

## Inhuman sentencing of children in the Maldives

Briefing for the 71st June pre-sessional working group of the Committee on the Rights of the Child

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### Inhuman sentencing of children in the Maldives

1. Corporal punishment and capital punishment are lawful sentences for crime for persons under 18 under Islamic law. It appears that child offenders may also lawfully be sentenced to life imprisonment.
2. Juvenile justice is governed by the Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors 2006<sup>1</sup> and the Penal Code. A new Penal Code adopted in April 2014 overturned a 60-year moratorium on the use of capital punishment and allowed for children as young as seven to be sentenced to death for certain crimes.<sup>2</sup>

### Legality of inhuman sentencing

#### *Death penalty*

3. Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors states that children from the age of puberty may be held criminally responsible for committing apostasy, revolution against the state, fornication, fallaciously accusing a person of fornication, consumption of alcohol, unlawful intentional killing and other offences relating to homicide.<sup>3</sup> These are offences for which *hadd* is prescribed in Islam, including the death penalty, although contrary to Islamic law apostasy is not punished by death.<sup>4</sup>

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□ This Regulation repeals clauses 281 and 289 of the Regulation on Trial Procedures No. 6 and Ministry of Justice Circular Number 2004/03/MJ (24 February 2004).

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□ UN News Centre, Maldives should repeal new regulation providing for death penalty says UN rights office, 29 April 2014: <http://www.un.org/apps/news/story.asp?NewsID=47680#.VA6wBGSSrww>.

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□ Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors 2006, articles 4 and 5.

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4. From the age of 15, children may be convicted of other offences (age 10 for drug offences). The Penal Code and possibly other laws provide for the death penalty. The Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors states that children should receive two thirds of the minimum penalty stated in law, and gives the judge discretion where no minimum is stated, but there is no explicit prohibition of the death penalty for child offenders.

5. A new Penal Code adopted in April 2014 overturned a 60-year moratorium on the use of capital punishment. The new regulation provides for the use of the death penalty for the offence of intentional murder, including when committed by individuals under the age of 18. The age of criminal responsibility in the Maldives is 10, but for *hadd* offences (for which the prescribed penalty is mandatory), children as young as 7 years old can be held responsible. *Hadd* offences include theft, fornication, adultery, consumption of alcohol, and apostasy.<sup>5</sup>

### ***Corporal punishment***

6. Corporal punishment is lawful as a sentence for crime. Under the Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors, children who have reached puberty may be punished by flogging for committing certain *hadd* offences.<sup>6</sup> From the age of 15, children can also be convicted of a wider range of offences under Islamic law. The offence of theft, however, is reportedly not punished by amputation as might be expected under some Islamic law systems.<sup>7</sup> There is no provision for corporal punishment in the Penal Code. The Disobedience Law provides for corporal punishment as a sentence, but we have not been able to obtain further information on the exact nature or enforcement of this law.

### ***Life imprisonment***

7. The Government has stated that life imprisonment without possibility of release is not imposed for offences committed by persons under 18,<sup>8</sup> but there appears to be no explicit

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<sup>5</sup> Robinson, P. H. and the University of Pennsylvania Law School Criminal Law Research Group (2006), *Final Report of the Maldivian Penal Law & Sentencing Codification Project, Vol. 1 : Text of Draft Code (including Sentencing Guidelines)*, Commissioned by the Office of the Attorney General of the Maldives and the United Nations Development Programme, p. 4.

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<sup>6</sup> UN News Centre, Maldives should repeal new regulation providing for death penalty says UN rights office, 29 April 2014: <http://www.un.org/apps/news/story.asp?NewsID=47680#.VA6wBGSSwrw>.

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<sup>7</sup> Articles 4 and 5.

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<sup>8</sup> Robinson, P. H. and the University of Pennsylvania Law School Criminal Law Research Group (2006), *op cit.*, p.4.

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prohibition. Under the Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors, a child who is convicted of an offence punishable by imprisonment or banishment may, at the discretion of the judge, be sent to a juvenile detention centre or a rehabilitation centre or placed under house arrest.<sup>9</sup> If sentenced to imprisonment as specified in law, the penalty must be two thirds of the smallest penalty stated in the law or, where no minimum is specified, at the judge's discretion.<sup>10</sup> There is no explicit prohibition of life imprisonment.

8. According to one source, sentences of capital punishment are typically commuted to life imprisonment through presidential powers,<sup>11</sup> and this would presumably apply to child offenders convicted of capital offences. In 2005, a sentence of life imprisonment for drug possession passed by the Juvenile Court was overturned by the High Court on appeal, but we have not been able to obtain further details on this case.<sup>12</sup>

### **Inhuman sentencing in practice**

9. We have been unable to obtain statistical information relating to sentencing of child offenders to capital punishment, life imprisonment, or corporal punishment.

10. In 2003, 7 children under 16 (6 girls, 1 boy) and 36 children aged 16-18 (25 girls, 11 boys) were sentenced for the crime of fornication, but we do not know the nature of the sentences handed down.<sup>13</sup> The figures for 2004 were 6 children under 16 (all girls), 38 aged 16-18 (37 girls, 1 boy), and the figures for 2005 were 1 child under 16 (a girl), 20 aged 16-18 (18 girls, 2 boys).<sup>14</sup>

### **Progress towards prohibition and elimination**

11. All legal provisions authorising the courts to sentence persons under 18 to death or to corporal punishment should be repealed and legislation should be enacted to explicitly prohibit all judicial corporal punishment of child offenders, including under Islamic law. The law should also explicitly prohibit capital punishment and life imprisonment for child offenders.

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<sup>9</sup> 2006, para. 608; see also UNICEF (2006), *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law*, Kathmandu: UNICEF Regional Office for South Asia.

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<sup>10</sup> Article 17(b)

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<sup>11</sup> Article 17(e)

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<sup>12</sup> *Moving from aspirations to impact: NGO Shadow Report on CRC*, co-ordinated by Hama Jamiyya and Care Society with funding from UNICEF (2006), para. 120.

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<sup>13</sup> *ibid.*

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<sup>14</sup> *Moving from aspirations to impact: NGO Shadow Report on CRC*, co-ordinated by Hama Jamiyya and Care Society with funding from UNICEF (2006), p. 28.

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<sup>15</sup> *Ibid.*

## **The review of the Maldives by the Committee on the Rights of the Child**

12. In light of the clear international human rights consensus against the imposition of capital punishment, life imprisonment and corporal punishment of child offenders we hope that the the Committee on the Rights of the Child will urge the government of the Maldives to:

- Explicitly prohibit and enforce prohibitions on capital punishment, life imprisonment and corporal punishment for persons under 18 years of age, under all systems of justice and without exception to ensure full compliance with international standards.
- Raise the minimum age of criminal responsibility.
- Provide disaggregated data about sentences handed down to children by offence committed and date, as well as information about children in detention, including gender, age and length of time spent in pre-trial detention in each case.

13. To read CRIN's detailed report on Inhuman Sentencing of Children in the Maldives, visit: <https://www.crin.org/en/library/publications/maldives-inhuman-sentencing-children>