

Human Rights Commission of the Maldives Male' Republic of Maldives



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<u>Comments by the Human Rights Commission of the Maldives to the draft</u> <u>Industrial Relations Act.</u>

Observation

Since the Labour Relations Act will be bringing in a whole new set of legal provisions on the right to strike, we at the HRCM believe that it is crucial for the enactment of this law to be met with an equal emphasis on the duty to raise awareness on the relevant legal provisions in order to achieve the desired results. Hence, we propose that the Labour Relations Authority to exercise the mandate to create awareness among workers, employers and the general public on the rights and responsibilities arising from this Act and other labour related Acts.

General Comments:

- Since the provisions of the Industrial Relations Act is related to other existing laws such as the Employment Act and the Associations Act it is crucial to identify any over lapping areas and harmonise them accordingly to avoid any ambiguities and contradictions.
- 2) As two core areas of the Act Chapter 4 on Collective Bargaining and Chapter 5 on Dispute Resolution are currently missing in the draft Act, we request that the inserted provisions under these Chapters be sent to us for comments. We also stress the provisions of these chapters to be formulated in line with the constitution, existing domestic laws and relevant international human rights and labour standards.
- 3) As Article 31 of the Constitution stipulates right to strike, we strongly believe that it is important for the right to strike be reflected in this Act. We also recommend that the lawful conditions, if any, that may limit a strike action by the employees to be clearly stated in this Act.

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Specific Comments on Core Areas of the Act: CHAPTER 1 - INTRODUCTION

Article 2

It is recommended to expand Article 2 (a) as follows. "Giving effect to fundamental rights and freedoms [of workers and employers – <u>both expatriates and nationals</u>] under the Constitution, <u>relevant domestic laws and international human rights standards to which the Maldives is party</u> <u>to</u>."

Article 4

It is recommended to include a definition for 'government' in Article 4 so as to offer clarity to the role of government as defined in the Act, especially since there are several state entities that do fall under the executive power specified under the constitution.

CHAPTER 2 – FUNDAMENTAL RIGHTS AND FREEDOMS

Article 7

As Article 7 (e) stipulates that every union member has the right to participate in lawful industrial action, it is significant that "lawful industrial action" or "other lawful action" to be specified and clearly stated. For example striking, picketing, collective bargaining, collective agreements etc.

Article 8

It is recommended to provide further substantiate what constitutes "<u>unreasonably refuse</u> to deal with the union" as stated in Article 8 (b).

It is recommended to specify and elaborate upon what amounts or what could amount as "<u>anything unfair</u> in order to undermine the role of the union in representing its members" in 8 (c). For example; taking away opportunities in the work place; taking disciplinary actions (suspension, dismissals etc) against workers belonging to a union, giving preferences for workers who are not part of a union etc.

Article 9

It is recommended to specify and clearly state what constitute as "lawful activities of an employer association" in Article 9 (c). This is to provide clarity to the workers and guidelines to employers in dealing with unions and carrying out activities of their associations.

Article 10

It is recommended to insert the following underlined parts to the beginning of the Article. "Subject to this Act, <u>the Maldivian constitution</u>, relevant domestic laws and international <u>standards</u>, every organization has the right to operate freely and independently.

Article 12

It is recommended to add the following as a new point to Article 12 stating prohibited conduct. (e) Discriminate between workers who are part of a union in recruitment, dismissal or promotion.

<u>CHAPTER 3 – REGISTRATION OF ORGANISATIONS</u> Part 1 – Registration and deregistration

Article 13

It is recommended to set clear requirements on how to ensure that an organization is "independent from the control of government and of other organizations" in Article 13 (c). For example: by stipulating that the office bearers are not serving in influential or senior positions in the government or any other organizations.

Article 16

It is recommended that "all reasonable inquiries" stated in Article 16 (b) to be clearly stated to avoid any ambiguity.

It is recommended to change Article 16 (c) as follows.

"The <u>Civil Court</u>, acting on the application of an interested person, considers it appropriate to order the deregistration of the registered organization, on the <u>ground</u> that it no longer meets the registration requirements contained in Section 13. <u>The Civil Court decision on such a case will be open for appeal to the High Court and the Supreme Court</u>."

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Part 2 – Operation of registered organizations.

It is recommended to add the following as a new point after Article 20.

- The constitution of the registered organization should be made available to all members of the organization.

Part 3 – Mandatory Requirements for registered organizations

Article 19

It is crucial to clearly state that decisions of the union to amalgamate with another registered organization or spilt or dissolve itself should be made after consulting and taking into consideration the views of its members.

Article 21

It is recommended to change the deadline for submitting the return to the Registrar from 6 months of the end of the financial year to <u>3 months of the end of every financial year</u>.

It is recommended to clearly state that the audited financial statements under Article 21 (a) should include transactions in and out of the organizations in order to ensure transparency.

It is also crucial to state whether or not the registered organizations under this Act will be taxed or not. Following the example of most of the countries, HRCM recommends that such organizations be exempted from taxation unless they undertake any commercial activity.

Article 22

As Article 22 refers to a situation where a registered organization resolves to amalgamate with another registered organization or spilt or dissolve itself, it is crucial to make reference to Article 19 (1) which stipulates that a registered organization must have a constitution describing the process for dissolving the registered organization, and the distribution of the assets of the registered organization.

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Article 27

It is recommended to change Article 27 as follows. "An official must not arrange a financial benefit (whether a gift, loan, bonus, commission or other benefit) to be paid by the organization to themselves except to achieve the objectives of the organizations stated in its constitution."

CHAPTER 6 – TRIPARTITE LABOUR DIALOGUE

Article 28

It is recommended to include independent observers such as the Human Rights Commission of the Maldives and relevant NGOs, to ensure fairness and transparency, during the Tripartite Labour Dialogue Forum.

It is also recommended that the number of representatives of registered unions (Article 28 (b)) be determined to reflect the main industries in the Maldives namely Construction, Tourism, Fishing and service sector industries such as teaching, nursing etc. Hence, HRCM believes that limiting the number of representatives of registered unions will not be a fair representation of the diverse industries in the Maldives and that the number should be increased accordingly.

Article 29

It is recommended to change the duration by which the representatives of the registered union be decreased from once every three years to one year with the prospect of being re-elected through consensus or majority vote among the registered union.

Article 33

It is crucial to state whether the decisions taken by the Forum will be treated as merely consultative or whether it will be binding. Further, it should also state who will be obliged to comply with the decisions taken by the Forum.

Article 34

It is recommended to change this Article to bring it in line the comment above for Article 28. "It is recommended to include independent observers such as the Human Rights Commission of the Maldives and relevant NGOs, to ensure fairness and transparency, during the Tripartite Labour Dialogue Forum."

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CHAPTER 7 - ADMINISTRATION

Article 35

It is recommended to clearly lay down the tenure of the Registrar of Organizations and it is crucial to state the grounds by which the Registrar can be removed or dismissed.

It is further recommended to state that the Registrar will be provided with the adequate staff and other logistical / financial resources to effectively carry out his/her mandate.

Article 37

It is recommended to clearly state the requirements or guidelines that would be used to measure the independence and impartiality of the Registrar as stated in this Article.

Article 38

It is recommended to lay down the conditions and/or procedure through which the Registrar delegate some or all of their functions to another civil servant within the Ministry.

Article 44

It is recommended that this Article be rephrased as follows. The recommended changes have been underlined. "If the Registrar <u>has not received a</u> late annual return within a reasonable period, he or she may refer the matter to the Court, which may make any necessary orders."

It is recommended to clearly state what amounts to a "reasonable period" in order to guarantee consistency and fairness.

It is also recommended that the penalties for failure to provide a late annual return be clearly stated under this Article as it has been done under Article 55.

Article 48

It is recommended to clearly state what amounts to a "period that is acceptable to the Registrar" as stated under this Article. This is in order to ensure regularity and fairness.

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Article 49

It is recommended to clearly state whether the Registrar may bring proceedings under this Act if all the conditions under this Article are satisfied or if one of these conditions is satisfied.

Article 51

It is recommended to change the duration of 35 days to make an appeal to High Court to 90 days. This is to give the aggrieved person or organization the same opportunity / duration to make an appeal to High Court as in other cases appealed at the High Court.

CHAPTER 8 - ENFORCEMENT

Article 55

It is to be noted that this article only states the penalties for Section 12 (prohibited conduct) and 3.3 of Chapter 3 (integrity requirements). Hence it is recommended to expand this Article to include penalties for other breaches of the Act such as that of Article 43 and Article 44 regarding failure to provide a copy of annual return.

CHAPTER 9 - MISCELLANEOUS

Article 59

It is recommended to state that the regulations referred under this Article should be made within 90 days of the enactment of this Act and published on the government gazette.

SCHEDULE 1

Article 6

It is recommended to clearly state the minimum number of members needed to be in attendance to hold a general meeting of the union.

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It is recommended to change Article 6 as follows. "A registered organization must hold a general meeting of members at least <u>once every year.</u>" This is to ensure the effective functioning of the registered organization and to ensure the accountability of the people in official positions of the registered organizations.

Article 9

It is crucial to lay down the maximum amount that the registered organization with which it may fine a member and clearly state the types of action such an organization can take to penalize its members.

Article 14

It is recommended to include the following to this Article. "These audited financial records and statements should be published in the government gazette."

Article 15

It is crucial to change this Article as follows so as to ensure that the transparency, accountability and the effective running of the organization in the long term. "A registered organization must keep the register of members, financial accounts and statements, minutes of meetings for the entire duration of which the registered organization is operating."

13th December 2012

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