



Inhuman sentencing of children in the Maldives

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Introduction

Corporal punishment is lawful as a sentence for crime for persons under 18 under Islamic law. It appears that child offenders may also lawfully be sentenced to capital punishment and life imprisonment.

Juvenile justice is governed by the Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors 2006¹ and the Penal Code. The Regulation states that children up to the age of 10 are not criminally responsible for any offence unless they have reached puberty, in which case they are liable for certain *hadd* offences (for which the prescribed penalty is mandatory) and homicide; children aged 10 to 15 are criminally responsible for these crimes plus drug offences; from 15, children are criminally responsible in relation to all offences.² The Regulation defines a minor as under 18,³ and states that offences committed by minors must be dealt with in accordance with this Regulation.⁴

The criminal justice system, including juvenile justice, is under review (see below).

Legality of inhuman sentencing

Death penalty

Child offenders may be sentenced to death under Islamic law. The Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors states that children from the age of puberty may be held criminally responsible for committing apostasy, revolution against the state, fornication, fallaciously accusing a person of fornication, consumption of alcohol, unlawful intentional killing and other offences relating to homicide.⁵ These are offences for which *hadd* is prescribed in Islam, including the death penalty, although contrary to Islamic law apostasy is not punished by death.⁶

From the age of 15, children may be convicted of other offences (age 10 for drug offences). The Penal Code⁷ and possibly other laws provide for the death penalty. The Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors states that children

¹ This Regulation repeals clauses 281 and 289 of the Regulation on Trial Procedures No. 6 and Ministry of Justice Circular Number 2004/03/MJ (24 February 2004)

² Articles 4, 5 and 6

³ Article 2

⁴ Article 1

⁵ Articles 4 and 5

⁶ Robinson, P. H. and the University of Pennsylvania Law School Criminal Law Research Group (2006), *Final Report of the Maldivian Penal Law & Sentencing Codification Project, Vol. 1 : Text of Draft Code (including Sentencing Guidelines)*, Commissioned by the Office of the Attorney General of the Maldives and the United Nations Development Programme, p. 4

⁷ Articles 26, 27, 36, 37, 76, 78, 82

should receive two thirds of the minimum penalty stated in law, and gives the judge discretion where no minimum is stated, but there is no explicit prohibition of the death penalty for child offenders.

The Government has stated that capital punishment is not imposed for offences committed by persons under 18.⁸ This is contradicted by information that persons convicted of religious offences prescribing the death penalty may be sentenced to death regardless of their age.⁹

Corporal punishment

Corporal punishment is lawful as a sentence for crime. Under the Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors, children who have reached puberty may be punished by flogging for committing certain *hadd* offences.¹⁰ From the age of 15, children can also be convicted of a wider range of offences under Islamic law. The offence of theft, however, is reportedly not punished by amputation as might be expected under some Islamic law systems.¹¹ There is no provision for corporal punishment in the Penal Code. The Disobedience Law provides for corporal punishment as a sentence, but we have not been able to obtain further information on the exact nature or enforcement of this law.

Life imprisonment

The Government has stated that life imprisonment without possibility of release is not imposed for offences committed by persons under 18,¹² but there appears to be no explicit prohibition. Under the Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors, a child who is convicted of an offence punishable by imprisonment or banishment may, at the discretion of the judge, be sent to a juvenile detention centre or a rehabilitation centre or placed under house arrest.¹³ If sentenced to imprisonment as specified in law, the penalty must be two thirds of the smallest penalty stated in the law or, where no minimum is specified, at the judge's discretion.¹⁴ There is no explicit prohibition of life imprisonment.

According to one source, sentences of capital punishment are typically commuted to life imprisonment through presidential powers,¹⁵ and this would presumably apply to child offenders convicted of capital offences. In 2005, a sentence of life imprisonment for drug possession passed by the Juvenile Court was overturned by the High Court on appeal, but we have not been able to obtain further details on this case.¹⁶

⁸ Second/third state party report to the Committee on the Rights of the Child, CRC/C/MDV/3, 10 April 2006, para. 608; see also UNICEF (2006), *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law*, Kathmandu: UNICEF Regional Office for South Asia, p.122

⁹ *Moving from aspirations to impact: NGO Shadow Report on CRC*, co-ordinated by Hama Jamiyya and Care Society with funding from UNICEF (2006), para. 121; see also Heiberg, T. et al (2010, draft), *Stepping Up Child Protection: An assessment of Child Protection Systems from all countries in South Asia, including reflections from Central Asia*, Kathmandu: Save the Children Sweden Regional Office for South and Central Asia, p. 49

¹⁰ Articles 4 and 5

¹¹ Robinson, P. H. and the University of Pennsylvania Law School Criminal Law Research Group (2006), *op cit.*, p.4

¹² Second/third state party report to the Committee on the Rights of the Child, CRC/C/MDV/3, 10 April 2006, para. 608; see also UNICEF (2006), *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law*, Kathmandu: UNICEF Regional Office for South Asia

¹³ Article 17(b)

¹⁴ Article 17(e)

¹⁵ *Moving from aspirations to impact: NGO Shadow Report on CRC*, co-ordinated by Hama Jamiyya and Care Society with funding from UNICEF (2006), para. 120

¹⁶ *ibid.*, para. 121

Inhuman sentencing in practice

We have been unable to obtain statistical information relating to sentencing of child offenders to capital punishment, life imprisonment, or corporal punishment.

No executions have been carried out since 1952.¹⁷ Sentences of capital punishment are commuted to life imprisonment.¹⁸ According to one report, judicial lashings were halted in 2007 because of the death of the man who administered them, but resumed in May 2008.¹⁹

In 2003, 7 children under 16 (6 girls, 1 boy) and 36 children aged 16-18 (25 girls, 11 boys) were sentenced for the crime of fornication, but we do not know the nature of the sentences handed down.²⁰ The figures for 2004 were 6 children under 16 (all girls), 38 aged 16-18 (37 girls, 1 boy), and the figures for 2005 were 1 child under 16 (a girl), 20 aged 16-18 (18 girls, 2 boys).²¹

Progress towards prohibition and elimination

Law reform needed

All legal provisions authorising the courts to sentence persons under 18 to corporal punishment should be repealed and legislation should be enacted to explicitly prohibit all judicial corporal punishment of child offenders, including under Islamic law. The law should also explicitly prohibit capital punishment and life imprisonment for child offenders.

Law reforms under way

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, the Government made a commitment to prohibition of corporal punishment in all settings, including the home.

The criminal justice system is under review and there are plans to introduce comprehensive juvenile justice legislation. Two reviews commissioned by the Attorney General recommended the abolition of flogging.²² However, the draft Penal Code prepared in 2006 does not prohibit capital or corporal punishment for child offenders.²³ The draft was sent to a committee of the People's Majlis in October 2009²⁴, but we have not been able to obtain further information. New juvenile justice laws and regulations were expected to be drafted during 2009/2010.²⁵

National campaigns

¹⁷ E/2010/10, 18 December 2009, *Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*, para. 22 and Table 4

¹⁸ *Moving from aspirations to impact: NGO Shadow Report on CRC*, co-ordinated by Hama Jamiyya and Care Society with funding from UNICEF (2006), para. 120

¹⁹ *Minivan News*, 1 June 2008

²⁰ *Moving from aspirations to impact: NGO Shadow Report on CRC*, co-ordinated by Hama Jamiyya and Care Society with funding from UNICEF (2006), p. 28

²¹ *ibid.*

²² Alder, C. and Polk, K. (2004), *Strategic Plan for the Reform of the Juvenile Justice System*, Prepared at the request of the Attorney General; Robinson, P.H. (2004), *Report on the Criminal Justice System of the Republic of Maldives: Proposals for Reform*, Prepared at the request of the Attorney General, para. 6.4

²³ Draft Penal Code prepared by Professor Robinson and the University of Pennsylvania Law School Criminal Law Research Group, commissioned by the Office of the Attorney General of the Maldives and the United Nations Development Programme,

²⁴ *Miadhu News*, 15 October 2009

²⁵ Office of the Attorney General (2009), *Terms of Reference for a Project Manager and Deputy Project Manager of the Juvenile Justice Unit*

We are not aware of any national campaigns on the issue.

National and international law conflicting with inhuman sentencing

The Constitution

A number of provisions in the Constitution (2008) potentially conflict with inhuman sentencing of child offenders.

Article 16 (Guarantee of Rights):

“(a) This Constitution guarantees to all persons, in a manner that is not contrary to any tenet of Islam, the rights and freedoms contained within this Chapter, subject only to such reasonable limits prescribed by a law enacted by the People’s Majlis in a manner that is not contrary to this Constitution. Any such law enacted by the People’s Majlis can limit the rights and freedoms to any extent only if demonstrably justified in a free and democratic society....”

Article 17 (Non-discrimination):

“(a) Everyone is entitled to the rights and freedoms included in this Chapter without discrimination of any kind, including race, national origin, colour, sex, age, mental or physical disability, political or other opinion, property, birth or other status, or native island...”

Article 20 (Equality):

“Every individual is equal before and under the law, and has the right to the equal protection and equal benefit of the law.”

Article 21 (Right to life):

“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 35 (Special protection to children, young, elderly and disadvantaged people):

“(a) Children and young people are entitled to special protection and special assistance from the family, the community and the State. Children and young people shall not be harmed, sexually abused, or discriminated against in any manner and shall be free from unsuited social and economic exploitation. No person shall obtain undue benefit from their labour....”

Article 54 (No degrading treatment or torture):

“No person shall be subjected to cruel, inhumane or degrading treatment or punishment, or to torture.”

Article 57 (Humane treatment of arrested or detained persons):

“Everyone deprived of liberty through arrest or detention as provided by law, pursuant to an order of the court, or being held in State care for social reasons, shall be treated with humanity and with respect for the inherent dignity of the human person. A person may be deprived of the rights or freedoms specified in this Chapter only to the extent required for the purpose of which he is deprived of his liberty.”

Article 63 (Voiding of laws inconsistent with fundamental rights):

“Any law or part of any law contrary to the fundamental rights or freedoms guaranteed by this Chapter shall be void or void to the extent of such inconsistency.”

Article 66 (Voiding of laws inconsistent with rights and freedoms):

“All existing statutes, regulations, decrees and notices inconsistent with the fundamental rights and freedoms provisions in this Chapter shall, to the extent of the inconsistency, become void on the commencement of this Constitution.”

Article 68 (Interpretation):

“When interpreting and applying the rights and freedoms contained within this Chapter, a court or tribunal shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom, and shall consider international treaties to which the Maldives is a party.”

International human rights treaties

The Republic of Maldives has ratified or acceded to the following international treaties:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in 2004)
- Convention on the Elimination of All Forms of Discrimination Against Women (in 1993)
- Convention on the Rights of the Child (in 1991)
- Convention on the Rights of Persons with Disabilities (in 2010)
- International Covenant on Civil and Political Rights (in 2006)
- International Convention on the Elimination of All Forms of Racial Discrimination (in 1984)
- International Covenant on Economic, Social and Cultural Rights (in 2006)
- SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia.

The Republic of Maldives has not ratified the Second Optional Protocol on the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

The Republic of Maldives has ratified or acceded to the following complaints/communications mechanisms:

- International Covenant on Civil and Political Rights (in 2006)
- Convention on the Elimination of All Forms of Discrimination Against Women (in 2006)

Status of treaties

Constitution article 93 (Treaties):

“(a) Treaties entered into by the Executive in the name of the State with foreign states and international organizations shall be approved by the People’s Majlis, and shall come into force only in accordance with the decision of the People’s Majlis.

(b) Despite the provisions of article (a), citizens shall only be required to act in compliance with treaties ratified by the State as provided for in a law enacted by the People’s Majlis.”

Recommendations from human rights treaty monitoring bodies

Subcommittee on Prevention of Torture

(26 February 2009, CAT/OP/MDV/1, Report on the visit of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment to the Maldives, paras. 26, 27, 28, 29)

“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.”

Committee on the Rights of the Child

(13 July 2007, CRC/CDV/CO/3, Concluding observations on second/third report, paras. 55, 56, 97, 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 notes that the State party is in the process of reforming the administration of juvenile justice, including the plans to draft a Juvenile Justice Act, and that the State party has introduced a “family conferencing” programme and established a Family and Child Protection Unit within the police department. The Committee also notes that the State party, with the support of UNICEF, has set up databases on the administration of juvenile justice in Addu, at the Juvenile Court and police offices and further categorized and disaggregated the data collected within these databases. It also takes note of the National Criminal Justice Action Plan 2004-2008.

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

- a) the administration of juvenile justice is still based on the principle of punishment and detention rather than on the restorative model providing measures for rehabilitation and reintegration of children in conflict with the law;
- b) the minimum age of criminal responsibility, which is set at 10 years, is still too low;
- 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;
- e) despite the introduction of a family conferencing programme, the lack of alternative measures and sentencing options to the deprivation of liberty....

“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;
- b) continue to develop and implement a comprehensive system of alternative measures such as community service orders, family conferencing and interventions of restorative justice in order to ensure that deprivation of liberty is used only as a measure of last resort;
- c) raise the minimum age of criminal responsibility at least to the age of 12 years;
- d) abolish the death penalty related to *haddu* offences perpetrated by persons under the age of 18 years;
- e) abolish the use of corporal punishment as a sentence for crime and for disciplinary purposes....”

Committee on the Rights of the Child

(5 June 1998, CRC/C/15/Add.91, Concluding observations on initial report, paras. 24 and 45)

“While the Committee takes note that the administration of juvenile justice is regulated by the Penal Code and the Law on the Protection of the Rights of the Child, it is concerned about the full compatibility of such legislation with articles 37, 40 and 39 of the Convention as well as other relevant standards, 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. Although the Committee is aware that juvenile offenders aged up to 16 enjoy a special judicial procedure, it is particularly concerned regarding the situation of those between 16 and 18 years, who are considered as adults.

“With regard to the administration of juvenile justice, the Committee recommends that the State party accelerate the adoption of special procedures for children to fully integrate the provisions of the Convention, in particular articles 37, 40 and 39 as well as other relevant international standards in this area, such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty in its legislation, laws, policies, programmes and practices. In particular, the Committee recommends special procedures for children aged between 16 and 18, who are currently considered adults, to establish special courts for children and to review the provision of legal counselling for children in care centres. Furthermore, the Committee recommends to the State party to consider seeking international assistance from, inter alia, the Office of the United Nations High Commissioner for Human Rights, the Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF through the Coordination Panel on Juvenile Justice.”

Universal Periodic Review

Maldives is due to be examined under the Universal Periodic Review process in November 2010.