



ಮಹಾತ್ಮಾ ಜಯಂತಿ ದಿನ

ಮಹಾತ್ಮಾ ಜಯಂತಿ ದಿನದಂದು

ಜಯಂತಿ ದಿನದಂದು 38 ನೇ ಮಹಾತ್ಮಾ ಜಯಂತಿ ದಿನದಂದು

15 ನೇ ಮಹಾತ್ಮಾ ಜಯಂತಿ ದಿನ 2019

ಜಯಂತಿ ದಿನದಂದು 38 ನೇ ಮಹಾತ್ಮಾ ಜಯಂತಿ ದಿನದಂದು (2 ನೇ ಮಹಾತ್ಮಾ ಜಯಂತಿ ದಿನದಂದು)

11:00 : ಮಹಾತ್ಮಾ ಜಯಂತಿ ದಿನದಂದು

{بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ الرَّحْمَنُ الرَّحِيمُ الَّذِي لَهُ الْمُلْكُ يَوْمَ تَأْتِي السُّحُبُ بِمَاءٍ مَّحِينٍ}

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

أَلَمْ نَجْعَلْ لَكَ قُرْآنًا كَرِيمًا وَسَيُجَنَّبُكَ الْمُؤْمِنُونَ وَالَّذِينَ هُمْ عَنْ صَلَاتِهِمْ سَاهُونَ أَلَمْ نَجْعَلْ لَكَ قُرْآنًا كَرِيمًا وَسَيُجَنَّبُكَ الْمُؤْمِنُونَ وَالَّذِينَ هُمْ عَنْ صَلَاتِهِمْ سَاهُونَ

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

و 28 وَمَا تَرْجُوهُم بِأَنْ يَرْجُوكُمْ وَلَا تَسْتَوِي لَهُمْ الْحَرْبُ وَلَا السَّلَامُ وَلَا يَكُونُوا بِكُمْ عِدَّةً وَلَا مَدِينَةً

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

وَالَّذِينَ هُمْ عَنْ صَلَاتِهِمْ سَاهُونَ أَلَمْ نَجْعَلْ لَكَ قُرْآنًا كَرِيمًا

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

وَالَّذِينَ هُمْ عَنْ صَلَاتِهِمْ سَاهُونَ أَلَمْ نَجْعَلْ لَكَ قُرْآنًا كَرِيمًا وَسَيُجَنَّبُكَ الْمُؤْمِنُونَ وَالَّذِينَ هُمْ عَنْ صَلَاتِهِمْ سَاهُونَ أَلَمْ نَجْعَلْ لَكَ قُرْآنًا كَرِيمًا وَسَيُجَنَّبُكَ الْمُؤْمِنُونَ وَالَّذِينَ هُمْ عَنْ صَلَاتِهِمْ سَاهُونَ





abolishing capital punishment for children. And so, we, that the committee requested from me to help facilitate some expert opinion on this for us to deliberate. There is no time for us to compile a paper on this. And we thought it will be much better, I felt it would be much better that we discussed in person, if institutions would give us some time to sit through this. This is an informal meeting. The new parliament standing order allow us for this, which is great. And so, we can speak as open in as candidly and we can rest all our concerns through meetings like this. This is very useful for the kind of work that we have to do. So, thank you once again for accommodating my very informal, very late request. And thank you committee members for everyone except one member is here. So, you can see the commitment. So, if any committee members doesn't; already have a question, I open the floor to you

10:00 UNICEF representative Dr. M. Munir A. Safiaddin speaking:

Well thank you very much. We really appreciate giving our sincere opportunity to meet with you and to discuss this issue. And let me probably go directly into this specific oblige with regard to the prohibition of the enforcement of capital punishment on children. And number one of the reasons why we believe this has to be sustained in the bill from UNICEF point of view is that the Maldives is one of the signatures to the convention on the rights of the child. And article 37 of the convention on the article of the CRC prohibits the enforcement of subjecting children to capital punishment. And when the Maldives actually ratified the CRC did not register any reservation was regard to this article. So, as a state in Maldives obliged to comply was on the articles of the CRC to which you did not register any reservation. And I think you will know that Maldives registered to two reservations is regarded to the convention. One of them is related to the adoption, and the other one is related to the freedom of religion. Other than that, the national community and the committee which oversees the implementation of the convention of the rights would expect as we do that Maldives will comply with this one. The second point is that it's a matter of also consistency with the national laws in the Maldives. I understand that any person under the age of 18 cannot get a driving license. Any person under the age of 18 cannot vote. And if you say any person under the age of 18 is subject to punish, capital punishment you will have to explain to everyone else. Specially in the international community. They will say to you simply you believe the person under the age of 18 is too young to have a driving license, too young to vote but old enough to be executed. So, I think it's a matter of consistency. Your laws say that issues like driving license, voting cannot be practice by a person under the age of 18. And I think it become really difficult for anyone to I am very found to comprehend how a person cannot be be given a driving license can be hanged and can be executed. So, it's a matter of consistency with all

national laws. And the third point is where now we are in the countries which are govern by sharia or law many countries are reviewing this. And many countries have changed the laws and they have included in the national laws of that the children under the age of 18 are not subjected to capital punishment. And the countries which is still continue that are very few and they are consider the exception like the Islamic republic of Iran. And they are under tremendous criticize internally, not even you know externally. And there is a lot of literature among the Muslim scholars, which clearly speaks to this point. You know, I know people many scholars they talk about how to define a child. They define a child according to bloom or property, which has biological science rather than link to age. But this is changing specially in you law, you have not used term puberty. You have specified, defined the child on the basis of the age. So, all the arguments some of the Muslim scholars have been using upon on the basis of thinking the definition of childhood to puberty are not relevant I would say it in your own national law, which has moved a step forward and linked the definition of the child to an age rather than science of puberty. Also, number of Muslim scholars have been very clearly saying that it's not about puberty, it's about something else. It's not wudu according to in Arabic language. It's so called rushd or the maturity, the mental maturity of the person and they have quote it and I have some resources. I would be happy to share with you that they say even for an often to be given custody and control over his or her inherited wells. It's not linked to puberty only. It's linked to puberty together was the mental development and capacity which is call rushd.

And this is very clear in the Quran. فَإِنْ ءَانَسْتُمْ مِّنْهُمْ رُّشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ only one who see from these orphan children rushd the ability to manage their money well give them their money back to control before that the custody to control over the money of the all the wealth's of an orphan wouldn't be given to him or her because the likelihood of misusing the money in a very irresponsible way. So, I think if you looked at these things in Islamic Fiqh of jurisprudence they rank what are the priorities protecting the life of a human being is more important than protecting the wealth or the money. And if by way of protecting the money of the wealth's of an orphan Quran does not allow us to give the child who has not shown maturity and wisdom in his or her decision not to give them control of their money. Can we say we are consistence with the Islamic law by saying we don't do that, we don't give them their money, we don't give them the driving license, we don't give them the right way but we can send them to execution. I think there is an issue here of consistency with Islamic jurisprudence and consistency with your national laws and definitely consistency was regard to your commitment as a state regarding the CRC.

UNICEF programme specialist Mohamed Naeem speaking:

I think those are the main arguments that we have to see that the rectification of the CRC and then the re-consistency with laws that we were discussing that. Mainly those are the good arguments that we can have in terms of in addressing this issue. Also, the way it's written in the current draft the way it's written it also leaves a very it gives a very ambiguous argument like it says that a child cannot be prosecuted or cannot be subjected to death penalty or capital punishment. But then it also leaves the space for that it can be applied once the child becomes 18. Because it doesn't talk about the crime that was committed as a child. So, I think there is something that we also need to actually correct in it. Because it leaves a lot of ambiguities for deciding, delaying the resolution. so, I think those are the things that I had observed in specifically for that argument.

#### Chairmen Speaking:

In the current draft, the draft proposes address the ambiguities that you are talking about. So, child offence committed by the child, a child cannot be held accountable for offence committed by the child person when the person was a child. So, it's addressed and it goes on further to say that the article goes on to say the next it refers to the penal code and the next most strict penalty will be applied not exactly as it is  $\frac{3}{4}$  of the penalty will be applied. And so that is what, that is the probation is and so do you have any questions? I have two actually. So, I understand that there were lot of discussions lots of stake holders were consulted in various stages for this bill, for this draft bill that we have. After the discussions it is really interesting that this has survived so many stake holder meetings. Everyone with an interest for and with a child has proposed the prohibition for capital punishment of children to be there in the bill. And so, I am really interested to know what would generally, since you are part of the stake holder discussions anyone led some of the stake holder discussions. But generally, were the discussion around it and was it discussed. Because if there was, if this was such a contentious issue, I believe this would not have been in the draft in the first place. Because everyone in the field has been consulted as far as I have been informed. Second one I understand that you also consulted children on this UNICEF, in a UNICEF led initiative children were consulted on this bill on this draft. And I was wondering if this was discussed and if so, what did they have to say.

#### UNICEF representative Dr. M. Munir A. Safiaddin speaking:

In terms of the consultation we had at different stages, three different consultations with adults on under the bill. And we did and discuss about this particular article and almost everyone that we have discussed felt that it should not be held. Because the discussion was basically on that they often see adults getting children in to those crimes rather than

the children themselves leading it. So, the concern was that penal code also does not recognize those kinds of offences, offence where adults explore children and get into those kinds of crimes. So, our the most of the discussion was around that saying that we need to actually whenever possible to amend the penal code we need to actually work on that and see how we can bring those elements into the penal code as well. So, the adults, most of the tasks that we discuss felt that, that it should not be the children should not secure or should not be subjected to capital punishment. We asked the children about it like how they feel about it and it wasn't a long discussion but most of them said they don't, they don't know if a child will do that when they understand what they are doing that was the basic argument this they had and saying that children who may have committed or have participated in a crime like this may not have known exactly what they were doing. They will not have that capacity to realize what the consequences will be and I think it will be interesting to talk to some of the minors who are now in custody to actually understand how they felt about it after wards once they have committed those crimes. Because from that children they were very sure that children will not understand what they were doing at that age.

#### Chairmen Speaking:

That itself shows so much maturity. Yeah. The third question was we were wondering one of the discussions that we had during while we were debating on this, on this topic was how many children are we talking about you know, in terms of how many children have committed an offence for which they should get death as per the law they have been sentenced to death penalty because from what we understand it's about almost three hundred. Only three hundred children in conflict with the or law in the juvenile justice system. And there are series of crimes or series of illegal activities that they are involve in a living, they've been used for and none of these statistics of JJU is not talking about any of the offences that would call for death penalty. So, something that I have being trying to say consistently let's not make laws for the exception. Let's not say okay there are some kids who have committed offence, who have committed these kinds of offences. Why are we making laws for the exception? And so, I wanted to know how many children in the past that we are talking about?

#### UNICEF programme specialist Mohamed Naeem speaking:

I think if we take specific cases like let's say we take the case of Humaam. If we take a specific case when Humaam was in conflict with law and in the Juvenile justice system he was one of the children who was in Feydhoofinolhu for the rehabilitation what that was been laid by JJU and the police at that time. The councilor's as well as the other people who were providing was giving the programs, runnind the programs there in



Feydhoofinolhu felt that he doesn't have, he can be exploited into a crime like this. For one he doesn't have any empathy. He don't feel empathy and some of the fights that was happened between the boys who was there in Feydhoofinolhu we all felt that he needed a very specific treatment, very specific treatment for him to actually live in a society. We elated we flatted we were talking about it very often we were talking about it, especially when he was about to leave the place because he was, he was turning Eighteen. And I think it was to within a the week that he turn eighteen that he was removed from Feydhoofinolhu and send back to the family. And I don't think it took long for him to be exploited in to committing that crime or become part of it. So, it shows that even the way if you that we have people can identify the capacity the mental the thinking the psychological problems that they have. So, even we take examples like this it's not that they had that intension, or they have that thinking to murder a person. But then people can exploit. Because they have the other coming of psychological problems that they have. So, I think we also need to look at some of these cases to understand those who have been part of these serious crimes to understand like what had led them into these and even if you look at the other minor cases, most of them had been in the system as victim's. Victims of violence they have been neglected. They have been if they have experience abuse as children and if you look at the major majority of them who are in the JJU list if you have a compare that with the services that was provided by Gender Ministry in terms of addressing the violence that they were experiencing you can see lot of them had been in the system but not provided that relevant support through out for them to survive and become not go into the into a unacceptable behavior in those that side of the... So, I think, I think we really need to look at the whole system and say is a gap not, I mean not having a capital punishment for children will it get more children into committing serious crimes? I don't think so. Because those who have committed those crimes if you look at them it's again a weakness on the system for preventing that. So, so prevention and treating them when they have a problem is much better than putting as you said an exceptional clause an exceptional rule to say like if they have like just one case or even like; so I think we need to consider that the rehabilitation and those services, the prevention services if what I have also like to highlight whenever you talk to like average person or somebody who don't have this information these people are afraid that children might start committing they might take advantage. But they don't what they don't consider is again that adults are the people who get them into committing these crimes. They have somebody some an adult who can really strategize, think, plane and then get the children to execute it. So, so I think we need to really look into those issues.

UNICEF representative Dr. M. Munir A. Safiedin speaking:

If I may have you know coming back to your question about the statistics on numbers, yes! on average if you look at 2017, 2018 the average number of children who went through JJU is about three hundred and plus. Yes! 365. Which my calculation is definitely on average less than one child per day even of the year. You know children committing crime offences not serious crimes like murder. And if you want to see or look at how many children have committed murder, I would say 2017, 2018 to the best of my knowledge zero. Okay. So, if you try to take the average number of children who committed serious crimes or offences that if they were not children, they would have been subjected it to commit the punishment over the last five years. I would say probably one percent not more than that. And what's talking about exceptional cases that even the publicly know X, Y by name. So, it's the exception. Children who have been involved in like murder or any serious crime that if they were not children, they would have been subjected to capital punishment I would say the for last five years is one percent if not less. So, it's an exception. Then number two which is extremely important for all of us to understand that when a child commits a crime it means we as a society have failed to protect the child. Have failed to protect the child from you know committing a crime, by understanding you know the legal consequences by upbringing the child in a loving, caring, a protective environment. Or we have failed the child by leaving him/her victim to manipulation by criminals. And this is the whole purpose of the bill on the protection of children. It's to protect them and through protecting them protecting the society. Some people they believe through penalizing people you protect the society. Which is completely wrong. By protecting the child, we need to protect the whole society. And that's I think the logic. And what is very important is through this bill to emphasize the need for effective crime prevention. Juvenile crime prevention program in the Maldives which does not exist. And we do have and we are all aware unfortunately of the fact that our gangs actively going out to the poor islands recruiting boys and girls. Bringing them here, using them. And unfortunately, there is no any effective penalty to stop these gangs from doing that. And I don't think it is fair to say we wait until we catch one of the children who are being exploited by these gangs red handed. And we take, we make him an example of how serious we can be in punishing a child. So, that's I think the rational.

Dhangethi constituency member Mohamed Nazim speaking:

Sorry I was a little late today. I have heard what you have said, the both of you have said. Thankyou you very much. I think I was the person who actually initiated the including a clause regarding death penalty. I mean I am also not a big fan of you know including that. But still we would like to find out as a community what is your opinion and what is in other countries like in Muslim countries or other western countries do

they have a clause regarding this capital punishment for juvenile? I mean young children under 18. And we consider like 15 years now. We have been considering that. 15 years as a juvenile okay. So...

Chairman speaking:

Juvenile 15 for criminal justice...

Dhangethi constituency member Mohamed Nazim speaking:

Yes, criminal liabilities. So, there is the reason why I raised that issue is that I mean that we need to have a clause to deter even the children. You know in Maldives I think because of the nature and the availability of facilities like internet grade 10 students like those who are studying in school, they finish school at the age of 16 now. Basically, they do O'level. So, by the time at grade 8, they will be like say 13 years. So, by the time its grade 8, they have excess to all the facilities now. Social media plus internet. So, they go through and get all the information. So, my argument was that we still could have a clause saying that even though they are juveniles, when they reach 18 and above there will be a punishment. There will be a punishment so that they will deter. Even the parents they will also be informed about the bill. I mean if we have a clause saying that okay they, even when they grow up and when they go above 18 there is a punishment for them. Okay, so when we create awareness among the parents and the parents will also inform the children. Okay as you don't have an added advantage being a child for crimes. Okay 13 or 18. So, that was the argument basically. So, my argument was why don't we have that clause saying that okay when you are above 18 even if you have committed a crime below 18 years, but still it is punishable. Because you will be punished. I mean in Maldives I mean even though it is in the law as a capital punishment we never had those. We never had a capital punishment in Maldives so far. In long ago we had but not anymore. So, the president has the extreme powers to do that. So why don't we have that as a clause to deter children but I am sure that will not be executed. This is an argument you know. You know as a 100% Muslim country we also need to relate to our shariah as well. Why in shariah it says that every, all offences are you know punishable. You know if you make an offence, the crime it is punishable. So, whether it is a child or it is an adult doesn't matter basically. So, we just want to discourage that. That was the argument. I mean I am not a big fan of capital punishment. I am not saying that. But the reason why I was raising the issue is that let's keep it as a deterrent. So, just to deter. So now in Maldives as I have said earlier even the 13-year child is, they have a lot of knowledge now. Because being excess, they are having excess to internet. Even I mean if you take as if you do a survey basically everyone above 12 or 10 basically has a phone now. A mobile phone, the latest mobile phone. So,

we have, people have excess to all this. So, when they have excess, they go through internet and they search and they do, they have a lot of knowledge to do it. So, and then in your opinion what do you think rely on. I am sure that I have done a research yet. But have you done a research on the other, about other countries why, whether they have this in their laws or any of that sort? Thank you very much you know.

UNICEF programme specialist Mohamed Naeem speaking:

Maybe for the sake of responding forgive me if I may have to repeat some of the things I have said in his absence. No, no it's alright. Definitely you should not include any capital punishment for children. And I have shared my arguments. 1- Here in the Maldives you have defined a child as any person under 18. And that's why a person under 18 will not have a driving license. Would not be given the right to vote. So, you tell a child that I can't give you a driving license because you are too young. I can't give you the right to vote because you are too young. But I can kill you, I can execute you. You are not too young for being executed. This is very inconsistent with your own laws. Which have defined the rights of the child based on his/her age. So, there is an inconsistency here. Secondly you have as a state an obligation under international law. Maldives is a signatory to the convention on the rights of the child. Article 37 of the convention on the rights of the child prohibits the punishing children under any law that is under capital punishment. And you as a country where you never had any reservation to this article. You had two reservations to the article of CRC. Which one of them is related to adoption and the other one relates to the freedom of religion. So, the international community understands that you have an obligation and they will hold you accountable to it. And international forum in every 5 years you have to submit a report to the committee which is responsible for overseeing the implementation of this. And you will be subjected to a lot of questioning by the international community. Fairly I would say shariah law does not make a child punishable under hudhoodh. Hudhoodh is under shariah law applicable only for a person who is an adult. Who is not a child. And there is a very clear statement from the prophet Mohamed SAW. 3 categories of people are not accountable for their deeds. And one of those 3 categories he said and a child until he/she reaches puberty and rushd. Now some countries in the Muslim world over the last few years were defining childhood you know as per puberty or linking the definition of childhood to reaching puberty. Which is a biological can of thing rather than age. But now almost all the countries have moved away of this. Because it is always a challenge for a judge in a court to argue whether this child specific case has reached puberty or not. Because it's left to the discretion of the judge rather than telling the judge it's the age. Now countries have moved into defining childhood not in relation to puberty which it variates from one person to the other. But to child to an age. And in

the Maldives, you have adopted that principle. In your law you are defining a child per age not to any other thing. So, to be very inconsistent now say yes, I define human being as a child, and I have committed myself to the international law that a child will not be subject to capital punishment. But now I am doing something different. It will be very inconsistent actually in the logic actually you have used in your national laws as well. And most importantly now even in shariah law, more and more Muslim scholars are insisting that when it comes to the minimum age of criminal responsibility it's the best interest of everyone and it is consistent with the Rahma with the mercy of Islam to define childhood based on rushd mental maturity rather than biological maturity. And this is a trend now it's going among the Muslim scholars and I have a few quotations I will be happy to share with you on that one. Now which countries are still subjecting children to capital punishment? I will give you 3 names and I will tell you; you will never want to be associated with these countries. Its Saudi Arabia. You want to be associated with their human rights record. Yemen which is the biggest chaos on planet earth. Okay, I had the opportunity of serving Yemen for 4 years and I know how their prisons look like. And the 3<sup>rd</sup> country which has now made a change is Iran. I also served there for 3 years. Iran until 3 years ago were subjecting children to capital punishment. Now they made a change and UNICEF was associated with this change, where they said children cannot be executed. But the problem there was still unaddressed that they detain a child who commits a serious crime specially like murder. They commit if he/she is a sorry, the detained person if he is 16/15 they will detain the person until he/she reaches 18 and they will be executed. And I met so many of the children who are waiting on the death row. Waiting for execution for many years. And in Iran there is an outcry by everyone that this is inhuman. You are already destroying the life of the person keeping the person awaiting for death. And you don't understand the mental suffering and the disorder you are causing. This is very inconsistent with Islamic law. In Islam the prophet Mohamed SAW said even if you want to slaughter a goat or an animal don't make it suffer. And now we want to slaughter a human being and make him suffer for many years waiting for the execution. And one morning at dawn time with Fajr prayer someone will open the gate of the cell and take the child out for execution. These are the countries which are violating children rights and human rights. And I hope Maldives will not be listed as one of them.

Dhangethi constituency member Mohamed Nazim speaking:

I think it is very very informative information you have given. The basically the reason why we had this discussion is you know by end of this bill, the clerics or the people who are support this will question us. So that we would like to get information, so that we will also be able to answer them. Okay, why we didn't include that clause. So, I

think I am basically I am very convinced with because of the experience and what you have shared with us. So that I will be able to explain to them. Okay, these are the reasons why we didn't include that in the bill. So, thank you very much.

Chairman speaking:

Let me just, thank you so much Munir and Naeem. This is so helpful to us in so many ways. Not just as MPs but as human beings. I am glad that committee is here and we are all and we know what we are doing and why we are doing what we are doing. So, I am just very happy that you gave us this time, and this is very enlightening. And I request from the secretariat to kindly make an opinion note based on this discussion for this clause. So, that there is, it is there in the commentary of Majilis documents or relating to this bill. So, there will be, yes sure.

UNICEF representative Dr. M. Munir A. Safieldin speaking:

Well Thank you very much and we are very much pleased that you have invited us for this consultation and we honestly expect a lot from this committee. This is my 3<sup>rd</sup> time to appear before this committee. Twice under this mainly and once before that. And I am very happy to see this committee is taking the right issues quite seriously. I was very happy, and I believe almost everyone in the country to see the decision and the instruction from this committee to the police to investigate some of the child abuse cases. This is very important. But I will also want to share with you 2 things if you don't mind. I want to share with you, this is the CRC I mean I want to refer to article 37. And which is about capital punishment. And yes, I would like to share with you I apologize because I didn't have the time to translate this to English. This is an Arabic paper. Which I have put together sometime ago. It talks about the you know the minimum age of criminal responsibility from Islamic jurisprudence point of view and the distinction between puberty and rushd mental. Thank You.

Chairman speaking:

I also would like to request from the secretariat to get us a translation of this done. Thank You.

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