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60TH SESSION OF THE COMMITTEE ON THE ELIMINATION OF ALL DISCRIMINATION AGAINST WOMEN: THE REPUBLIC OF MALDIVES- REVIEW OF THE COMBINED FOURTH AND FIFTH PERIODIC REPORT

THE REPUBLIC OF MALDIVES- QUESTION 7 OF THE LIST OF ISSUES CONCERNING VIOLENCE AGAINST WOMEN

Amnesty International would like to submit information in relation to Question 7 of the List of Issues (CEDAW/C/MDV/Q/4-5) concerning violence against women, specifically the criminalization of fornication and the corresponding sentence of flogging in advance of the review of the fourth and fifth combined periodic report submitted under article 18 of the UN Convention on the Elimination of All Forms of Discrimination against Women (the Convention).

Amnesty International understands that flogging in the Maldives is prescribed under a series of regulations issued by the Ministry of Justice over the years instructing the courts on the criminal procedures and the penalties. These regulations, which are based on an interpretation of *Shari'a*, criminalize behaviour including fornication [consensual sexual relations outside marriage] and consensual same sex sexual relations.

In 2013, Amnesty International sought statistics from the government about the number of people under the sentence of flogging for any offence or of those who had been flogged; the organization did not receive any such information.

The cases of flogging that have nonetheless come to Amnesty International's attention have mainly related to fornication, which is not a crime under international law. Amnesty International therefore opposes the criminalization in law or in practice of consensual sexual relations, including consensual same sex sexual relations. It also opposes the punishment of flogging on any grounds whatsoever.

Laws criminalizing "fornication" or "adultery" can act as a deterrent to women and girls reporting rape because they fear being prosecuted if their allegations are not believed.¹

According to media reports and reports from human rights defenders, in the majority of "fornication" cases, only women and girls have been convicted and flogged. These reports indicated in 2011 that almost 90 per cent of the individuals convicted of "fornication" in Maldives were female.²

In 2013, the office of the Prosecutor General told Amnesty International that convictions were primarily

¹ CCPR/C/SDN/CO/3 (HRC, 2007), 14. HRC concluded that the State Party (Sudan) should undertake to review its legislation, in particular articles 145 and 149 of the 1991 criminal code, so that women are not deterred from reporting rapes by fears that their claims will be associated with the crime of adultery.

² According to a Minivan News report, statistics published for 2011 by the Department of Judicial Administration showed that out of a total 129 cases of fornication that were filed, 104 people were sentenced to flogging. Of those sentenced, 93 were female, 10 of whom under the age of 18. See 'Judicial statistics show 90 percent of those convicted for fornication are female', Minivan News, 10 October 2012

<http://minivannews.com/politics/judicial-statistics-show-90-percent-of-those-convicted-for-fornication-are-female-44605>

based on confessions, and that if the accused denied the allegations, the charge of “fornication” would normally be dropped. The office said men usually denied such allegations, and were therefore not charged. This was also true for some women, unless they had become pregnant or were under pressure from their communities. In such cases they admitted to the allegations and were charged.

In 2013, Amnesty International spoke with a woman who had been convicted of “fornication.” She was sentenced to 20 lashes and four months in prison in June 2012, when she was 17. She said someone had witnessed her having sex with her boyfriend on an island and reported it to the police. She was arrested and taken to the Juvenile Court where she confessed. She said this was the second time she had been flogged – she had been 14 the first time. She said flogging is always done by a man and that “it was very painful when they flogged me. I was bruised and had marks on my body for some time.” After being flogged she was sent to prison.

Also in 2013, a 15 year old rape victim was convicted of “fornication” by a juvenile court and sentenced to 100 lashes and house arrest for the “offence” of extra-marital sex. The girl had reportedly been sexually abused repeatedly by her stepfather. In August that same year, the Maldives High Court quashed the conviction. The case had received widespread publicity, prompting the government to seek a reversal of the conviction. Subsequently, government lawyers successfully argued against the sentence during an appeal hearing and the conviction was quashed. In Amnesty International’s view, the prosecution should never have been brought in the first place. This nonetheless highlighted a case that had come to public attention. Lawyers representing women in some “fornication” cases have told Amnesty International that most women prefer to undergo the punishment quietly for fear of being stigmatised and labelled promiscuous by the wider community.

As frequently highlighted by UN treaty bodies and UN Special Procedures, including CEDAW, flogging constitutes a cruel, inhuman or degrading punishment and the criminalization of fornication is a violation of the rights to privacy and bodily autonomy.

As noted by the UN Working Group on Discrimination against Women in Law and in Practice, “The punishments imposed by states for violation of adultery laws are imposed almost exclusively on women and girls.”³

RECOMMENDATIONS

Amnesty International recommends that the Republic of Maldives:

- Establishes a moratorium on flogging;
- Annuls all outstanding flogging sentences;
- Annuls all convictions for “fornication”;
- Repeals any laws in the Maldives that criminalize and punish consensual sexual activity;
- Amends laws on rape and other forms of sexual violence to bring them in line with international human rights standards;
- Conducts impartial, effective investigations into all allegations of rape and other forms of sexual violence and where there is sufficient evidence, prosecute those responsible in fair trials;
- Ensures that anyone who reports rape or other forms of sexual violence is provided with appropriate support services by the government such as health and social services.

³ “Adultery as a criminal offence violates women’s human rights” – Background note to the Statement of the UN Working Group on Discrimination Against Women in Law and in Practice
<http://www.ohchr.org/Documents/Issues/Women/WG/BackgroundNoteAdultery2.doc>