ Such numerical figures may be deceptive of the actual situation of rights within a country. Problems also may arise in the collection of data, which may present a distorted picture of the enjoyment of a right within the context. Indicators are useful to the extent that they provide something measurable. For example, in measuring torture, indicators used are not torture in itself, but rather, news reports of torture cases.¹⁰³⁴ On the positive side, indicators make things easier to specify. Although availability of legal assistance may not be entirely representative of a right to a fair trial, it presents a measurable aspect of a right to fair trial. Indicators highlight issues and success stories in ‘quantifiable and measureable terms.’¹⁰³⁵ Indicators have since become a powerful tool assisting in the measurement of rights, and are widely used by the UN and NGOs today.

¹⁰²⁹ Russel Lawrence Barsh “Measuring Human Rights: Problems of Methodology and Purpose” (1993) 15 Human Rights Quarterly 87 at 89; See United Nations Developmental Programme *Human Development Report 1992* (Oxford University Press 1992).

¹⁰³⁰ Sally Engle Merry “Measuring the World: Indicators, Human Rights, and Global Governance: with CA comment by John M Conley” (2011) 52 Current Anthropology S83 at 83.

¹⁰³¹ AnnJanette Rosga and Margaret L Satterthwaite “The Trust in Indicators: Measuring Human Rights” (2009) 27 Berkeley Journal of International Law 253 at 254–255.

¹⁰³² Merry, above n 1030, at 86.

¹⁰³³ Rosga and Satterthwaite, above n 1031, at 255.

¹⁰³⁴ Barsh, above n 1029, at 90.

¹⁰³⁵ Merry, above n 1030, at 83; See Rosga and Satterthwaite, above n 1031, at 255.

4.3.1 *Rights-in-principle vs. Rights-in-practice*

Using these primary ideas, this research constructs a model to measure a right to public life (Figure 12). This right, similar to the right to citizenship, has three components: the extent to which the right to public life is embodied in national legislation and policy; the degree to which practices and policies of the State conform to these prescriptions; and the challenges (struggles) in the pursuit of equal rights and freedoms in public life for women. The first component in this model is the rights-in-principle measure and will use data from CEDAW reports to quantify the legal rights in the context of a right to public life. A list of indicators based on the CEDAW Convention was then created to measure this component.¹⁰³⁶ This index identified the presence of constitutionally or legally prescribed rights directly relevant to the achievement of equal rights and non-discrimination in public life included in CEDAW.¹⁰³⁷ This made the comparison with the rights-in-practice data - collected through qualitative interview data on perceptions of rights conditions and experiences¹⁰³⁸ - more visible.

Although Foweraker and Landman's measure of rights-in-principle is useful in the context of this research to show formal legal equality, this was not useful to measure rights-in-practice, primarily because there is no data on this in the Maldives. The rights-in-practice model used by Foweraker and Landman was a combination model based on the research findings of Gastin (freedom scale),¹⁰³⁹ Fitzgibbon (image index),¹⁰⁴⁰ Duff and McCamant (repressiveness),¹⁰⁴¹ Arat

¹⁰³⁶ For a detailed discussion on human rights methodology see, Russel Lawrence Barsh "Measuring Human Rights: Problems of Methodology and Purpose" (1993) 15 Human Rights Quarterly 87.

¹⁰³⁷ See table 5.1, Chapter 5.

¹⁰³⁸ Landman, above n 714, at 78–82.

¹⁰³⁹ Raymond Duncan Gastil *Freedom in the World* (Transaction Publishers, New York, 1980).

¹⁰⁴⁰ Russell H Fitzgibbon "Measuring Democratic Change in Latin America" (1967) 29 The Journal of Politics 129.

¹⁰⁴¹ Kenneth F Johnson "Scholarly Images of Latin American Political Democracy in 1975" (1976) 11 Latin American Research Review 129.

(‘democraticness’)¹⁰⁴² and Humana (UDHR based human rights and freedom scale).¹⁰⁴³ Though abstract, this combined model (CRI) allowed Foweraker and Landman to depict how rights-in-practice had evolved over time in selected countries.¹⁰⁴⁴ For the purposes of this study, such information on women’s perception of rights associated with a right to public life was not available from other studies. Therefore, this study measured rights-in-practice by focusing on State compliance with CEDAW obligations (which includes the integration of CEDAW rights at the local level and compliance with treaty enforcement mechanisms) and the experience of equality and discrimination and the challenges to enjoy a CEDAW right to public life.¹⁰⁴⁵ Questions for the rights-in-practice measure thus centered on:

- The existence of discrimination against women and perceptions on the efforts to eliminate discrimination against women;
- Social and cultural patterns of conduct of men and women, with a view to identifying prejudices and practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- The effect of rising fundamentalist interpretations of Islam on women’s choice; and
- Other factors affecting women’s rights in the local context.

Data for this segment was collected through semi-structured open-ended interviews using a purposively recruited sample as opposed to random samples. According to Landman, there are three ways to gather rights-in-practice data: event based, standard based and survey based methods.¹⁰⁴⁶ Information gathered in this study was neither event based nor standard based; a survey based method was the closest possible method to achieve the aims of this research due to a lack of information on

¹⁰⁴² Zehra F Arat *Democracy and Human Rights in Developing Countries* (Lynn Reiner Publishers, Boulder and London, 2003).

¹⁰⁴³ Humana, above n 1020.

¹⁰⁴⁴ Foweraker and Landman, above n 1021, at 298.

¹⁰⁴⁵ Landman, above n 714, at 80.

¹⁰⁴⁶ At 81–82.

the subject in the Maldives. The qualitative interview methodology was also ideal because it captured the world from the subject’s viewpoint and uncovered lived experiences.¹⁰⁴⁷ Semi-structured open-ended interviews therefore became the most appropriate method for this research because they allowed the researcher to gather the maximum amount of data on multiple aspects in a holistic manner.¹⁰⁴⁸

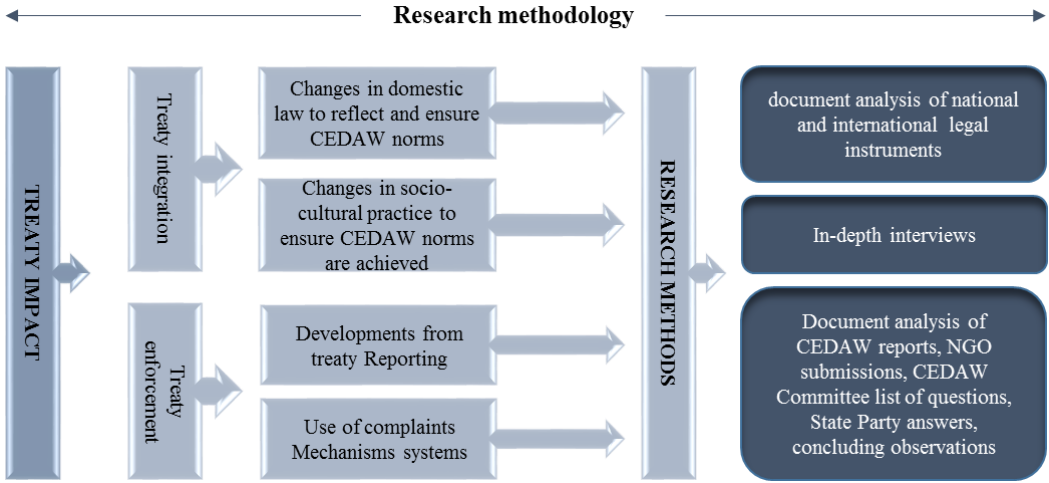


Figure 12: Instrument to Measure Human Rights Treaty Impact at the Domestic Level

4.4 Data Collection

The study used two main methods of data collection: document analysis and interviews. These two methods allowed the researcher to capture a holistic picture of a CEDAW right to public life in the Maldives. Using multiple methods is key to capturing an in-depth understanding of a research problem and as a method, adds “rigor, breadth, and depth to the study and provides corroborative evidence of the data obtained”.¹⁰⁴⁹ Collecting data from different sources will make issues more visible and also increase the validity and reliability of the findings.

¹⁰⁴⁷ Steinar Kvale *Interviews* (SAGE Publications, London, 1996) at 1.

¹⁰⁴⁸ Michael Quinn Patton *Qualitative Evaluation and Research Methods* (Second Edition edition ed, SAGE Publications, California, 1990) at 50.

¹⁰⁴⁹ Linda D Bloomberg and Marie F Volpe *Completing Your Qualitative Dissertation* (Second Edition edition ed, SAGE Publications, California, 2012) at 82.

4.4.1 Document Analysis

Data for this instrument was collected through a document analysis of CEDAW reports (States Party and NGO submissions), treaty monitoring ‘communications’ (concluding observations, questions and answers) between the CEDAW Committee and the States Party. The document analysis (Table 4.1.) identified the changes that were theoretically significant over the last 20 years since CEDAW ratification within the context of the Maldives and gauged the degree to which CEDAW ratification has actually made a difference to women’s equality in public life. The exercise uncovered the changes that have occurred over time since the ratification of the Convention within the legal and executive framework of the Maldives and interviews were used to measure the experience of rights. Primary and secondary documents were consulted. These included State reports to CEDAW and other Human Rights Reports such as the common core document and the universal periodic review, secondary documents included a number of key human rights related legislation which informed the instances of legal and policy reform in the Maldives. Major evaluation and planning initiatives that took place in the Maldives were also closely reviewed to analyse the development of women’s rights in public life since CEDAW ratification. Document analysis also served to help triangulate data, which at times showed similarities in the interview data and the documented data, increasing the credibility of the findings of this research.

4. 1: List of Documents Analysed

<i>CEDAW Reporting</i>	<i>Document Number / Title</i>	<i>Original Due Date</i>	<i>Date Submitted</i>	<i>Date Published</i>
Cycle -1				
States Party Report	CEDAW/C/MDV/1	31.07.1994	28.01.1999	28.01.1999
Info from UN agencies	CEDAW/C/2001/1/3/Add.2		01.03.2001	01.03.2001
Info from UN agencies	CEDAW/C/2001/1/3/Add.1		11.12.2000	11.12.2000
Concluding Observations	A/56/38(SUPP)paras.114-146			02.01.2001
Summary records	CEDAW/C/SR.498		24.01.2001	26.03.2001
Summary records	CEDAW/C/SR.499		24.01.2001	27.03.2001
Summary records	CEDAW/C/SR.506		30.01.2001	30.03.2001

Cycle - 2				
States Party Report	CEDAW/C/MDV/2-3	31.07.2002	08.06.2005	08.06.2005
List of Issues	CEDAW/C/MDC/Q/3		04.08.2006	04.08.2006
Reply to List of IOssues	CEDAW/C/MDV/Q/3/Add.1		27.09.2006	27.09.2006
Info from UN agencies	CEDAW/C/2007/1/3/Add.1		25.10.2006	25.10.2006
Info from UN agencies	CEDAW/C/2007/1/3/Add.3		27.10.2006	27.10.2006
Concluding Observations	CEDAW/C/MDV/CO/3		20.02.2007	20.02.2007
Summary records	CEDAW/C/SR.763			
Summary records	CEDAW/C/SR.763(B)			07.03.2007
Summary records	CEDAW/C/SR.764			
Summary records	CEDAW/C/SR.764(B)			31.01.2007
Cycle – 3				
States Party Report	CEDAW/C/MDV/4-5	31.07.2010	13.12.2012	
List of Issues	CEDAW/C/MDV/Q/4-5		25.07.2014	25.17.2014
Reply to List of Issues	CEDAW/C/MDV/Q/4-5/Add.1			13.07.2015
Info from civil society	Global Initiative to End All Corporal Punishment of Children (for MSWG)			
Info from civil society	Amnesty International (session submission)			
Info from civil society	Global Initiative for Economic, Social and Cultural Rights (session submission)			
Info from civil society	Hope for Women (Maldives) (session submission)			
Info from NHRIs	Human Rights Commission of the Maldives (PSWG submission)			
Info from NHRIs	Human Rights Commission of the Maldives (session submission)			
Concluding Observations	CEDAW/C/MDV/CO/4-5			10.03.2015
Summary records	CEDAW/C/SR.1294			
Summary records	CEDAW/C/SR.1293			
Other Relevant Human Rights Reports				
Common Core Document				
Universal Periodic Report	A/HRC/WG.6/9MDV/1/Rev.1			03.11.2010
Universal Periodic Report	A/HRC/WG.6/22/MDV/1			06.05.2015

4.4.2 Interviews

Interview data was gathered in two phases. Phase I took place between January and June 2013. The researcher spent five months in the capital city Male' gathering interviews. Phase II took place in 2014, between August and October. After identifying the first potential participants, the researcher sent individual e-mails describing the purpose of the study, inviting their participation and requesting a convenient date and time for the interview. Those who responded to these invitations were sent a list of questions and a research information package with key information on informed consent and confidentiality. All of these documents

were pre-approved in 2012 by the Te Piringa, Faculty of Law Ethics Committee, and University of Waikato, New Zealand.

The research used informal conversational interviews depending on the participants and the type of information they were willing to share.¹⁰⁵⁰ The research uses quotes from interviewees to allow description of their own experiences in their own words to reduce “interpretation and judgment” on the part of the researcher.¹⁰⁵¹ An interview guide (Appendix C: Semi-structured interview guide) was developed to ensure information was gathered on all key topics.¹⁰⁵² Many times, the participants had to recall their life experiences or life stories.¹⁰⁵³ For this reason, it was important for the researcher to employ other techniques such as providing a list of semi-structured questions and probes in order to ensure that participants are able to recall the key experiences which could provide vital information relevant to this research.¹⁰⁵⁴ There was no strict order for asking questions and most of the interviews were natural conversations.¹⁰⁵⁵ Some interviews required more focus and work on the part of the researcher with some degree of flexibility whilst others required a higher level of flexibility to obtain intense rich data regarding specific cases of legal/policy reform or development affecting women’s public lives. All interviews therefore, responded to individual differences and situational changes, and accordingly, questions were individualised.¹⁰⁵⁶ At the end of the two phases, 48 audio-recorded interviews were collected and transcribed verbatim. A few participants preferred to give written interviews rather than being tape-recorded.

¹⁰⁵⁰ Patton, above n 1048, at 280.

¹⁰⁵¹ Michael Quinn Patton *Qualitative research & evaluation methods* (3rd ed, Sage Publications, Thousand Oaks, Calif, 2002) at 331.

¹⁰⁵² Michael Brenner, Jennifer Brown and David V Canter *The Research interview, uses and approaches* (Academic Press, Orlando, 1985) at 152.

¹⁰⁵³ At 163.

¹⁰⁵⁴ At 153.

¹⁰⁵⁵ Kvale, above n 1047, at 145.

¹⁰⁵⁶ Patton, above n 1048, at 281–284.

4.4.2.1 *Research Sample*

The research pool included participants from various government departments, legislature, judiciary, and resident UN organisations, local NGOs, political parties, and included full time employed staff, retired staff and volunteers. This allowed a holistic view of the problems associated with a CEDAW right to public life in the context of the Maldives. It brought in perspectives from the government side, the non-governmental side, UN and individual women who had either experienced a public life or women who wanted to, but had not yet been able to experience decision-making positions.

Participants for this research were identified via purposive recruitment, based on information they could potentially share.¹⁰⁵⁷ Participants were also identified through snowball sampling¹⁰⁵⁸ strategy whereby participants were asked to refer other individuals who could provide information relevant to this research.¹⁰⁵⁹ The key criteria for the selection of participants was a measure of appropriateness,¹⁰⁶⁰ based on their knowledge of CEDAW implementation in the Maldives, women's rights or leadership and/ or decision-making in the Maldives. This technique was necessary because specific knowledge on the experiences with CEDAW, for instance, could only come from persons who were currently working or had formerly worked with CEDAW or treaty implementation. Information on the experience of public life could only come from women who had experienced a public life in the Maldives. Secondly, perspectives of women from NGOs, political parties and human rights organisations in the Maldives were collected to demonstrate the constraints for women who want to pursuit decision-making positions within the State, but have not succeeded.

¹⁰⁵⁷ Jane Ritchie and Jane Lewis (eds) *Qualitative Research Practice; A Guide for Social Science Students and Researchers* (Sage Publications, London, 2003) at 79.

¹⁰⁵⁸ Norman Blaike *Designing Social Research* (Polity, Cambridge, 2000) at 205.

¹⁰⁵⁹ Patton, above n 1051.

¹⁰⁶⁰ Blaike, above n 1058, at 205.

All interviews followed from an initial stakeholder consultation with the Ministry of Human Rights and Gender. This meeting was necessary because most of the interviewees for this research were from the State: ministries and departments mandated with CEDAW reporting, and CEDAW implementation in the Maldives. It was also important to involve the key ministry at the beginning of the field research because that was thought to be useful in the identification of key persons to be interviewed for this research. The purposive sampling technique also allowed the researcher to choose women from different political parties, with different educational and employment backgrounds and rural/urban life experiences.

This research has taken place at a time of deep socio-political changes in the Maldives.¹⁰⁶¹ Many people in decision-making bodies and the public in general, were politically divided between the political parties, during the data collection process. In order to minimise bias, the researcher chose a fair balance of participants from different political parties and interviewed beyond the saturation point, in order to reduce errors in the findings.¹⁰⁶² Participants also differed in their length of national service, age and experience in the research area. The final sample comprised 50 individuals. Experiences and perceptions from the interview participants however, started showing similarities and pattern, after the first 15 interviews. This could be taken as an indication that the population parameters have been well covered and that the research sample is adequate to produce accurate generalisations.¹⁰⁶³

¹⁰⁶¹ The country is in a state of political 'transition'. From 1978 to 1998, President Maumoon Abdul Gayyoom had won 6 presidential terms. In 2008, after the introduction of political party system, Maldives had a new President, Mohamed Nasheed. In February 2012, he was asked by the Military to step down. After the alleged 'forced' resignation, his Deputy President, Mr. Mohamed Waheed Hassan Manik filled in the post of the President from February 2012 to November 2013. In November 2013, Maldives voted in a new President, Mr. Abdulla Yamin. For a full discussion, see *Chapter 1, Background Context*.

¹⁰⁶² Blaike, above n 1058, at 210.

¹⁰⁶³ At 209.

4.4.2.2 Participant Demographics

Participants at the end included women and men from the three branches of the state: the executive, the judiciary and the legislature. Participants also included women and men who have worked with CEDAW reporting and implementation and women from development and human rights organisations in the Maldives including local NGOs. The age of the participants ranged from 25 to 60 years, the majority were female and belonged to the age group 35-50. (Figure 13). All of the participants interviewed lived in the capital city, Male', at the time of the data collection. Some had come from outer islands as a young children with their families for purposes of education and employment. It was difficult to put participants into experience categories as most had experiences relevant to treaty reporting, decision-making, working with NGOs and also political parties.

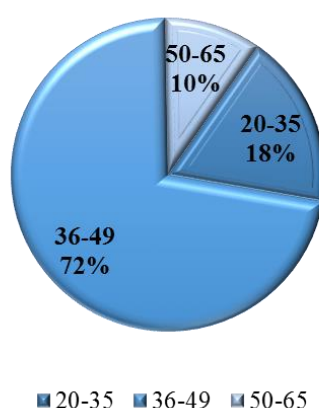


Figure 13: Participants by Age Groups

Prior to data collection, it was assumed that women would be willing to participate in this research and talk about their experiences. On the contrary, many potential participants were uncomfortable talking about their experiences and despite emphasized guarantees from the researcher, potential candidates did not have the confidence that the information gathered would be kept confidential. During this stage, the researcher had immense difficulty in getting participants for the research, differently to what had been assumed previously. This may have been for several reasons: political instability; job security; perceptions of potential bias of the researcher; or time factors.

- a) Political instability: the first phase of data collection took place early 2013, after the alleged coup in February 2012. Many people were still being constantly moved between government offices, forced to leave work or simply chose to leave the public service sector for good. Many people who were in key positions of the Government during this period did not know much about their responsibilities or mandates, and were not comfortable answering questions.
- b) Job security: Despite emphasizing the confidentiality of information, some potential participants were not comfortable sharing information about their life experiences. Some did not want any involvement with research at all. This may be because of job security or affiliations with political parties that hold specific views about women's rights on the success of international treaties in the Maldives or simply because they did not have enough background information on the researcher.
- c) Perceptions of potential bias of the researcher: The research context was highly polarised at the time of the data collection. Many potential participants, when invited to participate in the research, wanted to know more about the researcher, rather than the research. Some potential participants personally knew the researcher through previous work engagements, whilst some participants were totally new to the interviewer or needed to know more about the researcher before committing to an interview. Previous work engagements thus presented some tensions during the data collection phase. There could have been concerns that a researcher who has a political affiliation could still use information against these women who are also affiliated with political parties in the Maldives.
- d) Time factors: The researcher was in Male' for five months during her first data collection visit from Jan 2013 to April 2013, and for two months during the second data collection phase from October 2014 to November 2014. Some participants who wanted to be a part of the research did not have the time to meet within this time frame.

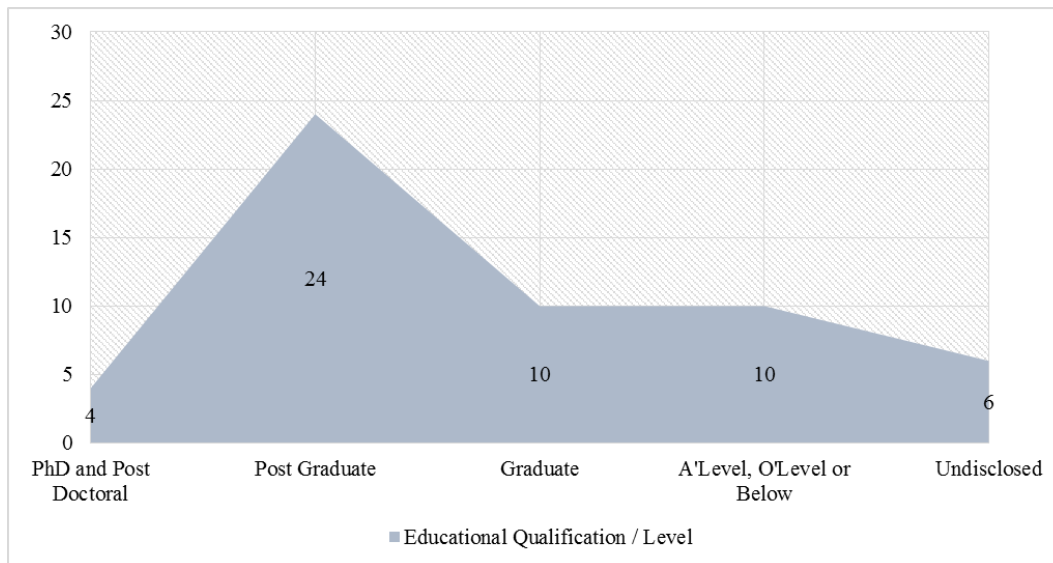
After sending e-mails inviting individuals to participate in the research, the researcher spent four months waiting for responses. The researcher then made phone calls and met with potential participants to discuss and explain the research, and then ask if they would be willing to contribute to the research. This exercise was more useful in terms of getting participants. The numbers also started increasing after the first few interviews. Some of the participants had suggested other individuals who could contribute to the study, who were later contacted. Quite possibly, the first participants were friends or colleagues of these other individuals who later participated in the research.

Phase II of the data collection took place in 2014 and participants were more forthcoming at this time. In general, people were more willing to talk about their experiences in leadership positions. These differences may have been associated with issues such as job security, moving jobs due to change of governments, abolition of government departments and, at times, unfamiliarity with new jobs and associated frustrations.

In the end, a total of 50 people participated in this research, five males and 45 females. Forty-eight people gave interviews directly to the researcher and were open with their narratives and experiences. Two participants felt more comfortable writing down and emailing their answers to the researcher. Other factors included time and interest in taking part in the research. A few persons committed to the research, but did not get the time during the two data collection trips on which the researcher was in the Maldives. Whilst almost all of the participants were married, many participants, especially women, had been married multiple times. Most women in decision-making positions also had only one to two children.

Participants of this research were highly qualified with a majority having post graduate qualifications (see Figure 15 below for a breakdown of qualifications). It is also observed that most women who were in volunteer work and NGOs had lesser educational qualifications in comparison to those working within the State.

Figure 14: Research Participants by Educational Qualification



Most participants in this research came from the executive branch of the government. This is because the greatest variety of jobs are also found within the executive body of the government: e.g. ministers, deputy ministers, cabinet secretaries, permanent secretaries, director generals and so forth. Parliament only includes members of parliament and the judiciary includes only judges. The research also includes views from the two financial authorities of the State, the Maldives Monetary Authority and the State Bank; Bank of Maldives. (See Figure 16 shows a break down of the participants by their area of work)

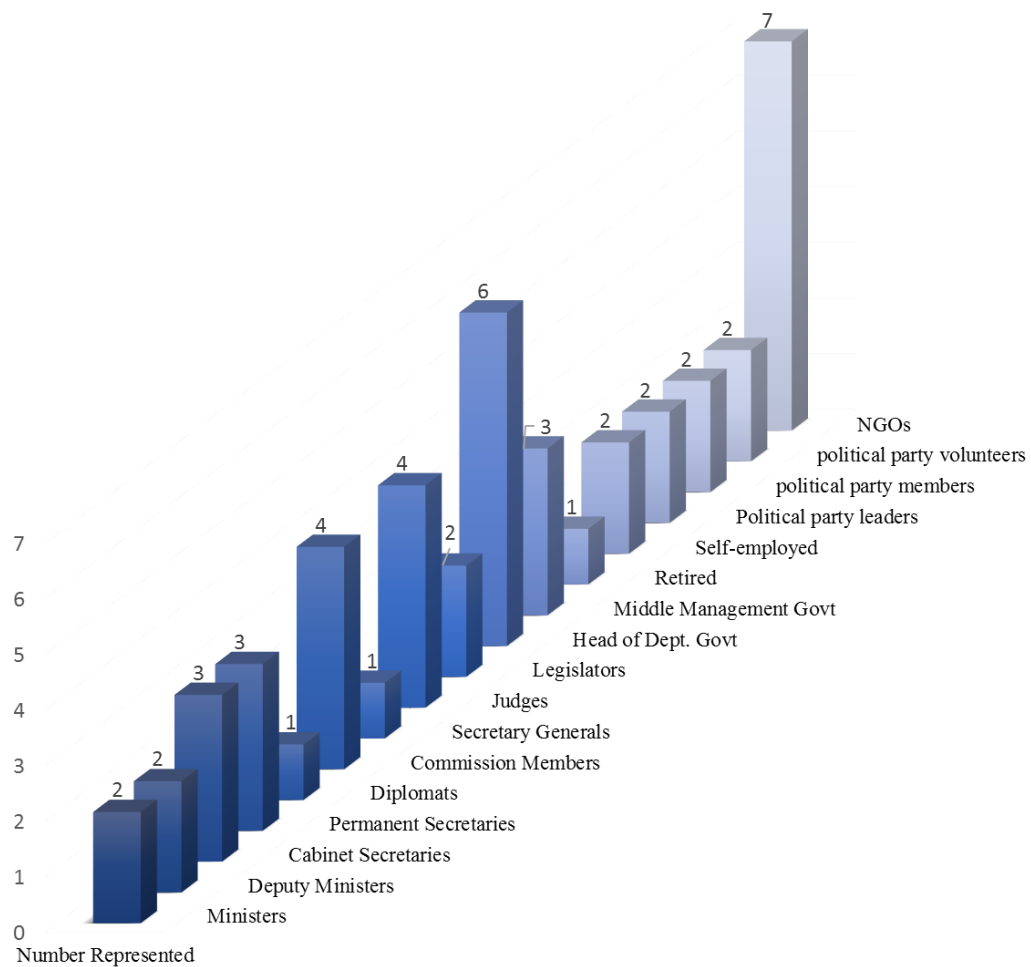


Figure 15: Positions held by the Research Participants within different sectors at the time of data collection

The researcher made a conscious effort to balance views from different political parties, in view of the highly polarised context in the Maldives at the time of data collection in the Maldives. Thus, more participants were interviewed from the two biggest political parties in the Maldives, Progressive Party Maldives / Dhivehi Rayyithunge Party (PPM/DRP) and Maldivian Democratic Party (MDP), followed by Adhaalath Party and Jumhooree Party (JP) (Figure 16).

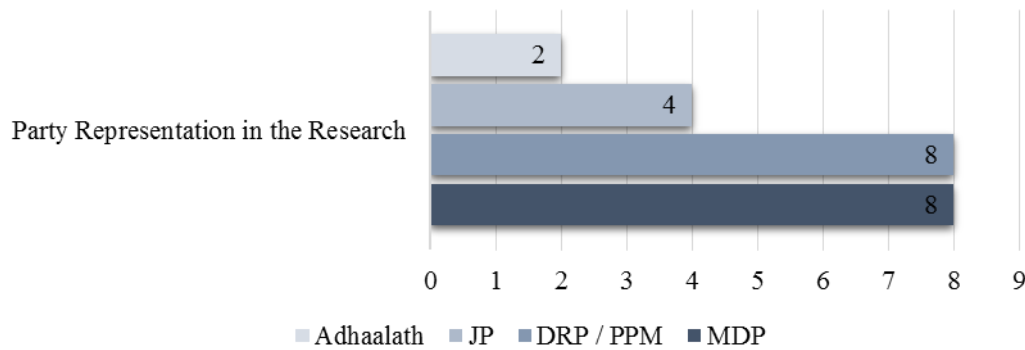


Figure 16: Political Parties Represented in the Research

4.5 Data Processing and Analysis

As indicated above, the interview data is drawn from ethnographic interviews in Male'. In the qualitative element, 47 face-to-face interviews were carried out with 44 women and three men. The interviews in this study were conducted with officials and ex-officials from the government departments, legislature, judiciary, local and city councils, local NGOs, UN bodies and human rights organisations in the Maldives and participants from local political parties. Interviews lasted between 30 and 90 minutes and each interview was recorded and fully transcribed. Five of the first 35 interviews formed a pilot study which was necessary to 'test' the semi-structured interview guide and to gain a feel for the issues which were important in the context of the Maldives. For example, the initial interview guide had specific questions on CEDAW articles; however, after the pilot interviews, the guide was amended as it was felt that participants would not be able to answer specific questions on CEDAW articles. However, the main issues were still discussed during the interviews, keeping in mind that participants may have information that could be useful for the research.

This research adopted a content analysis technique to analyse qualitative data from the interviews. Qualitative data analysis is often based on grounded theory approaches, which assumes that theory will emerge from the data. Grounded theory allows the data to speak for themselves rather than approaching the data within, for

example, existing theoretical frameworks.¹⁰⁶⁴ This research adopted both manual transcription and coding, plus NVivo-10 as a digital software to analyse the interview data and followed the following steps: manual transcription; NVivo-10 Project: re-transcribing and analysis; and data analysis through visual diagramming.

4.5.1 Manual Transcribing

Following the pilot study the data were manually transcribed. Transcribing is “an instrumentation practice, examining sound-data from an audio-tape to create visual data for printing out on paper.”¹⁰⁶⁵ Transcribing involves making complicated decisions as to how data will be transcribed, whether it will be typed verbatim or ‘by tidying up’. This research transcribed data verbatim manually. Interviews from the first 33 participants from Phase I were transcribed in 2013. Two participants shared typed out interviews. A total of 15 interviews were transcribed from Phase II of data collection in 2014. Transcribing was done during the interview phases so that the process of analysis could begin in the researcher’s mind. This also made the researcher better informed on the follow up questions to ask from individual participants.

In the transcript analysis process, the researcher went through the data identifying codes and patterns in the data. This helped build themes in the study. The data in the interviews were not fragmented in the initial stage, and it was observed from a more holistic angle, to understand the perspectives and stances of the research participants. Keeping the data on word files, retaining the context within which the data appeared, facilitated hearing what the participant was saying rather than slicing their responses into arbitrary units and themes, which carried the risk of carrying the researcher’s voice more than the participants. Moreover, cutting up or

¹⁰⁶⁴ Udo Kelle “Theory Building in Qualitative Research and Computer Programs for the Management of Textual Data” (30 June 1997) <www.socresonline.org>.

¹⁰⁶⁵ Tom Wengraf *Qualitative Research Interviewing* (SAGE Publications Ltd, London; CA; New Delhi, 2001) at 221.

fragmenting data on the word files is no longer necessary given the advantages of digital software tools.

At the end of this process it was decided that it would be necessary to use a software package for the full study. This decision was initially made on the basis of volume of data, which amounted to over 140,000 typed words. Of the possible options explored by attending the University DWC session and meeting previous users of analysis software, NVivo-10 stood out. NVivo-10 was chosen over other packages primarily because it offered a 30 day free trial period and was relatively user-friendly. Using a digital tool also helps minimise researcher bias in terms of understanding the challenges for a CEDAW right to public life in the Maldives.

4.5.2 NVivo-10 Project: Re-Transcribing and Analysis

In the second step of data processing and analysis, the interview data on the word files were transferred to the NVivo-10 project. NVivo-10 is a qualitative data analysis software designed by QSR. NVivo-10, constructed on a grounded theory approach, is a software that “has ‘memoing’ tools which facilitate theory building from the data”.¹⁰⁶⁶ After transferring data on to the NVivo-10 project, the researcher then worked through the interview data for a second time, creating nodes on the NVivo-10 project. This is primarily, a manual exercise in the sense that the researcher goes through the interviews again, line by line, to identify nodes.

¹⁰⁶⁶ For a discussion see, Elaine Welsh “Dealing with Data: Using NVivo in the Qualitative Data Analysis Process” (2002) 3 Forum Qualitative Sozialforschung / Forum: Qualitative Social Research.

4.5.2.1 *Open Coding and Axial Coding in NVivo-10*

In NVivo-10, data are coded at nodes. In NVivo-10, nodes represent a code, theme, or idea arising out of the data.¹⁰⁶⁷ The coding process fragments the interview into separate categories, forcing examination of each detail, and involves piecing these fragments together to reconstruct a holistic and integrated explanation. A bottom-up approach was adopted by the researcher to identify nodes whereby the transcripts were re-read creating nodes along the way, allowing themes to arise from the data. Creation of 'nodes' in this way required the researcher to go through the interview transcript line by line in a labour-intensive exercise. The overall purpose of this process was to identify patterns or themes that were linked together similarly or divergently and that collectively described or analysed each research point. The advantage of NVivo-10 was that the tool allowed the researcher to see all the material under a particular node in one virtual box which it displays with all information on a theme summarized together. NVivo-10 thus helped identify major themes and also uncover subtle trends: for example, by searching for an exact word or words that are similar in meaning to quickly test theories.

The first phase of node creation resulted in 177 identified nodes, many of which were overlapping. These were then re-adjusted to fit into similar nodes: existing and current nodes. Technology assisted working in a more systemic manner in comparison to manual coding.¹⁰⁶⁸ The researcher also worked interactively on multiple analysis projects at the same time; on the NVivo-10 project and the manually transcribed data on the word files, doing simple word-searches to see how many times they appeared. Some words which the researcher is familiar with, such as non-discrimination, do not appear very often in the text of the interviews, however, participant narratives often tell a story of discrimination.

¹⁰⁶⁷ *Using SPSS for Windows - UsingNVivo9_0.pdf* - Using NVivo for Qualitative Data Analysis, Stanford University, Social Science Data and Software 2011-2012, at 7.

¹⁰⁶⁸ John W Creswell *Qualitative Inquiry and Research Design* (3rd ed, SAGE Publications, Inc, Los Angeles, 2012).

During the open coding stage, the research primarily focused on identifying concepts and categories. As a next step (axial coding), concepts and categories were re-read to confirm that the concepts and categories accurately represent interview responses and also explore how concepts (sub-categories) and categories are related.¹⁰⁶⁹ To examine the latter, questions that helped to understand the context such as conditions or causes that influenced concepts and categories, the social/political context and the associated effects or consequences, provided some useful lenses. For example, one of the concepts is day-care facilities in Male', and two of the categories were 'growing nuclear families' and 'maternity leave', an axial code can appear in a phrase like "our office does not encourage having children." Thus a broader category is required that captures the context in which these codes are appearing, which may be labelled as 'unsupportive work environment.' Axial coding in this sense requires intense analysis of categories and allows clarification and double checking of concepts arising from the text.

4.5.3 Data Analysis through Visual Diagramming

Interview data were also put in graphs, flowcharts and mind maps to understand the flow of data, relationships and inconsistencies in the data. Visual overviews were mostly done using Microsoft PowerPoint. This helped the researcher identify commonalities and differences amongst the research participant responses, and also differences amongst participants from the State sector and from non-State actors. According to Buckley and Waring, diagrams are extremely powerful tools in conveying thoughts, presenting data, clarifying the research process and showing relationships between concepts and categories.¹⁰⁷⁰

¹⁰⁶⁹ Judy Kendall "Axial Coding and the Grounded Theory Controversy" (1999) 21 West J Nurs Res 743.

¹⁰⁷⁰ Charles A Buckley and Michael J Waring "Using diagrams to support the research process: examples from grounded theory" (2013) 13 Qualitative Research 148 at 149.

4.6 Interpretive Paradigm: Human Rights and Women's Capabilities

Capabilities Approach (CA) provides the necessary lens to gauge the inequalities faced by women in the Maldives in the area of right to public life, because it will help explain unequal participation by women in public life.¹⁰⁷¹ CA is ideal for this research because as an analytical framework, it helps to explore the complexities surrounding women's public lives in contrast to measuring the number of women in decision-making bodies. By exploring various freedoms and challenges of a woman's life, such as freedom to choose family or mobility within the community, this approach allows the triangulation of the different dimensions that dictate and shape women's choices,¹⁰⁷² which is not usually not possible with other dominant political theories. The research questions were, therefore, broad enough to explore these issues for women's free choice in the context of the Maldives. The semi-structured open-ended questionnaire thus measures other factors, in addition to the experience of right to public life, such as overall capacity and equality of women in society. The questionnaire included specific questions related to capability; life, bodily health, bodily integrity, senses, imagination and thought, emotions, practical reason, affiliation, other species, play, and control over one's environment. Since enjoyment of rights depend on the context around the right, capabilities is an important concept to explore and as a tool, it offers unique perspectives which, other analytical tools do not offer. Employing this lens helps towards an understanding of the profound challenges women face in the area of public life in the Maldives, which significantly limits CEDAW's success at the local level.

CA allowed measurement of the practical outcomes of the formal equality approach adopted by the State, and the evaluation of how women pursue these rights and opportunities to enjoy equality with men in public life. Secondly, CA offers a much richer set of dimensions for evaluation, which, given the nature of formal equality

¹⁰⁷¹ Reicher, above n 975, at 171.

¹⁰⁷² Unterhalter, above n 811, at 116.

approaches, with their many and complex outcomes, makes the approach ideal for capturing all these outcomes. The approach allows the highlighting of the appropriateness of the formal equality frameworks and their efficiency in reducing inequalities.

4.7 Epistemologies, Positioning and Insider-Issues

Research questions and research methods are informed by the researcher's social positioning, values, ways of being and how knowledge is defined, valued and prioritised.¹⁰⁷³ Worldviews are framed by life experience, circumstances and localities,¹⁰⁷⁴ and thus researcher's standpoints are informed by social positioning, epistemology and axiology.¹⁰⁷⁵ The influences of such stances and perspectives are critical to the research,¹⁰⁷⁶ and have practical implications and must be made explicit.¹⁰⁷⁷ The sections below therefore, details the positionalities, epistemologies and stances of the researcher.

The researcher in this case was an insider; a local woman who has been a woman's rights activist (working with the Gender Advocacy Working Group (GAWG)),¹⁰⁷⁸ a lawyer, and most importantly, a ministerial level public service official¹⁰⁷⁹ in the Maldives. The experiences of the researcher in decision-making positions – particularly in working with women who have been disadvantaged by the legal system, the frustrations with the lack of sustainable processes for effective treaty implementation, the unclear role of the treaty bodies, the effect of growing

¹⁰⁷³ Walter, above n 1006, at 11–15.

¹⁰⁷⁴ At 11.

¹⁰⁷⁵ For a comprehensive discussion see, At 11–15.

¹⁰⁷⁶ At 11.

¹⁰⁷⁷ For a comprehensive discussion, see Creswell, above n 1068.

¹⁰⁷⁸ Gender Advocacy Working Group – A non-governmental collaborative between the UNFPA, Maldives Government and local NGOs working in the area of women's rights, particularly in the area of violence against women in the Maldives.

¹⁰⁷⁹ Permanent Secretary of the Attorney General's Office. A Permanent Secretary in the Maldives is the Civil Service head of a Ministry, equal in rank to a Deputy Minister.

fundamental versions of Islam and women being the biggest group affected by such ideals – initially inspired her to take on this research, to understand benefits and changes that have or have not occurred in the last 20 years since CEDAW ratification.

The researcher had to be mindful and diligent about these attributes during the interview processes in Male'. Having background knowledge about the potential research participants was useful in framing the research questions, to capture diverse experiences, keeping in mind that every individual experiences things differently. Being mindful was also important because the researcher herself was drawing from her own experiences in the subject area. The researcher also had to keep an open mind to allow and capture the various 'lived realities' of the participants, which are informed by their own positioning and stances in the society. It was also anticipated that experiences change over time, with work environments, age, and other factors. This also meant that the researcher had to be conscious of the participant's contexts in order to situate knowledge.¹⁰⁸⁰

This research gathered data from various contextual settings. The context was important for this research due to various political developments in the country such as the political transition to a democracy, which has been discussed earlier. The interview questionnaire was used to prompt open and friendly conversations between the researcher and the participant. The semi-structured nature of the questionnaire ensured that data on specific research areas were collected, and also provided the flexibility to modify questions depending on the participant. Participants were purposely selected from different organisations within the State and outside the State, so none were able to answer all the questions. The difference in views and perspectives were central to this research. The resulting knowledge is therefore transactional, subjective and co-created between the researcher and the research participants.¹⁰⁸¹

¹⁰⁸⁰ Ian Dey *Qualitative Data Analysis* (1 edition ed, Routledge, London, 1993) at 33.

¹⁰⁸¹ For a comprehensive discussion see, Norman K Denzin and Yvonna S Lincoln *The SAGE Handbook of Qualitative Research* (Sage Publications, US, 2011); Linda Finlay "Negotiating the

4.8 Bias and Reflexivity

To judge is human nature.¹⁰⁸² In qualitative research, this can be one of the greatest underlying threats to the accuracy of research findings. The interviewer-interviewee relationship may be an asymmetrical power relation, mainly because an interview is a one-way dialogue where the interviewer holds a monopoly of interpretation,¹⁰⁸³ almost an exclusive privilege to report on what the interviewee said.¹⁰⁸⁴ Most of such research interviews are entirely orchestrated by the interviewer in determining discussion topics, timing and follow up.¹⁰⁸⁵ The qualitative researcher is thus, a central figure in the research who “influences, if not actively constructs, the collection, selection and interpretation of data”.¹⁰⁸⁶ In this research however, the interviewees were sometimes in positions of power within government, positions senior to those held by the researcher. In these situations, while the researcher maintained an interpretive monopoly on the data to some extent, the researcher also had to be mindful of the extent to which questions and answers, particularly follow up questions, might be curtailed due to a sense of priority, discretion or deference.

Personal reflection is therefore an important part of a good research design. Linda Finlay suggests that introspection, intersubjective reflection, mutual collaboration, social critique and discursive deconstruction minimises subjectivity in research,¹⁰⁸⁷ and enhances its trustworthiness, transparency and accountability of the research.¹⁰⁸⁸ Reflection enables the researcher to become aware of factors that may

swamp: the opportunity and challenge of reflexivity in research practice” (2002) 2 *Qualitative Research* 209 at 213.

¹⁰⁸² “Visual Cues & Bias in Qualitative Research” (17 April 2011) *Research Design Review* <www.researchdesignreview.com>.

¹⁰⁸³ Steiner Kvale “Dialogue as Oppression and Interview Research” (paper presented to Nordic Educational Research Association Conference, Tallinn, Estonia, 9 2002) at 12.

¹⁰⁸⁴ At 13.

¹⁰⁸⁵ At 12.

¹⁰⁸⁶ Finlay, above n 1081, at 213.

¹⁰⁸⁷ At 209, 212–213.

¹⁰⁸⁸ At 211–212.

intensify issues arising from age, gender, socio-economic status/ classes, or political orientation. This was particularly relevant given the current polarised public, including the officials in most government departments and political parties. The awareness the researcher gained through these reflective techniques helped her model specific questions for specific participants, and also to clarify the interviewee's point of view.

Such understanding of the participants and the research location assisted with designing the research process and the tools to analyse and synthesise the interview data. Martha Nussbaum's Capability Approach (CA), offers the best practical tool to understand and evaluate the challenges for a woman to effectively enjoy a right to public life in the context of the Maldives. It provides links to understanding the world of women, and to demonstrate incapability or capability of women, and how structures in their world affect their choices and autonomy. This paradigm is unique as it helps unpack the role of institutions and social structures in advancing capabilities and shaping individual choices, which is directly related to the pursuit and enjoyment of human rights. This interpretive paradigm offers assistance to make sense of the challenges and work on better implementation of a CEDAW right to public life in the future. The next section explains the interpretive lens that analyses the right to public life in the Maldives.

4.9 Ethical Considerations

Minimising harm, respecting autonomy and preserving privacy are central to good research ethics.¹⁰⁸⁹ Although there were no anticipated risks to participating in this research or related activity, participant confidentiality and privacy were key to this research as it involved a number of government officials whose specific comments and thoughts on the system may cause harm to their image, employment, reputation

¹⁰⁸⁹ Patricia Leavy *The Oxford Handbook of Qualitative Research* (1 edition ed, Oxford University Press, New York, 2014) at 62.

and future career prospects.¹⁰⁹⁰ Participant information is kept confidential and their identities (names, positions and affiliated institutions) are not disclosed to anyone, other than the chief supervisor and the co-supervisor of this research, whose names have been shared with the research participants in the research information package.

In recognition of these circumstances, the researcher took a number of measures: interview questions covered broad areas of issues; researcher questions and comments were kept to a minimum; the participant was left to provide details of experiences; all interviews were transcribed verbatim; and all the names were removed. The names were not replaced with pseudonyms, or any other form of numbering because a reader could piece together information from several different quotes to identify a participant. References to institutions also have been carefully used to ensure that participants are unidentifiable based on the contexts. This gives privacy to the participants and specific material cannot be associated with any particular individual.

Participant autonomy was further ensured by sharing research information prior to the interviews, and also explaining the research objectives to the participants prior to every interview. Verbal and written consent was received from each participant prior to the interview. The researcher also sat with many participants who could not go through the information package to explain the research purpose and process prior to the actual interview. Consent received from the participants in this case can therefore be deemed as *informed* consent. Participants were expressly advised of their rights, data collected was kept confidential and participant identities were closely protected as required under the University of Waikato Ethical Conduct in Human Research and Related Activities Regulations.

All information gathered through interviews was maintained at the highest levels of respect, privacy and confidentiality and was not accessible to any other person

¹⁰⁹⁰ At 63.

other than the main researcher. All hard files are maintained in secure cabinets, and all soft files are saved on hard drives and personal computers of the researcher, and are password protected at all times. Data will be transferred and stored within the University of Waikato Databases for a period of five years from the date of this research, as per University Regulations.

4.10 Limitations of this Study

Limitations of this study can be mostly attributed to the common critiques of the qualitative methods adopted for the current study. Although careful thought has been given to minimise the effect of limitations of this research, the present design has the following limitations.

All interviews for the research were conducted in the capital city Male' because all of the participants were based because of their work or for other reasons. Over 80 percent of the government jobs are concentrated in Male'. Had the research been extended to cover the outer islands, the research could have identified whether there were any differences in the experiences of women between rural and urban areas in the Maldives in the achievement and realisation of their rights.

Sociological analysis is not free from personal perceptions, and is therefore always partisan.¹⁰⁹¹ Particularly in this case, the researcher herself has experienced public life in the Maldives and carries certain perceptions about the right to public life in the Maldives. Many of the participants had worked with the researcher and/or knew her at a professional level. This may have caused some participants to either provide information that they perceived the researcher was looking for or to have guarded specific information.¹⁰⁹²

¹⁰⁹¹ Howard S Becker "Whose Side Are We On?" (1967) 14 Social Problems 239 at 245.

¹⁰⁹² For an in-depth discussion see Joseph A Maxwell *Qualitative Research Design* (SAGE Publications, 2005).

4.11 Chapter Conclusion

This chapter has provided a detailed discussion of the research methodology, methods and tools of analysis used to identify and measure the impact of a CEDAW right to public life in the Maldives. Two main data collection methods – document analysis and interview – were employed to record data on two components; rights-in-principle and rights-in-practice. The intent was that by identifying the gaps in rights-in-principle or between rights-in-principle and rights-in-practice, the research would identify barriers to effective implementation of a CEDAW right to public life in the Maldives.

CHAPTER FIVE

TREATY IMPLEMENTATION THROUGH INTERNALISATION OF TREATY NORMS: RIGHTS-IN-PRINCIPLE

The literature discussion in Chapter Two and Chapter Three has demonstrated that the implementation of an international human rights norm at the domestic level is no small feat. The actual effect of these treaties are still debatable. Studies on human rights impact have however, identified challenges that need to be addressed both by the States and the UN bodies working with the States Parties.

This chapter examines one aspect of treaty integration, formal equality. In its simplest form, the formal model of equality in international human rights requires States Parties to change domestic laws to reflect their commitment under international human rights treaties. As a concept, formal equality regards men and women as being the same and therefore sets out to treat women the same as men. Formal equality is useful to prevent direct discrimination, remove legal disabilities and create enforceable rights for women, on equal terms with men. Many countries continue to have a range of discriminatory laws which deny formal equality. The emphasis on formal equality and removal of these legal disabilities thus, continue to be important for the achievement of human rights.

5.1 Integrating International Human Rights Norms into the Domestic Framework to achieve Formal Equality

Maldives had a good start in the early 1990s. After CEDAW ratification, the government undertook a CEDAW-domestic law compliance check,¹⁰⁹³ followed by a movement to amend discriminatory laws on ratification to CEDAW. This legislative review identified multiple instances where the law treated men and

¹⁰⁹³ United Nations, above n 94, at 6. Also see CEDAW/C/MDV/1, at 8.

women differently and, to achieve formal equality, these provisions were amended in the national laws and also the national Constitution. Numerous instances of legislative amendments were thus prompted by the human rights treaties, and particularly CEDAW, towards the removal of legal barriers preventing women from pursuing certain positions within the State. Although specific rights in human rights treaties are not directly enforceable, unless adopted by an Act of parliament,¹⁰⁹⁴ multiple equality provisions in CEDAW have been given effect to in a number of domestic laws over the last decade. Legislative successes include the Citizenship Act 1998, Employment Act 2009, Civil Services Act 2010, Domestic Violence Prevention Act 2012, Sexual Harassment Act 2013, and Sexual Offences Act 2014. The government also completed a special project to codify Shari'ah law on family matters and produced the Family Act 2000.¹⁰⁹⁵

The 2008 Constitution, a hallmark of legislative reform in the Maldives, provided for anti-sex discrimination for the first time in history. The fundamental rights chapter of the Constitution demonstrates that human rights treaties have had a positive impact on law reform in the Maldives. For example, embodying the principles of equality and non-discrimination in the international human rights instruments, Article 17 of the Constitution states:

- a. Everyone is entitled to the rights and freedoms included in this Chapter without discrimination of any kind, including race, national origin, colour, *sex*,¹⁰⁹⁶ and age, mental or physical disability, political or other opinion, property, birth or other status, or native island.
- b. *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 ...*

¹⁰⁹⁴ Al Suood, above n 45, at 118.

¹⁰⁹⁵ United Nations, above n 94, at 6.

¹⁰⁹⁶ Different to many international instruments, the Constitution does not use the term 'gender'. It uses 'sex' to mean 'gender' and also uses it interchangeably to mean the sex of the person.

This article provides that every individual, both male and female are “equal before and under the law, and has the right to the equal protection and equal benefit of the law”.¹⁰⁹⁷ All the rights enumerated in the national constitution are thus rightfully available to both males and females.¹⁰⁹⁸ Any law that is inconsistent with the fundamental rights guaranteed in the Constitution will be void or void to the extent of such inconsistency.¹⁰⁹⁹ The State is obligated to protect and promote all the rights and freedoms provided in the Constitution.¹¹⁰⁰ Moreover, by providing a list of rights, the Constitution does not provide a non-exhaustive list and other rights claims can also be made in the Maldives.¹¹⁰¹

A CEDAW right to public life has been given effect through Article 26 of the Constitution which states that every citizen of the Maldives who is eighteen years of age has the right: (a) to vote in elections, and in public referendums; (b) to run for public office; (c) to take part in the conduct of public affairs, directly or through freely chosen representatives. The Constitution further guarantees equal rights to work, equal remuneration, and equal opportunity for promotions,¹¹⁰² and freedom to form political parties, associations and societies.¹¹⁰³ Unlike previous Constitutions prohibiting women from becoming a head of State, the 2008 Constitution allows for a female head of States¹¹⁰⁴ and also introduces new possibilities with provisions entitling special measures for disadvantaged persons.¹¹⁰⁵

¹⁰⁹⁷ Constitution of the Republic of Maldives 2008, art 20.

¹⁰⁹⁸ Above n 1097, art 62 (a).

¹⁰⁹⁹ Above n 1097, art 63.

¹¹⁰⁰ Above n 1097, art 18.

¹¹⁰¹ Above n 1097, art 62 (b).

¹¹⁰² Above n 1097, art 37.

¹¹⁰³ Above n 1097, art 30 (a).

¹¹⁰⁴ United Nations, above n 2.

¹¹⁰⁵ Article 35 (a) Children and young people are entitled to special protection and special assistance from the family, the community and the State. Children and young people shall not be harmed, sexually abused, or discriminated against in any manner and shall be free from unsuited social and economic exploitation. No person shall obtain undue benefit from their labour. (b) Elderly and

5.2 Gaps in the Guarantee of Formal Legal Equality

The rights-in-principle table below has been completed by using data from CEDAW reports and shows a quantified picture of a right to public life. This index identifies the presence of constitutionally or legally prescribed rights directly relevant to the achievement of equal rights and non-discrimination in public life included in CEDAW. Table 5.1 below shows much ‘commended and welcomed’¹¹⁰⁶ legislative efforts to develop rights-in-principle / formal legal equality between 1993 (ratification) and 2013 in the Maldives. A score of two in the table represents that the right is fully present in the law, one represents partial recognition in the law and zero represents the non-recognition of the right in the domestic law.

5. 1: Institutional Procedural Index: Rights-in-Principle after CEDAW

<i>CEDAW Rights</i>		<i>Absent (0), Partially Present (1), Present (2)</i>				
		93’	98’	03’	08’	13’
Article 2	Embodiment of principles of equality of men and women in the national constitution	0	0	0	2	2
	Embodiment of principles of equality of men and women into other laws to ensure practical realisation of non-discrimination	0	0	0	2	2
	Adoption of legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women	0	0	0	2	2
	Establishment of existence of competent national tribunals and other public institutions to ensure legal protection of the rights of women on an equal basis with men	0	0	0	2	2

disadvantaged persons are entitled to protection and special assistance from the family, the community and the State.

¹¹⁰⁶ Convention on the Elimination of All Forms of Discrimination against Women Committee on the Elimination of Discrimination against Women *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Maldives* (CEDAW/C/MDV/CO/4–5 2015).

	All national penal provisions which constitute discrimination against women repealed	0	0	0	2	2
Article 3	Appropriate measures, including legislation, to ensure the full development and advancement of women	1	1	1	1	1
Article 4	Adoption of temporary special measures	0	0	0	0	1
Article 7	Right and freedom to vote in all elections and public referenda	2	2	2	2	2
	Right to be eligible for election to all publicly elected bodies	1	1	1	2	2
	Right to participate in the formulation of government policy and the implementation thereof	1	1	1	2	2
	Right to hold public office and perform all functions at all levels of government	1	1	1	2	2
	Right to participate in non-governmental organisations and associations concerned with the public and political life of the country	2	2	2	2	2
Article 8	Opportunity for men and women to represent their Governments at the international level and to participate in the work of international organizations	2	2	2	2	2

Viewed from a purely formal legal rights perspective, the table shows that the States Party has put in a significant effort to create legal compliance with CEDAW provisions, falling behind only in the areas of a full development of laws to ensure women's development and advancement and the adoption of temporary special measures to ensure women's equality. The quantification of formal legal rights, however, shows a distorted version of the true picture. A closer analysis of the legal developments indicates that there are problems with the guarantee of equal rights and non-discrimination.

5.2.1 Family Law

The Family Act 2000 was one of the first pieces of major law reform in the Maldives after CEDAW ratification. This law aimed to address many of the existing family issues that were difficult to address under Shari'ah law, which was uncodified prior to 2000. One participant in the research noted that some of the

provisions in the law are still significantly based on Shari'ah law, and have not made it any easier for women to access their rights:

There are major issues for women to claim their rights under the Family law ... there are no clear guidelines in cases of divorce for a mother to get child support, the woman has to make all the effort to claim the money ... a woman can apply for a divorce, but it is at the discretion of the judge to grant the divorce because the judge determines if there is sufficient grounds to grant a divorce. In many instances the couple is counselled and sent back to reconcile. A woman can only re-apply after 3 months. In a society with such patriarchal attributes, I think these are huge flaws and disadvantages to women.

These areas of the family law which the participant identifies, are based on the accepted interpretation of Islamic family law in the Maldives. Men can get married within three months whereas a woman will have to wait for a minimum of three months. Divorce and childcare are major issues in the Maldives. In 2002, Maldives had the highest divorce rate in the world with 10.97 divorces per 1,000 inhabitants per year.¹¹⁰⁷ After a divorce, a woman usually takes care of the children, and it is expected that the father of the children will continue financially supporting the children. Some of these women are unemployed and have little prospects of getting good employment in the short run. As many of these divorced men fail to pay child support, the women are left with the children in a very vulnerable position. While these social factors exist, the Family Law fails to provide for the responsibilities of the parents, and an adequate system for child support, which is required to achieve substantive equality.

In the local culture, matrimonial homes, despite there being no legal barriers, are registered in the husband's name. This means that in the case of a separation or a divorce, the woman will need to leave the premises. Divorces are easy, and there is no concept of division of marital property, due to this, often times, women walk away without any property. The law of inheritance differentiates between men and

¹¹⁰⁷ Highest Divorce Rate, Guinness World Records, Officially Amazing, Explore Records, Available on <www.guinnessworldrecords.com>, accessed at 4.40 p.m, 13/01/2016.

women. The majority of the land in the Maldives is State-owned. In the case where the land is privately owned, men will receive twice as much as the women in the family. Maldives has a remarkably high proportion of female headed households (47%).¹¹⁰⁸

The Family Act 2000 has given some security to women. Where the couple has children under 18 years, and their custody is assigned to the woman, she has a right to reside in the matrimonial premises, “during the prescribed waiting period of iddah or during the period of that custody, unless she is provided by the husband with alternate accommodation”.¹¹⁰⁹ This gives some security to divorced women, as it prevents a possible instantly homeless situation. However, because there is no concept of relationship property, almost always, the woman is left without any financial support after a divorce.

The Family Act is further discriminatory towards women because it gives a husband more rights in divorce, compared to the wife. A woman can only seek a divorce through a court,¹¹¹⁰ whereas a husband can pronounce the phrase “I divorce you” to his wife and that will be recognised as a divorce in a court of law. The Family Act, however, did introduce a system to fine husbands who divorce their wives outside the courts.¹¹¹¹ Husbands also may take a second wife, and upto four wives,¹¹¹² if they are able to financially take care of more than one wife.¹¹¹³ A woman cannot take more than one husband at a time. There is a clear lack of formal equality in these provisions.

¹¹⁰⁸ The share of female-headed households is amongst the highest worldwide. See, ADB, above n 117, at 1.

¹¹⁰⁹ Family Act 2000, Law No. 4/2000, sec 38.

¹¹¹⁰ Above n 1109, sec 24.

¹¹¹¹ Above n 1109, sec 23.

¹¹¹² Above n 1109, sec 7.

¹¹¹³ Above n 1109, sec 12 (a) and (b).

5.2.2 Criminal Law

Similar to many other countries, Maldives prescribes statutory penalties to criminal offences not covered in the *Qur'ān*, primarily based on its understandings of Shari'ah law. For example, the offence of rape legislated in the Maldives is thus based on the Shari'ah offence of *zina* (fornication). *Zina* under Islamic law is any unlawful sexual relations between persons who are not married to one another, and automatically exempts married couples from committing the offence against each other. In the Maldives, two pieces of legislation, the Penal Code and the Sexual Offences Act covers the issue of rape, but does not recognise marital rape, as it is believed that 'consent' is given through marriage.

The 2014 Penal Code defines rape similarly to a previous definition included under Section 173(12) of the Court Procedures and uses *zina* to define rape. Under Islamic Shari'ah, *zina* is consensual sexual intercourse and is a criminal offense requiring four eye witnesses or a confession from the accused parties. The new Penal Code allows circumstantial evidence under section 411(c), but would result in lower penalties for the convicted offender. This Code also confirms that unless proven otherwise, consent will be presumed if the sexual intercourse was with one's wife.¹¹¹⁴ Moreover, even if the presumption under the legislation is rebuttable, obtaining a confession or testimonies of four eye witnesses would mean that proving the offense of rape would become quite impossible.

Under the 2014 Sexual Offences Act, rape,¹¹¹⁵ attempting to rape a person, or aiding and abetting another person to rape, are all criminal offences.¹¹¹⁶ The draft Sexual Offences bill was in the pipeline for over a decade in the Maldives, and was also returned to the Parliament by the President, without ratification. According to local and international media, this bill was returned after a religious opinion endorsed by

¹¹¹⁴ Law No. 9/2014, Penal Code, sec. 130 (b).

¹¹¹⁵ Sexual Offences Act 2014, art 14.

¹¹¹⁶ Sexual Offences Act 2014, art 15.

the *National Fiqh Committee* that ‘the law was un-Islamic as a woman had no right to say no to sex to her husband’.¹¹¹⁷ After much speculation in the media and amongst the public, this bill was finally passed in May 2014.¹¹¹⁸ This law also creates an exemption for husbands, and legalises marital rape, unless where an exceptional circumstance prevails. The Sexual Offences Act defines rape, with the exception of married couples, as “... the sexual penetration, however slight, into a sexual or non-sexual organ, without consent”.¹¹¹⁹ The definition is purposefully gender-neutral, speaking in terms of victim and perpetrator, which means that the victim could be either a man or a woman and in the absence of consent, the insertion of a sexual organ into a sexual (vagina) or a non-sexual organ (mouth), qualifies as rape. This law does not recognise that an act of rape can occur between married couples. Section 20 of the Act recognises marital rape in certain exceptional circumstances: having sexual intercourse without the consent of the wife at the time of an on-going appeal for separation through the court, pending a final decision of the court; either party-initiated divorce cases, pending final decision of the court; having sex to purposely transmit a deadly disease; and where couples, although not divorced, are living separately under mutual agreements, will be considered as rape.¹¹²⁰ Consent for sexual intercourse cannot be obtained by creating fear, harm, threat of harm or threat or harm to a person who is / was in a marital relationship with the woman or through misrepresentation of events.¹¹²¹

Another area under criminal law is fornication and adultery, which is closely aligned with Islamic law. Convictions for adultery and fornication are obtained through confessions. The Islamic Shari’ah law requirement is four eye witnesses,

¹¹¹⁷ Vishal Arora |Religion News Service “Maldives president vetoes marital rape bill as ‘un-Islamic’” *The Washington Post* (16 January 2014) <www.washingtonpost.com>.

¹¹¹⁸ Hussain Fiyaz Moosa “Jinsee kushuge bill aai jinsee furassaara kurumuge bill faaskoffi” *Haveeru Online* (Male’, 27 April 2014) <www.haveeru.com>; Ali Nafiz “Jinsee kushuge bill aa jinsee furassaaraige bill thasdheegukuravvaifi” *Haveeru Online* (Male’, 13 May 2014) <www.haveeru.com>.

¹¹¹⁹ Sexual Offences Act 2014, art 6.

¹¹²⁰ Above n 1119, art 20 (a).

¹¹²¹ Above n 1119, art 20 (b).

which is almost impossible to meet. In the absence of a confession, a man can only be convicted of rape if there are two male witnesses or four female witnesses willing to testify. The PGO reported it lost almost all cases of forced sexual assault because insufficient weight was given to the testimony of the victim.¹¹²² In these cases, most men (married or unmarried) deny the charges for adultery or fornication. However, a woman who falls pregnant, confesses. Local courts accept DNA evidence as secondary evidence; however, paternity tests are never done. As such, there is no investigation to prove who has fathered the child. The man walks free of any charges and convictions, and the woman is convicted to flogging.¹¹²³

All of these provisions in the criminal laws are discrimination against women. Some of the recent cases have been quite absurd, and this was noted by one participant in this research:

Two recent cases sentenced two under aged girls to be flogged. In one of those cases, the male was convicted for Paedophilia for having sex with a minor under the Special protection for victims of abuse legislation in the Maldives. But the girl was also convicted of fornication ... How could the girl have committed adultery if the man involved was sexually abusing the child?

Thus, even where the man is convicted of rape or abuse, the girl still faces separate charges for fornication. These features of the law show that women are disadvantaged, mostly in the application of Islamic law on matters such as marriage and divorce, inheritance, criminal law and testimony. So, formal equality has not been achieved in these areas.

¹¹²² Bureau of Public Affairs Department of State the Office of Website Management *2013 Human Rights Reports: Maldives* (US Department of State, Bureau of Public Affairs 2014) maldives|.

¹¹²³ The penalty will be carried out after delivery of the child.

5.2.3 *Evidence Law*

The law of evidence in the Maldives strictly follows the Qur'ānic stipulations in taking testimonies.¹¹²⁴ The testimony of a woman is considered equal to that of a man, except on issues specifically stipulated by Islam.¹¹²⁵ The *Qur'ān* provides different rules for different situations. In case of adultery, the witness of a man and a woman is equal.¹¹²⁶ In witnessing a will in the event of death, the requirement is 'two equitable persons'.¹¹²⁷ In financial transactions, the witness of two women is equal to one male witness.¹¹²⁸ Thus, there is discrimination in the status of a testimony between a man and a woman.

Other laws in the Maldives that discriminate against women, such as the civil services law and the decentralisation law, are considered next.

5.2.4 *The Civil Services Regulations*

5.2.4.1 *Maternity Leave*

Despite the fact that all other sick and annual leave in the Maldives civil service, is counted without the public holidays, maternity leave in the Maldives is counted with public holidays. This means that the number of days off work that will be received by women who are entitled to maternity leave, will be lesser, than if they were counted without public holidays. Many participants, after mentioning that the law treats men and women equally, noted that the Civil Service Regulation 2010

¹¹²⁴ Evidence Act 1976 (Law No. 24/76), sec 7.

¹¹²⁵ The US Department of State *2009 Human Rights Report: Maldives* (US Department of State, Bureau of Democracy, Human Rights and Labour 2010); See Law No. 14/72, Women's Testimony Act 1972.

¹¹²⁶ Verse 24:6-10, Qur'an.

¹¹²⁷ Verse 5:106, Qur'an.

¹¹²⁸ Verse 2:282, Qur'an. "...Two men shall serve as witnesses; if not two men, then a man and two women whose testimony is acceptable to all. Thus, if one woman becomes biased, the other will remind her."

had discriminatory provisions in terms of maternity leave. Some of these were expressed as follows:

The Civil Services Act has a discriminatory clause where it says that all leave, except for maternity leave (60 days), will be counted without the public holidays. It is only the maternity leave that is counted with all the public holidays ... as if maternity leave is a favour Civil Services Commission gives women.

The 'civil service maternity leave' is discriminatory towards women. This leave is the only leave that is counted with the public holidays ... This is disheartening for a lot of young women ...

This is an issue for women because if public holidays are not counted, women can have more time recovering from childbirth, which they are able to spend at home. This therefore, is another area where formal equality is lacking. Only women take maternity leave, and this is the only leave that is counted including public holidays. This shows that women are treated differently to men, taking other forms of leave.

5.2.4.2 Performance Appraisal

Performance appraisals are conducted every year in the civil service. Women are often penalised, awarded lesser marks for job performance, for taking legally entitled leave from office including and most often maternity leave. For many women in the civil service, the changes in the regulation meant that the public service fails to understand women's lives. According to one view:

We as women bear children. When we return to work after having a child – after a couple of months, again we feel that discrimination. We have to go and feed, put them to school ... those breaks that we have to take as mothers, creates a perception about us and affects performance evaluation.

Men in the Maldives do not take time off from work to assist with new-born children or sick children. These necessary child-raising tasks are not taken into account by the national public service. Using one option could be not filling a job performance form for a female employee who has taken a long entitled leave, by

forcing officers to fill forms, in this way, the Civil Service Commission perpetuates the gender based attitudes and discrimination.

A closer examination of these laws reveals that these laws are discriminatory in application and hinder women's progress in their chosen careers. In instances where there are sufficient laws, these are not friendly towards achieving the objective; ensuring a right to public life. For example, although right to maternity leave is ensured under the local labour laws, taking maternity leave is costly for women on multiple levels. They lose chances of promotion, end up using their leave and also are discriminated against during the process of performance evaluation which goes on their official records. In Maldivian culture, women carry out all nurturing functions within the family. This means that when the children get sick, the woman takes leave. She also takes leave when her husband falls sick. She also takes leave when she falls ill. These laws are often gender blind and are based on a premise that there are no gender based discrimination or gender issues in the Maldives and that everyone would be entitled to the same benefits from the black letter laws and regulations.

5.2.5 Decentralisation Law

The Women's Development Committees (WDCs) also illustrates an interesting case of discriminatory treatment from the State. Since 2012, WDCs are now elected bodies under the Decentralisation Act 2010.¹¹²⁹ There is a WDC established under every Island Council in the Maldives at present,¹¹³⁰ but the elected members of the WDCs do not receive any remuneration.¹¹³¹ This is the only State elected body in the Maldives, working without remuneration. The law also stipulates that only

¹¹²⁹ Transparency Maldives *Assessment of Women's Development Committees in the Maldives* (Transparency Maldives 2014) at 8.

¹¹³⁰ Decentralisation Act 2010, art 35 (a), 36.

¹¹³¹ Transparency Maldives, above n 1129, at 9.

women can vote in the nation-wide election for the WDC.¹¹³² According to a participant in this research:

The entire election process under the Decentralisation Act is discriminatory. The Election Commission Policies say that all elections in the Maldives will be handled by the Elections Commission. However, when it came to the WDC election, the country-wide election was handled by the Island Councils. Moreover, according to this law, only women could vote in this election. This is highly discriminatory.

Article 17 of the Constitution prohibits discrimination based on sex, and the lack of remuneration for WDCs is clearly discriminatory when all other public bodies in the Maldives receive a remuneration.

5.2.6 *The Constitution 2008*

The Constitution of the Maldives allows for the application of various legal instruments from around the world, including international instruments. When interpreting and applying the rights and freedoms in the Constitution, a court or tribunal shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom, and shall consider international treaties to which the Maldives is a party.¹¹³³ However, Islam is the fundamental basis of the Constitution and the national law.¹¹³⁴

The legal system in the Maldives is based on the principles of Islam.¹¹³⁵ Islam is the State religion and the primary source of law.¹¹³⁶ No law in the Maldives can contradict any ‘tenets of Islam’.¹¹³⁷ Citizens are free to engage in any conduct or

¹¹³² Decentralisation Act 2010, art 35 (b) states that WDCs will be elected through a vote of all voting-age women in each island, with a term of 3 years for the Committee Members.

¹¹³³ Constitution of the Republic of Maldives 2008, art 68.

¹¹³⁴ Al Suood, above n 45, at 76.

¹¹³⁵ Above n 1133, art 2.

¹¹³⁶ Above n 1133, art 10 (a).

¹¹³⁷ Above n 1133, art 10 (b) and 70 (c).

activity that is not expressly prohibited by Islamic Shari'ah and by law.¹¹³⁸ Judges in the local courts are required to refer to Islamic Shari'ah, in deciding matters on which the Constitution or the law is silent.¹¹³⁹ Furthermore, before assuming office, the President, Cabinet of Ministers, the Chief Justice, Justices of the Supreme Court, Members of the Parliament, and members of the constitutional commissions and bodies must swear on oath to respect Islam.¹¹⁴⁰

According to Article 16, rights and freedoms in the Constitution may be limited through a law enacted by the Parliament, as long as the limitation can be demonstrably justified in a free and democratic society.¹¹⁴¹ Sub-section (b) of the same article further reiterates the protection and maintenance of the tenets of Islam. Furthermore, to ensure that a right or freedom in the fundamental rights chapter has been limited in accordance with article (a) and (b), the Constitution requires the Court to make reference to:

- a) the nature and character of the right or freedom;
- b) the purpose and importance of limiting the right or freedom;
- c) the extent and manner of limiting the right or freedom;
- d) the relationship between the limitation of the right or freedom and the importance of the right or freedom;
- e) the extent to which the objective for which the right or freedom has been limited could have been achieved by limiting the right or freedom to a lesser degree;
- f) The extent to which the right or freedom must be limited *in order to protect the tenets of Islam*, where the right or freedom has been limited pursuant to article (b).

The list requires judges to provide written reasons for over-riding a right or a freedom in the national constitution. However, the provisions in Article 16 of the Constitution may lead to conflict with Article 17 of the Constitution, simply

¹¹³⁸ Above n 1133, art 19.

¹¹³⁹ Above n 1133, art 142.

¹¹⁴⁰ Al Suood, above n 45, at 77.

¹¹⁴¹ Above n 1133, art 16 (a).

because, Islamic Shari'ah, will be the supreme source of law. In fact, the Constitutional guarantee of rights and freedoms to all persons are subject to the tenets of Islam.¹¹⁴²

This Constitution guarantees to all persons, in a manner that is not contrary to *any tenet of Islam*, the rights and freedoms contained within this Chapter, subject only to such reasonable limits prescribed by a law enacted by the People's Majlis [Parliament] in a manner that is not contrary to this Constitution. Any such law enacted by the People's Majlis can limit the rights and freedoms to any extent only if demonstrably justified in a free and democratic society.

The guarantee of rights in the Constitution is subject to what the Constitution refers to as the 'tenets of Islam', used to mean (i) the *Qur'ān*, (ii) the uncontested traditions of the Prophet Muhammad, and (iii) the legal rules derived from the two sources.¹¹⁴³ This means that differences in the rights and duties prescribed in the Holy *Qur'ān* and undisputed *Sunnah*¹¹⁴⁴ of the Noble Prophet, and any principles derived from these two foundations will be observed as they are even if they were discriminatory towards women.¹¹⁴⁵ This makes it possible to modify the equal protection guarantee under article 17 of the Constitution, to accommodate any discriminatory actions interpreted to be allowed under Islamic law. This is confirmed by the 2010 female judges' gender inequality case (hereinafter referred to as the *Mauzoon Case*), which was challenged on the basis of the Constitutional guarantee of gender/sex equality.¹¹⁴⁶ In declaring that a woman cannot solemnize a marriage in the Maldives, this case suggests that despite Constitutional provisions prohibiting discrimination based on gender, specific positions within the State can only be occupied by men.

¹¹⁴² Above n 1133, art 16 (a).

¹¹⁴³ Above n 1133, art 274 (a).

¹¹⁴⁴ Arabic word *Sunnah* refers to a body of established customs and beliefs that make up a tradition of Prophet Mohamed. "Oxford Islamic Studies Online" <www.oxfordislamicstudies.com>.

¹¹⁴⁵ Above n 1133, art 274 (a).

¹¹⁴⁶ Hope for Women, NGO Maldives, above n 147, at 15.

Three female judges (one from the Family Court and two from the Civil Court) raised their concerns through a letter to the Chief Judge of the Family Court¹¹⁴⁷ over a recruitment announcement from the Family Court seeking ‘*mauzoons*’ (persons who solemnize marriages).¹¹⁴⁸ The eligibility criteria required the applicants to be graduate followers of Sunni Islam, in possession of a sound mind, lacking a criminal record and male.¹¹⁴⁹ The female judges referred to Articles 17 and 20 of the Constitution, the right not to be discriminated against (based on sex) and the right to be equal before the law. These judges argued that gender equality is further protected by Article 62(a) of the Constitution, which says that the rights and freedoms in the Constitution are granted equally to female and male persons. An argument was raised under Article 16 of the Constitution, claiming that rights and freedoms in the Constitution can only be curtailed by an Act of Parliament and even where it is curtailed, it can only be done if it is demonstrably justifiable in a free and democratic society. It was argued that, the Constitution requires judges to consider Islamic Shari’ah when deciding matters on which the Constitution or the law is silent. They argued that on this particular matter, the law was clear, and there was no requirement to refer to Shari’ah.¹¹⁵⁰ Thus, they concluded that the Family Court Job Advertisement, by limiting applicants to male only, was unconstitutional.

The initial letter to the Family Court, covering the above, was only requesting clarification of the matter. This letter was forwarded to JSC, who took this query as a disciplinary matter and started an investigation on the ‘competency’ of the three female judges.¹¹⁵¹ As the general administrator of the judicial power in the

¹¹⁴⁷ Family Court Daily Entries, No. 19647, Section A1, Date 2 November 2010.

¹¹⁴⁸ Family Act 2000, Article 73 (a) - *Mauzoon* is defined as “a person who is authorised and appointed to solemnize marriages by an official authority”.

¹¹⁴⁹ Maldives Family Court Job Advertisement, No. 146/A1/2010/30 (12 Oct 2010), Available on the Maldives Government Gazette, Vol 39, Issue 117, Page 53, available online <www.gazette.gov.mv>.

¹¹⁵⁰ Islamic Shari’ah is defined in Article 274(a) of the Constitution as “the Holy Qur’an and the ways preferred by the learned people within the community and followers of the Sunnah in relation to criminal, civil, personal and other matters found in the Sunna”.

¹¹⁵¹ Judicial Services Commission Decisions, No. JSC-B1/11/305 (30 November 2011).

Maldives,¹¹⁵² JSC also possesses investigative powers and the power to take action against judges.¹¹⁵³ While JSC had taken up this matter as a disciplinary matter, in July 2011, the Family Court replied to the female judges' letter with an opinion from the National Fiqh Academy.¹¹⁵⁴ According to this letter, a woman cannot be a '*mauzoon*' in the Maldives.¹¹⁵⁵ No formal measures have been taken against these female judges, although their questioning of certain decisions and policies have often brought them into conflict in their career as judges.

Many posts require the taking of an oath in front of a judge. Traditionally, male judges presided over the taking of the oaths, and in the absence of female judges, the practice had continued unchallenged within the judiciary. To bring an end to this tradition, early 2012, the Civil Court of the Maldives made a deliberate attempt to nominate female judges to preside over the oath taking ceremonies to be held at the Attorney General's Office (AG), Maldives Customs Services (MCS) and Maldives Police Services (MPS). The nominated female judges were swapped for male judges at the last minute and the justification given by the Chief Justice was that he was defending Islamic practices and traditions.

Another example of discrimination against women contrary to CEDAW that highlights the gaps in formal equality is that female judges cannot sit in certain types of cases or take the position of the Chief Judge because they are women. For example, women are not appointed as judges to the Criminal Court in the Maldives, nor are female judges allowed to judge on criminal matters. In 2008, despite a specialisation in criminal law, a woman was appointed to the Civil Court. The one female judge on the High Court bench, is not allowed to sit on criminal cases. The Family Court's only female judge is never allowed to act as a chief judge, even on a temporary basis. This is because even if women have been appointed as judges, they are not allowed to work in certain areas of the family law, such as solemnizing

¹¹⁵² Judicial Service Commission Act, Law no. 10/2008, sec. 21 (e).

¹¹⁵³ Judicial Service Commission Act, Law no. 10/2008, sec 21 (b).

¹¹⁵⁴ Opinion No. 4, IFA/2011/01.

¹¹⁵⁵ Family Court Letter No. 146-A1/0/2011/61, Dated 4th July 2011, Chief Judge Hassan Saeed.

marriages.¹¹⁵⁶ Thus, it appears that the Constitutional guarantee of equality and non-discrimination has no practical implications in certain fields of work. Mayer argues that such guarantees of equality and non-discrimination (as provided under the Maldives Constitution), do not support claims of non-discrimination and equality before the law.¹¹⁵⁷ While it indicates the uncertainty conservative Muslims feel about the principle of equality, it allows them to evade the practice of equality, without having to openly condemn such principles.¹¹⁵⁸ Similarly, the examples discussed suggest that, while the equal protection clause in the Constitution of the Maldives demonstrates the influence of the international human rights framework, it is not enough to achieve equality and non-discrimination.

Despite the examples discussed, CEDAW reports from the Maldives in the past, simply state that discrimination on the grounds of sex has been prohibited in the 2008 constitution.¹¹⁵⁹ In reality, Shari'ah law, as it has been practiced in the Maldives for quite some time, has different standards for men and women, and these have also at times been reflected in the provisions of Acts of parliament (such as the Civil Services Act in relation to maternity leave), and are also reflected in practices in the legal system, as discussed.

5.3 Summary Conclusion

This analysis indicates that efforts to internalise a CEDAW right to public life has been focused on the creation of formal legal rights, but not sufficiently on the removal of legal disabilities or provisions that may become discriminatory in application in the local context. Maldives now has many progressive laws, but the

¹¹⁵⁶ Since data collection for this research began in 2013, the only two female judges in the Civil Court (there were two in total between 2007 and 2015), who were signatories to the letter, have resigned from their posts as judges. At present, there are no female judges in the Civil Court.

¹¹⁵⁷ Mayer, above n 860, at 85.

¹¹⁵⁸ At 92.

¹¹⁵⁹ United Nations, above n 96.

benefits to be achieved depend on how these rights and duties will be implemented. Although there is much work to be done on the formal laws, it is seen that the interpretation and enforcement of the existing laws also creates problems for women's rights. Gender neutral laws also allows religious groups to interpret the legislation using Shari'ah rules, which again harms the pursuit of equal rights and non-discrimination for women. When the laws are gender neutral, or are silent on certain matters, or specifically say, are subject to Islamic Shari'ah, there is room to interpret and apply in a way that helps to eliminate women's participation in public life. For example, in the case of *Mauzoons*, the law says a '*Mauzoon*' is a 'person', but then JSC decided that these persons, under Islamic Shari'ah, should only be men.

Many aspects of the analysis of the law also show that the law in the Maldives does not treat men and women the same. In certain areas, the law specifically provides different standards for men and women and allows direct discrimination. In other places, the law, does not appear to be discriminatory, but has a discriminatory effect when implemented. These are often possible where women already occupy a disadvantaged space due to pre-existing inequalities. This means that at best, gender neutral laws avoid socio-political and cultural realities, leave or exacerbate them, which negatively affects the realisation of women's rights.

CHAPTER SIX

TREATY IMPLEMENTATION THROUGH INTERNALISATION OF TREATY NORMS: RIGHTS-IN-PRACTICE

Legal mandates are often powerless to overcome dominant political and social ideologies. Thus, there has often been a mis-match between the rights-in-principle and the rights-in-practice in many jurisdictions, despite law reform. The previous chapter demonstrated how this gap relates to formal legal equality. This chapter considers the need for measures beyond formal legal equality, often referred to as ‘substantive equality,’ to achieve fulfilment of women’s right to public life in the Maldives. Substantive equality encompasses equality of opportunity and also equality of results. The indicators of State progress in creating substantive equality under the CEDAW Convention, lie not only in what the State does, but in what the State achieves in terms of real change for women. The emphasis here is not on the creation of laws, institutions, opportunities, but on the end result.

This study confirms international and domestic research findings on the local pressures affecting the impact of human rights treaties at the domestic level: domestic economic constraints, lack of focus to address issues in the short run, absence of developed local civil society groups, lack of mobilised publics and ideological barriers to women’s rights. The data from the Maldives further indicates that substantive equality has three major obstacles in the local context: structural, ideological and capabilities related. The conclusions reached from the data and its analysis indicate that the States Party must acknowledge and realise the differences in women’s lives and how these affect the achievement of equality and the broader dynamics within which the States Party must work, in order to implement international human rights norms.

6.1 Ideological: Culture and Religion in the Pursuit of Equality in Public Life

Prior to 1993, there were very few women working in the civil service in comparison to present day. Generally speaking, women were less educated. They participated less in formal employment, in both the public and the private sector. Despite these characteristics, this study finds that women were less restricted within the society to pursue opportunities and equal rights. It was noted by participants that although there are more women in elected positions now, women were more active and engaged in community development, fifteen years ago.¹¹⁶⁰ According to all the participants in this study, there is currently discrimination and limited encouragement for women to actively participate in public life.

Almost all the participants acknowledged either that they themselves, or a colleague had experienced barriers to participation on the grounds of sex, beyond the formal provisions of the law. Some of these views expressed by the participants are as follows:

There have been many instances where I have felt that I did not get the due respect for my skills, just because I am a woman.

I used to joke that I had three disadvantages or downfalls ... one of them being that I am a woman.

Some of my friends who are qualified for leading positions have been undermined within their companies and offices or companies and I have seen them leave employment because of this. I have also seen that the opinion that a woman takes into a head of departments meeting is not really taken into account... I think that the majority of the women would still feel that their voices are not been heard.

¹¹⁶⁰ These comparisons were made primarily by participants who had been in decision-making in the Maldives for over fifteen years. Some participants had more than 40 years of experience in decision-making at different levels of the government and in different positions in the State.

These are informal barriers to female participation, beyond the formal provisions of the law. The following is a discussion of the main ideological barriers to equality in public life discussed by the participants.

6.1.1 Sex Role Socialisation and Gender Stereotyping

Similar to other studies both inside and outside the Maldives, this study finds that the public sphere in the Maldives is the legitimate domain for men.¹¹⁶¹ Not so long ago, men in the Maldives had a virtual monopoly in public life, holding all positions of decision-making within the parliament, judiciary and the executive branch of the government, including the political and non-political positions. In more recent times and with the possibilities for equal and higher education, women have made considerable progress in the employment sector. However, when it comes to decision-making roles, political and non-political, there is a significant gender gap. In 1993, Auster explained that the glass ceiling is not a single ceiling, a wall or a spot, but rather many varied pervasive forms of gender bias that occur frequently in both overt and covert ways.¹¹⁶² The glass ceiling is a barrier that prevents women from reaching positions of leadership and decision-making by obstructing their vertical mobility.

Part of the reason for the gender gap and the glass cliff, can be explained in terms of girl-boy socialisation experiences. Socialisation has a powerful impact on the development of stereotypical attitudes and behaviour.¹¹⁶³ Such stereotypes thus emphasize characteristics such as meekness, obedience, child bearer, and family

¹¹⁶¹ Also see Julie Ballington and Azza Karam *Women in Parliament* (International IDEA, Publications Office, Stockholm, Sweden, 2005).

¹¹⁶² Ellen R Auster *Demystifying the Glass Ceiling* (York University, Faculty of Administrative Studies, Toronto, 1992); Michelle K Ryan and S Alexander Haslam “The Glass Cliff: Evidence that Women are Over-Represented in Precarious Leadership Positions” (2005) 16 *British Journal of Management* 81; Susanne Bruckmüller and Nyla R Branscombe “The glass cliff: When and Why Women are Selected as Leaders in Crisis Contexts” (2010) 49 *British Journal of Social Psychology* 433.

¹¹⁶³ Claire M Renzetti and Daniel J Curran *Women, Men, and Society* (2nd ed, Allyn and Bacon, Boston, 1992) at 260.

caretaker for women and, impinged on women's perceptions of their responsibilities, consequently inhibiting their participation in public life.¹¹⁶⁴ Gender stereotyping is a significant challenge to CEDAW's promise of substantive equality.¹¹⁶⁵ After surveying senior women and CEOs experiences in the United States and Canada, *Catalyst and Opportunity Now* surveyed 1188 women and 117 CEO respondents in the UK, and found that stereotyping affected as many as 81 percent of the respondents.¹¹⁶⁶

This study contributes a wealth of information, with almost every participant (50 in total), confirming that stereotypes have impacted their lives and careers. The influence of gender role stereotypes manifested in many forms: low self-esteem; lack of confidence; and through negative self-image.

Confidence is also still an issue for women. They lack the confidence to come out into these areas.

Capacity in terms of self-confidence is missing.

Women are not as confident about going about as a lawyer, as an engineer etc.

It takes a lot of inner strength for a woman to go to court and get custody of a child. She needs to build up her courage on her own to do something like that.

Gender-based stereotypes see women as weak, nurturing and fit for domestic roles. In line with these ideas, and with concerns for their security, families prefer certain types of jobs for girls. Women are perceived to be physically weaker than men and

¹¹⁶⁴ See, Farzana Bari *Women's Political Participation: Issues and Challenges* (EGM/WPD - EE/2005/EP. 12 United Nations Division for the Advancement of Women (DAW) 2005).

¹¹⁶⁵ Rebecca J Cook and Susannah Howard "Accommodating Women's Differences under the Women's Anti-Discrimination Convention" (2007) 56 Emory Law Journal 1039 at 1043.

¹¹⁶⁶ Opportunity Now *Breaking the Barriers: Women in Senior Management in the UK* (Opportunity Now, A division of Business in the Community 2000), at 30.

hence, unable to fulfil the responsibilities of decision making, often associated with long hours at work and travel. There are no restrictions on what boys and men can pursue in terms of a career. For example, teaching and nursing are feminine work. Working in a resort on the other hand, involves working outside the provinces and cities, traveling and thus considered masculine. Participants made the following observations:

... It is very culturally unacceptable for a man to become a pre-school teacher or a nurse. Because these nurturing jobs are seen as a mother's job ...

... If it's a professional sense, then it would be mostly men again. Tailors are often men. But if you do it from home, like bake cakes from home, then it would be mostly women ... I think there are some jobs that are seen as feminine and more acceptable for women and these include things like pre-school, more nurturing roles and more care taking roles – soft jobs.

... It is only very recent that girls have really taken an interest in diving and now they take up diving courses and work in the resorts. It is a slow change happening. Recently there are more women taking up unconventional jobs ... When it comes to jobs, in our society there are male jobs and there are female jobs.

Participants noted that choosing to be in either teaching or nursing is somewhat related to the socio-economic development of the country. All the islands have schools and health posts. Local training is easily available for both of these professions, and a job afterwards is always guaranteed, closer to family homes. Most islands, often have only teaching and health centre related jobs available, and there is little point in getting a training that has no relevance to their lives. It is also considered as the safer option for girls and women, as it does not require travel to other parts of the country.

Moreover, society believes that women cannot be in certain professions because they lack skills simply because they are women; such as physical strength,

intellectual capacity and vigilance. For example, it is socially unacceptable for a woman to become a construction worker, an engineer, a seaman or a taxi driver. Men are still accepted more readily, and is more likely to happen in certain professions. For example, male doctors are more readily accepted than female doctors. But for nursing or teaching, women are more readily accepted. Males are more readily accepted as health officials in the islands. Thus, some professions and work environments are more hostile towards women. To be in a leading or senior management position in a male-dominated working environment could be very different from holding a leading position in a ministry/sector that has an equal number of men and women. Women have been discriminated against in terms of training and opportunities to travel abroad simply because the travel group is largely male, and the men were not comfortable travelling with female colleagues.

According to the majority of the participants, the biggest barrier for women's equality in public life is their responsibility towards their family. Women in the Maldives are socialised to mothering roles, and similar to many other countries, this unpaid category of work consumes women's lives. As discussed in Chapter One, the Maldivian cultural heritage is in many ways similar to its South Asian neighbors. Early childhood socialisation, sex-role stereotyping makes men and women pursue traditionally defined roles in society.¹¹⁶⁷ Cultural expectations match women with motherhood and domestic caretaking.¹¹⁶⁸ Gender-based division of labour limits women's involvement in the non-traditional areas, such as politics or decision-making in general.¹¹⁶⁹ It is observed that women of childbearing age do not enter politics or continue towards senior level jobs because they are not able to commit more time to their jobs.

Men and women are raised differently, to pursue different roles. Girls are raised and treated differently from birth. They are brought up in-doors, whilst boys are

¹¹⁶⁷ Runyan and Peterson, above n 803, at 112.

¹¹⁶⁸ At 112.

¹¹⁶⁹ At 113.

able to go outside with their friends and travel alone to nearby islands with their friends. Girls, however, are not allowed to travel alone or go out of their homes without another family member. Most people still believe that women and girls should not go out alone because they are weak and need protection. Boys and men receive special treatment on many occasions, especially during religious and cultural festivals when special food is prepared. Even during normal days, in many families, women in the house would serve the father and the boys first at meal hours and women and girls would eat afterwards. Families also prioritize boys over girls in higher education, especially, when parents can only afford to educate one or a few of their children. On the socialisation of girls and boys, one participant notes:

We live in a society where we actually firmly believe that it is a girl's role to take care of the house / family / children. It is her primary responsibility. Any other thing, whether it is study or work or become involved in a political party, they are all secondary to her primary duty. So, a woman must do her primary duty first, before she does what she wants to do for herself. It is not so much for the man, it is pretty much left to them to decide what they want to do and what they want to achieve from their life. But it is different for a female.

Girls are expected to know household chores such as washing, cooking, ironing when they get married. Most girls are trained from a young age to do these chores with their mothers. Perhaps because the Maldives does not have farms or animals, boys do not have much to learn in terms of household skills, so they basically spend their time with friends.

My husband grew up in a really stereotypical family and at the time of our marriage, his sister asked him if I would know how to iron properly ... when we have visitors from his family, they always volunteer to do the ironing. My sister-in-law is a stay-at-home wife. She believes that all that has to be done for the husband including serving him water.

Much emphasis is also placed, from birth of the girl child, to be meeker, obedient and following rather than leading. This hinders the development of key leadership qualities, necessary for participation in public life.

At home we encourage girls not to play, not to be loud etc. the attitude is still very much prevalent even within the school system. Girls are meeker, quieter and don't ask questions. The society and our culture, our school system still has to change a lot to make girls more forthcoming and take initiative. This can be clearly seen within our society. There are only a handful of girls in schools who become captains and school captains and the rest is still the meeker ones and the majority is left behind.

The hidden school curriculum still emphasize that the man is the head of the family and takes care of you and the entire family. We have to change what's happening in schools; how girls see themselves, how boys see girls.

In our traditional average home girls don't go out alone or even early in the evening without telling your parents where you are going until you are 21 years old.

The society believes that men and women have different social roles to perform. For this reason, many people still expect girls to study, but also settle down early, which is not expected from male children even if they were not studying.

What we expect from women as a society is very different from what we expect from a man. It is perception and what we feel is evolving and changing but not that much. For example, when a girl completes her school or first degree, her parents or guardian wants – perhaps not so common in the capital – but definitely in the islands, people would want her to get married, settle down, have kids. And when you have kids, stay home and take care of them. I mean, these are the expectations for a girl child. If a boy, even if he reaches 30, 35, 40 one wouldn't be demanding the same from him.

All participants held socialisation responsible for women's lack of interest in politics, which also supports the literature on socialisation as a barrier to women's participation in public life. Being brought up and socialised in a specific way, women do not develop the confidence, or the drive, to focus on participating in decision-making positions because the focus is towards having a family and taking care of the family. According to one participant:

Women don't have that drive, for many reasons. Firstly, it is because of the way you are raised. Secondly, you are worried about the way society

looks upon you. Take me for example. People don't really think we are feminine women. Even women themselves don't think we are real feminine women. We are not their version of soft spoken, well dressed and well behaved women. So many conditions to be a proper woman. That is not us; we don't belong in that category.

The gendered characteristics of girls persist into adult lives and play out in public life in many ways because girls are trained for a private life and not a public life. The culture emphasizes and thus, knowingly and unknowingly reproduces dependant and less competent women who will have significant difficulties in pursuing leadership roles. These images and perceptions reduce women's sense of political effectiveness and reduces their interest to participate in decision making. Sex and gender roles prevent women from engaging in political activities because these images emphasize women as homemakers and housewives.¹¹⁷⁰ Strong patriarchal systems emphasize strict boundaries for women and men and on their roles as mothers and wives.¹¹⁷¹ Sex role socialisation also teaches women not to pursue male roles in society.¹¹⁷² All of these factors make women passive and unmotivated to explore positions of leadership.

6.1.1.1 Gender and Leadership

The majority of the participants in this study were of the view that the society sees men as better suited for decision-making roles, and that men preferred being the boss. Men are associated with notions such as competition, aggression and rationality, and are seen as having the natural qualities of a leader. Participants in this study shared their experiences of the attitudes they are met with expressed on a day to day basis in the local context:

¹¹⁷⁰ Jeane J Kirkpatrick *Political women* (Basic Books, New York, 1974).

¹¹⁷¹ See discussion in, Ballington and Karam, above n 1161.

¹¹⁷² See Cynthia Fuchs Epstein *Woman's Place* (University of California Press, Berkeley, 1970).

Society sees men as more influential and as better leaders. Society sees them as better equipped and knowledgeable to take on various functions ... Many women are still reluctant, ... more women have become reluctant to be involved in decision-making roles.

Men are accepted as better leaders. Many men who were way less qualified, less vocal, less forward, who had much lower leadership traits made it to the top levels faster than I did. It is our culture that males are easily accepted as leaders. ... A woman has to do a lot more to be heard and to be accepted in these male roles that is known as 'senior management'.

All the heads of departments are equal in rank in the office. But I was still seen as inferior to my male colleagues. ... He [a colleague] was not comfortable me being his equal and delivering orders, even when they were from our seniors.

Even when you are a minister, your decisions are constantly influenced, by deputies who are all men.

Men always like to be the boss.

Women who are active in politics are seen in a negative light. Women who openly participate in political activities are seen as boisterous and unwomanly. If the same qualities are possessed by a man, they are seen in a positive light; good leadership skills. Women like Velizinee, Maria – they are boisterous, vociferous, and belligerent – Their male counterparts on the other hand are brave and courageous ...

Similar ideals also prevent investors from funding female candidates, and a fear of failure restrains women further.

Campaign money is necessary and women don't have that kind of money to invest into a campaign. Other people who invest in the candidates don't feel that comfortable to invest in a woman because of the patriarchal view that women will not be able to participate equally or do a good job, or can be used to represent me [the investor/voter] to perform tasks that interest me. ... even women are not comfortable to vote for a woman.... So, even if women were economically empowered, they wouldn't pursue public lives.

One participant expressed the view that there seems to be jealousy and fear of female leaders in the Maldives.

I think now, different from those days, more men are jealous of women now. I think that political people are also really jealous of women permanent secretaries. I think they fear women because they know that women are more difficult to click into their views. Men, they can just put their hands on their shoulders and get into their minds ... men are very threatened.

These are not new findings. Despite studies showing that there is little difference between male and female managers,¹¹⁷³ cultural prejudice assumes that men are better suited, given their qualities, for leadership.¹¹⁷⁴

Studies on leadership do not show that men are better leaders. These suggest that although there are sex-related differences in leadership styles, these differences are small, and take the form of highly overlapping distributions of women and men.¹¹⁷⁵ They show that men adopt a more vertical, command and control style while women, adopt a more democratic and participatory approach to leadership.¹¹⁷⁶ Assertiveness, while it is a key component of leadership, prevalence of low and high assertiveness is costly to good leadership.¹¹⁷⁷ Female leadership studies showed that women included others in decision-making and create communication flows.¹¹⁷⁸ Women are nurturing even in the work environment. They are focused on the overall welfare and promote values such as understanding, appreciation,

¹¹⁷³ Gary N Powell *Women and Men in Management* (Fourth Edition edition ed, SAGE Publications, Inc, Los Angeles, 2010).

¹¹⁷⁴ Madeline E Heilman and others "Has anything changed? Current characterizations of men, women, and managers" (1989) 74 *Journal of Applied Psychology* 935.

¹¹⁷⁵ See Diana Bilimoria and Sandy Kristin Piderit *Handbook on Women in Business and Management* (Edward Elgar Publishing, Cheltenham, UK, 2007); Alice H Eagly "Achieving relational authenticity in leadership: Does gender matter?" (2005) 16, *The Leadership Quarterly* 459.

¹¹⁷⁶ Alice H. Eagly and Mary C. Johannesen-Schmidt, *Leadership Style Matters: The Small, but Important, Style Differences between Male and Female Leaders*, in Bilimoria and Piderit, above n 1175, at 279.

¹¹⁷⁷ Daniel R Ames and Francis J Flynn "What Breaks a Leader: the Curvilinear Relation between Assertiveness and Leadership" (2007) 92 *J Pers Soc Psychol* 307 at 322.

¹¹⁷⁸ Judy B Rosener *America's Competitive Secret* (Oxford University Press, Oxford : New York, 1997); Sally Helgesen *The Female Advantage* (1st Edition edition ed, Doubleday Currency, New York; New York, 1995).

tolerance and protection.¹¹⁷⁹ For example, if women are in legislative bodies, they are more likely than men to advocate for issues of public welfare, child rights, women's rights, and health care.¹¹⁸⁰ Men and women also have different values and attitudes towards leadership.¹¹⁸¹ Women's leadership styles are increasingly gaining value as organisations focus on diversity and networking.¹¹⁸²

These differences in leadership are due to gender stereotypes and gender roles that also permeate the work environment and affect behaviour. Gender roles emerge in these contexts as people expect different things from men and women.¹¹⁸³ Carol Gilligan argues that women and men have different leadership styles, and that these are based on the socialization processes.¹¹⁸⁴ She argues that men consider moral issues in terms of justice, rules and individual rights in contrast to women who tend to approach moral dilemmas using criteria that judges outcomes based on their impact on relationships.¹¹⁸⁵ Gilligan argues that this is because boys are taught games based on rules and fairness whereas girls are taught games that involve inclusion and acknowledgement of feelings. Men and women therefore bring different ethical values to work.¹¹⁸⁶

¹¹⁷⁹ Shalom H Schwartz and Tammy Rubel "Sex Differences in Value Priorities: Cross-Cultural and Multi-Method Studies" (2005) 89 *J Pers Soc Psychol* 1010 at 1010–1011; Also see, Ann M Beutel and Margaret Mooney Marini "Gender and Values" (1995) 60 *American Sociological Review* 436.

¹¹⁸⁰ Lena Wängnerud "Women in Parliaments: Descriptive and Substantive Representation" (2009) 12 *Annual Review of Political Science* 51; Pamela Paxton, Sheri Kunovich and Melanie M Hughes "Gender in Politics" (2007) 33 *Annual Review of Sociology* 263.

¹¹⁸¹ Schwartz and Rubel, above n 1179.

¹¹⁸² Nancy J Adler "Competitive Frontiers: Women Managers in the Triad" (1993) 23 *International Studies of Management & Organization* 3; Sally Helgesen *The Female Advantage* (1st Edition edition ed, Doubleday Currency, 1995); Rosener, above n 1178; Helgesen, above n 1178.

¹¹⁸³ Bilimoria and Piderit, above n 1175, at 285.

¹¹⁸⁴ Carol Gilligan *In a Different Voice* (Harvard University Press, Cambridge, Mass, 1982) at 26–30.

¹¹⁸⁵ At 26–30.

¹¹⁸⁶ At 16.

Men's discomfort with women in senior positions have also been explained with concepts such as 'flight from the mother'¹¹⁸⁷ or the unconscious fear of powerlessness that is associated with a past experience of powerlessness with an actual mother in infancy.¹¹⁸⁸ According to Gutek, this happens primarily because men are not 'raised' to work under a woman. Many of them have a fear of being 'topped' by a woman, the fear of losing to a woman is scary.¹¹⁸⁹

These findings are also in line with the findings of the IPU study - *Politics: Women's Insight* - that revealed that hostile attitudes towards political participation by women was one of the biggest barriers to running for parliament.¹¹⁹⁰ For many women, they struggle on a day-to-day basis within their positions to be seen as equals. The same is true for women in political positions as well as those in non-political positions in public life. According to multiple participants in the study, the weight a man carried with him, through his participation and presence, was simply unequal to that any woman could carry.

Women in management studies have often found that male managers are seen as aggressive, independent, unemotional, objective, dominant, active, competitive, logical, worldly, self-confident, and skilled in business, all competence related traits while female traits were the exact opposite.¹¹⁹¹ Research also found that successful corporate leaders, men and women, both have traits of the male stereotype.¹¹⁹² The association of predominantly masculine attributes with the attributes of leadership puts women at a disadvantage. Women often work around these socially accepted

¹¹⁸⁷ Manfred FR Kets de Vries *Life and Death in the Executive Fast Lane* (1st ed, Jossey-Bass, San Francisco, Calif, 1995).

¹¹⁸⁸ Rosener, above n 1178, at 97.

¹¹⁸⁹ Barbara A Gutek *Sex and the Workplace: The Impact of Sexual Behavior and Harassment on Women, Men, and Organizations* (1st ed, Jossey-Bass, San Francisco, Calif, 1985).

¹¹⁹⁰ IPU *Politics: Women's Insight* (No. 36 2000).

¹¹⁹¹ Inge K Broverman and others "Sex-Role Stereotypes: A Current Appraisal" (1972) 28 *Journal of Social Issues* 59; Heilman and others, above n 1174.

¹¹⁹² LR Bei Offermann C "Achievement Styles of Women Leaders and Their Peers" (1992) 16 *Psychology of Women Quarterly* 37 at 52.

practices to create images of masculinity or downplay feminine traits.¹¹⁹³ Shepherd in *'Women Managers' Perceptions of Gender and Organisational Life'* argued that some women adopt a strategy that allows them to keep enough feminine traits not to challenge the stereotypes directly but are business-like enough to maintain their credibility with their male colleagues.¹¹⁹⁴

Most of the women who are in public life at the moment have a certain socio-economic class or status in the Maldives. These women came from positions of power, either through locally owned business or previously powerful families in the country. These women were not ordinary women in the Maldives. Many of them received preferential treatment, and were appointed to positions of decision-making by the President. For example, except for one, every female who successfully became a member of parliament in 2014, had previously served the parliament as a presidential member in the Qayoom Government. These women were given a kick-start to influential decision-making within the State. Generally, women are seen as less competent, whether or not they came to their positions by hard work or with preferential treatment. Once in employment, women therefore, have to prove their capability at a higher standard, sometimes working twice as hard as their male colleagues. A woman's reputation in public life is achieved through immense dedication and hard work. Struggle, is part of the journey, which every woman expects. Thus, the persistence of the society's entrenched male and masculine stereotype of a leader is part of the reason why there are few women in leading positions within the public and the private sector. More importantly, gender stereotypes also create a double bind, which severely affects women's participation in public life in the Maldives.

¹¹⁹³ William L Gardner, Joy Van Eck Peluchette and Sharon K Clinebell "Valuing Women in Management An Impression Management Perspective of Gender Diversity" (1994) 8 *Management Communication Quarterly* 115.

¹¹⁹⁴ Albert J Mills and Peta Tancred *Gendering Organizational Analysis* (SAGE Publications, Inc, Newbury Park, 1992) at 151–166.

6.1.1.2 Double Standards and Double Binds

In the achievement of equal rights in public life, women are subjected to both double standards¹¹⁹⁵ and double binds. Women's joining of the labour force did not change much for men, but women end up doing a double shift.¹¹⁹⁶ After marriage, childcare and household chore responsibilities for women increase significantly, as discussed above. Nancy Dowd suggests that the situation is similar to a single parent life where mothers are doing the unwaged – all or the majority of the house work, caretaking – and also the waged work.¹¹⁹⁷ Often many women are overwhelmed with waged and unwaged work that given a choice, mothers would often trade parenting jobs for job opportunities or income.¹¹⁹⁸

In the context of participation in public life, women confront double bind predicaments on a daily basis. To be taken seriously, women must be tough and authoritative (like men), but “will be perceived as bitches if they act too aggressively.”¹¹⁹⁹ Such double binds make sure that the less powerful in the society, such as women, stay oppressed.¹²⁰⁰ Prior to establishing a career at a decision-making level, women have to go through crucial levels where their potential is tested; where they must prove their worth. This is more commonly referred to as competency testing.

According to Lipman-Blumen, women are made to go through constant processes of proving themselves, in order to keep the old boys networks free of women and

¹¹⁹⁵ Used to mean a rule or principle which is unfairly applied in different ways to different people or groups.

¹¹⁹⁶ Equalities and Families, Nancy Dowd, in Nan M Seuffert *Yearbook of New Zealand jurisprudence* (School of Law, University of Waikato, Hamilton, NZ, 1997) at 86.

¹¹⁹⁷ At 87.

¹¹⁹⁸ Nancy E Dowd *In Defense of Single-Parent Families* (New York University Press, New York; London, 1999) at xvi.

¹¹⁹⁹ Judith G Oakley “Gender-based Barriers to Senior Management Positions: Understanding the Scarcity of Female CEOs” (2000) 27 *Journal of Business Ethics* 321 at 324.

¹²⁰⁰ At 324; Also see, Kathleen Hall Jamieson *Beyond the Double Bind: Women and Leadership* (1st ed, Oxford University Press, New York, 1995).

also less powerful men.¹²⁰¹ Rosener argued that women are more often subjected to competency testing if they are in upper level positions already, and this stems from fears of loss of power, control and self-image.¹²⁰²

These issues were identified by a majority of the participants in this study. According to some of these views:

Women have to be double-brave, extra-educated, extra diligent in their work even to survive. I don't think even if uneducated men are in the parliament, any uneducated woman can get into our parliament.

Women are perceived differently. You will have to outperform a man to fit into that role. Women have to do far more work to do the same work ... when it comes to a high position, the public does not see a need for women to come into these positions.

Many people still say that if it's a woman, then that person can't do that sort of work. Immediately they feel certain things fail because it is handled by a woman. We can see this even by looking at a male and female competing candidates in council elections. If I and another man compete for the Constituency X, he will get more votes.

The *Mauzoon* case (the female judges' case) is a perfect example of competency testing. If women were to choose a political career, constituents are interested to know more about a woman's chastity and good behaviour on top of her educational qualifications. The same is not expected from male candidates. There is a general interest to know about how her domestic responsibilities will be handled, whilst she takes on the very challenging role as a political figure. Some participants in this study also talked about a woman's duties towards their families. A few participants' highlighted women's primary duties towards her family and children and one participant stressed the need for good behavioural record for elected positions. This

¹²⁰¹ Jean Lipman-Blumen "Toward a Homosocial Theory of Sex Roles: An Explanation of the Sex Segregation of Social Institutions" (1976) 1 Signs 15.

¹²⁰² Rosener, above n 1178, at 99.

is similar to other research from around the world emphasizing the role of women at home, and how it affects women's involvement in the public sphere.¹²⁰³

6.1.1.3 *Sexual Objectification of Women*

Sexual objectification is the viewing of people solely as depersonalized objects of desire instead of as individuals with complex personalities and desires / plans of their own. Women across the globe are subjected to sexual objectification. For example, in recent times, Silvio Berlusconi called German Chancellor Angela Merkel an 'unfuckable lard-arse',¹²⁰⁴ Julia Gillard received comments on her 'small breasts, huge thighs',¹²⁰⁵ and just amongst hundreds of his sexist comments, Donald Trump said that what matters is to 'have a young and beautiful piece of ass.'¹²⁰⁶ Amongst multiple studies, a series of daily diary studies in 2001 found that 94 percent of undergraduate women reported experiencing unwanted objectifying sexual comments and behaviours at least once over a semester.¹²⁰⁷ In trying to investigate how sexual objectification hinders female political candidates and other positions of leadership for women, Heflick and Goldenberg in 2010, found that female sexual objectification had a direct impact on electoral success.¹²⁰⁸ A focus on the appearance of Sarah Palin actually led people to perceive Palin as less competent.¹²⁰⁹

¹²⁰³ See, Bari, above n 1164.

¹²⁰⁴ Jenn Selby "Jeremy Paxman asks Silvio Berlusconi: 'Is it true you called Angela'" *The Independent* (20 May 2014) <www.independent.co.uk>.

¹²⁰⁵ Maria Vultaggio "Julia Gillard Menu: 'Small Breasts, Huge Thighs' and What?" [2013] *International Business Times*.

¹²⁰⁶ Claire Cohen "Donald Trump sexism tracker: Every vile comment, in one handy place" (11 November 2015) <www.telegraph.co.uk>.

¹²⁰⁷ Janet K Swim and others "Everyday Sexism: Evidence for Its Incidence, Nature, and Psychological Impact from Three Daily Diary Studies" (2001) 57 *Journal of Social Issues* 31; Janet K Swim and Charles Stangor *Prejudice: The Target's Perspective* (1 edition ed, Academic Press, San Diego, Calif, 1998).

¹²⁰⁸ Nathan A Heflick and Jamie L Goldenberg "Sarah Palin, A Nation Object(iff)e)s: The Role of Appearance Focus in the 2008 US Presidential Election" (2010) 65 *Sex Roles* 149.

¹²⁰⁹ At 153.

Recent studies now suggest that in varying degrees and in many parts of the world, sexual objectification of women is now becoming more socially acceptable with the advent of multiple social media platforms,¹²¹⁰ and is affecting women's participation in politics.¹²¹¹ These studies support the view that sexual objectification gives women negative self-images and contributes to negative perceptions of them by the others, because the society does not acknowledge women's intelligence and competence.¹²¹²

Sexual objectification was identified as a serious issue of concern by the participants in this study. Women in decision-making positions, particularly in the area of politics in the Maldives, often fight off sexual remarks from their male colleagues and also the general public. According to the view of one participant:

When I was first nominated to my constituency, there were no females in any leadership positions there. So, it became such a novelty. There was constant teasing and comments on my body. They just made it impossible to be in the position... I saw this sort of behaviour even from my colleagues, people from my own political party. They treated me differently and kept sending negative comments to the party office. They want male leadership, to conquer everything.

MPs openly insult women through their parliamentary debates. In one particular discussion, an MP is reported to have argued that MPs must visit his constituency 'to see the beautiful women', during a budget discussion on the need for a jetty for the particular constituency. Likewise, women are confronted at a more personal level when they actively engage in politics. Women have to handle many personal attacks to which men are not subjected. These can come in the form of questions on their family responsibilities and also attacks on the way they dress.

¹²¹⁰ See study by, John B Ford, Michael S LaTour and William J Lundstrom "Contemporary Women's Evaluation of Female Role Portrayals in Advertising" (1991) 8 *The Journal of Consumer Marketing* 15.

¹²¹¹ Caroline Heldman and Lisa Wade "Sexualizing Sarah Palin: The Social and Political Context of the Sexual Objectification of Female Candidates" (2011) 65 *Sex Roles* 156.

¹²¹² Dawn M Szymanski, Lauren B Moffitt and Erika R Carr "Sexual Objectification of Women: Advances to Theory and Research" (2011) 39 *The Counselling Psychologist* 6, at 8-9.

During my campaign, a photo of me in a bikini was distributed to every single household in my constituency by my opponent. Another photo was also circulated during presidential elections almost nation-wide. To show ... anti-religious [behaviour]. So, there are these things we have to stand up against that men don't necessarily have to stand against. Lot of personal attacks than men don't have to.

There are no repercussions for those who pass discriminatory comments in the parliament and there is acceptance of this sort of behaviour at the societal level.

Politicians and parliamentarians openly say that someone was sexually harassed because she was working or that she was in an office. I was in the parliamentary committee that was reviewing the Sexual Offences bill to present comments from the Human Rights Commission. One of the parliamentarians said 'I believe that the Human Rights Commission's comments are un-Islamic and go against the religion'. I said I don't think this is un-Islamic and this is basic human rights. It was particularly in relation to marital rape. He just got worked up and said you can't say things that are against Islam. That's the mentality of the people who are making our laws.

This comment is identifying part of the issue which leads to the passing of contradictory provisions in laws, such as Articles 16 and 17 of the Constitution (discussed in Chapter Five), which prohibits sex-based discrimination, while at the same time, also guarantees all rights and freedoms subject to Islamic Shari'ah, which in its modern interpretations, allow discrimination between men and women.

In the current political context, women are easily reduced to a prostitute and this is a growing concern for women in public life. Viewing a woman as a prostitute is to literally see them as sex objects, equating their worth to their appearance and sexual functions.¹²¹³ So seeing them as prostitutes is seeing them as only good for sex. According to some of these views:

... As far as women in the top positions are concerned, everything has always been reduced to sex. If someone wants to insult a female

¹²¹³ Dawn M Szymanski, Lauren B Moffitt and Erika R Carr "Sexual Objectification of Women: Advances to Theory and Research" [2010] The Counseling Psychologist 0011000010378402.

parliamentarian for instance, she is pretty much reduced to a prostitute. And that is the problem and I think that could be one of the reasons why most women would not dare to do it or don't have the courage to do it. Because in the process, it could pretty much destroy someone's life. I think we have less women [competing for and in these positions] because of the way society treats women.

... if anything political parties have been terrible. If a woman is in an opposing party, she is reduced to a prostitute. This is true for all the parties ... I think that the likes of Eva, Rozaina and Maria (MPs) are very brave and courageous, because it is not only about expressing your views. In the whole process you lose whatever respect, dignity you have. You don't even have to do anything wrong.

There is an inherent tendency within our culture to regard women as merely objects of sexual gratification.

During the first 6 months itself, I realized that the public perception [referring to her constituency] towards me was quite different. The islanders, including the people in the island office, did not accept a female to be in that position of leadership in the island. They totally ignored me ... at times they saw me as a 'piece' for entertainment. ...

Thus, women who are active in political parties are often character assassinated, and treated as sexual objects by the officials, the public and the media.¹²¹⁴ These attitudes and treatments also came from women.

6.1.1.4 Integrating Family and Work

The findings of this study indicated that balancing work and family obligations was a major barrier affecting a CEDAW right to public life in the Maldives, and seriously restrained women's autonomy to participate in public life. This finding is similar to many previous and recent findings from around the world on the impact

¹²¹⁴ To read generally on the role of media in sexual objectification of women, see Rosalind Gill "From Sexual Objectification to Sexual Subjectification: the Resexualisation of Women's Bodies in the Media" (2003) 3 *Feminist Media Studies* 100.

of family life on women's freedom.¹²¹⁵ Women in the Maldives are likewise, under a double burden, with workloads at home and also at the workplace. Childbirth, child care and caring for the husband are seen as the duties of a woman and these roles are, as mentioned by participants, still promoted through school curriculums, families and media.

The challenge of integrating family and work was also reflected in the participant pool in this study. Many participants in this research had been married multiple times, had one child, which is also indicative of a difficult balancing act; juggling between home and work. Many of them had broken marriages, were widowed, or divorced. This is consistent with previous studies showing women in certain decision-making positions stayed single, were divorced or widowed.¹²¹⁶ Moreover, when women get married and have children, there is no support structure that facilitates or encourages women to join or continue in public life.

Employers also do not have such a mechanism such as flexi hours, to make the working environment more enabling for women. Women do not have the choice to freely engage in political activities and often must arrange alternative care for their children, have fewer children or wait until children grow old enough to take care of themselves.¹²¹⁷ All of the participants in this study had the support of their husbands and families and were grateful for their contribution towards their careers. Whilst many of them indicated that the domestic chores are shared, some participants indicated that they had maids and other family support taking care of their domestic chores. There are no options such as day care or flexible working hours, for women who are married with children. This means that the women always have to stay home. As such, women are not able to continue in employment, in leadership positions and public life.

¹²¹⁵ For statistics in Europe, See European Commission *Women in Decision-Making Positions* (Special Eurobarometer 376, Wave EB 76. 1 – TNS Opinion & Social 2012).

¹²¹⁶ Shakeshaft 1987, Coleman 2002

¹²¹⁷ Kirkpatrick, above n 1170, at 55; also see Epstein, above n 1172.

The Maldives also has a significantly high percentage of female-headed households; the 2006 census report revealed that 47 percent of the households in the Maldives are female-headed,¹²¹⁸ mostly due to the husband working away and or divorce situations. Women, who are married with children, need to quit their jobs and take care of their young ones. For this reason, many participants were of the opinion that the answer to increasing women's equality in public life was in establishing day care facilities for working mothers:

Women have a lot of roles ... if women are to be employed, there needs to be a good set up for childcare. We don't even have school transport for that matter and a lot of women spend much time to drop and pick their kids from school; they are the public transport. It is very recent that men now go to drop and pick their kids from school, but still they are very few. These issues need to be addressed at a national level. We have to remove the barriers that exist. Imagine if there was a school bus? How many more women will have time to work more efficiently? Imagine the improvement on the society and the family.

... When we talk about women at work we are hiding a lot. We are hiding that their role in the domestic affairs is quite large. Even if the husband is a stay at home dad, the woman will still be responsible for everything within the domestic sphere. We really don't know how many women cope with this. We only see the women in the meetings and that they have the capacity to deal with the issues at home and come to work as well.

With the high divorce rates in the Maldives, we have a lot of single women in the Maldives who bring the income into their families and also take care of their children. Often the fathers do not provide. There are a lot of female headed households in the Maldives. I am sure that a lot of women are managing families, adding to the income and also performing other obligations that the society expects the women to take in terms of the caring roles; children or elderly parents or the sick.

Men who stay home for various reasons (mostly out of unemployment), do not do house work. While a fairer division of household work is believed to lead to more

¹²¹⁸ Government of the Maldives, Ministry of Planning & National Development, March, 2007, Census of the Maldives, 2006.

satisfying marital relationships,¹²¹⁹ the family is the beginning and the locus of gendered constructions.¹²²⁰ Interesting findings in this area also show that men are increasingly taking part in the domestic chores,¹²²¹ the presence of a husband, as opposed to a cohabiting partner, makes women spend more time on housework.¹²²² They suggest that marital status has an important connection with the household labour time for women, but it does not have the same implications for men.¹²²³

According to the participants of this study, having the institutional structures such as day-care centres and flexible working hours will allow and encourage more women to pursue positions of leadership. A few views were expressed as follows:

...women are not able to remain in employment. Either they get pregnant, married and have to stay home. There are no options for women who are married with children offered by the State. So obviously they will have to stay home.

The main problem is that there is no effective structure in which women can continue to be in the working sector. In terms of our culture and nature, women perform primarily as a care giver at home and therefore lots of women discontinue their work when they have children and because they don't have any secondary structures or facilities to take care of their children.

We also don't have the system facilities to encourage women to continue working to achieve decision-making roles. We have tried with the civil services commission to make flexi hours.

Flexible working hours and part time options are things with which many other countries have seen positive results. And not just for the

¹²¹⁹ Scott Coltrane "Research on Household Labor: Modeling and Measuring the Social Embeddedness of Routine Family Work" (2000) 62 *Journal of Marriage and Family* 1208 at 1208.

¹²²⁰ Heidi I Hartmann "The Family as the Locus of Gender, Class, and Political Struggle: The Example of Housework" (1981) 6 *Signs* 366 at 366.

¹²²¹ Suzanne M Bianchi and others "Is anyone doing the housework? Trends in the gender division of household labor" (2000) 79 *Social Forces* 191 at 191.

¹²²² Beth Anne Shelton and Daphne John "Does Marital Status Make a Difference? Housework among Married and Cohabiting Men and Women" (1993) 14 *Journal of Family Issues* 401. It is also noted that Cohabiters have less traditional ideas about the division of household labour, at 417.

¹²²³ At 417.

mother, but the fathers because there are many fathers looking after their children who are trying to juggle their jobs as well. And these issues need to be looked into in terms of flexibility.

In the Maldivian society, there is some reluctance to put children in a day care facility rather than hiring the services of a foreign maid. Participants expressed concern over the non-development of these understandings within society, because without these structures, women of child bearing age will always find it difficult to be in employment or to take on more demanding decision-making roles.

It is a cultural mind-set because we believe that a woman's first priority should be to take care of her home. But I think that everyone has a right to make a choice; to decide on having a career, taking care of her home, or to have both. That freedom of choice is not there.

Having to stay home to take care of children does affect our careers and the way we want to go ahead in life. The State should introduce child care facilities.

Many participants used day care centres as a solution to their problems, and when asked to categorize barriers in the order of relevance, most women put supportive structures and family responsibilities as the number one barrier. The absence of day care facilities in the country is, therefore, a major issue for women's participation in public life, especially after getting married or having children.

6.1.2 The State, Religious Fundamentalism and Women

The Maldives has been a Muslim state since 1153 A.D. However, religion never appeared to affect the lives of the people, as much as it is affecting now. Generally speaking, fundamentalists are opposed to, amongst other things, women's education and employment outside their homes.¹²²⁴ According to Howland, there is

¹²²⁴ Nomita Halder "Female Representation in Parliament: A Case Study from Bangladesh" (2004) 6 New Zealand Journal of Asian Studies 27 at 37.

a wide variety in terms of thinking even amongst fundamentalist Muslims, but despite their diversity, they have ‘striking similarities’ on certain doctrines and goals.¹²²⁵ He notes that fundamental Muslims believe that “women harbour the seeds of destruction of all society and that to avoid this they and their sexuality must be carefully controlled.”¹²²⁶ Howland explains that women’s sexuality and childbearing are controlled so that women remain chaste and moral in closely defined gendered spheres and roles.¹²²⁷ The man is the head of the family and the woman is the submissive caretaker of the family.¹²²⁸ The nature of women, their submissiveness and instability makes them unsuited to any role of authority under the fundamentalist interpretation of Islamic doctrines.¹²²⁹ Fundamental Islamic ideologies are further reinforced by the cultural context.¹²³⁰

A more significant process of *islamisation* in the Maldives is quite recent. A growing movement to Islamize the Maldivian population started in the last decade, and more strongly after the 2004 Gayoom Government Political Reforms, which allowed political groups to establish themselves as organized groups. The labelling of human rights as westernization, and the rising local movements openly oppose Maldives’s commitments under human rights treaties. These ideologies emphasize the role of wives and their obedience towards their husbands.¹²³¹ Many practices thought to reflect Muslim culture are really the infliction of Islamic religious principles on pre-existing behavioral codes in the Middle East; thus, such practices are not actually Islamic teachings and are used to control social behavior.

¹²²⁵ Courtney W Howland “The Challenge of Religious Fundamentalism to the Liberty and Equality Rights of Women: An Analysis under the United Nations Charter” (1997) 35 Colum J Transnat’l L 271 at 307.

¹²²⁶ At 307.

¹²²⁷ At 308.

¹²²⁸ Sayyid Abul A’La Maududi *Purdah and the Status of Woman in Islam* (Islamic Publications, 1979) at 121.

¹²²⁹ At 121–23.

¹²³⁰ C Margaret Hall *Women and Empowerment* (Taylor & Francis, New York, 1992) at 102.

¹²³¹ Mayer, above n 860, at 95.

In the following sections, the study looks at how the rise of religious fundamentalism is affecting women's participation in public life in the Maldives.

6.1.2.1 *Fundamentalist Interpretations of Religious Texts*

Religion plays a significantly important role in the social structure. The common perception, and what came through most of the interviews in this study, was that almost all participants believed that Islam as a religion treats men and women equally. However, different interpretations of religious rules advocated by different locals - scholars and non-scholars – is leading to the more extreme forms of Islam in the country. One participant narrated her personal experience in the following way:

My father turned very religious all of a sudden. He was then involved in the Sultan Park bombing case¹²³² and then he was imprisoned for a really long time. When he returned, he was a changed man. He forced his [now] wife to be fully covered, and forbid her from coming out of the house. He then had a baby, but refused to give it vaccinations. He said it was *haram* [forbidden] under Islam. He didn't want his young daughter to be enrolled into kindergarten [pre-school in the Maldives]. She was only allowed to attend Qur'ān classes.

Many of the extremist views are expressed by middle-eastern educated clerics, usually self-proclaimed experts in Islam, referring to themselves as 'religious scholars' (*Sheikh*). Many people are now learning to follow various interpretations of Islam, from clerics and imams who receive training mainly from Pakistan and the Middle East. Islam in these cultures is inherently patriarchal. Such societies view women as needing protection and control, while at the same time, also "imposing many disabilities on women", keeping them in a subordinate role,

¹²³² Reported to be a homemade (consisting of a gas cylinder, a washing machine motor and a mobile phone) device, the bomb blast took place on September 29, 2007, in Sultan Park near the Islamic Centre in the Maldivian capital Malé, and injured 12 foreign tourists. This is the first recorded bombing to take place in the Maldives.

burdened with domestic chores.¹²³³ Patriarchy, now being integrated into Islam, is causing new forms of inequalities to women. These clerics emphasize following Islamic customary laws and a restricted interpretation of the *Quran* and the *Sunnah*. The stereotypes present in the Maldivian society are now being exacerbated by the overt religious extremisms where all their work is emphasizing the differences between men and women, explaining that women are more emotional and unfit for decision-making roles.

These narratives suggest that religion in the Maldives is now being promoted with ulterior motives. Religious views are often either misinformed or purposefully used as propaganda to side-line women. Often times, these clerics use a single hadith, or a contested interpretation of Qur'ānic verses to explain the ruling in Islam. According to one such view:

In the past two to three years I have heard media programmes where they openly discourage, openly prohibit women from working. Openly call on women to stay home or openly call on their husbands or whoever is taking care of them to make sure that they remain at home, get married early. So I see a systematic attempt to see that women are tied to domestic life and they don't emerge into public life ... the men just grab anything [*hadith*] they have. Any single bit of hadith or Qur'ānic verse which they interpret on their own ... We can't really rely on a single *Hadith* that has come down generations just like that without any big research. To rely on a single Hadith that is entirely discriminatory.

Islam has been around in the Maldives for over 1200 years, but it was not until the 2004 political reforms, the introduction of political parties and the arrival of the new Constitution, that Islamic fundamentalism took root as a major political force in the country. Global factors contributed to the rise of the Islamic fundamentalism:

¹²³³ Mayer, above n 860, at 95.

the situation in majority Muslim States such as Afghanistan, Syria and Palestine and the role of the West in these contexts.¹²³⁴

In the case of the Maldives, fundamental groups started amongst individuals who were disappointed with not being able to freely practice Islam as a religion in the Maldives.¹²³⁵ Currently, fundamental thinking revolves around the failure of the leaders to uphold rule of law, and their failure to follow Islamic Shari'ah as prescribed in the *Qur'ān* and *Sunnah*. These conditions along with the change of Government in 2008 (ending a 30 year rule of the Qayyoom Government), established room for Islamic fundamentalism to grow, as many people were convinced that democracy is unable to create good governance in the local context. Instead, many people now believe that such fundamentalist interpretations of the Islamic texts and values that will help the Muslim society prosper.

Donald Holbrook argued in 2010, that “militant Islamist ideologues and propagandists seek to supplement their message with references to the Holy Book of Islam, framing the narrative in a religious setting and adding perceived religious purpose and legitimacy to the prescribed campaign of jihadist militancy”.¹²³⁶ According to Abdulla Saeed, several references in the *Qur'ān*, a tenet of Islam referred to under the Maldivian Constitution, suggests that men and women do not have the same social status.¹²³⁷ The Qur'ānic text has differential treatment for men and women in marriage,¹²³⁸ polygamy,¹²³⁹ divorce,¹²⁴⁰ on the issue of men taking

¹²³⁴ United States Department of State, Bureau of Democracy, Human Rights, and Labour *International Religious Freedom Report 2014* (United States Department of State, Bureau of Democracy, Human Rights, and Labour 2014) at 6–7.

¹²³⁵ Qayoom Government controlled freedom of religion by limiting the practices that can be followed by its citizens. For example, a woman cannot be fully covered in a public place.

¹²³⁶ See Donald Holbrook “Using the Qur'an to Justify Terrorist Violence: Analysing Selective Application of the Qur'an in English-Language Militant Islamist Discourse” (2010) 4 (3) *Perspectives on Terrorism*.

¹²³⁷ Abdullah Saeed *The Qur'an - An Introduction* (Routledge, London ; New York, 2008).

¹²³⁸ Qur'an, 5:5.

¹²³⁹ Qur'an, 4:3, 25, 127, 129.

¹²⁴⁰ Qur'an, 33:49; 2:226-233, 237; 65:4-6.

care of women,¹²⁴¹ inheritance,¹²⁴² dress codes¹²⁴³ and punishment for immorality.¹²⁴⁴ However, the *Qur'ān*, as discussed in Chapter Three, was not aiming to entrench gender discrimination as religious law, but intended to do the opposite.

In many places, the *Qur'ān* was describing gender-based distinctions in Pre-Islamic and Islamic society at the time, and at the same time improving the situation of women from former Arabian societies.¹²⁴⁵ As discussed, in almost all of these areas, the situation of women had been improved from previous practices, what was written is often taken at face value, rather than focusing on key elements of the Prophetic mission, argued to be creating new rights, justice and fairness.¹²⁴⁶ Saeed argues that part of the problem is that the Qur'ānic text is taken by many Muslims as a legal, rather than an ethical text. He claims that although the emphasis on legal matters could be viewed as necessary during the early stages of developing Islamic law and jurisprudence, that emphasis became excessive in the process, and “the language and spirit of the Qur'ān was lost.”¹²⁴⁷

6.1.2.2 *Responding to Rising Religious Fundamentalism*

As a result of fast-spreading information on the role and function of women, education, employment and participation in leadership positions, the country is looking at a serious case of regression. Many capable educated qualified women are not able to remain in employment for various reasons, religion being a strong factor. Thus, for many participants in this research, religious extremism is a bigger concern than the local culture that has existed for many years. According to these

¹²⁴¹ Qur'an, 4:34.

¹²⁴² Qur'an, 4:11, 176.

¹²⁴³ Qur'an, 5:5.33:59; 24:31, 60.

¹²⁴⁴ Qur'an, 4:15.

¹²⁴⁵ Saeed, above n 1237, at 13–14. Mayer, above n 860, at 94.

¹²⁴⁶ Saeed, above n 1237, at 15.

¹²⁴⁷ At 13.

views, fundamentalism/ extremism is also a bigger threat to the success of CEDAW in the Maldives.

Participants in this research had different views as to why religious fundamentalism is spreading so quickly in the Maldives. The most common view is that the fast progressing developmental changes are responsible for the fast spreading religious extremism in the Maldives. According to these participants, the past decade has seen incredible changes within the country with the proliferation of international standards of human rights and human freedoms. Within this wave, new religious scholars also found the opportunity to express their views on religion; some of them quite extreme. The public knowledge of Islam is limited in general, and any information on Islam is quickly believed to be true, and the transition from moderate to extreme is hurried. Most people in the Maldives have very basic knowledge of Islam and its various forms and do not question religion.

These findings are in line with theories that claim that fundamentalism in Islam is new in itself and gained momentum as late as in the 1980s.¹²⁴⁸ This form of political Islam is focused on the socio-economic, political and cultural life. For example in Turkey, it interfered with its modernist secularist development and brought in its first Islamist mayors.¹²⁴⁹ Similarly, in the case of the Maldives, the introduction of political parties in 2004 formally provided a platform for the extremist groups to function. These parties have since been able to gain public support through their showcasing of Islam, as the ideal way of life and the ultimate solution to all the economic and social problems in the country. Whilst there are 15 registered political parties in the Maldives, the religious party has the fifth highest number of supporters. As a significant proportion of the voter population, the government is forced to give weight to their views and ideologies.

¹²⁴⁸ Kayhan Delibas *The Rise of Political Islam in Turkey: Urban Poverty, Grassroots Activism and Islamic Fundamentalism* (IBTauris, London ; New York, 2005) at 1.

¹²⁴⁹ At 2–3.

One way or the other, they are penetrating into the political system. They are finding a way to do it. They are already influencing policy making in the country. ...

... with the new political freedom and Adhaalath party being able to compete in the 2008 elections and them coming into politics so strongly I think is indication of how strong this is spreading.

The 2008 Constitution provided the freedom to express and associate, which were restricted in the Maldives before 2008. Apart from being restricted to openly engaging in conversations about the local politics, religious freedom was equally restrained in the Maldives, in particular, Islam, which controlled the spread of religious views prior to 2008. At present, the State has no control on these groups, or their views and the public being naïve on religious matters, are being very much affected by these clerics.

Earlier there was only a certain group that could preach. Now many are able to preach. Previously Friday Sermons used to be written document. Sometimes we also give information for example on 16 Days of Activism to include in the Sermons. Now the preacher says whatever he feels is right and sometimes what we send them is no longer considered in the Sermons.

According to participants in this research, fundamental thinking is making its way into the decision-making via its increased party membership and passage into the parliament in the Maldives.

One reason for this is that people openly discourage women's participation in public life. We can't get law makers, policy makers and decision makers to see there is an issue here ... a large number of influential people believe that it is better that women stay home. How can you then bring about that change?

In the previous governments in the Maldives, multiple views on Islam were moderated by the State and persons were not allowed to freely engage in conversations with the public. Islam teachers were also closely monitored for content delivery in the local schools. Other teachers were not allowed to talk about Islam, at all. Conservative views on Islam became more pronounced after the 2004

tsunami when people started to believe the religion based claims that the people of the Maldives have been punished by Allah.

Fundamentalism has had a huge impact, especially after the tsunami. People think it is an act of God to regress; because God was angry because of whatever things happening in our society. And we had to repent.

According to Amir, the first Islamic organisations established themselves as NGOs in the Maldives in 2009, during a period of heightened period of alienation when Maldives was going through multiple issues: high unemployment; inadequate and unbalanced economic development; influx of Western ideals and norms which militate against traditional norms and taboos; and social ills such as drug abuse.¹²⁵⁰ Prior to that there were no organized religious groups in the country.¹²⁵¹ These groups have successfully established themselves in the Maldives carrying out regular advocacy activities using media platforms, political forums as well as a continued online presence. Sermons and speeches in the Maldives often center on the role of women in Islam.¹²⁵² The religious groups in the Maldives appear to be better organized and have better utilised the available platforms in comparison to any other political or social groups in the Maldives.

Islam treats men and women the same, they are encouraged to study and work. Fundamental Muslims interpret the *Qur'ān* and the *Sunnah* in a specific way, and are not open to a different interpretation of the text. In many cases, the interpretations used are incorrect. According to Shehadeh, women in Islam hold independent status and many Muslim States blatantly disobey the rules and the spirit of the *Qur'ān*.¹²⁵³ As also discussed in Chapter Three, the Prophetic traditions further provide evidence of the position of women and their presence in the public,

¹²⁵⁰ Amir Hassan “Islamism and Radicalism in the Maldives” (Masters Thesis, Naval Postgraduate School, 2011) at 47.

¹²⁵¹ At 47.

¹²⁵² At 49.

¹²⁵³ Lamia Rustum Shehadeh *The Idea of Women in Fundamentalist Islam* (University Press of Florida, Florida, 2003) at 149.

social and military life of an Islamic State.¹²⁵⁴ Refusal to accept these as they are, only proves a purposeful misinterpretation of the textual authorities by fundamental groups.

Such liberal views on women's rights under Islam are also new for most Maldivians because it significantly clashes with the Maldivian culture, which primarily follows South Asian gender structures. In line with these cultural settings, most Maldivians do not believe that women and men are equal when it comes to decision-making roles. Views in Islam that are more aligned with the local culture are accepted more easily than a liberal view, even if that came from Islam.

The definitions given to the word fundamentalism has been much problematized,¹²⁵⁵ but generally refer to various movements to revive religion in the face of modernity.¹²⁵⁶ Highly critical of democracy and secularism,¹²⁵⁷ some Islamic fundamentalists seek to return to an “imagined model of seventh-century Arabia.”¹²⁵⁸ It has been argued that, to a large extent, Islamic fundamentalism is a reaction to the Westernisation.¹²⁵⁹ Colonial powers often brought local customary practices into question (discussion) and attempted to save the locals, particularly women from their men/ situation.¹²⁶⁰ In the way women dress, eat, drink, carry out religious rituals, move and becomes visible in social space, women display

¹²⁵⁴ At 149.

¹²⁵⁵ Delibas, above n 1248, at 8.

¹²⁵⁶ For a discussion see, Campbell William F *The Quran and the Bible in the Light of History and Science* (Middle East Resources Inc, Upper Darby, PA, 1992).

¹²⁵⁷ Karen Armstrong *The Battle for God* (1 edition ed, Ballantine Books, New York, 2000) at 165–166.

¹²⁵⁸ Ahmed Rashid *Taliban* (2nd ed, Yale University Press, New Haven, CT, 2010) at 6.

¹²⁵⁹ Janet Afary “Seeking a Feminist Politics for the Middle East after September 11” (2004) 25 *Frontiers: A Journal of Women Studies* 128 at 130–133; Valentine M Moghadam *Modernizing Women: Gender and Social Change in the Middle East* (Lynne Rienner Publishers, London, 2003) at 99, 159, 168, and 222.

¹²⁶⁰ Spivak Cary Nelson and Lawrence Grossberg *Marxism and the Interpretation of Culture* (Macmillan Education, Basingstoke, 1988) at 299.

naturalised distinction between the East and the West,¹²⁶¹ demonstrating culture and cultural identity.¹²⁶² According to Spivak:¹²⁶³

Between patriarchy and imperialism, subject-constitution and object-formation, the figure of woman disappears, not into a pristine nothingness, but into a violent shuttling which is the displaced figuration of the 'third-world woman' caught between tradition and modernisation.

According to Jyothsna Belliappa (2013) this has happened in many parts of the world. For example, in India, debates around customary practices such as widow burning (sati), child marriage and enforced widowhood were debated between the colonial administration and the Indians. In Egypt, such conversations centred on the practice of veiling and in Uganda, around women's sexuality.¹²⁶⁴ The contentious issue of women was also a question of the nation's manhood.¹²⁶⁵

In the case of the Maldives, it is largely the availability of platforms, the ignorance of the public and the relaxed attitude of the governments over the last decade, that have contributed to the rise and spread of fundamentalist thinking. The counter-voice and action on the part of the State and the society is missing, and the situation of women's rights are increasingly at risk.

6.1.2.3 Implications of Changing Religious Values on CEDAW Norms

According to participants in this research, fundamentalist groups such as the *Salafis*, are putting extreme emphasis on the role and function of women in family

¹²⁶¹ Tania Roy, Towards a Style of the Body, in Robbie BH Goh *Narrating Race: Asia, (Trans) Nationalism, Social Change* (Rodopi, Amsterdam; New York, NY, 2011) at 29.

¹²⁶² Nelson and Grossberg, above n 1260; See, Tanika Sarkar *Hindu Wife, Hindu Nation: Community, Religion and Cultural Nationalism* (Permanent Black, 2003).

¹²⁶³ Gayatri Spivak, Can the Subaltern Speak? Nelson and Grossberg, above n 1260, at 305.

¹²⁶⁴ Jyothsna Belliappa *Gender, Class and Reflexive Modernity in India* (Palgrave Macmillan, New York, 2013) at 56.

¹²⁶⁵ At 56–57.

and society. Groups such as *Salafis* and Islamic Foundation of the Maldives (IFM), are known to work closely with political parties in the Maldives, promoting conservative notions of Islam.¹²⁶⁶ According to some of their views, a woman should be dressed in a certain way, should not go to certain places within the society, and should be accompanied by a *mahram*¹²⁶⁷ when she goes outside the home. Some of these views also talk about the perfumes a woman must and must not wear. They also argue that mothers should not be in paid employment at all because a working woman is less able to attend to the needs of her family. There are constant reminders of these teachings through *fatwas*,¹²⁶⁸ radio stations, Friday sermons, freely distributed CDs and social media. These extremist views argue that to be a good Muslim woman, a wife must obey her husband, look after ‘his’ children and ‘his’ property. Moreover, women must not display their beauty to other men.

... and they have to stay home and look after the husband and the husband’s property. You will be a good Muslim woman if you stayed home and look after your husband’s children and property.

there is lot of propaganda to keep women at home. Now they are claiming that there are unruly children on the roads because women are going for various jobs. Even when women participate in political activities, people criticize them by saying that they are not looking after their children and they are going to political activities, neglecting the needs of the children.

There are a lot of religious scholars who speak of the importance of covering the face now. And not to show the beauty, not to use perfume etc. once I was told that ‘you shouldn’t be wearing strong perfumes, it attracts men ... etc.’

¹²⁶⁶ United States Department of State, Bureau of Democracy, Human Rights, and Labour, above n 1234, at 7.

¹²⁶⁷ A blood relative she cannot officially get married to.

¹²⁶⁸ A *fatwa* is an Islamic religious ruling, a scholarly (not legal) opinion on a matter of Islamic law. A fatwa can be issued by a recognized religious authority (individual and organisations) in Islam

Views expressed in such programs talk about the place of women at home, going out of the home with *mahrams*.¹²⁶⁹

They (fundamentalists) argue that without a *mahram* a woman should not leave the house, even for studies, go on a trip, even to one's own island.

My colleague who wanted to take a speedboat was refused service because she didn't have a *mahram*.

Members of the parliament have similarly expressed some extreme views with respect to Islam, and have openly supported stereotypes and segregation of men and women in society.

In CSC President's Case [sexual harassment case], an MP was saying that these things happen [sexual harassment in this case] because women go out and work and it wouldn't happen if they stayed home or in the proper places they were supposed to stay.

So, there is this whole dialogue going around on how important it is for the women to stay home. The Friday before the last, sermons, is a big thing. This sermon was all about how the wife should be at the service of the husband. And the reason for all the social issues is because women are working. So, if more women stayed at home, we would have less social issues. So we have all this blaming that is going on and the guilt that they put in women, so that more and more women start believing that it's their fault and more men would start believing that it is the men's fault. Issues of violence, drugs and all the youth going astray is now, because the women are not staying at home.

... there are Friday sermons and other propaganda on the role of women, how they should dress and how women should carry themselves within the society.

According to some of the extreme views in the context of the Maldives, the Domestic Violence Prevention Act is also contradictory to Islam. This is because according to their interpretation of the Qur'ānic text, Islam allows a man to hit his

¹²⁶⁹ Someone who is a blood relative of the woman, to whom she cannot legally marry.

wife and therefore local law cannot criminalise the act of hitting/ beating one's wife. They also claim that the age of maturity should be reduced to 12 because by 13, most girls would be married and there will be lesser sexual abuse and rape cases in the Maldives.

They say that a man can hit his wife and the DV Act says that it is a crime. They wouldn't call it abuse, but we call it abuse. They argue that we are restricting something that Allah has given permission to, and also comments like; we should decrease the age of maturity from 18 to 12 so that rape cases and sexual abuse would not happen because by 13 then, they would be married. So this is how people see on VAW issues.

Islam is often used as a weapon to justify violence because they interpret the verses to find a right to chastise women that includes beating. But, Islam does not support violence of any manner. I think people know very little about Islam and Qur'ān. It's more a tool they use.

Different views on religion are also preventing the removal of the reservation to article 16 of CEDAW,¹²⁷⁰ indicating that there is a direct impact on the progress of CEDAW at the local level. Religion is the main reason why the Maldives continues with the reservations made to CEDAW, restricting women's rights in family and marriage.¹²⁷¹ As the majority of people practice Islam as a religion,¹²⁷² the subject is a sensitive area, and open discussions on matters of the religion are rare. According to one of the participants in this research:

Religion is a delicate issue and most people in the Maldives are not well versed in religion. People are so scared that they might go to hell. I think this is having a great impact on women's rights, because women have started believing it.

¹²⁷⁰ Equal rights within marriage, divorce, child custody, etc.

¹²⁷¹ CEDAW 1979, art 16.

¹²⁷² Maldives claims to be hundred percent Muslims.

Religious text is often interpreted to the benefit of men. For example, where there is strong stress on women's dress, the same amount of emphasis is not placed on men's dress. This is because of the assumption that women are more sexual than men or that they would tempt men, it is more imperative that women cover fully in comparison to men. The same rule also goes for men's right to have multiple wives. The *Qur'ān* says that a man can have four wives, but there are criteria to be established before someone can take more than one wife. The conditions are stringent and makes it very difficult for the man. However, there are no conversations on these matters. Religion is used to promote taking multiple wives, but the strict conditions under which a man is allowed four wives, does not seem to be a topic of interest. There is no talk on the rights of these wives, and what they are to be granted under Islamic Shari'ah. Conversations and speeches only focus on the right of men to have four wives. Thus, participants note that *Qur'ān* and *Ḥadīth* are used against women in the local context.

My personal belief is that religion is interpreted to suit males more than females and it has been this way for a long time. The sheikhs may not agree with me on this.

We just follow what we want to follow in the religion. For instance, the Qur'ānic provisions that permit up to 4 wives. They just use part of the sentence that permits up to 4 wives. They fail to read the end of the sentence that requires any man who has over 1 wife to maintain justice amongst his wives. You are not allowed to have 4 wives if you can't.

It is more difficult for women to go out and participate in public life freely now. They have become more subservient. And there are no counter advocacies or lobby groups working against these fundamental ideal supporters. Moreover, even if there are no policies that hinder women from participating in public life, the local laws are gender neutral. When this is tied in with the cultural practices and the religious conservatism, these laws become less useful for equal rights in the context of the Maldives.

In recent times, these fundamentalist religious groups have also started to raise questions about why the Maldives is party to human rights instruments that contradict Islamic Shari'ah, particularly referring to CEDAW, and religious

extremism appears to be reaching a new high. These views are often disseminated through the use of media.

... MPs have expressed views against Conventions and women in power ... questions are also raised as to why we have ratified these conventions that contradict Islam. The tolerance level is getting lower and they question why did we ever ratify CEDAW and it is totally against Islamic Shari'ah. I have heard this during a recent Friday sermon. ... All of a sudden he starts talking about why we are party to certain UN and HR Conventions. And [explains] that it is a way of getting away from Islam. ... Many sermons have said that all the bad things in the society happen because of women.

When we travel to the islands, what we are seeing now is all veils. Moreover, they don't want to tolerate anyone who is without a veil. They don't want to understand that it should be left to the woman to cover herself. ... All sorts of topics are now covered during Friday sermons (used to be State approved speeches before 2008), and these sermons do put a lot of focus onto women and how women should behave in society.

Fundamental views influence women's private as well as public lives. The regulation and emphasis on the private sphere of a woman's life controls and limits what she is able to do outside of the house; in the public.

The pressure from the fundamentalist groups claiming that women should stay home and women are not capable of decision-making would affect women because we don't have any counter voices that talks about women working in Islam and that women have the capacity to make decision in Islam. The advocacy is one-sided and there is no encouragement; not even from the working women, a voice to say that women can, and must work. Women are not showing that sort of leadership. I think this is also out of fear to voice against the fundamental groups. Anyone who does this will be easily labelled as anti-Islam and this sort of labels don't go away easily in this small community.

... it [fundamentalism] is already affecting women's public life ... some studies now that show certain regressive features. For instance we see that now there are concerns with girls studying in schools and there have been issues of girls not being sent to schools and I think that mobility well may also be affected and this is something we need to

look into to see whether women's freedoms in terms of higher education and access to jobs are limited. If we look at the way some of way the religious speakers preach and talk, definitely, we would be seeing these traits in our society ... if women's rights are further limited, they would become more and more vulnerable in terms of not being economically independent and being subject to various types of abuse and their quality of life would deteriorate further.

The conservative elements are dragging women behind doors. ... We have highly qualified women in the Maldives now, but they don't come to public service because they have a fear it is against Islam ... Because of the fear 'am I doing something wrong in going out to work?' is making women stay home.

Even in my business world, I find the religious factor coming in. They tell us that women shouldn't be in this sector, you should stay home. I think they fear women coming into this area. I have made considerable progress during one year. They put you down in every way they can ...

The overall improvement of women in public life is something that is openly discouraged by men from religious groups. Moreover, there is new and growing belief that women in public life is non-Islamic. According to one participant, the reason for having very few female judges also could be because of extremist views on Islam.

There are limited number of female judges because there is a misconception that Shari'ah does not allow women to become judges. For example, when X applied, X was the only female candidate. All of the applicants went through the interviewing process and after the interviewing process, X had enough points to secure a position, but all the other applicants went ahead and took their oath, assumed their positions and started working. X's application was kept pending for another 6 months or so. Later on, when inquired, X came to know that since she was a female applicant, JSC needed to clear her appointment through the Islamic Ministry and through the Fiqh Academy to ensure that it is allowed in Islam to have female judges.

Since the appointment of the first female judges in 2007, religious clerics have opposed to the appointment of female judges to the bench. According to these

views, women cannot be judges as it is a position of serious leadership in Islam. Many people question the validity of females hearing their cases in a court of law.

There are people who don't want to be in a court that is presided by a female judge. There are people who believe that they can't make decisions and challenge the validity of decisions made by female judges.

For some, the effect of fundamentalism is not so pronounced at the moment. These views claim that women in the Maldives often wear a veil, but do not stay away from employment outside their homes.

the impact of religion is not that high. ... definitely there are fundamental views, but the impact is not as high as we think it is ... One friend of mine, who has completed her degree, is staying at home. This is not common amongst my friends. Most of them wear a buruga, but they are all employed. But yes, we do have issues of girls not being sent to school and all, maybe in a few years, this might become a huge issue. At present there is no huge impact on women's public lives. Perhaps in a few years there may be a higher impact.

For the majority of the participants, it was very easy to compare how less free Maldivian women are now, in comparison to a few years back. Furthermore, religion is a key value in the local culture, and therefore, most people either cannot, or do not want to challenge religion. For such reasons, participants were of the view that fundamentalism therefore, has a bigger implication on rights, in comparison to socio-cultural practices:

We are less free now. One reason is because of the religious extremism in the Maldives. Previously Maldives was a more moderate society. We didn't have any elements of extremism in the Maldives, even though we were an Islamic country. We also had many social and cultural stereotyping issues. But religious extremism is different and more worrying for many reasons.

It has a bigger impact than traditional values, I think religion by its nature is difficult for people to challenge unless you are knowledgeable and you have access to lot of information. This is only possible for some people who has access to information and can ask a wide variety of

scholars for different views. But the mass majority of people are exposed only to this one rhetoric.

... there was a lot of progress 10 years ago or so ... we saw a lot more women joining the labour force, also in leadership more women starting to become parliamentarians and ministers. Many of them were appointed, but still, you saw these women coming into these positions. But then, there was a counter-force by conservative extremist groups, who started pushing the idea that women should stay at home, emphasizing that leadership was not for them ... so I think there is another shift now ... anecdotal evidence suggests that women are now less inclined to work outside their homes and in decision-making roles

Religion is becoming a new barrier to women's free participation and equality in public life [in the Maldives] ... religion in our societal life was not so restrictive earlier. The current trend is, if you do not behave in a certain way [follow a specific interpretation of Islamic texts], then you are 'un-Islamic' – not seen as a Muslim.

These views also suggest that there will be a decrease in women who enjoy equal rights in the future. Challenging religious views can also have consequences in the local context. Moreover, increasing preaching on the role of women and their position in the home influences women's choices.

In conclusion, for the majority of the participants in this study, Maldives is on its way to create a society where people will not accept female decision-makers. Women who are in decision-making positions will face controversy in the future, unless the issue is identified and addressed by the State. The findings suggest that there is no adequate response from the State, in the form of proactive planning, to counter these religious views. Prohibitions on discriminatory practices against women are not enforced by the State, rather the State is an active participant in discriminatory practices against women because legal recourse is also missing in the current system.

6.2 Structural: Institutions, International Human Rights Norms and Women

Participants in this study also confirm previous research from other parts of the world, that argue that local pressures;¹²⁷³ domestic economic constraints;¹²⁷⁴ lack of focus to address issues in the short run;¹²⁷⁵ absence of developed local civil society groups;¹²⁷⁶ and lack of mobilised publics,¹²⁷⁷ affect the impact of human rights treaties at the domestic level. These issues are discussed below.

6.2.1 *Level of Development: Socio-Economic Frameworks*

A conversation on international human rights only gained momentum during the 2000s in the Maldives. Given its turbulence in the last decade over the transition to a democracy, women's rights have not received significant attention from the State, nor NGOs working in the Maldives. Some pressures from the UN organisations and interested individuals have, however, always demanded attention on issues of violence against women and the rights of the girl child, to which the State has paid more attention, in comparison to some other rights, for example, women and decision-making, over the last decade. While this has helped keep a government department focused on women's issues, there has never been a committed body overseeing the development of the full gamut of women's rights in the Maldives.

¹²⁷³ Neumayer, above n 603, at 931. Also see Moravcsik, above n 603.

¹²⁷⁴ Neumayer, above n 603, at 928. Andrew Reynolds "Women in the Legislatures and Executives of the World: Knocking at the Highest Glass Ceiling" (1999) 51 *World Politics* 547. See Lane Kenworthy and Melissa Malami "Gender Inequality in Political Representation: A Worldwide Comparative Analysis" (1999) 78 *Social Forces* 235. Wilma Rule "Electoral Systems, Contextual Factors and Women's Opportunity for Election to Parliament in Twenty-Three Democracies" (1987) 40 *The Western Political Quarterly* 477. R. Darcy, Janet Clark and Susan Welch *Women, Elections, and Representation* (2 Revised edition ed, University of Nebraska Press, Lincoln, 1994).

¹²⁷⁵ Neumayer, above n 603, at 928.

¹²⁷⁶ At 929; Chayes and Chayes, above n 621, at 250. also see Emilie M Hafner-Burton and Kiyoteru Tsutsui "Human Rights in a Globalizing World: The Paradox of Empty Promises" (2005) 110 *American Journal of Sociology* 1373.

¹²⁷⁷ Hafner-Burton and Tsutsui, above n 1276.

State building in Maldives has been a slow process with a number of mitigating factors. There are many infrastructure difficulties in the system of governance in place. Until very recently, Maldives was a subsistence society.¹²⁷⁸ The country stepped into speedy economic growth in the 1980s with the advent of Tourism. It was soon discovered that the legal system was lacking in many ways, and legislation had to be produced to protect commerce. These laws also had to be compliant with the international legal systems as many investors in the Tourism industry were foreigners. To an extent, the country is still trying to catch up with the fast growing economic and political changes and also a rising conservative belief system in the Maldives.

... in terms of administrative and procedure, we are still in the infantile stage ... The whole system is very fragmented in terms of budgeting and programming and implementation.

Previous studies conducted in the Maldives indicating the under-representation of women in public life was because of arriving late to education, acquiring employable skills and hence arriving late to positions of power within the State.¹²⁷⁹ This study shows a contrary picture. Some participants still argued that women are not equally represented in decision-making positions because women arrived late to public service. However, on the contrary, if these were the only reasons that prevented women's equality in public life, women should now be equal because at present men and women are equally educated in the Maldives and the national public service is mostly women.

Participants talked about poverty and women in the Maldives and how it undermines socioeconomic rights and other rights that place a positive obligation on the state, in particular with respect to vulnerable groups such as women. In this respect, the negative impact of globalization and the transition from autocracy to democracy on the socioeconomic rights of the poor is mentioned, as well is

¹²⁷⁸ Observation made interview participants.

¹²⁷⁹ Miralao, above n 158, at 37.

corruption. Certain women in the Maldivian politics also represent men in the political sphere, as Kirkpatrick argued in 1974. She argued that women in elected positions resemble the men in the elected positions in terms of their personal as well as social backgrounds.¹²⁸⁰ This is also true for most Maldivians. Women in the Maldivian public life, and almost all of those who are in politics, have a much higher socio-economic standing in comparison to women who are struggling to make it to decision-making positions. They either come from strong powerful families, or have high earning businesses.

Many studies have found that the level of democratisation has a profound effect on rights and liberties. However, no study has found a direct link between democracy and women's parliamentary representation.¹²⁸¹ This link is hard to establish because many traditionally non-democratic countries have introduced quotas which allow women to be elected to the parliament.¹²⁸² In the Maldives, the democratic changes have seen the creation of spaces for human rights claims, most importantly freedom of expression and assembly. This has also opened a gateway for more extreme views of Islam, particularly on patriarchal rules on how women should behave in society.

Some participants felt that there was too much happening in the Maldives in terms of political and legal changes, to think about women's participation and equality in public life. There is disagreement at the local level on the CEDAW norms, where resources should be directed, and also substantive debate about the ways in which the States Party should move towards recognising and fulfilling the human rights of women. The transitional phase of moving from an autocracy to a democracy came about informally starting 2004, and formally in 2008, after the ratification of the 2008 Constitution.

¹²⁸⁰ Kirkpatrick, above n 1170, at 221.

¹²⁸¹ See Reynolds, above n 1274.

¹²⁸² Inglehart and Norris, above n 816, at 130.

A major challenge would be the way politics is evolving in the Maldives. I don't think there is time and space for anyone to think about women. Six months to an election, no one has really taken women as a priority in their campaigns and it is a really disappointing issue ... Even in primaries (at the political party level) at present we are not hearing anything about female candidates or any room for female leadership within political parties.

The political situation is the most difficult it has ever been for women in the recent history. However, women are active within political parties, openly participate in demonstrations and openly engage with politics in the Maldives.

With the recent developments with the change of power and the participation of women in political matters in terms of what we can see on the streets, I find that really encouraging development because women are not afraid to hit the streets, face the police, stand on the front of the rally and even confront if they feel a confrontation is needed. In this aspect, women have really found a space in political participation.

For many participants, the inequality and restrained lives of women was more because of the existing situation of politics and the growing struggle over power, rather than issues with culture or religion. Most politicians would only support the views of the majority because this guaranteed election votes. A good example of this is that most people refrain from openly discussing religious issues, afraid that they would be seen as anti-Islamic. Political parties are fearful that they might lose their political appeal. Due to the high importance given to Islam by the locals, it is often used by politicians to gain support and legitimacy in the local context.

The issue of fundamentalism is a very crucial question that nobody wants to answer right now. Take for instance the 15 year old girl case. None of the political parties, except for the current president, said anything in defence of the girl. And we did have a stream of people who thought that the president was commenting on Islamic Shari'ah. We couldn't have a good enough debate because there weren't enough people who were comfortable talking about this topic. The normal haahoo didn't come up. ... Anyone who talks about this is talking against Islam. And there is a lot of discouragement on people talking about what Islam should be about. Women in Islam etc. ... It is really disappointing to see women's issues have not come up in anyone's agenda.

During the first days of newly formed political parties, it seemed as if political parties would be a big platform for women to advance. However, political parties do not engage women in ways that are beneficial to women's rights or leadership. The women's committees/ branches in the political parties are no different to the WDCs in the islands; they don't have any voting or decision-making powers. No party, except for the Progressive Party of the Maldives (PPM), has a special provision for women. There are no plans for affirmative action, and women acting on their own, cannot compete on par with the men, unless these women had connections with the political leaders. Qualifications, or the demand for qualifications, does not qualify anyone for a decision-making position in the current system in the Maldives. The introduction of political parties appears to have significantly increased this effect, as political parties aim to look for candidates from big powerful families in the country.

I have been in the political field for the last five years and you have not seen my face. It is because the party does not want that. I have been on podiums in the islands, but in Male', I do not get the opportunity.

Most of these women would also then be less threatening to the party once they are in government, as more often than not, they have a stake in the status quo through family relationships.

The introduction of political parties itself has affected women's engagement in the political process in both positive and negative ways. The main issue with the system of political parties at present is that the leaderships are not gender-sensitive. The focus is not on mobilizing women into politics, but getting hold of power, and for many political parties, the best way to ensure that is by nominating candidates that have better chances of getting successfully elected.

... I think the political parties are also for the women an opportunity to do 'something else' [for stay at home mothers] and they are going ahead with it. The introduction of political parties might actually have brought the issue out. We are now seeing that women are capable of demonstrating even.

Political parties have helped women to come to centre-stage in political events at some level. They are no longer reluctant to come out on the roads and demonstrate. It is unclear if this is empowerment, advancement or just carrying out their individual functions within the political parties, because their participation is mostly voluntary and unpaid. Often, women are used by political parties for their own gains. In this aspect, the introduction of political parties have not helped women to succeed to political positions or positions of leadership.

... I think it [success] depends on your connections and how strongly you are within a political party or group. Within the context of the Maldives at present, rather than the gender, it mostly depends on the party backing ... I think the political party backing and finance and the belonging to a network or powerful/ prestigious family really matter in becoming successful in politics.

I don't think this is the way to empowerment. As long as women demonstrate people see them as participating in public life. I don't think so... If you are affiliated with some political party, then you may end up having a high position... merit really doesn't count any more. Within the political system or even civil service, everything is highly politicized.

I have been in the political field for the last 5 years and you have not seen my face. It is because the party doesn't want that. I have been on podiums in the islands, but in Male I don't get that opportunity anymore. I felt it [being in politics] was a waste of time.

I don't see that being in a political party contributes to women's development in anyway. I think they [political parties] only do things for political popularity.

On the positive side, many women today openly engage in political activism, taking part in street demonstrations representing their individual political parties. One definite positive outcome of political parties is that there are more women activists now, who work in political parties and a few of them are establishing rights based NGOs. Again, the downside to this is that the activism is mostly based on the general interests of political parties and not women's advancement. Some of these views are:

It did give women a platform to voice out their concerns and it could have been their political or social concerns. The fact is that this did give women the opportunity to take part in these issues.

There are more women activists now - activism has increased, but not for the specific purposes for which we would like for women to come into politics... they are not politically empowered. They are only following their leaders and it's again like a group of people who are merely performing a group demonstration... They only do what they are asked to do and it affects in a negative way.

Thus, the introduction of political parties has brought more women into politics, perhaps not at high leadership levels. But the levels of participation are more in terms of getting membership and actual participation. Women are in the political parties and women are in the audience as well. Through the development of the political parties, political figures and the public in general have come to realise that they need women to win an election; they do carry half the voting rights of the population. Thus, over the last decade, there has been a significant increase in women joining political parties in the country. More women are expected to openly engage with political parties in the future. Although there may not be an equal number of women competing with the men in the next elections, participants generally believe that there will definitely be more female contestants to the parliament and the Council elections in the future.

In the past there was a difference in the participation as well. In the past there was a lot of men in MDP, but if you look at a MDP meeting now, we see a lot of women and also from a particular age group. Now if we look at demonstrations we see a lot of women, a lot of women are at the forefront.

Since multi-party politics, women's role as voters has been forced to be recognized. They have to engage them and they have to reach out to them... Most of the parties have recognized the need to have a women's wing and all major parties have established them. This gives opportunities for women... maybe as women's wing leaders initially, but it paves the way to take up leadership positions.

It has created the space for some to be more involved in the political process. This also does not mean that when they run for elections

women will win... There is a lot of women involved in the youth group in MDP; planning and implementation stages within MDP.

I think it has brought a lot more women into the public arena and in many ways boosted their confidence... [and] helped in terms of bringing out more women into public life.

The type of political system, and features such as gender quotas in party recruitment processes, assist women to come into positions of leadership. Many studies have shown that the “political rules of the game are the primary explanation for systematic differences in women’s representation among relatively similar societies, and that changing those rules is the most effective way to promote women’s political leadership”.¹²⁸³ The political structure is still in a state of flux and Maldivians do not particularly appreciate or view politics or involvement in it as a career prospect. Laymen do not understand or comprehend political parties or formal political structures and the importance of having women’s participation in public life. Moreover, unless a woman is member of a major political party, they will still find it difficult to win an election due to lack of financial resources or insufficient networks.

The changes in the politics of elections are also posing more challenges to women. In the previous systems, candidates actually were not required to travel and visit all of their members prior to elections. With the new political changes after the introduction of political parties, candidates are expected to travel around and visit the entire constituency for which they are standing. Resources and mobility issues due to family care then become added barriers for women.

6.2.1.1 The Instability of the National Gender Framework

The first Ministry for Women’s Affairs was established in 1993, after ratifying CEDAW. This Ministry engaged in small projects to comply with and implement

¹²⁸³ At 130. Also see Ballington and Karam, above n 1161.

the provisions of the treaty, but were mainly focused on improving the general situation of women in the country. According to the participants of this research, one of the bigger aims of this organisation, or the women involved with this new government office, was to bring more women into decision-making in the Maldives. This venture, therefore, began with attempts to raise awareness amongst the general public in Male' and the outer islands of women and development and extended to executive appointments of women to the parliament and the executive body.

After 1993, the Government actually made a conscious effort to increase women's participation in politics. In 1978 we had our first female Minister... By 2008, we had 4 cabinet members. President nominated four men and four women to the parliament. More women were given high profile positions in the government. There were efforts made to bring more women to senior/ decision-making level... Gender Ministry did a lot of gender sensitizing programmes... conducted a series of gender management system – cabinet session on familiarizing with gender management systems and gender in general.

The first WDCs in the Maldives did not perform any decision-making functions. At best, they were involved in performing a woman's job for the IDCs. WDCs were in-charge of cooking and cleaning and they were to making sure dignitaries were taken care of, in terms of their reception and accommodation during their stay in the respective island. After the Decentralisation Act 2010, WDCs now have a legal mandate, and must be elected to the Committee rather than be nominated on voluntary basis that was the practice. WDCs, however, are not salaried like all other legal bodies in the Maldives. While women must now learn to go through an election to participate in the WDC, having an unsalaried job is also not conducive to increasing female participation. This came through very clearly in the first WDC election held in 2012 when 44 islands did not have any contestants at all.¹²⁸⁴ At present, many islands do not have WDCs because no one put their names forward. Competing for a position in the WDC is a challenge for women for multiple reasons

¹²⁸⁴ Fazeena Ahmed "No Candidates from 44 Islands for Women's Committees: LGA" *Haveeru Online* (Male', Maldives, 3 November 2012) <www.haveeru.com>.

(which are discussed in detail below), but for this and various other reasons related to the changing political context, many women shared the view that the Qayyoom Government was more favourable towards women's participation in public life.

During the last 7 to 8 years of the Qayyoom Government, the environment was more conducive towards female leadership. I would say that gender architecture became very strong. There were extra appointments made to ensure there was sufficient female representation. Most of the active women in public life in the Maldives at present were all introduced into 'public life' first through direct appointments and not through elections.

This is an important point. In fact, most women in public life in the Maldives at present, particularly in the parliament, were women who were previously appointed to the parliament during the Qayyoom Government. Some of these women have successfully won public elections to win a second term in the parliament.

6.2.1.2 Fluidity of Institutions and Policies

In terms of the institutional frameworks, many changes have taken place over the last two decades in the Maldives. The Ministry of Gender itself has been going through multiple changes in terms of the institutional authority and staffing. Together with the gender architecture, the gender policies have also been constantly in a state of flux. Every new government has introduced new policies and either closed or not given adequate attention to on-going policies.

Government decision-making and political decision-making is more or less the same. The way it has transformed after the constitution, we have a party system and the party goes into the government. We don't have policies that are sustainable. We change the government out goes all the policies and new policies come in.

From 2008 there have been many changes to the gender architecture... Never was there a continuity of the plan with dedicated people. It has been changing and changing and changing. They change the management and then again a new structure and they just cannot focus on their work. They don't really have a long term mission. They only have short term goals to address any current issues. So I don't think

there ever has been a strategic approach to gender in the recent history.

In 2008, the Nasheed Government down-sized the Ministry of Gender to a department. This made it difficult to budget for gender projects, because gender was not amongst the key objectives of the new parent ministry, which was the Ministry of Health. The Ministry did not have the time, nor the resources to work on women's issues as a separate project. Many capable staff resigned or moved office when it was downsized to a department under the Health Ministry. The few remaining staff did not have the right leadership. This was also the point when the new government introduced gender mainstreaming and established gender focal points within each Government Ministry. These focal points working directly under the Deputy President of the Republic were political appointees rather than public servants. For various reasons, this also meant that most of the people who were in this Committee, did not have the technical knowledge critical to the understanding of gender issues. In a few months, the gender infrastructure completely broke down.

the Gender section is only three staff – two of them are technical and there is one staff who does most of the administrative work. The section is headed by an Assistant Director, so we just have no staff there. We are talking about a huge mandate and honestly we are not able to function and be as productive as we would like to be.

... there are lots of problems with the entire gender machinery – it is institutionally very weak and more or less it is under staffed and under resourced. So not only to draft [the treaty report], but also to follow up on the concluding observations and recommendations – to carry out their mandate, it has a lot of problems.

At the end of the day, these institutional challenges affect the strength and productivity of the national gender architecture. The administrative framework is not working and there is little commitment to gender issues or the advancement of women at present.

The government didn't actually pay much attention to the WDC election. They didn't give any attention or interest. This shows that the State actually has no interest in these gender issues. I don't know what role they actually play.

... with the recent development of the local government system, the Women's Development Committees are now representatives from political parties. So again the social networks are being replaced with political networks ... the entire social network has broken down. We need to sit down with the local government authorities to discuss these issues. Some of them are quite supportive towards these issues. But they are more concerned with their parties and the next elections. That will be a major challenge for the society to undertake.

There are difficulties in implementing legislation because, in general, institutions are not up-to-date with the legal developments. Laws are not institution driven and facilities to implement laws are lacking.

I feel that while this [Domestic Violence Prevention Act] law is important, the service providers are not ready. We don't have the training and awareness to implement such a law. Maldives is a small place and the Act cannot function in the Maldives like it would in much larger countries. That's a real obstacle that we have. For instance, if we house a battered woman in a shelter/ protection centre – the husband may be living just next door [because the islands are very small]. If the case goes to court, the judge will simply say 'it is the duty of a husband to take care of the wife'.

Part of the problem with the political structures is not just with the fluidity of institutions, but the culture of policy implementation. Even prior to the introduction of political parties in 2007, there was no culture of implementing policies. According to a few participants in this study, policy implementation in the local context usually depends on personal networks.

... there is no concept of policy implementation - you do things for your friends. If your friend in another Ministry wants you to do something, then you will do it for them. If you don't have these prior networks established within the public sector, things will be very difficult for you.

These concerns raise the issue of good leadership and governance. At the one end of the spectrum, participants are still positive that a leader is still needed to ensure the implementation of CEDAW in the Maldives and the advancement of women in public life. However, having a gender specific ministry has also resulted in some advantages and some disadvantages over the years. Having a Ministry for Women's

Affairs projected an image that this is the Ministry that will deal with all women's issues in the country. But it also gave the message that no other government office had to do anything related to gender. The advantage is that the Ministry could act as a leader and follow up on important cases or issues of interest to the public.

... having a Ministry in a way marginalizes the cause. For example, whenever something has a women's issue then it becomes a woman's thing. Because everyone else thinks there is a women's ministry and they will do everything. Mainstreaming is not there. But on the other hand when you have a ministry, at least there is one organization that is purely working on women's issues and thus women's rights ... one day a man visited the Ministry of Women's Affairs from an island. He came to explain to the Ministry that the women in his island were very much involved in fisheries work and wanted to discuss women's involvement in the sector. However, the point to note is that he visited the Women's Ministry because he felt that it was the right place to go because his idea involved women. This is also the general understanding of all State and non-State bodies in the Maldives. It didn't matter whether the issue was fisheries or industrial relations. ... Gender Mainstreaming is a very much political issue in the Maldives, so for gender to be mainstreamed this has to change. An enabling environment that facilitates gender development should come in. Otherwise a mainstreaming policy only provides a lip service.

Almost half of the research participants were sceptical as to the benefits of a Gender Ministry. For many participants, a negative perception of the advantages of a specific gender Ministry is founded on the conviction that the gender architecture since 1993 has been very weak and has handled the majority of gender related cases very poorly.

I don't think a Gender Ministry is helpful at all. I believe gender has to be promoted and by having a ministry, we have not seen any change in the Maldives ... Let's talk about the 15 year old flogging case [a recent high profile case of a 15 year old girl who was convicted of adultery]. The police investigated this case and they asked the girl of her sexual history with the step-father. They wrote the report and then they thought they should investigate her sexual life in general. During these investigations she told the police that she has had sex with other men as well. First of all this is irrelevant for the purposes of the case under investigation. There was no lawyer present during these investigations. They sent the report to Prosecutor General, he decided to prosecute her

... The Gender Ministry did not sufficiently protect the child. There was not even a public statement from the Ministry.

The Gender Ministry has taken many shapes and forms over the years and has lost institutional memory as well as stability to create the desired effect of a leader for women's rights and issues in the country. The actual problem appears to be of a problem with the entire system, an issue of good leadership rather than just the issue of the Gender Ministry.

Without a proper culture of actually engaging women in public life or with what they want to do, there will be no effect of what we are doing. There are several meetings with the government regarding these issues. There was a policy with the previous government [Nasheed Govt] which was introduced with a lot of gusto and celebrations, but it never materialized. Initially the president was supposed to oversee the whole thing, after the celebrations the President decided that the Gender Department would be overseeing it. In the end, no one really knew who was really responsible for the implementation of the Gender Policy. It was just another policy.

When it comes to Gender issues, it doesn't reverberate it doesn't impact on the politicians to do anything. Consider the primaries and presidential nominations etc, there is very little talk of what's really happening. Of course they say empowerment of women etc, but do they really understand the situation? The policies they are promising won't work in this situation. We have gone to a regression whereas gender is concerned. We have never been this low. There needs to be a serious, systemic look at what's happening.

Every change, including political system changes and natural disasters (2004 Tsunami), have left women more vulnerable than before. The basic issues at present such as growing cases of violence against women, abuse of young girls, sexual harassment and exploitation, are all indicative of a regress in gender planning and implementation. Having said that, the Gender Ministry is not very pro-active; even when there is a situation of national urgency. But this is not to say that they did not do anything. They have trained a number of people in the islands and the women's committees. However, with basic knowledge lacking in the area of gender and equal rights, gender mainstreaming was not the ideal policy to integrate gender into the

national architecture. A more inclusive strategy is missing and the coordination between State bodies is also missing.

HRCM has a broader mandate in comparison to the Gender Ministry when it comes to human rights, implementation of CEDAW or other International Human Rights Treaties ... All of this actually boils down to the question of good leadership and if we don't have this, then anything can be a failure. We also need to have good public servants as well.

The transition from the old system into a new system of democracy is also posing significant challenges for the pursuit of equality for women. Much of this has to do with the constant changes and the current institutional instability within the government sector. The formation of coalition governments has made things worse because the sensitivity to bigger social issues is absent and the level of corruption is significantly high. The transitional phase is harsher for women because it has taken away the focus on women's issues which led to the advancement of women's rights in the 1980s and 1990s. Moreover, victimisation and sexualisation are often part of the political game, making women back away from public life.

6.2.2 Prejudice and Discrimination within Political Parties

Women in the Maldives do take part in the politics in various forms. For instance, in the 2014 Parliamentary elections in the Maldives, women represented 49.5 per cent of the voters and 65 per cent of polling officials.¹²⁸⁵ This is similar to women's participation in previous years in the Maldives. In sharp contrast, women who contested as candidates in the election comprised only 7.62 per cent. Representation as political candidates is similar to the 2009 elections where women contestants

¹²⁸⁵ The Commonwealth *Maldives People's Majlis (Parliament) Election: Report of the Commonwealth Observer Group* (Commonwealth Group 2014) at 19–20.

represented 4.62 per cent of the candidates running for Parliament.¹²⁸⁶ Women represent over a significant population of the political parties in the country.¹²⁸⁷

Women's rising numbers among a party's basic and mid-levels has not so far contributed to any increase in parliamentary delegation, emphasis on social justice in the party programme, or the adoption of gender quota policies even at the party level. Thus, according to the participants in this study, political parties are a fine example of double standards in the local political context. While women are openly engaged in electoral campaigns, awareness raising for the party, demonstrations and rallies, women are rarely offered a position within the party and rarely allowed to speak in party podiums. Participants from political parties noted that a man need not have any educational qualifications to pursue a position, in the party, or the government. Educational qualifications and ethical standards were only applied to women. They are discriminated against, and denied positions simply because they are women.

6.2.3 Level of Civil Society Engagement and Rights Awareness

Despite being a party to CEDAW for 20 years, this study found that awareness of CEDAW amongst government officials (mostly working directly with CEDAW), and NGOs was limited. Major stakeholders are not familiar with CEDAW and it is very poorly recognised, both by persons working within the government and outside the government sector. In some participants' views:

I think that there is a very limited understanding of CEDAW and what kind of actions we need to take under CEDAW. So there needs to be lots of education, for the public, the government ministries, NGOs and other persons working in the social fields ... To achieve better impact

¹²⁸⁶ At 20.

¹²⁸⁷ See, Ritchie, Ann Rogers and Sauer, above n 3; IFES *Money and Elections in the Maldives: Perceptions and Reality* (IFES 2014); IFES, above n 203.

of treaties on women's rights, it is imperative that law makers are aware of treaty rights and obligations.

In my view, the main obstacle for women's advancement in public life is lack of awareness, poor comprehension of human rights, and sometimes unfavourable cultural beliefs.

They [law makers] are yet to become acquainted with the international human rights. Most of them have no idea what CEDAW is [let alone the UN treaty system]. For example, MP Riyaz Rasheed submitted a special case into the parliament to remove Dr. Shaheed from his post as Special Rapporteur to Iran. He thought that the job was given by the Maldivian government. He had no clue that special Rapporteurs are UN jobs.

I don't think the parliament is sensitized to these international instruments. When the sectoral budgets go to the parliament, they adjust the budget according to what they want and what is more important to their individual constituencies.

Heyns and Viljoen has argued that the widespread ignorance of the treaty system in government circles, among lawyers and in civil societies, effectively blocks any impact that the treaties may otherwise have had.¹²⁸⁸ In the case of the Maldives, participants were more aware of ICCPR and ICESCR, and the Maldives's commitments under those Conventions. There were no local NGOs mobilized around CEDAW, although there are local NGOs mobilised around CRC and CAT. A few local NGOs worked on specific issues such as violence against women, rights of the girl child, and trafficking of women, and there is very little to no mention of human rights treaties in the local newspapers.

Therefore, the implementation of rights within the domestic context is severely affected by the lack of an effective mobilisation by the national human rights actors, NGOs and the media. With the shortage of journalists with human rights training, a free and vigorous local media that focuses also on international supervision, the treaty system's impact is severely limited. These groups are either silent or have

¹²⁸⁸ Heyns and Viljoen, at 518.

limited focus on the effectiveness of human rights treaties in the Maldives and working with women's rights and religion becomes a double challenge for these actors. Hence, there is no activism on these matters. The limited mobilisation partly arises out of this. The second reason for the limited mobilisation of human rights as indicated in the sections above, is a lack of awareness and knowledge on the part of parliament members, judges, NGOs, government officials and national human rights institutions and also the CEDAW Committee which is relevant to the Maldivian context.

Local NGOs are weak and underdeveloped and will take time and resources to see growth and improvement in these structures. Moreover, rights-based NGOs were introduced only very recently in the country.

Even our civil society is so weak in being able to use the tools available for us. NGO Capacity building will take time. At present NGOs are very much dependent on short term project work and much still needs to be done on the issue of capacity. But then, these things take time.

We have only one or two civil society organizations and the one are not very strong. So, we have to provide a lot of guidance in terms of what they want and what they will do.

An NGO capacity study conducted in the Maldives in 2009 showed, amongst other things, that the sizable majority of Male'-based NGOs were not fully operational, had few active members, and frequently lack sufficient expertise – in effective NGO or small organisation management. It also showed that there exist unexplored opportunities for productive and mutually beneficial linkages between the NGOs and Government of Maldives, private sector, regional/ international organisations, as well as within the civil society sector.¹²⁸⁹

NGO involvement in the CEDAW reporting process is also unclear. The Ministry does not have records of former reporting practices, nor copies of the shadow

¹²⁸⁹ Raajje Foundation *NGO Capacity and Needs Assessment* (UNDP Maldives and Australian High Commission Colombo 2009) at 10.

reports submitted by local NGOs *Fashan* and *Hama Jamiyyaa*. The NGOs that have been involved in the first and second shadow reports were general human rights organisations and did not specialise in women's rights. The most comprehensive shadow report (third shadow report) was drafted and submitted recently by *Hope for Women*, an organisation working on the rights of the girl child and women. Since the second State report, the Ministry is now increasingly engaging in consultative process with different NGOs, women's groups and other women's rights proponents in the country, all of which is still lacking in strategy and focus.

This may also be the reason why the local NGOs are severely unaware of the CEDAW frameworks, reporting practices and also the rights and obligations emanating from this human rights treaty. Thus, the pressure, lobby and advocacy, which is critical from NGOs are absent in the case of the Maldives. There is no external pressure on the Government to conform to the CEDAW standards or on issues concerning women. Participants from NGOs who were part of this study confirmed that NGOs are still establishing themselves and human rights work is still very new to Maldivian NGOs. They also argued that the public had certain beliefs about men and women and any work claiming the equality of men and women is portrayed by fundamental groups as anti-Islamic and the fear of being labelled as anti-Islamic restrains rights workers.

6.3 Women's Capabilities to pursue Equality in Public Life in the Existing Socio-Political and Religious Context

With the data from this research, it can now be claimed that both international,¹²⁹⁰ and local studies confirm that customs, traditions, and religion limit the impact of human rights treaties at the domestic level. The findings of this research confirm recent studies from the Maldives on the perceptions and participation of women in various aspects of the public life. These studies, as discussed in Chapter One (see Table 1.6 for a summary of findings), also show that women have cultural, religious

¹²⁹⁰ Heyns and Viljoen, above n 590, at 518.

and socio-economic challenges in the local context, which prevent their participation in politics. The majority of the studies confirmed that patriarchal values and domestic burdens of care-giving and performing dual roles (working and having a family) is a significant barrier for women.¹²⁹¹ Recent studies in the Maldives also show that more men and more women now refuse to believe in gender equality, in comparison to 2006.¹²⁹² The local system and culture are saturated with both patriarchal values and norms of female subordination. Religion is a fundamental basis of the existence of the local population, and all local laws are based on the States Parties' understanding of Islam. The varied forms of ideological and infrastructure barriers have severe implications for women's capabilities to pursue equal rights in public life.

As discussed in Chapter Three, a good human life is only made possible through a variety of central functions.¹²⁹³ Central human capabilities have importance in everything a person does and the pursuit of a good life is dependent on these human functionings.¹²⁹⁴ In this way, capabilities assessments can demonstrate what else is going on in a person's life,¹²⁹⁵ what they are *able to do or able to be*,¹²⁹⁶ which could either enable or disable them to pursue rights. This assessment identified the following, also acting as barriers to women's substantive equality.

6.3.1 Finance and Resource autonomy

Resources affect women's lives and their autonomy in the Maldivian society. Generally, women in the Maldives have very limited resources generally. Most

¹²⁹¹ IFES, above n 203, at 39; IFES, above n 1287; Quinn, above n 95; Ritchie, Ann Rogers and Sauer, above n 3; Nevitte, above n 222; Human Rights Commission of the Maldives, above n 148; Human Rights Commission of the Maldives, above n 148.

¹²⁹² See, Human Rights Commission of the Maldives, above n 148.

¹²⁹³ Nussbaum, above n 977, at 285.

¹²⁹⁴ At 286.

¹²⁹⁵ At 285.

¹²⁹⁶ At 285.

houses are registered under a man's name, in the case of a divorce, must make other living arrangements. One participant makes the following statement:

If we look at the situation, we can see what the women are left with... less property, less protection for yourself and your children. If your husband dies or you get a divorce, there is no one to financially support you or your family.

Even when educated, lack of resources and financial capacity limits women's engagement in politics. Women do not have the resources to run successful election campaigns. These issues are aggravated by the current dynamics of politics in the country. Vote buying is becoming a common problem and growing at an alarming rate.¹²⁹⁷ Political parties often spend a large quantity of money directly on vote buying or on buying gifts for voters.¹²⁹⁸ The same is expected from women:

Someone said to me outright, if you give me a new roof, I'll give you a vote – it was so abrupt.

In the fast evolving political dynamics of the Maldives, having the proper backing of an influential politician is equally or more important because political figures attract investors. Political parties rely on people who can either bring in finances or attract finances.

Women's autonomy is also restricted by double burdens created by increasing level of female employment, and the unchanged duties towards caretaking in the family and domestic chores.¹²⁹⁹ For many women in the Maldives, employment is not a choice. They are forced to earn an income to meet the high living cost of Male'. At the same time, women have to juggle two lives: child care and paid employment.

¹²⁹⁷ Nearly two-thirds (66 percent) of Maldivians believe that political parties and candidates spent most of their campaign funds on vote buying and on gifts for voters during the last parliamentary elections. A slight majority (53 percent) believe that political parties and candidates spent most of their money on direct vote buying and 13 percent say that political parties and candidates spent funds on buying gifts for voters. IFES, above n 1287, at 1.

¹²⁹⁸ At 19.

¹²⁹⁹ Equalities and Families, Nancy Dowd, in Seuffert, above n 1196, at 86.

There are limited childcare facilities because it is expected that women will take care of the children. Unlike women, men do not have to be responsible for household chores or how children are handled day-to-day. Thus, in the current system, women are over-burdened, in the context of the urban life in Male', giving women little time to relax, or vent. Furthermore, major day-to-day decisions with respect to children are also taken by mothers and, as such, women are extremely involved decision-making within the private sphere.

As far as statistics are concerned, poverty is not a major concern for the Maldives. ADB statistics in 2007 showed that there was no abject poverty or severe malnutrition in the Maldives. Despite the Tsunami, poverty incidence in the Maldives was the lowest in the South Asian region. However, there is a strong link between poverty and women. According to the ADB report, the poor are often women, and households are far more likely to be poor if the households were headed by women.¹³⁰⁰ Participants in this research noted that women are increasingly participating in activities such as prostitution, and there is a significant lack of data in the area to measure the impact of poverty on women.

6.3.2 Health, Well-being and Violence against Women

In terms of violence, one in every three women in the Maldives have experienced psychological, sexual or physical violence, mostly from their intimate partners. Although these may not always be lethal, violence affects women's physical as well as psychological *health*. The society does not put the blame on the perpetrator of the violence. Often the woman is blamed or accused of having done something to spark the violent behaviour from her partner. A domestic violence prevention Act was only introduced in 2012 and prior to that, the police refused to even consider reports of domestic violence if the accused was the husband. Moreover, marital rape is still legal in the Maldives. Participants in this study spoke at great length about

¹³⁰⁰ ADB *Maldives: Poverty Assessment* (ADB 2007) at 3.

violence against women, sexual harassment, trafficking and prostitution which emotionally destroys women's sense of self-worth.

According to a UNDP Report in 2006, one in every three Maldivian women between the ages 15 and 35 has faced some form of violence, either psychological, sexual or physical, at least once in her lifetime.¹³⁰¹ Women in the Maldives are subjected to many forms of violence. Some of the new forms of violence include those arising out of new developments in religious fundamentalism with more liberal views on having multiple wives. Some men who have multiple wives do not arrange separate living for the wives. As such, they end up living in the same confined physical space creating emotional and physical tensions between the parties. Many women are also now involved in violent activities such as gang violence, prostitution and human trafficking.

More women are now assaulted by the police and in some cases by opposition parties in demonstrations because there are more women involved in these activities in the Maldives now, in comparison to previously. Increasing violence against women is attributed to the demise of social values, gender socialisation and the increasing drug and alcohol abuse in the Maldives. Women also face workplace harassment and sexual harassment on the streets. Women do not report experiences of harassment, particularly sexual harassment fearing it will not be taken seriously. According to participant views, reports alleging abuse in custody are also common amongst women, and when a girl is violated in these ways, they are affected mentally and it will be very hard for them to come into social spheres again.

I think women are mishandled even within these demonstrations. Young girls are arrested and there have been many rumours on police mishandling of women and abuse in confinement in the past. ... Often, women and girls are not handled by women police and this is a major problem.

¹³⁰¹ See Emma Fulu *Gender Based Violence in the Maldives: What We Know So Far* (GBV Study, Ministry of Gender, Family Development and Social Security 2004).

The society believes certain things happen to women because they are dressed in certain ways. Unfortunately, these views are also held by State officials, who are there to protect both men and women.

These very people from the courts have said that the girls were raped because they were out at night, because they wear certain types of clothing, because they hang out in the wrong crowds. As if the courts believe that the girls who got raped, deserved to be raped. When the justice system believes that rape is okay as long as you wear certain type of clothing, as long as you hang out with certain kinds of people or out alone at the certain time of the day... no international community, no one has pressured the State to remedy this problem ... I see no interest in that manner.

MP Mutthalib said on the Fahmy's Sexual Harassment Case ... 'we allow our women to go out on the streets to the workplace undressed and there is always Satan between man and women and we don't protect our women by making them work in offices'. There are instances where people in very high positions have undermined women and the religious aspect is very pronounced now. Because I don't wear a head-veil now I could get threatened on Facebook, which has happened and if I go to an island and want to have a meeting, people may turn me down because I don't have a head veil. The fact that I have been doing good social work for a number of years has no value or are not considered.

Another human functioning which affects women's capacity to pursue rights is restrained mobility and the lack of supportive structures around them.

6.3.3 Mobility, Autonomy and Enabling Environments

Women face many mobility issues arising out of the socio-cultural values. These factors become critical when running a political campaign because the public wants to meet their potential MPs or Council Members, and often times, women are not able to travel to their constituencies during campaigns, because of family commitments.

I think there are other factors that inhibit women from participating in public life. For example we still have lots of mobility issues. I don't think it is easy for a woman to campaign travelling from island to island

within a constituency to get support. There are some women who go out and campaign like Aneesa... so it is possible. But we can see why women are reluctant to pursue these roles.

... the enabling environment to facilitate women's participation in the workforce is missing. For example when you have kids, can't afford a maid, where do you send your children when you go to work? There are no proper and affordable day care services.

Being able to move freely from one place to another place is a key component of the capability of *bodily integrity*. Men and women in the local context do not have the same freedom and choice when it comes to moving from one place to the other. These restrictions begin at the early stages of their lives when girls are brought up inside the homes due to fear of being violated and families receiving a bad name. Boys have immense freedom to travel and make friendly networks. Even in the twenty-first century where women in the Maldives have achieved equality in education with men, women are still restricted in terms of choices they have to make due to their responsibilities towards their families. Women in the Maldives are often working and carrying dual responsibilities by being the key caretaker of family and children. This means that women have limited choice in taking on key positions in decision-making, let alone running a campaign for a political post.

Men in the local culture are seen as the ideal leaders. Moreover, the society is unsure whether women should at all be in certain positions; judges and *mauzoons* etc. Although the Maldives has amended the constitutional provision barring women from the position of a head of state, it is highly unlikely that Maldivians will vote in a woman as their head of state, given the existing social ideals. Female judges have experienced open harassment on the streets of Male', facing public views against having female judges. What does this do to a woman's *senses, imagination and thought*? Girl children in the Maldives lack key leadership traits when they grow up, given how they are raised. This process teaches women to be soft spoken, meeker and obedient. Women do not have a freedom of speech. A good example is when wives are forced by husbands to vote for a certain candidate of the husband's choice. Another example is of a woman who was locked inside the bathroom during the elections day because her husband was sure she would vote for a different

candidate, given the opportunity. This is not different to what has happened in the world for centuries.

Through multiple forms of ideological subordination, by using chastity, violence and harassment, women have been silenced, preventing them from “using their thought and imagination to stake out a place in the world.”¹³⁰² Emotional development in these women has been “blighted by fear and anxiety.”¹³⁰³ A woman constantly facing these situations cannot engage in critical reflection of her life, or plan her own life. She constantly needs to think about taking care of her children, her family, her domestic chores, her safety and protection all at the same time. These features of a woman’s life further limit the *affiliations* she is able to make, limiting her social networks which are critical, especially, for political positions in public life.¹³⁰⁴

A shopkeeper who has to pay the mob for protection is not exactly free to run his business as he wants. Women in most of the world, most of the time, are like the shopkeeper: they have to pay the great organized syndicate of men for protection, meaning granting sexual favours, doing domestic and child-rearing labour, in order to have a strong male body there to keep them safe from marauders.

Affiliations women are able to form are much restricted by these social values. These factors affect and limit the social and political networks women are able to create. They have *less control over their environments* which affect their freedom to engage in public life, seek employment and enjoy a rewarding work life.

Women work hard in their jobs and at the same time make sure their children have been taken to school, arrange alternative care, and make sure meals have been prepared. Much like the rest of the Asian world, Maldivians are also used to a hot

¹³⁰² Martha C Nussbaum “Women’s Bodies: Violence, Security, Capabilities” (2005) 6 Journal of Human Development 167 at 172.

¹³⁰³ At 172.

¹³⁰⁴ At 173.

breakfast. This means that a minimum of three meals need to be cooked on a daily basis. After returning from work in the afternoon, women must make dinner, ensure children have completed their homework, and attend to washing and ironing as preparation for the next day. Men in the Maldives spend the after-hours from office with their friends in cafes, which gives them an opportunity to vent. According to some participants, the lives of women in the Maldives are so busy they do not get the opportunity to vent.¹³⁰⁵ This means that women have limited opportunities to *enjoy leisure, laughter and play* (relationship with the world of nature).

Even when women have legal equality these socially engraved cultural values do not allow women to exercise these rights and impede effective participation in a public life. As such, gender stereotypes have a detrimental impact on society, especially on women's rights, and need to be addressed at different levels and by different actors. In that regard, laws against discrimination and equality are crucial. Public policies must ensure the neutrality of public institutions and promote a gender balance in areas such as education, where important disparities remain, as well as in economic and political life. Family and community leaders also have an important role to play in eliminating prejudices in the community. Challenging gender stereotypes is the first step to combating discrimination against women and improving women's participation in public life. Unless these measures are taken, a CEDAW right to public life will not be effectively enforced.

Empowerment of women for decision-making positions will be a significant challenge in the local context considering the rising level of conservative thinking. Raising awareness in such cases will not produce effective results in the short run, although long term awareness-raising projects must be carried out by the State. Increased levels of education, employment and liberal thinking especially amongst the younger generations, however, also suggests that we can expect to see slow but

¹³⁰⁵ According to these participants men in the local culture almost everyday spends a few hours of their after office hours time with friends in cafés. The café life in the capital city is evidence to this claim. These participants noted that women, burdened with household chores and childcare, do not get the opportunity as often as men, or even sometimes at all, to spend time outside their homes with friends.

continued progress in female representation in public life in the Maldives. These cultural changes may produce a climate that may be more receptive towards policy reforms designed to increase women's participation in public life, and enable the use of affirmative measures or even introduce gender quotas for the parliament, the judiciary and the rest of the executive offices in the public sector. Introduction of these becomes easier if the public is more sympathetic towards getting more women into public life, because then, political parties become interested in including more women and bringing more women into the front line of the political party.

The implications of these ideals are severe on a CEDAW right to public life in the Maldives where women either do not have the time and opportunity to utilise these equal rights or they are socialised not to pursue these roles. Findings strongly suggest that as in some other places, ideology, is still the biggest barrier to women's equality.¹³⁰⁶ The discussion in this chapter was theoretically and practically consistent with previous literature on women's participation in decision-making and also on the effectiveness of human rights treaties at the domestic level; specifically, that women's progress in public life was strongly influenced by the socio-political context, their beliefs about their capabilities and the local infrastructure.

In a 2006 Ministry of Gender and Family study on women's health and life experiences, one in six women in Male and one in eight countrywide reported being sexually abused when they were under 15. A Domestic Violence Prevention Act covering all types of domestic relations, enacted in April 2012, prohibits physical, sexual, verbal, psychological, and financial abuse. It also extends protection to wives against being forcibly impregnated by their husbands against medical orders and includes an extensive list of other abuses for which protection is given. The act allows courts to issue restraining orders in domestic violence cases and criminalizes any actions against these orders. Nevertheless, law enforcement officers were

¹³⁰⁶ At 55; also see Cynthia Fuchs Epstein *Woman's Place* (University of California Press, Berkeley, 1970).

reportedly reluctant to make arrests in cases of violence against women within the family, believing such violence was justified in Islam. Family and children's centres were located on every atoll and intended to streamline the process of reporting abuse against women and children. The centres had a shortage of trained staff and faced legal challenges, such as collecting evidence about abuse cases.

The law bans sexual harassment in the workplace, but there were allegations of sexual harassment in government ministries. Various forms of harassment, especially verbal abuse, were accepted as the norm in government offices. Fearing reprisals such as loss of employment, women did not normally make official complaints. In 2012, a staff member of the Civil Service Commission (CSC) made the first such complaint against the Commission's President (CSC President). In November 2012, parliament voted to remove the CSC President from his post as president, and as a member of the CSC, based on the gravity of the allegations. The CSC President subsequently asked the Supreme Court to overturn his removal, as the allegations were not proved in court. The court in turn ordered parliament to delay selection of a replacement, pending the court's decision on the case. Although parliament appointed his replacement on August 13, the Supreme Court, at the CSC President's request, issued an injunction against any appointments to replace him. On August 20, parliament nevertheless appointed a new president of the CSC, who assumed the role.

The Human Rights Commission of the Maldives (HRCM) published a report in which they claimed that there were no policies in the Maldives to address these acute areas of concern. There were limited policies to enhance equal opportunities for women in employment, despite equal rights in the Constitution. Lack of childcare facilities made it difficult for women, to remain employed after having children and societal disapproval discouraged women from working at tourist resorts for extended periods. The HRCM also received reports that some employers discouraged women from marriage or pregnancy, as it could result in termination or demotion. A 2011 HRCM report noted that the government had fallen short of promoting women's equality by failing to establish childcare centres and child-friendly working environments, and failing to implement affirmative action.

The lack of day care facilities, flexi-work hours, penalisation of women taking maternity leave, and the outright discrimination against women in certain professions exposes a strongly gendered world. Males are considered as the ideal decision-makers and women, as ideal in lower to mid-ranking civil service positions. Part of the dilemma is that women are also the silent/ silenced bearers of culture: of racism, sexism, classism and imperialism. The subaltern¹³⁰⁷ woman “has been written, represented, argued about, and even legislated for, but she is allowed no discursive position from which to speak.”¹³⁰⁸ Women do not have the language/ voice or a position in the political and the conditions under which they are permitted such positions in a society.¹³⁰⁹

Women and young girls are also discouraged from pursuing professions in the industries that require travelling. Women are almost entirely absent in professions such as fishing, carpentry and taxi service. Socialisation ensures that women are meeker, obedient and nurturing. They grow up to be less confident and many times have lower aspirations for themselves, particularly in terms of decision-making. All of these factors are strongly entrenched in the Maldivian culture and contribute towards limited participation in public life. Moreover, in the absence of these facilitative structures, a CEDAW right to public life cannot be implemented successfully.

¹³⁰⁷ Defined as "removed from all lines of social mobility, barred from access to all public resources that would allow for upward movement, out of dire poverty and into political invisibility". See, Gayatri Chakravorty Spivak *An Aesthetic Education in the Era of Globalization* (Harvard University Press, Cambridge, Mass, 2012).

¹³⁰⁸ Kwok Pui-Lan, *Unbinding Our Feet: Saving Brown Women and Feminist Religious Discourse*, in Laura E Donaldson and Pui-lan Kwok *Postcolonialism, Feminism and Religious Discourse* (Psychology Press, 2002) at 67.

¹³⁰⁹ For a full discussion see, Gayatri Spivak *A Critique of Postcolonial Reason: Toward a History of the Vanishing Present* (Harvard University Press, Cambridge, Mass, 1999) at 308–311.

6.4 Summary Conclusion

The study confirms many of the previous findings of similar human rights impact studies that despite some achievement at the local level, factors such as state capacity (strong vs weak States), civil and international war/ conflict/ periods of transition, democracy, economic development all contribute to the effective realisation of human rights at a local level, limiting the impact of treaties ratified by States Parties. The current study also finds that socio-cultural factors continue to significantly affect the successful achievement of women's equality in public life in the Maldives, where people's choices reflect and reproduce gender norms of their own socialisation and patriarchal order. Moreover, the fast changing socio-cultural and religious dynamics in the Maldives is posing a significant challenge for women's equality and non-discrimination, and threatens the existence of human rights frameworks such as CEDAW.

There is an assumption that everyone is equal in the Maldives, so that everyone will get everything including all the opportunities. The participant experience of equality in public life in the Maldives in this study, however, supplies concrete evidence of the inequalities they face on multiple levels. In terms of barriers, women working within the State bodies, NGOs and political parties were all critical, to varying degrees, about the situation of women's rights in the country. Almost every participant in the study agreed that the biggest challenge for women to pursue roles in public life was integrating family and work. Women bear in most cases, complete responsibility for childcare, elder care and domestic chores.

All this put together, creates a culture where women are not able to speak for themselves, freely move in social circles, let alone be engaged in public life. The lack of empowerment, the rigorous advocacy by religious groups, the absence of positive measures, and the lack of advocacy by the State to counter the religious ideals, is creating a dangerous environment for women's rights in the Maldives. Challenges existing at the individual, societal and institutional level, obstruct the realisation of equality in public life. Thus, despite ratification and being party to the

Convention for over 20 years, the expected normative changes have not taken place at the domestic level. The idea of substantive equality and the idea of positive measures to tackle the structural roots of gender inequality have yet to gain momentum as well as acceptance at the domestic level.

CHAPTER SEVEN

TREATY ENFORCEMENT THROUGH REPORTING, MONITORING AND COMPLAINTS PROCEDURES

Theories of globalisation, States and the international human rights regimes often argue that universalisms as pronounced in the international human rights instruments do not exist, should not be assumed, given the histories of colonisation, and the plurality of the legal systems in existence. For many States Parties, the concept and practice of human rights, in particular women's rights, have been conditioned by colonial heritage, cultural background, and contemporary economic and political development as well as the political concerns of contemporary politicians. Thus, the impact of a treaty cannot be fully understood without examining how treaty enforcement mechanisms have contributed to that impact at the local level.

Given its prime importance in the implementation of human rights at the domestic level, this chapter examines the domestic practices around treaty reporting under CEDAW, to understand the domestic processes, dialogues and issues, which may be affecting the promotion and the practice of rights. The impact of treaty monitoring on a CEDAW right to public life is measured through a documentary analysis of treaty reports and other human rights reports of the States Party, including the reports in which the States party responded to Concluding Observations (COs) from the treaty body. The document analysis is further complemented by semi-structured interviews conducted with stakeholders, including NGOs and UN bodies, involved in the reporting process in the Maldives.¹³¹⁰

¹³¹⁰ It is emphasized that issues discussed in this Chapter are additional to the barriers discussed in Chapter 5, to CEDAW implementation in the Maldives. Thus, the overall impact of a CEDAW right to public life, in general all rights, are limited by these factors in the local context.

7.1 UN Treaty Enforcement Mechanisms

International law is largely structured on voluntary compliance and self-interest.¹³¹¹ It aims to implement international human rights treaties at the domestic level, and they are both under-utilised by the States Parties concerned, and at times by the treaty bodies involved.¹³¹² A number of factors associated with the nature of the international human rights regime also creates obstacles for the achievement of the human rights agenda. Such factors are not only confined to CEDAW; they are also generally related to the structure of the international human rights regime. These problems continue to be associated with a State-centered, sovereignty based conception of international order and the absence of enforcement mechanisms in international law.¹³¹³

Enforcement mechanisms by their very nature, both reporting and complaints mechanisms, are weak in international law.¹³¹⁴ Heyns and Viljoen, however, argue that international enforcement mechanisms used by the treaty bodies have a very limited demonstrable impact, partly because the system has taken a number of decades to develop to its present level and partly as a result of inefficiencies in the system (backlogs, overlaps, vagueness in findings, etc.).¹³¹⁵ Moreover, any views expressed by the UN Human Rights Committee, or independent expert bodies monitoring compliance with the human rights treaty obligations at the domestic level, do not carry any legally binding force.¹³¹⁶ Monitoring therefore, merely aims

¹³¹¹ Santos, above n 764, at 267.

¹³¹² Kicker, Renate and Mostl, Markas (Council of Europe) *Standard-setting Through Monitoring?* (Council of Europe, Strasbourg, FRA, 2012) at 20.

¹³¹³ Jack Donnelly “Human Rights in the New World Order” (1992) 9 *World Policy Journal* 249 at 258.

¹³¹⁴ Council of Europe, above n 1312, at 19.

¹³¹⁵ See Heyns and Viljoen, above n 662.

¹³¹⁶ Council of Europe, above n 1312, at 20.

to assess domestic human rights practice, and serve as an early warning mechanism for potential future rights violations.¹³¹⁷

7.1.1 The CEDAW Treaty Reporting Process

The reporting procedure is a central feature of the UN human rights treaty system. According to the UN, the human rights treaty reporting system has in important respects been positive and successful, and provides for “the creation of constituencies at the national level which encourage[s] implementation of human rights.”¹³¹⁸ States Parties are largely in favour of treaty reporting rather than other mechanisms under human rights instruments, as it does little to challenge the sovereignty of the States Parties.¹³¹⁹ Thus, even as the least intrusive method to measure compliance, the reporting system holds potential to protect individual rights indirectly through emphasis on facilitating cooperation in the joint undertakings.¹³²⁰

Parties to the CEDAW Convention are required to submit reports to the UN Committee on the Elimination of All Forms of Discrimination against Women at least every four years, detailing the measures they have taken to comply with their obligations under the Convention. The Committee on the Elimination of Discrimination against Women (CEDAW Committee) monitors the progress of women's rights in those countries that are Parties to the Convention. The CEDAW Committee comprises 23 experts who are competent in fields covered in the Convention. These experts are identified and nominated by States Parties, but due consideration is given to ensuring that the experts group is a fair representation of

¹³¹⁷ At 20.

¹³¹⁸ Note by the Office of the UN OHCHR *Effective Functioning of Human Rights Mechanisms Treaty Bodies* (UN Economic and Social Council, Commission on Human Rights, Sixtieth Session, Agenda Item 18 (a) of the Provisional Agenda, 2004) at 3, para 6..

¹³¹⁹ Harvey Philip “Monitoring Mechanisms for International Agreements Respecting Economic and Social Human Rights” (1987) 12 Yale J Int 396 at 410.

¹³²⁰ At 411.

geographical distribution, different forms of civilisations and also legal systems.¹³²¹ The duty of these experts is to perform their functions honourably, faithfully, impartially and conscientiously, all in the attempt to eliminate all forms of discrimination against women.¹³²² The Committee meets twice a year to review these reports and comments on them.

CEDAW's reporting and monitoring is purely state-oriented. Ideally, the States Party is required to:¹³²³

- (a) Conduct a comprehensive review of the measures it has taken to harmonize national law and policy with the provisions of the relevant international human rights treaties to which it is a party;
- (b) Monitor progress made in promoting the enjoyment of the rights set forth in the treaties in the context of the promotion of human rights in general;
- (c) Identify problems and shortcomings in its approach to the implementation of the treaties;
- (d) Assess future needs and goals for more effective implementation of the treaties; and
- (e) Plan and develop appropriate policies to achieve these goals.

The reporting procedure is a forum for the Committee, and the States Parties to exchange information, to develop a better understanding of the common problems faced by States, and a fuller appreciation of the type of measures which might be taken to promote effective realization of each of the rights contained in the [relevant treaty].¹³²⁴ When followed in the suggested manner, it should encourage and facilitate, participation, constructive engagement and scrutiny at the national

¹³²¹ Art 17 (1), CEDAW 1979.

¹³²² UN Doc. CEDAW/C/ROP.

¹³²³ Guidelines on an expanded core document and treaty-specific targeted reports and harmonized guidelines on reporting under the international human rights treaties, HRI/MC/2004/3, Annex, para. 9 (drawing on CESCR, General Comment No 1).

¹³²⁴ CESCR, General Comment No 1, para. 9

level.¹³²⁵ The Committee's work is mainly to identify the issues predominantly affecting women, such as gender-based violence, and to make recommendations to the individual States Party on how to tackle these issues. Thus, whether the reporting process leads to real change in law, policy and practices at the national level, is also dependent on the quality of the COs and observations produced by the CEDAW Committee, as well as the timely follow-up of the COs.¹³²⁶

There is no formal requirement, but NGOs are welcome and increasingly encouraged to submit shadow reports detailing their views on how well their government is living up to its CEDAW obligations.¹³²⁷ Usually written by a coalition of NGOs rather than one NGO, a shadow report is a civil society critique of the government reports, highlighting issues that may have been neglected or misrepresented in the government reports. In cases where a government fails to submit a report or does not make its report available to NGOs in time for a critique, alternative reports may be submitted (by NGOs) as a key source of information on the issues that are important to the cause. At the end of a reporting cycle, the relevant treaty body produces a set of country-specific Concluding Observations (COs).¹³²⁸ The factual situation represented by the States Party in its report is matched with information from other sources such as reports and submissions from international and national NGOs.¹³²⁹ Moreover, the CEDAW Committee, unlike the CERD Committee, only addresses States and does not establish a connection with individuals or NGOs. Thus, the CEDAW Committee does not have an official

¹³²⁵ HRI/MC/2004/3, Annex, para. 10.

¹³²⁶ Office of the High Commissioner for Human Rights (OHCHR) "Monitoring Implementation of the International Human Rights Instruments: An Overview of the Current Treaty Body System [Background Conference Document prepared by the OHCHR (pursuant to paragraph 6 of General Assembly resolution 59/198 of 20 December 2004)]" [2005] Fifth session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities at 8–9.

¹³²⁷ Marsha A Freeman "The Human Rights of Women under the CEDAW Convention: Complexities and Opportunities of Compliance" (1997) 91 Proceedings of the Annual Meeting (American Society of International Law) 378 at 381.

¹³²⁸ Philip Alston and Oliver De Schutter *Monitoring Fundamental Rights in the EU: The Contribution of the Fundamental Rights Agency* (Hart Publishing, Oregon, 2005) at 78.

¹³²⁹ At 78.

mandate to consider reports from individuals who may allege violations of the Convention, nor from NGOs. Prior to the adoption of its Optional Protocol in 2000, CEDAW also did not have an individual complaints procedure. Thus, for a long time, CEDAW lacked effective treaty related implementation strategies.

Article 29 of the CEDAW Convention allows States Parties to resolve conflicting interpretations and applications of the Convention by referring it to arbitration and then to the International Court of Justice.¹³³⁰ At the same time, these provisions have not been used because any party can object to this procedure within the privileges given to States Parties in CEDAW. The treaty bodies monitoring compliance to this Convention also have limited powers in comparison to the other treaty bodies.¹³³¹ Particularly weak language further compromises its potential.¹³³² Such structural issues with CEDAW justified the Optional Protocol to the CEDAW Convention,¹³³³ and yet again, the optional protocol also requires a permit from the State before any visits from the CEDAW Committee to conduct a national inquiry.¹³³⁴ Even with all of these considerations, some of the States Parties abstained from the voting in the General Assembly noting that the Convention failed to strike a fair balance amongst all existing legal systems and thought that some of the provisions were extreme to achieve a desired outcome.¹³³⁵

CEDAW has been successful in listing and embodying structures to ensure those rights. However, it does not incorporate provisions to ensure enforcement of these articles.¹³³⁶ Many States Parties are behind in their reporting obligations and sufficient mechanisms of enforcement are lacking at the international level. However, just by reporting or not reporting regularly, the human rights practices of

¹³³⁰ Rosenblum, above n 452, at 116.

¹³³¹ Power and Allison, above n 404, at 28.

¹³³² Donner, above n 389, at 242.

¹³³³ Hoq, above n 452, at 683. Rosenblum, above n 452, at 116.

¹³³⁴ Rosenblum, above n 452, at 117.

¹³³⁵ Statement from Moroccan delegate, at UN Doc. A/34/107, para. 14.

¹³³⁶ Hathaway, above n 631, at 592.

the particular State are observed and depending on the organisations/ body, monitored, by the UN, foreign countries, other international organisations, civil society groups interested in the human rights and development data, and also the media. Further problems also exist with the reporting mechanisms and the working of the treaty bodies, most of which is related to the ad hoc development of the entire human rights system, leading to low awareness and the absence of an effective mechanism for reporting and follow-up.¹³³⁷

7.1.2 Complaints Procedure under CEDAW

Reporting is one way of monitoring human rights at the State level. The second main method to monitor human rights at the domestic level is the complaints procedure. Of the six core human rights treaties, four are monitored through individual complaints mechanisms: ICCPR, CERD, CAT and CEDAW.¹³³⁸ CEDAW is a new addition to the list. Prior to 2000, CEDAW did not have any established complaints procedures. Introduction of the Optional Protocol in 1999 opened up a ‘creative space’ for individual women, to use international law to access human rights.¹³³⁹

The Optional Protocol entered into force in 2000, which established procedures for the CEDAW Committee to investigate individual or group complaints that allege grave or systematic violations of women's rights under the Convention.¹³⁴⁰ The primary purpose of the CEDAW Optional Protocol is to improve the enforcement of women's rights.¹³⁴¹ As at January 2016, there are 106 States Parties to the

¹³³⁷ O’Flaherty, M (2011), Reform of the UN Human Rights Treaty Body System: Locating the Dublin Statement Geoff, Hampson and Sandoval, above n 644, at 70.

¹³³⁸ Alston and Schutter, above n 1328, at 79.

¹³³⁹ Margaux J Hall “Using International Law to Promote Millennium Health Targets: A Role for the CEDAW Optional Protocol in Reducing Maternal Mortality” (2010) 28 Wis Int’l LJ 74 at 81.

¹³⁴⁰ Bal Sokhi-Bulley “The Optional Protocol to CEDAW: First Steps” (2006) 6 Human Rights Law Review 143.

¹³⁴¹ At 143–144.

Optional Protocol.¹³⁴² Although this Protocol is widely ratified, it is again, largely an under-utilised mechanism.¹³⁴³ No individual or group complaints had been filed from the Maldives under the CEDAW Optional Protocol at the end of 2015. For this reason, this aspect of the enforcement mechanism is excluded from this research.

7.2 Domestic Issues for Treaty Enforcement Mechanisms

The Maldives has completed three cycles of reporting, submitting its initial report and two combined State reports to the CEDAW Committee. Numerically, the Maldives has submitted its fifth CEDAW report. However, has only gone through three CEDAW reporting cycles due to delay and presentation of combined reports.¹³⁴⁴ Maldives submitted its initial report in 1999, five years after it was due. The second and third reports were sent in 2005 and the fourth and fifth combined report was sent in 2012. Apart from having to face little to no criticism from interested individuals, there are no real penalties or sanctions for States, such as the Maldives, that are not fulfilling their reporting obligations under CEDAW.

Interviews conducted with various stakeholder organisations, individuals and NGOs, however, reveal that there are increased efforts at the government level to establish a better process to prepare and follow up on reporting obligations. A lack of resources and the fluid gender structure, however, prevents the effective establishment of such an institution within the government. As a result of these issues, often drafting of State reports are outsourced. UN bodies in the Maldives often fund, and guide the entire report preparation process. However, further factors discussed below, critically affect the success of the treaty at the domestic level.

¹³⁴² UN Women “CEDAW: Signatures to and Ratifications of the Optional Protocol” UN Women Webpage <www.un.org>.

¹³⁴³ See Cases and decisions to date UN Women, above n 1342.

¹³⁴⁴ For particular dates, see Table 4.1, Chapter 4.

7.2.1 *Timely Submission of Reports*

Generally speaking, timely treaty reporting is key to the enforcement of treaty norms within domestic systems as it allows a continuity of dialogue between the states party and the CEDAW Committee every four years.¹³⁴⁵ The time period between treaty reports (four years in the case of CEDAW), is also a critical time period in which to collect data, identify issues and also address them locally.

Timely submission of all the reports is a significant issue across the world.¹³⁴⁶ According to the existing literature almost all States Parties to human rights treaties fail to fully comply with their reporting obligations.¹³⁴⁷ In 1997, Marsha Freeman wrote that by October 1996, there were 155 States Parties that had failed to submit 54 initial state reports, 42 second periodic reports, 51 third periodic reports and 44 fourth periodic reports.¹³⁴⁸ Maldives is no different; it is at the poor reporters' end of the scale. During the 2013 UPR Session, Maldives noted that the reporting obligation on the State is heavy.¹³⁴⁹ Recent studies also suggest that the reporting business is becoming both cumbersome and costly for many States Parties.¹³⁵⁰ For instance the six oldest treaties – CERD, ICCPR, ICESCR, CAT, CEDAW and CRC – have at least 150 States Parties each.¹³⁵¹ In terms of the work load for these treaty bodies, for example, in 2010 alone, 92 States submitted a total of 139 State reports

¹³⁴⁵ Neil A Englehart and Melissa K Miller “The CEDAW Effect: International Law’s Impact on Women’s Rights” (2014) 13 Journal of Human Rights 22 at 24.

¹³⁴⁶ Heyns and Viljoen, at 504.

¹³⁴⁷ Englehart and Miller, above n 1345, at 24.

¹³⁴⁸ Freeman, above n 1327, at 381.

¹³⁴⁹ Human Rights Council, Working Group on the Universal Periodic Review, above n 2, at 7.

¹³⁵⁰ Jasper Krommendijk “The domestic effectiveness of international human rights monitoring in established democracies The case of the UN human rights treaty bodies” (2015) 10 Rev Int Organ 489 at 490.

¹³⁵¹ Navanethem Pillay *Strengthening the United Nations Human Rights Treaty Body System* (United Nations Human Rights Office of the High Commissioner 2012) at 20.

to the UN.¹³⁵² By the end of the 2011-12 biennium, the treaty bodies will have reviewed 246 reports from States Parties, over 250 individual complaints, over 250 States Parties reports will have awaited consideration and over 500 individual complaints will be pending review.¹³⁵³ For the States Parties who are party to all major human rights treaties and comply with reporting obligations, they may be working with 100 to 350 recommendations from various treaty bodies within a time period of four to five years.¹³⁵⁴ States Parties also incur expenses in data collection, drafting of reports and travel, in terms of presenting the State's reports at the UN. Likewise, NGOs also spend considerably in the process of formulating and submitting shadow reports.¹³⁵⁵

7.2.2 *Ad hoc Reporting Style*

Reporting is widely seen as an ad hoc activity, a one-off burden that the state has to deal with every few years, and not a continuous effort that involves an ongoing cycle of reporting, the dissemination of concluding observations, implementation, and the drafting of a new report.¹³⁵⁶ There is limited coordination and communication within government authorities, among NGOs, and between governments and NGOs. According to one stakeholder interview:

When we send the final report from Gender to Foreign, sometimes, they would go through the report and send their feedback. But we do include them in our stakeholder consultations and they are also included in the drafting stages. But after we finalize, from here we send it to the Foreign Ministry and they would incorporate their comments and finalize it.

¹³⁵² Helen Keller and Geir Ulfstein *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press, Cambridge, 2015) at 418.

¹³⁵³ Pillay, above n 1351, at 18.

¹³⁵⁴ Keller and Ulfstein, above n 1352, at 18.

¹³⁵⁵ Krommendijk, above n 1350, at 490.

¹³⁵⁶ Heyns and Viljoen, above n 590, at 519.

The department does very limited consultation with the civil society ... there was no practice of holding focus group discussions or finding out if there are different opinions on a subject. It therefore, is a very rudimentary process.

This shows that feedback and comments are often obtained from other stakeholders, including NGOs during the drafting process, but it is a very quick process. Given these conditions, properly engaging and communicating with civil society groups, becomes a challenge.

Most of the participants from the NGOs who participated in this study were not aware of the State's reporting procedure or the process for the shadow reporting. Local NGOs note that they are not sufficiently involved in the writing of the State reports. The government however, is increasingly using consultative processes involving NGOs and civil society in the reporting process. NGOs are increasingly making use of the opportunity to submit shadow reports. Shadow reports have been submitted with respect to all three state reports over the last 20 years. Many participants in this study appreciated and applauded the NGO CEDAW reports, in contrast to the State reports.

Having the relevant data for the treaty report has been a challenge for many years. However, there is no systematised effort to improve data collection for the State report. Most of the time the relevant line ministries do not regularly collect the necessary gender disaggregated data or keep them as official records. The reasons Maldives does not collect and store gender disaggregated data is unclear, and according to one participant, may be a gender question:

There were lots of line ministries involved in the reporting. Gender Ministry actually does not have all the information required to complete this report so they sent out letters to all line ministries and they had a consultant also to get technical assistance to do the initial draft. They also have a Committee at the ministerial level and they also have members from other relevant ministries as well.

Gathering information is very difficult, maybe because it is CEDAW or maybe because it is something to do with women. We never get the

requested information on time. We always have to send two to three follow up letters and practically run after them.

These views indicate that there are added difficulties in working with the different stakeholders when it comes to working with CEDAW. At the end of the process, the State often produces an incomplete version of the situation of women's equality in the Maldives. According to one participant:

... the State report even this time was not very comprehensive. It was more like a fantasy report ... The shadow report was quite big, and more like what the State report should have looked like ... I also think we remove necessary information that needs to be there. ... I think we like to present a very rosy picture – but that is not the real situation. I don't think anyone would blame us, if we present the true state of affairs.

This view also shows that in the attempt show a rosy picture of the situation of women's rights in the Maldives, the States Party removes valid information from the report. This can be seen by comparing the fourth and fifth combined report of the States party and the *Hope for Women* NGO shadow report from the Maldives.¹³⁵⁷

7.2.3 Technical Capacity, Commitment and Organisational Issues

Reports in the Maldives are often delayed due to the lack of initiative within government offices to draft the reports or start the process. Making a treaty the exclusive responsibility of a certain government department also limits its reach, although it is seen as necessary for one department to coordinate the others. Reports are late also because it is a difficult and onerous process, due to lack of gender data, the need for extensive consultation and the compilation of comprehensive

¹³⁵⁷ Hope for Women, NGO Maldives, above n 147; Maldives *Consideration of Reports Submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined Fourth and Fifth Reports of States Parties* (CEDAW/C/MDV/4–5 United Nations 2012).

information from divergent sources (often uninterested in being a part of the CEDAW reporting process).

Reporting in the Maldives is primarily undertaken by the gender department, under the supervision of the Ministry of Foreign Affairs. Often there is a lack of expertise and lack of available human resources that places an undue burden on junior officials. Responsible departments are understaffed and there is a lack of coordination in the form of a central agency to take responsibility for reporting. There also is a lack of continuity or institutional memory as the government struggles to retain the trained civil service staff from moving jobs. Late reporting has also been ascribed to processes of the current political transformation. Other reasons cited include the lack of financial resources; the perception that delay is the norm; and the lack of pressure generated by local NGOs and the media.

For many participants in this research, the failure to submit timely reports was related to a lack of qualified personnel to draft the report and lack of resources within the government sector. Participants from outside the executive body were critical of the commitment shown and organisational skills of the relevant government departments involved in treaty reporting. The following is a selection of some of the views expressed by the participants, and as can be seen, there is no agreement on the reasons:

Not a single report was sent on time. The initial report went 5 or 4 years late. It was supposed to be sent within a year. We lacked the technical capacity to write a report. We still don't have the technical capacity to write the report up to their standard. The last CEDAW report was, however, different from the previous reports. I think technical capacity is the number one reason why we fail to report on time.

The main issues we have with reporting is a resource issue. We don't have a dedicated person who writes the report and almost always the State has to get an external consultant to write the State report. Whoever the State has been training to do this work, they leave their jobs after a short period. The fluidity of staff is a problem. So it is generally a lack of expertise to do this job. It's not a lack of commitment.

The lack of human resources at the Ministry I think is an indication of the weakness of the mechanism that exists for CEDAW reporting. I don't think we have the political will to address this situation either.

I think there is a commitment issue. Not a capacity issue. The State can do more. We being an NGO, without a single cent to our name, we are writing a huge trafficking project. At least being aware of the trafficking and prostitution issue, them saying that they don't know is sufficient for me.

There are a number of qualified people who are graduates in the Maldives, who are capable of drafting the CEDAW report. The issues here are commitment and political will.

A separate reporting unit within the specific Ministry can be a starting point to a more organized system of reporting in the Maldives.

I think in terms of capacity, a dedicated unit in the Ministry, ideally would be a very good suggestion.

Technical capacity within the department responsible for reporting did come across as a genuine concern. The reporting process in the Maldives is often funded by different resident UN Organisations. Apart from paying for consultants who would draft the report for the States Party, they also provide guidance and other assistance throughout the reporting process. Accordingly, most of the State reports were outsourced to independent consultants who are often international consultants.

International consultants have issues working in the local context due to the lack of familiarity with the context, and also because Maldivians speak a different language. The local counterparts working with the international consultants, often lack the technical capacity to check the consultant's report afterwards. According to some of these views:

It has been [2009, compiling the 4th and 5th periodic reports] a very long process ... the consultant failed to deliver. Although we didn't lose any money (since he/she didn't deliver), but the time lost was a big loss for both the Maldives and also to us (UN Maldives). The second time around, the government decided that the government wanted a local consultant to be the chief consultant to do the main drafting and then to find an international consultant to provide the technical assistance and guide the local consultant ... Even this time, the local consultant, during

the pre-methodology, definitions stage, failed to deliver (a different consultant). Thus, the international consultant who was supposed to deliver the technical expertise was on a mission to work with the local consultant to develop the methodology and do the initial consultations. When the local consultant abandoned the assignment, we expanded the international consultant's TOR and she drafted the CEDAW report. By being international, there were many things that she didn't understand, so the gaps are evident in the current CEDAW report as a result of this. I also feel that it is more appropriate if the locals did the CEDAW report drafting.

Often times, when we bring in foreign expertise, they fail to capture the ground realities of the country, unless of course the foreign consultant is able to get real good feedback from the people ... The lack of technical expertise within the organizations forces them to accept whatever the consultant drafts.

At the time of ratification, the majority of the people working within the Government were not trained in the international human rights systems. As such, Maldives could have avoided entering reservations. According to one of the stakeholders interviewed, the people who were working towards CEDAW ratification felt that the majority of the domestic laws were already in compliance with CEDAW. Whilst it was felt that any remaining discriminatory practices followed in the country as part of the domestic culture will not be challenged by CEDAW, it was also felt that the Maldives had to enter reservations to those articles which appeared to be in conflict with the domestic law.¹³⁵⁸ Limited knowledge on both the religion Islam and human rights treaties in general led to Maldives's reservations under CEDAW. According to an interview participant:

Maldives's reservations to Article 7 and 16 were entered primarily out of plain ignorance: in terms of human rights, human rights frameworks and also women's rights in Islam... For example, our knowledge on Islam was limited on the area of marriage and divorce at that time, and we thought only men could divorce... We wanted to place a reservation because we thought that a woman could not initiate a divorce under Islam.

¹³⁵⁸ Reference here is made to article 2, 7 and 16 of CEDAW 1979.

Support to this observation made by the participant can also be drawn from the reservation entered to Article 16. Maldives entered a blanket reservation to Article 16 of CEDAW. Under the article:

(1) States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. (2) The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

A blanket reservation to this provision could be either of two things or a bit of both: issues with awareness of the treaty system; or/ and a reluctance to provide formal legal equality in matters of the family due to domestic cultural and religious norms. In either case, a blanket reservation to this article was never needed. In her 2014 study on gender and Islam in the Maldives, Fulu observed that both men and women openly and freely date for years before choosing their spouse, and eventually getting

married.¹³⁵⁹ Most Maldivians go through a number of marriages in their lifetime exercising their freedom to choose a spouse.¹³⁶⁰ Women in the Maldives also actively participate in deciding the number of children, spacing between children and how they will be raised. In this manner, a majority of the household related decisions are also taken by women.¹³⁶¹ Thus, technically speaking, there was never a need for a blanket reservation.

The other underlying issue, as indicated above, may be culture and religion. According to one of the participants, reservations were also entered because the law makers felt that such provisions in the Convention were also against Islamic Shari'ah. Hence, by putting in reservations, the State intended to refrain from committing to specific requirements under those provisions.

This may also be the reason why there is no identifiable difference on the national commitment to create gender equality in law, policy and practice. In contrast to the participants outside the government (NGOs, individual rights workers, political parties), participants from the government sector argued that key people within different government bodies working in their individual capacities, and at times, as disorganized government committees, made considerable attempts to law reform and withdraw reservations to the CEDAW. Participants from outside the government sector, refused to accept that there were genuine efforts to address the domestic law relevant to Maldives's reservations to article 7 of the treaty. The 2008 Constitution makes the Maldives' reservation to Article 7(a) redundant.

Whilst discussions are underway to explore whether the Maldives can review its current reservation to article 16 and only enter reservations to specific sub-parts of

¹³⁵⁹ Fulu, above n 191, at 56.

¹³⁶⁰ In 1985, there were a total of 2,228 marriages and 1,928 divorces in Male' Office for Women's Affairs - the Republic of Maldives, above n 91, at 12; United Nations Economic and Social Commission for Asia and the Pacific *Rapid Situation Assessment of Drug Abuse in Maldives: Social Policy Paper No 12* (United Nations Publications, New York, 2003) at 13. In 2002, according to the UN, with 10.97 divorces per 1,000 inhabitants per year, Maldives has the highest divorce rate in the world. Data available at <www.guinnessworldrecords.com>

¹³⁶¹ ADB, above n 117, at 2.

the article, the dialogue is slow moving even within the State bodies. There is no discussion at the government level to remove the entire reservation to article 16. In 2013, there was little consensus amongst government departments in relation to amending the entered reservation to article 16 of the Convention. The following views expressed by participants provide support to this claim:

... The State is ready to modify its reservation to article 16. The State has agreed to remove article 16 1(a), (b), (e), (g), (h) and paragraph 2.

... We started a dialogue with the Ministry of Islamic Affairs a couple of years ago ... The Ministry has a strong disinclination to remove the reservations to article 16 ... They have said we cannot withdraw the reservation and they have also given their reasons which are based on Islamic Shari'ah.

The new system of governance introduced after the 2008 Constitution, now adds another level of complexity in terms of confirmations to be received prior to any commitments to be made under an international human rights instrument. Under article 93(a) of the Constitution, the national parliament must approve any changes in the Maldives' international commitments, under international treaties. This means any modifications to the reservations made to a treaty or convention will also need to be passed by a majority vote of the parliament. Given this change in the law, and the understanding of family as a matter fully covered under Shari'ah law, the prospects to withdraw reservation on Article 16, appear to be dim. According to one such view:

This is a difficult area to work with, especially because of Shari'ah rules. I am happy that there is a lot of push within the government to remove at least part of the reservations we have made to article 16, but I don't know how well this will be accepted by the public. I think this can become quite sensitive issue. Moreover, I don't know what will happen when it goes to the parliament for approval ... I think there is very conservative thinking within the parliament.

In contrast, one participant from the parliament felt that given the current developmental phase,¹³⁶² this could be the right time to approach the parliament to modify reservations made to international human rights instruments.

Despite many participants talking about the lack of resources to work on gender issues in the Maldives, the change of government in 2008 appeared to have the biggest impact on the initiatives of the then Minister of women's affairs. After the Maldives had received the COs for the second and third combined CEDAW report in 2007, the States Party had formulated a plan to implement COs. According to the stakeholder organisation, the plan failed to be implemented when the government changed and the ministry was downsized to a department under the Ministry of Health. This also affected the budget for the department and the number of staff the department could retain.

7.2.4 Organisational Effective Follow-Up

Heyns and Viljoen have noted that, if a country is disengaged with the treaty body, it receives less feedback on its human rights performance.¹³⁶³ Therefore, a lack of organisation and follow up strategies within the relevant government authority also affects the success of the treaties at the domestic level. This has been seen in the case of the Maldives. Many participants in the study noted that they are 'inspired' by the questions raised during the CEDAW Committee meetings, during treaty reporting processes. Some of these views were expressed by participants:

In the 4 years that we were waiting to hear back from the CEDAW Committee, we had also made some progress with the amendments to the family law; a fairly commendable improvement on the family law was made considering that the Maldives was a 100 percent Muslim country. And this served as a good tool in defending the report. My strategy was to just to be as frank in answering to the questions by the

¹³⁶² Refer to Maldives Political Reform Timeline, Figure 9.

¹³⁶³ Heyns and Viljoen, above n 590, at 488–489.

CEDAW Committee... We did have a lot of questions about the reasons for the reservations to Article 7 and why we're not removing the constitutional bar on equality of men and women.

We did try to remove the gender bar in article 35 of the Constitution at that time where it said you have to be a man to be the head of the State. But only two people at the Majlis [Parliament] voted in favour of removing that clause. I told the Committee that in a democracy, you go by the majority will and that we have tried it in the constitutional assembly and that the majority was against it. So we retained it. It was not because we didn't try. The majority view was that a woman cannot be the head of an Islamic State. It was decided by the Special Majlis.

There was some kind of priority after the second and third report, because, there was commitment or at least some sort of actions planned to implement the concluding observations and recommendations after the country examination. There were some positive efforts. But I think that the current political environment, where democracy and certain political rights supersede any other human right, it has become an easy excuse for the State in a turbulent political environment to say we have more urgent issues to deal with.

We have to publish the concluding observations when we get it ... there was an action plan compiled on the basis of the observations that had come out and we were not able to implement the action plan as it was, but some activities we had implemented had reflected the activities that were drafted on the action plan.

When there is questioning at the Committee, participants come back motivated to work on the feedback from the Committee. However, most recommendations and concluding observations given by the CEDAW Committee are not implemented in the Maldives and there is no strategic follow up to these comments and observations from the Committee, nor effective dissemination of them to the relevant government and non-government authorities.

I personally feel that we haven't done anything to implement the recommendations and observations. These are so simple things that can make a big impact on women's lives.

There is no one who follows up and sees which reports are due and which are up for meetings, and follows up to see whether it is drafted or not. Often the ministries are on their own to do it, to do it when they

can and if they can. It is not often budgeted for because it misses people's radar so you don't really budget to produce the report within the year.

The answer to all of the [why] questions is that they are trying to implement them. The only answers are budget, human resources issues etc. while I can understand the staff interest, there is a lack of political interest at the decision-making levels. I don't think there is enough understanding.

We actually didn't do a good job on the dissemination of the information and even when we prepared for the second and third combined reports, we didn't do much from our experience with the first reporting. We didn't also use much of the concluding observations from the first report.

The government has not been very proactive in following up from CEDAW Committee recommendations and COs. The Ministry of Gender in 2007 created a ministerial Action Plan to implement the CEDAW Committee recommendations from the second and third combined CEDAW reports. This plan however was not followed up by the new government in 2008. Apart from the Ministry of Women's Affairs, with all of its changing titles over the years, no other government office refers to the CEDAW reports or to COs. Government officials acknowledged that they did not refer to CEDAW nor was reference to CEDAW considered as a useful exercise within the government. The role of CEDAW in the policy and legislative process is therefore limited and questioned.

7.2.5 Successful Concluding Observations (COs)

Distinctions between dualism and monism are no longer as strong as they used to be, as most States are now moderate monists, giving special treatment to

international treaties; particularly human rights treaties.¹³⁶⁴ In the case of the Maldives, it is primarily a dualist State, and treats international law and domestic law as two different legal systems.¹³⁶⁵ No part of CEDAW, or its Optional Protocol, is part of the Maldives's domestic law. However, empirical evidence from this study suggests that the recommendations from the human rights bodies, have been taken seriously by the States Party in terms of a right to public life, demonstrating positive influence on States Party behaviour.

A CO is deemed effective if it brings about 'observable changes' at the domestic level, which would not have taken place, if not for the COs.¹³⁶⁶ The most effective CO in the Maldives was the removal of the formal barrier to women becoming presidents. Since ratification, the CEDAW Committee has actively engaged the States Party in a conversation on the reservations made to articles 7 and 16 of the Convention,¹³⁶⁷ and on identifying State efforts to address and remove these reservations.¹³⁶⁸ During the first reporting cycle, the government officials noted that the national Constitution was revised in 1998,¹³⁶⁹ and by a two-third majority of an elected constitutional council voted in favour of the President and Vice-President

¹³⁶⁴ European Commission for Democracy through Law (Venice Commission), Council of Europe *on the Implementation of International Human Rights Treaties in Domestic Law and the Role of Courts* (CDL-AD (2014)036 Council of Europe 2014) at 7.

¹³⁶⁵ Article 17, Maldives National Constitution; Also see Graham Greenleaf *Asian Data Privacy Laws* (Oxford University Press, Oxford, 2014) at 461–462; European Commission for Democracy Through Law (Venice Commission), Council of Europe, above n 1364.

¹³⁶⁶ Krommendijk, above n 1350, at 492.

¹³⁶⁷ Committee on the Elimination of Discrimination against Women *Report of the Committee on the Elimination of Discrimination against Women* (A/56/38 (Part I) UN General Assembly 2001); See CEDAW Committee COs in, Committee on the Elimination of Discrimination against Women *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Maldives* (CEDAW/C/MDV/CO/3 United Nations 2007).

¹³⁶⁸ Committee on the Elimination of Discrimination against Women, above n 1367, at 17.

¹³⁶⁹ Note that this change to the Constitution was made after ratification to CEDAW in 1993.

being male.¹³⁷⁰ This, according to the Maldivian delegates, represented the will of the democracy.¹³⁷¹

During the second reporting cycle, the States Party reported that the reservation on article 7 was a domestic religious issue as opposed to a gender issue, and was unsure whether the parliament would remove the ban on a female head of State in the Maldives.¹³⁷² In 2007, the Government had informed the CEDAW Committee that the gender barriers in the judiciary were under consideration, a proposal to remove the gender bar on female head of State in the Maldives has been made, and that Government intended to appoint female judges.¹³⁷³ The legal bar was removed in the 2008 Constitution and the reservation on article 7 (a) was successfully withdrawn in 2012.

The CEDAW Committee has also been influential in highlighting areas of concern in the domestic law and culture. For example, during the initial reporting cycle, the CEDAW Committee expressed concerns over the Family Act provision which allowed under-age marriages in special circumstances; what the government was doing to reduce the impact of high divorce rate on women's economic situation; the issue of domestic violence and refusal of victims to report; and for more statistics on women in polygamous marriages.¹³⁷⁴ Committee member Livingstone Raday noted that "early marriage, domestic duties and the resulting high drop-out rate for

¹³⁷⁰ Committee on the Elimination of Discrimination against Women (Twenty-Fourth Session) *Consideration of Reports Submitted by States Parties under Article 18 of the Convention (Continued) - Summary Record of the 506th Meeting* (CEDAW/C/SR.506 United Nations 2001) at 2.

¹³⁷¹ At 2.

¹³⁷² Maldives Government Document *Responses to the List of Issues and Questions with Regard to the Consideration of the Combined Second and Third Periodic Reports - Maldives* (CEDAW/C/MDV/Q/3/Add.1 Committee on the Elimination of Discrimination against Women 2006) at 3.

¹³⁷³ UN General Assembly, WOM/1597 "Experts of Anti-Discrimination Committee Criticize Maldives over Prohibition on Women Holding Top Political and Judicial Office: Government Considering Removal of Ban, Says Minister" *CEDAW Committee, United Nations* (Department of Public Information, News and Media Division, New York, 19 January 2007) at 1–2.

¹³⁷⁴ Committee on the Elimination of Discrimination against Women (Twenty-Fourth Session) *Consideration of Reports Submitted by States Parties under Article 18 of the Convention* (CEDAW/C/SR.499 United Nations 2001) at 2.

girls at the secondary level had contributed to feminisation of poverty in Maldives.”¹³⁷⁵ During the consideration session, the States Party noted that research in multiple areas of women’s lives including the impact on women’s participation in the labour force on women’s poverty, gendered use of contraceptives, mental health of divorced women, and reasons for women initiating divorce proceedings, were missing in the Maldives. Thus, the State Party was unable to adequately answer the questions from the CEDAW Committee.¹³⁷⁶

In its COs, the Committee also noted that the low marriage age under Maldivian law contravened the provisions of CEDAW and CRC, both of which Maldives is party to.¹³⁷⁷ The Committee further stressed the issue of violence against women and noted that the State should intensify its efforts to create legal provisions to tackle this issue.¹³⁷⁸ The government acknowledged that there was local resistance to raising the legal age of marriage as there is provision in Shari’ah that allows marriage after puberty and also resistance to domestic violence surveys in the country.¹³⁷⁹ As a positive outcome, the State did complete a study on the prevalence of domestic violence in the Maldives, and identified it as a case for national concern.

7.2.6 *Difficult and Rejected Concluding Observations (COs)*

Some COs either do not receive the same level of attention, or are ignored, because they are difficult to work with in the local system. One example, which has been discussed above, is the reservations to CEDAW Article 16, which covers equal rights of men and women in the private sphere, i.e. family. The CEDAW Committee

¹³⁷⁵ At 2.

¹³⁷⁶ Committee on the Elimination of Discrimination against Women (Twenty-Fourth Session), above n 1370, at 3–4.

¹³⁷⁷ At 5.

¹³⁷⁸ At 5.

¹³⁷⁹ At 5.

had suggested the Maldives honour the provisions in article 16, with a view to withdrawing the reservation on this article.¹³⁸⁰ This is yet to be achieved.

A second area of concern is the domestically accepted norms on equality and non-discrimination. Twenty-two years after CEDAW ratification, the equal rights and non-discrimination provisions in the treaty remain to be incorporated into the national law.¹³⁸¹ The CEDAW Committee has noted its concern with the principle of non-discrimination on the basis of sex in the 2008 Constitution, and explained that these provisions are not in line with CEDAW's principle of equality and non-discrimination.¹³⁸² Concerns have also been raised by the CEDAW Committee in 2015, noting that the Maldives is yet to incorporate CEDAW standards into its domestic law, and at present, the Convention cannot be enforced through a local court.¹³⁸³

The Maldives is working towards enacting a Gender Equality Law which will incorporate provisions for TSM in the local context. The CEDAW Committee has suggested that the Gender Equality Law include a definition of discrimination, in conformity with CEDAW article 1, encompassing both direct and non-direct discrimination in the public and private spheres, and the principles of gender equality, in conformity with CEDAW article 2. However, this is where the CEDAW Committee fails to understand that the Constitution is supreme law in the Maldives, and where any other law or regulation conflicts with the Constitution, the Constitutional provision will prevail.

COs also call upon the State to conduct a review of the laws in the Maldives with a view to bring it into full compliance with CEDAW, particularly in the area of

¹³⁸⁰ Committee on the Elimination of Discrimination against Women, above n 1367; Committee on the Elimination of Discrimination against Women, above n 1106.

¹³⁸¹ Committee on the Elimination of Discrimination against Women, above n 1106, at 2.

¹³⁸² At 3.

¹³⁸³ At 3.

criminal law and family issues.¹³⁸⁴ Chapter Five has discussed how provisions under criminal law and the family law in the Maldives closely follow a specific interpretation of Islamic Shari'ah rules, which are discriminatory towards women. Thus, there is no effort at the local level to modify these laws to comply with CEDAW provisions.

The biggest impediment to fully commit to CEDAW, to retain Maldives's reservations to certain articles of CEDAW, and also its refusal to act on the COs appears to be the accepted interpretation of Islamic rules in the Maldives, which affects the success of the entire mechanism.

I can't say CEDAW mechanism has been effectively used in the situation of the Maldives ... Maybe the reason for this is because everyone takes gender as a difficult issue, especially nations ... and if a government doesn't want to give that commitment to elevate the regression of these rights, CEDAW is not helpful ... In the past 4 years when the entire gender architecture in the Maldives fell, I can't say there was close enough monitoring from the CEDAW Committee. I wouldn't say CEDAW was effective enough.

The CEDAW Committee often expresses its dismay with the reservations entered by individual States Parties, and does ask questions on the subject, despite reservations made to specific provisions.¹³⁸⁵ This is also seen in the Maldives case, as discussed above. However, the CEDAW Committee has not examined the extent to which the goals of the treaty are compromised by the reservations entered, in the case of the Maldives, which used to have reservations on both women's public life (article 7, rights related to political and non-political decision-making in public life) and private life in general (article 16, rights related to family matters). The CEDAW Committee does have limited powers to enforce the provisions in the treaty at the

¹³⁸⁴ At 3.

¹³⁸⁵ Riddle, above n 721, at 617.

domestic level;¹³⁸⁶ however, the engagement process in the context of the Maldives can be further improved.

7.2.7 Problems with Adopting Temporary Special Measures (TSM)

The CEDAW Committee has recommended the adoption of TSMs to address the underrepresentation of women in public life in the Maldives, and adopt legislation pertaining to domestic violence, marital rape and equal rights under family law.¹³⁸⁷ Positive discrimination or affirmative action has helped to bring women forward and participate in decision-making in other countries. In the case of the Maldives, there appears to be a reluctance on the part of the law makers to introduce TSM. In 2007, the Government of the Maldives informed the CEDAW Committee that advocacy efforts to introduce TSM were met with resistance from political factions denying that women were fit to hold the presidency, ministerial or parliamentary positions, and others claiming that quotas were discriminatory against men.¹³⁸⁸

There has been occasional debate as to the incorporation of quotas and affirmative measures to enhance women's participation in public life, but a consensus has never been reached, due to which, Maldives has never had any quotas.¹³⁸⁹ There is ongoing debate within the government sector, including a few parliament members as to the benefits of a quota system although this measure has been tried and tested in a number of countries and accepted as a good practice.

In March 2015, the CEDAW Committee in its COs, recommended that the Maldives 'intensify its efforts' to raise awareness of TSMs amongst political

¹³⁸⁶ At 629.

¹³⁸⁷ Committee on the Elimination of Discrimination against Women, above n 1367, at 17.

¹³⁸⁸ UN General Assembly, WOM/1597, above n 1373, at 1.

¹³⁸⁹ See States Reports, Maldives *Consideration of Reports Submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women: Combined Second and Third Periodic Reports of States Parties* (CEDAW/C/MDV/2–3 United Nations 2005); Maldives, above n 1357.

parties.¹³⁹⁰ Recommendations on adopting TSMs have been made by the CEDAW Committee in every reporting cycle. In 2001, the CEDAW Committee requested the Maldives to use quotas and similar measures as provided under article 4, paragraph 1, of the Convention “to improve women’s access to higher education, decision-making positions and legislative bodies at the national and local levels.”¹³⁹¹ The recommendation also suggested that the TSM’s be implemented as short-term and long-term strategies, combining them with “public awareness and legal literacy programmes that challenge sexual stereotypes and recognize the right of women to equality.”¹³⁹² The Maldives, to date, have not used any quotas or similar measures to increase the number of women in decision-making positions. At the local level, and since ratification to CEDAW, the Maldives has struggled to introduce temporary special measures, in line with CEDAW Committee recommendations and COs.

In one particular instance, a special provision in the Judicial Services Commission Regulations provided a woman a chance to be voted first in case of a tie with a male candidate and paved the way for the selection of the first woman judge to the High Court bench. Although there are difficulties in becoming a judge in the Maldives against the common perceptions and beliefs, that there are some female judges is indicative of good changes in the system and also evidence of what the Government is willing to promote at the national level. Moreover, against what many traditional judges in the judiciary advocate, JSC passed a regulation to give preference in voting to a female where male and female candidates finish with equal points based on merit. This gives more opportunity to the female candidate because if the female candidate is voted on first, and if the majority voted for her, there will not be a voting for the next candidate. A few participants referred to this as a special measure.

¹³⁹⁰ Committee on the Elimination of Discrimination against Women, above n 1106, at 2.

¹³⁹¹ Para. 134, Committee on the Elimination of Discrimination against Women, above n 1367, at 19.

¹³⁹² Para. 135, At 19.

... The JSC regulation requires a woman to be given priority in voting, when there is a tie in the total score. At the time this provision was incorporated into the JSC Regulations, all of the male lawyers were actually challenging the inclusion of this provision ... this was done to give more opportunity for the female candidates. Because if a male candidate is voted on first, and if the majority voted for him, there won't be a voting for the next candidate.

... The idea was for example, if the panel voted for the male candidate first, they would all have said yes and there wouldn't have been a need to vote for the female candidate. So what they were saying was that they would first vote for the woman... So, if there is a tie between two candidates, then they would ask to vote for the woman first. If the majority does not vote for her, then only the male candidate would be in for voting.

However, over the years, the concept of affirmative measures, positive discrimination and quotas, has not gained much support amongst most Maldivians, although a few have remained devoted advocates. There has always been a strong resistance to the idea of quotas and special measures for women. For many participants, the main issue here is that the State has failed to raise awareness on the benefits of affirmative measures and create the right atmosphere to introduce them into different State bodies.

There are so many men who think that affirmative action is something that goes against men. But positive discrimination should be taken in a positive manner. What the state has failed to promote is the effects of affirmative action. The whole purpose of positive discrimination is to take women to the same level as men. We are not trying to put women ahead of men.

It has been rejected quite a lot and when they developed a quota for the parliament, it was rejected. There were many concerns as to why there should be a need for affirmative measures... I think it is important to bring out women. And by showing by example, it can inspire other women to pursue these positions.

I have come to learn that the level of resistance she had to face working on affirmative measures is pretty comprehensive. Always resisted: in the constitution, in the parliament, in the decentralization Act, the political parties Act – in every action taken to introduce a quota it was

rejected. There is huge resistance even amongst women in political posts.

In general, State efforts to raise awareness and support to bring more women into decision-making is lacking.

... I feel that the parliamentarians were not really against it, I just think they didn't know what affirmative measures are really for. Maybe they thought it was only about bringing more women into the parliament to sit there. We should make them understand what they are conceptually made for.

I think it is a lack of awareness, a lack of understanding of the reasons ... The advocacy needs to address the why question and on not simply introducing affirmative action. It doesn't also sit with the general perception in the Maldives. People actually don't believe that women and men are unequal.

All participants in the research acknowledged that there was no support for affirmative measures or quotas in the Maldives. Although many believed that affirmative measures could change the dynamics of Maldivian politics.

When we talk about positive discrimination, all the men in this country jump up and they talk about equality.

... When the political party bill was in the parliament we actually made an amendment to consider including reserved seats for women in the parliament. We proposed that actually each political party has a 30 percent reserved seats in its electoral list. But the parliament didn't even consider this proposal.

... There was a discussion on reserving seats for women within the parliament and also the political parties ... But they failed because it was seen as discrimination against men.

The idea of affirmative measures or quotas is rejected by everyone including political parties and it is unclear whether the reason behind this is to purposely avoid women's inclusion in decision-making or to have already established political figures (raises the chances of a successful election) run for elections, which turn out to be all men.

...When we were debating on the Decentralization Act, we wanted special seats reserved for women (affirmative action) for the Councils, but then the Political Party that was in power at the time didn't feel the same way. They didn't want to reserve special quota/ seats for women. MDP didn't want and neither did the other political parties wanted these seats at that time... Their argument was that everyone should be running on their own strengths and on a 5 member council, why would you want to reserve seats for women. The reasons could be hidden. It could be because they wanted certain political activists to be in the Council positions or otherwise they just don't realize that all women cannot run on an equal footing in campaigns, especially in the outer islands.

A few female participants in this research also strongly disagreed with the proposition to create quotas and affirmative measures to provide the necessary opportunities for women.

I don't agree that there should be allocated seats for women in the parliament permanently.

If it helps women to attain the leadership positions then I am in ... I need to see if it works in the long run. India and Bangladesh are trying, but, women are not competing to fill the reserved seats.

With all of these situations in place, the current government is working towards introducing affirmative measures through a Gender Equality Bill, which is currently in its final stages of drafting. One political party has also introduced gender quotas within their political parties to ensure more women come forward to participate at the decision-making level.

... We are also trying to draft a Gender Equality Bill ... This bill would focus more on special measures.

... [at] PPM, we are doing something to empower women in politics. For example, we have now 4 women on the Council and from next Congress we will have a woman elected as a deputy leader of PPM. All island level executive committees of PPM will also have two reserved seats for women. So we are hoping that these women, after sometime will be empowered to compete in elections and right now in the main wing in the party, to bring 8 women to compete in the parliamentary elections.

The CEDAW Committee recommends Maldives adopt TSMs and also have a legislative basis for TSMs.¹³⁹³ However, with the sensitivity lacking from grassroots to higher level government officials, introducing TSMs will be a challenge.

7.2.8 Lack of Human Rights Mobilisation

Theories on compliance have previously suggested that human rights mobilisation and advocacy changes State behaviour and fosters treaty compliance. These studies suggest that change in this manner mostly occurs through institutions such as domestic courts, advocacy groups, NGOs, political parties that pressure governments into change.¹³⁹⁴ International treaties often fail to make the same impact at the local level, unless there is domestic resonance and support.¹³⁹⁵ Referred to as ‘*cooptation*’, these bodies within a States Party are able to shift the domestic balance of power, towards human rights enforcement.¹³⁹⁶ The spiral model of human rights change is strongly dependant on these networks.¹³⁹⁷ However, even if the international human rights networks such as Amnesty International and Human Rights Watch are active, and ready to be more engaged in the Maldives, the situation of the local NGOs, lack of lobby groups and the disinterest of the political parties on gender equality, limits the internal pressure created to enforce a CEDAW right to public life.

¹³⁹³ Committee on the Elimination of Discrimination against Women, above n 1106, at 5.

¹³⁹⁴ Neumayer, above n 603; Hafner- Burton and Tsutsui, above n 616, at 1385; Simmons, above n 607.

¹³⁹⁵ Peter Gourevitch “The Second Image Reversed: The International Sources of Domestic Politics” (1978) 32 *International Organization* 881 at 911; Robert D Putnam “Diplomacy and Domestic Politics: The Logic of Two-Level Games” (1988) 42 *International Organization* 427 at 429–430.

¹³⁹⁶ Andrew Moravcsik “Explaining International Human Rights Regimes: Liberal Theory and Western Europe” (1995) 1 *European Journal of International Relations* 157 at 161; Simmons, above n 607, at 135.

¹³⁹⁷ Thomas Risse-Kappen, Stephen C Ropp and Kathryn Sikkink *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press, Cambridge, 1999) at 10, 18; Margaret E Keck and Kathryn Sikkink “Transnational advocacy networks in international and regional politics” (1999) 51 *International Social Science Journal* 89 at 90, 93.

With the exception of the judiciary,¹³⁹⁸ this research studied the involvement of the NGOs, local interest groups and the political parties in the CEDAW process, and whether they use CEDAW provisions, reports, or COs from the CEDAW Committee in their domestic work, to test whether a domestic mobilisation was present in the case of the Maldives and how that influences treaty impact and compliance. Political parties, lobby groups and NGOs that were interviewed confirmed that they did not use CEDAW in their work in the Maldives. A few NGOs accepted working with women's political participation and other areas covered under CEDAW such as women's health and violence against women, but did not use CEDAW in their engagements with the State, or in awareness raising projects.

7.3 Complying with Human Rights Treaty Obligations under CEDAW

According to the stakeholder interviews, the drive to ratify CEDAW in the Maldives, initially came from a few women in the Government sector amidst Maldives's participation in the UN Decade for Women. Members of the National Council for Women,¹³⁹⁹ little aware of CEDAW rights or obligations, were primarily focused on the advancement of women in government decision-making. The decision to ratify CEDAW was also part of a broader strategic plan related to Maldives's foreign policy: to be seen as an agreeing party within the global community in support of universal norms. From the conversations with the stakeholders, it appears that the main idea behind ratification was that by becoming a party to CEDAW, it would create the necessary national impetus to amend the laws and policies to create gender equality. In fact, and also as discussed in Chapter Five, ratification to CEDAW did become a driving force behind gender focused law reform in the 1990s.

¹³⁹⁸ The Judiciary in the Maldives has not been very open to human rights reporting. As discussed before, the Suomoto case against the Human Rights Commission of the Maldives is evidence to this.

¹³⁹⁹ Local body established by the Government to coordinate Maldives's participation in the UN Decade for Women.

In terms of CEDAW ratification and implementation, particularly in relation to a CEDAW right to public life over the last 22 years, the following features stand out:

- The presence of prominent feminists/ individuals within the State sector,¹⁴⁰⁰ in the 1990's who worked towards the removal of the Constitutional bar on female judges and female heads of States, established the first women's machinery and the IDCs, bringing women to work with development for the first time; and
- The work of UN bodies in the Maldives, national human rights organisations, newly developing civil society and feminist movements (particularly over the last decade), to create awareness of women's rights and particularly in highlighting issues in women's rights and women's equality in the Maldives.

7.3.1 *Issues with Compliance*

Reputational and legitimacy based explanations of treaty compliance have argued that States Parties make rational choices to comply, in fear of naming and shaming.¹⁴⁰¹ In 2002, Downs and Jones also argued that new and developing countries are more sensitive towards international criticism and therefore, reputation is more important for such States.¹⁴⁰² However, the Maldives, a developing State is relatively easily ignoring and resisting the implementation of COs from the treaty bodies, the reputational costs do not seem have much influence in the local context. The first theories of compliance, "desire to maintain the

¹⁴⁰⁰ It is noted here that human rights groups were and continue to be limited in number in the Maldives.

¹⁴⁰¹ Frank Schimmelfennig "Strategic Calculation and International Socialization: Membership Incentives, Party Constellations, and Sustained Compliance in Central and Eastern Europe" (2005) 59 *International Organization* 827 at 831–832; Darren Hawkins "Explaining Costly International Institutions: Persuasion and Enforceable Human Rights Norms" (2004) 48 *International Studies Quarterly* 779 at 41; Robert O Keohane "International Relations and International Law: Two Optics" (1997) 38 *Harv Int'l L J* 487 at 497.

¹⁴⁰² George W Downs and Michael A Jones "Reputation, Compliance, and International Law" (2002) 31 *The Journal of Legal Studies* S95 at 112.

reputation”¹⁴⁰³ thus does not go all the way. Downs argues that multiple reputations which exist and operate at the same time, and limit the reputational consequences of a given incident.¹⁴⁰⁴ This may explain why States makes rational choices in terms of which treaties, or which treaty provisions, to follow. Reasons behind treaty compliance thus, is far more complex than what has been suggested in the empirical and theoretical investigations to date.¹⁴⁰⁵

The theories above to an extent explain the reasons behind Maldives’s behaviour in treaty compliance. While it appears to be working hard to meet certain obligations under the treaties, work under certain provisions has been purposely unattended. For example, joining the UN, was Maldives’s most significant foreign policy decision to date.¹⁴⁰⁶ However, certain rights in the universal documents such as same-sex rights and freedom of religion, are two key areas Maldives continuously has refused to work with. The States Party also appears to be moving into new terrain, speaking openly about State sovereignty and cultural relativism. For example, in December 2015, a number of press releases from the President’s Office provide evidence to this claim. In the first press release dated 03 December, the President noted that “global peace and security cannot be ensured, if more powerful States have license to interfere in the domestic affairs of smaller countries”.¹⁴⁰⁷ A second press release seven days later stressed the importance of cultivating cultural relativism, asserting that “certain rights championed by the West are not applicable in other cultures” and used the examples of allowing same-sex marriage and freedom of religion.¹⁴⁰⁸ The President also noted that allowing such rights would

¹⁴⁰³ See Robert O Keohane *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton University Press, Princeton, NJ, 1984).

¹⁴⁰⁴ Downs and Jones, above n 1402, at 97.

¹⁴⁰⁵ At 96.

¹⁴⁰⁶ Yameen A Gayyoom President of the Republic of Maldives *President Delivers Speech at the Ceremony Held to Mark the Government’s Two-Year Foreign Policy Achievements and 50 Years of UN Membership* (The Presidency - Official Press Release (Ref No 2015-446), Republic of Maldives, 2015).

¹⁴⁰⁷ President of the Republic of Maldives, above n 1406.

¹⁴⁰⁸ Yameen A Gayyoom President of the Republic of Maldives *Human Rights are not just about International Instruments or Pieces of Law: Human Rights are also about Belief that needs to be*

be contradictory to the national Constitution of the Republic and the “beliefs and values of the overwhelming majority of the Maldivian people”.¹⁴⁰⁹ The statement goes on to say that human rights are often used by “certain nations as a weapon to wield their power over smaller nations”.¹⁴¹⁰ Moreover, the Maldives has also declared its commitment to adhere to its chosen interpretations of Islamic values at the UPR Session in 2015.

Recent human rights reports to the UN has noted that the Islamic faith is strongly preserved in the Maldives.¹⁴¹¹ The National Constitution also provides strong evidence for this claim.¹⁴¹² Maldives’s decision to either accept or reject COs by the UN treaty bodies, including the CEDAW Committee, is seeing a strong shift towards the preservation of Islamic values. These positions are different to previous positions Maldives has taken. For example, in the 2015 UPR process, Maldives refused to accept most of the recommendations related to freedom of religion.¹⁴¹³ The States Party refused to consider or take measures to withdraw reservation on article 18, ICCPR,¹⁴¹⁴ which entitles the right to freedom of thought, conscience and religion.¹⁴¹⁵ Maldives also refused to accept recommendations to remove the legal requirement which prevents non-Muslims from being appointed as members of HRCM; legislate on prohibition of discrimination on the basis of sexual

Carefully Cultivated and Nurtured (The Presidency - Official Press Release (Ref No 2015-467), Republic of Maldives, 2015).

¹⁴⁰⁹ President of the Republic of Maldives, above n 1408.

¹⁴¹⁰ President of the Republic of Maldives, above n 1408.

¹⁴¹¹ Human Rights Council, Working Group on the Universal Periodic Review, above n 2, at 13.

¹⁴¹² A discussion of the legal standing of Islam has been covered in Chapter 5.

¹⁴¹³ See *UPR Maldives - Responses to Recommendations and Voluntary Pledges (as of 30092015)* (United Nations 2015).

¹⁴¹⁴ At 13.

¹⁴¹⁵ Art 18, ICCPR. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice; 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

orientation and gender identity; guarantee the human rights of gay, lesbian, transgender and intersex people; decriminalise sex out of wedlock and banish penal code provisions on flogging for sexual intercourse outside of marriage, and death penalty; ensure survivors of sexual violence are not prosecuted for fornication; and on multiple levels, refused to remove legal provisions that restricted the freedom of religion in the Maldives.¹⁴¹⁶ Previously, during the 2006 CEDAW reporting cycle, the States Party had confirmed that where CEDAW provisions conflict with the national Constitution, the latter would prevail in the Maldives.¹⁴¹⁷ It is therefore, noteworthy that Maldives accepted many recommendations on women's equality and protection, such as to establish gender equality legislation to protect women, continue efforts to implement prioritised strategies to ensure protection of women, take measures to ensure women's participation at all levels within the society, and eliminate all forms of discrimination against women.¹⁴¹⁸

Contradictory to these positions, in its national report submitted in accordance with paragraph five of the annex to Human Rights Council resolution 16/21, the Government of the Maldives pledged to take measures on empowerment of women including eliminating barriers to employment and participation in the political sphere, enhancing economic empowerment, adopting a zero tolerance for violence against women and harassment through legal and normative measures, ensuring the protection of families from experiencing negative consequences from divorce, and equal distribution of matrimonial property after divorce.¹⁴¹⁹ The States Party also confirmed that an amendment to the Family Act has already been submitted to the first sitting of the Parliament to effect these changes,¹⁴²⁰ and that legislative framework to ensure empowerment of women and also implement rights and

¹⁴¹⁶ “UPR Maldives - Responses to Recommendations and Voluntary Pledges (as of 30092015)”, above n 1413, at 13–16.

¹⁴¹⁷ Maldives Government Document, above n 1372, at 2.

¹⁴¹⁸ Sierra Leone, “UPR Maldives - Responses to Recommendations and Voluntary Pledges (as of 30092015)”, above n 1413, at 3.

¹⁴¹⁹ Human Rights Council, Working Group on the Universal Periodic Review, above n 2, at 13.

¹⁴²⁰ At 13.

obligations under CEDAW and related international human rights instruments, have already been established in the Maldives.¹⁴²¹ In contrast, strong adherence to the existing application of Islamic law in the Maldives however, means that in some instances, for example in cases of flogging, women may receive discriminatory treatment from the State. The discussion above shows that the government does not always afford the same level of legitimacy to the treaty bodies.

7.3.2 CEDAW Committee Issues

The CEDAW reports from the Maldives say very little about the right to public life in CEDAW. CEDAW reports have a body-count approach to measuring the right to public life, and as long as there is steady progress (in terms of numbers), this is seen as an achievement. Often it then makes a few acknowledgements on the legal rights available under the Constitution, which matches the list of rights provided under articles 7 and 8 of CEDAW. These reports, therefore, do not significantly capture the issues for the full achievement of this right.

From the CEDAW Committee engagements with the Maldives during the reporting process, it can be seen that the treaty body has not effectively engaged with the States Party in any on-going dialogues to ensure follow-up. While the achievement of a CEDAW right to public life in any context requires emphasis on multiple issues such as legal rights as well as removal of discriminatory practices, attitudes and stereotypes and patriarchal cultures, and rising Islamic fundamentalism in the context of the Maldives, it does not appear that the CEDAW Committee is able to engage with the States Party in this manner. The success of the mechanism also depends on the willingness and ability of individual States Parties to report and to make the reporting process an opportunity for discussion of relevant human rights issues at the domestic level is critical, as is interest and vigour on the part of civil

¹⁴²¹ At 14.

society in using the process of reporting to assess progress and continuing needs in the implementation of the convention at the national level.

Most States Parties give little attention to timely reporting or following up on Committee recommendations for implementation. Moreover, focused and relevant concluding observations are still routinely ignored when domestic convenience so requires.

The actual and potential impact of the international norm enforcement system is further limited because Maldives is not adequately engaged with the treaty system.¹⁴²² State reports are always delayed by a significant number of years, there have been no individual complaints, and local newspapers rarely publish information on the system. The international norm enforcement mechanism, as it is, can assert only very limited pressure. By being disengaged, Maldives is “shying away from the little pressure the system exercises.”¹⁴²³ The enforcement system can have a very limited impact in the absence of these features.¹⁴²⁴ Norm cascades through international or domestic norm enforcement mechanisms¹⁴²⁵ do not occur in the Maldives.

7.4 Chapter Conclusion

One of the most significant findings of this study signals or identifies the problems to rights, stemming from the domestic approaches to international norm enforcement methods: treaty reporting and use of complaints procedures. It finds that the existing system of reporting under the Convention adds limited value to the realisation of human rights at the local level. The focus on a measure of number of

¹⁴²² Heyns and Viljoen, above n 590, at 488–489. Heyns and Viljoen, at 488–489.

¹⁴²³ At 489.

¹⁴²⁴ At 488–489.

¹⁴²⁵ CH (Christof H) Heyns and Frans Viljoen “The Impact of the United Nations Human Rights Treaties on the Domestic Level” (2001) 23 Human Rights Quarterly 483 at 485.

women in political life takes away from the actual requirements of the human rights requirements of articles 7 and 8; women's participation in decision-making in all areas and at all levels of the State. In terms of articles 7 and 8, the human rights measure only produces numbers, which paints an incorrect picture of the actual situation of equality for women in public life in countries such as the Maldives and helps to turn a blind eye on the real issues for human rights development.

Interview findings suggest that the UN treaty reporting process has influenced the Maldives in many positive ways. It has been successful in fostering law reform, the biggest example of which is the removal of the legal barrier on a female head of State. However, it also finds that the State Party is not sufficiently engaged, to inspire substantive equality for women in all areas envisaged by CEDAW. CEDAW reports are often late and do not generate enough activity afterwards to bring about domestic change. There are no known cases where anyone has used the CEDAW complaints procedure either. This can be largely attributed to the low level of CEDAW awareness within the government sector and civil society. Whilst some argue that CEDAW is not renowned for bringing effective changes to produce equality for women in public life, some also blame the CEDAW Committee for not having played an active role during the transition phase when the gender architecture disintegrated beyond repair.

Furthermore, findings from Chapter Five and Six confirm many existing studies and provide added evidence on the role of culture and rising religious fundamentalism in the local context. They also suggests that women bear these cultures, which creates added challenges for CEDAW norms at the local level. Bearing these in mind, the reporting process in the Maldives has never sufficiently identified these issues in the local context, to ensure rights of women primarily, and in eliminating the negative influences that shape and guarantee particular rights for women in a context specific way. Thus, it can be concluded that the international norm enforcement mechanisms have not been used effectively in the Maldives.

For CEDAW to have a stronger impact in systems such as the Maldives, at the treaty level it needs to rethink the way the State reports are compiled and reported;

rethink the way human rights are measured at the domestic level and increase the mandate of the CEDAW Committee when dealing with countries such as the Maldives and follow up on COs and comments more rigorously. At the State level, much emphasis needs to be placed on improving the legal and political system, in particular, to stabilise the political situation and give policies and programmes time to be implemented. The Maldives also needs to examine the growing issue of religious fundamentalism and effectively engage with local and international stakeholders to minimise the impact of these ideologies on human rights. Treaty reporting needs to be regulated by the State and civil society involvement increased. The State also needs to address women's issues in a more holistic manner so that women are capable of pursuing public lives.

CHAPTER EIGHT

CONCLUSION

This thesis set out to examine the impact of a CEDAW right to public life in the Maldives. In order to begin the investigation on the impact of a CEDAW right to public life, Chapter Two of the thesis conducted a textual analysis of the relevant CEDAW provisions and other international human rights instruments, to identify a CEDAW right to public life. This chapter also examined different frameworks adopted by CEDAW to ensure that women were entitled, enabled and empowered to pursue the CEDAW envisaged rights. The literature discussion in Chapter Three mainly discussed issues of interest to the implementation of international human rights norms at the domestic level. Chapter Three also investigated key domestic issues for the women's treaty such as socio-culture and religion, which have a significant role in different societies, limiting women's rights to varying degrees. Keeping the research context in mind, this thesis discussed rights for women under Islam, its two key texts, the *Qur'an* and the Sunnah, to investigate whether rights in public life under Islam are different to those espoused in CEDAW. The thesis found no such conflicts. Furthermore, it found that in the history of Islam, women had pursued various roles in public life. In this regard, the literature reviewed various studies that have been done in other parts of the world, using international human rights treaties including CEDAW. This discussion was useful to identify research gaps in the area and how this research would contribute to the international literature in the area.

To understand impact and factors affecting impact, the thesis looked at treaty integration (how a CEDAW right to public life has been integrated into the political and legal system) and the use of treaty enforcement mechanisms (treaty reporting and complaints procedures) in the Maldives. To answer the first research question with respect to the integration of a CEDAW right to public life in the local context, the study employed a unique instrument, combining multiple human rights measurement tools that have already been used in other human rights studies. To

answer the research question with respect to treaty reporting mechanisms, the research relied on primary sources from the treaty body: CEDAW States Party reports, shadow reports, COs, recommendations, and comments. In the end, this study has presented issues for a CEDAW right to public life in the Republic of Maldives from various angles. It has brought about a range of findings that can be used by the CEDAW Committee and the States Party, to ensure better success with the achievement of a CEDAW right to public life in the Maldives. It is also anticipated that these issues are relevant to many other domestic contexts, and will provide a useful guide to persons working with CEDAW rights.

8.1 The Challenges to a CEDAW Right to Public Life

By becoming a party to the CEDAW Convention, Maldives undertook to ensure the right to participate in public life, enumerated in articles 7 and 8 of the Convention. However, because all rights in the Convention, including any form of discrimination or violation of the Convention, are linked to the principles of State obligation, articles 2 to 5 which set out the broader principles of State obligation under the CEDAW Convention must also be closely observed in order to guarantee the rights in CEDAW. Moreover, the implementation of the articles from 6 to 16 of the Convention is highly dependent on the achievement of the broader principles set out in articles 2 to 5 of the Convention. This includes abolishing and or amending all discriminatory laws, incorporating the principle of gender equality into its laws and establishing the necessary justice system to ensure that women are protected. Despite CEDAWs framework to create equality for women in the short run and in the long run, in all areas of life, States Parties to CEDAW such as the Maldives, have rarely adopted this approach to ensure equality for women.

This study finds that human rights law and the local guarantee of rights in public life are still fairly new concepts in the context of the Maldives. Local struggles of human rights treaties, and women to achieve treaty rights, have not been adequately researched, and the UN efforts, are still trying to catch up with the domestic politics, ideological structures and institutional challenges. As a result, there is a huge

mismatch between rights envisaged by the UN bodies, State initiatives to guarantee treaty rights, and the needs and frustrations of women in the pursuit of the promised rights. The substantial discrepancies lead to the limited impact. This is particularly true when it comes to rights of vulnerable groups, such as women, and rights that are constantly in question in many contexts, such as women's rights in public life.

The study finds that over the past twenty years since CEDAW ratification, formal equality has increasingly gained currency in the Maldives. Local legislation has been modified and reservations to CEDAW provisions removed. Maldives has shown commitment in terms of creating key legislative instruments and the removal of reservations entered to articles 7 of the Convention. The national Constitution guarantees equality between men and women and forbids discrimination. More specific provisions in the Convention are given effect through a range of more specialised legislation around family relations, employment and violence against women. The 2008 Constitution also contains provisions that authorise special measures to achieve equality. Moreover, despite its reservation to article 16, the Maldives enacted a family law reform in 2001 that, on paper, alters traditional Islamic rights and responsibilities between the spouses and there is on-going dialogues within the executive, parliament and civil society groups on modifying the initial reservation to article 16. Accordingly, the Maldives has witnessed significant development in terms of laws in favour of women's equality and non-discrimination, such as the Domestic Violence Prevention Act, Sexual Harassment Act and Special Protections for Victims of Abuse Act; all providing protection to women and the girl child. The State also has taken significant measures in trying to establish a gender architecture with institutions vested with a mandate and also creating gender policies. Domestic legal and social mobilization since CEDAW ratification hence, were instrumental in the inclusion of the relevant equality and non-discrimination international norms, leading to removal of reservations preventing women from positions of senior leadership and to a constitutional amendment recognizing sex equality at the formal level, but there is insignificant norm diffusion at a more substantive level.

This study confirmed findings of recent research in the Maldives on the influence of culture and religion on women's rights. In confirming that treaty ratification has not resulted in the successful realisation of a right to public life, the study illustrates multiple domestic hurdles, existing at the individual, institutional and national level, preventing the success of a CEDAW right to public life in the local context. Barriers to women's equality in public life are presented by gender stereotypes on the roles of men and women in the private and the public sphere, double standards and double binds in the society, sexual objectification of women, and the rising levels of fundamentalist Islam. These factors are compounded by the political context where the national gender architecture is in a state of constant flux (together with other government departments), the fluidity of national policies and institutions, and the patriarchal structures followed in the newly introduced political parties. Findings also indicate that the local NGOs and individual rights workers have a limited understanding of treaty rights and State obligations under CEDAW and the absence of an informed mobilised public severely affected the effectiveness of the Convention at the local level. The fluidity of political reforms, together with the problems associated with the international human rights implementation mechanisms, treaty reporting and complaints procedures, are also unhelpful in the local context to create change for women's equality in public life.

Human rights treaties do not expect countries to be free from cultural and religious values or political tensions. However, it expects States Parties to take appropriate measures to eliminate discriminatory practices, including the adoption of TSMs where necessary. The experiences of disadvantage, discrimination and inequality, can be addressed through some form of intervention from the State in order to level the playing field. In the case of the Maldives, there is internal resistance not only to adopt TSMs, but in general, to integrate and implement human rights norms as espoused in the international human rights instruments.

8.2 Recommendations on Integration and Enforcement

The thesis has demonstrated that there are multiple issues affecting a CEDAW right to public life in the Maldives. The challenge now is to draw practical lessons from these analyses that will help better utilise the CEDAW frameworks and defend human rights at the local level. These are mostly in the area of strengthening institutions, better coordination amongst human rights actors, data collection, awareness raising, and planning and organisation. The following are summarized recommendations.

- Integration starts with recognition of rights at the domestic level. At present, the right in CEDAW has no domestic recognition. Moreover, the equal rights in the Constitution, can be limited using Shari'ah interpretations. The human right to a public life in the Maldives therefore needs to be aligned with the CEDAW right to public life.
- Human rights education needs to be introduced into school curriculum and university courses. Increased awareness of human rights will lead to changes in social ideals in the long run. Rights education also needs to cover rights of women under Islam. Increased awareness would also mean that the CEDAW system, including the established complaints procedures will be better used by the States Parties.
- Human rights efforts need better coordination at all levels. Integration efforts must ensure that government institutions, the national human rights institution, non-governmental organisations, UN bodies and individual rights workers at the local and international level are deployed to promote and protect human rights at the domestic level. The increased attention and pressure will also be useful in treaty monitoring and implementation at the local level.
- The States Party needs to strengthen its reporting processes and focus on presenting timely reports to the CEDAW Committee and to ensure a continuing dialogue with the Committee on women's rights. HRCM needs to continue presenting parallel reports and to play a more pro-active role in the reporting process. As the national human rights institution, HRCM also needs to monitor the progress of CEDAW rights in the Maldives, and also establish clearly defined and observed grievance mechanisms.

- Human rights based research needs to be fostered and encouraged in the Maldives so that data in the area can be collected and stored. Research in the area is very limited and barriers for women and CEDAW rights have still not been adequately identified. This thesis is one of the first studies on the subject in the Maldives. Data will also be helpful to ensure timely reporting and answering to the CEDAW Committee during and after reporting cycles. This will also be useful to policy development and planning activities in terms of just be more organized.
- This research has established that barriers exist at multiple levels. It also has shown that overall, women are affected by other factors such as domestic violence, sexual harassment and poverty, which limits their capabilities, despite being educationally qualified, for decision-making positions. Thus, both the States Party and the CEDAW Committee needs to have a more holistic approach to study human rights and how they become limited in the local context.
- The guarantee of any human right is dependent on its enforcement at the local level. Rights violators therefore must be made accountable for their actions. For this recommendation to work, law enforcement authorities in the Maldives needs to work together to ensure rights are protected and enforced in the local courts. Courts must also make more use of international human rights instruments. This can also contribute to future scholarly work and research on the subject.

8.3 Theoretical Contributions

In identifying a human right to public life in CEDAW, this thesis makes a contribution to international human rights law. Readers of the CEDAW text often read a list of political rights under article 7, and fail to read it as rights for women to participate in both political and non-political decision-making within the State. This thesis argued that a right to public life, incorporated through articles 7 and 8 of the Convention, gives women rights to decision-making within the State and also beyond the State, as State representatives. These rights are not confined to women's participation in politics.

States Parties are obliged to create legal rights for women, on equal terms with men, to vote, to be eligible for election to all publicly elected bodies, the right to participate in the formulation of government policy, the right to participate in NGOs and associations concerned with the public and political life of the country, and the right to represent country; and the right to represent the national government at the international level and to participate in the work of international organizations. The Convention, through its transformative provisions in articles 1 to 5, recognise that, in order to guarantee substantive equality, issues affecting women's rights need to be addressed from different angles. This therefore entails not only an obligation of changing or modifying laws and practices that are overtly discriminatory, but also revising laws that appear neutral, but have a discriminatory effect.¹⁴²⁶ Recognising that legal rights alone may not be sufficient for the achievement of equal rights for women, the Convention also provides for the adoption of temporary special measures.¹⁴²⁷

CEDAW recognizes that unequal power relations within the private sphere contribute very significantly to gender inequality in all aspects of women's lives, and intends to correct this balance by requiring States to take measures that will correct this power imbalance. CEDAW rights are to be achieved through this unique model of equality which seeks to entitle, enable and empower women to pursue rights in CEDAW. The substantive equality obligation on the State ensures practical realisation of rights; rights-in-practice. This is captured under CEDAW articles 1 to 5, and emphasizes the importance of changing cultural attitudes and practices that may affect the realisation of rights at the domestic level. To ensure that the State has complied with its obligations of means and results, under subsections of article 2 of the Convention the State is required to take specified means to ensure compliance with the CEDAW Convention. In order to achieve this, the State has to go beyond those recommendations set out in article 2 to ensure that the means

¹⁴²⁶ Rebecca J Cook *Human Rights of Women* (University of Pennsylvania Press, Philadelphia, PA, 1994) at 236.

¹⁴²⁷ Article 4, CEDAW.

chosen actually result in the elimination of all forms of discrimination and the creation of equality for women. This two-fold obligation is therefore a guarantee not just of rights but also of their realisation. It guarantees that women are given not just equality of means and resources nor only equality of access; it further ensures that equality, both at the de jure and de facto level, results from State's interventions.

Generally speaking, the obligation to respect requires a State to abstain from any conduct or activity of its own that violates human rights. The obligation to protect shifts the focus of responsibility by compelling the state to prevent violations by non-state actors including individuals, groups, institutions and corporations. Finally, the duty to fulfil obligates the State to take whatever measures are needed to move towards the full realization of human rights.

This thesis also makes a contribution to international regime compliance theories. Previous theories on human rights treaties and State compliance have been very restricted in their scope and thus, have not sufficiently examined the reasons which could lead to low impact of a particular human right at the domestic level. In examining treaty impact through treaty integration and enforcement mechanisms established by the treaty bodies, this thesis shows how both domestic and UN based systems contribute to low treaty impact. Findings of the study show that reasons behind treaty compliance thus, is far more complex than what has been suggested in the empirical and theoretical investigations to date. They are not only related to socio-cultural practices and the absence/ presence of democracies, or the level of economic development of individual States Parties. The level of treaty awareness, presence of mobilised rights groups who are actively engaged in the rights processes, the effectiveness of the treaty reporting mechanism and worthwhile inter-cultural dialogue between the CEDAW Committee with the States Party, are also equally important to increase the impact of a human rights treaty at the domestic level.

8.4 Methodological and Empirical Contributions

This research captured dynamic individuals, processes, strategies, and activities to provide a snapshot of the challenges for the CEDAW right to public life in the Maldives. Although the research methods used in this study were not new, they were combined in ways that are uncommon in human rights research. In particular, the comparison between formal equality to be complemented with substantive equality data collected through qualitative interviews provided a platform to showcase the gaps in and between rights-in-principle and rights-in-practice, which is very different to how rights are usually measured. This study was based on data collected through document analysis and semi-structured ethnographic interviews targeted at different areas of CEDAW implementation: the CEDAW reporting community (within the State), human rights and democracy activists and defenders in political parties, non-governmental organisations and human rights bodies, and women in public life in the Maldives.

The findings contribute to the empirical investigation by recording information relevant to the practice of treaty reporting, women's autonomy in public life after CEDAW and also enforcement of CEDAW rights in the Maldives. Whilst women's engagement in decision-making is a widely researched area internationally, there is very little research in this area done in the Maldives. This study is expected to contribute significantly to the body of knowledge in women's rights in public life in the Maldives and, at the same time, raise scholarly concern over the effectiveness of the international treaty system in creating equal rights for vulnerable groups such as women. This research can also be used as a baseline study to do more expanded studies on the impact of CEDAW on women's rights in the Maldives, as the barriers identified are not just related to a CEDAW right to public life, but the bigger issues affecting women's equality and freedom in the Maldives.

One of the major implications of this study is also that these findings can serve as a productive framework from which to study women's perceptions of equality and discrimination in public life in more detail and create solution based approaches to

treaty implementation in the future. These findings provide an explanatory model that can be used by human rights workers and also individual nations to better understand the difficulties rights implementation is faced with at the domestic level. This, in turn, is useful to create more solution based approaches to achieve equal rights. It is hoped that this study will further the understanding of, and will aid in bridging, the gap that currently exists between a formal approach to equality in public life, a body count approach to women's representation in public life, and the achievement of substantive equality for women in public life. As this study focused on the local treatment and the impact of a CEDAW right to public life in the Maldives, its findings offer significant contributions to the existing body of research in the field. Whereas some countries may share similarities with the existing political culture in the Maldives, some will share common cultural and religious values. The findings of this study also have significant implications for policies directed at enhancing the effectiveness of a CEDAW rights, women's capabilities to pursue rights, and the creation of a holistic approach for the implementation of CEDAW right to public life within domestic systems.

The discussion in Chapter Three highlighted both the critical need for standardised and adequate instruments to assess the advances made by human rights treaties and setbacks to human rights norms at the domestic level. Thus, in attempting to identify how a CEDAW right to public life has been integrated into the domestic legal and political systems in the Maldives, and the identification of local struggles through the investigation of personal experiences with a right to public life, this research offers a novel contribution to human rights impact studies in the following areas:

- A unique methodology (Chapter Four) to measure human rights at the local level using a model to measure formal legal rights and rights experienced at the grassroot level;
 - To show that there are gaps in rights-in-principle (formal equality) and rights-in-practice (substantive equality);
 - To enable identification of specific local struggles related to individual, national and the international frameworks; and,
 - To identify growing threats to the legitimacy of international human rights instruments at the local levels.

However, it is envisaged that the rich description and information from this study could be transferred and appropriately applied to other similar contexts, where a CEDAW right to public life is insufficiently implemented. The in-depth examination of one situation also allows the making of a high-level comparison of issues encountered by other countries, and for generalisations to be made.

8.5 Limitations and Future Studies

The study included 45 women, 40 of whom had experienced decision-making positions either in the government, civil society or within political parties. A question may be raised whether these findings can be generalised to the population of the Maldives. Considering the small population of the Maldives and the number of women in decision-making positions, this number is an accurate representation of the population. Almost all of the participants talked about the same issues and were clear and coherent with their narratives so can be considered as a complete model that is representative of women in public life in the Maldives. Despite these characteristics, the following limitations need to be taken into account.

A direct causal link between the treaty system and legislative or policy reforms on the domestic level often is difficult to establish conclusively. In some instances the direct influence of the treaties was obvious; in other instances the possible influence was more indirect and difficult to pinpoint. For example, the CEDAW Domestic Law compatibility study led to the legislative reforms of the Citizenship Act and Family Law Act. However, it is hard to establish whether it was the general national law reform or the CEDAW treaty system which led to the removal of the constitutional bars on female judges and female head of State in the Maldives.

There are slight discrepancies amongst the CEDAW stories told by participants within the State and participants outside the government. Similar discrepancies are also observed between participants from different political parties in the Maldives. The research has tried to limit the impact of these by bringing in as much as possible, equal numbers of participants from the major political parties.

The study records women's experiences in public life in the Maldives. It would be interesting to see how men perceive women's participation in public life. All of the 50 participants were from Male'. Although 90 percent of the workforce is in the capital city, it would be interesting to see how the views of women from secluded islands compare with views of women from Male. A few women in the study also mentioned that religious fundamentalism did not affect their choices, but accepted that it was a major concern for the society in general. Majority of the participants accepted that religious fundamentalism affected them. New research could potentially examine how religious fundamentalism affects women working at different levels in decision-making.

8.6 Final Reflections

This research anticipated that local culture and religious fundamentalism played a key role in limiting women's participation and equality in public life in the Maldives. However, it also confirms that the political culture significantly affects the impact of the Convention at the local level. While it remains significantly important to work on addressing the socio-cultural aspects and the religious fundamentalism in the Maldives, this research suggests that it is equally important to have stable policies, institutions, human resources, and effective frameworks at the local level to ensure better impact of a CEDAW right to public life. Moreover, institutional issues relevant to effective domestic enforcement of the rights are not specific to a right to public life only, but a right to public life is affected more because religion and culture plays an additional role to restrict women's roles in society. Generally, women have limited capabilities affecting their autonomy and choice, and consequently their participation in public life. These findings imply that the implementation of a CEDAW right to public life, depends on a holistic approach to the idea of human rights and the appreciation of a woman's capabilities relevant to particular local contexts.

Despite the challenges to CEDAW identified in this research, it is envisaged that the Maldives is still a very promising case for CEDAW norms. There are multiple

reasons for this assertion. For instance, South Asia is known for its diverse cultures, traditions and religions, restricting women's equality. These factors are not as dominant in the Maldives in comparison. Women in the Maldives often enjoy unrestrained freedom in education, travel and in choosing life partners. Maldivians are quick to adapt to changes and modern ways of living, including the use of technology. There is cultural change towards both open-minded and conservative ideals. At one end, there is a shift towards more liberal forms of thinking, which is seen more in the younger generations. There is also a serious shift towards more fundamentalist views on Islam. At the same time, the Governments in the Maldives is also increasing its engagement and cooperation with the global community by welcoming regional and international instruments into its domestic context.

By far and large, the parliament also appears to be liberal and there is good support for women's issues within the parliament. For example, the Domestic Violence Act passed in the Parliament with barely any opposition. On allegations of a sexual harassment case against the Civil Services Commission President, the Parliament with a majority 52 votes, and only two abstaining votes, voted the President out. The majority view of the Parliament appears to be more in favour of women's rights. For example, the Parliament did not consider the religious and NGO pressure for a Shari'ah based penal code. Although not extensively, members of the Parliament do consider CEDAW as an important State commitment and have also considered comments and recommendations from NGOs and other Human Rights bodies in the law making process. The same also goes for religious clerics, religious and political groups such as *Adhaalath* Party. These voices have only a space because they make media headlines and because they make sensational headlines.

The biggest positive factors in the Maldives are that the local population is not very conservative when it comes to education, it is small, homogenous, and adaptable. These are factors that can be capitalized in terms of implementing CEDAW norms in the local context. A young population is also an advantage because adaptation becomes less challenging and it is easier to introduce new ideas, forward and more futuristic thinking. Girls are more open-minded now and are able to make career decisions for themselves. There are more girls graduating from tertiary institutes in

the Maldives. This is because there are more opportunities for higher education, and it has become easier for girls to choose what they want to do. Women's voices have really started to grow over the last three to four years and these voices may be even stronger than the reactionary voices from the religious groups. This may be the beginning of a future women's movement.

For various reasons, the impact of the religious preaching in the Maldives is still lesser in comparison to other Muslim contexts because, unlike many other Muslim countries, many women in the Maldives are highly educated and already in full time employment. Even when women give up their jobs to look after their children and husbands for conservative reasons, they still enjoy considerable freedom in terms of movement within society. Women actively participate in political party events and street demonstrations. Women are increasingly coming forward, to address the people on party podiums. This was uncommon prior to CEDAW, but has increased with increasing access to education, political reforms and awareness in the country. Moreover, many religious scholars who advocate for women to be at home, also have working wives. Even though there are increasing voices that openly discourage the open interaction of sexes, there is much interaction between men and women in places such as educational institutes, within offices, and political parties even now. The restrictions on women's movement are growing, but have not reached a place from which it could not be rescued. Looking at these features of the society, it appears that the time is ripe to introduce better approaches to implement CEDAW right to public life.

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Appendix A: Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination

and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

- | | |
|-----------|--|
| Article 1 | For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. |
| Article 2 | <p>States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:</p> <ul style="list-style-type: none">(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; |

- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3 States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4 (a) Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

 (b) Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5 States Parties shall take all appropriate measures:

 (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority

or the superiority of either of the sexes or on stereotyped roles for men and women;

- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases

Article 6 States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7 States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8 States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9 (a) States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

- (b) States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

- (1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
 - (a) The right to work as an inalienable right of all human beings;
 - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
 - (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
 - (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
 - (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
 - (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
- (2) In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their

effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

(3) Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

(1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

(2) Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;

- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

(1) States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

(2) States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
- (c) To benefit directly from social security programmes;
- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
- (f) To participate in all community activities;

- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

- Article 15
- (1) States Parties shall accord to women equality with men before the law.
 - (2) States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
 - (3) States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
 - (4) States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.
- Article 16
- (1) States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters

relating to their children; in all cases the interests of the children shall be paramount;

- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

(2) The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

(1) For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth States Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

(2) The members of the Committee shall be elected by secret ballot from a list of persons nominated by States parties. Each States Party may nominate one person from among its own nationals.

(3) The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States parties.

(4) Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

(5) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

(6) The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

(7) For the filling of casual vacancies, the States Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

(8) The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and

conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

(9) The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

(1) States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

(2) Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

(1) The Committee shall adopt its own rules of procedure.

(2) The Committee shall elect its officers for a term of two years.

Article 20

(1) The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

(2) The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. (Amendment, status of ratification)

Article 21

(1) The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States parties.

(2) The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22 The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23 Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a States Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

Article 24 States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25 (1) The present Convention shall be open for signature by all States.

(2) The Secretary-General of the United Nations is designated as the depositary of the present Convention.

(3) The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

(4) The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26 (1) A request for the revision of the present Convention may be made at any time by any States Party by means of a

notification in writing addressed to the Secretary-General of the United Nations.

(2) The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

(1) The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

(2) For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

(1) The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

(2) A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

(3) Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

(1) Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

(2) Each States Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any States Party which has made such a reservation.

(3) Any States Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

Appendix B: Reservations and Declarations to CEDAW

Summary of reservations or declarations to the CEDAW Convention according to country as at April 2009.¹⁴²⁸

Country | Reservations and / or Declarations

- Algeria | 2, 15(4), 16, 29(1)
- Argentina | 29(1)
- Australia | 11(2)
- Austria | 11
- Bahamas | 2(a), 9(2), 29(1)
- Bahrain | 2, 9(2), 15(4), 16 (any parts incompatible with the Shari'ah), 29(1)
- Bangladesh | 2, 16(1c)
- Brazil | 29(1)
- Brunei Darussalam | General reservation, 9(2), 29(1)
- Chile | Generally worded declaration
- China | 29(1)
- Cuba | 29(1)
- Democratic People's Republic of Korea | 2(f), 9(2), 29(1)
- Egypt | 2, 16, 29(1)
- El Salvador | 29(1)
- Ethiopia | 29(1)
- France | 9 (must not be interpreted as precluding the application of Article 96(2) of the French Nationality Code) 14(2c), 14(2h), 16(1g), 29(1)
- Germany | Preambular paragraph 11
- India | 5(a), 16(1), 16(2), 29(1)
- Indonesia | 29(1)
- Iraq | 2(f), 2(g), 9(1), 9(2), 16, 29(1)
- Ireland | 11(1b,c,d), 13(a), 16(1d), 16(1f)
- Israel | 7(b), 16, 29(1)
- Italy | Reservation to exercise the option in Article 19 of the Vienna Convention on the Law of Treaties
- Jamaica | 29(1)
- Jordan | 9(2), 16(1c), 16(1d), 16(1g)
- Kuwait | 9(2), 16(f), 29(1)
- Lebanon | 9(2), 16(1c), 16(1d), 16(1f), 16(1g), 29(1)
- Lesotho | 2 (with special reference to 2e)
- Libyan Arab Jamahiriya | 2, 16(c), 16(d)
- Liechtenstein | 1
- Malaysia | 9(2), 11, 16 (1a), 16(1c), 16(1f), 16(1g), 16(2)
- Maldives | 16
- Malta | 11, 13, 15, 16 (with special reference to 16(1e))
- Mauritania | Subject to Shari'ah Law and the Constitution of the State
- Mauritius | 29(1)
- Mexico | Generally worded declaration

¹⁴²⁸ Available at <www.iwraw-ap.org>.

- Morocco | 2, 15(4), 29(1)
- Myanmar [Burma] | 29
- Netherlands | Preambular paragraphs 10 and 11
- Niger | 2(d), 2(f), 5(a), 5(b), 15(4), 16(1c), 16(1e), 16(1g), 29(1)
- Pakistan | Subject to provisions of the National Constitution, 29(1)
- Republic of Korea | 16(1g)
- Saudi Arabia | Subject to norms of Islamic law, 9(2), 29(1)
- Singapore | 2, 11(1), 16, 29(1)
- Spain | Subject to constitutional provisions concerning succession to the Spanish crown.
- Syrian Arab Republic | 2, 9(2), 15(4), 16(1c), 16(1d), 16(1f), 16(1g), 16(2), 29(1)
- Switzerland | 15(2), 16(1g), 16(1h)
- Thailand | Subject to principles of the National Constitution, 16, 29(1)
- Trinidad and Tobago | 29(1)
- Tunisia | Subject to provisions of the National Constitution, 9(2), 15(4), 16(1c), 16(1d), 16(1f), 16(1g), 16(1h), 29(1)
- Turkey | 29(1)
- United Arab Emirates | 2(f), 9, 15(2), 16, 29(1)
- UK of Great Britain and Northern Ireland | 1, 4(1), 9, 11, 15(3), 15(4), 16(1f)
- Venezuela | 29(1)
- Viet Nam | 29(1)
- Yemen | 29(1)

Appendix B: Semi-structured Questionnaire

Interviews began by asking work-related background information of the participants. This helped the researcher to determine which questions were more relevant and which ones were not relevant to the participant. The following questionnaire was used as a general guide and a conversation prompter.

A. Experience as a Law Enforcement / Executive Official / Treaty Reporting

1. Have you worked with CEDAW / women's development / rights in the Maldives?
2. Are you aware of women's rights under CEDAW?
3. If you have specifically worked in CEDAW reporting:-
 - a) What were your roles within the department/ministry in relation to CEDAW reporting?
 - b) Can you explain how the Maldives reported under CEDAW? Who drafted the CEDAW reports? Who compiles data?
 - c) Who presents them at the CEDAW committee? Who decides on the delegation from the Maldives? How did you prepare for the country examination? Do you feel you were adequately prepared for the country examination?
 - d) What is the process of replying to concluding observations? How do you deal with the feedback?
 - e) Does expert feedback from the CEDAW committee assist positive progress in the area of women's public lives?
 - f) How can you have improved the preparation / CEDAW report / work after committee recommendations?
4. What was the role of your agency (formerly Ministry of Gender) in ensuring Maldives complies with its human rights commitments under CEDAW?
5. Did your department work to remove the reservations made to article 7 of CEDAW? Did you work on removing reservations to article 16? What are the major influences to retain these reservations?

B. Pre-CEDAW Women's Public Lives

1. How would you describe women's public lives prior to 1993 Maldives? Did the conversion to Islam bring and changes to women's public lives in the Maldives? Can you identify any publications on this matter?
2. Apart from female heads of States during the monarchy, what leadership positions did women occupy prior to 1993?

3. Is this information available in any statistics or published literature?
4. If women worked, were there any preferred jobs/occupations for women?
5. How would you describe the involvement of women in community life prior to 1993 in the Maldives?
6. What were the major roles played by women in the island committees and women's committees and how influential were they in the decision-making for the governance in the islands?
7. 1970s and 1980s is heralded as a period in history when there was a movement to bring more women into the decision-making of the country and hence followed the first women's committees in the country. What was the main driving force behind this movement?
8. Was there any influence from women's movements/committees/NGOs to ratify CEDAW?

C. Personal Experiences Questions

1. Can you describe your present / past job? (Conversation starter)
2. How did you pursue your position career in politics/civil service/community leadership? (Conversation starter)
3. How equal are women in local governance, leadership, media, and home?
4. What are the key difficulties in attaining to senior management and decision-making positions or political participation in your area of work/community?
5. How are women's public lives affected by religious beliefs, cultural beliefs, lack of awareness on human rights etc.?
6. Which one plays the most significant role in limiting the advancement of women in the Maldives in the area of participation in public life? (*place numbers 1-5 in order of preference with number 1 as the most significant and 5 as the least significant*)
 - ☐ Limited capacities to pursue such positions
 - ☐ Lack of supportive structures within the system
 - ☐ Too many responsibilities at home
 - ☐ Religious reasons
 - ☐ Traditional / Cultural reasons
7. Has the introduction of political parties affected women's participation in public life?

8. Are the existing laws / legislative framework sufficient to ensure equality and non-discrimination for women's public lives in the Maldives?
 - a) Can you identify any laws/policies that were created since ratification to incorporate the equality provisions of CEDAW into the national framework?
 - b) Can you identify any laws/policies that are discriminatory or inhibit participation of women in public life?
 - c) Can you identify any present laws and policies that are in need of amendments or are inconsistent with Maldives's commitments under CEDAW?
 - d) What do you think needs to be done to achieve formal and substantive equality in public life?
9. Do you believe having a specific gender or human rights ministry has an advantage over mainstreaming women's rights for the pursuit of equality for women?
10. What are your observations on the achievements of the Convention in terms of its impact on women's public lives? How can Maldives enhance the impact of the Convention on women's public lives?
11. What are the positive features within the society/system that supports women's public lives?
12. What else needs to be done to achieve women's equality in public life in the context of the Maldives?
13. Can you identify any publications and persons of importance that can contribute to this research? Would you like to add anything else related to the current discussion?

Appendix C: Ethics Approval

Te Piringa - Faculty of Law
The University of Waikato
Private Bag 3105
Hamilton 3240, New Zealand

Telephone +64 7 838 4167
Facsimile +64 7 838 4417
Email lawrecp@waikato.ac.nz
www.waikato.ac.nz.law



5 October 2015

Ms M Jabyn
34B York Street
Hamilton East
HAMILTON 3216

Dear Marium

I wish to advise that Te Piringa, Faculty of Law Ethics Committee has approved your ethics application for the project "Local Implications of International Human Rights Treaties: The Impact of a CEDAW Right to Public Life in the Republic of Maldives".

Should any changes from the existing application be made, you must stop the research and apply to Te Piringa - Faculty of Law Ethics Committee for approval; and must not begin the research again until the necessary approval has been obtained.

We wish you well with your research project.

Yours sincerely

Juliet Chevalier-Watts
Chair, Te Piringa - Faculty of Law Ethics Committee



Appendix D: Letter of Invitation to Participants

Date: [.....]

To: [.....]

PHD RESEARCH: A CEDAW RIGHT TO PUBLIC LIFE IN THE REPUBLIC OF MALDIVES

Dear Madam,

I am currently enrolled as a PhD candidate at the University of Waikato, New Zealand. I am proposing to conduct a research on the Impact of the Convention on All Forms of Discrimination against Women (CEDAW) on Women's Public Lives: A Case-Study of the Maldives.

You have been identified as a key person working in the area of CEDAW reporting/ implementation/ law enforcement etc. or as an individual/expert who has experienced 'public life'¹⁴²⁹ in the Maldives. This research could highly benefit from your expertise obtained through education and/or experience working in this sector in the Maldives.

The discussion will be geared towards obtaining information related to the current practice of CEDAW reporting (State reporting as well as shadow reporting), consequent efforts at following 'concluding observations' and 'recommendations', CEDAW implementation, commitment, compliance and enforcement. Research is also aimed at identifying reasons limiting women's engagement in public life in the Maldives and achievements for women in the Maldives to date.

The proposed interview/consultation with yourself/members of your organisation/advocacy group is not expected to take more than an hour of your invaluable time, will be conducted in English and will be audio-recorded.

Ethical approval under the Ethical Conduct in Human Research and Related Activities Regulation of the University of Waikato, New Zealand, has been officially granted for this research. Thus, all procedures of confidentiality and ethical command will be strictly followed at all times. Accordingly, names of any persons taking part in the stakeholder consultations will not appear in any of the publications.

I would appreciate your informed review of the enclosed material, prior to your approval and confirmation to the "open-ended interviews". Please do not hesitate to reach me at (+64) 021-1187-593 or mj68@students.waikato.ac.nz for any queries.

¹⁴²⁹ Participation in decision-making at all levels across the public sphere.

I look forward to your comments and approval.

Yours sincerely;

Marium Jabyn

C/- Te Piringa – Faculty of Law
The University of Waikato
21 Ruakura Road
Hamilton 3240
New Zealand

Supervisory Panel at the University of Waikato, New Zealand

Chief Supervisor

Professor Margaret Wilson

Te Piringa – Faculty of Law
University of Waikato
Private Bag 3105
Hamilton 3240
New Zealand

Co-Supervisor

Professor Nan Seuffert

Director, Legal Intersections Research
Centre
University of Wollongong
NSW 2522
Australia

RESEARCH PROJECT TITLE

A CEDAW RIGHT TO PUBLIC LIFE IN THE REPUBLIC OF MALDIVES

PURPOSE

This research is conducted as a partial requirement for the degree of Doctorate of Philosophy (PhD) in Law at the University of Waikato, New Zealand. To inform the proposed research, this research will use a number of mixed qualitative methods not limited to stakeholder consultations and expert interviews. The latter two will be conducted in the Maldives.

PURPOSE OF THE RESEARCH

This research will explore and review the changes in the situation of women's public lives since the ratification of CEDW in Maldives to inform the hypothesis that negligible changes have occurred in the area of women's public lives since CEDAW ratification. The thesis will also contend that the effectiveness of treaty implementation, such as CEDAW, has been curtailed due to existing and growing issues of socio-cultural and religious discrimination against women within national borders. Such issues, not limited to violence against women and adequate support structures to facilitate women's equality and eliminate discriminatory patterns, continue to prevent women from being a part of public life although most legal barriers have now been removed in cases such as the Maldives.

The research uses an intensive case-study method to explore the gap between rights-in-principle and rights-in-practice through measuring the disparities in the legislative and political framework and the perception of rights through qualitative interviews. The findings of this research can be used to enhance the effectiveness of CEDAW and ensure women's rights in relation to public life in both underdeveloped and developing countries in the future.

STAKEHOLDER CONSULTATION / EXPERT INTERVIEWS

Through the stakeholder consultations and interviews, it is intended that the researcher will acquire substantive information regarding the operation of the organisation and the work in relation to CEDAW and/or women's public lives in the Maldives. Participation in either the stakeholder consultation or if identified as expert interviewee, is voluntary. Apart from the benefit of knowledge sharing between the participants and the researcher, there are no financial or non-financial

benefits such as “monetary payments, prizes, goods, services or favours either directly or indirectly” for participation in this research.

The researcher will conduct all consultations and interviews in person. Preliminary contact will be through e-mail and telephone. However, all persons and organisations will be contacted formally via letters with information packages in attachment. In the event any person is unable to do an interview physically, telephone interviews may be conducted.

All persons involved in this study will be informed of the need to give informed consent prior to the interviews and consultation. Interviews will not be conducted unless informed consent is obtained from all participants and information providers to this research. At the beginning of the consultation and/or interviews, the researcher will provide participants with the objectives of the interview/consultation and will obtain their consent through signatures on the relevant consent forms. Participant’s signature on the consent forms will be deemed as informed consent and approval to the use of information from the interviews.

Questions for the stakeholder consultations will be based around the ‘stakeholder consultation guide’ and the questions for the expert-interviews will follow (but not limited to) the open-ended interview. Participants will be provided with a hard copy of these guides at the beginning of the consultation/interviews. Questions to clarify doubts or regarding the research may be asked at any point. Participants are free to refrain from answering any particular question or withdraw participation in the research at any time.

The researcher may need to interview the same participant for further information. Permission for further interviewing will be obtained during the first interview with the participant.

No publication or presentations coming out of this research will bear any names of any participants involved in this research.

All consultations and interviews will be audio-taped. Therefore, it is preferred that all consultations and interviews take place in a quiet space where it is possible to audio tape the conversation and interviews.

Once the open-ended interviews have been transcribed, the transcripts will be emailed to the individual participant. At this point, participants may add, delete or correct any information in these transcripts.

DATA STORAGE

The information from the participants will be stored in soft and hard files. The researcher will be using this material to inform the wider PhD research on the comparative analysis of the impact of CEDAW on women’s public lives in the Maldives. These results may be used in different conference papers, presentations and publications of the researcher. Hard files will be safely locked in private

cabinets accessible only the researcher. All soft files will be saved on hard disks or on private computers of the researcher and these systems will be password protected at all times.

According to 12 (1) of the Ethical Conduct in Human Research and Related Activities Regulations, “all non-identifying data (e.g. data sets and transcripts) used for publication must be securely kept long enough to allow for academic examination, challenge or peer review”. This period could potentially be as long as “at least five years”. The materials gathered through the stakeholder consultations and open-ended interviews will be shared with the research supervisors at the University of Waikato, New Zealand and University of Wollongong, Australia. Furthermore, information might also be stored within the Te Piringa – Faculty of Law, University of Waikato.

DECLARATION TO THE PARTICIPANTS

Data collected through these interviews is anticipated to contribute to a PhD thesis at the University of Waikato Law School. By participating in this research you are not obliged to answer any questions. You may refrain from answering any particular question you refuse to answer. Likewise, you may withdraw your consent to participate in this study at any time. During the interview, you may ask any questions related to the topic of discussion. At the end of all the interviews, and transcription of the interviews, you will be provided with a summary of the research findings.

Your participation is highly valued and is an important contribution to this research. I thank you for your time and cooperation. Please indicate your willingness to participate in this research by completing the attached “Participant Consent Form”. Do not hesitate to contact me at mj68@students.waikato.ac.nz or in the alternative, the following postal address in case of any queries.

Thank you.

Marium Jabyn

C/- Te Piringa – Faculty of Law
The University of Waikato
21 Ruakura Road
Hamilton 3240
New Zealand

Supervisory Panel at the University of Waikato, New Zealand

Chief Supervisor

Professor Margaret Wilson
Te Piringa – Faculty of Law
University of Waikato
Private Bag 3105
Hamilton 3240
New Zealand

Co-Supervisor

Professor Nan Seuffert
Director, Legal Intersections Research
Centre
University of Wollongong
NSW 2522
Australia

Appendix F: Participant Consent Forms

I have read the Participant Information Sheet for this study and have had the details of the study explained to me. My questions about the study have been answered to my satisfaction, and I understand that I may ask further questions at any time.

I also understand that I am free to withdraw from the study at any time, or to decline to answer any particular questions in the study. I understand the recorded interviews will be transcribed and shared with me and I can withdraw or change any information I have provided in the initial interviews before giving my final consent to the information I gave.

I agree to provide information to the researchers under the conditions of confidentiality set out in the Participant Information Sheet. I agree to participate in this study under the conditions set out in the Participant Information Sheet.

Additional consent as required

- ☐ I agree / do not agree to my responses being audio-taped.
- ☐ I agree / do not agree to my images being used.
- ☐ I agree / do not agree to further interviewing.
- ☐ I agree / do not agree to be interviewed for further information via telephone.
- ☐ I agree / do not agree to translate the interviews into English
(in case the interviews are requested to be conducted in the local language).

Signed: _____
Name: _____
Date: _____

Marium Jabyn
C/- Te Piringa – Faculty of Law
The University of Waikato
21 Ruakura Road
Hamilton 3240
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