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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; and the Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice.

REFERENCE: OL G/SO 214 (53-24) G/SO 214 (89-15)
MDV 1/2013

26 February 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences; and Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice pursuant to Human Rights Council resolutions 16/23, 16/7, and 15/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the **existence of legal provisions that allow sentencing of sexually abused minors on charges of fornication.**

The 1961 Penal Code of the Maldives lacks specific provisions criminalizing sexual violence. It only contains a general provision in section 88 (a) where in case of non-compliance with lawful and judicial orders: "(i)t is an offence to disobey an order issued lawfully within the Shari'ah or Law, person guilty of this offence shall be subjected to a punishment of exile or imprisonment or house detention (...)".

In the absence of specific provisions penalizing sexual violence, sentencing judges can resort to subsidiary law, and in particular Schedule 2 of the 2008 General Law on Regulation. According to section 173 of Schedule 2a of this law, fornication and rape are listed as offences punishable by flogging. In this connection, Schedule 2b of the same law contains provisions regulating the sentencing of juveniles, allowing judges to exercise discretion to suspend a sentence until the victim has reached 18 years of age or a reduction to 1/3 of the period of imprisonment.

In addition, in 2009 the Special Provisions Act to Deal with Child Sex Abuse Offenders (Act 12/2009) was passed in an effort to, inter alia, "protect children... from persons who could harm them" (Section 2a), "monitor and manage child sex offenders in

a continued manner” (Section 2b), “stipulate severe punishment to child sex abusers and those who aid and abet in the commission of those” (Section 2d), “obtain compensation for injuries suffered” (Section 2e), and “prevent requests to the child to demonstrate to court through actions... the manner in which the abuse was carried out or committed” (Section 2g). While we take note of this law, we would like to highlight some issues which may negatively impact on its effective implementation, thus undermining the aims of prevention and protection from sexual abuse.

Section 47 of this 2009 Special Provisions Act specifies a minimum of five different categories to constitute evidential requirement out of the ten listed. The same Section stipulates that “where at least 5 types of evidences are available... such evidence shall be deemed to constitute sufficient evidence to establish the offence beyond reasonable doubt as stated in article 51 (a) [*sic*] [*h*] of the Constitution”, which sets the basic standard of evidence needed to convict a person for a criminal offence.

Furthermore, according to Sections 24 and 25 of this law, children under 13 “shall not be deemed to be in a position to give consent (to sexual acts) under any circumstance”, and children aged between 13 and 18 years of age be “deemed that... did not give consent” unless specified otherwise. However, while these provisions are welcome, we are concerned that under Shari’ah law, a girl can still be charged with zina (fornication), which carries the penalty of flogging. The fact that zina is integrated into law and flogging is carried out by state authorities perpetuates the negative social stigma attached to zina further discouraging reporting of rape and sexual abuse and undermines the enforcement of the Special Provisions Act to deal with child sex abuse offenders (Act 12/2009).

In this connection, we would like to express our serious concern at the existence of legislation that permits punishing victims of sexual violence, including minors, by flogging on charges of fornication. We would also like to express our grave concern at the devastating impact on the physical and psychological integrity and well-being of children, in particular female minors victims of sexual violence, resulting from the deliberate use of such legal provisions.

We would like to draw the attention of your Excellency’s Government to article 19 of the International Convention on the Rights of the Child which provides that States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Moreover, article 34 provides that States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials.

In this context, we wish to make reference to paragraph 7 (a) of resolution 8/8 of the Human Rights Council which reminded Governments that corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture. We would also like to draw your Excellency's Government's attention to the annual report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the 60th session of the General Assembly, in which the Special Rapporteur, with reference to the jurisprudence of UN treaty bodies, concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. He also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (para.28 A/60/316). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime of as an educative or disciplinary measure.

As it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify any information related to our mandates, we would be grateful for your observations on the following matters:

1. Please explain how the existing criminal law in the Maldives is in accordance with international human rights standards, and in particular with articles 7 of the ICCPR, 2.1 and 4 of the CAT, and articles 2.2, 3.2, and 4 of the Convention on the Rights of the Child.
2. Please provide details on any legislative initiative to criminalize sexual violence in general and against women and girls in particular. Please also provide details on any steps taken to review the 1961 Penal Code.
3. In line with the evidential requirement set out in Section 47 of the 2009 Special Provisions Act to Deal with Child Sex Abuse Offenders, please explain how this provision facilitates the adequate consideration of cases of sexual abuse of children, in particular in terms of interpreting the value of quantitative and qualitative evidence presented before the Court when the prosecution is unable to present evidence from five

out of twelve categories. In this connection, please provide disaggregated statistical data of the cases of sexual abuse prosecuted in your country in the last three years.

4. Please explain how your Excellency's Government ensures that victims of sexual violence, including minors, are afforded adequate legal, judicial and administrative protection before the law and whether there are services in place for their rescue, rehabilitation, and reintegration.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Juan E. Méndez
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treatment or punishment

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Special Rapporteur on violence against women, its causes and
consequences

Kamala Chandrakirana
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