

Corporal punishment of children in the Maldives

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Child population 119,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools, penal institutions and as a sentence for crime.

Article 44 of the Penal Code 2014 authorises the use of force by parents and others for the purpose of punishing children. This provision should be repealed, and prohibition of all corporal punishment, however light, should be enacted in relation to parents and all adults with authority over children.

Alternative care settings – Corporal punishment should be clearly prohibited in all alternative care settings (foster care, institutions, places of safety, emergency care, etc), including through repeal of article 44 of the Penal Code 2014.

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc), including through repeal of article 44 of the Penal Code 2014.

Schools – The Penal Code provision authorising the use of force by teachers for “prevention or punishment of misconduct” should be repealed and clear prohibition enacted of corporal punishment in all education settings at all levels.

Penal institutions – Corporal punishment should be prohibited as a disciplinary measure in all institutions accommodating children in conflict with the law.

Sentence for crime – All provisions which allow for persons convicted of an offense when they were under the age of 18 to be sentenced to corporal punishment – even when the sentence is not imposed until they reach the age of 18 – should be repealed.

Current legality of corporal punishment

Home

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.

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”.¹ 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”.²

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.³ In 2010 a Children’s Bill was being drafted which would reportedly prohibit corporal punishment in all settings.⁴ 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.⁵ However, the Government went on to reject recommendations made during the review to prohibit corporal punishment of children,⁶ and to enact the Penal Code 2014 as described above.

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”.⁷ It reported

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

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

³ SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review*

⁴ National action plan to prohibit all corporal punishment, SAIEVAC workshop on Legal Reform and Corporal Punishment, November 2010, Kathmandu

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

⁶ 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

⁷ [January 2016], CRC/C/MDV/Q/4-5/Add.1 Unedited Version, Reply to list of issues

to the Committee Against Torture in November 2018 that President Solih was committed to having the Maldives join the growing number of countries which prohibit “all forms of corporal punishment on children, including beatings by parents” and that the Government strongly supported the new Protection of the Rights of the Child Bill, which was sent to Parliament in June 2018 to prohibit corporal punishment “being imposed on any child by their parents in any situation”.⁸

Amendments to the Family Act were passed by Parliament in April 2016:⁹ these did not include prohibition of corporal punishment.¹⁰

Alternative care settings

Corporal punishment is lawful in alternative care settings under the authorisation for the use of force in article 44 of the Penal Code 2014 (see under “Home”). In 2010 regulations for children’s homes were being drafted which would reportedly prohibit corporal punishment.¹¹

Day care

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 (see under “Home”).

Schools

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” (see under “Home”). 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 2014:¹² the Government has reported that it would prohibit corporal punishment in schools.¹³

Penal institutions

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 (see under “Home”). Physical punishments – including beatings, being tied to trees, the use of stocks and other painful restraints and other cruel

⁸ 27 November 2018, Opening statement of the Head of the Maldives Delegation to the Committee Against Torture

⁹ <http://www.majlis.gov.mv/en/2016/04/18/majlis-passes-bill-on-amendment-to-the-family-act/>, accessed 22 April 2016

¹⁰ <http://minivannewsarchive.com/politics/parliament-accepts-amendments-for-regulating-division-of-assets-after-divorce-93166>, accessed 22 April 2016

¹¹ National action plan to prohibit all corporal punishment, SAIEVAC workshop on Legal Reform and Corporal Punishment, November 2010, Kathmandu

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

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

punishments – have been documented against children in detention.¹⁴ 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.¹⁵ A Juvenile Justice Bill is under discussion and is expected to be submitted to Parliament in early 2019: we are seeking information on the proposed provisions.¹⁶

Sentence for crime

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".

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

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).¹⁷ The report confirms that corporal punishment is lawful as a sentence for crime for children as described above.¹⁸

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

¹⁴ 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

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

¹⁶ 27 November 2018, Opening statement of the Head of the Maldives Delegation to the Committee Against Torture

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

¹⁸ 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

announced the establishment of a Committee to review existing child protection mechanisms, particularly legislation.

The Government had reported to the Universal Periodic Review in 2015 that the Juvenile Justice Bill was expected to be submitted to Parliament in 2015, but had made no comment on its provisions.¹⁹ However, the Government did state 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”.²⁰ Recommendations to prohibit corporal punishment, including flogging, were rejected (see below).²¹ The Government then reported in November 2018 that the Juvenile Justice Bill would be introduced to Parliament by February 2019.²²

The Criminal Procedure Act 2016 was passed in April 2016: we have yet to see the text.

Universal Periodic Review of the Maldives’ human rights record

The Maldives was examined in the first cycle of the Universal Periodic Review in 2010 (session 9). During the review, the Government stated that it had no plans to abolish flogging under Shari’a law but was concerned that it was being imposed in a discriminatory way against women and a moratorium was being considered.²³ The following recommendations were made:²⁴

“Ensure that its new Penal Code is fully consistent with international human rights standards and that it abolishes corporal punishment and the death penalty (United Kingdom);

“Take all measures to end the application of cruel, inhuman or degrading penalties such as flogging (France);/abolish criminal penalties that infringe on the physical integrity of convicts, for example, flogging (Austria);/prohibit the use of public flogging (New Zealand); abolish corporal punishment, in particular public flogging (Brazil)”

The Government “partially accepted” the first of these recommendations, stating: “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.”²⁵ In response to the second recommendation, the Government stated: “The Maldives accepts to begin wider consultations on this matter. The Maldives accepts to consult with relevant national and international authorities to assess whether the application of corporal punishment, as currently practiced in the Maldives, is compatible with the Maldives’ international obligations under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment (CAT), and also whether the newly-independent judiciary in the country has the capacity, at present, to pass down such punishments in a manner fully

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

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

²¹ 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

²² 27 November 2018, Opening statement of the Head of the Maldives Delegation to the Committee Against Torture

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

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

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

consistent with the Maldives Constitution and international human rights law, in particular those provisions dealing with non-discrimination on the basis of gender.”²⁶

Examination in the second cycle took place in 2015 (session 22). In its national report, the Government stated that since the Constitution states that Islam constitutes the basis of laws 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”.²⁷ During the review the following recommendations were made, all of which were rejected by the Government:²⁸

“Banish from its Penal Code the provisions related to corporal punishment, including flogging for sexual intercourse outside of marriage, and death penalty (Albania)

“Amend the Penal Code to prohibit corporal punishment (Chile);

“Abolish flogging and other forms of corporal punishment, and ensure that survivors of sexual violence are not prosecuted for fornication (Slovenia);

“Institute an immediate moratorium on the punishment by flogging, with a view to abolishing this practice at the legislative level (Uruguay);

“Impose an immediate moratorium on flogging, with the view of abolishing it in law and prohibit all forms of corporal punishment in all settings (Latvia);

“Bring an end to the application of cruel, inhuman or degrading punishments, in particular corporal punishment (France);

“Introduce the necessary legal and policy measures to abolish all forms of corporal punishment (Italy)”

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(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)

“The Committee is gravely concerned that: ...

e) the November 2015 circulars establishing automatic appeal for death penalty and flogging cases, while positive in general, are not adequately disseminated among those that can benefit from them, and also reduce the period of appeal to the Supreme Court from 60 days to 30 days.

“While noting that Article 54 of the Constitution prohibits torture, the Committee is concerned that under the 2014 Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors (articles 4 and 5) children who have reached puberty may be punished by flogging for committing certain *hadd* offences. The Committee is seriously concerned that minors continue being flogged or sentenced to flogging and that there is a gender bias in the application of this punishment as in the majority of cases only women and girls who have been convicted for sex out of marriage are sentenced to flogging. The Committee is further concerned that child offenders

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

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

²⁸ 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

may also be lawfully sentenced to life imprisonment, banishment, or flogging for consensual same-sex relations.

“The Committee reiterates its previous recommendation (CRC/C/MDV/CO/3, para. 56) and with reference to the Committee’s General Comment No. 8 (2006) on corporal punishment it urges the State party:

a) to take all the necessary measures to ensure that persons who committed crimes while under the age of 18 are not subjected to any form of torture, including corporal punishment, and that corporal punishment as a disciplinary measure is prohibited by law in the home, alternative care settings, justice institutions, schools and workplace settings;

b) to amend the 2014 Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors (articles 4 and 5) to prohibit flogging....

“While welcoming the adoption in 2012 of the Domestic Violence Act and the activities carried out to raise awareness about its provisions, the Committee is concerned that the Act is not interpreted as prohibiting corporal punishment of children. The Committee is particularly concerned that:

a) violence against children, abuse and neglect are widespread at home, at school, and in the community;

b) reporting of cases of domestic violence is low, and law enforcement officers are often reluctant to take action and arrest perpetrators of domestic violence, believing such violence is justified in Islam....

“With reference to General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence and the Sustainable Development Goal 16.2 to end abuse, exploitation, trafficking and all forms of violence against and torture of children, the Committee recommends that the State party:

a) ensure that corporal punishment is unambiguously prohibited under the Domestic Violence Act;

b) ensure the enforcement and implementation of the 2012 Domestic Violence Act, including by establishing the required shelters, adequately funding protection services centers and safe houses, providing adequate capacity-building for law enforcement officials on violence against girls within the family, and increasing reporting through awareness-raising efforts;

c) establish a national database on all cases of domestic violence against children, and undertake a comprehensive assessment of the extent, causes and nature of such violence;

d) institutionalize, as also recommended by the United Nations Special Representative of the Secretary General on Violence against Children during her visit in May 2013, a high-level platform where all leading departments and institutions responsible for child protection concerns meet periodically and formulate a comprehensive strategy, stipulating concrete budgeted interventions, for preventing and combating violence against children and child abuse, including with focus on gang-related violence;

e) create a unified, co-ordinated and comprehensive child protection system;

f) take all necessary measures to prevent violence against children as well as their exposure to violence during political protests;

g) prevent intimidation and threats directed towards LGBTI children.

“The Committee welcomes the enactment in 2009 of the Special Provisions Act to Deal with Child Sexual Abuse, the subsequent online publishing by the Ministry of Law and Gender in November 2015 of a registry of convicted sex offenders and the increase in reporting of child sexual abuse. The

Committee is however concerned that: ...

g) there have been a number of cases of sexually abused children who were sentenced to flogging on charges of fornication.

“The Committee notes that the newly adopted Penal Code (9/2014) considers immaturity of a child as a justifiable defence for children below the age of 15 years, with the exception of *Hadd* offences, and that the implementation of sentencing for any child between the ages of 15-18 years who is found guilty of an offence under the Penal Code is to be deferred to a time until she/he is above 18 years of age. The Committee is seriously concerned that the age of criminal responsibility remains low at 10 years. The Committee is also concerned that:

- a) judges in the State party tend to use the attainment of physical puberty rather than the minimum legal age to establish criminal responsibility;
- b) flogging remains lawful as a sentence for crime....

“With reference to General Comment No. 10 (2007) on children’s rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards. In particular, the Committee urges the State party:

- a) not to apply penalties for *hadd* offenses to children below the age of 18; ...
- d) abolish flogging as a sentence for crime....”

Committee on the Rights of the Child

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

“The Committee is concerned at the information that section 44 of the new draft Penal Code would legalize corporal punishment of children at home, schools and institutions. The Committee is also seriously concerned that, contrary to article 37 (a) of the Convention, under applicable law of the State party, persons who have reached puberty may be subject to flogging.

“In the light of the consideration of the new draft Penal Code, the Committee urges the State party to take all the necessary measures to ensure that persons who committed crimes while under the age of 18 are not subjected to any form of corporal punishment, including as a sentence for offences, and that corporal punishment as a disciplinary measure is prohibited by law in the home, alternative care settings and justice institutions, schools and workplace settings. It recommends that the State party take other appropriate measures, such as positive education and training programmes as well as public awareness raising campaigns, to eliminate this practice which directly conflicts with the equal and inalienable rights of the child to respect for her/his human dignity and physical integrity. Finally, it draws the attention of the State party to the Committee’s General Comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8).

“The Committee welcomes the information that the State party is in the process of establishing child helpline services. The Committee regrets that insufficient measures are being taken to address the serious problem of violence against children, child abuse, including sexual abuse, and ill-treatment of children in the State party. The Committee notes with concern that the legal framework fails to provide full protection against sexual abuse and that it also shifts responsibility on producing evidence to a victim. It also notes with concern that domestic violence is widely tolerated in Maldivian society and that Maldivian legislation does not expressly prohibit corporal punishment in the family....

“In the light of article 19, other relevant provisions of the Convention and taking into account the recommendations of the Committee adopted on its days of general discussion on children and violence (CRC/C/100, para. 866 and CRC/C/111, paras. 701-745), the Committee urges the State party to:

a) undertake a national study on domestic violence, ill-treatment of children and child abuse in the home assessing the scope and nature of this problem as well as the impact of legal measures to address violence against children with a view to prohibiting all forms of physical, sexual and mental violence against children, including sexual abuse in the family....

“Despite these positive steps taken, the Committee notes with concern that: ...

c) children from the age of 7 years can be held liable for *haddu* offences and consequently they can be exposed to a death penalty;

d) corporal punishment is lawful as a sentence for crime and for disciplinary purposes....

“The Committee recommends that the State party continue and strengthen its efforts to ensure the full implementation of juvenile justice standards, in particular articles 37, 40 and 39 of the Convention and other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules), taking into account the Committee’s newly adopted General Comment No. 10 on children’s rights in juvenile justice (CRC/C/GC/10). It recommends that the State party:

a) expedite its efforts to draft and enact a Juvenile Justice Act and ensure that the provisions of this Act fully comply with the provisions and principles of the Convention as well as other international standards on the administration of juvenile justice, including the hearing of the child during criminal justice proceedings; ...

e) abolish the use of corporal punishment as a sentence for crime and for disciplinary purposes....”

Human Rights Committee

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

“The Committee is concerned at reported cases of corporal punishment of children in schools. The Committee is also concerned that flogging can be administered to persons for certain offences prescribed by the Sharia law (art. 7).

The State should abolish flogging. It should also explicitly prohibit corporal punishment in all institutional settings.”

Committee Against Torture

([December 2018], CAT/C/MDV/CO/1 Advance unedited version, Concluding observations on initial report, paras. 13, 14, 31, 32, 41 and 42)

“The Committee is concerned at information concerning children in conflict with the law in the State party, such as penal legislation according to which criminal responsibility starts at 10 years of age; that concerning sharia law, children are considered responsible from the age of 7; that minors can be sentenced to flogging even in cases when they are the victims (such as rape) and for fornication. Furthermore, the Committee is concerned at reports that juveniles are detained in conditions that are in violation of the Convention (arts. 1, 2, 4 and 16).

“The State party should align its penal legislation concerning minors in conflict with the law with the provisions and rules contained in international standards, and in particular with the Convention and should repeal all provisions that contravene the Convention.”

“The Committee is seriously concerned about the practice of “judicial flogging” administered under a restrictive and/or hard line interpretation of sharia penalties, which is also allowed under the Penal Code, mostly as punishment for consensual extramarital sex. It is gravely concerned that this corporal punishment is also used against survivors of sexual abuse and assault and that 85 per cent of persons punished in this way are women and girls (arts. 2 and 16).

“The State party should immediately enact a moratorium on flogging and other corporal punishment and should consider reviewing its laws with a view to prohibiting the practice as a matter of priority.”

“The Committee is concerned that corporal punishment of children is allowed in all settings, including the home, provided that the force “does not create a substantial risk of causing death, serious bodily injury, extreme or unnecessary pain or mental distress, or humiliation” and that the State party has reportedly not taken adequate measures to protect the children. It is also concerned that the Domestic Violence Act and the Family act do not prohibit corporal punishment (arts. 2 and 16).

“The State party should:

- (a) Explicitly prohibit in law the corporal punishment of children in all settings, including in the home, alternative care settings, day care settings, school and penal institutions, through acts or omissions by State agents and others who engage the State’s responsibility under the Convention, as a sentence for crime or for disciplinary purposes; and ensure that it is not applied under sharia law;
- (b) Ensure the abolition of flogging of children;
- (c) Conduct public awareness-raising campaigns about the harmful effects of corporal punishment;
- (d) Promote positive non-violent forms of discipline as an alternative to corporal punishment.”

Committee on the Elimination of Discrimination Against Women

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

“... The Committee notes with grave concern that consensual sexual relations outside marriage are still punished with flogging sentences, which disproportionately affect women and girls and deter them from reporting sexual offences....

“The Committee recommends that the State party:

- a) as a matter of urgency, de-criminalize and abolish the imposition of flogging as a sentence for consensual sexual relations outside marriage, as recommended by the Committee in its previous Concluding Observations (CEDAW/C/MDV/CO/3, para. 34)....”

Subcommittee on Prevention of Torture

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

“In the initial talks with the Minister for Justice, Attorney General and the Minister for Home Affairs the delegation was informed that flogging remains an applicable sentence for certain offences. The authorities noted, however, that this punishment was intended to inflict humiliation rather than physical pain. The delegation understood that even children may be subject to flogging; for the

offences for which flogging is prescribed, they must assume criminal responsibility once they reach puberty.

“Deliberate infliction of pain as a form of control or punishment is both inhuman and degrading. The SPT shares the views expressed by the Human Rights Committee (HRC) in its general comment No. 20 on prohibition of torture and cruel treatment or punishment, according to which the prohibition of torture enshrined in article 7 International Covenant on Civil and Political Rights (ICCPR) should be extended to corporal punishment. The Special Rapporteur on Torture also has taken the view that corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment enshrined in the international human rights instruments. As regards the practice of flogging, the SPT emphasizes that the HRC has considered flogging as cruel and inhuman punishment prohibited by article 7 of ICCPR, and the Committee against Torture has taken the view that flogging is not in conformity with the Convention against Torture.

“Furthermore, the SPT is concerned about the fact that section 44 of the draft Penal Code would legalize corporal punishment of children at schools and institutions. The SPT shares the opinion of the Committee on the Rights of the Child which, in its latest concluding observations on the Maldives, considered that the practice of flogging was contrary to article 37 (a) of the Convention on the Rights of the Child. The SPT considers that the practice of flogging, whether inflicted upon a child or an adult and irrespective of whether it is intended to inflict humiliation or physical pain, is unacceptable because of its inherent humiliating and degrading nature. It should therefore not be an applicable sentence for any offences.

“The SPT recommends that the Government of 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 and for disciplinary purposes.

“... The SPT understands that the Government is currently considering a draft Prison, Detention and Young Offender Centre Rules, which will, include provisions on disciplinary proceedings and sanctions.

“In interviews with the detainees [in prisons], the delegation heard several coherent allegations of the use of beating and handcuffing as disciplinary measures, as well as humiliation by being stripped naked in front of other prisoners and prison officers and blindfolded....

“The SPT was left with the impression that disciplinary measures were used in an arbitrary way, almost at the will of the prison administration, and that the system was not oriented to punish specific individuals but that also collective punishment was also regularly used.

“The SPT considers that discipline in prison is an important factor in the safety of both prisoners and staff. However, it is important that safeguards are introduced to avoid abuses of the disciplinary process and to prevent ill-treatment. The SPT encourages the Maldivian Government to adopt the draft Prison Rules and trusts that the Government will ensure that they conform to the international standards on treatment of prisoners binding upon Maldives. The SPT further recommends that the authorities ensure that no collective punishments are used. Prison managers should increase oversight of incidents and the disciplinary process to ensure that no punishments other than those provided for in law are imposed or other than by the formal disciplinary process. All occurrences giving rise to disciplinary proceedings and all disciplinary punishments should be carefully recorded in special registers, and subject to independent monitoring.

“The delegation also heard several accounts of use of handcuffs in particularly humiliating and painful way, for purposes of punishment and control [in prisons].... The SPT emphasizes that discipline and order should be maintained with no more restriction than it is necessary for safe custody and well-ordered prison life. Instruments of restraints, such as handcuffs, should never be applied as

punishment. The SPT recommends that the practice of using handcuffing as a means of punishment be eliminated immediately.

“The SPT was informed by the Director [of Maafushi Educational Training Centre for Children] that, as regards disciplinary punishment, the rules and regulations did not include corporal punishment. If disciplinary measures were needed, children might be punished by the cancellation of their favourite TV programme. Decisions on disciplinary measures were taken by the teachers. The SPT recommends that all incidents and punishments and other disciplinary measures be systematically recorded in an incident book in a manner allowing proper oversight of use of those measures.”

Prevalence/attitudinal research in the last ten years

A 2012 report on the widespread and systematic use of torture and ill-treatment by security services identified the use of torture as individual or collective punishment as a striking feature of many of the testimonials – including those of children. Six of the testimonials included in the report were children at the time of their arrest and ill-treatment; the youngest reports to have been 13 at the time. One woman (14 at the time) reported being tied to a tree for four days and nights, being kicked and beaten with batons, being forced to roll on sharp coral and having sewage water poured on her, as collective punishment for a riot that had taken place in the prison.

(Redress & Torture Victims' Association Maldives (2012), *This is what I wanted to tell you – Addressing the legacy of torture and ill-treatment in the Maldives*, London, UK: Redress & Torture Victims' Association Maldives)

A study which involved focus groups with 15 10-18 year olds and interviews with children and staff in alternative care settings documented the use of isolation for over a week as a punishment in a “correctional training centre”.

(Naseem, A. (2011), *Child participation in the Maldives: An Assessment of Knowledge*, UNICEF & Human Rights Commission of the Maldives)

An unpublished large scale 2009 UNICEF study found that 47% of children had experienced physical or emotional punishment at home, at school or in the community. The study involved almost 17,035 people in 2,500 households and 2,000 children in schools. Thirty per cent of children at secondary school had been hit by at least one of their caregivers, 21% with an object; 8% of school students had been physically punished by their teachers.

(Reported by *Minivan News*, 21 February 2011, www.minivannews.com)