

Government of The Maldives



Committee Against Torture

**CONSIDERATION OF THE MALDIVES' INITIAL REPORT SUBMITTED UNDER
ARTICLE 19 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

Opening Statement of Head of Delegation

His Excellency Ahmed Naseem
Minister at the President's Office

27 November 2018

Mr. Chairperson,
Distinguished Members of the Committee,
Representatives of Civil Society,
Ladies and Gentlemen,

It is my honour and privilege to present on behalf of the Government of the Maldives our comments on the report submitted by the prior Government on the implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention) to this 65th session of the Committee Against Torture (Committee). My other colleagues joining me here today, also listed in our submission, will respond as appropriate to questions raised by the Committee.

Let me begin by explaining that for me, representing my Government in presenting before you today is about much more than simply our compliance with our obligations under international

law; it is also deeply personal. Many years ago, I spent five years as a political prisoner in the Maldives, where I was repeatedly and brutally tortured. Over that time, I was held in solitary confinement for a year and spent another year banished to a remote island where I was forced to be a subsistence fisherman.

In addition, I also need to highlight a critical and rather unusual point. Our new President Ibrahim Mohamed Solih was only inaugurated 10 days ago, on 17 November 2018. As was widely reported by reputable international organizations, rights groups, and the media, our immediate prior President Abdulla Yameen, who served in office for the prior five years, led a highly repressive authoritarian regime that committed a wide range of gross human rights abuses against our people to maintain his grip on power. It was Yameen's regime that submitted our Initial Report to the Committee. Our Government's views of our country's record in complying with the Convention diverges substantially from the prior Government, as will be highlighted in my Opening Statement and our dialogue. Indeed, our views are generally consistent with those submitted to the Committee by the Human Rights Commission of the Maldives (HRCM) rather than those of the prior Government in the Initial Report. I therefore would ask that you not rely upon the Initial Report for an understanding of our Government's views about our compliance with the Convention. And I would ask that you refer to the Appendix to my Opening Statement, which provides specific comments, by paragraph, on the Initial Report.

It is hard to over-emphasize the dramatic transition that our country has undergone in recent weeks. For the last five years, our Government brazenly flouted its obligations under international law and made itself a pariah around the world by how it treated our citizens. Yet by their votes, our people have spoken loudly and unequivocally – they demanded that freedom, democracy, and human rights be restored. And by his election, President Solih has taken on a sacred trust to fulfill these hopes and dreams.

Our Government strongly believes in both the compatibility of Islam with democracy and that we can promote and protect human rights in accordance with our international legal obligations, which we view as consistent with Islam as our state religion. But our challenge, however, is much broader than ensuring that all Maldivians are free from torture or other cruel, inhuman, or

degrading treatment or punishment, despite its preeminent importance. President Solih has also committed to rebuild our democratic institutions, to restore the separation of powers and checks and balances to our system of government and, above all else, to help rebuild a judiciary that is independent so that the rule of law will again prevail for all our people. Such wide ranging systematic reforms can only serve to improve our ability to guarantee our human rights commitments, both locally and internationally.

This will require an enormous amount of work and close collaboration and cooperation with the treaty bodies, the UN Special Procedures, and the UN High Commissioner for Human Rights and her good offices, among many others. We welcome your engagement, ask for your assistance, and today provide an open invitation for any of these institutions to conduct missions to the Maldives and provide advice regarding thematic issues within their mandates. We will be most willing to receive a full country mission by the UN Special Rapporteur on Torture and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.

I want to make clear that our new Government condemns and opposes all torture and cruel, inhuman, or degrading treatment or punishment (CID) and it will work relentlessly to prevent and respond to these issues both proactively and reactively.

Turning now specifically to the Committee's mandate, I will first make some observations regarding a number of specific Convention provisions and then address an array of concerns that have been raised about gaps between the commitments of The Maldives under the Convention and their implementation in practice.

I. Observations on Implementation of Specific Convention Provisions

• Article 1 – General Framework for Prohibiting and Preventing Torture

The Maldives has for too long, overlooked issues of torture, CID, punishment and prison reform. In fact, every political leader in the ruling Government, including the new Minister of Home

Affairs, has spent considerable periods of time in jail, including solitary confinement. There is a strong determination by the Government to eradicate torture, CID and the Minister of Home Affairs has stated that prison reform will be one his topmost priorities. All forms of torture and CID are prohibited in Article 54 of our Constitution and under Article 57 in relation to those deprived of their liberty. Our Prisons and Parole Act prohibits torture and CID by prison officers and provides standards for all kinds of detention facilities, but further elaboration on those standards through regulation is required. Keeping in mind the high priority prison reform has been given in our new administration, the formulation of these regulations will be expedited. And torture is criminalized under our Anti-Torture Act and Penal Code. That said, however, there has been, especially in recent years, a dramatic gap between the existence of these laws and their application in practice. Eliminating this gap and responding to past and future acts of torture and CID is a top priority.

- **Article 2 – Prevention / Reported Incidents of Torture and CID**

The HRCM has investigated 630 alleged cases of torture between 2008-2017. Of the 275 alleged torture cases reported since the enactment of the Anti-Torture Act in December 2013, 110 were dismissed after investigation, another 97 were closed without prosecution due to insufficient evidence, and 38 cases were closed due to lack of cooperation from the parties. Only 14 cases are ongoing. In addition, there have been reports of 23 deaths of detainees in custody investigated by HRCM but this does not reflect the total number of actual deaths and there has been no conclusion on any case so far that the death was from anything other than natural causes. In light of the highly contentious relationship between the prior Government and the HRCM, which included the Supreme Court imposing new procedures for it to legally report abroad, it can be surmised that the HRCM had to operate in less than favourable conditions to implement their mandate. It is important to say unequivocally today that our Government will now cooperate fully with the HRCM. This will require us to review past cases, including those never shared with the HRCM, and to undertake a thorough review of our governmental systems for investigating allegations of torture to ensure objective and independent conclusions are reached and victims can obtain justice and accountability.

- **Article 2 – Prevention / States of Emergency**

The prior Government declared states of emergency in both 2015 and 2018. It is our Government’s view that these declarations were invalid under our Constitution as they were arbitrarily declared by President Yameen as a pretext for mass detentions of his leading political opponents. There were many credible reports of torture and CID during these periods that were never subjected to proper investigation and prosecution, which must be examined.

- **OPCAT – Functioning of the National Preventative Mechanism (NPM)**

The Maldives is a state party to the Optional Protocol to the Convention, with the HRCM designated as the NPM in 2007, but it was only able to function properly after the ratification of the Anti-Torture Act on 23 December 2013. As noted by the HRCM, the prior Government ignored or refused numerous requests for data about allegations of torture and CID and failed in its Initial Report to provide sufficient information on the situation of those deprived of their liberty, such as children under state care, juvenile delinquents, persons in mental health facilities, and persons detained in military facilities. In addition, there have been a wide array of allegations of excessive use of force by police and security forces. Our Government will supplement our Initial Report to the CAT with further data on these categories of people as soon as is practical.

Since the designation of HRCM as the NPM under OPCAT, the NPM has been conducting regular visits to all detention facilities where persons are deprived of their liberty. While detention conditions have been improving, according to the HRCM, complaints about “allegations of torture remain prevalent.” It is clear that there needs to be both improved training for relevant personnel and consistent accountability for perpetrators when violations have been substantiated.

The HRCM has also reported that detainees are often not informed about their rights at the time of arrest and that they lack interpreters to assist those who do not speak Dhivehi. Our

Government is grateful that the OPCAT Special Fund paid for the development, translation, and publication of booklets and posters on the rights at time of arrest in 10 languages.

- **Article 10 – Education and Information**

As reported by the HRCM, there has been a lot of training of police and prison officials. Yet this must increase substantially and the gap between our Government’s commitments under the Convention and their implementation in practice must be closed.

- **Article 14 – Right of the Victim to Redress**

Although the Anti-Torture Act provides provisions to allow for civil redress for torture victims and punishment of perpetrators, these provisions in practice have not been applied and there needs to be proper enforcement of the Act and disciplinary sanctions imposed. The Government will review why these provisions have not been applied in situation where torture was found to have occurred, and will prioritize the proper enforcement of the Anti Torture Act.

II. Gaps Between Commitments Under Convention and Implementation in Practice

There have been specific concerns raised to the Government by various UN bodies and civil society groups regarding potential gaps between our commitments under the Convention and their implementation in practice. While I am sure that the Committee will ask further questions about these and others issues during our dialogue, let me proactively address some of the most sensitive issues, especially where our views diverge from the former Government, as presented in the Initial Report or otherwise.

- **Death Penalty and Juvenile Death Penalty**

According to figures from the Maldives Correctional Service, a total of 18 individuals were sentenced to death in the Maldives. The majority of these sentences were commuted to life imprisonment. Today there are only three prisoners currently on death row in The Maldives, with

the last execution having taken place in 1954. As an initial commitment, just 10 days after his inauguration, I can report the Government will uphold the 65-year moratorium on the death penalty. In addition, to underscore this commitment, The Maldives will change its vote from the prior Government this year and will vote “yes” on the draft resolution before the UN General Assembly entitled “Moratorium on the Use of the Death Penalty” (A/C.3/73/L.44) when it comes up for voting in the Plenary.

Our Government knows that serious concerns have been raised about a number of these cases by the UN Human Rights Committee and civil society groups. The Maldives will seriously consider these concerns and ensure that it acts in full compliance with its obligations under international law.

We also understand that various international institutions, governments, and civil society groups would like The Maldives to abolish the death penalty for all crimes, even though the International Covenant on Civil and Political Rights permits state parties to impose of the death penalty for those over 18 years old, in cases of intentional homicide. At this stage, our new Government simply has not had enough time to examine this issue or take a position on it. But the Government will review this question very carefully.

With respect to offenders on death row who were convicted as juveniles, the moratorium will apply and any penalties imposed on them will comply fully with The Maldives’ obligations under the Convention on the Rights of the Child.

- **Corporal Punishment of Children**

President Solih is committed to having the Maldives join the 54 countries in the world that ban all forms of corporal punishment on children, including beatings by parents. A new Protection of the Rights of the Child bill was sent to the People’s Majlis on 26 June 2018 and prohibits corporal punishment being imposed on any child by their parents in any situation. The Government strongly supports this proposed legislation. Additionally, the 100-day action plan of

President Solih's government, includes the introduction of a Juvenile Justice bill to the Parliament, within the first 60 days of the administration.

- **Criminal Liability of Children Under 18 Years Old**

The Penal Code of the Maldives states that children under age 15 at the time of an offense may be presumed to lack the maturity of an adult to be held responsible for the commission of a crime. For children between ages 15 to under 18, they may be presumed to not be responsible for a crime if they lack the maturity of an adult, but this presumption can be rebutted by the prosecution. In examining this issue, the Government has decided that in accordance with its commitment to make the rule of law more humane, raising the age of criminal responsibility to 18-years-old would be consistent with its obligations under the Convention on the Rights of the Child. The Government will, therefore, submit a proposed amendment to this law in the People's Majlis.

- **Gender-Based Violence**

The Government acknowledges the issue of gender-based violence and its disproportionate effect on women in the The Maldives. The Government believes wider judicial reform, and a prioritization of evidence-based prosecutions over judicial processes that unfairly prejudice a particular gender will go far in ensuring a fairer criminal justice system for all.

The Government is committed towards enforcing and implementing with full effect, laws such as the Sexual Offences Act, Prevention of Sexual Harassment Act and the Domestic Violence Act, in order to work towards eliminating gender disparity.

Currently, the Penal Code of the Maldives criminalizes marital rape, but it does provide a rebuttable presumption where the law presumes the existence of consent for sexual intercourse between spouses. The new Government is focused on its duty to protect all persons against violence in all contexts. Abolishing this provision will require a change in the law, which the Government will submit to the People's Majlis.

- **Past Allegations of Torture**

On 26 July 2012, the UN Human Rights Committee urged The Maldives to constitute a new independent commission to examine prior allegations of torture. A new Transitional Justice Committee/Working Group is deliberating on the establishment of a commission that would have the authority to review cases between 1 January 2012 through 17 November 2018, but its final mandate has yet to be finalized.

There has also been concern in our country and abroad about cases of murders and enforced disappearances. Just hours after taking the oath of office on 17 November, President Solih established a Commission on Murders and Disappearances charged with conducting a “free, independent, and trustworthy investigation” into cases between 1 January 2012 and 17 November 2018 that were “not properly investigated.” The Commission is chaired by former Attorney General Husnu Al Suood and has four other members.

- **Prevention of Torture**

Especially in light of our country’s recent history, President Solih is committed to immediately acting to prevent and respond stridently to acts of torture and CID. To achieve this commitment, our Government will review and implement, to the maximum extent possible, prior recommendations of the NPM that were not addressed by the prior Government. The Government will conduct a thorough review of our Constitution, laws, regulations, and systems responsible for preventing and responding to torture and CID to improve our record dramatically going forward. And the Government will also be pleased to accept in good faith constructive recommendations made by the Committee through this process to improve our adherence to the Convention.

- **Strengthening International Human Rights Mechanisms**

Finally, I am pleased to announce today that President Solih has made two more decisions that will strengthen international human rights protections for our citizens.

First, the Government will shortly make a declaration under Article 22 of the CAT to allow complaints to be made by individuals within our jurisdiction regarding allegations of torture and CID to the Committee, upon their exhaustion of domestic remedies.

And second, the Government will submit for ratification to the People's Majlis *The UN Convention Against Enforced Disappearances*, which it signed on 6 February 2007.

Conclusion

Mr. Chairperson and Distinguished Members of the Committee,

As I hope that you can appreciate from our Delegation's Opening Statement today, the new Government of the Maldives is taking a dramatically different approach than the prior Government to ensure that it complies fully with its obligations under international law.

And to that end, I also want to announce that in light of our own forthcoming comprehensive review and numerous highly substantive actions we will be taking in the coming months to close the gap between our commitments under the CAT and their implementation in practice, the Government will within six months submit its first Periodic Report to the Committee.

We are pleased to now be able to engage in dialogue with the Committee about The Maldives' commitments under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. And our Government looks forward to working collaboratively, cooperatively, and constructively with the Committee going forward.

Thank you.