

Stakeholder submission of the Commonwealth Human Rights Initiative (CHRI) for the 2nd Universal Periodic Review of Maldives

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This Universal Periodic Review (UPR) stakeholder submission for Maldives includes information on the following areas: cooperation with international human rights mechanisms, the death penalty, torture and ill-treatment, freedom of expression, and sexual orientation and gender identity.

A. Cooperation with international human rights mechanisms, core international human rights instruments and their monitoring bodies

1. In order to initiate a consultation process in line with the UN Human Rights Council's Resolution 5/1, the Government of Maldives constituted a 'UPR Standing Committee' (UPRSC) in September 2009, which comprised of the Minister of Foreign Affairs, as its chairman, representatives of other relevant ministries, Human Rights Commission of Maldives, and members of civil society.¹ On 22 July 2010, the Standing Committee invited public comments and inputs to the draft report, through the website of the Ministry of Foreign Affairs, and after collating all input, the final version of the report was prepared in August 2010.²
2. During the consideration of Maldives' first UPR outcome at the Sixteenth Regular Session of the UNHRC, the delegation accepted several recommendations on considering joining international Human Rights instruments. However, since its last UPR, Maldives has signed only two of the instruments referred to in the recommendations, namely, the Optional protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child.³
3. At the time of writing, Maldives had three overdue reports, including one to the Committee Against Torture (due since 2005), another to the Committee on Economic, Social and Cultural Rights (due since 2008) and one to the Committee on the Rights of Persons with Disabilities (due since 2012).⁴
4. Maldives issued a standing invitation for the Special Procedures Mandate Holders in 2006 and since the last UPR two country visits have been undertaken. Maldives has also in principle, accepted a request for a visit from the Special Rapporteur on Freedom of peaceful assembly and of association. However, two visit requests, by the Special Rapporteur on violence against women (made in 2008) and the Special Rapporteur on the situation of human rights defenders (made this year) remain pending.⁵
5. Following a country visit in July 2011, the Special Rapporteur on the human rights of Internally Displaced Persons (IDP) called on Maldives to adopt the draft Bill on Disaster Management, which remains pending⁶. Moreover, the Special Rapporteur recommended that the Government ensure that disaster management systems, laws and policies incorporate a human rights-based approach, and urgently review the situation of those currently displaced and living in temporary shelters. Although Maldives' National Disaster Management Centre is engaged with various bodies, such as the United Nations Development Programme, progress on these recommendations is unclear.⁷ It would be useful for the Government to issue briefings on their progress.
6. Following a country visit in February 2013, the Special Rapporteur on the independence of judges and lawyers called on Maldives to conduct a review of the constitution, investigate allegations of judicial, prosecutorial and professional misconduct, pass the Sentencing Bill, the Criminal Procedure Code, the Civil Procedure Code and the Evidence Act, increase the financial and human resources of the judiciary,

¹ UN Human Rights Council (UNHRC), *National report submitted in accordance with paragraph 15(a) of the annex to the Human Rights Council resolution 5/1 – Maldives*, A/HRC/WG.6/9/MDV/1/Rev.1, 30 August 2010, at p. 2. Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/MV/A_HRC_WG.6_9_MDV_1_Rev.%201_Maldives_eng.pdf.

² *Ibid* at paragraph 5.

³ See Office of the High Commissioner for Human Rights' (OHCHR), *Country specific information on Maldives' ratification of international Human Rights Treaties*. Available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDV&Lang=EN.

⁴ See OHCHR's information on Maldives' reporting cycles.

Available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDV&Lang=EN.

⁵ See OHCHR's Country specific information on Country and other visits by Special Procedures Mandate Holders. Available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsF-M.aspx>.

⁶ See, *One UN in the Maldives – Newsletter*, Issue 13, October – December 2013, at p. 6. Available at: http://www.undg.org/docs/13224/Maldives_OneUNNewsletterQ4_2013.pdf.

⁷ *Ibid*. See also, http://irides.tohoku.ac.jp/media/files/topics/20131226_report.pdf.

institutionalise a comprehensive system of legal aid, and eliminate gender discrimination in the justice system.⁸ The Government of Maldives fully acknowledged the challenges identified by the Special Rapporteur, and sought her continued engagement and OHCHR's assistance to fully implement the recommendations.⁹

CHRI recommends that the Government of Maldives:

- 1. Implement the recommendations of the Special Rapporteur on the human rights of IDPs and the Special Rapporteur on independence of judges and lawyers;**
- 2. Immediately facilitate all pending visits requested by the Special Rapporteurs; and**
- 3. Demonstrate a commitment to the UN human rights mechanisms by complying, in a timely manner, with all treaty reporting obligations.**

B. The death penalty

Maldives had been a *de facto* abolitionist country since 1954.¹⁰ However, at least 20 individuals were on death row, at the time of writing.¹¹

7. During the last UPR Maldives failed to accept any recommendations solely related to abolition of the death penalty, however the delegation stressed on a number of occasions that the Government remained committed to the country's moratorium.¹²
8. Under Sharia law crimes that are considered *Hadd* offences, including theft, fornication, adultery and consumption of alcohol, for which the age of criminal responsibility is seven years old, may attract the death penalty.¹³ Thus, there is the potential for children as young as seven to be executed once they turn eighteen.¹⁴ Although the courts retain powers of discretion when issuing the death sentence;¹⁵ these legal principles contravene international legal standards.¹⁶
9. In April 2014, the Government adopted the 'Regulation on Investigation & Execution of Sentence for Willful Murder', creating an expedited procedural system for carrying out the death penalty for crimes of intentional homicide and premeditated murder, including when convicts are below the age of 18¹⁷. While the regulation retains discretion of the Supreme Court when issuing the death sentence,¹⁸ the concern remains that the regulation will encourage the use of death penalty in preference of the punishment over imprisonment.

⁸ UNHRC, *Report of the Special Rapporteur on the independence of judges and lawyers – Mission to Maldives*, A/HRC/23/43/Add.3, 21 May 2013. Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-43-Add3_en.pdf.

⁹ Permanent Mission of the Republic of Maldives to the UN Office at Geneva, *Statement at the Intractive Dialogue with the Special Rapporteur on the Independence of Judges and Lawyers*, 29 May 2013. Available at: https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/23rdSession/OralStatements/Maldives_Concerned_08.pdf.

¹⁰ Amnesty International, *Death Sentences and Executions in 2013*, March 2014, at p. 24. Available at: <http://www.amnesty.org/en/library/asset/ACT50/001/2014/en/652ac5b3-3979-43e2-b1a1-6c4919e7a518/act500012014en.pdf>.

¹¹ World Coalition Against Death Penalty, *Data on Maldives*. Available at: <http://www.worldcoalition.org/Maldives#>.

¹² UNHRC, *Report of the Working Group on the Universal Periodic Review – Maldives: Addendum*, A/HRC/16/7/Add.1, 14 March 2011. Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/session9/MV/A_HRC_16_7_Add.1_Maldives_E.pdf.

¹³ International Federal of Human Rights (FIDH), "Death Penalty: Maldives turns its back on history and children's rights", (21 May 2014) at: <http://www.fidh.org/en/asia/maldives/15361-death-penalty-the-maldives-turns-its-back-on-history-and-children-s-rights>.

¹⁴ Aljazeera, *Maldives teenager could face death penalty*, 23 May 2014. Available at: <http://www.aljazeera.com/news/asia/2014/05/maldives-teenager-could-face-death-penalty-201452345910586561.html>.

¹⁵ *Ibid.*

¹⁶ See, UN Committee on the Rights of the Child, *General Comment No. 10 – Children's rights in juvenile justice*, CRC/C/GC/10, 25 April 2007, at paragraph 75 and 76. Available at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

¹⁷ UN News Centre, *Maldives should repeal new regulation providing for death penalty, says UN rights office*. Available at: <http://www.un.org/apps/news/story.asp?NewsID=47680#.VBErgaOkCdc>.

¹⁸ Cornell University Law School, *Death Penalty World Wide, Maldives – Does the country have a mandatory death penalty*, 4 June 2014. Available at: <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Maldives#f23-3>.

Further, an amendment to the Clemency Act has removed Presidential power to commute death sentences to life in prison.¹⁹

CHRI recommends that the Government of Maldives:

1. **Legislate to ensure that no person can be sentenced to death for an offence that was committed before the age of 18 years; and**
2. **Work towards ratifying the 2nd Optional Protocol to the ICCPR and thereby formally abolishing the death penalty.**

C. Torture and ill-treatment

11. At the time of writing, judicial corporal punishment is legal in Maldives. While the *Penal Code* does not authorise judicial corporal punishment, Sharia law does allow corporal punishment in the form of flogging for *Hadd* offences. This can result in cases where survivors of sexual abuse, accused of fornication (a *Hadd* offence), are sentenced to flogging. For example, in August 2013, following considerable public attention and a civil society petition, the High Court of Maldives overturned a juvenile court's decision, which has sentenced a 15-year-old girl to 100 lashes for fornication. The girl, who was said to be suffering from post-traumatic stress due to years of sexual abuse at the hands of her stepfather, had confessed to having consensual intercourse with another man during her stepfather's trial.²⁰
12. During the last UPR, while not accepting all recommendations to abolish corporal punishment and torture the delegation did commit to consulting with relevant national and international authorities to assess whether the application of corporal punishment, as currently practiced in Maldives, is compatible with its international obligations. It also intended to consult on whether the judiciary has the capacity to order corporal punishment in a manner fully consistent with the Maldives' Constitution and international human rights law especially, in reference to gender equality. In 2012, the Human Rights Committee, in its concluding observations on Maldives expressed concern at reports of torture in some police stations in Maldives, including during the period of 8 February 2012, when demonstrations were occurring in Male' and Addu cities.²¹ The Committee recommended, among other things, prohibition, through legislation, of torture and ill treatment in all its forms.²²
13. Subsequently, in 2014 the landmark *Anti-Torture Act* came into force, guaranteeing freedom from torture. The Act renders any statement obtained through torture inadmissible in court and provides for the punishment of state officials committing, ordering, assisting or failing to prevent the commission of torture. It requires monthly reporting on detainees and establishes a victims' compensation and rehabilitation scheme.²³ In July 2014, the Human Rights Commission of Maldives, mandated under the Anti-Torture Act, submitted its first report regarding its work in relation to the Act, to the president and the parliament.²⁴
14. Since the last UPR, the *Prisons and Parole Act* has become operational, setting out inmates' rights and providing for the establishment of a prison regulatory body to oversee prison administration, facilitate a complaints mechanism and oversee prison discipline.²⁵ Nevertheless, prison conditions remain poor because the inmates are not provided with medical services, healthy food, clean water; and their prison cells are undersized.²⁶ In 2013, the Human Rights Commission of Maldives (HRCM) reported a rise in incidences of

¹⁹ *Supra* n. 17.

²⁰ Amnesty International, "Maldives: Girl rape victim to be spared outrageous flogging sentence", 21 August, 2013. Available at: <http://www.amnesty.org/en/news/maldives-girl-rape-victim-be-spared-outrageous-flogging-sentence-2013-08-21>; The Guardian, *Maldives girl, 15, sentenced to 100 lashes for fortification*, 01 March 2013. Available at: <http://www.theguardian.com/world/2013/mar/01/maldives-girl-100-lashes-fornication>.

²¹ UN Human Rights Committee, *Concluding observations adopted by the Human Rights Committee at its 105th session - Concluding Observations on Maldives adopted by the Human Rights Committee*, CCPR/C/MDV/CO/lat, 31 August 2012, at paragraph 14. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/MDV/CO/1&Lang=En.

²² *Ibid.*

²³ Miadhu News, *President ratifies the Anti-Torture Bill 2013*, 24 December 2013. Available at: <http://www.miadhu.com/2013/12/local-news/president-ratifies-the-anti-torture-bill-2013/>.

²⁴ See, <http://www.hrcm.org.mv/news/page.aspx?id=201>. (Available in Dhivehi language at the time of writing)

²⁵ Minivan News, *Parliament passes prison and parole bill*, 29 August 2013. Available at: <http://minivannews.com/news-in-brief/parliament-passes-prison-and-parole-bill-63782>.

²⁶ Minivan News, *Maafushi prison inmates petition president over poor conditions*, 03 June 2013. Available at: <http://minivannews.com/politics/maafushi-prison-inmates-petition-president-over-poor-conditions-58904>.

torture in detention centres;²⁷ and in July the HRCM confirmed that it was investigating three cases of detainees who suffered torture inflicted by officers of the Department of Penitentiary and Rehabilitation Services at the Custodial Reception and Diagnostic Centre in Male.²⁸

CHRI recommends that the Government of Maldives:

- 1. Eliminate corporal punishment provisions from current legislation and completely prohibit the use of corporal punishment; and**
- 2. Take all necessary measures to prevent torture and ill-treatment in all detention facilities.**

D. Freedom of expression, peaceful assembly, and access to information

15. In January 2013, the Maldives' Parliament passed the *Freedom of Peaceful Assembly Act*.²⁹ The Act outlawed gatherings outside the private residences of the President and Vice-President, certain government buildings, tourist resorts, ports and airports without the prior approval of the police. The Act did not provide a time frame for requesting and granting such approvals. Moreover, the law limits the right of the media, not accredited by the State, to report on assemblies and defines assemblies as a gathering for a shared purpose, of more than one person, in public or private.³⁰
16. Reports of confrontations between law enforcement officials and protesters, involving excessive use of force by the police are common.³¹ For instance, in November 2013, during protests in Malé against the Supreme Court's decision to allow the sitting President to remain in power, protestors claimed to have been severely beaten by the police.³² Amnesty International reported that during protests surrounding Mohamed Nasheed's resignation in February 2012, police targeted protesting MDP members and went to the extent of beating injured protesters in hospitals.³³
17. Journalists critical of government action faced attacks and intimidation. On 22 February 2013, the head of news for the Raajje TV Channel, a private pro-opposition channel, was badly beaten with an iron bar by unknown assailants while riding a motorbike in Malé. In October 2013 the station of Raajje was the target of an arson attack. The Police Integrity Commission subsequently found that the police officers in the vicinity had been negligent in their duty to protect the station.³⁴
18. The *Right to Information Act*, ratified in January 2014, came into force on 12 July 2014. The Act requires all institutions to appoint information officers and mandates that requested information, or justification for denying the request, be provided within thirty days.³⁵

CHRI recommends that the Government of Maldives:

- 1. Ensure the safety, and protect the rights, of all journalists and media houses by impartially investigating any allegation of harassment or attack with a view of bringing those responsible to justice; and**
- 2. Immediately repeal the *Freedom of Peaceful Assembly Act* and ensure that all legislation that seeks to limit fundamental freedoms are in compliance with the principles of international human rights law.**

²⁷ Minivan News, *Police Commissioner urges all officials to be patient with inmates*, 25 March 2014. Available at: <http://minivannews.com/society/police-commissioner-urges-all-officers-to-be-patient-with-inmates-80862>.

²⁸ Minivan News, *HRCM investigating three cases of alleged torture in Male' custodial*, 13 July 2013. Available at: <http://minivannews.com/politics/hrcm-investigating-three-cases-of-alleged-torture-in-male-custodial-61049>.

²⁹ Transparency Maldives, *Governance Update Jan 2013*, January 2014. Available at: <http://transparency.mv/wp-content/uploads/2013/05/GU-January-13.pdf>.

³⁰ Forum Asia, *Maldives – Freedom of Peaceful Assembly Act, 2013 (Unofficial Translation)*, 16 July 2013 at: <http://www.forum-asia.org/?p=17526>.

³¹ Minivan News, *Protester clashes with security forces*, 16 February 2013. Available at: <http://minivannews.com/politics/protesters-clash-with-security-forces-52999>;

³² Minivan News, *Maldives police, thugs clash with pro-democracy protesters*, 11 November 2013. Available at: <http://goo.gl/IJquS2>

³³ Amnesty International, *2013 report on Maldives*. Available at: <http://www.amnesty.org/en/region/maldives/report-2013>.

³⁴ Minivan News, *Police officers 'negligent' in Raajje TV arson attack*, 12 December 2013. Available at: <http://goo.gl/fK4oAw>.

³⁵ Minivan News, *MJA urges Majlis to expedite Information Commissioner approval*, 13 July 2014. Available at: <http://minivannews.com/category/news-in-brief/page/5>.

E. Sexual orientation and gender identity (SOGI)

19. Same-sex sexual conduct is prohibited by Sharia law, with penalties of nine months to one year of banishment or 10 to 30 strokes of whipping and nine to twelve months of house arrest for women.³⁶ This includes sexual acts between females as well as those between males.
20. During the last UPR, Maldives rejected all recommendations related to sexual orientation and gender identity, including those related to introducing policies to combat discrimination.
21. The unsatisfactory legal situation discourages individuals from reporting crimes and incidents relating to LGBT related violence and harassment.
22. In January 2014, the trial for alleged homosexual conduct between a military officer and a security guard, began in Malé. The two men have been accused of indulging in “indecent act”.³⁷ In May and August 2013, four men were arrested on charges of being involved in homosexual acts, two from Fokaidhoo Island and two from Vilimale.³⁸

CHRI recommends that the Government of Maldives:

- 1. promote and facilitate constructive dialogue on sexual orientation and gender identity with stakeholders, including government ministries, civil society and religious leaders;**
- 2. take concrete steps to protect LGBTI identifying individuals from violence and discrimination; and**
- 3. work towards de-criminalising same-sex sexual conduct by initially establishing a moratorium on prosecutions.**

³⁶ International Lesbian, Gay, Bisexual, Trans and Intersex Association (IGLA), *Submission in the UPR review of Maldives*, 2010. Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/MV/JS2_ARCI_ArcInternational_JS.pdf;

³⁷ Rainbow Maldives, *Trial begins over case of military officer's "indecent behavior" with security guard*, 05 January 2014. Available at: <http://rainbowmaldives.blogspot.in/2013/01/trial-begins-over-case-of-military.html>.

³⁸ Minivan News, *Police charge two men for homosexuality on Fokaidhoo*, 04 August 2013. Available at: <http://goo.gl/CKIYIN>.