

**REFORMING THE MALDIVIAN PENAL CODE WITH
REFERENCE TO PUNISHMENT OF IMPRISONMENT**

BY

MOHAMED AFFAN SHAFY

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degree of Doctor of Philosophy in Law**

**Ahmad Ibrahim Kulliyyah of Laws
International Islamic University Malaysia**

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ABSTRACT

The purpose of this thesis is to identify issues related to the use of imprisonment as a general form of punishment in the Penal Code of Maldives and to propose areas of reforms to the punishment of imprisonment to Maldives. In this study two main areas for reform were identified; firstly, since Maldives is a 100% Islamic country, the philosophies, aims, purposes of punishment and punishment of imprisonment were identified from Islamic Shari'ah. Since confirmation to the tenets of Islam is a requirement for all laws in Maldives by its constitution a Shari'ah punishment benchmark was derived under Article 10 of the Constitution of Maldives 2008. It was established that Shari'ah punishments were of 3 main types in Islamic criminal law, these are *hudud* (fixed), *qisas* (retaliatory) and *ta'zir* (discretionary) punishments. To suggest Shari'ah reforms to the Maldivian Penal Code, Islamic penal systems from Brunei Darussalam and Malaysia were analyzed. Secondly, for the reduction of meting imprisonment as a general form of punishment, different types of alternative punishment forms and application of penal laws were identified from the Nordic region where the penal systems in the Nordic region seldom used imprisonment unless for major crimes; and even in the instances of imprisonment, the punishment is focused on reforming the offender. The Nordic penal punishment model was found to be more compliant with the punishment philosophy of Shari'ah. This research identified that Maldivian Penal Code 9/2014 had imprisonment as a primary punishment form for all types of offences and an unrestricted discretion on punishment was given to judges. It was also found in this study that Maldivian prisons were not suitable to keep prisoners as they are not operated in accordance with laws of Maldives, Shari'ah punishment objectives and international human rights conventions and treaties. To identify areas of punishment reform all the 160 offenses mentioned in the Penal Code of Maldives 9/2014 were analyzed under the Shari'ah benchmark, it was found that offences that are applicable under *hudud* or *qisas* categories were allocated imprisonment sentences. In order for the penal laws of Maldives to comply with the Shari'ah benchmark whilst reducing imprisonment as a general form of punishment and introducing alternative punishment forms, it was recognised in this research that Maldives would have to follow a mixed model of a codified Islamisation model in terms of *hudud* and *qisas* punishments and a harmonization reformation model in terms of reforms on alternative forms of punishments under *ta'zir*. The findings of this study will help stakeholders in reforming Maldivian Penal Code with reference to the punishment of imprisonment to be compliant with the Shari'ah, Constitution of Maldives and international best practice.

خلاصة البحث

الهدف من هذا البحث هو تحديد القضايا المتعلقة باستخدام السجن كشكل عام من أنواع العقوبة في قانون العقوبات في جزر المالديف واقتراح الإصلاح لإدخال أنواع بديلة للعقوبات غير السجن. حدد هذا البحث أن قانون العقوبات المالديفي 2014/9 كان يشتمل على السجن كنوع من أنواع العقوبة الأولية لجميع أنواع الجرائم وأذن للقضاة بسلطة تقديرية غير مقيدة بشأن العقوبة. والنتيجة لذلك ، أصبحت السجن المديف تفوق طاقتها المسموح بها. وتبين أيضاً في هذه الدراسة أن سجون جزر المالديف لم تكن مناسبة للاحتفاظ بالسجناء لأنها لا تعمل وفقاً لقوانين جزر المالديف وأهداف عقوبة الشريعة والاتفاقيات والمعاهدات الدولية لحقوق الإنسان. لمعالجة قضية السجن هذه ، تم تحديد مجالين رئيسيين للإصلاح في هذه الدراسة ؛ أولاً ، نظراً لأن جزر المالديف بلد إسلامي بنسبة 100٪ ، فقد تم تحديد الفلسفات والأهداف وأغراض العقوبة والعقوبة بالسجن من الشريعة الإسلامية. ثانياً ، لتقليل عقوبة السجن كشكل عام من أشكال العقوبة ، تم تحديد أنواع مختلفة من أشكال العقوبة البديلة وتطبيق قوانين العقوبات من دول الشمال حيث نادراً ما تستخدم أنظمة العقوبات في دول الشمال عقوبة السجن إلا في الجرائم الكبرى ؛ وحتى في حالات السجن تركز العقوبة على إصلاح الجاني. تم العثور على نموذج العقوبة الجنائية الاسكندنافية ليكون أكثر توافقاً مع فلسفة العقوبة في الشريعة. كتأكيد لمبادئ الإسلام هو شرط لجميع القوانين في جزر المالديف بموجب دستورها ، تم اشتقاق معيار العقوبة الشرعية بموجب المادة 10 من دستور جزر المالديف 2008. وقد ثبت أن عقوبات الشريعة كانت من ثلاثة أنواع رئيسية في القانون الجنائي الإسلامي ، وهذه العقوبات هي الحدود (الثابتة) والقصاص (الانتقامية) والتعزير (التقديرية). لتحديد مجالات إصلاح العقوبة ، تم تحليل جميع الجرائم الـ 160 المذكورة في قانون العقوبات في جزر المالديف 2014/9 بموجب معيار العقوبة الشرعية. وتبين أن الجرائم التي تنطبق على فئتي الحدود والقصاص قد حكم عليها أيضاً بالسجن. علاوة على ذلك ، من أجل إدخال إصلاحات الشريعة على قانون العقوبات المالديفي ، تم تحليل أنظمة العقوبات الإسلامية في بروناي دار السلام وماليزيا. وقد ثبت في هذه الدراسة أنه لكي تتمثل قوانين العقوبات في جزر المالديف لمعايير الشريعة بموجب دستور جزر المالديف ، بينما يتم إصلاح السجن كشكل عام من أشكال العقوبة وإدخال عقوبات بديلة ، يتعين على جزر المالديف اتباع نموذج مقنن وفق نظام الإسلام من حيث جزاءات الحدود والقصاص ونموذج الإصلاح التوافقي من حيث عقوبات التعزير. ستساعد نتائج هذه الدراسة أصحاب المصلحة على إصلاح قانون العقوبات المالديفي مع الإشارة إلى عقوبة السجن لتتوافق مع الشريعة ودستور جزر المالديف وأفضل الممارسات الدولية.

APPROVAL PAGE

The thesis of Mohamed Affan Shafy has been approved by the following:

Ramizah bt. Wan Muhammad
Supervisor

Afridah bt. Abas
Co-Supervisor

Mohd. Iqbal bin Abdul Wahab
Co-Supervisor

Abdul Rani Bin Kamarudin
Internal Examiner

Siti Zubaidah Ismail
External Examiner

Salim Ali Farrar
External Examiner

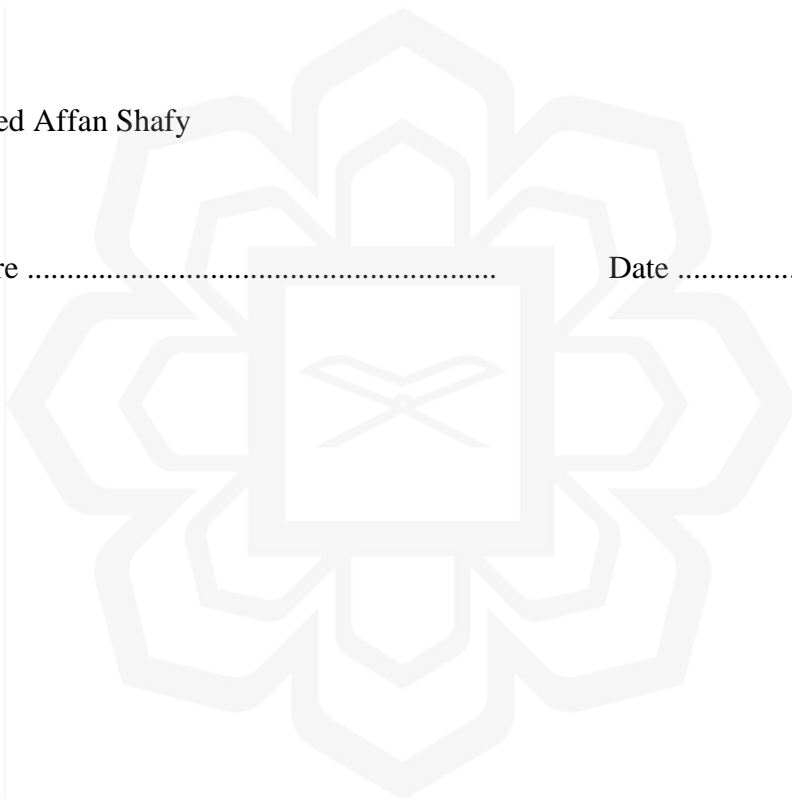
Erry Yulian Triblas
Chairman

DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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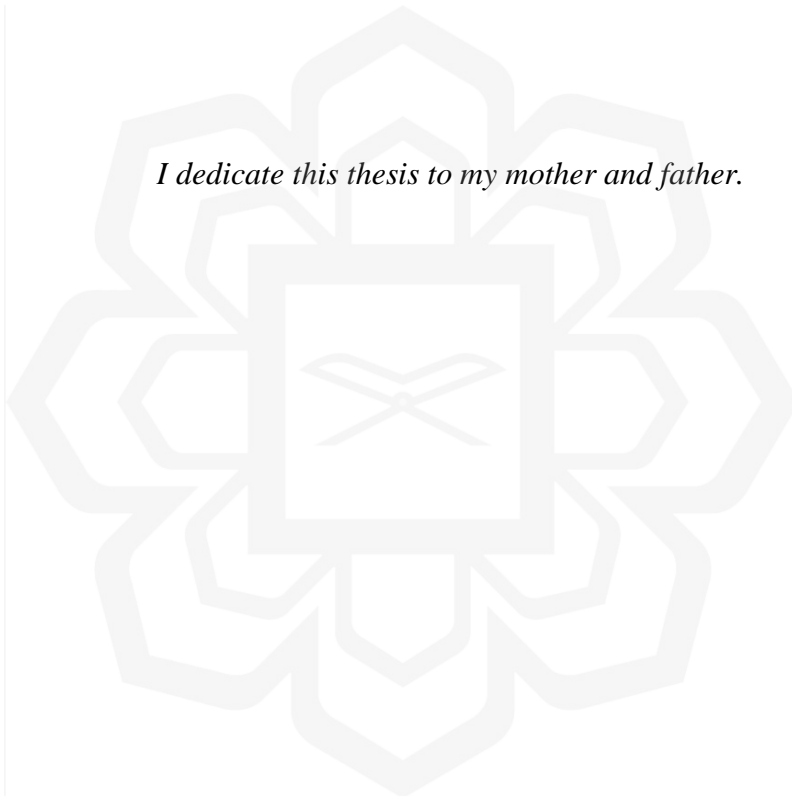
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I dedicate this thesis to my mother and father.



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Praise be to Allah (SWT), the Most Gracious and the Most Merciful, and I send my salutations and *salawat* to the Prophet Muhammad (SAW). It is by the will of Allah (SWT) and his will only that I have been able to complete this Ph.D. thesis, at International Islamic University of Malaysia. It is without a doubt a task as immense as completing the Ph.D. research cannot be completed without a lot of help and effort from a lot of great people.

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Application of Laws Act 5/1951 (Brunei)
Code of Discipline for Prisoners 2015 (Maldives)
Constitution of Brunei Darussalam
Constitution of the Republic of Maldives 2008
Clemency Act 2010 (Act No.: 2 of 2010) (Maldives)
Criminal Code (Order No. 909 of 2005) (Denmark)
Criminal Code 520/2001 (Finland)
Criminal Procedure Act 2016 (Act No.: 12 of 2016) (Maldives)
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Execution of Sentences Act ACT-2001-05-18-21 (Norway)
Federal Constitution of Malaysia 1957 (Malaysia)
General Penal Code of Iceland 1940 (Amended 2015) (Iceland)
Judicature Act 2010 (Act No.: 22 of 2010) (Maldives)
Law of the 1st Amendment to the Penal Code (Act No.: 6 of 2015) (Maldives)
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Law of the 1st Amendment to the Prisons and Parole Act (No.10 of 2015) (Maldives)
Maldives Police Act 2008 (Act No.: 5 of 2008)
Penal Code of Maldives 2014 (Act No.: 9 of 2014) (Maldives)
Penal Code of Norway 1902 (Amended 2005) (Norway)
Prisons and Parole Act 2013 (Act No.: 14 of 2013) (Maldives)
Regulation of Basic Amenities for Prisoners, Detainees and People Arrested Under a Court Order 2016/R-34 (Maldives)
Regulation on Detained Convicts, Detainees Held on Accusation of a Crime prior to Conviction, Detainees Detained Under a Court Order of Maldives 2015/R-127 (Maldives)
Regulation for Maintaining Safety, Security and Harmony in Prisons 2015/R-144 (Maldives)
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Regulation on the Standards of Ensuring the Rights of Victims of Torture 2014/R-37 (Maldives)
Regulation on the use of Force and Weaponry by Prison Staff 2015/R-145 (Maldives)
Swedish Penal Code 1962 (Sweden)
Syariah Courts Act S37/98 (Brunei)
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Syariah Courts Criminal Procedure Code Order 2018 (s9/2018) (Brunei)
Syariah Criminal Procedure (Federal Territories) Act 1997 (Malaysia)
Syariah Penal Code Order 2013 (Brunei)
Uniform and Clothing Regulation for Prisoners 2015 (Maldives)

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(Maldives)

Prosecutor General vs Abdulla Saeed, Ali Hameed and Maumoon Abdul Gayyoom,
(241/Cr-C/2018) (Maldives)

Prosecutor General vs Aishath Latheefa, (58/P9C/2015) (Maldives)



LIST OF ABBREVIATIONS

CRDC	Custodial Reception and Diagnostic Centre
DPRS	Department of Penitentiary and Rehabilitation Service
HRCM	Human Rights Commission of the Maldives
ISK	Icelandic Krona
NBS	National Bureau of Statistics
NSHR	National Society for Human Rights
PG	Prosecutor General
RA	<i>Radia'Allah anhu</i>
SAW	<i>Sallalaahu Alaihi Wassallam</i>
SCCPC	Syariah Court Criminal Procedure Code
SKR	Swedish Krona
SPC	Syariah Penal Code
UNDP	United Nations Development Program
UNODC	United Nations Office on Drugs and Crimes
USDS	United States Department of State

TRANSLITERATION

b = ب	z = ز	f = ف
t = ت	s = س	q = ق
th = ث	sh = ش	k = ك
j = ج	ṣ = ص	l = ل
ḥ = ح	ḍ = ض	m = م
kh = خ	ṭ = ط	n = ن
d = د	ẓ = ظ	h = ه
dh = ذ	‘ = ع	w = و
r = ر	gh = غ	y = ي

Short:	a = ’	i = ,	u = ُ
Long:	ā = َ	ī = ِ	ū = ِ
Diphthong:	ay = ِ	aw = ِ	

CHAPTER ONE

INTRODUCTION

1.1 MALDIVES OVERVIEW

Maldives consists of 1190 islands with only 200 islands are inhabited with a population of around 378,114 people¹ and the country is considered to be one of the most densely populated countries in the world. The official religion of the Maldivians is Islam, where Islamic religion is considered the epitome of the solidarity between the people and Islamic tenets are guarded steadfastly as a mean to protect harmony and tolerance that has been a part of Maldivian society. Islamic religion is a vital proponent of everyday life for Maldivians.²

Maldives gained independence from the British in 1965.³ Ever since the independence from the British, the country has for the most part been a Republic with a parliamentary style of government. The Maldives has been under a government where the separation of powers was almost non-existent where the previous constitution allowed the President to hold the ranks of Head of State, Head of Government, Minister of Defense, Minister of Finance and the Governor of the National Monetary Authority.⁴

In 2004 following public and international pressure the then President proposed a reform agenda to transform the political landscape by introducing separation of

¹ National Bureau of Statistics, “Statistical Year Book of Maldives 2018”, Ministry of Finance and Treasury, Government of Maldives, <http://statisticsmaldives.gov.mv/yearbook/2018/wp-content/uploads/sites/5/2018/04/3.3.pdf> (accessed 21 August, 2020)

² International Monetary Fund. *Maldives: Poverty Reduction Strategy Paper*. (Washington D.C.: International Monetary Fund, 2008), 168.

³ Clarence Maloney, “The Maldives: New Stresses in an Old Nation”. *Asian Survey*, vol. 16, no.7, (1976): 654.

⁴ The Consortium and et al. *Evaluation of the European Commission's Co-operation with Maldives – Volume II*. (Rome: European Commission, 2010), 1.

powers to institutions, allowing a multi-party political system with more freedom for the people, allowing the independence of judiciary and other state institutions by amending the constitution to support all these reform aspirations of the people. This in turn promised the people the protection of human rights and a way forward for the country to be recognized in the global community as a democracy.⁵ After 78 years of British protectorate status and after 30 years of been ruled by the same leader the Maldives transitioned into a multi-party democracy in 2008.⁶

1.2 BACKGROUND TO THE STUDY

In Maldives, whilst claimed with a criminal system enforced and highly educated professionals from every imaginable area of expertise is involved in reducing crimes committed and rehabilitating the convicts; the crime rate soars every year, especially in the felony related categories. According to the statistics of Maldives Police Service in 2015 in fact 49.17% of all crimes reported to the Maldives Police Service during the year 2015 is or can be related to grievous crimes; ranging from Murder, Sexual Offences, Theft, Highway Robbery and Intoxication.⁷ As mentioned by the United Nations Office on Drugs and Crimes annual report of 2005, however small the population of Maldives is they have a high rate of crime. Crimes in the nature of Drugs, Illicit sexual relationships, theft and robbery are on the rise.⁸

⁵ International Monetary Fund. *Maldives: Poverty Reduction Strategy Paper*. (Washington D.C.: International Monetary Fund, 2008), 5.

⁶ International Monetary Fund. *Maldives: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, (Washington D.C: Legal Department IMF, 2012), 15.

⁷ Maldives Police Service, “Crime Statistics 2015”, MPS, <https://www.police.gov.mv/#casestat> (accessed 5 January, 2017)

⁸ UNODC, “South Asia Regional Profile Sept 2005 Maldives”, United Nations Office on Drugs and Crime, http://www.unodc.org/pdf/india/publications/south_Asia_Regional_Profile_Sept_2005/11_maldives.pdf (accessed 5 January, 2017)

Another study by Madulu NGO found that a climate of fear has encased Maldives with crimes with sharp weapons, drugs, sexual abuse of women and children; and murder became a common sight in Maldives. Madulu NGO found this level of criminal activities are directly in contrast to the historically peaceful and peace-loving country.⁹

Mohamed (2015) notes at this point to combat the ever-increasing crimes and to be in par with the modern and internationally acceptable legal mechanisms the Maldives government ratified a new penal code, which was described as a modern penal code compatible with Shari'ah and international human rights standards. This penal code was drafted by an expert on law at the University of Pennsylvania Professor Paul H. Robinson upon the request of Maldivian government.¹⁰ According to UNDP the new penal code replaced the one in effect dating back to 1968. UNDP were actively involved during the drafting of the new penal code providing technical support in the form of a team of international legal experts to assist Professor Paul H. Robinson. The UNDP acknowledged that a team of local experts on Islamic Shari'ah and Maldivian Legal system were working alongside providing much required expertise. After the initial draft the Penal Code was further amended as deliberations went on through a national consultative process to further streamline it to the nation.¹¹ According to Robinson & Zulfiqar the Maldives is an Islamic country with a wish to enshrine Islamic Shari'ah

⁹ Mandulu.org, "Press Statement on the escalation of crime in Maldives", *Mandulu*, March 23rd 2010, <http://www.madulu.org/blog/press-release/press-statement-escalation-crime-maldives/> (accessed 5 January, 2017)

¹⁰ Hassan Mohamed, "Maldives Celebrates Historic Penal Code", *Maldives Independent*, July 16 2015, <http://maldivesindependent.com/politics/maldives-celebrates-historic-penal-code-101013> (accessed 5 January, 2017)

¹¹ UNDP, "Maldives and the Attorney General's Office hold first high level stakeholder meeting on the roll-out of the Maldives' new Penal Code," <http://www.mv.undp.org/content/maldives/en/home/presscenter/articles/2014/04/29/undp-maldives-and-the-attorney-general-s-office-hold-first-high-level-stakeholder-meeting-on-the-roll-out-of-the-maldives-new-penal-code.html> (accessed 4 January, 2017)

rules and principles in the laws that govern their daily lives.¹² However for *hudud* related crimes primacy was given to the punishments of the law and Shari'ah was considered secondary. As a result, instead of prescribing Shari'ah required forms of punishments, imprisonment was put in place as a punishment for these crimes along with most of the other crimes in having imprisonment as the primary form of punishment for crime in Maldives.

By 2019 Maldives ranked at the 7th place amongst the top 10 countries with the highest imprisonment rates.¹³ According to the United States Department of State, The DPRS (Department of Penitentiary and Rehabilitation Service) prison system, only able to accommodate 885 prisoners now held 1,200 inmates.¹⁴ Statistics from the Maldives Police Service has shown an increase in gang violence and muggings raising the crime rate.

The crime rate compared to the May of 2015 is raised in 2016 due to an increase in gang violence, theft and drug related crimes. Compared to 2015, drug related crimes in the month of May have risen by 46%. Violent crimes were increased by 22%. The number of crimes reported in June 2016 has been higher than the first five months of 2015.¹⁵ Also the national statistics shows an increment in criminal cases filed under

¹² Paul H. Robinson and Adnan Zulfiqar. "Of Neocolonialism, Common Law and Uncodifiable Shari'a: A Reply to Professor An-Na'im. *Journal of Comparative Law*", *U of Penn Law School, Public Law Research Paper*, vol.2, no.07-20 (2007): 62.

¹³ Sinitia Radu, "Countries With the Highest Incarceration Rates," *US News*, 13 May 2019, <https://www.usnews.com/news/best-countries/articles/2019-05-13/10-countries-with-the-highest-incarceration-rates> (accessed 26 July, 2020).

¹⁴ United States Department of State., "Country Reports on Human Rights Practices for 2014," Bureau of Democracy Human Rights and Labor, http://photos.state.gov/libraries/maldives/231771/PDFs/hr_report_2014_Maldives.pdf (accessed 5 January, 2017)

¹⁵ Sun, "Gang violence and mugging increased – crime up by percent", *Sun News*, 9 June 2016, <http://english.sun.mv/38033> (accessed 30 September, 2017)

adultery/fornication by 89% since the ratification of the new penal code and thefts had and increment of 64% since its ratification.¹⁶

People sentenced for crimes increased in a span of less than 2 years since the ratification of the new penal code by over 67%.¹⁷ According to Prison Studies.Org, Maldives prisons had an occupancy rate of 110% by November 2016.¹⁸

Table 1 Types of Offenses by Victims¹⁹

Nature of Crime	2016	2017	2018	2019
Assault	781	770	753	631
Theft	3616	3503	3270	4554
Robbery	716	662	537	483
Sexual offenses	467	417	361	405
Counterfeit and forgery	97	86	71	86
Vandalism	359	455	472	467
Embezzlement	523	518	516	494
Arson	101	105	29	29
Attempted suicide	59	70	36	56
Causing, aiding or soliciting suicide	47	54	55	60
Deception	275	306	246	218
Obstruction of justice	147	141	89	73
Disorderly conduct	286	308	213	185
Producing or distributing obscene materials	72	65	87	73
Trafficking, Manufacture, Sale, or Possession of Firearms or Catastrophic Agents	41	37	39	19
Theft by Deception	55	52	28	72
Use of a Dangerous Weapon During an Offense	20	23	27	15

¹⁶ NBS, “Government Statistical Yearbook 2017,” National Bureau of Statistics Maldives, <http://statisticsmaldives.gov.mv/yearbook/2017/wp-content/uploads/sites/4/2017/07/8.22.pdf> (accessed 30 September, 2017)

¹⁷ Ibid., <http://statisticsmaldives.gov.mv/yearbook/2017/wp-content/uploads/sites/4/2017/07/8.42.pdf> (accessed 30 September, 2017)

¹⁸ World Prison Brief, “Maldives – World Prison Brief data,” Prison Studies, <http://www.prisonstudies.org/country/maldives> (accessed 30 September, 2017)

¹⁹ National Bureau of Statistics, “Number of Victims by Type of Offense and Sex, 2016 – 2019,” Statistics Maldives, <http://statisticsmaldives.gov.mv/yearbook/2020/wp-content/uploads/sites/7/2020/06/8.1.pdf> (accessed 20 August, 2020)