



THE REPUBLIC OF MALDIVES

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 22ND SESSION OF THE UPR WORKING GROUP, MAY 2015

FOLLOW UP TO THE PREVIOUS REVIEW

The Maldives has taken steps to implement some of the recommendations made during its previous UPR. These include the country's accession in September 2011 to the 1998 Rome Statute of the International Criminal Court,¹ which Amnesty International welcomes. However, it has failed to implement a number of other UPR recommendations, including to end flogging and the death penalty, and to reverse intolerance of belief systems other than Sunni Islam.

The Maldives has failed to implement the recommendations from at least six states to abolish flogging.² In only one case, that of a 15-year-old girl, did the government respond positively to international concerns when it mounted a strong appeal to the High Court against the sentence, which led to her acquittal.³ However, the Maldives has taken no action to abolish or introduce a moratorium on flogging.

Also, in apparent defiance of widespread concerns inside and outside the country about the possible resumption of executions, the Maldives for the first time in more than 60 years began preparations in 2014 towards carrying out executions.⁴ This retrograde move takes the Maldives in the exact opposite direction to the four recommendations made by seven states in the previous UPR that the moratorium on executions should be maintained, with a view to abolishing the death penalty.⁵ Unfortunately, the Maldives accepted only the recommendation on maintaining the moratorium, saying "the Maldives is committed to maintaining a moratorium on the death penalty" But even that limited commitment now appears to be jeopardised⁶

Amnesty International is disappointed that the Maldives did not accept recommendations to remove restrictions in law and practice on freedom of thought, conscience and religion. The government did not even keep its own promise that "the Maldives does commit, as per recommendation 100.91, to begin awareness raising and public debate around the issue of freedom of religion and religious tolerance."⁷ Further, with the emergence of vigilante religious groups⁸ that create and execute their own laws to suppress these freedoms and the government's persistent failure to bring them to justice, the protection of the rights to freedom of thought, conscience and religion as well as freedom of expression is worse than it was at the time of the previous UPR.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Flaws in the judicial system

Amnesty International has frequently raised concern about fundamental flaws within the judicial system, which continue to undermine fair trials.⁹ Most laws in force are remnants of an outdated judicial system inherited from the 30-year rule of former president Maumoon Abdul Gayoom. Others are regulations by ministries and acts that Parliament has passed in recent years. Most judges have no formal training in law, yet exercise considerable discretion – often based on their own interpretation of Islamic law – in determining both the offence and its appropriate punishment.

The new Penal Code intended to address these shortcomings was eventually passed by Parliament in 2014, but will not come into force until 2015. In the interim period, the government is to amend other laws that might be in conflict with the provisions of the new Penal Code.¹⁰

Holding judges accountable for maladministration in judicial proceedings is the responsibility of the Judicial Services Commission (JSC); however, the JSC has been accused of being politicized, bringing into question its own impartiality.¹¹

Most judges are appointees of Maumoon Abdul Gayoom, who held considerable power as president and head of the judiciary during his 30-year rule that ended in 2008. All judges serving on 7 August 2008, when the new Constitution came into force, were to be evaluated by the JSC within two years and reappointed “in accordance with law”. However, before such a law was passed, the JSC had drawn up its own regulations which enabled it to reappoint all judges without seriously scrutinizing their qualifications.

Since the last UPR, the government has taken no visible action to ensure that standards of judicial independence and impartiality are upheld and monitored. For instance, there has been no action to strengthen the impartiality of the JSC. There is a perception in the Maldives, frequently voiced by judicial and government authorities to Amnesty International, that the principle of judicial independence would not be upheld if the government were to scrutinize the conduct of the judiciary. While Amnesty International would oppose interference by the executive in the affairs of the judiciary, it considers that statutory state organs entrusted with maintaining judicial accountability, such as the JSC, should monitor and take action against any breaches of impartiality. The Special Rapporteur on the independence of judges and lawyers stated at the conclusion of her visit to the Maldives in February 2013 that “the concept of independence of the judiciary has been misconstrued and misinterpreted in the Maldives”.

* Following the publication of its submission for the upcoming UPR of Maldives in September 2014, the Supreme Court summoned the Human Rights Commission of the Maldives (HRCM). The participation and contribution by relevant stakeholders in the UPR, including national human rights institutions and civil society groups, is a key element in the UPR process and as such should be encouraged and facilitated by the state coming up for review. Any punitive action against HRCM will raise serious human rights concerns.

THE HUMAN RIGHTS SITUATION ON THE GROUND

Cruel, inhuman or degrading punishment

People continue to be sentenced to flogging on conviction of “fornication”. In 2013, Amnesty International sought statistics from the government about the number of people under the sentence of flogging or of those who had been flogged; the organization did not receive any such information.

According to media reports and human rights defenders in the majority of “fornication” cases, only women have been convicted and flogged. In 2013, the office of the Prosecutor General told Amnesty International that convictions were primarily based on confessions, and that if the accused denied the allegations, the charge of “fornication” would normally be dropped. The office said men usually denied such allegations, and were therefore not charged. This was also true for some women, unless they had become pregnant or were under pressure from their communities. In such cases they admitted to the allegations and were charged.

* In 2013, Amnesty International spoke with a woman who had been convicted of “fornication”. She was sentenced to 20 lashes and four months in prison in June 2012, when she was 17. She said someone had witnessed her having sex with her boyfriend on an island and reported it to the police. She was arrested and taken to the Juvenile Court where she confessed. She said this was the second time she had been flogged – she had been 14 the first time. She said flogging is always done by a man and that “it was very painful when they flogged me. I was bruised and had marks on my body for some time”. After being flogged she was sent to prison.¹²

Amnesty International considers flogging to be a cruel, inhuman or degrading punishment and that the criminalization of “fornication” effectively discriminates against women and girls, violating their rights to privacy and bodily autonomy.

Death penalty

In April 2014, the government introduced “procedural regulations on investigating and penalising the crime of murder” which could indicate their intention to carry out executions. With these developments, the Maldives appears to be at the brink of resuming executions after more than 60 years, putting at risk the lives of at least 20 people remaining on death row.

The Criminal Court imposed 13 death sentences in 2013. In addition, two were sentenced to death by the Juvenile Court in 2014 for crimes committed when they were under the age of 18.

Freedom of thought, conscience and religion and freedom of expression

The Constitution sanctions discrimination on grounds of religion: by requiring Maldivian citizens to be Muslims, it blocks the right to citizenship for Maldivians who profess no belief or adhere to other religious beliefs.¹³ The Constitution further discriminates against branches of Islam other than Sunni by stipulating that only “a Muslim and a follower of a Sunni school of Islam” can be the president, a cabinet minister, a judge or an MP.¹⁴

The Maldives has not responded positively to international calls to bring its legal framework into conformity with the principles of non-discrimination on grounds of religion. It retains its reservation to Article 18 of the ICCPR.

Restrictions in law against freedom of thought, conscience and religion, and the government’s failure to protect individuals against attacks on grounds of exercising these rights has prevented the enjoyment of these rights by people. In 2012, Member of Parliament, Dr Afrasheem Ali, was stabbed to death after voicing support for open debates on religious issues. While the trial of his alleged killers is underway, no one has been brought to justice for stabbing and seriously injuring blogger Ismail Hilath Rasheed in 2012. He had also been attacked in 2011 for advocating religious freedom.

These attacks took a new form in June 2014 when a vigilante religious group kidnapped several young men, held them for hours, ill-treated them and warned them not to promote “atheism”. None of the kidnappers have been brought to justice, even though the identities of some of them are allegedly known to the victims.

* In August 2014, Ahmed Rilwan Abdulla, a well-known journalist with Minivan News, disappeared. He was last seen in the early hours of 8 August on the Malé-Hulhumalé ferry. He had been investigating the activities of vigilante religious groups, and his disappearance was believed to be linked to his work as a journalist. Members of Parliament and other journalists raising their voice against Rilwan’s disappearance have themselves received death threats.

* Ibrahim Waheed (Asward), a journalist with Raajje TV News, was left in a critical condition following an attack in February 2013. He had received several death threats to stop his news reporting.

Torture and other ill-treatment, excessive use of force and impunity

Impunity for human rights violations, especially for torture and other ill-treatment and for unnecessary or excessive use of force by police against demonstrators has been a persistent failure of the government.

For example, the government has not disclosed whether police officers are being investigated for using unnecessary

force against youths peacefully attending a private music festival in April 2014. Police ransacked their belongings, held 79 of them in handcuffs overnight and subjected some of them to torture and ill-treatment.

The government has also failed to bring to justice police officers engaged in attacks against the Maldivian Democratic Party (MDP) MPs and members in February 2012, more than two years after these attacks happened.

From 7-9 February 2012 – around the time when then President Mohamed Nasheed resigned in controversial circumstances -- police officers were effectively engaged in a violent campaign against members and supporters of the MDP. None of the police officers involved in these attacks have been brought to justice.

- * On 7 February 2012, several police officers attacked MP Eva Abdulla and hit her on her head and shoulder and kicked her.
- * Police charged at MP Mariya Ahmed Didi on 7 February 2012 and beat her on her head. She was then detained and police beat her and pepper sprayed directly into her eyes and mouth.
- * Police attacked MP Ahmed Esa on 7 February and beat him repeatedly with a metal rod.
- * Ahmed Shamah Rasheed, Deputy Mayor of Malé, was beaten by police officers on 8 February until he collapsed. His wife was also severely beaten.
- * Ismail Manik, an MDP activist, collapsed after police beat him on the head. He was repeatedly kicked in the ribs by the police.
- * Police in plain clothes beat Mohamed Shafeeg, a senior MDP member, seriously injuring him.
- * Mohamed Amir, one of hundreds of demonstrator and MDP supporter who was beaten severely by police and military officers had to flee the hospital where he went for treatment. He saw police beating other injured demonstrators there.
- * Mohamed Saeed, a businessman and MDP supporter was arrested at his home in Addu on 9 February, and severely tortured.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of the Maldives to implement the following recommendations:

The judicial system

- Provide adequate training for judges, including human rights training, to strengthen fairness in judicial proceedings;
- Strengthen the impartiality and independence of the Judicial Services Commission;
- Ensure that the judiciary operates in accordance with international human rights standards;
- Ensure that relevant stakeholders can participate freely in the UPR process;
- Guarantee the independence of the Human Rights Commission of Maldives to carry out its work free from political interference or any intimidation by the authorities.

Cruel, inhuman or degrading punishment

- Impose an immediate moratorium on flogging, with a view of abolishing it in law;
- Commute all sentences of flogging.

The death penalty

- Immediately announce a moratorium on executions, with a view of abolishing the death penalty;
- Halt all preparations for carrying out executions;
- Commute all existing death sentences.

Freedom of thought, conscience and religion and freedom of expression

- Withdraw the reservation to Article 18 of the ICCPR;
- Remove provisions in national legislation that restrict freedom of thought, conscience and religion, including Article 9.d of the Constitution, which bar non-Muslims from being Maldivian citizens;
- Carry out prompt, impartial and thorough investigations into the attacks on Islamil Hilath Rasheed and Ibrahim Waheed (Asward) and bring the perpetrators to justice in fair trials;
- Investigate thoroughly the possible abduction or enforced disappearance of Ahmed Rilwan Abdulla and bring to justice those responsible in a fair trial;

Torture and other ill-treatment, excessive use of force and impunity

- Carry out prompt, impartial, independent and efficient investigations into all complaints and reports of unnecessary or excessive use of force by police against demonstrators and bring those responsible to justice, including those with command responsibility, in fair trials without recourse to the death penalty, and provide reparations to the victims;
- Ensure that members of the police are trained to respect human rights.

END NOTES

¹ 'Maldives becomes latest country to endorse International Criminal Court', UN NewsCentre, http://www.un.org/apps/news/story.asp?NewsID=39669#.VB_sc_lDVpt (accessed 22.09.2014)

² These states were: Austria, Brazil, Canada, France, New Zealand and UK. See 'Report of the Working Group on the Universal Periodic Review*, Maldives', United Nations, A/HRC/16/7, 4 January 2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/100/41/PDF/G1110041.pdf?OpenElement> (accessed 22.09.2014) Paragraphs: 100.52 (Canada); 100.55 (UK); 100.58 (France, New Zealand, Austria and Brazil).

The Maldives rejected these recommendations. See 'Report of the Working Group on the Universal Periodic Review Maldives Addendum', United Nations, A/HRC/16/7/Add.1, 14 March 2011, http://www.upr-info.org/sites/default/files/document/maldives/session_9_-_november_2010/ahrc167add.1maldivese.pdf (accessed 6 October 2014) Paragraphs: 100.52, 100.55, 100.58.

³ Amnesty International, '15-year-old girl's flogging sentence quashed' <http://www.amnesty.org/en/library/asset/ASA29/006/2013/en/feb6fdeo-f325-40cd-9bf2-384c6bff8a6a/asa290062013en.pdf> (accessed 22.09.2014)

⁴ Amnesty International, 'Maldives: Halt "retrograde" move to resume executions', <http://www.amnesty.org/en/news/maldives-halt-retrograde-move-resume-executions-2014-01-24> (accessed 22.09.2014)

⁵ The states making these recommendations included Austria, Canada, Slovenia and the United Kingdom. See 'Report of the Working Group on the Universal Periodic Review*, Maldives', United Nations, A/HRC/16/7, 4 January 2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/100/41/PDF/G1110041.pdf?OpenElement> (accessed 22.09.2014) Paragraphs: 100.6 (France); 100.55 – 100.57 (UK, Canada, Slovenia, Chile, Austria and Spain).

The government rejected the recommendations to abolish the death penalty but said "the Maldives is committed to maintaining a moratorium on the death penalty". See 'Report of the Working Group on the Universal Periodic Review Maldives Addendum', United Nations, A/HRC/16/7/Add.1, 14 March 2011, http://www.upr-info.org/sites/default/files/document/maldives/session_9_-_november_2010/ahrc167add.1maldivese.pdf (accessed 6 October 2014) Paragraphs: 100.56; 100.55 – 100.57.

⁶ Ibid

⁷ Ibid

⁸ In this document, vigilante religious groups refer to self-styled groups in the Maldives professing a strict interpretation of Islamic doctrine and allegedly opposed to anyone adhering to secular views or religious views other than these groups'.

⁹ See: Amnesty International, 'The other side of paradise: A human rights crisis in the Maldives', <http://www.amnesty.org/en/library/info/ASA29/005/2012/en> (accessed 22.09.2014)

¹⁰ Amnesty International does not have a copy of the new Penal Code but has been informed that it contains the punishment of flogging and the death penalty.

¹¹ See for instance the following from 'Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Addendum, Mission to Maldives', United Nations A/HRC/23/43/Add.3 - 21 May 2013 : http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-43-Add3_en.pdf (accessed 22.09.2014), Paragraph: 44.

"44. First, the interlocutors of the Special Rapporteur almost unanimously declared that the current composition of the Judicial Services Commission is inadequate and politicized.

The Human Rights Committee also expressed its concern at the composition and functioning of the Commission, stating that it compromises the realization of measures to ensure the independence of the judiciary as well as its impartiality and integrity. Because of this politicization, the Commission has allegedly been subjected to all sorts of external influence and has consequently been unable to function properly."

¹² Amnesty International understands that the boyfriend was sentenced to an unknown term of imprisonment for having sex with a minor.

¹³ Article 9.d of the Constitution of the Republic of Maldives <http://www.maldivesinfo.gov.mv/home/upload/downloads/Compilation.pdf> (accessed 22.09.2014)

¹⁴ Articles 73.a.3, 109.b, 130.a.b, 149.b.1 of the Constitution of the Republic of Maldives.