



**Protect Human Dignity**

Republic of Maldives v.  
Hussein Humaam Ahmed

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The **Maldivian Democracy Network (MDN)** is a non-partisan NGO which aims to promote human rights and the values and principles of democracy in the Maldives.

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# 1. BACKGROUND

## 1.1 Introduction

The death penalty was reintroduced on the backdrop of religious rhetoric used to galvanize a society that is increasingly susceptible to religious fundamentalism. Similar to other societies, it is also justified using rising crime rates within jurisdictions. In this case, the capital Malé, home to one third of the total population. Developing islands in the outer atolls have also experienced a stark rise in crime.

The Maldives, and its isolated population have been grappling with the socioeconomic effects of rapid modernization that was experienced over the past 5 decades. The Maldivian youth is afflicted with high unemployment, heroin addiction and gang crime – creating sections of society that is disenfranchised.

Increasing criminality and delinquency perpetuated by the inept criminal justice system has manufactured public consent for reintroducing capital punishment after over 60 years. Despite the unofficial moratorium the death penalty was always specified under the now repealed penal code, and continues to be prescribed under the Penal Code 2014.

## 1.2 Maldivian Government policy

Shortly after President Yameen Abdul Gayoom's coalition government assumed power, a regulation was ratified in April 2014 overturning the 60-year moratorium on the death penalty.<sup>1</sup> In November 2015, the Government submitted a bill to the parliament that it stated would

expand on the existing death penalty regulation. Recently, President Yameen has claimed that the death penalty is “essential to uphold public order.”<sup>2</sup> The reasons given by the Maldivian Government to support the death penalty have been vague. It is clear that this government policy is not rooted in facts and research.

The government has made no attempt to explain how the implementation of the death penalty can relate to public order. President Yameen has also claimed that the implementation of the death penalty will be an effective deterrent to crime.

However empirical studies show that this is an inconclusive hypothesis. While some research show a negative correlation between executions and the rate of homicides, an equal or larger amount of studies show that **“neither the existence of a provision for capital punishment – nor the use of the provision as demonstrated by the number of inmates sentenced to death, nor the enactment of that provision as demonstrated by the actual number of executions – would have an effect on deterring violent crime at any level.”**<sup>3</sup>

The fact that it cannot be concluded that the death penalty can be a “deterrent to crime;” highlights the great risk that the Maldivian Government is taking with a human life based on contested justification.

According to statistics from the Maldives Correctional Service (MCS), a total of 17 Maldivians are presently on death row. **There is a sharp rise in numbers of convicted murderers after 2012**, as opposed to just 4 death sentence convictions from 2008 to 2011.

### 1.3 Death row prisoners

No	Date of Verdict	Amount of convicts
1	29th July 2008	3
2	25th November 2010	1

Death sentence conviction from 2008 - 2010

No	Date of Verdict	Amount of convicts
1	19th July 2012	2
2	13th December 2012	1
3	19th December 2012	1
4	14th January 2013	1
5	2nd May 2013	2
6	16th January 2014	1
7	20th January 2015	1
8	14th May 2015	1
9	11th May 2015	2
10	5th November 2015	1

Death sentence conviction from 2012 - 2015

### 1.4 Criticisms against the Maldivian judiciary

The report published by legal expert Professor Paul H. Robinson in 2004, highlighted the urgent reforms needed for the Maldivian criminal justice system. Professor Robinson, who assisted in drafting the new penal law ratified in 2014, concluded that “the reforms needed [for the Maldivian judiciary] are wide-ranging, and that without dramatic change the system and its public reputation are likely to deteriorate further.”<sup>4</sup>

In August 2010, after the interim period outlined in the Constitution ended, the Maldivian judiciary failed to re-

appoint sitting judges in accordance with the standards and requirements envisioned under democratic Constitution passed in 2008 (Article 285 of the Constitution). A report published by the International Commission of Jurists in February 2011, also raises concerns about **“the politicization of the judicial vetting process.”**<sup>5</sup>

The 2012 report<sup>6</sup> by former United Nations Special Rapporteur on Independence of Judges and Lawyers Gabriela Knaul detailed the crisis Maldives’ criminal justice system is faced with. The report expressed concerns over the “politicised and inadequate” judicial oversight mechanism.

Importantly, the UN report notes that **“the concept of independence of the judiciary has been misconstrued and misinterpreted in the Maldives, including amongst judicial actors”** to solely benefit judges, enabling a culture of impunity for misconduct, corruption and ultra vires actions.

A study<sup>7</sup> conducted in 2014 by the UNDP Maldives’ Legal and Justice Sector Baseline Study states that judicial corruption has generated poor public confidence in the judiciary. According to the survey, due to lack of confidence in the judiciary 71% of Maldivians choose to settle disputes out of court, while 40% indicated corruption as the primary impediment to justice being served. According to new statistics produced by a 2015 Transparency Maldives survey,<sup>8</sup> 51% of the Maldivian population does not have any confidence in the courts.

## 1.5 The charge

The Prosecutor General filed charges against Hussein Humaam Ahmed, a well-known young offender, for the murder of Progressive Party (PPM) MP and moderate religious scholar Dr. Afrasheem Ali between 23:30 on 1st October 2012 and 02:00 on 2nd October 2012. The charge stated that the State claims Humaam and accomplices deliberately attacked and killed Dr. Afrasheem using a sharp object. Islamic Shari'a penalty for murder was invoked in the charge, raising Article 88(d) of the repealed penal code, which was in force when the crime occurred. The subsection states that if any disobedience to a judicial or legal authority results in a death of a person; the offender must be subjected to the punishment prescribed under Islamic Shari'a.

## 2. TRIAL AND APPELLATE COURT PROCEEDINGS:

**Trial Report Number:** 145-A/2014/38

**Judgment Number:** 1158/Cr-C/2012

**Claimant:** The State/Prosecutor General

**Defendant:** Hussein Humaam Ahmed

**Offence:** First-Degree Murder

**Date of Arrest:** 02 October 2012

**Place of Arrest:** Malé, Maldives

**Date Charged:** 20 December 2012

**Date of Verdict:** 16 January 2014

**Appeal Number:** 2014/HC-A/180

**Respondent:** The State/Prosecutor General

**Appellant:** Hussein Humaam Ahmed

**Legal Counsel:** Abdullah Haseen

**Offence:** First-Degree Murder

**Date Appealed:** 03 July 2014

**Date Adjudicated:** 07 September 2015

## 2.1 The extrajudicial confession

Initially, on the trial hearing conducted on 2nd January 2013, Humaam pleaded not guilty and requested to continue criminal proceedings only after being afforded the opportunity to appoint a lawyer of his own choosing or through the legal aid scheme provided by the State.

However at the hearing held three months later, Humaam said in court that he was “mentally unstable” when he requested for a lawyer at the previous hearing. Humaam’s family, to this day, continues to claim that his mental health issues and him being arrested many times as a juvenile are not mutually exclusive.

At the aforementioned hearing on 22nd April 2013, Humaam said in court “I want my own lawyer, not one that is appointed for me through legal aid. If I can’t have my own lawyer then you can continue proceedings without any lawyer.” The defendant said this after the judge claimed that proceedings would continue without a lawyer if he were unable to appoint one.

A month later Human told the Judge, **“I don’t know anything about the murder of Afrasheem, I admitted to it before during a remand hearing [prior to trial], because I was scared.”** Humaam confessed to many instances where he had attacked, repeatedly stabbed and at times killed people in the streets of Malé with the help of accomplices, from 2006 to present. In contrast to the instances Humaam mentioned, he continued to plead innocence to the murder of Dr. Afrasheem.

During the trial, Humaam claimed that he confessed to the other crimes in order to ask for forgiveness and to serve the

due punishment. Nonetheless the judge did not request the authorities to investigate the defendant's involvement in these criminal acts he confessed to during trial.

Later in May 2013, Humaam again went back on his stance; when given the opportunity he refrained from submitting defence witnesses and confirmed that the statement he made confessing to the homicide during the investigation is a true statement. It is important to note that he did not reiterate the entire pre-trial statement in court under oath.

The State submitted its evidence and witnesses to prove Humaam's guilt since he had denied the charge, confessed to it and later retracted it. Prosecution witnesses included undisclosed witnesses; the State claimed their lives and the outcome of the case might be jeopardized if their identities were revealed. The public prosecutors argued that Humaam had previously confessed to killing Dr. Afrasheem on 7th December 2012 at a remand hearing. "Even if Humaam denies it now, the witness statements corroborate what Humaam had said during the remand hearing," the public prosecutor stated.

Notwithstanding Article 52 of the Maldivian Constitution, which deems pre-trial statements inadmissible, the judge claimed that since Humaam confirmed the pre-trial confession during a trial hearing on 22nd May 2013, he could not be afforded certain rights constitutionally guaranteed to anyone accused of a criminal offence (Article 51).

Discussing the case under Islamic Shari'a, the judgment states that if the victim of the crime is "a son of Adam," confessions cannot be retracted without showing proof of undue force or intimidation. The trial report states that this is in consideration of the victim's rights.

“The retraction of Humaam’s confession was dismissed because he failed to substantiate allegations of coercion and intimidation in a court of law”, stated the presiding judge.

The judgment also discusses laws of other open democracies such as the United States and Canada. The Federal Rule of Criminal Procedure used in the US is also referenced in disallowing the retraction. Additionally, invoking Canada’s Criminal Code, it is stated that the defendant should be “of a sound state of mind and fully aware that he or she is not bound by any pre-trial statements.” In spite of this, the judgment uses both legal instruments to assert: “a retraction of a confession is not an absolute right.”

However, the presiding judge did not ensure that Humaam adequately substantiated the elements of the crime found in his pre-trial confession. Whether Humaam knew the statement he gave during a pre-trial hearing did not bind him was also not referred to in the trial report.

The Criminal Court judge allowed the investigative officer to read out Humaam’s pre-trial confession and **Humaam merely said “that is the statement I gave, that statement is true.”** The judge accepted the pre-trial confession as one of prosecution’s evidence against Humaam, but he did not give it the probative value of a confession made during trial. In order to give the confession more legal weight, the judge stated that Witness 1’s testimony was used to corroborate it. The judgment notes that Humam only fully retracted his confession – claiming that he confessed to evade danger – when all hearings were about to be adjourned.

## 2.2 Undisclosed prosecution witnesses

The prosecution's undisclosed witness (Witness 1) testified in court that he saw Humaam inside Dr. Afrasheem's house covered in blood, holding Dr. Afrasheem's hand while he was stabbed beyond recognition. A witness that appeared in court, Dr. Amrith Raj, who observed Dr. Afrasheem's body, testified that "there was no sign of life" and that he died from injuries sustained from the brutal hacking.

**No thorough post-mortem examination was conducted before Dr. Afrasheem was buried.** A forensic expert summoned to court by the prosecution claimed that samples taken from inside Humaam's blue jeans tested positive for both the defendant and victim.

The third prosecution witness (Witness 3), an undisclosed witness, claimed that he saw a man that "looked very similar to Humaam," inside Shaheed Ali Mosque. At first the witness assumed the man was "performing ablution," but a closer look revealed that he was "frantically washing his face." When the police asked the witness if Humaam was the man the witness saw, he said the man that he saw inside the mosque "looked a lot like Humaam." While the fifth and sixth undisclosed witness (Witness 5 and 6), who were the arresting officers on patrol that night claimed that Humaam appeared to be "under the influence" and "very nervous." Witness 7 anonymously testified that Humaam complained to him about having "nightmares about Dr. Afrasheem," and suggested that Dr. Afrasheem is someone "he thought should be killed."

**It is very important to note that the court considered the aforesaid hearsay and circumstantial evidence against the defendant in its judgment.**

Humaam raised an objection calling into question the reliability of Witness 1, but the judge concluded that there was no room to question the reliability of Witness 1 as his testimony corroborated Humaam's confession given during the investigation. When all undisclosed witness testimonies are considered, the testimonies contradict each other. If true, Humaam was at different locations simultaneously.

### **2.3 The lower court judge**

This year on 6th March, Humaam's family submitted a complaint against the presiding judge at the Criminal Court, Abdulla Didi. The complaint brings into question the Judge's impartiality and highlights due process violations such as refusal to allow defence witnesses, relying on hearsay evidence and pre-trial confession.

It is noteworthy that Judge Abdulla Didi, who was promoted to the High Court after ruling against opposition political figures in 2015,<sup>9 10 11 12</sup> was also unconstitutionally given benefits through the executive. Along with other judges at the High Court and Supreme Court, the Judge was given a luxury apartment in Malé.<sup>13</sup>

According to the Judges Act 2010, judges are required to be resourceful towards defence lawyers, prosecutors, witnesses, and all individuals using the services of the court (subsection (c) of Article 30). Additionally, judges are obligated to give defendants appropriate opportunity to present defence witnesses (subsection (d) of Article 30), and be bound by all legal provisions relating to judges found under the Maldivian Constitution and legal instruments (subsection (f) of Article 30).

The Court also declared that the reasons provided by

Humaam when he retracted his confession were not substantial enough to dismiss the confession. In addition to that, the judge elaborated that Humaam's claim of mental instability was questionable, as he never mentioned this in previous court hearings. The perception of judicial impartiality (Article 29 subsection (a) numbers 2, 3, 4, 5 of the Judges' Act 2010) is lost when the judge based his decision on what Humaam previously said or failed to say under oath, during unrelated previous court proceedings. Furthermore, there is nothing to indicate that the judge's decision to dismiss Humaam's claim of mental disorder was based on an independent psychiatric assessment. Humaam was not given the opportunity.

This illustrates an implicit bias on the part of the judge in refusing to look into the matter more seriously, given that Humaam is charged with homicide. The judgment notes that his family members continued to maintain that the pre-trial statement Humaam gave was retracted and that it was obtained through intimidation while he was mentally unstable. Any psychiatric evaluations conducted on Humaam were not adduced in court; its results remain unknown even to his family members. Again, we note that the judge failed to give due importance to Humaam's claims of mental disorder. **Through the trial report it can easily be observed that the mental disorder claim was arbitrarily ruled out without adducing expert opinion.**

## 2.4 The High Court appeal

The points of law submitted to appeal the Criminal Court verdict consisted of four highlighted issues. Firstly, Humaam's lawyer highlighted that the legal basis for dismissing the retraction of confession was unclear and therefore arbitrary.

Secondly the Islamic Shari'a standard of proof for a homicide is **"beyond any doubt,"** stated his lawyer Abdullah Haseen. "It is questionable that the Criminal Court judgment 1158/Cr-C/2012 ruled that there was sufficient evidence to convict the appellant, Hussein Humaam Ahmed, of murdering an individual when there were no eyewitnesses who testified to directly seeing Humaam murder [the victim.]"

Thirdly, it was raised that Humaam's right to an impartial, fair and transparent trial conducted with justice (Subsections (a) and (b) of Article 42) where adequate time and facilities were provided for preparation of his defence and to communicate and instruct legal counsel of his own choosing (subsection (e) of Article 51) was effectively denied through arbitrary judicial decisions.

In conclusion, the defence lawyer stated that the judge did not invoke cases from other open democracies that contradict the view that a confession may be retracted in certain situations. Under the cases invoked, the judge left out aspects that support Humaam's dilemma –discussed further under Number 5.2 of this publication.

### **3.INCONSISTENCIES IN ISLAMIC SHARI'A INTERPRETATION**

#### **3.1 Shari'a principles**

The judgement cites the criteria for retracting a confession under Islamic Shari'a. The penalty for first-degree murder under Islamic law through the concept of qisas is capital punishment. The judge notes that according to Shari'a the defendant has to be a "mentally-sound adult," however, the presiding judge did not ascertain the state of Humaam's

mental health through relevant experts. Additionally, according to Shari'a, the judge should actively ascertain the mental health of the defendant, especially in the event that a hadd was prescribed as the punishment.

Secondly, under Shari'a, the murderer must have malice aforethought or the specific intent to end a human life. Thirdly, it is required that the defendant's actions were not subject to coercion. In spite of this, the motives, accomplices or masterminds behind this brutal killing were not deliberated upon during the trial. And as per ordinary practice, Humaam's claims of mental instability and coerced pre-trial statement were not evaluated efficiently.

The judge stated that in Islamic Shari'a, malicious intent to kill is decided by the nature and severity of the attack, taking into consideration the object or weapon used. Whilst explaining this principle the judge stated: "It is clear that the defendant – intended to kill Dr. Afrasheem Ali considering the weapon used and the nature of the attack."

### **3.2 Unanimous approval of death penalty by victim's next of kin**

The judge highlighted the importance of the Shari'a principle of the victim's heirs having the last say over the life of the murder convict. Due to the Shari'a principle Dr. Afrasheem's under-age children, too, have a say over implementing the death sentence on Humaam. Nonetheless, this view was quickly dismissed to use views posited by Ibn Tamiyya, a well-known 12th Century Muslim scholar whose ideas extensively influence modern-day Islamists.

Interpretations of Islamic Shari'a that require the convict to remain in prison until all heirs reach adulthood were wholly

ignored. The lower court claimed it would opt to implement capital punishment – without waiting for Dr. Afrasheem’s children to reach legal age – in the interest of public safety.

The fact that all of the victim’s heirs did not have a say in qisas is exceedingly concerning as the heirs’ decision to put the defendant to death has to be unanimous. Three of his heirs, his parents and wife stated in court that they agree to the state-sanctioned execution of the convict. **However, his children’s views over the matter, and moderate ideas found in Islamic jurisprudence that condone reprieve until heirs are of-age have been purposefully excluded.**

The judge stated that the decision to support the Maliki sect’s legal interpretation – of excluding under-age heirs’ views – was made “in the interest of securing Maldivian society.”

Maldivian Islam has historically centred on the Shafi’i sect of Islamic law, similar to southern parts of India and the Horn of Africa. The High Court upheld a lower court decision 498/Cr-C/2012 where the Maliki sect’s interpretation was used to justify executing convicts.

The five Islamic sects – Hanafi, Maliki, Shafi’i, Hanbali and Zahiri – differ on various issues of jurisprudence. If the judge supported the Maliki sect’s view in the interest of public order, **the judge did not specify how keeping Humaam imprisoned until the victim’s children reach 18, compromises public safety.**

### 3.3 Islamic Shari'a burden of proof and principle of forgiveness

The high burden of proof required by Shari'a was mentioned under Humam's defence lawyer's points of appeal (2.4 of this publication). **Scholars have argued that this high standard is applied by Shari'a so that "punishment is averted if any suspicion or doubt arises."**<sup>14</sup> In addition to the high burden of proof, Shari'a law also states that at least two witnesses must testify to directly seeing the offence take place.<sup>15</sup>

In Humaam's case, none of the witnesses directly saw the murder take place, however circumstantial evidence was used to prove his guilt. According to Shari'a, circumstantial evidence cannot be adduced in court regarding the adjudication of a qisas offence.<sup>16</sup>

There is also proof that Prophet Muhammad, and Islamic jurists that followed him considered forgiveness and restitution the honourable option for heirs of the murder victim.<sup>17</sup>

There is also an immense amount of Islamic literature that supports the need for victim's next of kin to pardon the murder convict and seek restitution instead. **The Qur'an encourages the victim's heirs "to forgive the perpetrator, and seek financial compensation (Diyya – sometimes called "blood money") as an alternative to demanding retribution through execution as an act of charity or in atonement for sins"**<sup>18</sup>(Qur'an 5:45).

## **4. THE SUPREME COURT'S ROLE IN ARBITRARILY EXPEDIATING APPEALS**

### **4.1 Overridden presidential pardon**

A month before the criminal proceedings against Humaam began; this view on the prerogative of the victim's next of kin over implementing the penalty was upheld by a High Court decision.

In December 2015 the High Court ruled that the President could not commute a death sentence or pardon the defendant if he or she was accused of first-degree murder. The ruling did not revise the Clemency Act 2010; instead it stated that only the heirs of the victim have the right to pardon the defendant under Islamic Shari'a,<sup>19</sup> which the president must consider as per Article 21 of the Clemency Act 2010.

The fundamental freedoms, liberties and fair trial rights guaranteed under the Maldivian Constitution have been flouted during the criminal proceedings against Humaam. In supporting the claim that Humaam should be the first to be put to death in over 60 years, the Government suggests that Humaam's case is the only first-degree murder case that has almost completed the appeals process. It is important to note the various Supreme Court circulars that expedited the appeals process for Humaam's case (outlined under 4.2).

### **4.2 Time constraints on right to appeal**

The Supreme Court circular number 2015/13/SC<sup>20</sup> issued on 8th November 2015 allows a month-long period to appeal death sentences and judicial flogging upheld by the

High Court. According to the circular, if a defendant fails to appeal a High Court verdict upholding the lower court sentence within a 30-day period (including public holidays), the appeal can then only be submitted to the Supreme Court by the prosecution.

As per Supreme Court circular 2015/14/SC<sup>21</sup> that follows, it is stated that the defendant must indicate his or her intention to appeal the verdict within 10 days. Where the convict fails to indicate, the court-of-first-instance is required to forward the case-file to the appellate court, 7 days after the 10-day period elapses – initiating High Court proceedings.

The circular states this is applicable to cases where High Court verdicts need to be reconfirmed by the Supreme Court. Currently, the only sentences that need to be reconfirmed by the appellate courts are cases where individuals are sentenced to death (Article 1204(d) of the Penal Code 2014).

The appeal period was shortened in January 2015. The new guidelines state that lower court verdicts need to be appealed at the High Court within 10 days,<sup>22</sup> and High Court verdicts need to be appealed at the Supreme Court within 60 days. Initially, subsection (a) of Article 42 of The Judicature Act 2010 granted a 90-day period, excluding public holidays, to appeal lower court verdicts.

It is to be noted with concern that the Supreme Court arbitrarily alters laws and in effect the rights of individuals. MDN believes that this is an unacceptable encroachment of parliamentary powers as the Constitution gives parliamentary supremacy over law making (Article 70).

### 4.3 The Penal Code

In July 2014, 6 months after Humaam was sentenced, the Government ratified the new penal code – a decade in the making, with assistance from academics such as Professor Robinson at Pennsylvania University in collaboration with the State. The new law repealed the previous penal code ratified between the late 1960s and early 1980s. The standard of proof for death penalty is outlined under Article 1204 and 1205 of the relatively new legislation addresses standard of proof for hudud offences.

The Penal Code 2014 states that that the death penalty can only be implemented after the prosecution proves the elements of the offence and “prove that offence committed is worse and represents more culpable behaviour than any other offence imaginable to a practical certainty” (subsection (a) Article 1204).

With regard to confessions in relation to cases where defendants are to be sentenced to death, the new penal law says that the State should not use a confession to attain a murder conviction (subsection (b) Article 1204). The aforementioned provision states that **the confession should only be admissible if the defendant “freely testifies in open court and under the advice of counsel, confessing to every element of the crime.”** The modernised penal law also stipulates that no contradicted witness testimony shall be considered when adjudicating a murder trial (Number 2 of subsection (c) of Article 1204).

These new penal provisions would apply to cases where the defendant was charged with murder after July 2014.

## **5. INCONSISTENCIES WITH DOMESTIC LAW, THE CONSTITUTION AND INTERNATIONAL LAW**

### **5.1 The Maldivian Constitution**

The Maldivian Constitution states that only statements made by a mentally sound person inside a court of law during a trial hearing shall be considered admissible (Article 52 and subsection (c) of Article 51.) All individuals accused of a criminal offence have the right to remain silent except to indicate identity (subsection (c) of Article 48).

Humaam alleged that a threat to his life and that of his family forced him to confess at the pre-trial hearing. The trial report concluded that Humaam voluntarily waived his fair trial rights such as; legal assistance of his own choosing; adequate time to mount defence; and submit defence witnesses; (Article 53; and Subsections (e), (f) and (g) of Article 51 respectively) without evaluating allegations of mental disorder, or considering interrupted legal assistance, and retraction of confession. Humaam's fair trial rights have been violated profusely, including the right to be presumed innocent beyond a reasonable doubt (subsection (h) Article 51 of the Constitution).

The Maldivian Constitution states that determination of one's innocence must be conducted "impartially" at an "independent court" (Subsections (a) and (b) of Article 42). As the bias of the presiding judge is discussed under 2.3 of this publication, and in light of the flawed judicial processes highlighted under 2.1, 2.2 and 2.4, in addition to grave concerns expressed regarding the independence of the Maldivian judiciary under 1.4, we believe that the Supreme Court must overrule the lower court decision supported by the High Court.

According to the 2008 Constitution, all individuals are free from “cruel, inhumane, or degrading treatment or punishment” (Article 54) and further emphasize human dignity and the right to life under Article 21. As the said article specifies: **“Everyone has the right to life, liberty and security of the person, and the right not be deprived thereof to any extent except pursuant to a law made in accordance with Article 16 of this Constitution.”**

The old penal code under which Humaam was charged does not specifically prescribe the death penalty. The law only states that “the highest punishment prescribed under Islam” should be implemented if disobedience to an order authorised by judicial or legal authority results in the death of a person (subsection (d) Article 88).

As the death penalty is a cruel and degrading punishment unpractised in the Maldives for over six decades, and is inconsistent with the democratic ideals adopted in August 2008, MDN urges a restoration of the unofficial moratorium on capital punishment.

Another important question that arises is how a regulation passed in April 2014 is retrospectively affecting those that were sentenced prior to it. Maldivian Constitution states that a penalty that is harsher than the one in practice at the time the offence was committed shall not be imposed on any convict (Article 59). The provision continues, “If the punishment for an offence has been reduced between the time of commission and the time of sentencing, the accused is entitled to the benefit of the lesser punishment.”

## 5.2 Case law

The Supreme Court of the Maldives interpreted “extrajudicial confession” to be **a confession made “during the investigation in the presence of law enforcement personnel or any other authority,” in a manner that “does not constitute a trial hearing.”**<sup>23</sup>

These principles were outlined during the state-initiated apex court appeal of a lower court decision, where six defendants against whom arson attack charges were filed in 2003, claimed that their pre-trial confessions adduced in court were obtained through brutal coercion. In relation to this case, the Criminal Court decided to dismiss the pre-trial confession based on the defendants’ claim. The High Court and Supreme Court of the Maldives supported the lower court decision.

The case specified conditions under which a pre-trial statement can be admitted as prosecution evidence, and the probative value given to such a confession. Upholding the lower court<sup>24</sup> and appellate court<sup>25</sup> precedents as within juridical norms, the apex court decided that the presiding judge has the “discretion to evaluate and conclude on retracted confessions.”

“Unless a defendant clearly attests – during a trial hearing – that a pre-trial confession is valid, **the Maldivian legal system does not recognise such a confession to be considered primary evidence sufficient enough for a conviction,**”<sup>26</sup> the judicial panel continued while interpreting conditions of admissibility. However, this precedent was not upheld nor referred to during Humaam’s case.

During the lower court proceedings of Humaam’s trial, the

Criminal Court judge referred to the United States case **Garner v. Mitchell (2007)**<sup>27</sup> to support the claim that the right to retract a confession is not an absolute right. The judgment fails to note that the US appellate court decision clearly states that when determining the legal standards governing the validity of a waiver, the relinquishment has to be a “deliberate choice” rather than result of “intimidation, coercion, or deception.”

**“Only if the totality of the circumstances surrounding the interrogation” suggests full voluntary choice of the defendant and that he or she has “the requisite level of comprehension,” the court may conclude that the defendant’s “Miranda rights have been waived.”**

In the case of **Ford v. Wainwright (1974)** in Florida, the US Supreme Court allowed for a review to clarify, among other issues, whether the district court should have held a hearing on Ford’s claim of insanity. The court “found that three problems with the procedures followed in Ford’s case: he had no chance to provide evidence relevant to his sanity, he was denied the opportunity to **“challenge or impeach the state-appointed psychiatrists’ opinions,”** and the procedure placed the ultimate decision wholly within the executive branch. The Court found that Florida’s inadequate procedure denied Ford his constitutional right to due process. “Accordingly, Ford was entitled to a new evidentiary hearing in federal district court on the question of his competence to be executed” writes Capital Punishment in Context,<sup>28</sup> a resource platform for cases involving capital punishment.

In the case of **Abdul Awkal (2012)** in Ohio, the US Supreme Court indefinitely stayed the convict’s execution based on the county court’s ruling that the convict was

mentally incompetent for execution following a mental competency hearing. As per **Robert James Acremant (2011)** in Oregon, a death sentence was commuted to life imprisonment without parole with the exception of new evidence showing the murder convict feigned mental illness. Similarly, in **Isaac Jackson Stroud (2011)** in California, the defendant's death sentence was commuted to life imprisonment without parole based on an incurable mental disorder.

### 5.3 International human-rights law

The inalienable right to a fair trial enshrined in the **Universal Declaration of Human Rights (UDHR) 1948**<sup>29</sup> and **International Covenant on Civil and Political Rights (ICCPR) 1966**<sup>30</sup> adopted by the UN have been denied for the death row prisoner mentioned in this document. The Maldivian Government ratified the ICCPR in 2006. International legal instruments that condone the practice of holding a moratorium on capital punishment have also been excluded the discourse surrounding the death penalty in the Maldives.

The historic human rights document ratified in 1948 states that all individuals are free from discrimination and equal before the law (Article 7 of the UDHR). The defendant's right to effective remedy for violations of fundamental rights granted to him by the Constitution (Article 8) was unaddressed by the appellate court (2.4, 3, and 4.2 of this publication). Whether the defendant's right to be heard by an independent and impartial court (Article 10) was upheld is questionable due to the reasons discussed under 2.3 and 1.4 of this document.

Given the doubts cast upon the impartiality of the judge, the right to be presumed innocent was denied. Since his defence witnesses submissions and claims of mental disorder were dismissed arbitrarily, guarantees for his defence outlined under Article 11, subsection (1) of the UDHR were violated.

Article 14 of the ICCPR, elaborates on the indivisible rights that encapsulate the right to a fair trial. The right to be presumed innocent (Article 14.2), **the right to be afforded adequate time to prepare a defence and to have a lawyer of his or her own choosing (subsection (b) of Article 14.3)**, the right to produce defence witnesses in the same manner as prosecution witnesses (subsection (e) of Article 14.3) have not been upheld to its full extent. As one of the key pieces of evidence used by the prosecution was the pre-trial statement, **the paramount fair trial right not to testify against oneself stipulated under Article 14.3 subsection (g) of the ICCPR was withheld** under questionable circumstances and through arbitrary decisions (as outlined under 2.1).

Since the details of motives and accomplices are unclear, the defendant has not been sentenced to death after ensuring that his **“guilt is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts” (Article 4 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty**<sup>31</sup> adopted by the UN’s Economic and Social Council (ECOSOC).

In light of the reasons discussed under 3.2 and 4.1, the murder convict’s right to seek pardon, or commutation of sentence, outlined under Article 7 of the ECOSOC adopted safeguards, has been alarmingly violated. This will effect

future first-degree murder convictions in the Maldives.

The Second Optional Protocol to the ICCPR was adopted in 1989 further emphasized the need for abolition of the death penalty. However, the Maldivian Government has not ratified the ICCPR's Second Optional Protocol.

The resolution 1999/61<sup>32</sup> passed by the UN Commission on Human Rights states under subsection (a) of Article 3 that States should “not to impose the death penalty for any but the most serious crimes and **only pursuant to a final judgement rendered by an independent and impartial competent court**, not to impose it for crimes committed by persons below 18 years of age, to exclude pregnant women from capital punishment and to ensure the right to a fair trial and the right to seek pardon or commutation of sentence.”

Furthermore the resolution calls on States “**not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person**” (subsection (e) of Article 3). The reasons discussed under 2.1 of this document illustrate the unresolved allegations of mental disorder claimed by the death row convict. Implementing the death sentence on a convict of contested mental health would amount to a shameful and deeply inhumane act undertaken by the Maldivian State.

**The Human Rights Resolution 2005/59<sup>33</sup> adopted by the UN Office of the High Commissioner for Human Rights and UN General Assembly Resolution 62/149<sup>34</sup> calls for States to move towards progressive ideals of repealing provisions for the death penalty.** The resolutions call upon countries that practice capital punishment to imperatively adopt a moratorium on executions.

## **6. RECOMMENDATIONS**

### **6.1 Relieve Humaam and order retrial**

This human rights organisation is of the view that the Maldivian State and the Supreme Court hearing his final appeal should relieve Humaam with a view to affording him a retrial. The retrial should grant Humaam his full constitutional rights that guarantee a fair trial (mentioned from 5.1-5.3 of this publication).

The irregularities and judicial flaws in the process strongly justify a retrial. If the case continues as it is, and the death penalty is implemented, we will witness a grave injustice that cannot be overturned. The criminal proceedings regarding a serious crime such as murder require that all processes were conducted with impartiality, while affording the defendant all rights, liberties and freedoms guaranteed to him under the Maldivian Constitution and international law.

The lack of procedural propriety and due process observed, such as, use of pre-trial statement; claims of mental disorder that were not evaluated; circumstantial and hearsay evidence; and denial of defence witnesses and retraction of confession (2.1-2.2 and 5) should be addressed in accordance with the standard of proof raised by the penalty for prosecution's charge (1.5 and 3.3 of this publication).

### **6.2 Conduct independent psychiatric evaluation**

MDN believes that an independent and transparent psychiatric evaluation has to be conducted on Humaam. The punishment to an extremely serious allegation such

as murder should not be meted out against an individual with claims of mental disorder that were not efficiently evaluated.

The nature of the allegations against the lower court judge (mentioned under 2.3 of this publication) and the criticisms against the Maldivian judiciary (detailed under 1.4) further constitute the need for an independent analysis into the defendant's mental health.

### **6.3 Address accomplices and bankrollers**

The charge against Humaam specified in 1.5 of this document mentions accomplices. Even after lower court proceedings were adjourned, the facts surrounding Dr. Afrasheem's brutal murder were not revealed. A heinous and premeditated crime against a parliamentarian would presumably require a number of accomplices and financiers.

Five others were accused of aiding and bankrolling the murder of Dr. Afrasheem. An accomplice was acquitted on 14th October 2015,<sup>35</sup> and two minors were charged with obstruction of justice regarding the murder. No others such as those who financed and aided the offence were charged.

Since the accomplices and financiers have not been fully investigated or charged, Humaam is a key witness to an on-going investigation. Humaam has also named two key individuals, President Yameen and former Tourism Minister and short-lived Vice President, now imprisoned, Ahmed Adeeb, saying that they would know who killed Dr. Afrasheem.<sup>36</sup> These claims need to be investigated. Killing Humaam would mean killing the only witness to

multiple unsolved murders (paragraph 4 and 5 of 2.1).

It is also important to note that Humaam's only alibi was found murdered shortly after Humaam's arrest, and that this was not acknowledged during court deliberations.

#### **6.4 Reintroduce the unofficial moratorium on capital punishment**

Important legal processes that should have been observed have been arbitrarily denied (as mentioned under 5.1-5.3). We note that Islamic jurisprudence also has important processes to be followed when implementing the death penalty (3.1-3.3 of this publication). These procedures are also applicable to the investigation phase of a homicide case.

We believe the Government should immediately review its policy of reintroducing the death penalty while it is inconsistent with the Maldivian Constitution. The State should urgently redress the due process violations mentioned above through the apex court appeal.

We call upon the Maldivian Government to adopt the Second Optional Protocol to the ICCPR in order to emphasise the need for abolition of the death penalty. The International human rights law discussed under 5.3 of this publication and ideals adopted after democratic transition in 2008 require the Maldivian State to urgently halt executions and reintroduce the moratorium on the death penalty.



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