

Inhuman sentencing of children in the Maldives

Briefing for the 22nd session of the Human Rights Council's Universal Periodic Review in May 2015, submitted by the Child Rights International Network (CRIN), (www.crin.org), September 2014.

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 2006¹ 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.²

Legality of inhuman sentencing

Death penalty

3. 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.³

4. The Regulation on 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.⁴ 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.⁵

5. 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

¹This 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).

² 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>.

³ 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>.

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

⁵ 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.

child offenders.

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.⁶ 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.⁷ 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.

7. CRIN has received information indicating that corporal punishment provisions have been retained in the Penal Code 2014, but has not been able to confirm how the provisions apply to children.

Life imprisonment

8. The Government has stated that life imprisonment without possibility of release is not imposed for offences committed by persons under 18,⁸ but there appears to be no explicit 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.⁹ 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.¹⁰ There is no explicit prohibition of life imprisonment.

9. According to one source, sentences of capital punishment are typically commuted to life imprisonment through presidential powers,¹¹ 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.¹²

10. CRIN has not been able to determine how provisions on life imprisonment for child offenders has been affected by the introduction of the Penal Code 2014.

Inhuman sentencing in practice

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

12. No executions have been carried out in the Maldives since 1952, but courts have continued to hand down death sentences, including for people who were children at the time of the relevant offence. On 2 May 2013, two people were sentenced to death by the Juvenile Court for a murder

⁶Articles 4 and 5.

⁷Robinson, P. H. and the University of Pennsylvania Law School Criminal Law Research Group (2006), *op cit.*, p.4.

⁸2006, 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.

⁹Article 17(b)

¹⁰Article 17(e)

¹¹*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.

¹²*ibid.*

committed while under the age of 18.¹³

13. 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.¹⁴ 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).¹⁵

International human rights mechanisms

14. During the first cycle of the Universal Periodic Review, the Maldives accepted recommendations from the United Kingdom, New Zealand and Brazil to abolish flogging. The State also received recommendations from the United Kingdom, Canada, Slovenia, Spain, Austria and Chile to abolish the death penalty.¹⁶

15. In 2007, the UN Committee on the Rights of the Child expressed concern that children could be “exposed to a death penalty” from the age of seven and recommended that the Maldives abolish the death penalty for offences committed while under the age of 18. The Committee also recommended that the State abolish corporal punishment as a sentence for crime and disciplinary purposes.¹⁷

16. The Human Rights Committee has also urged the State to abolish flogging and to consider abolishing the death penalty;¹⁸ and the Sub-Committee on Prevention of Torture has recommended that the Maldives “prohibit all types of corporal punishment, including flogging irrespective of whether inflicted with the purpose to cause pain or humiliation, as a sentence for crime [or] for disciplinary purposes.”¹⁹

The review of the Maldives by the members of the Human Rights Council

17. In light of the clear international human rights consensus against the imposition of capital punishment, life imprisonment and corporal punishment of child offenders and the specific recommendations made to the Maldives by the Committee on the Rights of the Child, the Human Rights Committee and the Subcommittee on Prevention of Torture, we hope that the members of the Human Rights Council 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; and
- 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.

¹³Amnesty International, *Death Sentences and Executions 2013*, p. 24.

¹⁴*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.

¹⁵*Ibid.*

¹⁶*Draft report of the Working Group on the Universal Periodic Review, A/HRC/WG.6/17/L.6*, 25 October 2013.

¹⁷UN Committee on the Rights of the Child, *Concluding observations on the third periodic report of the Maldives*, CRC/C/MDV/CO/3, 13 July 2007, paras. 98 and 99.

¹⁸UN Human Rights Committee, *Concluding observations on the initial report of the Maldives*, CCPR/C/MDV/CO/1, 31 August 2012, paras. 13 and 16.

¹⁹Report on the first periodic visit of the Subcommittee on the Prevention of Torture, CAT/OP/MDV/1, 26 February 2009, paras. 26, 27, 28, 29, 192, 194, 195, 196, 207 and 248.

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