

MALDIVES¹

OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES

(Updated as at 13 May 2022)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
Equality of spouses in marriage					
1) <i>Is there a Constitutional provision on equality and are there exceptions?</i>	<ul style="list-style-type: none"> Article 17 of the Constitution of Maldives provides:² <p><i>Everyone is entitled to the rights and freedoms included in this Chapter without discrimination of any kind, including race, national origin, colour, sex, age, mental or physical disability, political or other opinion, property, birth or other status, or native island</i></p>		<ul style="list-style-type: none"> Gender equality and non-discrimination are long discussed policies of the governments of Maldives, starting with the establishment of the Office for Women's Affairs in 1981 followed by the ratification of CEDAW in 1993.⁵ 		<ul style="list-style-type: none"> The rights under Article 17 and 20 are at present considered to be limited under article 16 of the Constitution, and applicable to the implementation of the Family Act of Maldives insofar as it may go to maintain the "tenets of Islam".

¹ This table was originally formulated as part of a 2016-2017 Musawah project to map Muslim Family Laws globally led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Maldives country table, we would also like to thank Uthema NGO in Maldives and key contributors from the Maldives for their inputs in its original preparation. This table was last updated in May 2022 as part of the Campaign for Justice in Muslim Family Laws. We would like to thank Humaida Abdulghafoor (Independent Researcher and Co-Founder of Uthema NGO) for the recent updates.

² The Constitution of Maldives, 2008. <https://storage.googleapis.com/presidency.gov.mv/Documents/ConstitutionOfMaldives.pdf>

⁵ Maldives NGO Shadow Report to the Committee on the Elimination of Discrimination Against Women, 2012, Hope for Women NGO, 30 September 2012, https://www2.ohchr.org/english/bodies/cedaw/docs/ngos/hopeforwomen_maldivesforpswg.pdf

	<ul style="list-style-type: none"> • Article 20 of the Constitution provides: <i>Every individual is equal before and under the law, and has the right to the equal protection and equal benefit of the law.</i> • While Article 17 of the Constitution guarantees non-discrimination based on gender (among other differences), all the rights enshrined in Chapter 2 (the bill of rights) is subject to limitations under article 16(b) which states that : <i>“The limitation of a right or freedom specified in this Chapter by a law enacted by the People’s Majlis as provided for in this Constitution, and in order to protect and maintain the tenets of Islam, shall not be contrary to article (a).”³</i> The meaning of “tenet of Islam” is provided in the Constitution as : 		<ul style="list-style-type: none"> • The subsequent inclusion of a comprehensive non-discriminatory clause in the Constitution of 2008 and the removal of the bar on women’s appointment to the position of Head of State are significant achievements.⁶ • The Gender Equality Law (18/2016) passed in 2016 also incorporated the Constitutional provision on non-discrimination based on gender as well as CEDAW provisions.⁷ This law further has the “special 		
--	--	--	--	--	--

³ Functional Translation of the Constitution of the Republic of Maldives 2008, Dheena Hussain, Ministry of Legal Reform, Information and Arts, <https://presidency.gov.mv/Pages/Index/15>

⁶ *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Maldives*, CEDAW Committee, 11 March 2015, CEDAW/C/MDV/CO/4-5, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMDV%2fCO%2f4-5&Lang=en

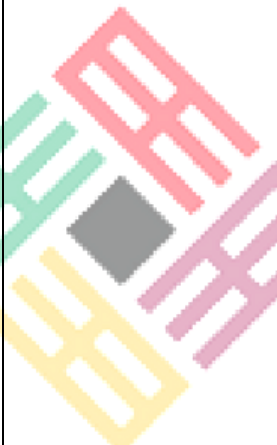
⁷ Section 2, Gender Equality Act 18/2016 [Unofficial Translation], 23 August 2016, <https://maldives.unfpa.org/en/publications/gender-equality-act>

	<p><i>“tenet of Islam” means, the Holy Qur’an and those principles of Shari’ah whose provenance is not in dispute from among those found in the Sunna of the Noble Prophet, and those principles derived from these two foundations”⁴</i></p>		<p>provision” that : <i>“No provision of the present Act shall be interpreted in a manner that contradicts the Constitution of the Republic of Maldives or the principles of Islam.”⁸</i> The CEDAW Committee has called on the Maldives to amend the law to incorporate “a definition of discrimination, in conformity with articles 1 and 2 of the Convention”.⁹</p>		
<p>2) Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws</p>	<ul style="list-style-type: none"> The right to marry and establish a family is enshrined in the Constitution 				<ul style="list-style-type: none"> The result of section 24 of the Family Act is that, if a

⁴ Article 274, Functional Translation of the Constitution of the Republic of Maldives 2008, Dheena Hussain, Ministry of Legal Reform, Information and Arts, <https://presidency.gov.mv/Pages/Index/15>

⁸ Section 3(a), Gender Equality Act 18/2016 [Unofficial Translation], 23 August 2016, <https://maldives.unfpa.org/en/publications/gender-equality-act>

⁹ Concluding observations on the sixth periodic report of Maldives, Committee on the Elimination of Discrimination against Women, 15 November 2021, CEDAW/C/MDV/CO/6, para 14(b), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMDV%2fCO%2f6&Lang=en

<p>relating to marriage and the family codified or uncodified?</p>	<p>of the Maldives which states that : "Every person of marriageable age as determined by law has the right to marry, and to establish a family as specified in law. The family, being the natural and fundamental unit of society, is entitled to special protection by society and the State." ¹⁰</p> <ul style="list-style-type: none"> • The first and codified primary law on marriage, divorce, child custody and spousal maintenance is the Family Act (4/2000) which was enacted in 2000, and its two subsequent amendments in 2013 and 2016 and associated regulations. • The law is silent on the specific point of marriage as a partnership between a husband and wife. • The law provides specific grounds for a woman to initiate divorce in a marriage 				<p>woman wants a divorce, she needs to prove one of the grounds.</p> <ul style="list-style-type: none"> • If the reason does not fall within the grounds the application is to be sent to the reconciliatory division. • A husband may pronounce a divorce with similar effect and without any grounds at all. For instance, no longer wanting to be married, wanting to marry someone else, divorce in the heat of an argument are all possibilities of effecting a divorce without grounds.
--	---	--	--	--	---

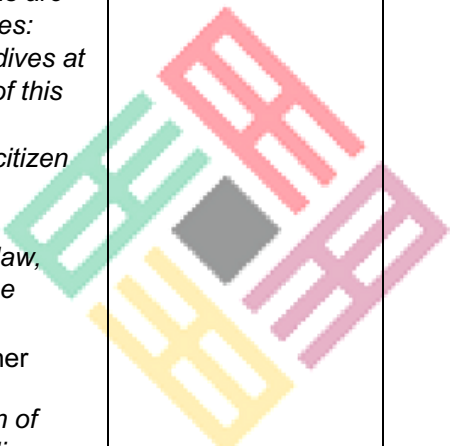
¹⁰ Article 3(a), Functional Translation of the Constitution of the Republic of Maldives 2008, Dheena Hussain, Ministry of Legal Reform, Information and Arts, <https://presidency.gov.mv/Pages/Index/15>

	but has no such limitations on men. ¹¹				
3) If codified, what are the titles of all the applicable laws?	<ul style="list-style-type: none"> • Law no. 04/2000 (Family Act) • First Amendment to the Family Act (4/2000) 11/2013, pertaining to sections 72 and 73 of the Act, ratified on 7 August 2013. • Second Amendment to the Family Act (4/2000) 9/2016, pertaining to prenuptial agreements (section 11), distribution of matrimonial property (section 32) and maintenance (35), ratified on 28 April 2016. • Family Regulation 2001 enacted pursuant to section 72 of the Family Act. • Second Amendment to the Family Act Regulation by the Supreme Court, pertaining to judicial wali and marriage to minors, dated 20 Sept. 2016. • Third Amendment to the Family Act Regulation by the Supreme Court, pertaining to wali, dated 16 October 2016. • Regulation of the Family Court. These are rules 		<ul style="list-style-type: none"> • From a policy perspective, the State views itself as "a sovereign, independent, democratic Republic formed on the principles of Islam" and the "family is the foundation of Maldivian society" which are also Constitutional provisions.¹³ 		

¹¹ Section 24, Family Act (4/2000) <http://familycourt.gov.mv/wp-content/uploads/2020/10/Family-Act-English-Translation.pdf>

¹³ Strategic Action Plan (SAP) 2019-2023, Government of Maldives, <https://presidency.gov.mv/SAP/>

	<p>specific to Family Court dated 30 Nov. 2011.</p> <ul style="list-style-type: none"> • Regulation pertaining to reconciliation of family disputes. This regulation mainly addresses matrimonial and custodial disputes. Limited to Family Court. • Regulation on the registration of marriages and divorces at Family Court • Regulation on the enforcement of judgments of Family Court. • In addition to the above, the jurisdiction of the Family Court and the Magistrate Courts are listed in Law No 22/2020 (Judicature Act), Schedule 3 and 5 respectively. It is pertinent to note that as far as the family matters are concerned, all family cases that falls within the judicial sector can be submitted to the Magistrate Court unless it is exempted by an Act. There is no such limitation or exemption. • Domestic Violence Prevention Act 3/2012, ratified on 23 April 2012 				
--	--	--	--	--	--

	<ul style="list-style-type: none"> • Gender Equality Law (18/2016), ratified on 23 August 2016.¹² • Child Rights Protection Act, 19/2019, ratified on 20 Nov. 2019. 				
<p>4) If codified, do these laws apply to all citizens irrespective of religion?</p>	<ul style="list-style-type: none"> • By Constitutional provision, all citizens of the Maldives must be Muslim. <i>“The following persons are citizens of the Maldives:</i> 1. <i>citizens of the Maldives at the commencement of this Constitution;</i> 2. <i>children born to a citizen of the Maldives; and</i> 3. <i>foreigners who, in accordance with the law, become citizens of the Maldives.”</i>¹⁴ • The Constitution further states that : <i>“Despite the provision of article (a) a non-Muslim may not become a citizen of the Maldives.”</i>¹⁵ <p>The Family Act is applicable to all marriages solemnised</p>				<ul style="list-style-type: none"> • Every Maldivian would be required under the Family Act to register all marriages solemnised in the Maldives.

¹² Gender Equality Law (18/2016), ratified on 23 August 2016 https://www.ilo.org/dyn/natlex/natlex4_detail?p_lang=en&p_isn=110448&p_count=4&p_classification=05

¹⁴ Article 9(a), Functional Translation of the Constitution of the Republic of Maldives 2008, Dheena Hussain, Ministry of Legal Reform, Information and Arts, <https://presidency.gov.mv/Pages/Index/15>

¹⁵ Article 9(d), Functional Translation of the Constitution of the Republic of Maldives 2008, Dheena Hussain, Ministry of Legal Reform, Information and Arts, <https://presidency.gov.mv/Pages/Index/15>

	and/or registered in the Maldives and the marriage of all citizens. Only Muslim marriages are registered and recognised under this Act.				
5) <i>If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam?</i>	<ul style="list-style-type: none"> • There is no difference in the application of law. In both political and legal practice, the expectation is that all Maldivians are adherents of Sunni Islam and mainly prescribe to <i>Shafi madhhab</i> in matters of religious rites. • The Constitution specifies that certain public office holders including the President, Members of Parliament, Cabinet ministers and Judges must be Sunni Muslims.¹⁶ • The Family Act recognises marriage to non-Muslims that are permitted by Islamic Shariah.¹⁷ • The Family Law expressly prohibits the marriage of a Maldivian woman to a non-Muslim foreigner.¹⁸ The law allows for a Maldivian man to marry a non-Muslim woman where such marriage is 				<ul style="list-style-type: none"> • Although section 8 of the Family Act recognises marriage to non-Muslims, in practice, non-Muslims are required to convert by application through the Ministry of Islamic Affairs in order for the marriage to be registered in the Maldives. • The definition of Islamic Shariah in Article 274 of the Constitution does not confine the concept to one

¹⁶ Article 109(b) - President / Article 73(a)(3) - MPs / Article 130(a)(3) - Cabinet ministers / Article 149(b)(1) – Judges - Functional Translation of the Constitution of the Republic of Maldives 2008, Dheena Hussain, Ministry of Legal Reform, Information and Arts, <https://presidency.gov.mv/Pages/Index/15>

¹⁷ Section 8, Family Act (4/2000)

¹⁸ Section 8(a), Family Act (4/2000)

	<p>permissible under Islamic Shariah.¹⁹</p> <ul style="list-style-type: none"> The legal meaning of Islamic Shariah is provided in the Constitution as : <i>“Islamic Shari’ah” means, the Holy Qur’an and the ways preferred by the learned people within the community and followers of the Sunnah in relation to criminal, civil, personal and other matters found in the Sunna”</i>²⁰ 				<p>sect or one Sunni <i>madhhab</i> alone.</p>
<p>6) If uncodified, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable?</p>	<ul style="list-style-type: none"> The concept of Islamic Shariah is broad in the Maldives legislative framework with the predominant school of thought prescribed as Sunni Islam. Therefore, the broader Shariah principles apply in the interpretation of law and the Family Act may be subject to Shari’ah principles of different <i>madhhab</i>, although the general adherence is to the Shafi <i>madhhab</i>. Therefore, an unaddressed issue is not necessarily restricted by one Sunni <i>madhhab</i> alone. 				

¹⁹ Section 8(b), Family Act (4/2000)

²⁰ Article 274, Functional Translation of the Constitution of the Republic of Maldives 2008, Dheena Hussain, Ministry of Legal Reform, Information and Arts, <https://presidency.gov.mv/Pages/Index/15>

<p>7) Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</p> <p><u>Applicable CEDAW Provision</u></p> <p>Article 16(1)(a)</p> <p>General Recommendation 21</p>	<ul style="list-style-type: none"> To a large extent, such discriminatory language is not prevalent in legislation. However, there are areas in which male responsibility is specifically provided, often relating to financial matters. For instance, on parental responsibilities, the following conditions exist. The Family Act states that the financial responsibility of housing and caring for parents fall on male children above the age of 18 years.²¹ Section 58(b) specifies that male and female children have equal responsibility for parental care except for the provisions in 58(a). 				<ul style="list-style-type: none"> The marriage sermon has a specific reference to the obedience of the wife to the husband, as below. <i>“So long as he does not go against the high principles and just ways of Islam, the wife must be loyal and obedient to the husband. And the husband must also be loyal and kind to the wife.”</i>²² [unofficial translation]
<p>Minimum and equal age of marriage</p>					
<p>1) Is there a minimum age of marriage?</p>	<ul style="list-style-type: none"> The minimum age of marriage is 18 years (by the Gregorian calendar) without exception.²³ 				<ul style="list-style-type: none"> This would be the practice from the enforcement of

²¹ Section 58(a), Family Act (4/2000)
²² Marriage Khutba, Family Court [undated]
²³ Section 25, Child Rights Protection Act (19/2019)

					the Child Rights Protection Act (2019) from 20 February 2020. Any other practice would be unlawful.
2) Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)?	<ul style="list-style-type: none"> There are no exceptions, and the minimum age has universal application.²⁴ 				
3) Is there an absolute minimum age without exceptions?	<ul style="list-style-type: none"> 18 years is the absolute minimum age.²⁵ 				
4) Is there equality in the minimum age of marriage?	<ul style="list-style-type: none"> There is equality in the minimum age of marriage.²⁶ 				
5) Is there a minimum age verification process before the marriage is concluded? <u>Applicable CEDAW Provision</u>	<ul style="list-style-type: none"> A formal identification document issued by the government must be submitted to ensure age. 			<ul style="list-style-type: none"> There is a formal application process for marriages and their registration, requiring the 	<ul style="list-style-type: none"> In practice identification documents would be the birth certificate, National Identification Card (which

²⁴ Section 25, Child Rights Protection Act (19/2019) since its enforcement on 20 February 2020
[https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=110452&p_count=3&p_classification=04#:~:text=Name%3A-Children's%20Rights%20Protection%20Act%2C%202019%20\(Act%20No.,19%2F2019\).&text=Abstract%2FCitation%3A,law%2C%20and%20prohibits%20child%20lab](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=110452&p_count=3&p_classification=04#:~:text=Name%3A-Children's%20Rights%20Protection%20Act%2C%202019%20(Act%20No.,19%2F2019).&text=Abstract%2FCitation%3A,law%2C%20and%20prohibits%20child%20lab)
or.

²⁵ ibid

²⁶ ibid

<p>Article 16(2) General Recommendation 21</p>				<p>submission of personal identification documents. During this process, the parties getting married are summoned to the court to verify information in the application form and other checks on their status of marriage.²⁷</p> <ul style="list-style-type: none"> • The formal marriage application procedure is published on the website of the Family Court.²⁸ 	<p>every citizen is issued with) or Passport.</p> <ul style="list-style-type: none"> • For purposes of Marriage a valid National Identification Card (this is based on the birth certificate) will need to be furnished for administrative purposes of solemnising the marriage.
<p>Consent to marriage / Forced marriage</p>					

²⁷ Family Court, Maldives, <http://familycourt.gov.mv/kaiveni/>
²⁸ ibid

<p>1) <i>Is a marriage valid without the woman's consent?</i></p>	<ul style="list-style-type: none"> The Family Act requires offer and acceptance for marriage to be valid. The law specifies that a marriage must be solemnised by a <i>mauzoon</i> in the presence of both parties, the wali (where applicable) and two witnesses.²⁹ Forced marriage is a legally penalised offence (see question 2 below).³⁰ Regulation states that the persons intending to marry must attend the court prior to the marriage to clarify information from both individuals.³¹ The Family Act specifically provides that for a marriage to be solemnised and registered, it must have the consent of the man and woman desirous to get married.³² 			<ul style="list-style-type: none"> All marriages require an application process to the court, where identification papers are required from those getting married, the wali and two witnesses. The court will then summon the parties getting married to verify information provided in the application forms.³³ 	<ul style="list-style-type: none"> Even though section 9 requires consent of the woman to have been obtained, in practice, there is no way of verification whether the consent procured was by coercion or of free will. Upon submission of the form to get married, the parties are required to attend the Family Court to verify the information provided in the form. Although the current practice paves a way to ensure consent, there
---	--	--	--	--	---

²⁹ Section 3(a), Family Act (4/2000)

³⁰ Section 63, Family Act (4/2000)

³¹ Section 93(b), Family Act Regulation (2011)

³² Section 9(a), Family Act (4/2000)

³³ Family Court, Maldives, <http://familycourt.gov.mv/kaiveni/>

					<p>is no formal mechanism in place to guarantee free will/consent to the marriage.</p> <ul style="list-style-type: none"> As there is no mechanism to verify or ensure that consent was freely given, it is possible that forced marriages may be solemnised.
2) <i>Is the practice of forcing women to marry against their will (ijbar) prohibited?</i>	The Family Act provides that it is an offence to coerce a person into marriage. The offender shall be subject to a fine between MVR 1000 and MVR5000 or exile for a period not exceeding 6 months. ³⁴				
3) <i>Is it mandatory to register a marriage?</i>	Registration of marriage, be it solemnised in the Maldives or elsewhere, is mandatory for all citizens. ³⁵				
4) <i>Is there a standard marriage contract?</i>	<ul style="list-style-type: none"> There is no standard marriage contract, other than a certification of marriage recording the identification details and age of the 				<ul style="list-style-type: none"> It is not customary or common practice to have additional terms

³⁴ Section 63, Family Act (4/2000)

³⁵ Section 19, Family Act (4/2000)

	<p>parties, wali, <i>mahr</i> and the date and time of marriage.</p> <ul style="list-style-type: none"> The Family Act provides that the law does not prohibit a contract pertaining to the rights and obligations of the parties to a marriage. This is in practice more like a prenuptial agreement as opposed to the marriage contract.³⁶ 				and conditions of marriage in this contract.
<p>5) <i>If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(a), 16(1)(b)</p> <p>General Recommendation 21</p>	<ul style="list-style-type: none"> Not Applicable. 				
Women's capacity to enter into marriage					
<p>1) <i>Is consent of a guardian (wali) required?</i></p>	<ul style="list-style-type: none"> The Family Act requires consent provided through wali for the marriage of a woman.³⁷ This may be her father or her closest male relative from the paternal side 				<ul style="list-style-type: none"> Reference is made to Hakim (the ruler) in the Family Act as per Shari'ah law. However,

³⁶ Section 11, Family Act (4/2000)

³⁷ Section 3(a), Family Act (4/2000)

	<p>(starting with the eldest male). In the event there is no identified relative as per Shari'ah requirement, the wali is delegated by a judge on behalf of the head of state.</p> <ul style="list-style-type: none"> Regulation specifies that the "wali of the hakim" (or judicial wali) will be provided by the Supreme Court.³⁸ 				<p>the traditional concept of delegation by the Head of state as Hakim is not clear in practice. A Supreme court circular governs the procedural aspects of this at present.³⁹</p>
<p>2) Can the woman choose her own wali?</p>	<ul style="list-style-type: none"> A woman cannot choose her own wali. However, where she is unable to obtain <i>wali</i> from the existing default <i>wali</i> provider, she can apply to the court for a judicial <i>wali</i> in certain circumstances.⁴⁰ 				
<p>3) Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage?</p>	<ul style="list-style-type: none"> The Family Act provides the option for a woman to seek a judicial <i>wali</i> in certain circumstances where her legal <i>wali</i> provider refuses to give consent.⁴¹ 		<ul style="list-style-type: none"> The Supreme Court's decision to be the "Hakim" is a policy decision of the court, rather than a statutory requirement. 	<ul style="list-style-type: none"> A judicial <i>wali</i> (or Hakim wali) is provided as per the family law regulations, issued by the Supreme Court.⁴² 	

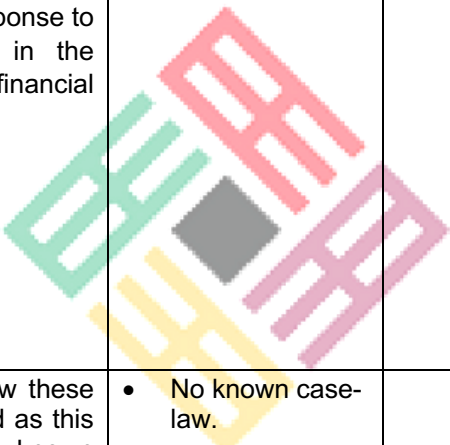
³⁸ Section 10, Second Amendment to the Family Act Regulation (2016)

³⁹ Third Amendment to the Family Act Regulation, 16 October 2016, Supreme Court of Maldives

⁴⁰ Section 9(b), Family Act (4/2000)

⁴¹ Section 9(b), Family Act (4/2000)

⁴² Section 10, 2nd Amendment to the Family Act Regulation (2016)

<p>4) <i>Can a woman negotiate her marriage rights prior to marriage and can these rights be changed during marriage?</i></p>	<ul style="list-style-type: none"> A woman may negotiate marriage rights to some extent. A prenuptial agreement may be executed in accordance with Shari'ah. What these Shari'ah requirements are, is not clear in the Family Act and will depend on development of the law.^{43,44} (Also refer to the response to question 1 above, in the section on women's financial rights after divorce.) 				<ul style="list-style-type: none"> A prenuptial agreement is rare and negotiations are not a common practice in the cultural context, where both men and women choose their spouse freely as customary practice. It is unclear as to whether these rights can be or even are changed during the marriage. This is yet to be tested under the Family Act.
<p>5) <i>If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(a), 16(1)(b)</p>	<ul style="list-style-type: none"> It is unclear as to how these rights can be changed as this is at present not a known practice. 	<ul style="list-style-type: none"> No known case-law. 			

⁴³ Second Amendment to the Family Act (4/2000) 9/2016

⁴⁴ Comprehensive Shadow Report to the CEDAW Committee, Uthema, April 2020, Part I, para 1 (f), <https://uthema.org/wp-content/uploads/Uthema-Comp-CEDAW-Shadow-Report-20Apr2020.pdf>

General Recommendation 21					
Polygamous marriage					
1) <i>Does the law or marriage contract prohibit polygamy or impose strict conditions on such practice?</i>	<ul style="list-style-type: none"> The Family Act specifically states that a woman who is already in a marriage (or someone's wife) cannot contract marriage with another man.⁴⁵ The Family Act specifically states that marriage with more than one woman may be approved by the Registrar of Marriage, based on a man's financial competence to provide for those he is responsible for. This would usually be a current wife and/or children.⁴⁶ The income that determines a man's financial competence to warrant approval by the Registrar of Marriage is determined as MVR 15,000 [USD 973] by the Family Court.⁴⁷ 		<ul style="list-style-type: none"> There are specific policy gaps in the administration of polygamous marriages and court processes. Some of these issues are identified in available research reports.⁴⁹ 		<ul style="list-style-type: none"> A polygamous marriage contract outside the court does not necessarily invalidate the marriage. However, lack of a marriage certificate will render the birth certificate of the child to be stated as fatherless. This birth certificate will be temporary. Legitimacy of children has not been challenged to date under such circumstances.

⁴⁵ Section 6(a), Family Act (4/2000)

⁴⁶ Section 12, Family Act (4/2000)

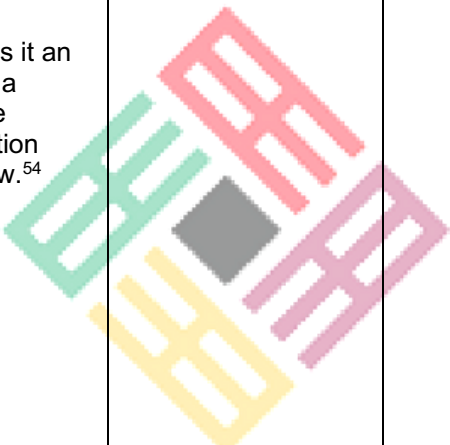
⁴⁷ Sections 116(a-2) and 117(c), Family Court Regulation 2011 ; (Note : this rule is also applicable to marriages between non-national men and Maldivian women, as per Section 105(e-1) of the same regulation.)

⁴⁹ Joint Report on Article 16, Muslim Family Law and Muslim Women's Rights in Maldives, Revised & Updated - September 2021, <https://www.musawah.org/resources/musawah-uthema-joint-thematic-report-on-maldives-2021/>

	<p>Notably, section 116 (d) provides a caveat reserving the decision about financial competency to be at the court's discretion, citing Section 12 of the Family Act. This provides room for discretionary practices by the court that may not require the above amount specified in the court's regulation.</p> <p>This amount will differ if the marriage is sought in the Magistrate Courts.</p> <ul style="list-style-type: none"> The Family Act specifies 4 instances where a woman cannot contract another marriage and provides a clear provision prohibiting polyandry.⁴⁸ 				
<p>2) <i>Is the permission of the court required for a polygamous marriage?</i></p>	<ul style="list-style-type: none"> The Family Act requires an application must be made to the Registrar of Marriage requesting approval for a polygamous marriage.⁵⁰ The Family Act requires the approval of the Registrar of Marriage prior to solemnisation of any 				<ul style="list-style-type: none"> The Registrar of Marriage is at the Family Court. Solemnisation of a marriage in a magistrate court may not entail the approval or

⁴⁸ Section 6(a-d), Family Act (4/2000)

⁵⁰ Section 12, Family Act (4/2000)

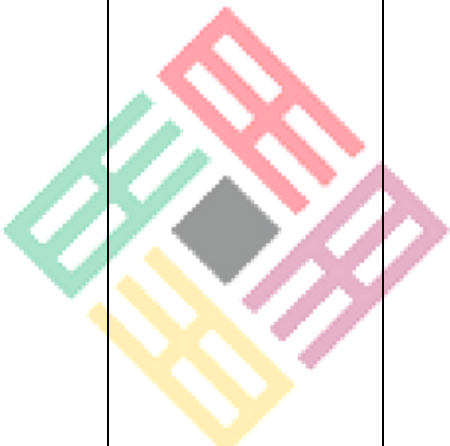
	<p>marriage under the Family Act.⁵¹</p> <ul style="list-style-type: none"> • The Family Act provides that no marriage solemnised in contravention of the Act shall be registered.⁵² • The Family Act makes it mandatory for the Registrar of Marriage to maintain a consolidated Marriage Registry.⁵³ • The Family Act makes it an offence to solemnise a polygamous marriage without the authorisation required under the law.⁵⁴ 				<p>determination of financial capacity by the Registrant.</p> <ul style="list-style-type: none"> • It would be possible to avoid proving a man's financial competence, if marriage is solemnised in an island. • According to section 12 of the Family Act, polygamous marriage under the Family Act requires authorisation from the Registrar of Marriage, but Magistrate Courts in the islands, solemnise marriages without such authorisation and in violation
--	--	---	--	--	---

⁵¹ Section 14, Family Act (4/2000)

⁵² Section 19(b), Family Act (4/2000)

⁵³ Section 20, Family Act (4/2000)

⁵⁴ Section 65, Family Act (4/2000)

					<p>of the Family Act.</p> <ul style="list-style-type: none"> • Polygamous marriages contracted without the approval of the Registrar of Marriage would be in violation of sections 12, 14, 19(b), 20 and actionable under section 65 of the Family Act. • It must also be noted that according to section 68 of Family Act, failure to notify acts in contravention of the Act is also an offence under the Act. • Section 70 of the Family Act makes it an offence for failure to act in accordance with the Family Act, punishable with a fine not
--	--	---	--	--	---

					exceeding MVR 1000 [USD 65] or exile not exceeding 6 months.
3) <i>Is the permission of an existing wife required for a polygamous marriage?</i>	<ul style="list-style-type: none"> The permission of an existing wife is not required by law. However, registration of any type of marriage is mandatory.⁵⁵ 			<ul style="list-style-type: none"> The court is required to verify whether the current wife and children are provided with maintenance or not.⁵⁶ 	<ul style="list-style-type: none"> Permission may be granted if there is no case pending by the current wife for claim in maintenance. The husband can file a case in court to ascertain that maintenance is provided to the current wife. This is a recent trend.
4) <i>Are temporary marriages recognised?</i>	<ul style="list-style-type: none"> Temporary marriages are not recognised in the Maldives. 	n/a	n/a	n/a	<ul style="list-style-type: none"> The traditional practice of “<i>fah kendun</i>” (similar to <i>nikah halala</i>) which was a legal requirement to marry another man before re-marry an ex-

⁵⁵ Section 19, Family Act (4/2000)

⁵⁶ Circular No: 2019/03/SC (29 July 2019), Supreme Court of Maldives

					husband after three consecutive divorces and re-marriage to him. This practice is now prohibited. ⁵⁷
<p>5) <i>Is it necessary to register a polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(a), 5(a)</p> <p>General Recommendation 21</p>	<ul style="list-style-type: none"> Registration is mandatory for all marriages without exception.⁵⁸ 				<ul style="list-style-type: none"> It is highly probable that there are many unregistered polygamous marriages in practice. One possible reason is also because there is no centralised marriage register.
Divorce					
<p>1) <i>Is there equal right to divorce? Can the husband divorce at will and without grounds?</i></p>	<ul style="list-style-type: none"> There is no equal right to access divorce in the Maldives, although either party may initiate divorce. The husband may pronounce verbal divorce outside the court, at will – being “desirous of divorce”.⁵⁹ 	<ul style="list-style-type: none"> Case Law where the High Court has refused to accept <i>rujoo’</i> divorce due to absence of relevant 		<ul style="list-style-type: none"> Divorce registration is still possible after 3 days, upon payment of an accrued administrative fine based on 	<ul style="list-style-type: none"> Failure to register an out of court divorce would not nullify its effects. The situation may get complicated if the couple

⁵⁷ Section 66, Family Act (4/2000)

⁵⁸ Section 19, Family Act (4/2000)

⁵⁹ Section 23(a), Family Act (4/2000)

	<p>This would have the effect of dissolving the marriage unilaterally. There need not be any justifiable grounds or reason for such pronouncement. The law states that a man wanting to divorce his wife should do so by applying for divorce as per the regulations under the law and with the approval of a judge and when the husband applies for divorce, the court will summon both parties.⁶⁰ If the wife does not consent to divorce, the matter will be sent to reconciliation.⁶¹</p> <ul style="list-style-type: none"> • A wife will have no option but to file for a divorce in a court and seek a pronouncement by either the husband or court, whereas the husband does not need to. • The Family Act provides the conditions and procedure by which “a wife” could apply for divorce.⁶² 	<p>registration processes : <i>I Athif v A Faiza</i> 2014/HC-A/57⁶³ and <i>U Hussain v A Khaleel</i> 2015/HC-A/348⁶⁴</p>		<p>length of delay in registration.</p>	<p>have conjugal relations within three months of such pronouncement irrespective of its registration.</p> <ul style="list-style-type: none"> • The legal effect of resuming conjugal relations results in a <i>rujoo'</i> of the marriage according to general principles of Shariáh. However, the High Court has refused to accept such <i>rujoo'</i> based on the language of section 26 of Family Act, unless it has been registered in court in accordance with the said
--	--	--	--	---	--

⁶⁰ Section 23 (b), Family Act (4/2000)

⁶¹ Section 23 (c), Family Act (4/2000)

⁶² Section 24, Family Act (4/2000)

⁶³ High Court decision : http://www.highcourt.gov.mv/dhi/mediamanager/2014-57_final.pdf

⁶⁴ High Court decision : <http://www.highcourt.gov.mv/dhi/mediamanager/2015-348.pdf>

					<p>provision. (case law : <i>I Athif v A Faiza</i> 2014/HC-A/57 and <i>U Hussain v A Khaleel</i> 2015/HC-A/348⁶⁵)</p> <ul style="list-style-type: none"> • In reality however, it is possible to have unregistered divorces and <i>rujoo'</i> (reverse). • The couple would be considered to be married again under Shariáh law whereby any children would be considered legitimate and born during the substance of a marriage albeit unregistered.
--	--	--	--	--	--

⁶⁵ See footnotes 60 and 61 above

<p>2) <i>What are the main forms of divorce?</i></p>	<ol style="list-style-type: none"> 1. <i>Raju'ee</i> divorce (consensual divorce). This occurs when divorce is pronounced by the husband; and is uncontested.⁶⁶ 2. <i>Thafreeq</i> divorce (dissolution of marriage by the Court) This occurs when the husband contests the divorce and the Court finds that the marriage has irretrievably broken down.⁶⁷ 3. <i>Faskh</i> divorce - Annulment of marriage on application by wife based on the following grounds⁶⁸: <ol style="list-style-type: none"> a. lapse of a period of one year without knowing the whereabouts of her husband; b. failure of husband to provide maintenance for a period exceeding three consecutive months (acted in default of two Court Orders to pay maintenance by the husband) c. husband's impotence; d. insanity for a period exceeding 2 years; e. husband's continued suffering from a 				
--	---	--	--	--	--

⁶⁶ Section 23 (b), Family Act (4/2000)

⁶⁷ Section 24 (c), Family Act (4/2000)

⁶⁸ Section 28, Family Act (4/2000)

	<p>communicable and an incurable disease</p> <p>f. occurrence of other events/incidents that justifies a <i>faskh</i> under Shari'ah</p> <p>4. <i>Khul'u</i> divorce - initiated on application by the wife whereby the parties agree on divorce upon the wife making a payment or giving something of monetary value in return of granting divorce.⁶⁹</p> <p><i>Note : The Family Act provides for the annulment of a marriage in circumstances where the husband is perceived to have died. If a wife had not heard from the husband for up to 4 years, the court shall investigate the matter and declare the death of the husband, on which date, the marriage would be dissolved.</i>⁷⁰</p>				
--	--	--	--	--	--

⁶⁹ Section 27, Family Act (4/2000)

⁷⁰ Section 30, Family Act (4/2000)

<p>3) <i>Can all forms of divorce be sought only through the courts?</i></p>	<ul style="list-style-type: none"> • Law requires all divorces to be sought through the courts. However a pronouncement outside of court is still valid and must be registered. • Divorce outside the court carries penalties as per the Family Act.⁷¹ • Penalties include a fine of MVR 5000 [USD 324] or banishment or house arrest not exceeding 6 months. 			<ul style="list-style-type: none"> • Divorce registration is still possible after 3 days, upon payment of an accrued administrative fine based on length of delay in registration. 	<ul style="list-style-type: none"> • The use of these penalties are not known as these cases do not reach news headlines, and case law especially on family matters are not published.
<p>4) <i>Are the grounds for divorce the same for the husband and wife?</i></p>	<ul style="list-style-type: none"> • The grounds for divorce that can be used by a woman and a man may differ. • A husband may pronounce and effect a divorce outside of court, without any reason or justification with lasting consequences. • The Family Act provides 4 conditions and procedures by which “a wife” could apply for divorce.⁷² These 4 grounds to seek a divorce are : <ul style="list-style-type: none"> i) Commission of an act by the husband that injures the integrity of the wife. 		<ul style="list-style-type: none"> • There are law and policy issues that require improved coherence in matters relating to family law and practice. The current family law is in need of modernisation and there is an initiative to reform the existing law by the Attorney 		<ul style="list-style-type: none"> • If the husband is unwilling to divorce the wife, it is very difficult and time consuming for a woman who has initiated the process. There is a mandatory reconciliation process under section 25 of the Family Act. • The mandatory reconciliation process has the

⁷¹ Section 67, Family Act (4/2000)

⁷² Section 24, Family Act (4/2000)

	<p>ii) Cruelty by husband towards wife. iii) Compulsion by husband towards woman to commit an act unlawful by religion. iv) Abstinence by husband, without just cause, from performing sexual intercourse with the wife for a period exceeding 4 months.</p> <ul style="list-style-type: none"> • A wife would have to go through a long and tedious process through the court, without an explanation (not to be confused with justifiable grounds), requesting a divorce and may not even be successful with the first application. Technically a wife may file for all four types of divorces mentioned above, depending on the circumstances. 		<p>General's Office of the Maldives. The CEDAW Committee has called on the Maldives to expedite proposed family law reforms.⁷³</p>		<p>possibility of being misused with malicious intentions, especially if the woman may wish to obtain a divorce in order to remarry.</p> <ul style="list-style-type: none"> • There also exists an inequity in practice in Male' and the islands. The Magistrate courts do not have an automatic reconciliatory mechanism in place, unlike the Family Court, which has a separate section handling reconciliation. In the islands, the Magistrate is to act as the mediator, often making it next
--	--	--	---	--	--

⁷³ Concluding observations on the sixth periodic report of Maldives, Committee on the Elimination of Discrimination against Women, 15 November 2021, CEDAW/C/MDV/CO/6, para 14(c), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMDV%2fCO%2f6&Lang=en

						to impossible for a woman in an island to obtain a divorce if the husband is unwilling and <i>tafriq</i> divorce is very rare, especially in the islands, adding further social obstacles within the community. This process may take 9 month to 1 year in Male' and will most likely be frustrated in the islands, resulting in the woman being forced to remain in the marriage.
5) <i>Is unilateral divorce prohibited?</i>	<ul style="list-style-type: none"> As the law stands, a man has the ability to declare unilateral divorce, although he is required to register his divorce formally in court.^{74,75} 					

⁷⁴ Section 23(a), Family Act (4/2000)

⁷⁵ Section 40, Family Act Regulation 2001

	<p>A woman can only seek divorce through an application to the court under certain grounds.⁷⁶ The regulation specifically requires a woman to inform the court within 3 days of her knowing about her divorce.⁷⁷ The language of the regulation puts a higher emphasis on the woman to do this, despite the fact that a man has the freedom to declare unilateral divorce.</p> <p>(see also responses to question 1 & 4 above in this section.)</p>				
<p>6) <i>If unilateral divorce is not prohibited, what is the procedure e.g. are witnesses required or does the spouse need to go to court?</i></p>	<ul style="list-style-type: none"> The divorce is required to be registered through a court process. Witnesses are not mandatory. Parties or their representatives may ascertain the same in court. 			<ul style="list-style-type: none"> An application for divorce must be submitted to the court within 3 days of divorce. The necessary documents to register the divorce (eg. marriage certificate) must be provided to the court within 7 days of 	<p>In the event a wife claims the husband has pronounced divorce outside of court and in the absence of witnesses, an oath will be administered on the husband.</p>

⁷⁶ Section 24(a), Family Act (4/2000)

⁷⁷ Section 40, Family Act Regulation 2001

				establishment of the divorce and the divorce certificate must be collected from the court within 10 days of registration of divorce. ^{78,79}	
7) <i>Is the right to divorce delegated to the wife?</i>	<ul style="list-style-type: none"> Either party may delegate the right to execute divorce and represent them in court by such appointment as allowed in the Family Court regulation.⁸⁰ 			<ul style="list-style-type: none"> Parties are required to obtain an attested document from a relevant authority to delegate authority to act on their behalf. This practice is only prevalent in the Family Court (in Male'), as this is provided for in the Family Court Regulation.⁸¹ The position of the Magistrates Court is unspecified. 	

⁷⁸ Sections 40 and 41, Family Act Regulation 2001

⁷⁹ Section 122, Family Court Regulation 2011

⁸⁰ Section 39 and 40, Family Court Regulation 2011

⁸¹ Section 39, Family Court Regulation 2011

<p>8) <i>If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Article 16(1)(c)</p>	<ul style="list-style-type: none"> All divorces must be concluded through the court, and divorce registration is a mandatory legal requirement.⁸² 			<ul style="list-style-type: none"> The divorce procedure involves the application for a divorce to the relevant court where it is processed using relevant identification and other documentation and checks using the court records and the issuance of a divorce certificate.⁸³ 	<ul style="list-style-type: none"> Refer responses to questions 3, 4 and 6 above in this section.
<p>Women's financial rights after divorce</p>					
<p>1) <i>Is there a legal concept of matrimonial assets?</i></p>	<ul style="list-style-type: none"> The concept of matrimonial assets is currently not a well-recognised legal concept within the jurisdiction. The Family Act states that in the absence of a prior agreement on maintenance of the wife and children, the court has discretion in deciding 	<ul style="list-style-type: none"> No case law to date. 	<ul style="list-style-type: none"> There are coherence issues in policy, law and practice in relation to the Family Law amendment relevant to matrimonial assets and the division of 		<ul style="list-style-type: none"> This is yet to be tested in practice.

⁸² Section 31, Family Act (4/2000)

⁸³ Sections 40 and 41, Family Act Regulation 2001

	<p>such, prior to granting a divorce.⁸⁴</p> <ul style="list-style-type: none"> • The Family Act does not prohibit prenuptial agreements. This does not however make any reference to matrimonial assets.⁸⁵ • A 2016 amendment to the Family Act recognises the concept of matrimonial assets.⁸⁶ However, the language of the law undermines the applicability of the concept due to limitations invoking “Shari’ah compliance” of prenuptial agreements, which undermine the application of the law in practice.⁸⁷ 		matrimonial property. ⁸⁸		
<p>2) <i>Is there equal division of marital property during marriage and at its dissolution?</i></p>	<ul style="list-style-type: none"> • There is no practicable legal recognition of the division of marital property equitably at dissolution. The issue is compounded by the language of the law which makes the recognition of and 				<ul style="list-style-type: none"> • Practical application is questionable due to the limitations

⁸⁴ Section 32, Family Act (4/2000)

⁸⁵ Section 11, Family Act (4/2000)

⁸⁶ Section 32, Second Amendment to the Family Act (9/2016)

⁸⁷ Comprehensive Shadow Report to the CEDAW Committee, Uthema, April 2020, Part I, para 1 (f), <https://uthema.org/wp-content/uploads/Uthema-Comp-CEDAW-Shadow-Report-20Apr2020.pdf>

⁸⁸ *ibid*

	<p>distribution of matrimonial assets merely theoretical.⁸⁹</p> <ul style="list-style-type: none"> If there is a dispute as to the division or acquisition of matrimonial property, the Court is required to take into account certain factors in determining an equitable proportion. In this regard, although there is no direct involvement of the wife in acquiring the property or gaining financial returns, her role as the mother of the child and in upholding the values of the marriage will be recognised and given due consideration when determining an equitable share.⁹⁰ This clause is dependent on the existence of a “Shari’ah compliant” prenuptial agreement and remains inapplicable in practice. 				<p>imposed by the law.⁹¹</p>
<p>3) <i>Is the woman’s role as wife and mother recognised as contribution to acquisition of assets?</i></p>	<ul style="list-style-type: none"> The 2016 amendment to the Family Act has a sub-section that could be interpreted as recognising the concept of a woman’s contribution to sustain the marriage as wife 				<ul style="list-style-type: none"> No known practical application to date. Women’s lived realities show

⁸⁹ Section 32, Second Amendment to the Family Act (9/2016)

⁹⁰ Section 32(f-3), Second Amendment to the Family Act (9/2016)

⁹¹ Comprehensive Shadow Report to the CEDAW Committee, Uthema, April 2020, Part I, para 1 (f), <https://uthema.org/wp-content/uploads/Uthema-Comp-CEDAW-Shadow-Report-20Apr2020.pdf>

	and mother of the children, which has substantive value. However, the contradictions and limitations within the broader provision negate any potential practical application of such a concept. ⁹²				there is no recognition of women's contributions as joint-matrimonial assets at divorce. ⁹³
4) <i>What spousal maintenance are available to the wife after a divorce?</i>	<ul style="list-style-type: none"> • <i>Iddah</i> alimony - consists of a minimum of MVR 2000 per month [USD 130] for the duration of the 3 month <i>iddah</i> period.⁹⁴ • The law provides for the divorced woman's right to accommodation, as follows : "Where the divorced wife during her marriage lived at the residence of the husband or where custody of children of the marriage is vested in the divorced wife, she shall not be removed from that residence of the husband against her will during the prescribed waiting period of <i>iddah</i> or during the 	<ul style="list-style-type: none"> • 2018/HC-A/358⁹⁸ Case refers to the application of maintenance for the children and right to accommodation as per Section 38 of the Family Act. The wife's claim to such expenses, specifically the right to accommodation expenses from the ex-husband and children's father is 			<ul style="list-style-type: none"> • The practical implementation of the legal provisions, especially in the Greater Male' Area is questionable given the context of high rents and low pay, which can undermine the purpose and intent of the law given the lived realities of families.⁹⁹ Lived experience suggests the

⁹² Section 32(f-3), Second Amendment to the Family Act (9/2016)

⁹³ Raula's Story, Part 2 of 3 - Women's Lived Realities : Maldives, Uthema, March 2018

https://www.youtube.com/watch?v=2qN4IsGbURc&list=PLZQL_QMqfnbB_IHLt9wyq81nGg1W_PSod&index=2&t=35s&ab_channel=Uthema

⁹⁴ Section 63(a), 1st Amendment to the Family Act Regulation (2014)

⁹⁸ Case details not published

⁹⁹ Raula's Story, Parts 1-3 - Women's Lived Realities : Maldives, Uthema, March 2018

https://www.youtube.com/playlist?list=PLZQL_QMqfnbB_IHLt9wyq81nGg1W_PSod

	<p>period of that custody, unless she is provided by the husband with alternate accommodation."⁹⁵</p> <ul style="list-style-type: none"> Regulation specifies a fixed amount in childcare support at divorce, which includes MVR 2000 [USD 130] per month for the first child and a minimum of MVR 1000 [USD 65] per month for each additional child.⁹⁶ There is no bar on a higher amount than specified being provided.⁹⁷ Childcare support is required to be paid until the child reaches 18 years. 	<p>supported by the Family Court's judgment and upheld by the High Court on appeal.</p> <ul style="list-style-type: none"> Divorced wife can also claim rent for accommodation of children and herself, based on the income of the husband. 			absence of oversight in implementation.
5) <i>Is she entitled to maintenance during the waiting period after the divorce (iddah)?</i>	<ul style="list-style-type: none"> <i>Iddah</i> alimony - consists of a minimum of MVR 2000 per month [USD 130] for the duration of the 3 month <i>iddah</i> period.¹⁰⁰ 				
6) <i>Is she entitled to a 'gift' upon divorce (muta'a)?</i>	<ul style="list-style-type: none"> Mut'a (or gift given by the husband to the wife upon divorce) is not practiced in the 				<ul style="list-style-type: none"> Not applicable.

⁹⁵ Section 38, Family Act (4/2000) [English translation]

⁹⁶ Section 65(a), 1st Amendment to the Family Act Regulation (2014)

⁹⁷ Section 65(b), 1st Amendment to the Family Act Regulation (2014)

¹⁰⁰ Section 63(a), 1st amendment to the Family Regulation (2014)

<p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(c), 16(1)(h), 15(2)</p> <p>General Recommendations 21, 29</p>	<p>Maldives. There is no reference to this in law.</p>				
<p>Custody of Children</p>					
<p>1) <i>Do parents have equal rights over the custody of their children?</i></p>	<ul style="list-style-type: none"> • Parents do not have equal custody rights, with the mother and the maternal line having priority in matters of child custody and the father having guardianship rights. • The Family Act specifies that priority will be given to the mother of the child in matters of custody rights.¹⁰¹ • There are conditions whereby the mother may not qualify for custody rights, in which case the line of custody is provided in law.¹⁰² • The law provides the relatedness line of custody in order or priority, starting with the mother, maternal grandmother (and the maternal line of the mother), father, paternal grandmother 	<ul style="list-style-type: none"> • Judicial precedents exist which recognises the mother as the primary custodian. Some of the cases are listed below: <ul style="list-style-type: none"> • High Court, Case No: 2009/HC-A/97 • High Court, Case No: 2013/HC-A/279 • High Court, Case No : 2013/HC-A/52 			<ul style="list-style-type: none"> • Priority is given to the mother of the child in custody cases, dependent on the circumstances of the case relevant to the specified provisions of law.

¹⁰¹ Section 40(a), Family Act (4/2000)

¹⁰² Section 40(b) and 41, Family Act (4/2000)

	(and the maternal line of the father). ¹⁰³ Notably, the preferred line of custody is for female relatives on both parents' side, including siblings.				
2) <i>If no, who has priority rights over the child?</i>	<ul style="list-style-type: none"> The Family Act stipulates that the mother has priority over the custody of the child until the child reaches 7 years of age.¹⁰⁴ This period of custody can be extended if requested from the court by the custodian, at the discretion of the court.¹⁰⁵ Such extension can be allowed until the male child reaches 9 years and the female child reaches 11 years by the Hijri calendar. The law provides that when the duration of custody is completed or when the child has reached the stipulated age, the child has the right to choose which parent they wish to live with.¹⁰⁶ While a mother has the primary custodial rights to the child, if she chooses to re-marry someone who is 	<ul style="list-style-type: none"> High Court Case No. 2019/HC-A/16 (where the child was allowed to choose which parent to live with.) 			<ul style="list-style-type: none"> The general practice is for the mother and the maternal family to have custody rights of the child, although this may change depending on the circumstances of the individual case, relevant to the provisions of the law.

¹⁰³ Section 71, Family Act Regulation (2001)

¹⁰⁴ Section 40, Family Act (4/2000)

¹⁰⁵ Section 44(a), Family Act (4/2000)

¹⁰⁶ Section 44(b), Family Act (4/2000)

	outside prohibited degrees of marriage to the child (or <i>mahram</i>), she stands to lose her right to custody. ¹⁰⁷				
3) <i>Is custody decided based on the best interest of the child?</i>	<ul style="list-style-type: none"> The law states that paramount consideration should be given to the welfare of the child.¹⁰⁸ In all matters relating to the child, the Court is required to give due regard to the best interest of the child.¹⁰⁹ In addition to this, the law requires all authorities to give due consideration in interpreting and applying the law to the UN Convention on the Rights of the Child (CRC), other conventions relating to children, optional protocols and to international best practices applied in democratic societies.¹¹⁰ 	<ul style="list-style-type: none"> Case Law references - awarding custody based on the best interest of the child : <ul style="list-style-type: none"> 2008/HC-A/146 2011/HC-A/216 2014/HC-A/75 High Court Case No. 2019/HC-A/112 is one of the more recent cases pertaining to custody where the Court gave due regard to Section 40 (e) and further applied best interest principles embodied in the CRC. 			<ul style="list-style-type: none"> The practice of the Court is to ascertain the best interest of the child in granting custody.

¹⁰⁷ Section 42(a), Family Act (4/2000)

¹⁰⁸ Section 40(e), Family Act (4/2000)

¹⁰⁹ Section 8, Child Rights Protection Act (19/2019)

¹¹⁰ Section 3, Child Rights Protection Act

<p>4) <i>Do mothers automatically lose custody upon remarriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p>	<ul style="list-style-type: none"> The mother may lose custody rights upon her marriage to a person who is not within prohibited degrees of marriage in respect of the child ; if she is accused of committing a prohibited act as laid down in Shari'ah ; if she changes residence hindering visitation rights accorded to the father ; on renouncement of faith from Islam, or negligence and cruelty towards the child.¹¹¹ 	<ul style="list-style-type: none"> In case no. 2014/HC-A/75 adjudicated in the High Court, custody of the child was retained by the father for several reasons including the mother's remarriage to someone within prohibited degrees of marriage in respect of the child as per Section 42(a) of the Family Act. 			<ul style="list-style-type: none"> Observations from women's lived experiences show that when a single mother remarries, she may lose her single parent State allowance, which is an implied indication that a woman's new husband (the child's stepfather) is expected to become a financial provider.¹¹²
<p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(d), 16(1)(f)</p> <p>General Recommendation 21</p>					

¹¹¹ Section 42, Family Act (4/2000)

¹¹² Raula's Story, Part 3 of 3 - Women's Lived Realities, Maldives, Uthema, March 2020,

https://www.youtube.com/watch?v=f_StS0Qy0rQ&list=PLZQL_QMqfnbB_IHLt9wyq81nGg1W_PSod&index=3&t=40s&ab_channel=Uthema

Guardianship of Children					
<p>1) <i>Is there equal right to guardianship?</i></p>	<ul style="list-style-type: none"> • Both parents do not have equal rights to the guardianship of their child, with the father and the paternal line having priority over this right. • The father of the child (and his family line) retains the judicial and legal guardianship of the child until the child reaches 18 years of age.¹¹³ • Regulations specify that the “sharu’ee guardian” (judicial guardian) or legal guardian of the child is the father, grandfather (and the paternal line thereafter), including siblings.¹¹⁴ • There is a notably clear gender-based line drawn on custodial rights where priority is given to the mother and the maternal family line and guardianship is given to the father and the paternal family line. 				<ul style="list-style-type: none"> • The separation of custody and guardianship results in conflict due to the fact that custodial responsibility of the child necessarily requires decision-making on matters that need legal guardianship, on formal administrative documents and gaining access to basic services including education and health.

¹¹³ Section 47 and 48, Family Act (4/2000)

¹¹⁴ Section 80, Family Act Regulation (2001)

<p>2) If no who has priority rights over the guardianship of the child?</p>	<ul style="list-style-type: none"> Father of the child holds the primary judicial and legal guardianship of the child until the child attains 18 years of age.¹¹⁵ The right of judicial and legal guardianship is delegated to persons (from the father's family) provided in the family law regulation.¹¹⁶ 	<ul style="list-style-type: none"> Case Law High Court <i>M Samaahath (Appellant)</i> 2012/HC-A/103¹¹⁷ The High Court affirmed that the principal judicial guardian of the child is the father, and that the High Court finds no reason to overturn the decision made by the Magistrate Court in ordering the daughter (who is 20 years of age and remains unmarried) to be placed with her principal judicial guardian, her, father. 			<ul style="list-style-type: none"> The High Court decision in <i>M Samaahath (Appellant)</i> 2012/HC-A/103¹¹⁸ regarding the guardianship of a woman who is no longer a minor has become the basis for asserting guardianship rights over women who have reached the age of majority. This brings into question the issue of equality before the law under Article 20 of the Constitution.
---	--	---	--	--	---

¹¹⁵ Section 47, Family Act 2000

¹¹⁶ Section 48(b), Family Act 2000

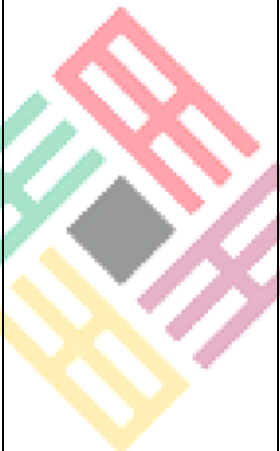
¹¹⁷ High Court decision : <http://www.highcourt.gov.mv/dhi/mediamanager/2012-103.pdf>

¹¹⁸ *ibid*

<p>3) <i>Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(d), 16(1)(f)</p> <p>General Recommendation 21</p>	<ul style="list-style-type: none"> The law refers to the best interest of the child in relation to both custody and guardianship. However, in the case of guardianship provided in Section 48(c) of the Family Act, the court has decision-making powers to transfer or remove guardianship, taking into account the best interest of the child, in the absence of the child's father (who is the legal guardian).¹¹⁹ The law requires that, in the event the child does not have a judicial or legal guardian, the court when appointing a guardian should give due consideration to the best interest of the child.¹²⁰ 				<ul style="list-style-type: none"> It is furthermore emphasised in Section 48 (a) of Family Act that irrespective of whom the custody of the child is entrusted to, the principal judicial guardianship of the child will remain with the father until the child reaches 18 years of age.
<p>Family Planning</p>					
<p>1) <i>Do women require the consent of the husband to practise family planning, including abortions and sterilization in the law, procedure</i></p>	<ul style="list-style-type: none"> The law does not specify that a woman must obtain a husband's consent to use family planning. However, the 		<ul style="list-style-type: none"> There is a National Reproductive Health Strategy 		<ul style="list-style-type: none"> Research shows that the concept of obedience of a

¹¹⁹ Section 48(a) and 48(b), Family Act (4/2000)

¹²⁰ Section 48(c), Family Act (4/2000)

<p>or practice?</p> <p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(e), 12</p> <p>General Recommendation 21</p>	<p>concept of “obedience to husband” is prevalent, similar to most other Shariáh based jurisdictions.¹²¹</p> <ul style="list-style-type: none"> • Currently, there are no laws on family planning or sterilisation in the Maldives. Abortion after 120 days is criminalised.¹²² • While public health services provide contraceptive commodities, anecdotal evidence suggests that marital status information is sought from those seeking commodities and services. Spousal consent is required for female sterilisation as per the National Standards for Family Planning Services (Reviewed 2021) which states that : “<i>Since surgical sterilization procedures are permanent, it is important that</i> 		<p>2014-2018 which covers policy and strategies on SRHR issues.¹²⁴</p> <ul style="list-style-type: none"> • Country studies exist on SRHR matters, which include family planning, access to contraception, abortion, SRHR and related issues.^{125,126,127,128} 		<p>wife to a husband is prevalent, with 82.9% respondents “strongly” supporting the statement “<i>A good wife always obeys her husband even if she disagrees</i>”.¹²⁹</p> <ul style="list-style-type: none"> • At the time of an ongoing medical procedure, husbands may make unilateral and uninformed decisions on behalf of the wife. The practice is inconsistent and
--	--	--	---	--	---

¹²¹ Note : the standard marriage sermon used by the Family Court in the Maldives which is read by the *Mauzoon* uses the language of “obedience and loyalty” from the wife to the husband and “kindness and loyalty” from the husband to the wife.

¹²² Section 416, Penal Code (9/2014)

¹²⁴ National Reproductive Health Strategy 2014-2018, Health Protection Agency, Ministry of Health, UNFPA Maldives, [https://health.gov.mv/Uploads/Downloads/Publications//Publication\(21\).pdf](https://health.gov.mv/Uploads/Downloads/Publications//Publication(21).pdf)

¹²⁵ *Reproductive Health Knowledge and Behaviour of Young Unmarried Women in the Maldives*, UNFPA, 2011, <https://maldives.unfpa.org/en/publications/reproductive-health-knowledge-and-behaviour-young-unmarried-women-maldives>

¹²⁶ *Qualitative Assessment on challenges to access SRH information and services among young people in the Maldives with a focus on unplanned teenage pregnancy*, UNFPA, 2020, <https://maldives.unfpa.org/en/publications/qualitative-assessment-challenges-access-srh-information-and-services-among-young>

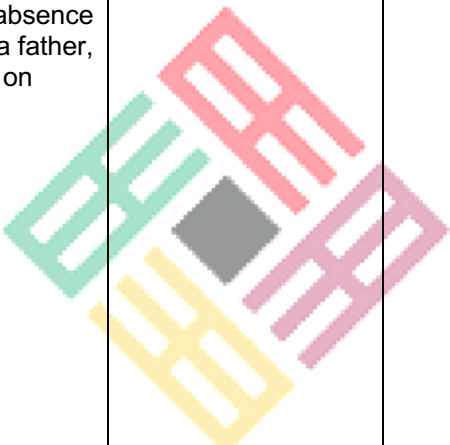
¹²⁷ *Country Profile on Universal Access to Sexual and Reproductive Rights: Maldives*, ARROW, 2017, <https://arrow.org.my/publication/country-profile-srr-maldives/>

¹²⁸ *Perceptions of Islam and SRHR in the Maldives*, ARROW, 2016, <https://arrow.org.my/publication/interlinkages-religion-srhr-maldives/>

¹²⁹ *Reflecting 15 years : The "Rights" Side of Life*, HRCM/FPA/UNDP Maldives, 2020, <https://hrcm.org.mv/en/publications/reflecting-15-years-the-rightside-of-life>

	<p><i>counselling is provided to both the client and spouse. ... the physician's role is to see that the family planning staff have ensured that the client and spouse signed the informed consent form with full understanding.</i>¹²³</p>				<p>unregulated amongst medical practitioners and institutions.</p> <ul style="list-style-type: none"> • Anecdotal evidence suggests that hospitals seek the husband's consent in addition to that of the wife in relation to medical procedures. As a result a woman may not be able to procure an abortion or undergo sterilisation without the consent of her husband.
Personal rights of spouses					
<p>1) Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive,</p>	<ul style="list-style-type: none"> • There are no legal barriers for women to work, choose a profession, leave the house, travel, drive, receive various 		<ul style="list-style-type: none"> • According to data available from the Maldives DHS 		<ul style="list-style-type: none"> • As a general rule Maldivians have not culturally

¹²³ National Standards for Family Planning Services (Reviewed 2021), Document No.MoH-QA/S/21/106-O, Ministry of Health/WHO Maldives, [https://health.gov.mv/Uploads/Downloads/Standards/Standards\(75\).pdf](https://health.gov.mv/Uploads/Downloads/Standards/Standards(75).pdf)

<p><i>receive various health services, study, etc. on her own behalf?</i></p>	<p>health services, study, etc. in the Maldives. However, in practice, there are specific areas that impact women's autonomy and freedom of choice. These include restriction to mobility in the country context, which may limit access to medical and other services being restricted due to the absence or lack of consent of a father, husband, specifically on SRHR matters.</p>		<p>2016/17, 11% women respondents reported “getting permission to go for treatment” as a challenge to access health services. While this data does not provide details about who permission is sought from, the rise of conservative narratives and the place and position of women as subordinate to men may have relevance.¹³⁰</p>		<p>practiced this. However, recent trends in extremism have resulted in women seeking permission of spouses before assuming employment, any form of service and travel.</p>
<p>2) Does a woman have the right to retain her birth name upon marriage or to choose her family name?</p> <p><u>Applicable CEDAW Provision</u></p>	<ul style="list-style-type: none"> Maldivians do not assume the husband's family name. There is no such custom / tradition in the country. 				<ul style="list-style-type: none"> Cultural practice is to carry the person's birth-name in all formal documentation.

¹³⁰ Comprehensive Shadow Report to the CEDAW Committee, Uthema, April 2020, <https://uthema.org/wp-content/uploads/Uthema-Comp-CEDAW-Shadow-Report-20Apr2020.pdf>

<p>Article 16(1)(g) General Recommendation 21</p>					<p>There is no practice of adopting a husband's name, or in many cases, even the father's name. However, the latter is quite common.</p>
<p>Inheritance</p>					
<p><i>1) Are men and women in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(h), 15(2) General Recommendation 21</p>	<ul style="list-style-type: none"> This depends on the individual cases and situation. Maldives has a cultural tradition of all land being owned by the State and allocated by the State to individuals for various uses, including permanent housing. If property such as land is state owned, inheritance rights are equal. However, if the ownership of property is absolute and private, shares are based on 2:1 ratio of male: female. The equitable distribution of property within a family may depend on the views held by the family, which may be shared equally or as considered to be the Shari'ah rule, which is unequal in favour of men. 				<ul style="list-style-type: none"> Although men are accorded a larger portion on the basis of having an obligation to take care of women, this obligation is never enforced through courts even in cases where women become destitute and the male heirs may have inherited a greater portion of the estate on the basis of Shari'ah.

<p>Violence against women in the family</p>					
<p>1) Are there laws and practices that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault, mental and other forms of violence that affects a women's mental health, which are perpetuated by traditional attitudes?</p>	<ul style="list-style-type: none"> The Domestic Violence Prevention Act (DVPA) includes physical abuse, verbal abuse, psychological abuse, verbal abuse, economic or financial abuse, intimidation, harassment, coercing or intimidating or forcing the victim to commit an act which the person would not have consented to or committed by her own volition, amongst others as acts of domestic violence.¹³¹ The law specifies 17 different instances of domestic violence as below: <ol style="list-style-type: none"> (1) physical abuse; (2) sexual abuse; (3) verbal and psychological abuse; (4) economic or financial abuse; 	<ul style="list-style-type: none"> Case Law High Court 2019/HC-A/325 Historic precedent recognising marital rape in the Maldives.¹³⁹ 	<ul style="list-style-type: none"> The government has policies in place to establish functional shelters for survivors of domestic violence, although this has yet to be achieved.¹⁴⁰ Female circumcision is a key emerging concern linked to fundamentalist and conservative narratives in the Maldives, which is identified as a serious risk to girls and 		<ul style="list-style-type: none"> It is generally difficult to sustain a claim for domestic violence as most of the time there is little evidence and many are unwilling to get involved in what is culturally considered to be a "private and family" matter. Giving evidence as to factual occurrences is also difficult, especially due to the community being small and close knit. Although the DVPA have requirements to provide shelters

¹³¹ Section 4, Domestic Violence Prevention Act (3/2012)

¹³⁹ Joint Report on Article 16, Muslim Family Law and Muslim Women's Rights in Maldives, Revised & Updated - September 2021, <https://www.musawah.org/resources/musawah-uthema-joint-thematic-report-on-maldives-2021/>

¹⁴⁰ Strategic Action Plan (SAP) 2019-2023, Government of Maldives, (pg. 424), <https://presidency.gov.mv/SAP/>

	<p>(5) Impregnating the spouse, without concern to her health condition and against any medical advice to refrain from impregnation for a specified period of time;</p> <p>(6) Impregnating a women, who is trying to remove herself from a harmful marriage, against her will;</p> <p>(7) Deliberately withholding the property of a person;</p> <p>(8) intimidation;</p> <p>(9) harassment;</p> <p>(10) stalking;</p> <p>(11) damage to property;</p> <p>(12) entry into, and being present thereafter at the victim's</p>		<p>women.¹⁴¹</p> <ul style="list-style-type: none"> The CEDAW Committee has recommended the Maldives to : <i>"Combat all forms of violence and coercion perpetrated against women and girls justified with reference to religious practice or belief".</i>¹⁴² 		<p>for survivors of domestic violence, these are not established and functional. The law requires the establishment of support and rehabilitation services for perpetrators although this area has no implementation to date. The CEDAW Committee in its Concluding Observations have recommended the State to address these gaps.¹⁴³</p>
--	--	--	--	--	--

¹⁴¹ *Comprehensive Shadow Report to the CEDAW Committee*, Uthema, April 2020, <https://uthema.org/wp-content/uploads/Uthema-Comp-CEDAW-Shadow-Report-20Apr2020.pdf>

¹⁴² *Concluding observations on the sixth periodic report of Maldives*, Committee on the Elimination of Discrimination against Women, 15 November 2021, CEDAW/C/MDV/CO/6, para 26(d), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMDV%2fCO%2f6&Lang=en

¹⁴³ *Concluding observations on the sixth periodic report of Maldives*, Committee on the Elimination of Discrimination against Women, 15 November 2021, CEDAW/C/MDV/CO/6, para. 28(f), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMDV%2fCO%2f6&Lang=en

	<p>residence without consent, where the parties do not share the same residence;</p> <p>(13) any other act which may be described as controlling or abusive behaviour towards the victim;</p> <p>(14) coercing, intimidating or forcing the victim to commit an act which such person would not have consented to or committed by their own volition;</p> <p>(15) confining the victim to a place or restricting their movement against their will;</p> <p>(16) attempting to commit any of the foregoing acts or causing apprehension of such acts; or</p> <p>(17) causing a minor to witness or hear an act of domestic violence or presenting or placing a minor in such</p>				
--	---	--	--	--	--

	<p>situation where such minor may witness or hear an act of domestic violence.¹³²</p> <ul style="list-style-type: none"> • Section 6 of the DVPA specifically provides the status of the law which states that the violations specified in the law carry both civil and criminal liability.¹³³ • There is no law prohibiting female circumcision or FGM/C in the Maldives to date. However, the Govt of Maldives announced that it is currently in the process of drafting an amendment to the Penal Code criminalising all forms of FGM.¹³⁴ • The CEDAW Committee in its Concluding Observations have recommended the State to criminalise FGM.¹³⁵ 				
--	--	--	--	--	--

¹³² Domestic Violence [Prevention] Act, 3/2012, Unofficial Translation (English) for UNFPA Maldives, Section 4(a), <https://maldives.unfpa.org/en/publications/domestic-violence-act-2012-unofficial-translation>

¹³³ "Any act prescribed as an act of domestic violence under this Act shall carry both civil liability and be a criminal offence liable for criminal prosecution, which would be dealt with in accordance with the provisions of this Act.", Domestic Violence [Prevention] Act, 3/2012, Unofficial Translation (English) for UNFPA Maldives, Section 6, <https://maldives.unfpa.org/en/publications/domestic-violence-act-2012-unofficial-translation>

¹³⁴ "Amendments have been drafted by the Government, to the Penal Code of Maldives to criminalise FGM. Work is underway to finalise the draft and submit it to the Parliament. As per the draft, all forms of female genital mutilation will be criminalised even if the victim has consented to it.", Maldives CEDAW State Review, Opening Statement by the Head of Delegation, Minister for Gender, Family & Social Protections Services Aisha M Didi, 80th Session of the CEDAW Committee, 20 Oct 2021

¹³⁵ "Criminalise female genital mutilation and provide education and information on the criminal nature and harmful effects of FGM/C, take proactive measures to protect women and girls from FGM/C, and prosecute clerics promoting FGM/C.", *Concluding observations on the sixth periodic report of Maldives*, Committee on the Elimination of Discrimination against Women, 15 November 2021, CEDAW/C/MDV/CO/6, para 28(c), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fMDV%2fCO%2f6&Lang=en

	<ul style="list-style-type: none"> • Law no. 9/2014 (Penal Code) sections 130 to 139 covers battery in all forms and 140 to 149 covers sexual assault. • Section 20 of the Sexual Offences Act (14/2014) in its first rendition recognised marital rape in four specific conditions. However, the First Amendment to the Sexual Offences Act (14/2014) 25/2021 ratified on 6 December 2021 nullified Section 20 of the law and criminalised marital rape without exceptions. Section 6 of the law has revised the existing definition of rape, criminalising rape in all circumstances including within marriage without exceptions.^{136,137,138} • Revisions to Section 7 of the law on the definition of sexual violence and Section 8 of the law on the definition of sexual assault are now applicable 				
--	--	--	--	--	--

¹³⁶ *Maldives – Submission To The Committee On The Elimination Of Discrimination Against Women (CEDAW) 78th Session 2020*, (Thematic Joint Submission on Sexual Violence), Equality Now and Uthema, January 2020, https://www.equalitynow.org/resource/maldives_cedaw_2020/

¹³⁷ *Sexual Violence in the Maldives : Legal and Other Barriers to Justice for Survivors*, Equality Now and Uthema, 2021, Country Factsheet, <https://equalitynow.storage.googleapis.com/wp-content/uploads/2021/10/30214201/EN-SA - country fact sheets - MALDIVES 2021.pdf>

¹³⁸ *Women’s Rights Groups Welcome New Legal Protections Against Sexual Violence in the Maldives, including Marital Rape*, D Srinivasan and H Abdulghafoor, Inter Press Service News Agency, 22 December 2021, <http://www.ipsnews.net/2021/12/womens-rights-groups-welcome-new-legal-protections-sexual-violence-maldives-including-marital-rape/>

	without exceptions to marital status.				
2) <i>Is there specific legislation that recognises domestic violence as a crime?</i>	<ul style="list-style-type: none"> The Domestic Violence Prevention Act (3/2012) criminalises domestic violence, carrying both civil and criminal liability.¹⁴⁴ 	<ul style="list-style-type: none"> High Court 2019/HC-A/325 Historic precedent recognising marital rape in the Maldives.¹⁴⁵ 	<ul style="list-style-type: none"> Significant challenges continue to obstruct the implementation of the DVPA and policy level changes remain slow.¹⁴⁶ 		
3) <i>Are there support services for women who are the victims of aggression or abuses?</i> <u>Applicable CEDAW Provision</u> Articles 2, 5, 11, 12 and 16 General Recommendations 12, 19, 21	<ul style="list-style-type: none"> The relevant government authority with the mandate to provide social protection services including for domestic violence survivors is the Ministry of Gender, Family & Social Services (MoGFSS). The Family Protection Authority (FPA) is the oversight body created under the DVPA. The social protection network across the country constitutes Family & Child Service Centres (FCSCs) at every atoll, although this network is under-resourced in every way and remains inadequate to 				<ul style="list-style-type: none"> The Family Legal Clinic (FLC) is a civil society organisation providing pro-bono legal services to survivors of domestic abuse / violence.¹⁴⁷ The Society for Health Education (SHE) is a long-serving civil society organisation

¹⁴⁴ Section 6, Domestic Violence Prevention Act (3/2012)

¹⁴⁵ *Joint Report on Article 16, Muslim Family Law and Muslim Women's Rights in Maldives*, Revised & Updated - September 2021, <https://www.musawah.org/resources/musawah-uthema-joint-thematic-report-on-maldives-2021/>

¹⁴⁶ *Violence in the Maldivian Family : why does it continue to breed despite the Domestic Violence Prevention Act?*, H Abdulghafoor, Dhivehi Sitee, 23 April 2016, <https://www.dhivehisitee.com/people/violence-in-the-maldivian-family-why-does-it-continue-to-breed-despite-the-domestic-violence-prevention-act/>

¹⁴⁷ Family Legal Clinic, <https://www.familylegalclinic.org.mv/>

	<p>provide support services for victims/survivors.</p> <ul style="list-style-type: none"> • There are no established and functional domestic violence shelters in the Maldives. Efforts to establish shelters for survivors of domestic violence have been an ongoing and yet to be achieved programme for the government and relevant authorities for many years. 				<p>which provides psychosocial support to many seeking that service, including victims/survivors of domestic abuse / violence.¹⁴⁸</p>
Nationality					
<p>1) <i>Does a wife have the right to confer citizenship on foreign born husbands and children?</i></p>	<ul style="list-style-type: none"> • The Constitution states that “children born to a citizen of Maldives” is a citizen and makes no gender-based distinction.¹⁴⁹ Therefore, children born to any Maldivian have automatic citizenship rights in the Maldives. • Citizenship law makes no gender-based distinction on access to citizenship. The law provides a foreigner the right to apply for citizenship and specifies 8 different conditions required for citizenship application, none of which makes any reference to 	<ul style="list-style-type: none"> • Not applicable. 			

¹⁴⁸ Society for Health Education, <https://she.org.mv/>

¹⁴⁹ Article 2, Functional Translation of the Constitution of the Republic of Maldives 2008, Dheena Hussain, Ministry of Legal Reform, Information and Arts, <https://presidency.gov.mv/Pages/Index/15>

	marriage, marital status or gender. ¹⁵⁰				
<p>2) <i>Can the nationality of the adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Article 9</p> <p>General Recommendation 21</p>	<ul style="list-style-type: none"> No such provisions exist in relevant laws and as the law stands, this would not be possible. Once citizenship is granted, change in familial relationships or acts of family members would not result in penalisation. 	<ul style="list-style-type: none"> No known case law. 			

¹⁵⁰ Section 2, The Citizenship Act of Maldives (4/1969)

ACCESS TO JUSTICE (please include sources to information as much as possible)

SYSTEM	PROCEDURES	CHALLENGES FOR WOMEN	GOOD PRACTICES IN COURT SYSTEM
<p>1) How are Muslim family law (i.e. marriage and family related) cases administered in your country? (E.g. Do you have a Quazi/Kadhi court system, family courts or civil courts?)</p> <p>The courts system in the Maldives is as follows.</p> <p>1 – Magistrates Courts (island/community level)</p> <p>2 – Lower courts (Civil Court, Family Court, Drug Court, Criminal Court, Juvenile Court)</p> <p>3 – High Court</p> <p>4 – Supreme Court</p> <p>There is no parallel courts system. Maldives is a Constitutionally mandated 100% Muslim nation and all family law matters are administered through Islamic laws applicable to all within the State’s jurisdiction.</p>	<p>1) Are the procedures pertaining to family matters (e.g. divorce, maintenance etc) are defined in the family law and/or are there guidelines/policies available for judges/Kadhis?</p> <p>There are regulations made under the codified laws as well as court regulations applicable to the enforcement of laws. However, there are significant gaps in the application of laws in family matters between the urban capital and the rest of the communities in dispersed islands. The Family Court regulation applies to the execution of cases at that court while the same does not apply to island Magistrates Courts on similar matters. This would have the effect of unequal access to justice and</p>	<p>1) What are some key challenges that Muslim women face in accessing justice on family law matters?</p> <p>(E.g. lack of accessibility, costly, bad procedures, delayed processes, gender insensitive judges, etc?)</p> <p>All of the examples suggested prevail in the country context.¹⁵³</p> <p>Lack of access to lawyers, legal aid, legal information and other services present key challenges for women to access justice on family law matters.</p> <p>Unfriendly, inaccessible and difficult to approach courts compound the issues in rural contexts where patriarchal and other discriminatory cultural practices limit women’s ability and confidence to seek redress in the courts. The findings of a 2017 study on women and access to justice that 84% of respondents “preferred informal settlement” without</p>	<p>1) Are there any good practices, procedures or policies that you would like to share pertaining to how courts in your country deal with family law cases?</p> <p>(E.g. prioritising certain types of cases, timely delivery of decisions, clear procedure, etc)</p> <p>1) There is anecdotal evidence that in the Magistrates Courts, the settlement of custody and maintenance during divorce proceedings is a very effective procedure to prevent future issues. Sections 32 and 35 of the Family Act requires the court to settle maintenance issues during the divorce process, although this does not manifest in practice consistently. Hence, procedural and administrative changes at the Magistrates Court is reported to</p>

¹⁵³ Family Law Review Report 2004, UNFPA Maldives, <https://maldives.unfpa.org/en/publications/family-law-review-report-2004>

<p>2) How many courthouses/court rooms around the country that administer Muslim family law cases?</p> <p>Refer to question 1 above.</p> <p>The Magistrates Courts, Family Court and the Civil Court may all be used to resolve family law matters.</p> <p>3) If civil or Kadhi courts - what cases are handled by what courts?</p> <p>(not applicable – refer question 1 above)</p> <p>4) How many Muslim family law-related judges? Are there women working within the court system as judges/marriage registrars etc?</p>	<p><i>inconsistency in the quality of justice on family matters between the capital and the rest of the country.</i></p> <p><i>(Refer to the section of this table on divorce, and the response to question 7.</i></p> <p><i>Also see the column on good practices in the court system in this section.)</i></p> <p>2) <i>In general practice do judges/Kadhis follow procedures?</i></p> <p><i>There are a lot of opportunities for judges to use discretion and interpretations of Shari'ah as per the laws/regulations.</i></p>	<p><i>recourse to the judicial system is indicative of the situation.</i>¹⁵⁴</p> <p><i>Unequal access to divorce due to discriminatory laws is among the key barriers to access justice for women. Issues related to child maintenance, custody and guardianship inequalities, inheritance rights, matrimonial property rights and discriminatory provisions in all these areas of law and practice all present challenges for women.</i></p> <p><i>A 2004 review of the Family Act provides some significant contextual insights.</i>¹⁵⁵</p> <p><i>More recent studies on the situation of women provide insights into a host of challenges women face in the Maldives.</i>^{156,157,158}</p> <p><i>On a final note, the issue of radicalisation and extremist narratives/beliefs are having unprecedented impacts on the lives of</i></p>	<p><i>have improved the implementation of these provisions of the law, although this is not the case at the Family Court in Male'.</i></p> <p>2) <i>Anecdotal evidence also suggests that the Protection Order under the Domestic Violence Prevention Act is an effective tool to protect survivors of domestic violence, although there are procedural gaps in the implementation of the remedy. Protection Orders are issued based on the unilateral testimony of the survivor submitted to the court via a PO application form. Emergency protection orders can be issued relatively quickly by the courts. Research using 2017 data shows that 37% of emergency POs were issued within 8 – 30 days (see ref. below).</i></p> <p><i>However, protocols to inform the perpetrator about the protection</i></p>
--	--	---	--

¹⁵⁴ Research on Women's Access to Justice in the Maldives, UNDP Maldives, 2017,

https://www.mv.undp.org/content/maldives/en/home/library/democratic_governance/A2JStudyWomen.html

¹⁵⁵ Family Law Review Report 2004, UNFPA Maldives, <https://maldives.unfpa.org/en/publications/family-law-review-report-2004>

¹⁵⁶ Bridge The Gap : Position Paper on Women's Participation in Public Life in the Maldives, Uthema, May 2019, <https://uthema.org/paper-may-2019-eng/>

¹⁵⁷ Research papers on The Situation of Women in Maldives, UNFPA Maldives, 2018, <https://maldives.unfpa.org/en/publications/research-papers-situation-women-maldives>

¹⁵⁸ Comprehensive Shadow Report to the CEDAW Committee, Uthema, April 2020, <https://uthema.org/wp-content/uploads/Uthema-Comp-CEDAW-Shadow-Report-20Apr2020.pdf>

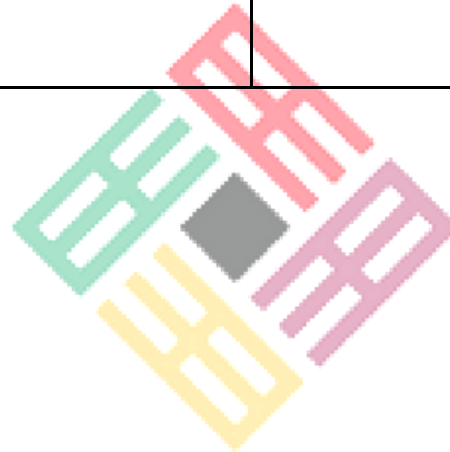
<p>a) Refer to question 1 above.</p> <p>b) There are very few women judges working within the courts systems in the Maldives, although this is improving slowly.</p> <p>Currently, there are 3 women judges in the Family Court from a total of 9 judges.</p> <p>There are 4 women judges in the Civil Court from a total of 14 judges.</p> <p>There are 8 women judges in the Magistrates Courts from a total of 125.</p> <p>There is 1 woman judge in the High Court from a total of 11.</p> <p>There are 2 women judges in the Supreme Court from a total of 7.</p> <p>5) Do lawyers represent clients?</p> <p>Lawyers are generally not available/accessible and women who can afford them are represented by lawyers.</p> <p>Family Legal Clinic NGO provides pro-bono services which are also available to a very few due to capacity and resource</p>	<p>3) How much judicial discretion do judges/Kadhis have over marriage and family matters?</p> <p>In various matters of marriage and divorce, judges have significant discretionary powers. For instance, until the enactment of the Child Rights Protection Act (2019) establishing the age of marriage to 18 without exception, judges had discretionary powers to allow marriage to minors. A judge can provide judicial wali where a woman is unable to obtain wali from her legal wali (ie. father or other male person). Divorce is also based on the discretion of judges as per law, upon application.</p> <p>4) Are there appeal processes?</p>	<p>women and girls in the Maldives. In 2015 and again in 2019, island magistrates courts had passed judgments hitherto unknown in the Maldives judicial system, to stone women to death for alleged adultery.^{159,160} Although on both occasions, the Supreme Court intervened to overrule the judgment, the fact that such views are being held by judges pose a serious risk of judicial abuse of women in vulnerable situations where access to legal aid or a lawyer is at best, limited.</p>	<p>order against them are weak, indicating the need to improve implementation procedures.¹⁶¹</p>
--	--	---	---

¹⁵⁹ H Abdulghafoor, *The Gemanafushi Stoning Ruling*, Dhivehi Sitee, 21 October 2015, <https://www.dhivehisitee.com/judiciary/the-gemanafushi-stoning-rule/>

¹⁶⁰ *Maldives top court quashes death by stoning verdict for adultery*, Maldives Independent, 7 January 2019, <https://maldivesindependent.com/crime-2/maldives-top-court-quashes-death-by-stoning-verdict-for-adultery-143374>

¹⁶¹ "How can the DVPA 2012 strengthen its mandate to protect, using the PO as an effective tool to prevent DV?", H Abdulghafoor, National Conference in Research on Domestic Violence, Family Protection Authority, Maldives, January 2018 (unpublished paper)

<p><i>constraints.¹⁵¹</i></p> <p><i>A 2017 study showed that 15.7% of survey respondents reported seeking legal assistance from a lawyer. However, the report also found high levels of dissatisfaction with lawyers, with 36.4% of respondents reporting to be “highly dissatisfied” citing “high cost and corruption”.¹⁵²</i></p>	<p><i>There are two levels of appellate courts, namely the High Court and the Supreme Court.</i></p>		
---	--	--	--



¹⁵¹ Family Legal Clinic, <https://www.familylegalclinic.org.mv/>

¹⁵² Research on Women's Access to Justice in the Maldives, UNDP Maldives, 2017, https://www.mv.undp.org/content/maldives/en/home/library/democratic_governance/A2JStudyWomen.html