



From the Global Initiative to End All Corporal Punishment of Children, October 2018

This briefing describes the legality of corporal punishment of children in the Maldives. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children and the repeated recommendations to the Maldives to prohibit made by the Committee on the Rights of the Child, the Human Rights Committee, the Committee on the Elimination of Discrimination Against Women, the Subcommittee on Prevention of Torture and during the Universal Periodic Review, as well as the new global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development, we hope the Committee Against Torture will:

- **recommend to the Maldives, following examination of the state party’s initial report, that legislation is enacted and implemented as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including as a judicial sentence and under religious law.**

1 The Maldives’ report to the Committee Against Torture

1.1 The Maldives’ initial report does not address the issue of corporal punishment of children, despite its continued legality in all settings including as a sentence for a crime. It does not mention flogging and gives no indication of whether prohibition is being considered, either in the penal system or in all settings including the home.

1.2 **We hope the Committee will raise the issue of prohibition of corporal punishment of children in its review of the Maldives and recommend that legislation is enacted and implemented as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including as a judicial sentence and under religious law.**

2 The legality of corporal punishment of children in the Maldives

2.1 **Summary:** Corporal punishment of children in the Maldives is lawful in every setting, including in all institutions and as a sentence for a crime.

2.2 **Home (*lawful*):** Corporal punishment is lawful in the home. The Penal Code 2014 came into force in July 2015. Article 44(a) states that a “parent, legal guardian, teacher or other person similarly responsible for the care or supervision of a minor, or a person acting at the request of a person with such responsibility” may justifiably use force on a child for the “prevention or punishment of his misconduct”, provided that the force used “does not create a substantial risk of causing death, serious bodily injury, extreme or unnecessary pain or mental distress, or humiliation”. Provisions against violence and abuse – including in the Domestic Violence Act 2012 – do not

prohibit corporal punishment of children. Amendments to the Family Act were passed by Parliament in April 2016:¹ these did not include prohibition of corporal punishment.²

2.3 In information provided to the Human Rights Committee in 2012, the Government asserted that the Law on the Protection of the Rights of the Child 1991 “prohibits corporal punishment in homes, schools and the penal system of any person under the age of 18”.³ In fact, article 18 of the Law prohibits only punishment of a degree which is considered to harm the child: “No child shall, even as a measure of discipline, be subjected to punishment which may cause physical injury or which may be detrimental to the health of the child.” Furthermore, at the same time as stating that all corporal punishment is prohibited the Government confirmed that it had “identified the actions and measures to prohibit all corporal punishment in all settings including law reform and an anti-corporal punishment campaign is planned for 2013”.⁴

2.4 The Government had previously indicated a commitment to prohibition in all settings. Initially a commitment was made at a meeting of the South Asia Forum in July 2006, following on from the regional consultation in 2005 of the UN Secretary General’s Study on Violence against Children. In 2010, Government representatives in SAIEVAC (South Asia Initiative to End Violence Against Children) developed a national action plan to achieve prohibition, and in 2011 endorsed a report on progress towards prohibiting corporal punishment in South Asia states which included an analysis of the reforms required in the Maldives.⁵ In 2010 a Children’s Bill was being drafted which would reportedly prohibit corporal punishment in all settings.⁶ The Government reported to the Universal Periodic Review in 2015 that a new Child Rights Bill had been drafted “designed to bring the child protection system in line with the Maldives’ obligations under the CRC” and that the Ministry of Law and Gender is reviewing all child rights and protection related legislation and regulations.⁷ However, the Government went on to reject recommendations made during the review to prohibit corporal punishment of children,⁸ and to enact the Penal Code 2014 as described above.

2.5 The Government reported to the Committee on the Rights of the Child that a high-level consultation meeting to discuss the launching of an anti-corporal punishment campaign had taken place in November 2015 and a plan of action drawn up. It referred in this context to “incorporating provisions within the Child Rights Bill and the Juvenile Justice Bill to prohibit corporal punishment”: we are seeking further information.⁹

2.6 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings under the authorisation for the use of force in article 44 of the Penal Code 2014. In 2010 regulations for children’s homes were being drafted which would reportedly prohibit corporal punishment.¹⁰

¹ <http://www.majlis.gov.mv/en/2016/04/18/majlis-passes-bill-on-amendment-to-the-family-act/>, accessed 22 April 2016

² <http://minivannewsarchive.com/politics/parliament-accepts-amendments-for-regulating-division-of-assets-after-divorce-93166>, accessed 22 April 2016

³ 5 July 2012, CCPR/C/MDV/Q/1/Add.1, Written replies to the Human Rights Committee, para. 73

⁴ 5 July 2012, CCPR/C/MDV/Q/1/Add.1, Written replies to the Human Rights Committee, para. 74

⁵ SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review*

⁶ National action plan to prohibit all corporal punishment, SAIEVAC workshop on Legal Reform and Corporal Punishment, November 2010, Kathmandu

⁷ 17 April 2015, A/HRC/WG.22/MDV/1, National report to the UPR, paras. 79 and 80

⁸ 13 July 2015, A/HRC/30/8, Report of the working group, para. 144(9), 144(34), 144(35), 144(36), 144(37), 144(38) and 144(39); 1 October 2015, Future A/HRC/30/2 Advance unedited version, Draft report of the Human Rights Council on its 30th session, para. 386

⁹ [January 2016], CRC/C/MDV/Q/4-5/Add.1 Unedited Version, Reply to list of issues

¹⁰ National action plan to prohibit all corporal punishment, SAIEVAC workshop on Legal Reform and Corporal Punishment, November 2010, Kathmandu

- 2.7 **Day care settings (lawful):** Corporal punishment is lawful in early childhood care and in day care for older children under the provisions for the use of force in article 44 of the Penal Code 2014.
- 2.8 **Schools (lawful):** Corporal punishment is lawful in schools. The Ministry of Education has stated that corporal punishment should not be used, but article 44 of the Penal Code 2014 authorises the use of force by teachers for the “prevention or punishment of [the child’s] misconduct”. Article 10 of the Law on the Protection of the Rights of the Child 1991 states that punishment in school “must be appropriate to the age of the child and should not be physically or psychologically harmful to the child”. An Education Bill has been under discussion since 2009: it was reviewed by the Committee on National Development in October 2012 and recommendations for further amendments were made but we have no detailed information on the proposed provisions. The Bill was submitted to Parliament in August 2014.¹¹ the Government has reported that it would prohibit corporal punishment in schools.¹²
- 2.9 **Penal institutions (lawful):** Corporal punishment is lawful as a disciplinary measure in penal institutions under the provisions for the use of force in article 44 of the Penal Code 2014. Physical punishments – including beatings, being tied to trees, the use of stocks and other painful restraints and other cruel punishments – have been documented against children in detention.¹³ The Prisons and Parole Act 2013 was adopted in December 2013: we have yet to see the final text. In its draft form, the Bill included explicit prohibition of corporal punishment (art. 163) but it appeared to apply to adults only. Section 26(b) of the Prisons and Parole Act reportedly prohibits any acts of torture, inhumane or degrading treatment by prison officers.¹⁴ A Juvenile Justice Bill is under discussion and was expected to be submitted to Parliament in 2015: we are seeking information on the proposed provisions.¹⁵
- 2.10 **Sentence for crime (lawful):** Corporal punishment is lawful as a sentence for crime for Shari’a crimes. The Law on the Protection of the Rights of the Child 1991 prohibits cruel and degrading punishment on children, but does not prohibit corporal punishment. The Penal Code 2014 sets the age of criminal responsibility at 15 but this does not apply to “offences for which punishments are predetermined under Islamic Sharia” or to “violent felony offenses”, in which cases “the implementation of the punishment as per this Code should be withheld till the offender is 18 years of age” (art. 53). This means that children convicted of unlawful sexual intercourse (art. 411), incest (art. 413), false accusation of unlawful sexual intercourse (art. 612), and failing to fast during Ramadan, consuming pork or alcohol (art. 616) may be sentenced to corporal punishment (lashes), to be carried out when they are 18 years of age. Article 411(f)(3) defines lashes as “the symbolic punishment of striking an offender’s back with a short length of rope in a manner not designed to cause bodily injury. A single person must inflict all of the lashes prescribed as punishment, and he may only drive the rope using his wrists; he may not use any other part of his arm or movement in his shoulders, hips, back, legs or torso for that purpose”.
- 2.11 The Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors 2006 states that children from the age of puberty may be held criminally responsible for committing apostasy, revolution against the state, fornication, falsely accusing a

¹¹ 17 April 2015, A/HRC/WG.22/MDV/1, National report to the UPR, para. 26

¹² 28 January 2015, CRC/C/MDV/4-5, Fourth/fifth state party report, para. 110

¹³ Torture Victims’ Association & Redress (2012), *This is what I wanted to tell you: Addressing the legacy of torture and ill-treatment in the Maldives*, www.redress.org/downloads/publications/1206_maldivesreport.pdf, accessed 7 February 2016

¹⁴ 2 November 2017, CAT/C/MDV/1, Initial report, para. 33

¹⁵ 17 April 2015, A/HRC/WG.22/MDV/1, National report to the UPR, para. 80

person of fornication, consumption of alcohol, unlawful intentional killing and other offences relating to homicide (arts. 4 and 5).

- 2.12 In 2012, the Government stated to the Human Rights Committee that flogging is available as a sentence under Shari'a law only for persons over 18 but also that it had identified the necessary law reform to prohibit corporal punishment in a report published by the South Asia Initiative to End Violence Against Children (SAIEVAC).¹⁶ The report confirms that corporal punishment is lawful as a sentence for crime for children as described above.¹⁷
- 2.13 A Juvenile Justice Bill has long been under discussion: we have no details of its provisions. The failure to pass this and other legislation was noted by the Government in a media statement it issued on 28 February 2013 in response to a 15 year old girl being sentenced by the Juvenile Court to flogging. The Government expressed "deep concern", referred to the Convention on the Rights of the Child and announced the establishment of a Committee to review existing child protection mechanisms, particularly legislation. The Government reported to the Universal Periodic Review in 2015 that the Juvenile Justice Bill was expected to be submitted to Parliament in 2015, but made no comment on its provisions.¹⁸ However, the Government stated that since Islam is the basis of all laws in the Maldives, "it is unconstitutional to remove *Hadd* punishments such as the death penalty and flogging from the Penal Code".¹⁹ Recommendations to prohibit corporal punishment, including flogging, were rejected.²⁰ The Criminal Procedure Act 2016 was passed in April 2016: we have yet to see the text.

3 Recommendations by human rights treaty bodies and during the UPR

- 3.1 **CRC:** The Committee on the Rights of the Child made detailed recommendations on corporal punishment in the Maldives in its concluding observations on the second/third report in 2007, particularly concerning the draft new Penal Code and provisions allowing corporal punishment under Shari'a law. The Committee recommended prohibition of corporal punishment in all settings.²¹ Again in 2016, the Committee expressed strong concern over the legality of corporal punishment in all settings, including as a sentence for a crime, and recommended that it is explicitly prohibited as a matter of urgency.²²
- 3.2 **HRC:** In 2012, the Human Rights Committee recommended the abolition of flogging under Shari'a law and in all institutions in the Maldives.²³
- 3.3 **CEDAW:** In 2015, the Committee on the Elimination of Discrimination Against Women recommended that flogging is abolished as a sentence for consensual sexual relations outside marriage.²⁴

¹⁶ 5 July 2012, CCPR/C/MDV/Q/1/Add.1, Written replies to the Human Rights Committee, para. 74

¹⁷ SAIEVAC with the Global Initiative and Save the Children Sweden (2011), *Prohibition of Corporal Punishment of Children in South Asia: a progress review*, p. 21

¹⁸ 17 April 2015, A/HRC/WG.22/MDV/1, National report to the UPR, para. 80

¹⁹ 17 April 2015, A/HRC/WG.22/MDV/1, National report to the UPR, para. 58

²⁰ 13 July 2015, A/HRC/30/8, Report of the working group, para. 144(9), 144(34), 144(35), 144(36), 144(37), 144(38) and 144(39); 1 October 2015, Future A/HRC/30/2 Advance unedited version, Draft report of the Human Rights Council on its 30th session, para. 386

²¹ 13 July 2007, CRC/CDV/CO/3, Concluding observations on second/third report, paras. 55, 56, 62, 63, 98 and 99

²² 29 January 2016, CRC/C/MDV/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth report, paras. 30, 40, 41, 42, 43, 44, 68 and 69

²³ 31 August 2012, CCPR/C/MDV/CO/1, Concluding observations on initial report, para. 16

²⁴ 6 March 2015, CEDAW/C/MDV/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth report, paras. 44 and 45

3.4 **SPT:** In its 2009 report on the first visit to the Maldives, the Subcommittee on Prevention of Torture expressed concern that the draft Penal Code would legalise corporal punishment of children in schools and institutions and at flogging in the penal system. The Subcommittee recommended prohibition of corporal punishment as a sentence for crime and for disciplinary purposes.²⁵

3.5 **UPR:** During the Universal Periodic Review of the Maldives in 2010, the Government stated it had no plans to abolish flogging under Shari'a law but was concerned it was being imposed in a discriminatory way against women and a moratorium was being considered.²⁶ The Government partially accepted recommendations to prohibit judicial corporal punishment.²⁷ It stated: "The new draft Penal Code currently before the People's Majlis is the first of its kind, designed to combine Shariah law with international human rights law and best practice. Notwithstanding, the new draft Penal Code does include provisions on corporal punishment."²⁸ It also stated its intention to hold consultations on the issue.²⁹ In 2015, the Government declared that as, according to the Constitution, Islam is the basis of legislation in the Maldives, "it is unconstitutional to remove Hadd punishments such as the death penalty and flogging from the Penal Code" and "there is extremely high evidentiary burden prescribed to Hadd offences".³⁰ Several recommendations to prohibit corporal punishment, and particularly flogging, were rejected.³¹

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²⁵ 26 February 2009, CAT/OP/MDV/1, Report on first periodic visit, para. 26, 27, 28, 29, 192, 194, 195, 196, 207 and 248

²⁶ 4 January 2011, A/HRC/16/7, Report of the working group, paras. 33 and 68

²⁷ 4 January 2011, A/HRC/16/7, Report of the working group, paras. 100(55) and 100(58)

²⁸ 14 March 2011, A/HRC/16/7/Add.1, Report of the Working Group: Addendum, para. 100(55)

²⁹ 4 January 2011, A/HRC/16/7, Report of the working group, para. 100(58)

³⁰ 17 April 2015, A/HRC/WG.22/MDV/1, National report to the UPR, para. 58

³¹ 13 July 2015, A/HRC/30/8, Report of the working group, para. 144(9), 144(34), 144(35), 144(36), 144(37), 144(38) and 144(39); 1 October 2015, Future A/HRC/30/2 Advance unedited version, Draft report of the Human Rights Council on its 30th session, para. 385