

## I. EXECUTIVE SUMMARY

1. This report contains the details of the compliance with human rights obligations by the Republic of the Maldives in connection with its use of death penalty and related issues, including (i) the implementation of accepted recommendations from the country's 2015 Universal Periodic Review relating to the death penalty or related issues, such as fair trials and judicial independence, among other things and (ii) the recent developments relating to the death penalty (and related human rights issues) in Maldives since the 2015 UPR.
2. This report addresses the death penalty as well as torture and cruel, inhuman or degrading treatment, conditions of detention, arbitrary detention, administration of justice and fair trials, and judicial independence and the rule of law.

## II. BACKGROUND AND FRAMEWORK

### A. 2015 Universal Periodic Review of Maldives

3. During its second Universal Periodic Review in 2015, the Maldives received 25 recommendations on the death penalty, 29 recommendations on fair trials, the rule of law and judicial independence, 6 recommendations on cruel and unusual punishment, 4 recommendations on enforced disappearances, 3 recommendations on torture and treatment in detention and 1 recommendation on arbitrary detention.<sup>1</sup> Maldives neither accepted nor implemented any of the recommendations on death penalty and on cruel and unusual punishment.<sup>2</sup> Among the recommendations for fair trials, the rule of law and judicial independence, Maldives had accepted 26 of the 29 recommendations.<sup>3</sup> It also accepted all of the recommendations on enforced disappearances, torture and treatment in detention and arbitrary arrest.<sup>4</sup> While Maldives should be commended for accepting a number of the above-mentioned recommendations, it has only partially implemented them.

1. *Death Penalty: Abolish death penalty, including for persons below the age of 18*

#### **Status of Implementation: Not Accepted, Not Implemented**

4. The Maldives received recommendations to abolish, place a ban on, or take measures to prohibit the application of, death sentences, either generally or against minors (persons under the age of 18) from six countries, including New Zealand, Spain, Belgium, France, Latvia and Sierra Leone. Maldives did not support any of these recommendations,<sup>5</sup> and it has not implemented them.

2. *Death Penalty: Ratify the Second Optional Protocol to the ICCPR*

#### **Status of Implementation: Not Accepted, Not Implemented**

5. The Maldives did not support or implement any of the recommendations from six countries that it ratify or accede to the Second Optional Protocol to the International

Covenant on Civil and Political Rights. These countries include Ecuador, Rwanda, Namibia, Norway, Paraguay and Madagascar.<sup>6</sup>

3. *Death Penalty: Maintain Moratorium on the Application of Death Penalty*

**Status of Implementation: Not Accepted, Implemented**

6. The Maldives received recommendations to maintain the moratorium on the application of death penalty with a view to abolishing the death penalty from 12 countries, including Brazil, Italy, Germany, Spain, Argentina, Montenegro, France, Nepal, Ukraine, Slovenia, Uruguay and Australia. It did not support these recommendations,<sup>7</sup> but in November 2018 the administration of President Ibrahim Mohamed Solih announced that the Maldives would maintain its moratorium on the death penalty.<sup>8</sup>

4. *Death Penalty: Remove Penal Code Provisions Relating to Corporal Punishment and the Death Penalty*

**Status of Implementation: Not Accepted, Not Implemented**

7. The Maldives received a recommendation from Albania to remove certain provisions from its Penal Code relating to corporal punishment, including flogging for sexual intercourse outside of marriage and death penalty. It did not support or implement the recommendation.<sup>9</sup>

5. *Fair Trials, Rule of Law, and Judicial Independence*

**Status of Implementation: Accepted, Not Implemented**

8. The Maldives supported recommendations from 26 countries to (i) strengthen its legislative framework to promote and protect human rights, including providing access to criminal justice services and legal assistance,<sup>10</sup> (ii) ensure judicial independence and impartiality,<sup>11</sup> and (iii) enforce the concepts of separation of powers and rule of law.<sup>12</sup> The Maldives has not implemented these recommendations; former President Yameen increasingly interfered in legislative and judicial affairs of the country during his presidency. He issued a state of emergency in February 2018, which suspended constitutional protections, banned public assemblies, and granted security forces sweeping powers to arrest and detain. As a result, Supreme Court Chief Justice Abdulla Saeed and Justice Ali Hameed were arrested, as well as former President Maumoon Abdul Gayoom, Yameen's half-brother.<sup>13</sup> Maldives did not support three recommendations from the United States, Norway, and Canada to end politically motivated prosecutions and release political prisoners, including former President Nasheed, due to the absence of a fair trial.<sup>14</sup> However, in January 16, 2016, Mr. Nasheed was granted permission to leave the Maldives for the United Kingdom to undergo spinal surgery and in May 2016, the U.K. government granted Nasheed asylum.<sup>15</sup>

6. *Enforced Disappearances, Torture and Detention Conditions, and Arbitrary Detention*

**Status of Implementation: Accepted, Partially Implemented**

9. The Maldives received recommendations to (i) ratify and accede to the International Convention for the Protection of All Persons from Enforced Disappearance from four countries, including Uruguay, Madagascar, Tunisia and Peru,<sup>16</sup> (ii) submit the initial

report to the Committee against Torture and end arbitrary detentions, in particular, on the ground of difference in political opinions from Denmark and France,<sup>17</sup> (iii) fully respect the rights, safety and security of the individuals in government custody from Canada,<sup>18</sup> and (iv) exercise restraint on the part of the Maldives' security forces in the face of peaceful and democratic protests and cease intimidation of the media from Canada.<sup>19</sup> As of the date of this report, the Maldives has not yet ratified the International Convention for the Protection of All Persons from Enforced Disappearance.<sup>20</sup> It submitted its initial report to the Committee Against Torture in October 2017.

## **B. Domestic Legal Framework**

10. The Republic of the Maldives is a multiparty constitutional democracy.<sup>21</sup> Article 16 of the Maldives' Constitution states that "everyone has the right to life, liberty and security of the person, and the right not to be deprived thereof to any extent except pursuant to a law made in accordance with Article 16 of this Constitution." Article 16 explains that such rights must be protected in accordance with what is proper in a "free and democratic society" and under the Sharia law, and provides that the limitation of any right must pass a proportionality test with an emphasis on the importance of the right. The onus of demonstrating that it is necessary to infringe a right to protect a tenet of Islam or some other state purpose is on the State (or the individual asserting that there should be a limitation). Article 54 prohibits "cruel, inhumane or degrading treatment or punishment, or to torture."
11. The death penalty is an available penalty for many types of offenses under the Penal Code of the Maldives and the Prevention of Terrorism Act of 1990, including murder, treason (including causing harm to the President of Maldives in contravention of the Sharia or law or committing acts detrimental to the government, sovereignty or territory)<sup>22</sup> and certain terrorism acts that cause death.<sup>23</sup> A death sentence can be carried out either by lethal injection<sup>24</sup> or hanging.<sup>25</sup>
12. On April 27, 2014, the Maldives adopted the Regulation on Investigation & Execution of Sentence for Willful Murder,<sup>26</sup> which provides for the use of death penalty in the case of intentional homicide and premeditated murder, if and when the Supreme Court issues or affirms the death penalty as the appropriate sentence. The regulation allows for the traditional Sharia mediation process in which the victim's heirs are asked to choose between a retributive death sentence and pardoning the convict, in which case they can elect to receive monetary compensation.<sup>27</sup>
13. The imposition of death penalty in the Maldives is not mandatory. Although the death penalty for murder can be applied in a mandatory fashion under Sharia law,<sup>28</sup> courts have discretion whether to impose a death sentence.<sup>29</sup> The heirs of the victim may be sought for a determination of whether or not they wish for retributive death penalty or pardon, but the Supreme Court is vested with final authority on issuing (or affirming) the sentence.<sup>30</sup>
14. In addition, under the Regulation on Investigation & Execution of Sentence for Willful Murder, the death penalty will not be implemented until the defendant has exhausted the full appeal mechanism.<sup>31</sup>

### **III. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS**

15. While the death penalty is an available punishment under the Maldives' law, the last time the country carried out a death sentence was in 1954.<sup>32</sup> Nonetheless, many human rights violations connected with the death penalty persist in the Maldives.

#### **Right or area 12.4. Death penalty**

16. As stated in paragraph 11 above, the death penalty in the Maldives is an available punishment not only for intentional homicide and premeditated murder. It is also an available punishment for offenses that do not involve intentional killing or any killing at all, including treason and certain terrorist acts. The definition of "terrorism" in the Prevention of Terrorism Act is broad, which includes a variety of purportedly terrorist acts not entailing an intentional killing, such as certain acts of simply making threats to cause harm or damage to persons or property either orally or in writing.<sup>33</sup>

17. In 2014, the government of then-President Abdulla Yameen announced that the Maldives will resume executions after more than 60 years without carrying out an execution.<sup>34</sup> In July 2017, noting that three executions could take place within days, Agnes Callamard, Special Rapporteur on extrajudicial, summary and arbitrary executions, intervened to urge the government to maintain de facto moratorium on the death penalty.<sup>35</sup> As of the date of this report, no executions have taken place in the Maldives.<sup>36</sup>

18. At the beginning of 2018, there were still 20 people on death row, including at least five who had been convicted and sentenced to death for crimes committed when they were less than 18 years of age.<sup>37</sup> In November 2018, the Ministry of Foreign Affairs of the Maldives announced that a 65-year moratorium on the death penalty would be maintained by the new administration of President Ibrahim Mohamed Solih, and that it will vote in favor of the UN moratorium resolution at the upcoming UN General Assembly.<sup>38</sup> Despite this commitment, the Maldives nonetheless voted against the resolution.<sup>39</sup>

#### **Right or area 12.5. Prohibition of torture and cruel, inhuman or degrading treatment**

19. The Committee against Torture considered the Maldives' initial report during the meetings held on November 27 and 28, 2018. Because the Maldives' delegation represented the newly elected government of President Solih that had just ascended to power on November 17, 2018, the Committee welcomed the new government's statement that the report submitted by the previous government of former president Yameen was not accurate, truthful or complete, as well as the new government's pledges to submit a new report within six months.<sup>40</sup> According to the Committee's website, the government has not yet submitted a supplemental report.

20. The Committee recognized the accession to and ratification of various international instruments by the previous governments of the Maldives, and the new government's initiatives to revise certain of its laws, policies, programs, and administrative rules relating to the Convention against Torture. But the Committee raised several concerns, including a lack of accountability for torture, torture committed by the police and government security forces, a lack of appropriate penalties for parties committing torture, numerous deaths of inmates while in government custody, prolonged detention without judicial review, and the continued practice of "judicial flogging" administered under the

conservative interpretation of the Sharia penalties and the Penal Code, among other things. Accordingly, it offered various recommendations to the government of the Maldives relating to these concerns.<sup>41</sup>

### **21. Right or area 12.6. Conditions of detention**

22. In the Concluding Observation on the Initial Report of Maldives relating to the Convention against Torture, the Committee against Torture stressed the importance of prison reform and improving conditions of detention.<sup>42</sup> In particular, it was concerned that (i) material conditions in penitentiary and other detention facilities in the Maldives do not meet the minimum international standards, (ii) these facilities purposely deny adequate medical attention and care to prisoners, (iii) there has been frequent use of prolonged solitary confinement against political prisoners, as well as provision of rotten and expired food, and (iv) there have been cases of torture and ill-treatment of persons deprived of their liberty by prison staff.<sup>43</sup>
23. The Committee made various recommendations to the Maldives to improve conditions of detention, including, but not limited to, undertaking measures to improve prison conditions, such as reduction of overcrowding, ensuring prisons receive adequate and timely medical care and medication, hiring additional trained prison staff, and introduction of health screening of inmates upon admission to reduce infectious diseases.<sup>44</sup>

### **Right or area 13.3. Arbitrary arrest and detention**

24. While the law in the Maldives prohibits arbitrary arrest and detention, the government has failed to enforce the law consistently, especially in cases against members of the political opposition.<sup>45</sup>
25. Since former President Yameen came to power in 2013, the Maldives had witnessed increasing repression, including arbitrary arrests and detention. The Maldives declared a state of emergency on February 5, 2018 following the Supreme Court's decision to release and re-try imprisoned opposition leaders. As a result, Chief Justice Abdulla Saeed and Justice Ali Hameed were arrested on February 6, 2018. Former President Maumoon Abdul Gayoom and his son-in-law were also arrested.<sup>46</sup>
26. The National Integrity Commission of the Maldives confirmed that proper arrest procedures were in place but noted that the police did not always fully implement them due to lack of adequate training. Furthermore, police had often held suspects under investigative or administrative detention without formal arrest for periods ranging from a few hours to several weeks.<sup>47</sup>

### **Right or area 15.1. Administration of justice & fair trial**

27. Although the law in the Maldives provides for an independent judiciary, the judiciary is not completely independent or impartial, and is subject to political influence.<sup>48</sup>
28. In addition, there have been numerous allegations of judicial impropriety and abuse of power, including cases in which the Supreme Court has attempted to control the lower courts to further the interests of the government.<sup>49</sup>
29. Many judges are appointed for life terms who hold only a certificate in Sharia law, but not a law degree. Most magistrate judges in the country cannot interpret common law or

Sharia law because they lack adequate English or Arabic language skills. An estimated one-quarter of the Maldives' 183 judges even had criminal records.<sup>50</sup>

30. Amnesty International reported that the Maldives government under former President Yameen ignored constitutional provisions safeguarding the right to a fair trial as evidenced by a string of criminal cases against political opponents. Yameen also used the military and judiciary to stifle the opposition, including the suspension of certain number of the opposition lawmakers and the arbitrary arrest of two other lawmakers.<sup>51</sup>

#### **IV. RECOMMENDATIONS**

31. This stakeholder report suggests the following recommendations for the Government of the Maldives:

- Commute the death sentences to terms of imprisonment for all people on death row who were sentenced to death for crimes committed while under the age of 18.
- Impose a formal moratorium on the death penalty with a view to its eventual abolition.
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.
- Commute all existing death sentences to terms of imprisonment.
- Amend the Penal Code and the Prevention of Terrorism Act to ensure that the death penalty is an available punishment only for crimes in which the person accused is proven to have committed an intentional killing, consistent with international human rights standards.
- Ensure that application of the traditional Sharia mediation process in murder cases does not result in discrimination against individuals based on their socio-economic status.
- Vote in favor of the next UN resolution supporting a moratorium on the death penalty.
- Fully implement the Committee against Torture's recommendations related to conditions of detention, provision of health care to detained persons, and accountability for acts of torture committed by government actors.
- Provide comprehensive training for police regarding proper arrest procedures, consistent with the findings of the National Integrity Commission of the Maldives.
- Prohibit police from holding suspects in investigative or administrative detention without formal arrest.
- Dismiss any judges who lack a law degree or who are not sufficiently fluent in English and Arabic to understand and interpret the laws they are tasked with interpreting. Ensure that all new judicial appointees have a law degree and are sufficiently fluent in English and Arabic to interpret the relevant laws.
- Take concrete measures to enhance the independence of the judiciary.

- Fully comply with the fair trial rights embodied in Articles 9 and 14 of the International Covenant on Civil and Political Rights and provide comprehensive training to all prosecutors and judicial officers about the substance of these rights.

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<sup>1</sup> *Report on the Working Group on the Universal Periodic Review, Maldives* (July 13, 2015), U.N. Doc. A/HRC/30/8.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Maldives pledges to uphold moratorium on death penalty*, Maldives Independent, 27 Nov. 2018, <https://maldivesindependent.com/politics/maldives-pledges-to-uphold-moratorium-on-death-penalty-142971>.

<sup>9</sup> *Report on the Working Group on the Universal Periodic Review, Maldives* (July, 2015), U.N. Doc. A/HRC/30/8.

<sup>10</sup> *Id.*

<sup>11</sup> *Report on the Working Group on the Universal Periodic Review, Maldives, Addendum* (September, 2015), U.N. Doc. A/HRC/30/8/Add.1.

<sup>12</sup> *Id.*

<sup>13</sup> Human Rights Watch, *An All-Out Assault on Democracy, Crushing Dissent in the Maldives*, by Patricia Gossman (August, 2018), <https://www.hrw.org/report/2018/08/16/all-out-assault-democracy/crushing-dissent-maldives>.

<sup>14</sup> *Report on the Working Group on the Universal Periodic Review, Maldives* (July, 2015), U.N. Doc. A/HRC/30/8.

<sup>15</sup> Human Rights Watch, *An All-Out Assault on Democracy, Crushing Dissent in the Maldives*, by Patricia Gossman (August, 2018), <https://www.hrw.org/report/2018/08/16/all-out-assault-democracy/crushing-dissent-maldives>.

<sup>16</sup> *Report on the Working Group on the Universal Periodic Review, Maldives, Addendum* (September 18, 2015), U.N. Doc. A/HRC/30/8/Add.1.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> United Nations Human Rights, Office of the High Commissioner, UN Treaty Body Database – Ratification Status for Maldives, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=106&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=106&Lang=EN).

<sup>21</sup> , U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Maldives 2018 Human Rights Report* (Washington D.C., March, 2019), available online at <https://www.state.gov/wp-content/uploads/2019/03/MALDIVES-2018.pdf>.

<sup>22</sup> Maldives Penal Code, arts. 36-37, Law No. 1/81 (Jan. 1, 1967).

<sup>23</sup> Maldives Prevention of Terrorism Act, art. 6(a), Law No. 10 of 1990 (Dec. 9, 1990).

<sup>24</sup> Muizzu Ibrahim, “*Maldives to use lethal injection for execution*,” Haveeru, Jan. 23, 2014, <http://www.haveeru.com.mv/news/53390>.

<sup>25</sup> Amnesty International, *Maldives: Halt plans to carry out first execution in more than six decades*, ASA 29/4364/2016, June 30, 2016.

<sup>26</sup> *Maldives Lifts Moratorium as Death Penalty Declines*, Eurasia Review, <http://www.eurasiareview.com/12052014-maldives-lifts-moratorium-death-penalty-declines-analysis/>; “Maldives should repeal new regulation providing for death penalty, says U.N. rights office,” U.N. News Centre, Apr. 29, 2014, <http://www.un.org/apps/news/story.asp?NewsID=47680#.U3JCzq1dWzA>.

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- <sup>27</sup> Ahmed Rilwan, “Death penalty can be implemented starting today: Home Minister, Minivan News,” Minivan News , Apr. 27, 2014, <http://minivannews.com/politics/death-penalty-can-be-implemented-starting-today-home-minister-83666>.
- <sup>28</sup> International Commission Against the Death Penalty, The death penalty and the “most serious crimes” (Jan. 2013) 7, [http://www.icomdp.org/cms/wp-content/uploads/2013/02/Most-serious-crimes\\_final\\_6Feb2013.pdf](http://www.icomdp.org/cms/wp-content/uploads/2013/02/Most-serious-crimes_final_6Feb2013.pdf).
- <sup>29</sup> When the State Kills, email to DPW, DPW Maldives Doc. E-1, May 25, 2014. Maldives teenager could face death penalty, Aljazeera, May 23, 2014, <http://www.aljazeera.com/news/asia/2014/05/maldives-teenager-could-face-death-penalty-201452345910586561.html>.
- <sup>30</sup> Ahmed Rilwan, “Death penalty can be implemented starting today: Home Minister, Minivan News,” Minivan News , Apr. 27, 2014, <http://minivannews.com/politics/death-penalty-can-be-implemented-starting-today-home-minister-83666>.
- <sup>31</sup> *Report on the Working Group on the Universal Periodic Review, Maldives, Addendum* (September, 2015), U.N. Doc. A/HRC/30/8/Add.1.
- <sup>32</sup> Amnesty International, *Death Sentences and Executions in 2013* (London: Amnesty International Publication, Mar. 2014)
- <sup>33</sup> Maldives Prevention of Terrorism Act, art. 6(a), Law No. 10 of 1990 (Dec. 9, 1990).
- <sup>34</sup> *Death Penalty to Resume in the Maldives*, January 12, 2018, Amnesty International UK, <https://www.amnesty.org.uk/death-penalty-resume-maldives>.
- <sup>35</sup> United Nations Human Rights Office of the High Commission, *UN Expert Urges Maldives to Step Back From “Imminent” Death Penalty Return*, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21936&LangID=E>, August 3, 2017.
- <sup>36</sup> Amnesty International, *Death Sentences and Executions in 2013* (London: Amnesty International Publication, Mar. 2014)
- <sup>37</sup> *Death Penalty to Resume in the Maldives*, January 12, 2018, Amnesty International UK, <https://www.amnesty.org.uk/death-penalty-resume-maldives>.
- <sup>38</sup> *Maldives Pledges to Uphold Moratorium on Death Penalty*, Maldives Independent, November 27, 2018, <https://maldivesindependent.com/politics/maldives-pledges-to-uphold-moratorium-on-death-penalty-142971>.
- <sup>39</sup> *Maldives Will Not Implement Capital Punishment: Ministry of Foreign Affairs*, The Edition, November 27, 2018, <https://edition.mv/news/8030>.
- <sup>40</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Committee against Torture – *Concluding Observations on the Initial Report of Maldives*, CAT/C/MDV/CO/1, December 19, 2018, available online at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMDV%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMDV%2fCO%2f1&Lang=en).
- <sup>41</sup> *Ibid.*
- <sup>42</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Committee against Torture – *Concluding Observations on the Initial Report of Maldives*, CAT/C/MDV/CO/1, December 19, 2018, available online at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMDV%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMDV%2fCO%2f1&Lang=en).
- <sup>43</sup> *Ibid.*
- <sup>44</sup> *Ibid.*
- <sup>45</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Maldives 2016 Human Rights Report* (Washington D.C., March. 2017), available online at <https://www.state.gov/wp-content/uploads/2019/01/Maldives-1.pdf>.
- <sup>46</sup> Amnesty International, *Urgent Action – Arbitrary Arrests Following State of Emergency*, ASA 29/7838/2018, February 7, 2018, available at <https://www.amnesty.org/download/Documents/ASA2978382018ENGLISH.pdf>.

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<sup>47</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Maldives 2016 Human Rights Report* (Washington D.C., March. 2017), available online at <https://www.state.gov/wp-content/uploads/2019/01/Maldives-1.pdf>.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> Amnesty International, *Amnesty International Report 2017/18: The State of the World's Human Rights* (London, Amnesty International Publication, 2018), 250-252, available online at <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>.