



Human Rights & Gender Review of Gender-Based Violence Related Laws in the Maldives

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ACRONYMS & ABBREVIATIONS

CEDAW	Convention on the Elimination of Discrimination Against Women
CRC	Convention on the Rights of the Child
GBV	Gender-based violence
HRBA	Human rights-based approach
ICT	Information and Communication Technology
ICPD	International Conference on Population and Development
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Education, Scientific and Cultural Organisation
UNFPA	United Nations Population Fund
UNFPA APRO	United Nations Population Fund, Asia Pacific Regional Office
UNICEF	United Nations Children’s Fund
UNODC	United Nations Office on Drugs and Crime

1 Introduction & Background

1.1 UNFPA Context

The United Nations Population Fund (UNFPA) is the lead UN agency for delivering a world where every pregnancy is wanted, every birth is safe, and every young person's potential is fulfilled.¹ Guided by the 1994 Programme of Action of the International Conference on Population and Development (ICPD) and the ICPD25 Nairobi Summit, the United Nations Population Fund partners with governments, civil society, and other agencies to accomplish its mission, which aims to promote the rights of every woman, man and child to enjoy a life of health and equal opportunity and supports countries in using data for policies and programmes to reduce poverty.

UNFPA's Strategic Plan 2022-2025 provides a framework for UNFPA programming at all levels of the organization. UNFPA has set in motion a strategic effort, based on quality data, to achieve three zeros by 2030: zero unmet need for contraception; zero preventable maternal deaths; and zero gender-based violence (GBV) and harmful practices. The Human Rights Based Approach (HRBA) is an accelerator to contribute to the achievement of the three zeros. UNFPA's strategic plan is also in line with the Sustainable Development Goals with the central pledge of leaving no one behind.²

UNFPA will deliver on the Strategic Plan results by building on its core comparative advantages, including (a) its presence in over 150 countries and territories through its global, regional and country programmes; (b) its expert knowledge and experience, acquired over decades of operation, and (c) its unique expertise in providing innovative, evidence-informed and rights-based solutions that cover both normative and operational dimensions, in line with the 2030 Agenda, United Nations reform and the 2020 quadrennial comprehensive policy review.³

1 www.unfpa.org

2 UNFPA (2021), UNFPA Strategic Plan 2022-2025, DP/FPA/2021/8.

3 UNFPA (2021), UNFPA Strategic Plan 2022-2025, DP/FPA/2021/8..

1.2 Maldives Context

The Maldives is in many aspects progressive in human rights, where the majority of the human rights treaties have been ratified and it is currently a Member of the Human Rights Council (up to 2025).⁴ The country has made significant advances in aligning the country's national legal and regulatory

frameworks with obligations in the Convention on the Elimination of Discrimination Against Women (CEDAW). In practice however, one in three women experience some form of violence, and only 3-5% of the total number of cases reported are brought up in court. In 2018 UN Human Rights experts warned that the rule of law is under siege in the Maldives.

Ratification of international human rights treaties by the Maldives

Treaty	Year of Ratification
Convention on the Elimination of Racial Discrimination	1984
International Covenant on Civil and Political Rights	2006
International Covenant on Economic, Social and Cultural Rights	2006
Convention on the Elimination of Discrimination Against Women	1993
Convention Against Torture	2004
Convention on the Rights of the Child	1991
Convention on the Rights of Persons with Disabilities	2010

The United Nations Expert Group on Discrimination Against Women and Girls undertook its first official visit to the Maldives from 11 to 22 September 2022 to assess progress and challenges in achieving gender equality and eliminating discrimination against women and girls in the country. The Working Group on Discrimination Against Women raised a number of concerns related to the legislative framework for ending violence against women, which are referred to throughout this report. The legal system of the Maldives is based on a mixture of Islamic law and English common law⁵ (with *Shari'ah* provisions incorporated into various Acts). Civil law is subordinate to *Shari'ah*, which is applied in situations not covered by civil law as well as in cases such as divorce and adultery.⁶ With relation to personal status, the basis of the law is *Shari'ah*, as adapted to the modern Maldivian judicial system.⁷ However, national stakeholders have purported that there is no plural system of law in the Maldives. This law review has nevertheless included observations by international human rights mechanisms relating to plural systems of law

because of these multiple sources of law which leave room for interpretation of provisions based upon *Shari'ah*.

A UNFPA Asia Pacific Regional Office (APRO) mission was undertaken in August 2022 to initiate the dialogue on decriminalizing gender-based violence (GBV) through gender related legislation together with the high level advocate Mr. Dean Peacock. In addition, the APRO Human Rights Advisor helped to review and recommend UNFPA Country Office positioning of human rights related actions in view of the changing political and socio-cultural context to obtain collective solidarity with UN agencies, in particular the Office of the High Commissioner for Human Rights. One recommendation from the mission is the need to obtain an overview of the laws related to gender-based violence.

⁴ <https://www.ohchr.org/en/hr-bodies/hrc/current-members>

⁵ Government of Maldives (2011), Core document forming part of the reports of States parties - Maldives, HRI/CORE/MDV/2010. The law does not provide for freedom of religion in the Maldives. The Constitution designates Islam as the official state religion and the law prohibits the practice of any religion other than Islam.

⁶ Government of Maldives (2011), Core document forming part of the reports of States parties - Maldives, HRI/CORE/MDV/2010.

⁷ Government of Maldives (2011), Core document forming part of the reports of States parties - Maldives, HRI/CORE/MDV/2010.

2 Purpose of the Research

2.1 Overall Aim

The purpose of the research is to provide an overview of the laws in the Maldives related to GBV and highlight where there are repetitions, overlap, possible contradictions and whether they are respectful of human rights and gender equality.⁸

2.2 Background to the Research

One of the recommendations from the August 2022 mission by the expert consultant on gender and punitive laws and the UNFPA APRO Human Rights Advisor was to review the GBV laws and related laws to obtain a clear understanding of the contradictions. It would be beneficial to review in the first instance the laws which are directly related to GBV and obtain a clear understanding if there are aspects/ articles in the laws which are aligned, repetitive, contradictory and finally if the laws are respectful of human rights and as such then also gender mainstreamed. These recommendations were discussed with different ministries during the mission as well as other stakeholders, which all were very supportive of this action point.

Justification for the mapping:

- i The Maldives has ratified the seven out of nine of the core human rights treaties and is as such legally bound to fulfill its human rights obligations. Ideally the treaty ratifications should be reflected in national laws and policies and then in practice, including programmes and services.⁹
- ii National laws often dictate the formulations of policies and possible programmes and service provisions for, in this case, the response to GBV;
- iii If there are duplications, repetitions and/ or contradictions it needs to be flagged as this has consequences on the translation of laws into practice;
- iv While it appears that most of the laws in the Maldives are respectful of human rights, Sharia law supersedes all laws, and it needs to be clear if and how this is stipulated in the various legal documents and what it implies;
- v The Asia-Pacific Region's lack of regional human rights protection mechanisms – for example, compared to Latin America, Europe and Africa- leaves people dependent on domestic and global levels protections and accountability mechanisms; and
- vi Research demonstrates that national/ customary laws have more meaning and impact on national policies and programmes than ratifications of treaties and, as such, if human rights are to be mainstreamed, the national laws also have to be aligned and respectful of human rights and gender equality.

While it is important to have a clear overview of laws and policies, it is not enough, but it is a first step to prevent inequalities and continuation of intergenerational violence.

⁸ Terms of reference for the assignment.

⁹ The Maldives has not ratified the Convention for the Protection of All Persons from Enforced Disappearance (CED) and the International Convention on the protection of the Rights of AI; Migrant Workers and Members of Their Families (CMW)

3 Methodology

3.1 Overall Aim

The overall aim is to obtain a mapping of laws related to GBV highlighting repetitions, overlap, possible contradictions and whether they are respectful of human rights and gender equality. In particular, the mapping study will do the following:

- 1 Review and map the laws related to gender based violence¹⁰ and highlight repetitions, overlap, possible contradictions, whether there is reference to punitive vs. non-punitive laws, and whether they are respectful of human rights and gender equality. The proposed laws to be reviewed are: Domestic Violence Prevention Act; Sexual Offences Act; Prevention of Sexual Abuse and Harassment Act; Gender Equality Act; Child Rights Protection Act; Penal Code; and the Family Act.
- 2 Highlight whether there is reference to Sharia law and consult with the Attorney General's Office what this means in practice.
- 3 Draft the report.
- 4 Present the findings in a workshop. This document will be a public document. The report will be edited, formatted and published 2023.¹¹

3.2 Methods of Data Analysis

What follows is a thematic analysis of seven laws relevant for gender-based violence in the Maldives, namely the Domestic Violence Prevention Act, the Family Act, the Gender Equality Act, the Penal Code, the Prevention of Sexual Abuse and Harassment Act, the Child Rights Protection Act, and the Sexual Offences Act.¹² Moreover, where relevant other pieces of national legislation are referred to, including the Anti-Torture Act, the Anti-Human Trafficking Act, the Constitution, the Employment Act, the Regulation on Conducting

10 These laws were chosen by UNFPA Maldives for their negative impacts on the status of women, and women's rights.

11 Terms of reference for the assignment.

12 These laws were selected on the basis that these laws have negative impacts on the status of women, and contain provisions that are discriminatory towards women.

Trials, Investigations and Sentencing Fairly for Offences Committed by Minors, the Regulation on Implementation of Death Penalty, the Regulation on Investigation and Execution of Sentence for Willful Murder, and the Special Provisions Act to Deal with Child Sex Abuse Offenders. In line with the characterization of the Committee on the Elimination of Discrimination Against Women of gender-based violence as physical, sexual, psychological or economic harm or suffering to women, the analysis is grouped into these categories.

Recommendations for law reform in the Maldives are made in accordance with existing recommendations of the United Nations Treaty Bodies, including the Committee on the Elimination of Discrimination Against Women, the Committee on the Rights of the Child and the Committee Against Torture, as well as United Nations Special Procedures, including the Special Rapporteur on Violence Against Women, and the Working Group on Discrimination Against Women. These are drawn from Concluding Observations relating to the Maldives, as well as from General Recommendations regarding legislative measures. (See Annex 1).

The mapping study will apply a human rights-based approach (HRBA), as required by UN guiding policies, including the United Nations "Statement on a Common Understanding of the Human Rights-Based Approach" 2003.¹³ HRBA is a conceptual framework that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. Under this approach, plans, policies and programmes are anchored in a system of rights and corresponding obligations established by international law, including the Convention on the Elimination of Discrimination Against Women, the Convention on the Rights of the Child, the Convention Against Torture, and the International Covenant on Civil and Political Rights. In addition, informed by the jurisprudence of the respective Committees contained in general comments or general recommendations and the work of the UN Special Procedures, including thematic special procedures of the Human Rights Council, particularly the UN Working Group on Discrimination Against Women

and Girls, the UN Special Rapporteur on Violence Against Women, the UN Special Rapporteur on the Independence of Judges and Lawyers, and the UN Special Rapporteur on Torture. Please see the desk review section below for specific guidance (Annex 1).

Each of the seven laws relevant for GBV will be analysed with respect to the following aspects:

- Repetitions
- Overlap
- Possible contradictions
- Reference to punitive vs. non-punitive laws
- Whether they are respectful of human rights and gender equality
- Sharia Law.

Regarding analysis of Sharia law, the mapping study will take into account the guidance of the UN Working Group on Discrimination Against Women and Girls stating that Islamic Sharia must uphold and protect the rights of women and girls, as well as jurisprudence of the UN Treaty Bodies and other Special Procedures regarding the status of religious laws.

The following analysis is presented in four subsections – physical, sexual, psychological and economic harm or suffering to women. Each subsection analyses laws relevant for these types of harm. First, an overview of the international human rights law is given, followed by findings regarding the national law in the given area with reasoning, and finally recommendations are made for law reform. A summary of findings and recommendations is contained in a table in Annex 2.

In May 2023, the consultant participated in a high level validation workshop in Male' to disseminate the findings and recommendations of the initial draft report, and to gather feedback from major stakeholders. Some of this feedback is incorporated into the recommendations of the final draft of the report. Key stakeholders consulted included the UN Resident Coordinator, UN Human Rights Advisor, UNFPA Country Director, UNFPA Head of Office, UNFPA Programme Analyst, UNICEF, UNDP, UNODC, UNESCO; the Chair, Gender and Human Rights Committee, Parliament; the Speaker of Parliament; the Gender Minister and her staff;

¹³ United Nations Development Group (2003), The Human Rights Based Approach to Development Cooperation: Towards A Common Understanding Among UN Agencies. UNFPA (2010), A Human Rights Based Approach to Programming: Practical Implementation Manual and Training Materials. UNFPA (2020), Guidance Note for Applying A Human Rights Based Approach to Programming in UNFPA.

two female Supreme Court Justices, the Prosecutor General; the Deputy High Commissioner, Australia; the Maldives Police Services; the Human Rights Commission of Maldives, Attorney General's Office, Family Legal Clinic, and the Family Court.

3.3 Limitations of the Study

The Study is limited by the fact that the researcher has been unable to view officially translated versions of amendments to the Sexual Offences Act and the Child Rights Protection Act. The first draft of this Study had recommended amendments to both those Acts, and Parliament has indicated it has already made some of these amendments. However, it has not been possible to verify the quality of such amendments.

Other laws only had unofficial translations available, some laws had no translation available, so in these instances the Study has been drafted with reference to what UN Treaty Bodies have stated about such laws.

Moreover, it has not been possible to seek the bilateral guidance of the Attorney General's Office in the Maldives, particularly with respect to the application of Sharia law in practice.

3.4 Definitions & Concepts

This section briefly defines some concepts central to the study.

Child marriage - The Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child in General Recommendation #31 on harmful practices stated that child marriage, also referred to as early

marriage, is any marriage where at least one of the parties is under 18 years of age.¹⁴

Corporal punishment - The Committee on the Rights of the Child in General Comment #8 on Corporal Punishment states that "corporal" or "physical" punishment is defined as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involve hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement, such as a whip, stick, belt, shoe, wooden spoon. It can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, caning, forcing children to stay in uncomfortable positions, burning, scalding, or forced ingestion.¹⁵

Crimes committed in the name of so-called honour - The Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child stated in General Recommendation 31 on harmful practices that crimes committed in the name of so-called honour are acts of violence that are disproportionately, although not exclusively, committed against girls and women because family members consider that some suspected, perceived or actual behaviour will bring dishonour to the family or community. Such forms of behaviour include entering into sexual relations before marriage, refusing to agree to an arranged marriage, entering into a marriage without parental consent, committing adultery, seeking divorce, dressing in a way that is viewed as unacceptable to the community, working outside the home or generally failing to conform to stereotyped gender roles. Crimes in the name of so-called honour may also be committed against girls and women because they have been victims of sexual violence.¹⁶

Female genital mutilation - female genital cutting is the practice of partially or wholly removing the external female genitalia or otherwise injuring the female genital organs for non-medical or non-health reasons. It may have various immediate and/or long-term health consequences, including severe pain, shock, infections and complications during childbirth (affecting both the mother and the child),

14 Committee on the Elimination of Discrimination Against Women in General Recommendation #31 on harmful practices, para 20.

15 Committee on the Rights of the Child (2007), General Comment #8 on Corporal Punishment, para 11.

16 Committee on the Elimination of Discrimination Against Women in General Recommendation #31 on harmful practices, para 29.

long-term gynaecological problems such as fistula, psychological effects and death.¹⁷ The Committee on the Rights of the Child in General Comment #13 on violence against children classifies female genital mutilation as a harmful practice.¹⁸

Forced marriages are marriages in which one or both parties have not personally expressed their full and free consent to the union. They may be manifested in various forms, including child marriage, as indicated above, exchange or trade-off marriages, servile marriages and levirate marriages (coercing a widow to marry a relative of her deceased husband). In some contexts, a forced marriage may occur when a rapist is permitted to escape criminal sanctions by marrying the victim, usually with the consent of her family.¹⁹

Forced sterilisation - Sterilization without full, free and informed consent has been variously described by international, regional and national human rights bodies as an involuntary, coercive and/or forced practice, and as a violation of fundamental human rights, including the right to health, the right to information, the right to privacy, the right to decide on the number and spacing of children, the right to found a family and the right to be free from discrimination. Human rights bodies have also recognized that forced sterilization is a violation of the right to be free from torture and other cruel, inhuman or degrading treatment or punishment.²⁰

Gender-based violence takes multiple forms, including acts or omissions intended or likely to cause or result in death²¹ or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.²²

Gender-based violence and harassment is defined as “violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.” (Article 1(1)(b) of the Violence and Harassment Convention - ILO Convention No. 190)

Judicial flogging - Flogging, also called whipping or caning, is a beating administered with a whip or rod, with blows commonly directed to the person’s back. It is imposed as a form of judicial punishment (hence judicial flogging) and as a means of maintaining discipline in schools, prisons, military forces, and private homes. (<https://www.britannica.com/topic/flogging>)

ILO Convention No. 190 **defines violence and harassment** as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.” (Article 1(1)(a))

17 Committee on the Elimination of Discrimination Against Women and Committee on the Rights of the Child (2019), Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1, para 19.

18 Committee on the Rights of the Child (2011), General comment No. 13 - the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 29.

19 Committee on the Elimination of Discrimination Against Women in General Recommendation #31 on harmful practices, para 23.

20 OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF, WHO (2014), Eliminating forced, coercive and otherwise involuntary sterilization: An Interagency Statement.

21 Deaths resulting from gender-based violence include murders, killings in the name of so-called “honour” and forced suicides.

22 Committee on the Elimination of Discrimination Against Women, General Recommendation #35 on gender-based violence against women, updating general recommendation #19, para 14. Citing General recommendation No. 19, para. 6, and general recommendation No. 28, para. 19.

4 Thematic analysis of the seven national laws relevant for gender-based violence in the Maldives

The Committee on the Elimination of Discrimination Against Women in General Recommendation #35 on gender-based violence against women stated that gender-based violence takes multiple forms, including acts or omissions intended or likely to cause or result in death²³ or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.²⁴ Gender-based violence against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices.²⁵ Violations of women's sexual and reproductive health and rights, such as forced sterilization, forced abortion, forced pregnancy, criminalization of abortion, denial or delay of safe abortion and/or post-abortion care, forced continuation of pregnancy, and abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.²⁶ The Committee on the Rights of the Child in General Comment #13 on violence against children defined violence as "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse" as listed in article 19, paragraph 1, of the Convention on the Rights of the Child. Other terms used to describe types of harm (injury, abuse, neglect or negligent treatment, maltreatment and exploitation) carry equal weight.²⁷

The following analysis is grouped according to physical, sexual, psychological and economic harm or suffering to women.

23 Deaths resulting from gender-based violence include murders, killings in the name of so-called "honour" and forced suicides.

24 Committee on the Elimination of Discrimination Against Women, General Recommendation #35 on gender-based violence against women, updating general recommendation #19, para 14. Citing General recommendation No. 19, para. 6, and general recommendation No. 28, para. 19.

25 Committee on the Elimination of Discrimination Against Women, General Recommendation #35 on gender-based violence against women, updating general recommendation #19, para 16. Citing Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57.

26 Committee on the Elimination of Discrimination Against Women, General Recommendation #35 on gender-based violence against women, updating general recommendation #19, para 18.

27 Committee on the Rights of the Child (2011), General comment No. 13 – the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 4.

4.1 Physical Violence

The Committee on the Elimination of Discrimination Against Women in General Recommendation #35 on gender-based violence against women stated that gender-based violence includes acts or omissions intended or likely to cause or result in death²⁸ or physical harm or suffering to women.²⁹

The Committee on the Rights of the Child in General Comment #13 on violence against children stated that violence includes “all forms of physical violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation”.³⁰ The Committee also stated that physical violence includes fatal and non-fatal physical violence, as well as: (a) All corporal punishment and all other forms of torture, cruel, inhuman or degrading treatment or punishment; (b) Physical bullying and hazing by adults and by other children.³¹

This section will analyse in particular (i) domestic violence, (ii) corporal punishment, (iii) torture or cruel, inhuman or degrading treatment, and (iv) death and the death penalty.

4.1.1 Domestic Violence

The Committee on the Elimination of Discrimination Against Women in General Recommendation No. 19 on Violence Against Women stated that domestic violence, or family violence, is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence,

which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women’s health at risk and impair their ability to participate in family life and public life on a basis of equality.³²

The Committee on the Elimination of Discrimination Against Women recommended that States ensure that laws against family violence give adequate protection to all women, and respect their integrity and dignity.³³ In particular, the Committee recommended criminal penalties and civil remedies, including legislation to remove the defense of honour in regard to the assault or murder of a female family member; services to ensure the safety and security of victims of family violence, including refuges, counselling and rehabilitation programmes; rehabilitation programmes for perpetrators of domestic violence;³⁴ and support services for victims of family violence, including specially trained health workers.³⁵

Moreover, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated that domestic violence amounts to ill-treatment or torture whenever States acquiesce in the prohibited conduct by failing to protect victims and prohibited acts, of which they knew or should have known, in the private sphere. States are internationally responsible for torture when they fail — by indifference, inaction or prosecutorial or judicial passivity — to exercise due diligence to protect against such violence or when they legitimize domestic violence by,

28 Deaths resulting from gender-based violence include murders, killings in the name of so-called “honour” and forced suicides.

29 Committee on the Elimination of Discrimination Against Women, General Recommendation #35 on gender-based violence against women, updating general recommendation #19, para 14. Citing General recommendation No. 19, para. 6, and general recommendation No. 28, para. 19.

30 Committee on the Rights of the Child (2011), General comment No. 13 – the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 4.

31 Committee on the Rights of the Child (2011), General comment No. 13 – the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 22 (a) and (b).

32 Committee on the Elimination of Discrimination Against Women (1992), General Recommendation No. 19 on Violence against Women, para 23.

33 Committee on the Elimination of Discrimination Against Women (1992), General Recommendation No. 19 on Violence against Women, para 24(b).

34 Committee on the Elimination of Discrimination Against Women (1992), General Recommendation No. 19 on Violence against Women, para 24(r).

35 Committee on the Elimination of Discrimination Against Women (1992), General Recommendation No. 19 on Violence against Women, para 24(k).

for instance, failing to criminalize acts that could constitute torture.³⁶ Furthermore, the Special Rapporteur noted that States' condoning of and tolerant attitude towards domestic violence, as evidenced by discriminatory judicial ineffectiveness, notably a failure to investigate, prosecute and punish perpetrators, can create a climate that is conducive to domestic violence and constitutes an ongoing denial of justice to victims amounting to a continuous human rights violation by the State. Domestic violence legislation and community support systems must in turn be matched by adequate enforcement. Special attention must be paid to religious or customary law courts that may tend to downplay and inadequately address domestic violence.³⁷

4.1.1.1 FINDINGS

In the Maldives, section 120(a) of the **Penal Code** prohibits assault. Section 120(b)(1) classifies it as serious assault, a Class 4 felony if the persons cause serious bodily injury or commits the offense with a dangerous weapon. Section 120(c) aggravates the baseline sentence one level if the victim is assaulted in a home where she is a resident or guest.³⁸ Section 6 of the **Domestic Violence Prevention Act** provides, "any act prescribed as an act of domestic violence under this Act shall carry both civil liability and be a criminal offence liable for criminal prosecution, which would be dealt with in accordance with the provisions of this Act." Section 7(a) clarifies, "Criminal liability and conviction under another Act for acts of domestic violence under this Act shall not prevent the implementation of measures prescribed in this Act." Section 7(b) provides, "The provisions of this Act shall fully apply and measures prescribed under this Act shall be fully implemented in respect of the perpetrator and the victim, regardless of and in addition

to such perpetrator receiving criminal conviction and punishment under another Act for a criminal offense (which is classified in this Act as an offense of domestic violence), provided the perpetrator and the victim are bound by a domestic relationship."

*However, the Committee on the Elimination of Discrimination Against Women was concerned that **domestic violence is not criminalized in the current legislation.***³⁹

The Committee on the Rights of the Child was concerned that the level of 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.⁴⁰ The Committee Against Torture was concerned at the persistence of violence against women, in particular domestic violence, especially against women and girls, and the small number of prosecutions of perpetrators of such acts. It was also concerned about the absence of due diligence, effective protection mechanisms and rehabilitation for victims of domestic violence.⁴¹ The Working Group on Discrimination Against Women was concerned about reports of overcrowded housing arrangements that contribute to the prevalence of domestic violence and the impact of the exposure of young children to such acts.⁴²

The Committee on the Elimination of Discrimination Against Women recommended that the Maldives review its current legislation, including the **Penal Code** and the **Domestic Violence Prevention Act**, to ensure that domestic violence is specifically criminalized, can be prosecuted ex officio and is sanctioned with appropriate penalties

36 Human Rights Council (2016), Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, para 55.

37 Human Rights Council (2016), Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, para 56.

38 Section 120 Penal Code.

39 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 27(f).

40 Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 42(b).

41 Committee Against Torture (2018), Concluding observations on the initial report of Maldives, para 29.

42 Working Group on Discrimination Against Women (2022), End of Mission Statement, Preliminary Findings: A Time to Bridge Gender Gaps and Accelerate Progress (Maldives), 22 September, 2022.

commensurate with the gravity of the abuse.⁴³ The Committee Against Torture recommended that the Maldives ensure the full implementation of the Domestic Violence Prevention Act and exercise due diligence, in particular by encouraging victims to file complaints; establish a protection mechanism for victims, including by setting up shelters; investigate, prosecute and punish perpetrators of domestic violence; provide redress to victims and psychological rehabilitation and counselling; and conduct awareness-raising campaigns about the negative effects of domestic violence.⁴⁴ Stakeholder feedback highlighted the need for harmonization of victim support, and recommended a survivor-centred approach, with holistic services, including financial support. Stakeholders also underlined that third party reporting must be repealed, emphasizing that reporting must be on the basis of consent of the victim.

4.1.1.2 RECOMMENDATION

Recommendation 1: (i) amend the Penal Code and Domestic Violence Prevention Act to ensure that violence is specifically criminalized, can be prosecuted ex officio and is sanctioned with appropriate penalties commensurate with the gravity of the abuse; (ii) repeal third party reporting, and ensure that consent of the victim to report is required.

4.1.2 Corporal Punishment

Article 37 of the Convention on the Rights of the Child requires States to ensure that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”. This is complemented and extended by article 19, which requires States to “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”.⁴⁵ In addition, article 28, paragraph 2 refers to school discipline and requires States parties to “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention”.⁴⁶ The Committee on the Rights of the Child in General Comment #8 on Corporal Punishment states that “corporal” or “physical” punishment is defined as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involve hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement, such as a whip, stick, belt, shoe, wooden spoon. It can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, caning, forcing children to stay in uncomfortable positions, burning, scalding, or forced ingestion.⁴⁷ The Committee reiterated this in General Comment #13 on Violence Against Children.⁴⁸ The Committee emphasizes that the Convention requires the removal of any provisions that allow some degree of violence against children (e.g. “reasonable” or “moderate” chastisement or correction), in their homes/families or in any other setting.⁴⁹

4.1.2.1 FINDINGS

In the Maldives, **neither the Domestic Violence Prevention Act, Family Act nor the Child Rights Protection Act prohibit corporal punishment.** Section 120 of the Penal Code prohibits assault, but does not make it explicitly clear that criminal law provisions on assault cover all corporal punishment. The Committee on the Rights of the Child in General Comment No. 8 on corporal punishment stated that once the criminal law applies fully to assaults on children, the child is protected from corporal punishment wherever he or she is and whoever

43 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 28(i).

44 Committee Against Torture (2018), Concluding observations on the initial report of Maldives, para 30.

45 Committee on the Rights of the Child (2007), General Comment #8 on Corporal Punishment, para 18.

46 Committee on the Rights of the Child (2007), General Comment #8 on Corporal Punishment, para 19.

47 Committee on the Rights of the Child (2007), General Comment #8 on Corporal Punishment, para 11.

48 Committee on the Rights of the Child (2011), General Comment #13 on Violence Against Children, para 24.

49 Committee on the Rights of the Child (2007), General Comment #8 on Corporal Punishment, para 31.

the perpetrator is.⁵⁰ The Committee stated that it should be made explicitly clear that the criminal law provisions on assault also cover all corporal punishment, including in the family. This may require an additional provision in the criminal code of the State party.⁵¹

However, given the traditional acceptance of corporal punishment, it is essential that the applicable sectoral legislation - e.g. family law, education law, law relating to all forms of alternative care and justice systems, employment law - clearly prohibits its use in the relevant settings.⁵² It is also possible to include a provision in the civil code or family law, prohibiting the use of all forms of violence, including all corporal punishment. Such a provision emphasizes that parents or other caretakers can no longer use any traditional defense that it is their right (“reasonably” or “moderately”) to use corporal punishment if they face prosecution under the criminal code. Family law should also positively emphasize that parental responsibility includes providing appropriate direction and guidance to children without any form of violence.⁵³

In 2018, the Committee Against Torture in its Concluding observations on the initial report of Maldives was concerned that the 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 Maldives has reportedly not taken adequate measures to protect children. It was also concerned that the **Domestic Violence Prevention Act** and the **Family Act do not prohibit corporal punishment**.⁵⁴ It recommended that the Maldives

explicitly prohibit in law the corporal punishment of children in all settings, including in the home, alternative care settings, day-care settings, schools 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 a crime or for disciplinary purposes, and ensure that it is not applied under Sharia law; and ensure the abolition of flogging of children.⁵⁵

Moreover, the Committee Against Torture was seriously concerned about the practice of “**judicial flogging**”⁵⁶ 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. For instance, section 411(d) on unlawful extramarital sex provides for additional punishment under Islamic Sharia of 100 lashes. The Committee was 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.⁵⁷ It recommended that the Maldives immediately enact a moratorium on flogging and other corporal punishment and review its laws with a view to prohibiting the practice as a matter of priority.⁵⁸ Moreover, the Committee on the Elimination of Discrimination Against Women in General Recommendation 35 on gender-based violence against women stated that the Convention provides that any existing norms of religious, customary, indigenous and community justice systems are to be harmonized with its standards and that all laws that constitute discrimination against women, including those which cause, promote or justify gender-based violence or perpetuate impunity for such acts, are to be repealed.⁵⁹

50 Committee on the Rights of the Child (2007), General Comment #8 on Corporal Punishment, para 35.

51 Committee on the Rights of the Child (2007), General Comment #8 on Corporal Punishment, para 39.

52 Committee on the Rights of the Child (2007), General Comment #8 on Corporal Punishment, para 35.

53 Committee on the Rights of the Child (2007), General Comment #8 on Corporal Punishment, para 39.

54 Committee Against Torture (2018), Concluding observations on the initial report of Maldives, para 41.

55 Committee Against Torture (2018), Concluding observations on the initial report of Maldives, para 42.

56 Judicial flogging – Flogging, also called whipping or caning, is a beating administered with a whip or rod, with blows commonly directed to the person’s back. It is imposed as a form of judicial punishment (hence judicial flogging) and as a means of maintaining discipline in schools, prisons, military forces, and private homes. (<https://www.britannica.com/topic/flogging>)

57 Committee Against Torture (2018), Concluding observations on the initial report of Maldives, para 31.

58 Committee Against Torture (2018), Concluding observations on the initial report of Maldives, para 32.

59 Committee on the Elimination of Discrimination Against Women, General Recommendation #35 on gender-based violence against women, updating general recommendation #19, para 26(a).

Likewise, the Committee on the Rights of the Child in 2016 noted that although article 54 of the Constitution prohibits torture, under the 2014 Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors (arts. 4 and 5), children who have reached puberty may be punished by flogging for committing certain *hudud* offences. Section 1205 of the Penal Code on Hudud Offences states, “offences for which punishments are prescribed in the Holy Quran. If an offender is found guilty of committing an offence for which punishments are predetermined in the Holy Quran, that person shall be punished according to Islamic Sharia and as prescribed by this Act and the Holy Quran.”

The Committee was seriously concerned that minors continue to be 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 outside of marriage are sentenced to flogging. The Committee was further concerned that child offenders may also be lawfully sentenced to life imprisonment, banishment or flogging for consensual relations.⁶⁰ Noting that violence against children, abuse and neglect are widespread at home, school and in the community,⁶¹ the Committee recommended that the Maldives **ensure that corporal punishment is unambiguously prohibited under the Domestic Violence Prevention Act**,⁶² amend the 2014 Regulation on Conducting Trials, Investigations and Sentencing fairly for Offences Committed by Minors to **prohibit flogging**,⁶³ and **prohibit corporal punishment as a disciplinary measure in the home,**

alternative care settings, justice institutions, schools and workplace settings.⁶⁴

4.1.2.2 RECOMMENDATION

Recommendation 2: Explicitly prohibit in law the corporal punishment of women, men, girls and boys in all settings, including in the Penal Code, Domestic Violence Prevention Act, Education Act, Family Act and the Child Rights Protection Act. All settings include in the home, alternative care settings, day-care settings, schools and penal institutions, and as a sentence for a crime or for disciplinary purposes. Repeal corporal punishment under Sharia law; and ensure the abolition of flogging of women, men and children.

4.1.3 Torture or Cruel, Inhuman or Degrading Treatment

In 2016, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment published a report on gender perspectives on torture and other cruel, inhuman and degrading treatment or punishment.⁶⁵ The Special Rapporteur noted that full integration of a gender perspective into any analysis of torture and ill-treatment is critical to ensuring that violations rooted in discriminatory social norms around gender are fully recognized, addressed and remedied.⁶⁶ Gender-based violence against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices.⁶⁷ This law review discusses in separate sections the relevant Maldives laws relating to domestic violence, rape,

60 Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 40.

61 Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 42(a).

62 Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 43(a).

63 Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 41(b).

64 Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 41(a).

65 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (2016), Report on gender perspectives on torture and other cruel, inhuman and degrading treatment or punishment, A/HRC/31/57.

66 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (2016), Report on gender perspectives on torture and other cruel, inhuman and degrading treatment or punishment, A/HRC/31/57, para 6.

67 Committee on the Elimination of Discrimination Against Women, General Recommendation #35 on gender-based violence against women, updating general recommendation #19, para 16. Citing Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57.

and harmful practices that amount to torture, such as flogging and corporal punishment.

4.1.3.1 FINDINGS

Article 54 of the **Constitution** prohibits torture. The Committee Against Torture welcomed the Maldives' adoption of the **Anti-Torture Act 2013**, recognizing torture as a distinct criminal offence and giving effect to the Convention Against Torture. It noted that the Act includes accomplice liability and takes precedence over all other national laws in conflict with the Act, including the Penal Code.⁶⁸

However the Committee noted with concern that the Anti-Torture Act appears to contemplate imprisonment for torture only in cases in which victims suffer injuries necessitating at least 90 days' hospitalization.⁶⁹ The Committee Against Torture recommended that the Maldives **revise the Anti-Torture Act to ensure that it provides for punishment commensurate with the gravity of the offence of torture** and does not condition punishment on the duration of the victim's hospitalization, noting that some forms of torture may not inflict physical suffering at all.⁷⁰

Moreover, the Committee Against Torture was concerned about the statute of limitations and accountability for acts of torture, in particular that the first amendment to the Penal Code has introduced provisions that may amount to the introduction of a statute of limitations for charges under the Anti-Torture Act.⁷¹ In that regard, the Committee drew the Maldives' attention to paragraph 5 of its general comment No. 2 (2007) on the implementation of article 2 of the Convention, in which it states that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability. The Committee was also concerned that the Anti-Torture Act requires that the perpetrator of torture

be convicted before civil liability can be awarded in favour of the victim.⁷² The Committee Against Torture recommended that the Maldives (i) amend the **Penal Code** in order to ensure that there is no statute of limitations for the crime of torture; (ii) ensure that pardon, amnesty and any other similar measures leading to impunity for acts of torture are prohibited both in law and in practice; and (iii) amend the **Anti-Torture Act** to allow for the civil liability of the perpetrator in favour of the victim, even if the perpetrator has not been prosecuted or convicted.⁷³

4.1.3.2 RECOMMENDATION

Recommendation 3: (i) revise the Anti-Torture Act to ensure that it provides for punishment commensurate with the gravity of the offence of torture and does not condition punishment on the duration of the victim's hospitalization, noting that some forms of torture may not inflict physical suffering at all; (ii) amend the Penal Code in order to ensure that there is no statute of limitations for the crime of torture; (iii) ensure that pardon, amnesty and any other similar measures leading to impunity for acts of torture are prohibited both in law and in practice; (iv) amend the Anti-Torture Act to allow for the civil liability of the perpetrator in favour of the victim, even if the perpetrator has not been prosecuted or convicted; (v) decriminalize consensual relations between persons

4.1.4 Death and the Death Penalty

The Committee on the Elimination of Discrimination Against Women in General Recommendation #35 on gender-based violence against women stated that gender-based violence includes acts or omissions intended or likely to cause or result in death, including murders, killings in the name of so-called "honour" and forced suicides.⁷⁴ The Committee recommended that States repeal

68 Committee Against Torture (2018), Concluding observations on the initial report of Maldives, para 5(d).

69 Committee Against Torture (2018), Concluding observations on the initial report of Maldives, para 19.

70 Committee Against Torture (2018), Concluding observations on the initial report of Maldives, para 20.

71 Committee Against Torture (2018), Concluding observations on the initial report of Maldives, para 21.

72 Committee Against Torture (2018), Concluding observations on the initial report of Maldives, para 21.

73 Committee Against Torture (2018), Concluding observations on the initial report of Maldives, para 22.

74 Committee on the Elimination of Discrimination Against Women, General Recommendation #35 on gender-based violence against women, updating general recommendation #19, para 14. Citing General recommendation No. 19, para. 6, and general recommendation No. 28, para. 19.

provisions that allow, tolerate or condone forms of gender-based violence against women, including any other criminal provisions that affect women disproportionately, including those resulting in the discriminatory application of the death penalty to women.⁷⁵

4.1.4.1 FINDINGS

In the Maldives, the **Penal Code** prohibits murder (section 110), manslaughter (section 111), negligent homicide (section 112), causing, aiding, soliciting or attempting suicide (section 113), and reckless endangerment (section 121).

Regarding the death penalty, section 1204 of the Penal Code authorizes the death penalty. Section 1205 of the Penal Code (Hudud Offenses) provides that if an offender is found guilty of committing an offence for which punishments are pre-determined in the Holy Quran, that persons shall be punished according to Islamic Sharia and as prescribed by the Penal Code and the Holy Quran. Section 92(k) provides that the death penalty is available only for the most egregious form of killing, i.e. *“the most egregious imaginable form of a purposeful killing of another person in the most cruel and heinous manner.”* Section 92(a) of the Penal Code authorizes the death penalty for Class 1 felonies. The only Class 1 felony in the Penal Code is murder (section 110(d)). Section 411 prohibiting sexual intercourse is a Class 1 misdemeanor if the person is unmarried and has intercourse with a person married to another (section 411(b)(3)), and a Class 2 misdemeanor if the person is unmarried and has intercourse with an unmarried person (section 411(b)(4)). The Child Rights Protection Act section 29(d) states that, *“no child shall be given the death penalty. In addition, death penalty shall not be given for offences committed before the child had attained the age of 18, even after the child has attained the age of 18.”* Stakeholder feedback noted the high threshold for the death penalty – beyond doubt – since article 1205 must be read together with article 1204. Stakeholders also noted that in practice the Maldives has a moratorium

on use of the death penalty. However, it is merely a matter of policy without any legal instrument, meaning that it could be overturned easily.

In the Maldives, the Committee on the Elimination of Discrimination Against Women was concerned that *consensual sexual relations outside marriage are still punished in some instances with the death penalty – a situation that disproportionately affects women and girls and deters them from reporting sexual offences.*⁷⁶ The Committee recommended that the Maldives **decriminalize, and abolish the imposition of the death penalty for consensual sexual relations outside marriage.**⁷⁷

Moreover, the Committee on the Rights of the Child was gravely concerned about the following (a) The Juvenile Court sentenced five children to death in three separate cases (one case in 2013 and two cases in 2015); (b) Reports indicate that most of the children facing death sentences have been sentenced under *qisas* (retaliation in kind) cases and that, based on the 30 November 2015 High Court ruling, the President may no longer commute a death sentence to life imprisonment for the offence of intentional murder if all heirs of the victim want to impose the Sharia punishment of *qisas* and demand the implementation of capital punishment on the convicted killer; (c) The **2014 Regulation on Investigation and Execution of Sentence for Willful Murder allows for children as young as 7 years of age to be sentenced to death for the offence of intentional murder;** (d) **The 2014 Regulation on Implementation of Death Penalty allows for the implementation of the death penalty on minors who are on death row once they turn 18;** (e) The November 2015 circulars establishing automatic appeal for death penalty and flogging cases, while positive in general, are not adequately disseminated among those who can benefit from them, and also reduce the period of appeal to the Supreme Court from 60 days to 30 days.⁷⁸ The Committee on the Rights of the Child recommended that the Maldives: (a) **Repeal all legal provisions in domestic legislation that provide for the death penalty for**

75 Committee on the Elimination of Discrimination Against Women, General Recommendation #35 on gender-based violence against women, updating general recommendation #19, para 29(c)(i).

76 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 53.

77 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 54(a).

78 Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 30(a)-(e).

persons under the age of 18; and (b) Ensure that the death penalty is not carried out on persons under the age of 18 years or on persons who were under the age of 18 at the time of the commission of the crime, including for *hudud* offences and *qisas* cases, to replace any such death sentences with an appropriate alternative sanction and to work with families of murder victims to encourage pardons for *qisas* cases.⁷⁹

Furthermore, the Committee Against Torture welcomed the statement by the Maldives that it intends to uphold the 65-year moratorium on the death penalty and vote in favour of the General Assembly resolution on a moratorium on the use of the death penalty. While welcoming the statement by the delegation that since the inauguration of the new President, the sentences of 15 of the 18 persons who had been sentenced to death in the State party have been commuted to life imprisonment, the Committee expressed its continued concern that some of the individuals on death row had alleged that they were convicted on the basis of confessions that were obtained through torture and that some were convicted for crimes allegedly committed when they were juveniles.⁸⁰ The Committee Against Torture urged the Maldives to continue to uphold its moratorium on executions, consider commuting all remaining death sentences and consider **amending its laws in order to abolish the death penalty for all crimes.**⁸¹

4.1.4.2 RECOMMENDATION

Recommendation 4: (i) repeal sections 1204 and 1205 of the Penal Code; (ii) decriminalize, and abolish the imposition of the death penalty for consensual sexual relations outside marriage; (iii) Repeal all legal provisions in domestic legislation that provide for the death penalty for persons under the age of 18; (iv) Ensure that the death penalty is not carried out on persons under the age of 18 years or on persons who were under the age of 18 at the time of the commission of the crime, including for *hudud* offences and *qisas* cases, to replace any such death sentences with an appropriate alternative sanction and to work with

families of murder victims to encourage pardons for *qisas* cases; (v) Entrench the moratorium on the death penalty via a legal instrument.

4.2 Sexual Violence

This section will analyse in particular rape and marital rape, sexual assault, sexual abuse and sexual exploitation, trafficking and exploitation of prostitution, sexual harassment, child marriage, early marriage, forced marriage, female genital mutilation, forced sterilization, and abortion.

4.2.1 Rape and Marital Rape

In 2021, the Special Rapporteur on violence against women, its causes and consequences issued a report on “Rape as a grave systematic and widespread human rights violation, a crime and a manifestation of gender based violence against women and girls, and its prevention.” Although many of the Special Rapporteur’s recommendations in the report also apply to the criminalization and prosecution of other forms of sexual violence, the report is focused specifically on rape in order to reflect developments at the international level that have also distinguished it from other types of sexual violence and defined its constitutive elements.⁸² The Special Rapporteur on violence against women stated that international human rights law has taken progressive steps in framing rape as a human rights violation through three main conceptual avenues: (a) as a specific form of gender-based violence against women and girls under the women’s anti-discrimination framework; (b) as torture under the torture framework; and (c) as other human rights violations, such as trafficking, sale of children, slavery, forced marriage and early and child marriage. Rape is a violation of a range of human rights, including the right to bodily integrity, the rights to autonomy and to sexual autonomy, the right to privacy, the right to the highest attainable standard of physical and mental health, women’s right to equality before the law and the rights to be

79 Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 31(a) and (b).

80 Committee Against Torture (2018), Concluding observations on the initial report of Maldives, para 33.

81 Committee Against Torture (2018), Concluding observations on the initial report of Maldives, para 34.

82 Human Rights Council (2021), Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention. Report of the Special Rapporteur on violence against women, its causes and consequences. A/HRC/47/26.

free from violence, discrimination, torture and other cruel or inhuman treatment.⁸³

In 2017, the Committee on the Elimination of Discrimination against Women adopted its general recommendation No. 35 (2017) on gender-based violence against women, which had been prepared in collaboration with the Special Rapporteur.⁸⁴ The Committee and the Special Rapporteur specifically recommended that States parties **ensure that rape was characterized as a crime** against the right to personal security and physical, sexual and psychological integrity, and that the **definition of rape, including marital rape, was based on the lack of consent and took into account coercive circumstances**. It also established that any time limitations, where they existed, should give consideration to circumstances hindering the capacity of the victims to report the crime, and that rape could amount to torture.⁸⁵

The Special Rapporteur on violence against women, in the Report on Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention, made the following general recommendations:⁸⁶

- i (a) Criminal law provisions on rape should protect all persons, without any kind of discrimination. Men, boys and gender-diverse persons should also be covered by legislation.

However, rape is a form of gender-based violence that predominantly affects women and girls, requiring a gender-sensitive application of gender-neutral provisions;⁸⁷

- ii (b) The criminalization of rape should include rape between spouses or intimate partners. All States that exclude the criminalization of marital rape, contrary to international human rights standards, should urgently repeal those provisions;⁸⁸
- iii (c) The criminalization of rape should explicitly include all types of penetration, however slight, of a sexual nature with any bodily part or object.⁸⁹

4.2.1.1 FINDINGS

In the Maldives, the **Sexual Offences Act** section 6 defines rapes as, “*the insertion, however minute, of a person’s sexual organ into a sexual organ or an organ which is not sexual organ of another person without consent, where the two persons are not married to each other, or between a married couple.*”⁹⁰ Section 14(a) prohibits rape. Section 14(b) provides circumstances where consent may not be given.

In 2016, the Committee on the Elimination of Discrimination Against Women was concerned that marital rape is not fully criminalized in the Maldives, noting that section 20 of the **Sexual Offences Act** criminalises marital rape only under certain circumstances, and there is a lack of redress

83 Human Rights Council (2021), Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention. Report of the Special Rapporteur on violence against women, its causes and consequences. A/HRC/47/26, para 20.

84 The Committee on Elimination of Discrimination Against Women acknowledged with gratitude the work of the Special Rapporteur on violence against women, its causes and consequences in the implementation of her mandate and her contribution to the present general recommendation.

85 Human Rights Council (2021), Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention. Report of the Special Rapporteur on violence against women, its causes and consequences. A/HRC/47/26, para 36.

86 Human Rights Council (2021), Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention. Report of the Special Rapporteur on violence against women, its causes and consequences. A/HRC/47/26, para 72.

87 Human Rights Council (2021), Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention. Report of the Special Rapporteur on violence against women, its causes and consequences. A/HRC/47/26, para 72(a).

88 Human Rights Council (2021), Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention. Report of the Special Rapporteur on violence against women, its causes and consequences. A/HRC/47/26, para 72(b).

89 Human Rights Council (2021), Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention. Report of the Special Rapporteur on violence against women, its causes and consequences. A/HRC/47/26, para 72(c).

90 Unofficial translation of 2021 amendment.

for the victim.⁹¹ In 2022, the Working Group on Discrimination Against Women commended the Government of the Maldives for the passage of the First Amendment to the **Sexual Offences Act** in 2021, which removed certain discriminatory evidentiary requirements for proving rape, **criminalised marital rape in all circumstances**, made the use of rape kits mandatory for collecting evidence and adopted victim-centered, trauma-informed approaches for investigating cases of rape.⁹²

However, the fact that marital rape is criminalized in all circumstances under the Sexual Offences Act is inconsistent with the Penal Code. In 2018, the Committee Against Torture was concerned that while the **Penal Code** criminalises marital rape, it also formally provides a rebuttable presumption of innocence in the case of allegations of sexual offences committed against married women and girls by their husbands and establishes a high burden of proof for the conviction of a man of rape in the absence of a confession.⁹³ Section 130(a) of the Penal Code on Sexual Assault provides that “A person commits an offense if he engages in sexual intercourse without consent.” Section 130(b) provides the rebuttable presumption: “If the person engages in sexual intercourse with his spouse, the trier of fact shall presume, subject to rebuttal, that consent existed. Section 130(d)(1) grading relates to rape (Class 2 felony), section 130(d)(2) relates to aggravated sexual assault (Class 3 felony), and section 130(d)(3) grading relates to sexual assault (Class 1 misdemeanor).

The Working Group on Discrimination Against Women stated that despite the progressive amendments to the Sexual Offences Act, the laws relating to sexual violence have certain gaps, which enable impunity for perpetrators. For example, the **Sexual Offences Act** still prescribes **burdensome evidentiary requirements** to prove offences of sexual violence against women, which often makes it difficult to obtain convictions. Many of the types

of evidence listed are discriminatory and based on gender stereotypes which often deter women and girls from reporting cases of sexual violence for fear of failing to meet the requirements. The Working Group heard from interlocutors that initial reports are often retracted. Impunity for perpetrators of sexual abuse is a leading cause of the lack of use of these laws. For instance, between 2015-2019, 364 cases of sexual abuse were reported, out of which only 49 cases have been prosecuted to date. The Working Group was also concerned about reports of the lack of protection for women who report rape, the fear of re-victimisation and retaliation, the lack of female police investigators, inadequate shelters for victims of violence, and the lack of legal aid and support services particularly outside of Male'.⁹⁴

The Committee on the Elimination of Discrimination Against Women noted that section 52 of the Sexual Offences Act and section 47 of the Special Provisions Act to Deal with Child Sex Abuse Offenders provide for burdensome evidence requirements to prove acts of sexual violence, which may lead to impunity for perpetrators.⁹⁵ For example, section 52(a) of the Sexual Offences Act states, “Notwithstanding the fact that a different standard of proof or rules for admission of evidence may be specified in another law, for the purpose of this Act, the following types of evidence shall be sufficient in favour of the victim to prove an offence of rape, sexual injury, or sexual assault: (1) Results of a scientific test; (2) Evidence of eye witnesses; (3) Results of forensic tests and impressions; (4) Statement given by the parents, husband, wife, relative, friend, doctor, health professional, psychologist, psychiatrist or investigating police officer as related to them by the victim within a short period of time from occurrence of the incident, where there are no probabilities of the victim fabricating the story; (5) Statement of the victim as to his version of events that occurred to him; (6) Corroboration of the victim’s narrative from the physical injuries sustained or the findings of forensic tests; (7) Material evidence.” Section 47 of

91 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 27(d).

92 Working Group on Discrimination Against Women (2022), End of Mission Statement, Preliminary Findings: A Time to Bridge Gender Gaps and Accelerate Progress (Maldives), 22 September, 2022.

93 Committee Against Torture (2018), Concluding observations on the initial report of Maldives, para 29.

94 Working Group on Discrimination Against Women (2022), End of Mission Statement, Preliminary Findings: A Time to Bridge Gender Gaps and Accelerate Progress (Maldives), 22 September, 2022.

95 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 27(a).

the Special Provisions Act to Deal with Child Sex Abuse Offenders states, *“The evidential requirement for a criminal offence stated in another law shall not apply when charges are made under this law or, when establishing offence stated in this law or in establishing the commission of a sexual offence with a child where at least 5 types of evidences are available from the following types of evidences. Where the 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) of the Constitution.”*

Moreover, the Committee was concerned that section 53 of the Sexual Offences Act provides that delays in reporting the incident, past sexual behavior of the survivor, or her relationship with the alleged perpetrator can constitute grounds for not initiating criminal proceedings, which gives rise to gender stereotyping and secondary victimization of survivors of sexual violence during legal proceedings.⁹⁶ For example, section 53(b) provides that, *“Notwithstanding Section 52 of this Act, occurrence of any of the following circumstances shall be evidence that may be used to deny the accusations in relation to the offence of rape, or sexual injury or sexual assault: Long time period having elapsed between the occurrence of the event and the date on which the complaint was made, and the incident not having been narrated to any other person within that period.”* Section 53(c) of the Penal Code provides that a person who is 18 years old at the time of the offence, and who is excused for his offence for immaturity and lacking substantial capacity, shall be culpable for offences for which punishments are pre-determined under Islamic *Sharia*.

The Committee on the Elimination of Discrimination Against Women recommended that the Maldives criminalize marital rape in all circumstances, without exception, and amend the **Penal Code** accordingly.⁹⁷ It also recommended that the Maldives amend section 52 of the Sexual Offences Act and section

47 of the Special Provisions Act to Deal with Child Sex Abuse Offenders to remove excessive evidence requirements for victims to prove sexual violence,⁹⁸ and amend section 53 of the Sexual Offences Act to ensure that discriminatory gender stereotypes relating to delayed reporting, false accusations and women’s “dignity and discipline” are removed from the adjudication of sexual violence cases and discontinue practices that contribute to secondary victimization of women, such as examining a victim’s prior sexual behavior.⁹⁹ The Committee Against Torture recommended that the Maldives align its penal legislation concerning minors in conflict with the law with the provisions and rules contained in international standards, in particular with the Convention Against Torture, and should repeal all provisions that contravene the Convention Against Torture.¹⁰⁰

4.2.1.2 SEXUAL OFFENCES ACT - SHARIA LAW

In 2021, the UN Special Rapporteur on violence against women, its causes and consequences stated that where Sharia plays an important role, it is crucial not to lose focus of its true values, principles, and objectives, particularly the following. The duty to uphold justice - both *‘adl* and *qist*: *‘Adl* is the general term for justice which today incorporates nuances of equality. Justice is inherent to the philosophy of law in Islam, thus any laws or legal amendments introduced in the name of Sharia and Islam should reflect the values of justice and equality. *Qist* refers specifically to a consciousness of the deep systemic and structural injustices that occur in any society and to gaining justice for those affected by them. Moreover, there is the requirement to protect oppressed groups, including survivors of violence: The Prophet urged the faithful to prevent wrongdoing as was the case in the saying: “Whosoever of you sees an evil, let him change it with his hand, and if he is not able to do so, then [let him change it] with his tongue, and if he is not able to do so, then with his hearth

96 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 27(b).

97 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 28(d).

98 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 28(a).

99 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 28(b).

100 Committee Against Torture (2018), Concluding observations on the initial report of Maldives, para 14.

and that is the weakest of faiths.” These values, contained in the corpus of Sharia, are consistent with universal human rights principles and values. When followed, these values would lead to gender equality and justice in law and in practice. In that sense, Sharia is closer to the concept of ethics that guide humans in the direction of justice and the right set of conduct.¹⁰¹

4.2.1.3 FINDINGS

Section 3 of the Sexual Offences Act provides for double punishment (sections 3(a)¹⁰² and (c)¹⁰³), and for Islamic sharia law to have preference if the elements of the offence are easier to fulfill (section 3(b)¹⁰⁴). The Working Group on Discrimination Against Women noted that the 2008 Constitution provides that rights and freedoms are guaranteed to all persons in a manner that is not contrary to any tenet of Islam, without discrimination, including on the basis of sex.¹⁰⁵

The Committee on the Elimination of Discrimination Against Women in General Recommendation #33 on Women’s Access to Justice noted that State laws, regulations, procedures and decisions can sometimes coexist within a given State party with religious, customary, indigenous or community laws and practices. This results in the existence of plural justice systems. There are, therefore, multiple sources of law that may be formally recognized as

part of the national legal order or operate without an explicit legal basis. States parties have obligations under articles 2, 5 (a) and 15 of CEDAW and under other international human rights instruments to ensure that women’s rights are equally respected and that women are protected against violations of their human rights by all components of plural justice systems.¹⁰⁶ The presence of plural justice systems can, in itself, limit women’s access to justice by perpetuating and reinforcing discriminatory social norms. In many contexts, the availability of multiple avenues for gaining access to justice within plural justice systems notwithstanding, women are unable to effectively exercise a choice of forum. The Committee observed that, in some States parties in which systems of family and/or personal law based on customs, religion or community norms coexist alongside civil law systems, individual women may not be as familiar with both systems or at liberty to decide which regime applies to them.¹⁰⁷

The Committee on the Elimination of Discrimination Against Women recommended that, in cooperation with non-State actors, States parties enact legislation to regulate the relationships between the mechanisms within plural justice systems in order to reduce the potential for conflict,¹⁰⁸ and ensure that women have a real and informed choice concerning the applicable law and the judicial forum within which they would prefer their claims to be heard.¹⁰⁹

101 UN Special Rapporteur on violence against women (2021), Any party in Afghanistan declaring it follows Islamic Sharia must uphold and protect the rights of women and girls.

102 Section 3(a) Where an offence prescribed in this Act is an offence under Islamic *Shari’ah*, and the elements of the offence prescribed in this Act are similar to that of the offence prescribed under Islamic *Shari’ah*, the penalty prescribed for that offence under this Act shall be given in addition to the penalty prescribed for it under the Islamic *Shari’ah*.

103 Section 3(c) It shall not be a bar to impose a punishment for an offence under this Act, by reason of that offence having been punished as prescribed Islamic *Shari’ah* for being an offence under the Islamic *Shari’ah*. For the purpose of Article 60 of the Constitution, it shall not be considered double jeopardy to impose a punishment under this Act, in addition to a punishment given under Islamic *Shari’ah*, for an offence that is prescribed under both Islamic *Shari’ah* and this Act. Under such circumstances, it shall be considered obligatory to impose two punishments for one offence.

104 Section 3(b) Where an offence prescribed in this Act is an offence under Islamic *Shari’ah*, and the elements of the offence prescribed in this Act are different from that of the offence prescribed under Islamic *Shari’ah*, penalty for that offence shall be given under this Act if the elements of the offence are fulfilled under this Act. If the elements of the offence are fulfilled under the Islamic *Shari’ah*, penalty for that offence shall be given under Islamic *Shari’ah*.

105 Article 16 (a) of the Constitution. Working Group on Discrimination Against Women (2022), End of Mission Statement, Preliminary Findings: A Time to Bridge Gender Gaps and Accelerate Progress (Maldives), 22 September, 2022.

106 The Committee on the Elimination of Discrimination Against Women in General Recommendation #33 on Women’s Access to Justice, CEDAW/C/GC/33, para 61.

107 The Committee on the Elimination of Discrimination Against Women in General Recommendation #33 on Women’s Access to Justice, CEDAW/C/GC/33, para 62.

108 The Committee on the Elimination of Discrimination Against Women in General Recommendation #33 on Women’s Access to Justice, CEDAW/C/GC/33, para 64(b).

109 The Committee on the Elimination of Discrimination Against Women in General Recommendation #33 on Women’s Access to Justice, CEDAW/C/GC/33, para 64(d).

4.2.1.4 RECOMMENDATION

Recommendation 5: (i) criminalize marital rape in all circumstances, without exception, and amend the Penal Code accordingly; (ii) amend section 52 of the Sexual Offences Act and section 47 of the Special Provisions Act to Deal with Child Sex Abuse Offenders to remove excessive evidence requirements for victims to prove sexual violence; (iii) amend section 53 of the Sexual Offences Act to ensure that discriminatory gender stereotypes relating to delayed reporting, false accusations and women’s “dignity and discipline” are removed from the adjudication of sexual violence cases and discontinue practices that contribute to secondary victimization of women, such as examining a victim’s prior sexual behavior; (iv) align penal legislation concerning minors in conflict with the law with the provisions and rules contained in international standards, in particular with the Convention Against Torture, and repeal all provisions that contravene the Convention Against Torture; and (v) enact legislation to regulate the relationships between the mechanisms within plural justice systems in order to reduce the potential for conflict, and ensure that women have a real and informed choice concerning the applicable law and the judicial forum within which they would prefer their claims to be heard.

4.2.2 Sexual Assault, Sexual Abuse and Sexual Exploitation

Article 19(1) of the Convention on the Rights of the Child states the following: “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.

The Committee on the Rights of the Child in General Comment #13 on violence against children guides States parties in understanding their obligations under article 19, and to outline the legislative measures that States parties must take.¹¹⁰ The Committee defined sexual abuse and exploitation as:¹¹¹ (a) The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity; (b) The use of children in commercial sexual exploitation; (c) The use of children in audio or visual images of child sexual abuse; and (d) Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage. The Committee noted that many children experience sexual victimization which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic.¹¹² Violence may be perpetrated through information and communications technologies, such as sexual abuse of children to produce both visual and audio child abuse images facilitated by the internet and other ICT.¹¹³

The Committee on the Rights of the Child recommended that States parties: (d) Review and amend domestic legislation in line with article 19 and its implementation within the holistic framework of the Convention, establishing a comprehensive policy on child rights and ensuring absolute prohibition of all forms of violence against children in all settings and effective and appropriate sanctions against perpetrators; and (g) Ensure that relevant legislation provides adequate protection of children in relation to media and ICT.¹¹⁴

110 Committee on the Rights of the Child (2011), General comment No. 13 – the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 11(a) and (b).

111 Committee on the Rights of the Child (2011), General comment No. 13 – the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 25(a), (b), (c) and (d).

112 Committee on the Rights of the Child (2011), General comment No. 13 – the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 25(a), (b), (c) and (d).

113 Committee on the Rights of the Child (2011), General comment No. 13 – the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 31(a).

114 Committee on the Rights of the Child (2011), General comment No. 13 – the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 41(d) and (g).

4.2.2.1 FINDINGS ON SEXUAL ASSAULT, SEXUAL ABUSE AND SEXUAL EXPLOITATION

In the Maldives, the **Penal Code** prohibits aggravated sexual assault with a minor (section 130(d)(2)(A)). It also prohibits criminal sexual contact without a reason permitted in Islamic Sharia (section 131), indecent exposure (section 132), and sexual exploitation (section 133). Section 134(a) deems consent by a minor invalid, except if they are married. Moreover, section 14 of the **Special Provisions Act to Deal with Child Sexual Abuse** provides for an exemption arising out of marriage. The **Sexual Offences Act** defines and prohibits sexual injury (sections 7, 16) and sexual assault (sections 8, 18). It also prohibits sexual acts with persons with mental disability (sections 28, 38), and detention for sexual purposes (sections 39, 40). It is also an offence to compel another person to participate in a sexual act (section 41) and to force a person to watch a sexual act (section 42). The **Prevention of Sexual Abuse and Harassment Act** prohibits sexual abuse in the workplace (section 3) and in institutions (section 9), and provides for damages (section 33).

In 2016, the Child Rights Committee welcomed 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. However, the Committee was concerned that (a) The legislation lacks a definition of the term “sexual abuse”, and **section 14 of the Special Provisions Act to Deal with Child Sexual Abuse 2009 allows for exemptions in cases of sexual offences committed against married girls by their husbands;** (b) The legal minimum age for sexual consent is set too low, at 13 years; (c) Child sexual abuse, especially of girls, remains common and largely unreported, conviction rates are extremely low and perpetrators are often released early and back into their community; (d) Secondary legislation, such as the Evidence Bill, necessary for effective implementation of the 2009 Act is yet to be finalized; (e) Judges are reported to hold discriminatory views relating to women, girls and sexuality; have shown insensitivity towards victims of child sexual abuse; and, in some cases, have

themselves been convicted of sexual offences in the past; (f) **Pregnancy out of wedlock is criminalized under the Sexual Offences Act, including for girls who become pregnant as a result of abuse;** and (g) There have been a number of **cases of sexually abused children being sentenced to flogging on charges of fornication.**¹¹⁵

The Committee on the Rights of the Child recommended that the Maldives: (a) Raise the minimum age for sexual consent to an internationally acceptable standard; (b) **Amend legislation to define sexual abuse in conformity with the Convention and to ensure that all children subject to any form of sexual exploitation are treated as victims and not subject to criminal sanctions;** (c) Repeal article 14 of the Special Provisions Act to Deal with Child Sexual Abuse, with a view to ensuring that all forms of sexual abuse, including marital rape, are criminalized and punished with penalties commensurate with the gravity of the offence, and finalize and enact the Evidence Bill; (d) Establish mechanisms, procedures and guidelines to ensure the duty to report all cases of child sexual abuse and exploitation; (e) Ensure effective prosecution against and commensurate sanctions for perpetrators of sexual exploitation and abuse, including through sensitization of judges regarding sexual abuse of girls; (f) Conduct awareness-raising activities to combat the stigmatization of victims of sexual exploitation and abuse, including incest, and ensure accessible, confidential, child-friendly and effective reporting channels for such violations; (g) Strengthen the development of programmes and policies for the prevention, recovery and social reintegration of child victims, including the provision of adequate shelter, in accordance with the outcome documents adopted at the World Congresses against Commercial Sexual Exploitation of Children.¹¹⁶

Moreover, the Committee on the Rights of the Child was concerned that **customary and religious interpretations of the best interests of the child that are not in conformity with the Convention prevail in the Maldives and lead to serious violations of children's rights.** The Committee noted that the non-reporting of child sexual abuse is considered as preserving the so-called “honour” of the child and therefore serving his or her best

115 Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 44(a), (b), (c), (d), (e), (f) and (g).

116 Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 45(a), (b), (c), (d), (e), (f) and (g).

interests.¹¹⁷ In the light of its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Committee on the Rights of the Child recommended that the Maldives **explicitly define and enshrine in its legislation the principle of the best interests of the child, in compliance with article 3 of the Convention.** In this regard, the Maldives was encouraged to develop procedures and criteria to provide guidance to all relevant persons in authority, and especially those working in law enforcement, for determining the best interests of the child in every area and for giving those interests due weight as a primary consideration. The Maldives should **conduct awareness-raising campaigns that challenge customary interpretations which lead people to think that impunity for perpetrators of child sexual abuse is in the best interests of the child.**¹¹⁸

4.2.2.2 RECOMMENDATION

Recommendation 6: (i) Raise the minimum age for sexual consent to an internationally acceptable standard; (ii) Amend legislation to define sexual abuse in conformity with the Convention on the Rights of the Child and to ensure that all children subject to any form of sexual exploitation are treated as victims and not subject to criminal sanctions; (iii) Repeal article 14 of the Special Provisions Act to Deal with Child Sexual Abuse, with a view to ensuring that all forms of sexual abuse, including marital rape, are criminalized and punished with penalties commensurate with the gravity of the offence, and finalize and enact the Evidence Bill; (iv) Establish mechanisms, procedures and guidelines to ensure the duty to report all cases of child sexual abuse and exploitation; (v) Ensure effective prosecution against and commensurate sanctions for perpetrators of sexual exploitation and abuse, including through sensitization of judges regarding sexual abuse of girls.

4.2.3 Trafficking and Exploitation of Prostitution

The Committee on the Rights of the Child in General Comment #13 on violence against children stated that sexual abuse and exploitation includes: (a) The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity; (b) The use of children in commercial sexual exploitation; (c) The use of children in audio or visual images of child sexual abuse; and (d) Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage. Many children experience sexual victimization which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic.¹¹⁹

4.2.3.1 FINDINGS RELATED TO TRAFFICKING

In the Maldives, section 14(b)(9) of the **Gender Equality Act** defines gender-based violence against women as including trafficking of girls and women or obtaining benefits through the trafficking of girls and women. The **Sexual Offences Act** section 31 prohibits trafficking a person for prostitution punishable with imprisonment between 7-10 years. The Committee on the Elimination of Discrimination Against Women welcomed the adoption of the amendment to the Anti-Human Trafficking Act through Act No. 2/2020 to bring it into alignment with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in 2020.¹²⁰ However, the Committee was concerned that procedures for early victim identification, case management and victim protection remain weak, notwithstanding the adoption of national guidelines for the identification of, and provision of assistance to, victims.¹²¹ The Committee recommended that

117 Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 28.

118 Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 29.

119 Committee on the Rights of the Child (2011), General comment No. 13 – the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 25.

120 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 4(a).

121 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 29.

the Maldives: (a) Strengthen victim identification procedures to facilitate prompt identification of potential victims of human trafficking and exploitation, including capacity-building among law enforcement and border patrol officers; (b) Ensure the investigation of all cases of human trafficking and exploitation, as well as the prosecution and punishment of trafficking offenders; (c) Ensure that victims are provided with medical treatment, psychosocial support, interpretation services and legal assistance; and (d) Systematically collect information on trafficking in women and girls to, from and within the State party and strengthen cooperation with other countries in the region to facilitate the exchange of information and the prosecution of traffickers.¹²²

4.2.3.2 FINDINGS RELATED TO PROSTITUTION

In the Maldives, the **Penal Code** prohibits prostitution (section 620), promoting or supporting prostitution including child prostitution (section 621), and producing or distributing obscene material including child pornography (section 622). Under the Penal Code, prostitution is a Class 1 misdemeanor (section 620), and section 92(f) provides for imprisonment of not more than one year.

The Penal Code is inconsistent with the **Sexual Offences Act**. The Sexual Offences Act prohibits prostitution (section 29), makes it an offence to use revenue from prostitution (section 32), and prohibits setting up a brothel (section 33). For a person to engage in prostitution in the Maldives, or for a Maldivian to engage in prostitution abroad, this shall be punishable with imprisonment for a period not exceeding 7 years (section 29(c)). For a person to engage another person in prostitution in the Maldives, or for a Maldivian to engage another person in prostitution abroad, this shall be punishable with imprisonment for a period between 7 and 15 years (section 29(d)).

The **Child Rights Protection Act** prohibits forced prostitution (section 11(b)), and child pornography

(section 11(c) and section 12). The **Special Provisions Act to deal with Child Sex Abuse Offenders** prohibits child prostitution and child pornography (section 18), and forced prostitution and pornography (section 19).

The Committee on the Rights of the Child, commenting on the Optional Protocol on the sale of children, child prostitution and child pornography, was concerned at reports that a number of children from poor and rural backgrounds engage in child prostitution and in the production and distribution of child pornography.¹²³ The Committee recommended that the Maldives bring the **Penal Code** into full compliance with articles 2 and 3 of the Optional Protocol, including by **criminalizing the use of children for prostitution and pornography even if the perpetrator and victim are married under Sharia law, criminalizing child sex trafficking even in the absence of coercion, and ensuring that child victims of offences under the Optional Protocol do not face charges under Sharia law (including charges of *zinah*)**.¹²⁴

4.2.3.3 RECOMMENDATION

Recommendation 7: Amend the Penal Code, Sexual Offences Act, Child Rights Protection Act and Special Provisions Act to deal with Child Sex Abuse Offenders to ensure consistency in punishments for offences related to prostitution.

4.2.4 Sexual Harassment

In June 2019, the **ILO Violence and Harassment Convention 2019 (No. 190)** and its accompanying Recommendation (No. 206) were adopted by governments, workers' and employers' representatives from around the world. Convention No. 190 recognises that violence and harassment are unacceptable, and that everyone has the right to a world of work free from violence and harassment. The Convention and Recommendation offer broad protection to a variety of individuals and apply to the public and private sectors, to the formal and informal economy, and in urban and rural areas. Although the Maldives has yet to ratify this

122 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 30.

123 Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 70.

124 Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 71.

ILO treaty, Convention No. 190 offers normative guidance to States regarding sexual harassment.

Convention No. 190 **defines violence and harassment** as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.” (Article 1(1)(a)) Gender-based violence and harassment is defined as “violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes **sexual harassment.**” (Article 1(1)(b)) Convention No. 190 places **special emphasis on violence and harassment against women because they are disproportionately affected.** Gender inequalities in society at large and particularly in the world of work expose women more to risk. Incidents of violence and harassment adversely impact women’s access, remaining and advancing in the labour market. The Convention reminds States that they have a responsibility to promote a “general environment of zero tolerance”.¹²⁵

Although men and women experience sexual harassment, women and young women are disproportionately affected. With growing media attention on the issue of sexual harassment in the world of work, organisations are stepping up their efforts to address both violence and harassment in the world of work, as it negatively affects individuals, the workplace environment, and productivity.¹²⁶ For the victim, it can cause trauma and sickness, which may result in lower productivity, participation, and loss of income. It can also affect the victim’s dignity, family and social life. For the employer, detriments may include decreased work quality among the victim and other workers who are aware of the harassment. This negative climate

can impact on motivation and teamwork in the workplace. It may also result in high staff turnover if workers feel uncomfortable in this environment, and also create legal costs for employers who are sued for failing to take action.¹²⁷ The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has said that, “Sexual harassment undermines equality at the workplace by calling into question individual integrity and the well-being of workers. It damages an enterprise by weakening the basis upon which work relationships are built and impairing productivity.”¹²⁸

Article 7 of Convention No. 190 provides, “*each Member shall adopt laws and regulations to define and prohibit violence and harassment in the world of work, including gender-based violence and harassment.*” In the Maldives, the Committee on the Rights of the Child welcomed the adoption of the Prevention of Sexual Harassment and Abuse Act 2014.¹²⁹

4.2.4.1 FINDINGS REGARDING SEXUAL HARASSMENT

The Working Group on Discrimination Against Women was pleased to learn about the **Sexual Abuse and Harassment Prevention Act of 2014** that aims to ensure a violence free work environment. However, the Working Group noted that sexual harassment against women in the workplace is common, complaints are not taken seriously, and redress for victims remains elusive. It noted that this contributes to a hostile work environment, undermines workplace safety and security for women and hinders their participation in workforce. The Working Group drew attention to the ILO Convention No. 190 on Violence and Harassment, which defines the world of work broadly and provides guidance to address these concerns.¹³⁰

125 https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_711891/lang-en/index.htm

126 ILO, Game Changers: Women and the Future of Work in Asia and the Pacific, ILO 2018, p vii.

127 International Labour Organisation (2015), Policy Brief – Eliminating sexual harassment in workplaces in the Pacific. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/policy/wcms_407363.pdf, p 3.

128 International Labour Organisation (2015), Policy Brief – Eliminating sexual harassment in workplaces in the Pacific. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/policy/wcms_407363.pdf, p 3, citing ILO Committee of Experts – Special Survey on the application of the Convention on Discrimination in Employment and Occupation (No. 111).

129 Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 4(a).

130 Working Group on Discrimination Against Women (2022), End of Mission Statement, Preliminary Findings: A Time to Bridge Gender Gaps and Accelerate Progress (Maldives), 22 September, 2022.

The **Prevention of Sexual Abuse and Harassment Act** prohibits sexual harassment in the workplace (section 3) and in institutions (section 9), and provides for damages (section 33). The Committee on the Elimination of Discrimination Against Women welcomed the requirement established by the **Gender Equality Act** for all public and private sector employers to establish a complaints mechanism for gender-based discrimination (section 29), and the establishment of such mechanisms in 43 public sector institutions. The Committee noted, however, that no complaints have been received, and that the mechanisms are limited to discrimination in employment.¹³¹ The Committee recommended that the Maldives strengthen awareness among employers and women employees about the provisions of the Employment Act, in particular on sexual harassment, and the remedies available for women to claim their rights.¹³²

4.2.4.2 RECOMMENDATION

Recommendation 8: Amend the Sexual Abuse and Harassment Prevention Act and the Employment Act to prohibit violence and harassment, including gender-based violence and harassment, towards another person in the world of work.

4.2.5 Harmful Practices - Child Marriage & Forced Marriage

The Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child in General Recommendation #31 on harmful practices stated that **child marriage, also referred to as early marriage, is any marriage where at least one of the parties is under 18 years of age.** The overwhelming majority of child marriages, both formal and informal, involve girls, although at times their spouses are also under 18 years of age. A child marriage is considered to be a form of forced marriage, given that one or both parties have not expressed full, free and informed

consent.¹³³ **Forced marriages are marriages in which one or both parties have not personally expressed their full and free consent to the union.** They may be manifested in various forms, including child marriage, as indicated above, exchange or trade-off marriages, servile marriages and levirate marriages (coercing a widow to marry a relative of her deceased husband). In some contexts, a forced marriage may occur when a rapist is permitted to escape criminal sanctions by marrying the victim, usually with the consent of her family.¹³⁴

The Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child in General Recommendation #31 on harmful practices stated that in States parties with plural legal systems, **even where laws explicitly prohibit harmful practices, prohibition may not be enforced effectively because the existence of customary, traditional or religious laws may actually support those practices.**¹³⁵

The Committees noted that prejudices and weak capacity to address the rights of women and children among judges in customary and religious courts or traditional adjudication mechanisms and the belief that matters falling within the purview of such customary systems should not be subjected to any review or scrutiny by the State or other judicial bodies deny or limit the access to justice of victims of harmful practices.¹³⁶ The Committees recommended that States **repeal all legislation that condones, allows or leads to harmful practices, including traditional, customary or religious laws.**¹³⁷

In 2021, the UN Special Rapporteur on violence against women, its causes and consequences stated that as reports have been recently resurfaced of increased forced marriages, including child marriages, it is important to underline that for a Muslim marriage contract to be valid it needs to fulfill several requirements – key being that both individuals give their free consent. The Quran

131 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 39.

132 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 40(e).

133 Committee on the Elimination of Discrimination Against Women in General Recommendation #31 on harmful practices, para 20.

134 Committee on the Elimination of Discrimination Against Women in General Recommendation #31 on harmful practices, para 23.

135 Committee on the Elimination of Discrimination Against Women in General Recommendation #31 on harmful practices, para 43.

136 Committee on the Elimination of Discrimination Against Women in General Recommendation #31 on harmful practices, para 44.

137 Committee on the Elimination of Discrimination Against Women in General Recommendation #31 on harmful practices, para 55(c).

clearly prohibits forced marriage when it stated: “It is not lawful for you to inherit women by force” (4:19). Furthermore, and in a Hadith attributed to the Prophet, and verified as authentic, the Prophet stated explicitly that a woman should not be married until her consent has been obtained. Several human rights instruments, including the Universal Declaration on Human Rights and the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) guarantee the right to enter marriage with free and full consent by both parties and give the right to choose a spouse freely.** The Special Rapporteur underlined that **for two individuals to give their consent, those entering a marriage contract need to be fully aware of its implications. Islamic jurisprudence on this is clear: All marriages must be carried out by mature individuals who have the mental, legal, intellectual, and physical capacity to give consent. This requirement means that child marriages are by definition null and void.**¹³⁸

4.2.5.1 FINDINGS ON CHILD MARRIAGE

In September 2022, at the conclusion of its mission to the Maldives, the Working Group on Discrimination Against Women commended the Government’s adoption of the **Child Rights Protection Act** in 2019, which marked significant changes in the legal protection of children and **prohibits child marriage.**¹³⁹ Section 25 of the Child Rights Protection Act states that marriage is not to be contracted for children: Given that Children have not achieved the same level of health and mental growth as adults, and since Article 35 (a) of the Constitution stipulates that they be given special assistance and special protection from their family, community and the State, marriage shall not be contracted for Children under 18

years of age, even though it may be stipulated otherwise in another law.¹⁴⁰ Likewise, in 2021 the Committee on the Elimination of Discrimination Against Women welcomed the adoption of the **Child Rights Protection Act**, which recognizes the right of children to be protected from all traditional and cultural practices affecting their well-being and **sets the legal minimum age of marriage at 18 years for women and men.**¹⁴¹

The Family Act is inconsistent with the Child Rights Protection Act. In 2016, the Child Rights Committee¹⁴² was concerned that, although the minimum age for marriage is 18, **under article 4 (b) of the Family Act, the Family Court in Male’ can authorize marriage at an earlier age, provided that the child has attained puberty, is of sound physical and mental health and has the competency to maintain a livelihood.** While noting that the Government has distributed information posters on the consequences of underage marriage and conducted other awareness-raising activities on the harmful consequences of child marriage and female genital mutilation, the Committee was concerned that child marriages are reportedly increasing in the Maldives.¹⁴³ In the light of joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/ general comment No. 18 of the Committee on the Rights of the Child on harmful practices (2014), the Committee on the Rights of the Child urged the Government of the Maldives to take active measures to put an end to harmful practices against children in the Maldives, in particular by **ensuring that the minimum age of marriage set at 18 in article 4 (a) of the Family Act Child is upheld.**¹⁴⁴

Furthermore, the Committee on the Elimination of Discrimination Against Women regretted the

138 UN Special Rapporteur on violence against women (2021), Any party in Afghanistan declaring it follows Islamic Sharia must uphold and protect the rights of women and girls.

139 Working Group on Discrimination Against Women (2022), End of Mission Statement, Preliminary Findings: A Time to Bridge Gender Gaps and Accelerate Progress (Maldives), 22 September, 2022.

140 Section 25 of the Child Rights Protection Act.

141 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 4(c).

142 Child Rights Committee (2016), Concluding observations on the combined fourth and fifth periodic reports of Maldives, CRC/C/MDV/CO/4-5, para 46.

143 Child Rights Committee (2016), Concluding observations on the combined fourth and fifth periodic reports of Maldives, CRC/C/MDV/CO/4-5, para 46.

144 Child Rights Committee (2016), Concluding observations on the combined fourth and fifth periodic reports of Maldives, CRC/C/MDV/CO/4-5, para 47(a).

high number of unregistered marriages in rural and remote areas, including child marriages, and their negative impact on the rights of women.¹⁴⁵ Moreover, the Working Group on Discrimination Against Women noted reports of the continued prevalence **of child marriages, which is a harmful practice** with devastating consequences. It noted that in some cases, **girls are forced to get married as a consequence of teenage pregnancy, which is often linked to a fear of prosecution.**

4.2.5.2 FINDINGS ON FORCED MARRIAGE

Regarding **forced marriage**, the Working Group on Discrimination Against Women was concerned that women and girls who have become pregnant outside of wedlock have been prosecuted or forced into marriage, including minors, since consensual sexual relations outside marriage are criminalized under the Penal Code and Sexual Offences Act.¹⁴⁶ Section 411(a), 411(b)(4), 412(a)(2), (3), and (5) and section 412(c) of the **Penal Code** criminalise sexual relations outside marriage. Moreover, section 411(d) provides for punishment additional to that authorized under Chapter 90, namely to impose the penalty under Islamic Sharia, an additional punishment of 100 lashes. Section 27(a) of the **Sexual Offences Act** criminalises sexual intercourse outside of wedlock (offence of *zinah*), and section 27(b) states that this is punishable with flogging of 100 lashes, and imprisonment of 1-3 years. The Working Group on Discrimination Against Women noted that such provisions often seem gender neutral, but they are overwhelmingly directed against women and girls. Moreover, the punishment for this is flogging. While enforcement of this punishment is not reported frequently, it does constitute a form of cruel, inhuman and degrading treatment. Further as reported by interlocutors, the prohibition has not stopped individuals from engaging in sexual activities outside marriage but rather contributed to women and girls who become pregnant being prosecuted for pregnancies outside of wedlock or

forced into marriage, including minors. The Working Group recommended that these issues be urgently addressed through legal reform.¹⁴⁷

The Family Act is also inconsistent with the **Penal Code**. Section 131(a) of the Penal Code on Criminal Sexual Contact provides that a person commits an offense if he causes sexual contact with another person without consent for the purpose of producing sexual arousal or gratification. Furthermore, section 131(c) of the Penal Code provides for aggravated sexual contact and a Class 4 felony if the victim is less than 18 years old. Section 131(c)(2) provides for criminal sexual conduct and a Class 5 felony if (A) the victim is a minor and the defendant is 4 or more years older; or (B) the defendant knows the victim cannot comprehend the nature of the act or validly consent to it. Moreover, section 131(b) defines "sexual contact" with reference to "touching another person's sex organs... without a reason permitted in Islamic Sharia".

Moreover, section 27(c)(2) of the Penal Code deems consent to be ineffective if given by a person who is incompetent, and section 27(d) of the Penal Code provides that a person is incompetent if by reason of youth he is manifestly unable to make a reasonable judgment. In contrast, the **Special Provisions Act to Deal with Child Sexual Abuse** 2009 sets the legal minimum age for sexual consent at 13 years, which the Committee on the Rights of the Child deemed too low.¹⁴⁸ Moreover, the Committee on the Rights of the Child was concerned that article 28 of the **Law on the Protection of the Rights of the Child** (Law No. 9/91) provides for three exceptions under which a child is not entitled to any rights provided by this law: a child who enters into a contract of marriage; a child who becomes a parent; and a child who is employed.¹⁴⁹ The Committee urged the Government of Maldives to **repeal article 28 of the Law on the Protection of the Rights of the Child and ensure that its legislation offers full and**

145 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 53.

146 Working Group on Discrimination Against Women (2022), End of Mission Statement, Preliminary Findings: A Time to Bridge Gender Gaps and Accelerate Progress (Maldives), 22 September, 2022.

147 Working Group on Discrimination Against Women (2022), End of Mission Statement, Preliminary Findings: A Time to Bridge Gender Gaps and Accelerate Progress (Maldives), 22 September, 2022.

148 Child Rights Committee (2016), Concluding observations on the combined fourth and fifth periodic reports of Maldives, CRC/C/MDV/CO/4-5, para 44(b).

149 Child Rights Committee (2016), Concluding observations on the combined fourth and fifth periodic reports of Maldives, CRC/C/MDV/CO/4-5, para 24.

equal protection to all persons under the age of 18 without any exception.¹⁵⁰

4.2.5.3 RECOMMENDATION

Recommendation 9: (i) Repeal section 4(b) of the Family Act; (ii) Repeal section 27 of the Sexual Offences Act; (iii) Repeal section 28 of the Child Rights Protection Act; (iv) Raise the age for sexual consent in the Special Provisions Act to Deal with Child Sexual Abuse; (v) Repeal section 411(d) of the Penal Code; and (vi) Repeal all legislation that condones, allows or leads to harmful practices, including traditional, customary or religious laws.

4.2.6 Harmful Practices - Female Genital Mutilation

Female genital mutilation, female circumcision or female genital cutting is the practice of partially or wholly removing the external female genitalia or otherwise injuring the female genital organs for non-medical or non-health reasons. Female genital mutilation is performed in every region and, within some cultures, is a requirement for marriage and believed to be an effective method of controlling the sexuality of women and girls. It may have various immediate and/or long-term health consequences, including severe pain, shock, infections and complications during childbirth (affecting both the mother and the child), long-term gynaecological problems such as fistula, psychological effects and death. The World Health Organization and the United Nations Children's Fund estimate that between 100 million and 140 million girls and women worldwide have been subjected to a type of female genital mutilation.¹⁵¹ The Committee on the Rights of the Child in General Comment #13 on

violence against children classifies female genital mutilation as a harmful practice.¹⁵²

4.2.6.1 FINDINGS

The Maldives Demographic and Health Survey, published in December 2018, indicated that 13 per cent of women aged 15 to 49 had been subjected to female genital mutilation/cutting.¹⁵³ The Committee on the Rights of the Child noted that the Maldives has conducted awareness-raising activities on the harmful consequences of female genital mutilation, but was concerned that there is **no explicit legal protection against female genital mutilation**. In 2022, the Working Group on Discrimination Against Women noted that although there has been a decline in the incidence of the practice among younger educated girls, due to an effective public health intervention, it was concerned about attempts by fundamentalists to revive as a religious requirement this harmful practice.¹⁵⁴ The Committee on the Rights of the Child recommended the **enactment of legislation explicitly prohibiting female genital mutilation** as a harmful practice and holding religious leaders who promote it accountable.¹⁵⁵ Similarly, the Committee on the Elimination of Discrimination Against Women recommended that the Maldives **criminalise female genital mutilation** and provide education and information on the criminal nature and harmful effects of the practice, take proactive measures to protect women and girls from female genital mutilation, and prosecute clerics promoting the practice.¹⁵⁶ Likewise, the Working Group on Discrimination Against Women **recommended that female genital mutilation be explicitly prohibited by criminal law** and accompanied by a sustained

150 Child Rights Committee (2016), Concluding observations on the combined fourth and fifth periodic reports of Maldives, CRC/C/MDV/CO/4-5, para 25.

151 Committee on the Elimination of Discrimination Against Women and Committee on the Rights of the Child (2019), Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, CEDAW/C/GC/31/Rev.1-CRC/C/GC/18/Rev.1, para 19.

152 Committee on the Rights of the Child (2011), General comment No. 13 - the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 29.

153 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 27(c).

154 Working Group on Discrimination Against Women (2022), End of Mission Statement, Preliminary Findings: A Time to Bridge Gender Gaps and Accelerate Progress (Maldives), 22 September, 2022.

155 Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 41(b).

156 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 28(c).

strategy from the Government involving all concerned stakeholders.¹⁵⁷

4.2.6.2 RECOMMENDATION

Recommendation 10: criminalise female genital mutilation.

4.2.7 Violations of Women's Sexual and Reproductive Health and Rights

The Committee on the Elimination of Discrimination Against Women in General Recommendation #35 on gender-based violence against women stated that violations of women's sexual and reproductive health and rights, such as **forced sterilization**, forced abortion, forced pregnancy, criminalization of abortion, denial or delay of safe abortion and/or post-abortion care, forced continuation of pregnancy, and abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.¹⁵⁸ The Committee recommended that States parties **repeal provisions allowing medical procedures to be performed on women with disabilities without their informed consent and provisions that criminalize abortion** or any other criminal provisions that affect women disproportionately, including those resulting in the discriminatory application of the death penalty to women.¹⁵⁹

Sterilization without full, free and informed consent has been variously described by international, regional and national human rights bodies as an

involuntary, coercive and/or forced practice, and as a violation of fundamental human rights, including the right to health, the right to information, the right to privacy, the right to decide on the number and spacing of children, the right to found a family and the right to be free from discrimination. Human rights bodies have also recognized that forced sterilization is a violation of the right to be free from torture and other cruel, inhuman or degrading treatment or punishment.¹⁶⁰

4.2.7.1 FINDINGS ON FORCED STERILIZATION

With respect to the Maldives, the Committee on the Elimination of Discrimination Against Women recommended that the State Party modify its legislation and policies in order to eliminate the forced sterilization of persons in the Maldives and ensure the full and informed consent of all persons to all medical procedures.¹⁶¹

4.2.7.2 RECOMMENDATION

Recommendation: amend legislation to prohibit forced sterilization of persons in the Maldives and ensure the full and informed consent of all persons to all medical procedures.

4.2.7.3 FINDINGS ON CRIMINALIZED ABORTION

Abortion is criminalized after 120 days in section 416 of the Penal Code except in cases of rape, sexual assault, incest¹⁶², when there is a threat to the woman's life,¹⁶³ and Thalassaemia major,¹⁶⁴ sickle cell major or multiple congenital anomalies.

The Child Rights Committee was concerned that abortion requires the consent of the spouse and is

157 Working Group on Discrimination Against Women (2022), End of Mission Statement, Preliminary Findings: A Time to Bridge Gender Gaps and Accelerate Progress (Maldives), 22 September, 2022.

158 Committee on the Elimination of Discrimination Against Women, General Recommendation #35 on gender-based violence against women, updating general recommendation #19, para 18.

159 Committee on the Elimination of Discrimination Against Women, General Recommendation #35 on gender-based violence against women, updating general recommendation #19, para 29(c)(i).

160 OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF, WHO (2014), Eliminating forced, coercive and otherwise involuntary sterilization: An Interagency Statement.

161 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 52(b).

162 Section 416(d) Penal Code.

163 Section 416(b) Penal Code.

164 Thalassaemia is an inherited blood disorder that causes your body to have less hemoglobin than normal. Hemoglobin enables red blood cells to carry oxygen. Thalassaemia can cause anemia, leaving you fatigued. <https://www.mayoclinic.org/diseases-conditions/thalassaemia/symptoms-causes/syc-20354995?p=1>

permitted only in the following cases: Thalassaemia major, sickle cell major or multiple congenital anomalies; to save the life of the mother or preserve her physical health; rape by an immediate family member; and rape of a child who is physically and mentally unfit to become pregnant and deliver a baby.¹⁶⁵

The Committee on the Elimination of Discrimination Against Women was concerned about the restricted access, in practice, to sexual and reproductive health services for unmarried women and girls, despite the National Family Planning Guidelines providing for the right to receive services irrespective of marital status, and the absence of information on the prevalence of unsafe and illegal abortions.¹⁶⁶ The Committee recommended that the Maldives collect data and conduct research on the prevalence of unsafe and illegal abortions in the State party, disaggregated by age and geographical location, **amend legislation in order to decriminalize abortion in all cases**, and ensure access to safe abortion services and post-abortion care.¹⁶⁷

4.2.7.4 RECOMMENDATION

Recommendation 11: (i) repeal section 416 of the Penal Code and treat abortion as a health issue rather than a criminal justice issue; and (ii) repeal legislation permitting forced sterilization.

4.3 Psychological Violence

The Committee on the Rights of the Child in General Comment #13 on Violence Against Children stated that mental violence is often described as psychological maltreatment, mental abuse, verbal abuse and emotional abuse or neglect and this can include: (a) All forms of persistent harmful

interactions with the child, for example, conveying to children that they are worthless, unloved, unwanted, endangered or only of value in meeting another's needs; (b) Scaring, terrorizing and threatening; exploiting and corrupting; spurning and rejecting; isolating, ignoring and favouritism; (c) Denying emotional responsiveness; neglecting mental health, medical and educational needs; (d) Insults, name-calling, humiliation, belittling, ridiculing and hurting a child's feelings; (e) Exposure to domestic violence; (f) Placement in solitary confinement, isolation or humiliating or degrading conditions of detention; and (g) Psychological bullying and hazing by adults or other children, including via information and communication technologies (ICTs) such as mobile phones and the Internet (known as "cyberbullying").¹⁶⁸

This section will analyse in particular (i) harassment, threats, intimidation, (ii) coercion, and (iii) crimes of so-called honour.

4.3.1 Harassment, Threats, Intimidation

The Committee on the Elimination of Discrimination Against Women in General Recommendation #35 on gender-based violence against women stated that gender-based violence takes multiple forms, including acts or omissions intended or likely to cause or result in psychological harm or suffering to women, threats of such acts, and harassment.¹⁶⁹ The Committee on the Rights of the Child in General Comment #13 on Violence Against Children stated that violence includes all forms of mental violence, injury, abuse, neglect or negligent treatment. The Committee on the Rights of the Child noted that in common parlance the term violence is often understood to mean only physical harm and/or intentional harm. However, the Committee emphasized that the term violence must not be interpreted in any way to minimize the impact of,

¹⁶⁵ Committee on the Rights of the Child (2016), Concluding observations on the combined fourth and fifth periodic reports of the Maldives, CRC/C/MDV/CO/4-5, para 56(a).

¹⁶⁶ Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 45.

¹⁶⁷ Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 46(d).

¹⁶⁸ Committee on the Rights of the Child (2011), General comment No. 13 - the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 21 (a), (b), (c), (d), (e), (f) and (g).

¹⁶⁹ Committee on the Elimination of Discrimination Against Women, General Recommendation #35 on gender-based violence against women, updating general recommendation #19, para 14. Citing General recommendation No. 19, para. 6, and general recommendation No. 28, para. 19.

and need to address, non-physical and/or non-intentional forms of harm (such as, inter alia, neglect and psychological maltreatment).¹⁷⁰

4.3.1.1 FINDINGS ON HARASSMENT, THREATS AND INTIMIDATION

In the Maldives, the **Domestic Violence Prevention Act** defines domestic violence as including verbal and psychological abuse (section 4(a)(3)), intimidation (section 4(a)(8)), harassment (section 4(a)(9)), stalking (section 4(a)(10)), entry into, and being present thereafter at the victim's residence without consent, where the parties do not share the same residence (section 4(a)(12), confining the victim to a place or restricting their movement against their will (section 4(a)(15), attempting to commit any of the foregoing acts or causing apprehension of such acts (section 4(a)(16), and causing a minor to witness or hear an act of domestic violence or presenting or placing a minor in such situation where such minor may witness or hear an act of domestic violence (section 4(a)(17)). The **Sexual Offences Act** prohibits the forcing of performance of a sexual act by threat or intimidation (section 34), by blackmail (section 35), by misrepresentation (section 36) or by forced intoxication (section 37).

The Committee on the Elimination of Discrimination Against Women welcomed the statement that the Maldives is fully committed to preventing and investigating reprisals against civil society organizations and individuals advocating for human rights, including online. It noted with concern, however, reports about **threats and intimidation against women human rights defenders** and about the shrinking civic space. It also noted with concern that, despite the announced steps to prevent and investigate online abuse, no perpetrators have yet been held accountable. It was further concerned

that the bill on associations, submitted to the People's Majlis in 2019, as well as **bill no. 9/2014 (the Penal Code) seeking to criminalize hate speech**, which was submitted to the People's Majlis¹⁷¹ in June 2021, have still not been adopted.¹⁷²

The Committee on the Elimination of Discrimination Against Women recommended that the Maldives (a) prevent reprisals against women human rights defenders, ensure their **protection from violence and intimidation, and investigate, prosecute and adequately punish all threats and harassment** against them;¹⁷³ (b) guarantee that women human rights defenders and activists can freely carry out their advocacy for women's human rights and exercise their rights to freedom of expression, peaceful assembly and association, without harassment, surveillance or other undue restrictions;¹⁷⁴ and (c) expedite the adoption of the bill on associations as well as the bill criminalizing hate speech.¹⁷⁵

4.3.1.2 RECOMMENDATION

Recommendation 12: define and criminalise hate speech.

4.3.2 Coercion

The Committee on the Elimination of Discrimination Against Women in General Recommendation #35 on gender-based violence against women stated that gender-based violence takes multiple forms, including acts or omissions intended or likely to cause or result in psychological harm or suffering to women, threats of such acts, and coercion.¹⁷⁶ The Committee on the Rights of the Child in General Comment #13 on violence against children stated that sexual abuse and exploitation includes the inducement or coercion of a child to engage in

170 Committee on the Rights of the Child (2011), General comment No. 13 - the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 4.

171 Parliament of the Republic of Maldives.

172 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 21.

173 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 22(a).

174 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 22(b).

175 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 22(c).

176 Committee on the Elimination of Discrimination Against Women, General Recommendation #35 on gender-based violence against women, updating general recommendation #19, para 14. Citing General recommendation No. 19, para. 6, and general recommendation No. 28, para. 19.

any unlawful or psychologically harmful sexual activity.¹⁷⁷ The Committee on the Rights of the Child recommended that States parties should ensure that policies and measures take into account the different risks facing girls and boys in respect of various forms of violence in various settings. This includes addressing gender-based stereotypes, power imbalances, inequalities and discrimination which support and perpetuate the use of violence and coercion in the home, in school and educational settings, in communities, in the workplace, in institutions and in society more broadly. Men and boys must be actively encouraged as strategic partners and allies, and along with women and girls, must be provided with opportunities to increase their respect for one another and their understanding of how to stop gender discrimination and its violent manifestations.¹⁷⁸

The Special Rapporteur on violence against women, its causes and consequences in her report on a framework for legislation on rape (model rape law), stated that lack of consent is presumed where rape was committed by force, or by threat of force or coercion.¹⁷⁹ The Special Rapporteur noted that there is a broad range of coercive circumstances, including, but not limited to, circumstances in which: (a) the victim was subject to abuse, violence, duress, deceit, detention or psychological oppression or intimidation that contributed to the victim's subjugation or acquiescence; or (b) the victim was subject to a threat (expressed or implied) of present or future physical or non-physical harm to the victim or a third person.¹⁸⁰

4.3.2.1 FINDINGS ON COERCION

In the Maldives, the Domestic Violence Prevention Act defines domestic violence as including coercing, intimidating or forcing the victim to commit an act

which such person would not have consented to or committed by their own volition (section 4(a)(14)), and any other act which may be described as controlling or abusive behavior towards the victim (section 4(a)(13). The Penal Code prohibits criminal coercion (section 141). The Child Rights Protection Act prohibits exploitation of children (section 122(a)), including by making a child work by force, coercion or deceit (section 122(a)(1)), and using a child to obtain a benefit to someone else by force, coercion or deceit (section 122(a)(2)).

The Committee on the Elimination of Discrimination Against Women noted the Maldives' efforts to raise awareness among media personnel to address negative portrayals of women. It noted that gender stereotypes were addressed during the national curriculum revision process but that challenges remain due to lack of awareness among teachers. It also noted with concern that religious fundamentalism, radicalization and conservative ideologies drive narratives of discrimination against women, are used to weaken support for gender equality and women's rights, and are invoked to legitimize gender-based violence against women in the State party, such as the practice of "*ruqya*" or exorcism and "*sih*r" or black magic.¹⁸¹

The Committee on the Elimination of Discrimination Against Women recommended that the Maldives: (i) Address the rising phenomenon of black magic and "*ruqya*" as key public health concerns as well as a safety and security concern affecting women and girls and prevent and protect women and girls from the risk of sexual violence linked to such practices;¹⁸² (ii) Publicly condemn expressions of hostility against, and the perpetuation of harmful gender stereotypes of, women and girls, including by religious figures or when "justified" with reference to religious belief, and instead

177 Committee on the Rights of the Child (2011), General comment No. 13 - the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 25(a).

178 Committee on the Rights of the Child (2011), General comment No. 13 - the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 72(b).

179 The Special Rapporteur on violence against women, its causes and consequences (2021), Report on a framework for legislation on rape (model rape law), A/HRC/47/26/Add.1, para 19.

180 The Special Rapporteur on violence against women, its causes and consequences (2021), Report on a framework for legislation on rape (model rape law), A/HRC/47/26/Add.1, para 19 (a) and (b).

181 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 25.

182 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 26(b).

express active support for gender equality;¹⁸³ and (iii) Combat all forms of violence and coercion perpetrated against women and girls “justified” with reference to religious practice or belief, ensure the personal safety and liberty of women and girls, hold accountable perpetrators of such violence and ensure that victims obtain redress.¹⁸⁴

4.3.2.2 RECOMMENDATION

Recommendation 13: criminalise all forms of violence and coercion perpetrated against women and girls “justified” with reference to religious practice or belief.

4.3.3 Crimes of So-called Honour

The Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child stated in General Recommendation 31 on harmful practices stated that crimes committed in the name of so-called honour are acts of violence that are disproportionately, although not exclusively, committed against girls and women because family members consider that some suspected, perceived or actual behaviour will bring dishonour to the family or community. Such forms of behaviour include entering into sexual relations before marriage, refusing to agree to an arranged marriage, entering into a marriage without parental consent, committing adultery, seeking divorce, dressing in a way that is viewed as unacceptable to the community, working outside the home or generally failing to conform to stereotyped gender roles. Crimes in the name of so-called honour may also be committed against girls and women because they have been victims of sexual violence.¹⁸⁵

4.3.3.1 FINDINGS ON CRIMES OF SO-CALLED HONOUR

In the Maldives, the Penal Code prohibits aggravated sexual assault with a minor (section 130(d)(2) (A)). However, section 134(a) deems consent by a minor invalid, except if they are married. Moreover,

section 14 of the Special Provisions Act to Deal with Child Sexual Abuse provides for an exemption arising out of marriage. The Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child stated in General Recommendation 31 on harmful practices stated that, contrary to their obligations under both Conventions (CEDAW and CRC), many States parties maintain legal provisions that justify, allow or lead to harmful practices, such as legislation that allows for child marriage, and provides the defence of so-called honour as an exculpatory or mitigating factor for crimes committed against girls and women or enables a perpetrator of rape and/or other sexual crimes to avoid sanctions by marrying the victim.¹⁸⁶

The Committees recommended that the States parties to the Conventions adopt or amend legislation with a view to effectively addressing and eliminating harmful practices, including child marriage. In doing so, they should ensure that a minimum legal age of marriage for girls and boys, with or without parental consent, is established at 18 years;¹⁸⁷ and that they repeal all legislation that condones, allows or leads to harmful practices, including traditional, customary or religious laws and any legislation that accepts the defence of honour as a defence or mitigating factor in the commission of crimes in the name of so-called honour.¹⁸⁸

4.3.3.2 RECOMMENDATION

Recommendation 14: – repeal section 134(a) of the Penal Code and section 14 of the Special Provisions Act to Deal with Child Sexual Abuse.

4.4 Economic Harm

The Committee on the Elimination of Discrimination Against Women in General Recommendation #35 on gender-based violence against women stated that gender-based violence takes multiple forms,

183 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 26(c).

184 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 26(d).

185 Committee on the Elimination of Discrimination Against Women in General Recommendation #31 on harmful practices, para 29.

186 Committee on the Elimination of Discrimination Against Women in General Recommendation #31 on harmful practices, para 42.

187 Committee on the Elimination of Discrimination Against Women in General Recommendation #31 on harmful practices, para 55(f).

188 Committee on the Elimination of Discrimination Against Women in General Recommendation #31 on harmful practices, para 55(c).

including acts or omissions intended or likely to cause or result in economic harm or suffering to women, including threats of such acts.¹⁸⁹ The Domestic Violence Prevention Act defines domestic violence as including economic or financial abuse (section 4(a)(4)), and deliberately withholding the property of a person (section 4(a)(7)), damage to property (section 4(a)(11)).

This section will analyse in particular (i) dowries, (ii) polygamy, and (iii) divorce.

4.4.1 Findings Regarding Dowries

In the Maldives, section 10(a) of the Family Act provides for dowries - the woman contracting a marriage shall be entitled to the dowry upon solemnization of the marriage in accordance with the principles of Islamic *Shari'ah*. It shall be an obligation on the man contracting the marriage to give the dowry in accordance with the principles of Islamic *Shari'ah*. Section 10(c) of the Family Act provides that any item of value or any benefit or work which is permissible under Islamic *Shari'ah* shall suffice as dowry.

The Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child in General Recommendation #31 on harmful practices stated that the payment of dowries and bride prices, which varies among practising communities, may increase the vulnerability of women and girls to violence and to other harmful practices. In some cases, families will agree to the temporary "marriage" of their daughter in exchange for financial gains, also referred to as a **contractual marriage**, which is a form of trafficking in human beings.¹⁹⁰

4.4.1.1 RECOMMENDATION

Recommendation 15 - repeal section 10 of the Family Act.

4.4.2 Polygamy

The Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child in General Recommendation #31 on harmful practices stated that polygamy is contrary to the dignity of women and girls and infringes on their human rights and freedoms, including equality and protection within the family. Polygamy varies across, and within, legal and social contexts and its impact includes harm to the health of wives, understood as physical, mental and social well-being, the material harm and deprivation that wives are liable to suffer and emotional and material harm to children, often with serious consequences for their welfare.¹⁹¹ While many States parties have chosen to ban polygamy, it continues to be practised in some countries, whether legally or illegally. Although throughout history polygamous family systems have been functional in some agricultural societies as a way of ensuring larger labour forces for individual families, studies have shown that polygamy actually often results in increased poverty in the family, especially in rural areas.¹⁹² States parties to the Convention on the Elimination of All Forms of Discrimination against Women have explicit obligations to **discourage and prohibit polygamy**. The Committee on the Elimination of Discrimination against Women also contends that polygamy has significant ramifications for the economic well-being of women and their children.¹⁹³

4.4.2.1 FINDINGS ON POLYGAMY

In the Maldives, section 12 of the Family Act allows for polygamy. Section 12(a) provides, "Polygamous marriage may be solemnized only upon being approved by the Registrar of Marriages subsequent to an application being made to the Registrar of Marriages in accordance with this Act and Regulations made under it by a man desirous of contracting such a marriage." Section 12(b) provides, "Polygamous marriage may be approved after having considered the financial competence of the man to maintain his wives and other dependents under his care and if the reasons for contracting the

189 Committee on the Elimination of Discrimination Against Women, General Recommendation #35 on gender-based violence against women, updating general recommendation #19, para 14. Citing General recommendation No. 19, para. 6, and general recommendation No. 28, para. 19.

190 Committee on the Elimination of Discrimination Against Women in General Recommendation #31 on harmful practices, para 24.

191 Committee on the Elimination of Discrimination Against Women in General Recommendation #31 on harmful practices, para 25.

192 Committee on the Elimination of Discrimination Against Women in General Recommendation #31 on harmful practices, para 26.

193 Committee on the Elimination of Discrimination Against Women in General Recommendation #31 on harmful practices, para 28.

marriage based on principles of Islamic *Shari'ah* are acceptable to the Registrar of Marriages.”

The Working Group on Discrimination Against Women was concerned that polygamy remains legal in the Maldives although it has been recognized as a harmful practice that is discriminatory towards women under international human rights law.¹⁹⁴ The Working Group urged the Maldives to address this through legal reform.¹⁹⁵

The Committee on the Elimination of Discrimination Against Women was also concerned that **polygamy remains permitted for men in certain circumstances under the Family Act** (Act No. 4/2000).¹⁹⁶ The Committee on the Elimination of Discrimination Against Women recommended that the Maldives **prohibit polygamy** and raise awareness about its harmful effects on women, in line with the Committee’s general recommendation No. 21 (1994) and joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women / joint general comment No. 18 of the Committee on the Rights of the Child (2014) on harmful practices, and **ensure the protection of the economic rights of women in existing polygamous marriages**.¹⁹⁷

4.4.2.2 RECOMMENDATION

Recommendation 16: repeal section 12 of the Family Act

4.4.3 Findings on Divorce

The Family Act sections 23 to 39 govern divorce in the Maldives. Stakeholders noted that the

Maldives has very high rates of divorce. However, the Committee on the Elimination of Discrimination Against Women noted with concern the unequal provisions for divorce in the family law to the effect that a man is not required to provide justification for divorce, while a woman must base her application on the grounds specified in law and must bear the burden of proof to avoid potentially lengthy reconciliation proceedings. Moreover, while the Committee took note of the 2016 amendment to article 32 of the Family Act, which provides for the distribution of matrimonial assets in cases where a prenuptial agreement exists, it was concerned that prenuptial agreements are not widely known, practiced, or encouraged¹⁹⁸ and that the 2016 amendment is therefore inapplicable to the vast majority of registered marriages.¹⁹⁹

The Committee on the Elimination of Discrimination Against Women recommended that the Maldives **adopt legislation to ensure that men and women have equal rights in divorce, including equal grounds and procedures for obtaining a divorce, as well as equal distribution of marital property upon divorce**, including land, in line with the Committee’s general recommendation No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution.²⁰⁰

4.4.3.1 FAMILY ACT AND DOMESTIC VIOLENCE PREVENTION ACT - SHARIA

In 2022, the Working Group on Discrimination Against Women at the conclusion of its mission to the Maldives stated that it is **not acceptable under international human rights law for any religious**

194 Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, CEDAW/C/GC/31/CRC/C/GC/18; UN WGDW, thematic analysis: eliminating discrimination against women in cultural and family life, with a focus on the family as a cultural space, A/HRC/29/40 (2015).

195 Working Group on Discrimination Against Women (2022), End of Mission Statement, Preliminary Findings: A Time to Bridge Gender Gaps and Accelerate Progress (Maldives), 22 September, 2022.

196 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 53.

197 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 54(d).

198 Stakeholders noted that there have only ever been around eight prenuptial agreements due to cultural stigma.

199 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 53.

200 Committee on the Elimination of Discrimination Against Women (2021), Concluding observations on the sixth periodic report of Maldives, CEDAW/C/MDV/CO/6, para 54(e).

doctrine to be used as a basis for discrimination against women and girls or to fail to prevent it.²⁰¹

Moreover, the Working Group on Discrimination Against Women was concerned about the **reservations** to certain provisions of Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women **concerning equality in marriage and family relations, on grounds of incompatibility with Sharia.**²⁰² The Family Act contains several provisions invoking Islamic *Sharia*, such as section 28 relating to dissolution by *Faskh*, section 32 on equitable distribution of matrimonial property prior to divorce (Islamic *Shari'ah* rights prevail over any prenuptial agreement), and section 35 on maintenance (quantum and period of maintenance determined by reference to principles of Islamic *Sharia*). Furthermore, Part 9 of the Domestic Violence Prevention Act on "*Thafriq*" or "*Fasakh*" contains references to Islamic *Shari'ah*. Section 46 of the Domestic Violence Prevention Act states that, "*Thafriq* refers to the special right of a woman under Islamic *Shari'ah* to demand the dissolution of a marriage where the court finds that any of the grounds stated under the Islamic *Shari'ah* for *thafriq* continue to exist." Section 47 provides for an order for dissolution, namely "Any marriage shall be dissolved under this Act pursuant to a *thafriq* order of the court. The legal principles applicable to a court judgment shall be applicable to such an order." Section 48 empowers women to request dissolution of marriage on the grounds of domestic violence. It states, "circumstances under which "*thafriq*" is allowed In the event a male perpetrator bound by marriage with a female victim has committed an act of domestic violence against the female victim, for the purposes of this Act, their marriage shall be dissolved at the request of the female victim where the court finds the existence of any of the following grounds which have been prescribed under Islamic *Shari'ah* as grounds under which "*thafriq*" is permissible: (a) The seriousness of the act of domestic violence has caused an impediment to the resumption of a peaceful life between the male perpetrator and the female victim; (b) The protection and wellbeing of the female victim cannot be granted certainty due

to the severity of such act of domestic violence; (c) In spite of the implementation of other measures prescribed under this Act, the marital relationship between the two persons has irretrievably broken down as a result of the act of domestic violence that it is impossible to maintain the marital relationship any further. Section 49 provides that: (a) In the event the court has ordered for the dissolution of a marriage by *thafriq*, the marriage shall immediately come to an end and the principles of Islamic *Shari'ah* applicable upon the dissolution of a marriage shall also apply to the two persons thereafter; and (b) For the purposes of Section 28 of the *Family Law Act (Act Number 4/2000)*, the events specified in Section 48 of this Act shall hereby further be deemed to be events that Islamic law allow for a marriage to be dissolved by *fasakh*.

The Maldives made reservations to sub-paragraphs (a), (c), (d) and (f) of paragraph 1 of Article 16 of the Convention on the Elimination of Discrimination Against Women,²⁰³ namely, 1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount. Sub-paragraph (c) is particularly relevant for marital rape.

The Working Group on Discrimination Against Women noted that the **2008 Constitution provides that rights and freedoms are guaranteed to all persons in a manner that is not contrary to any tenet of Islam, without discrimination, including on the basis of sex.** However, it was deeply concerned that, in addition to a number of legal

201 Working Group on Discrimination Against Women (2022), End of Mission Statement, Preliminary Findings: A Time to Bridge Gender Gaps and Accelerate Progress (Maldives), 22 September, 2022.

202 Working Group on Discrimination Against Women (2022), End of Mission Statement, Preliminary Findings: A Time to Bridge Gender Gaps and Accelerate Progress (Maldives), 22 September, 2022.

203 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en#EndDec

provisions that embody discriminatory gender stereotypes which are aimed at keeping women in a subordinate position, there are persistent attempts by certain influential social and political actors to reinforce such stereotypes and regulate all aspects of women's and girls' lives, ranging from how they dress and behave to what they learn in school. This is being done by instrumentalizing a very specific and narrow interpretation of Islamic religious doctrine that we are told is not historically in line with Maldivian culture and religious practices. The Working Group noted that the Government of the Maldives is aware of the active propagation of a fundamentalist ideology that is harmful to women but has not yet adopted a clear strategy to combat this trend.

The Committee on the Elimination of Discrimination Against Women in General Recommendation #33 on Women's Access to Justice noted that State laws, regulations, procedures and decisions can sometimes coexist within a given State party with religious, customary, indigenous or community laws and practices. This results in the existence of plural justice systems. There are, therefore, multiple sources of law that may be formally recognized as part of the national legal order or operate without an explicit legal basis. States parties have obligations under articles 2, 5 (a) and 15 of CEDAW and under other international human rights instruments to ensure that women's rights are equally respected and that women are protected against violations of their human rights by all components of plural justice systems.²⁰⁴ The presence of plural justice systems can, in itself, limit women's access to justice by perpetuating and reinforcing discriminatory social norms. In many contexts, the **availability of multiple avenues for gaining access to justice within plural justice systems notwithstanding, women are unable to effectively exercise a choice of forum.**

The Committee observed that, in some States parties in which systems of family and/or personal law based on customs, religion or community norms coexist alongside civil law systems, individual

women may not be as familiar with both systems or at liberty to decide which regime applies to them.²⁰⁵

The Committee on the Elimination of Discrimination Against Women recommended that, in cooperation with non-State actors, **States parties enact legislation to regulate the relationships between the mechanisms within plural justice systems in order to reduce the potential for conflict,²⁰⁶ and ensure that women have a real and informed choice concerning the applicable law and the judicial forum within which they would prefer their claims to be heard.²⁰⁷**

Recommendation 17: (i) adopt legislation to ensure that men and women have equal rights in divorce, including equal grounds and procedures for obtaining a divorce, as well as equal distribution of marital property upon divorce; (ii) enact legislation to regulate the relationships between the mechanisms within plural justice systems in order to reduce the potential for conflict, and (iii) ensure that women have a real and informed choice concerning the applicable law and the judicial forum within which they would prefer their claims to be heard.

204 The Committee on the Elimination of Discrimination Against Women in General Recommendation #33 on Women's Access to Justice, CEDAW/C/GC/33, para 61.

205 The Committee on the Elimination of Discrimination Against Women in General Recommendation #33 on Women's Access to Justice, CEDAW/C/GC/33, para 62.

206 The Committee on the Elimination of Discrimination Against Women in General Recommendation #33 on Women's Access to Justice, CEDAW/C/GC/33, para 64(b).

207 The Committee on the Elimination of Discrimination Against Women in General Recommendation #33 on Women's Access to Justice, CEDAW/C/GC/33, para 64(d).

5 Conclusion

This law review has examined laws relevant for gender based violence in the Maldives and made recommendations for law reform in line with the international human rights law standards as ratified by the Maldives. The above recommendations relate to law reform of specific sections of specific laws. However, in addition, this law review makes the following general recommendations for consideration when drafting such amendments.

- Apply a survivor centred approach²⁰⁸ when drafting amendments to specific laws relevant for gender-based violence
- Draft new provisions of law with progressive interpretations of Sharia law that are compatible with women's rights and international human rights laws to ensure coherence, predictability, and confidence in the way it would be interpreted, or any discretion applied.²⁰⁹

208 Survivor centred principles: (i) prioritise safety and security; (ii) maintain confidentiality; (iii) non-discrimination; (iv) treat her with respect and dignity; (v) provide information about services and help her access all the care and support she needs. https://interagencystandingcommittee.org/system/files/2023-06/IASC%20Definition%20%26%20Principles%20of%20a%20Victim_Survivor%20Centered%20Approach.pdf

209 e.g. p 150 Musawah book (Wanted: Equality and Justice in the Muslim Family, Edited by Zainah Anwar) – 5 basic values of Islam – foundation for systematic theory of individual rights; also see rest of this chapter
Islam beyond patriarchy through gender inclusive Qur'anic analysis
Explore the possibilities for achieving a normative reconciliation between the Islamic tradition and the international human rights laws
Produce a list of rights purportedly guaranteed by Islam, and the rights listed coincide, or were correlated, most typically with the major human rights in the UDHR. Most often, in order to demonstrate the point, these texts would selectively cite a Quranic verse, or some anecdotal report attributed to the Prophet, for each of the purported rights
What is needed is a normative commitment by the subjective interpreters of the law in favour of human rights
The notion of a government constrained by laws, and the denial to the executive power of unfettered discretion in dealing with the ruled, does tend to support conditions that are conducive for the protection of human rights. Arguably, *Shari'ah* law, as articulated by jurists, could support a conception of rights that, in most situations, are immune from government interference and manipulation. The fact that the interpretations of jurists are endowed with a certain measure of sanctity, as long as such interpretations tend to respect the honour and dignity of human beings – could empower these juristic interpretations against the vagaries and indiscretions of political powers and contribute to the protection of human dignities.

Annex 1 - Desk Review

The following normative guidance from UN human rights mechanisms has guided the mapping study and recommendations for law reform.

UN Working Group on Discrimination Against Women and Girls

- OHCHR (2022), UN Working Group on discrimination against women and girls – Maldives, preliminary findings: a time to bridge gender gaps and accelerate progress <https://www.ohchr.org/sites/default/files/documents/issues/women/wg/2022-09-21/EOM-statement-WGDAW-Maldives-22-Sept-2022.pdf>
- OHCHR (2022), Maldives Bridge gender gaps to accelerate progress, say UN experts <https://www.ohchr.org/en/press-releases/2022/09/maldives-bridge-gender-gaps-accelerate-progress-say-un-experts>
- OHCHR (2021), Any party in Afghanistan declaring it follows Islamic Sharia must uphold and protect the rights of women and girls <https://www.ohchr.org/en/statements/2021/08/any-party-afghanistan-declaring-it-follows-islamic-sharia-must-uphold-and>

UN Special Rapporteur on Violence Against Women

- SRVAW (2021), Thematic Report on Rape <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/089/99/PDF/G2108999.pdf?OpenElement>
- SRVAW (2021), Model Rape Law <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/149/63/PDF/G2114963.pdf?OpenElement>
- SRVAW (2018), Online violence against women <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/184/58/PDF/G1818458.pdf?OpenElement>
- SRVAW (2017), HRBA to protection services <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/162/08/PDF/G1716208.pdf?OpenElement>
- SRVAW (2013), State responsibility re VAW <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/136/39/PDF/G1313639.pdf?OpenElement>
- SRVAW (2011), Multiple and intersecting forms of discrimination against women <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/130/22/PDF/G1113022.pdf?OpenElement>
- SRVAW (2009), Reparations <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/131/09/PDF/G1013109.pdf?OpenElement>
- SRVAW (2008), Indicators on VAW and State response <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/104/47/PDF/G0810447.pdf?OpenElement>

UN Special Rapporteur on the Independence of Judges and Lawyers

- OHCHR (2013), Preliminary observations of the UN Special Rapporteur on the independence of judges and lawyers on her official visit to the Republic of Maldives (17-24 February 2013) <https://www.ohchr.org/en/statements/2013/02/preliminary-observations-un-special-rapporteur-independence-judges-and-lawyers>
- SRIJL (2011), Thematic Report on Gender and the Judiciary <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/130/15/PDF/G1113015.pdf?OpenElement>

UN Special Rapporteur on Torture

- SRT (2016), Thematic Report on Gender and SOGI <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/000/97/PDF/G1600097.pdf?OpenElement>
- Committee on the Elimination of Discrimination Against Women
- CEDAW (2021), Concluding observations on the sixth periodic report of the Maldives, CEDAW/C/MDV/CO/6 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/351/59/PDF/N2135159.pdf?OpenElement>
- CEDAW (2017), General recommendation No. 35 on gender based violence against women, updating general recommendation No. 19 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/231/54/PDF/N1723154.pdf?OpenElement>
- CEDAW (2015) General recommendation No 33 on women's access to justice https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGC%2f33&Lang=en
- CEDAW (2019), General recommendation No. 31 on harmful practices (jointly with CRC) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/134/42/PDF/G1913442.pdf?OpenElement>
- CEDAW (1992), General recommendation No. 19 on violence against women https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fGEC%2f3731&Lang=en

Committee on the Rights of the Child

- CRC (2016), Concluding observations on the combined fourth and fifth periodic reports of Maldives, CRC/C/MDV/CO/4-5 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/050/12/PDF/G1605012.pdf?OpenElement>
- CRC (2011), General comment No. 13 on the right of the child to freedom from all forms of violence https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en
- CRC (2006), General comment No. 8 on the right of the child to protection from corporal punishment https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f8&Lang=en

Committee Against Torture

- CAT (2018), Concluding observations on the initial report of Maldives, CAT/C/MDV/CO/1 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/443/25/PDF/G1844325.pdf?OpenElement>

Human Rights Committee

- CCPR (2012), Concluding observations adopted by the Human Rights Committee, Maldives <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/455/83/PDF/G1245583.pdf?OpenElement>

Annex 2 - Summary of Main Findings & Recommendations

Physical Harm

1. Domestic violence
2. Corporal punishment, consensual relations
3. Death penalty

Psychological Harm

9. Crimes of so-called honour

Sexual Harm

4. Marital rape
5. Prostitution
6. Sexual harassment
7. Child marriage
8. Abortion

Economic Harm

10. Dowry
11. Polygamy

LAW	FINDINGS	RECOMMENDATIONS
Domestic Violence Prevention Act	Domestic violence is not criminalised	Amend to ensure that violence is specifically criminalized, can be prosecuted ex officio and is sanctioned with appropriate penalties commensurate with the gravity of the abuse.
	Domestic Violence Prevention Act does not prohibit corporal punishment.	Explicitly prohibit in law the corporal punishment of women, men, girls and boys in all settings, including in the Penal Code, Domestic Violence Prevention Act , Education Act, Family Act and the Child Rights Protection Act. All settings include in the home, alternative care settings, day-care settings, schools and penal institutions, and as a sentence for a crime or for disciplinary purposes.
Family Act	Family Act does not prohibit corporal punishment.	Explicitly prohibit in law the corporal punishment of women, men, girls and boys in all settings, including in the Penal Code, Domestic Violence Prevention Act, Education Act, Family Act and the Child Rights Protection Act. All settings include in the home, alternative care settings, day-care settings, schools and penal institutions, and as a sentence for a crime or for disciplinary purposes.
	Child marriage - The Family Act is inconsistent with the Child Rights Protection Act. Although the minimum age for marriage is 18, under article 4 (b) of the Family Act, the Family Court in Male' can authorize marriage at an earlier age, provided that the child has attained puberty, is of sound physical and mental health and has the competency to maintain a livelihood.	Repeal section 4(b) of the Family Act

Penal Code

<p>Section 10(a) of the Family Act provides for dowries - the woman contracting a marriage shall be entitled to the dowry upon solemnization of the marriage in accordance with the principles of Islamic <i>Shari'ah</i>. It shall be an obligation on the man contracting the marriage to give the dowry in accordance with the principles of Islamic <i>Shari'ah</i>. Section 10(c) of the Family Act provides that any item of value or any benefit or work which is permissible under Islamic <i>Shari'ah</i> shall suffice as dowry.</p>	<p>Repeal section 10 of the Family Act</p>
<p>Section 12 of the Family Act allows for polygamy</p>	<p>Repeal section 12 of the Family Act</p>
<p>Domestic violence is not criminalized</p>	<p>Amend to ensure that violence is specifically criminalized, can be prosecuted ex officio and is sanctioned with appropriate penalties commensurate with the gravity of the abuse.</p>
<p>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. For instance, section 411(d) on unlawful extramarital sex provides for additional punishment under Islamic Sharia of 100 lashes. 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.</p>	<p>Repeal corporal punishment under Sharia law; and ensure the abolition of flogging of women, men and children.</p>
<p>Section 411(a), 411(b)(4), 412(a)(2), (3), and (5) and section 412(c) of the Penal Code criminalise sexual relations outside marriage. Moreover, section 411(d) provides for punishment additional to that authorized under Chapter 90, namely to impose the penalty under Islamic Sharia, an additional punishment of 100 lashes.</p>	<p>Repeal section 411(d) of the Penal Code; Decriminalise consensual sexual relations outside marriage</p>

<p>Section 1204 of the Penal Code authorizes the death penalty</p> <p>Section 1205 of the Penal Code on Hudud Offenses authorizes punishments prescribed in the Holy Quran, with punishment according to Islamic Sharia</p> <p>Consensual sexual relations outside marriage are still punished in some instances with the death penalty - a situation that disproportionately affects women and girls and deters them from reporting sexual offences</p>	<p>(i) Repeal section 1204 and 1205 of the Penal Code; (ii) decriminalize, and abolish the imposition of the death penalty for consensual sexual relations outside marriage; (iii) Repeal all legal provisions in domestic legislation that provide for the death penalty for persons under the age of 18; (iv) Ensure that the death penalty is not carried out on persons under the age of 18 years or on persons who were under the age of 18 at the time of the commission of the crime, including for hudud offences and qisas cases, to replace any such death sentences with an appropriate alternative sanction and to work with families of murder victims to encourage pardons for qisas cases</p>
<p>While the Penal Code criminalises marital rape, it also formally provides a rebuttable presumption of innocence in the case of allegations of sexual offences committed against married women and girls by their husbands and establishes a high burden of proof for the conviction of a man of rape in the absence of a confession.</p>	<p>Criminalize marital rape in all circumstances, without exception, and amend the Sexual Offences Act and the Penal Code accordingly</p>
<p>The Penal Code prohibits prostitution (section 620)</p>	<p>Amend the Penal Code, Sexual Offences Act, Child Rights Protection Act and Special Provisions Act to deal with Child Sex Abuse Offenders to ensure consistency in punishments for offences related to prostitution.</p>
<p>Abortion is criminalized after 120 days in section 416 of the Penal Code except in cases of rape, sexual assault, incest²¹⁰, when there is a threat to the woman's life,²¹¹ and Thalassaemia major, sickle cell major or multiple congenital anomalies.</p>	<p>Repeal section 416 of the Penal Code and treat abortion as a health issue rather than a criminal justice issue</p>
<p>Crimes of so-called honour - In the Maldives, the Penal Code prohibits aggravated sexual assault with a minor (section 130(d)(2)(A)). However, section 134(a) deems consent by a minor invalid, except if they are married.</p>	<p>Repeal section 134(a) of the Penal Code</p>

210 Section 416(d) Penal Code.

211 Section 416(b) Penal Code.

Prevention of Sexual	The Prevention of Sexual Abuse and Harassment Act prohibits sexual harassment in the workplace (section 3) and in institutions (section 9), and provides for damages (section 33).	Amend the Sexual Abuse and Harassment Prevention Act and the Employment Act to prohibit violence and harassment, including gender-based violence and harassment, towards another person in the world of work.
Child Rights Protection Act	Corporal punishment not prohibited	Explicitly prohibit in law the corporal punishment of women, men, girls and boys in all settings, including in the Penal Code, Domestic Violence Prevention Act, Education Act, Family Act and the Child Protection Act. All settings include in the home, alternative care settings, day-care settings, schools and penal institutions, and as a sentence for a crime or for disciplinary purposes.
	Child Rights Protection Act prohibits forced prostitution (section 11(b))	Amend the Penal Code, Sexual Offences Act, Child Right Protection Act and Special Provisions Act to deal with Child Sex Abuse Offenders to ensure consistency in punishments for offences related to prostitution.
Sexual Offenses Act	Marital rape is not fully criminalized in the Maldives, and there is a lack of redress for the victim.	Criminalize marital rape in all circumstances, without exception, and amend the Penal Code accordingly
	<p>Section 20 of the Sexual Offences Act - marital rape 2021 amendments- This section has been repealed under the amendment. However, Article 6 on definition has been changed to include marital rape.</p> <p>Section 6: Rape: Rape means the insertion, however minute, of a person's sexual organ into a sexual organ or an organ which is not a sexual organ of another person without their consent, between two persons who are not married to each other or between a married couple.</p>	
	Section 52 of the Sexual Offences Act and section 47 of the Special Provisions Act to Deal with Child Sex Abuse Offenders provide for burdensome evidence requirements to prove acts of sexual violence, which may lead to impunity for perpetrators.	Amend section 52 of the Sexual Offences Act and section 47 of the Special Provisions Act to Deal with Child Sex Abuse Offenders to remove excessive evidence requirements for victims to prove sexual violence;

<p>Section 53 of the Sexual Offences Act provides that delays in reporting the incident, past sexual behavior of the survivor, or her relationship with the alleged perpetrator can constitute grounds for not initiating criminal proceedings, which gives rise to gender stereotyping and secondary victimization of survivors of sexual violence during legal proceedings.</p>	<p>Amend section 53 of the Sexual Offences Act to ensure that discriminatory gender stereotypes relating to delayed reporting, false accusations and women's "dignity and discipline" are removed from the adjudication of sexual violence cases and discontinue practices that contribute to secondary victimization of women, such as examining a victim's prior sexual behavior;</p>
<p>Sexual Offences Act prohibits prostitution (section 29), makes it an offence to use revenue from prostitution (section 32), and prohibits setting up a brothel (section 33). For a person to engage in prostitution in the Maldives, or for a Maldivian to engage in prostitution abroad, this shall be punishable with imprisonment for a period not exceeding 7 years (section 29(c)). For a person to engage another person in prostitution in the Maldives, or for a Maldivian to engage another person in prostitution abroad, this shall be punishable with imprisonment for a period between 7 and 15 years (section 29(d)).</p>	<p>Amend the Penal Code, Sexual Offences Act, Child Right Protection Act and Special Provisions Act to deal with Child Sex Abuse Offenders to ensure consistency in punishments for offences related to prostitution.</p>
<p>Section 27(a) of the Sexual Offences Act criminalises sexual intercourse outside of wedlock (offence of <i>zinah</i>), and section 27(b) states that this is punishable with flogging of 100 lashes, and imprisonment of 1-3 years.</p>	<p>Repeal section 27 of the Sexual Offences Act;</p>

Sharia Law

Draft new provisions of law with progressive interpretations of Sharia law that are compatible with women's rights and international human rights laws

In 2021, the UN Special Rapporteur on violence against women, its causes and consequences stated that where Sharia plays an important role, it is crucial not to lose focus of its true values, principles, and objectives, particularly the following. The duty to uphold justice - both *'adl* and *qist*: *'Adl* is the general term for justice which today incorporates nuances of equality. Justice is inherent to the philosophy of law in Islam, thus any laws or legal amendments introduced in the name of Sharia and Islam should reflect the values of justice and equality. *Qist* refers specifically to a consciousness of the deep systemic and structural injustices that occur in any society and to gaining justice for those affected by them. Moreover, there is the requirement to protect oppressed groups, including survivors of violence: The Prophet urged the faithful to prevent wrongdoing as was the case in the saying: "Whosoever of you sees an evil, let him change it with his hand, and if he is not able to do so, then [let him change it] with his tongue, and if he is not able to do so, then with his hearth and that is the weakest of faiths." These values, contained in the corpus of Sharia, are consistent with universal human rights principles and values. When followed, these values would lead to gender equality and justice in law and in practice. In that sense, Sharia is closer to the concept of ethics that guide humans in the direction of justice and the right set of conduct.²¹²

212 UN Special Rapporteur on violence against women (2021), Any party in Afghanistan declaring it follows Islamic Sharia must uphold and protect the rights of women and girls.

