

Appendix IV: Information for Human Rights Watch Provided by the Attorney General’s Office, February 28, 2022

A. Progress achieved and challenges to the criminal justice system

Revision to the Prosecution Directives

- On 31st December 2018, the Prosecution Directives were revised by the Attorney General after its initial determination a decade ago. First amendment to the revised Prosecution Directives was issued on 20th October 2019.
- The reviewed directive hinges on the fundamental principles of fairness, impartiality and upholding the rule of law by the Prosecutor General in executing the duties and responsibilities set forth in the Constitution. The policies seek to ensure that the Prosecutor General acts within the ambit of law, by ensuring a balance between the rights of the accused, victim and that of the society as a whole.
- The directives establish main considerations for the Prosecutor General under the primary themes of raising charges, forgoing and reviewing charges; investigation and remand; sentencing and appeal.
- Prominent aspects of the renewed directive include, the special emphasis on prioritizing rehabilitation and reintegration in cases involving children in conflict with the law, restriction of undisclosed testimonies in cases of homicide, offences relating to gang violence and terrorism, and the obligation assigned to the Prosecutor General to ensure timely review of remand periods. As such, on 11th December 2019, the Prosecutor General commenced an extensive review of delayed trials and prolonged remand periods.
- The Prosecution Directives are issued by the Attorney General as broader policy directives to be upheld within the criminal justice system, as per Article 133 (g) of the Constitution of the Republic of Maldives.

Adoption of new laws

- Law No: 12/2016 (Criminal Procedure Act) was enacted in 2016, consolidating and codifying all the rules pertaining to the investigation, raising charges, trial and sentencing.

- The Criminal Procedure Act has since been amended in September 2020, in the context of the restrictions triggered by the COVID-19 pandemic, to allow for continued access to justice by recognizing online hearings. The Criminal Procedure Act also emphasizes timely hearing of cases, by obligating the judges to ensure continuous trials in order to protect the right to liberty and other fundamental rights enshrined in the Constitution.
- Further amendments to the Criminal Procedure Act are underway to introduce a comprehensive plea-bargaining mechanism.
- Law No: 18/2019 (Juvenile Justice Act) is a significant piece of legislation that addresses children in conflict with the law. Prior to the enactment of this legislation, a regulation was in place to govern matters relating to children in conflict with the law within the criminal justice system. The Juvenile Justice Act stipulates the inviolable rights of children who come in conflict with the law and are exposed to the criminal justice system. More importantly, the Juvenile Justice Act has introduced a distinct track within the criminal justice system for children in conflict with the law. One of the key features of this Act is the introduction of diversion mechanisms which provides the child an opportunity at a rehabilitative process in lieu of lengthy trials and incarceration, essentially moving away from retributive system to one that encourages rehabilitation and meaningful reintegration.
- Second Amendment to Law No: 32/2015 (Prevention of Terrorism Act) seeking to realign the definition of terrorism with that of the UN security council resolutions, to prevent its abuse to suppress political dissent, is another significant achievement to ensure protection of human rights within the criminal justice system.
- Law No: 34/2020 (Police Act) is a modern and comprehensive piece of legislation that seeks to enhance the provision of policing, internal governance of the police force and more importantly promote rights centric policing services within communities.
- Work is also underway to introduce legislative amendments to the Law No: 13/2010 (Judges Act) and Law No: 22/2010 (Judicature Act of Maldives) to setup the district courts mechanism and the circuit court model for High Court hearings. These legislative amendments are expected to maximize efficiency of the judiciary while enhancing the access to justice.

Judicial Reform

- Judicial Reform was one of the key pledges of the Government and the measures to implement a fair, impartial and efficient justice system continues to have its beneficial impact on the criminal justice system as well.
- The judicial reform policies cover mainly three components- enhancing court administration, furthering accountability and integrity of judges, and continuing education of judges. In that regard, amendments have been brought to the Law No: 10/2008 (Judicial Service Commission Act) to introduce a stringent mechanism for judge’s disciplinary hearings and anonymous submission of complaints. The Judicial Service Commission continues to vigorously pursue its mandate in ensuring the impartiality and quality of judges within the Maldivian justice system by executing thorough appraisals of performance.
- Appointment of the new bench to the Supreme Court of Maldives has had a remarkable impact on the soundness and clarity of judgments, respect to due process, fairness, and transparency of their proceedings.
- Further, steps were implemented towards achieving gender parity within the Judiciary. In September 2019, the first women Justices to the Supreme Court were appointed. The first woman Judge to the Criminal Court was appointed by the Judicial Service Commission (JSC) in September 2020 and a woman Judge has been appointed to the High Court in October 2020. As a result, for the first time in the history of Maldives, currently there are women judges presiding over cases at all tiers of the court system – from the Magistrate Courts to the Supreme Court of the Maldives.

Establishment of a communication protocol between Maldives Police Service (MPS) and Prosecutor General’s Office (PGO)

- In order to enhance communication between the investigative authorities and the Prosecutor General’s Office, a direct communication portal has been established between Maldives Police Service (MPS) and the Prosecutor General’s Office (PGO). The purpose

- of this portal is to efficiently relay directives from the PGO to the MPS, primarily during the investigation stage.
- The communication portal allows the prosecution team to keep close track of the investigation and provide instructions where necessary, on matters relating to criminal procedure and evidence collection. This enables efficiency within the prosecution process, minimizing the need to revisit the case for possible noncompliance of criminal procedure rules. The effective communication also allows proper documentation of decisions and instructions between the investigative authority and the PGO.

Challenges posed due to the absence of a modern Evidence Law

- Absence of a modern evidence law and strengthened witness protection regime pose a grave challenge in securing convictions and this is felt broadly across the entire justice system of Maldives.
- Mostly in criminal cases, structure and makeup of Maldivian communities present a primary challenge to securing testimonies. There have been instances where the perpetrators have identified witnesses, subjecting them to threat and harassment, even endangerment to life. The extent of this issue has contributed to a general hesitancy to give testimonies and this affects the number of convictions secured.
- However, in September 2020, an amendment has been brought to the Criminal Procedure Act to introduce rules of witness protection in cases concerning major criminal offences. As per the amendment, the judge afforded the discretion to admit testimony in a manner that ensures maximum to the person giving such a witness/testimony.
- A modern and overhauled Evidence Bill has also been submitted to the Parliament. Updates on the Evidence Bill is mentioned below.

Resource constraints

- Lack of sufficient infrastructure and sufficiently trained human capital also present a challenge to the criminal justice system. Additionally, given the geographically dispersed nature of Maldivian islands, there are inevitable challenges to conducting trials, transportation of witnesses and accused persons across islands.
- The criminal justice system deals with complex matters, some of which require in-depth knowledge of the subject matter. Maldivian criminal justice system experiences a lack of investigators, prosecutors and judges specializing in these complex fields (matters relating to financial crimes for an instance).
- Competent, ethical and professional defense counsels are also an essential component. While the enactment of Law No: 5/2019 (Legal Professions Act) and the establishment of a Bar Council to enable independent and self-governance of the profession have been positive steps to ensure standards in the profession, much need to be done to establish a pool of qualified defense counsels.

Implementation of non-custodial punishments mechanism

- The Law No: 9/2014 (Penal Code of Maldives) allows for the implementation of non-custodial punishments. However, the mechanism is yet to be developed to ensure its effective execution within the courts and correctional institutions.

Challenges pertaining to mutual legal assistance

- Law No: 2/2015 (Act on Mutual Legal Assistance) was enacted in 2015. While Maldives continues to negotiate mutual legal assistance treaties with countries, lack of an institutionalized system presents a great challenge particularly in relation to collection and admission of evidence in transnational organized crimes.

Adequate training of judges and backlogs

- Continuing legal education and training for judges is an utmost priority covered within the judicial reform efforts of the Government. Lack of expertise on the part of judges that will contribute to better performance is one of the challenges faced by the criminal justice system. In order to rectify this issue, Maldives Judicial Academy (MJA) has been established within the purview of Department of Judicial Administration, to identify training needs for judges and conduct specific programs aimed at improving their skillset. The MJA has a specific Advisory Board steering implementation of the programs and has engaged an international consultant to be stationed there. A training calendar has been developed and programs continue to be implemented.
- A long-standing issue and challenge within the criminal justice system is the backlog of cases primarily delayed due to lack of necessary infrastructure, staff shortages, and lack of ICT integration into the work. To resolve the backlog and enhance efficiency of the courts, Department of Judicial Administration (DJA) has now initiated the development of a centralized case management system that will be utilized by the courts to track progress of cases.

B. Updates on the cases pertaining to 6th May terrorist attack

- On 6th May 2021 around 08:30 pm, an IED was detonated near the residence of the Speaker of Parliament and former President Mohamed Nasheed. President Mohamed Nasheed sustained several serious injuries to his body, and was immediately taken to the nearest hospital. There, President Nasheed underwent several lifesaving surgeries.
- Following an extensive investigation which also included support from foreign experts, charges were raised against 9 (nine) individuals who were involved in the execution and planning of the attack.
- Mr. Adhuham Ahmed Rasheed- the individual who detonated the device- had 4 charges raised against him. The charges include committing an act of terrorism, conspiring to commit an act of terrorism, supporting a terrorist organization, and attempting to murder

- by using a sharp object or dangerous weapon. The charges were raised under the Law No: 32/2015 (Prevention of Terrorism Act) as amended by the second amendment, and the Law No: 17/2010 (Act on Prohibiting Threatening and Possession of Dangerous Weapons and Sharp Objects). His trial concluded on 14th December 2021. Following the execution of a plea deal between him and the Prosecutor General’s Office as per Section 140 of the Criminal Procedure Act, he was convicted on two charges and sentenced to a total of 23 (twenty-three) years of imprisonment.
- The trials of the remaining suspects are still at pre-trial stage at the Criminal Court. Remaining suspects have primarily been charged with aiding and abetting to commit an act of terrorism, conspiring to commit an act of terrorism, supporting a terrorist organization and for production, sale or transportation of weapons of war or items containing explosive or destructive material, pursuant to the Prevention of Terrorism Act.
- Maldives Police Service continues to identify individuals operating pseudo accounts on social media to harass and threaten human rights defenders and summon individuals for questioning or take them into custody where necessary. Maldives Police Service also continues to take appropriate steps through their Cybercrime Department and in accordance with the applicable rules, to block certain social media accounts that pose grievous threats to other individuals within the online sphere.

C. Updates on the Evidence Bill and Amendment to Law No 9/2014 (Penal Code of Maldives)

Evidence Bill

- A modern and completely new Evidence Bill was submitted to the Parliament on 10 April 2021. The Bill is currently being discussed at the Committee Stage. Following the submission of the Bill, some concerns were raised in relation to the privileges afforded to journalists under Article 28 of the Constitution of the Republic of Maldives, right to choose to refrain from disclosing the source of information.

- The Attorney General's Office (AGO) on 28th September 2021, issued a statement clarifying that the stipulation in the Bill to allow a judge to order for a disclosure of source of information was formulated in consideration of the test stated in Article 16 of the Constitution. The AGO further committed to resolving the concerns via revisions proposed to the Bill at the Committee Stage.

Amendment to the Law No: 9/2014 (Penal Code of Maldives)

- An amendment was brought to Law No: 9/2014 (Penal Code of Maldives) on 28th November 2021, to introduce provisions on the commission of acts of takfir, acts of hate committed based on race, place of birth, colour, and political views of a person.

D. Work done to address the issues surrounding pre-trial detention

- The usage and length of pretrial detention has been a cause of concern for the Government, and number of measures are being implemented by the relevant authorities to monitor and reduce (where possible) the use of pretrial detention.
- The basis for pretrial detention in Maldives is set forth in the Constitution and the Criminal Procedure Act. Article 49 of the Constitution states that, no person shall be detained in custody prior to sentencing, unless the danger of the accused absconding or not appearing at trial, the protection of the public, or potential interference with witnesses or evidence dictate otherwise. The release maybe subject to conditions of bail or other assurances to appear as required by the court.
- The amendment to Section 60 (i) of the Criminal Procedure Act in September 2020, has made it compulsory for the courts to conduct judicial reviews of the detention of accused persons held in remand, in every 30 days. The purpose of these hearings is to determine whether their detention is truly warranted or not. This arrangement has also allowed the state to closely monitor medical and other needs of the detainees. It has also allowed the State to closely monitor the medicals need and other concerns of detainees.

- Prior to the aforementioned legislative amendment, first amendment to the Prosecution Directives issued on 20th October 2019, mandated the Prosecutor General to conduct a 30-day review of those held in remand, initiate a request to the court to release those held in remand, and share the details of this work with the Parliament bi-annually.
- Additionally, the Prosecutor General's Office has commenced implementation of following measures to ensure continuous oversight of the persons deprived of liberty pending a trial.
- Internal Review- Setting up a Remand Review Section and implementing an internal review process of all the persons held on remand, every 30 days. Under this review system, 50 people who would otherwise be held in detention have been released under PGO's initiative;
- Releasing suspects detained on drug offenses involving less than 300g of narcotics substance;
- Further, the Government is planning to introduce amendments to the Law No: 17/2011 (Drugs Act), to emphasize rehabilitation and reintegration to victims of substance abuse. The amendment is also expected to direct all drugs and narcotics related cases to the Drug Court, established with the specific jurisdiction over such cases, to enable timely resolution of cases concerning general crimes in the Criminal Court.

E. Prison Reform

Work done to address the issue of prison overcrowding- Ministry of Home Affairs

- Prison overcrowding is a primary concern for the Government. A number of efforts are being undertaken by the primary mandate holders to resolve this issue and improve the conditions of imprisonment.
- Work is underway, led by the Ministry of Home Affairs, to develop a modern prison complex in *Hulhumale'*. This prison complex is expected to house up to 300 detainees. The Ministry is currently in conversation with relevant stakeholders in designing the infrastructure of the facility, especially in ensuring the design incorporates international best practices and standards. Work is also currently underway to renovate a unit in *Asseyri* Prison (*Himmafushi* Island) with the aim to create more space to house detainees.

- The Maldives Correctional Service, with the support of Ministry of Home Affairs, has been operationalizing the Special Management Unit developed within *Maafushi* Prison. The Special Management Unit has been developed to manage and rehabilitate detainees harboring violent extremist ideologies. Primary objective is to prevent the spread of radicalized ideologies within the prison population. The Unit houses 40 detainees. Due to the nature of the detainees and the programs to be implemented, the process of transferring detainees to the unit had been managed gradually.
- Further, cells in *Maafushi* Prison and Male' Prison have been inspected by the Inspector of Corrections, for its suitability to be converted into pre-trial detention units. Complaints of individual pre-trial detainees being held in police custody are often received, and looked into by the Inspector of Corrections.
- Further, work is underway to introduce legislative amendments to the Law No: 14/2013 (Prison and Parole Act) and Law No: 2/2010 (Clemency Act) to ensure meaningful reintegration of offenders and minimize prison population.
- The Maldives Correctional Services (MCS) is also working to establish a modern and comprehensive offender data management system, that will enhance the quality of services provided to the detainees.

Progress on the implementation of the Prison Audit Recommendations

- A comprehensive audit of the Maldivian prison facilities was conducted in 2019. The majority of the recommendations put forth in the audit require budget allocation, and the financial challenges triggered by the onset of the Covid-19 pandemic has significantly delayed the implementation.

- The implementation of the Prison Audit recommendations is reviewed by a specific committee chaired by the Minister of Home Affairs. A recommendation is approved as completed only after documenting and verifying evidence, which sometimes includes a visit by committee representatives for a physical inspection.

- Despite the challenges, significant progress had been made in meeting recommendations relating to the improvement of health services to the prison population:
 - All prisons have either residential doctors, or have daily visits by a doctor to attend to outpatient consultations. Medical centers had been established and is operational in *Maafushi* Prison and Male' Prison. A psychiatrist provides services to the prison population, including online consultations and regular visits.

 - The medical professionals are licensed and registered under Ministry of Health, and their performance is regularly appraised by Maldives Correctional Service.

 - Health services are covered through the national health insurance scheme, *Aasandha*, and are managed through the national portal for health services. All medical documents are maintained in confidence, and can only be accessed by medical professionals and the relevant detainees. All medicines are administered under the guidance of a doctor.

 - The improvement of services in *Maafushi* Health Center had also enabled referrals for some specialist treatment to be attended quickly, without requiring transportation to the capital region.

 - Further, Health Protection Agency and Maldives Correctional Service continue to collaborate to conduct screenings for the prevalence of Tuberculosis within the prison population. Regular screenings for Tuberculosis and HIV have been incorporated into the initial health screening, and the Government hopes to maintain prison population as TB-free communities.

- In addition to this, MCS and the IGM Hospital has executed a contract to enable specialist doctors and technical staff to travel to prisons and treat patients requiring specialist medical intervention.

Initiative by the Attorney General's Office to implement recommendations of the UNWGAD following the visit to the Maldives

- Following the United Nations Working Group on Arbitrary Detention's visit to the Maldives in November 2021, an initiative is underway by the Attorney General's Office to ensure implementation of the Working Group's recommendations. This exercise will bring together all the relevant stakeholders of the government to identify short term, medium term and long-term activities that will be required to implement the recommendations.
- The expectation is to also include the recommendations from the Maldives review under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the recommendations set forth following the visit of UN Special Rapporteur on Torture, Nils Melzer, from 17 to 24 November 2019