



The Maldives' Compliance with Convention on the Elimination of All Forms of Discrimination against Women: The Death Penalty

Submitted by The Advocates for Human Rights

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The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications.

The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence.

In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty (World Coalition), an alliance of more than 160 NGOs, bar associations, local authorities and unions, was created in Rome on May 13, 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

EXECUTIVE SUMMARY

1. The Maldives' continued use of the death penalty undermines government efforts and commitments to end gender-based discrimination. The death penalty invites discriminatory sentences against women for adultery and other crimes of sexual immorality, as well as for acting as accomplices to murder committed by male counterparts. Capital punishment promotes negative stereotypes about women and reinforces discriminatory gender roles. The possibility of facing the death penalty also discourages human rights defenders from civic engagement on a number of human rights issues, including women's human rights.

The Maldives fails to uphold its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women

I. The Maldives Government's retention of the death penalty invites discriminatory sentences against women for adultery (List of Issues paragraph 8)

2. The Committee requested information about measures taken by the State Party to abolish harsh penalties, including the penalties of flogging, applied to women convicted of adultery and fornication outside of marriage.¹ The Maldives prohibits sexual relations outside of marriage²; women convicted of adultery are usually sentenced to flogging.³
3. Article 17(a) of the 2008 Constitution of the Republic of Maldives prohibits gender-based discrimination.⁴ The State Party in its reply to the List of Issues outlined that Law Number 18/2016 promotes the prevention of discrimination based on gender and the prevention of all ideas and practices which promote discrimination or prevent women from enjoying equal human and fundamental rights with men.⁵
4. By sentencing women to death for sexual offenses, the Maldives contravenes its own Constitution and Gender Equality Act. Women have received death sentences for adultery.⁶ In 2014, a lower court sentenced a woman convicted of adultery to death by stoning. She had admitted to the crime of adultery after giving birth on the equatorial islet of Gemanafushi. The Supreme Court later annulled the sentence.⁷ In a 2019 case, the Naifaru magistrate court

¹ Convention on the Elimination of All Forms of Discrimination Against Women. *List of issues and questions in relation to the sixth periodic report of Maldives*, due in 2019, (18 Nov. 2019) U. N. Doc. CEDAW/C/MDV/Q/6, ¶ 8.

² Convention on the Elimination of All Forms of Discrimination Against Women. *Sixth periodic report submitted by Maldives under article 18 of the Convention*, due in 2019, (28 Oct. 2019), U.N. Doc. CEDAW/C/MDV/6, ¶ 98.

³ Convention on the Elimination of All Forms of Discrimination Against Women. *Sixth periodic report submitted by Maldives under article 18 of the Convention*, due in 2019, (28 Oct. 2019), U.N. Doc. CEDAW/C/MDV/6, ¶ 134.

⁴ Convention on the Elimination of All Forms of Discrimination Against Women. *Sixth periodic report submitted by Maldives under article 18 of the Convention*, due in 2019, (28 Oct. 2019), U.N. Doc. CEDAW/C/MDV/6, ¶ 19.

⁵ Convention on the Elimination of All Forms of Discrimination Against Women. *Replies of Maldives to the list of issues and questions in relation to its sixth periodic report*, due in 2019, (20 Aug. 2020), CEDAW/C/MDV/RQ/6, ¶ 3.

⁶ Uthema. NGO Shadow Report to the Convention on the Elimination of All Forms of Discrimination Against Women, Uthema-MV-Shadow-Report, 4 May 2020, ¶ 46.

⁷ Hidden Author. *Maldives woman convicted for adultery wins reprieve from death by stoning*. First Post. 19 Oct. 2015. <https://www.firstpost.com/world/maldives-woman-convicted-for-adultery-wins-reprieve-from-death-by-stoning-2473822.html>

sentenced a woman to death for fornication outside of marriage.⁸ Health workers had reported the case to the police after delivering the woman’s child, believing the child was conceived as a result of an unlawful sexual relation. The sentence did not mention the male partner.

5. The Penal Code and related laws do not stipulate that death is an acceptable sentence for adultery or fornication, yet courts nonetheless sentence women to death for adultery and fornication. The death penalty is an available penalty for many types of offenses under the Penal Code of the Maldives and the Prevention of Terrorism Act of 1990, including murder, treason (including causing harm to the President of Maldives in contravention of the Sharia or law or committing acts detrimental to the government, sovereignty or territory)⁹ and certain terrorism acts that cause death.¹⁰ A death sentence can be carried out either by lethal injection¹¹ or hanging.¹²
6. These cases demonstrate that women are more likely than men to face the death penalty for adultery or unlawful fornication, even when a man was involved with the same unlawful act. Unequal sentencing for women and men in cases of adultery reflects a common pattern. The Cornell Center on the Death Penalty Worldwide reports that, “In some Shariah jurisdictions, offenses against sexual morality, or *zina*, appear gender-neutral on their face, but in practice are applied in a discriminatory manner against women.”¹³ While, overall, women may be sentenced to death at lower rates than men, courts sentence women to death at higher rates for adultery.¹⁴
7. The use of the death penalty to punish women for perceived sexual immorality further promotes harmful gender stereotypes. Women often receive harsher sentences when perceived to be deviating from gender roles such as the peaceful caregiver or dutiful wife and embodying negative gender stereotypes such as the “femme fatale” who seduces men.¹⁵ Disproportionate sentencing for women convicted of adultery reflects this pattern, in which courts invoke the death penalty to punish women for being perceived to reject gender roles and embody deviant gender stereotypes.

⁸ *Maldives: Naifaru court sentences woman in absentia to death by stoning*. Hands Off Cain. 08 January 2019. <http://www.handsofcain.info/notizia/maldives-naifaru-court-sentences-woman-in-absentia-to-death-by-stoning-40300121>.

⁹ Maldives Penal Code, arts. 36-37, Law No. 1/81 (Jan. 1, 1967).

¹⁰ Maldives Prevention of Terrorism Act, art. 6(a), Law No. 10 of 1990 (Dec. 9, 1990).

¹¹ Muizzu Ibrahim, “Maldives to use lethal injection for execution,” Haveeru, Jan. 23, 2014, <http://www.haveeru.com.mv/news/53390>.

¹² Amnesty International, Maldives: Halt Plans to Carry Out First Execution in More than Six Decades, ASA 29/4364/2016, June 30, 2016.

¹³ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 2018), at 13, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

¹⁴ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 2018), at 11, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

¹⁵ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 2018), at 6, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

8. Moreover, the possibility of facing a death sentence, or an otherwise harsh sentence, for adultery discourages women from reporting sexual assault.¹⁶

II. The Maldives' retention of the death penalty for murder has a discriminatory effect on women (List of Issues paragraphs 4 and 8)

9. The Committee requested information regarding access to justice¹⁷ and measures taken to combat gender stereotypes and harmful practices.¹⁸
10. In July 2015, a court sentenced Fathimath Hana to death for murder. Hana's boyfriend had killed a lawyer, claiming that the lawyer had threatened to assault Hana. At the time of the murder, Hana was asleep. Hana's lawyer had argued that a death sentence would be disproportionate to her involvement in the murder. The High Court in 2016 upheld the sentence, asserting that while Hana may have been asleep at the time of murder, she had planned the murder with her boyfriend and therefore a death sentence was appropriate.¹⁹
11. Maldivian courts, when exercising their discretion to impose the death penalty, often make decisions influenced by gender stereotypes. The imposition of death penalty in the Maldives is not mandatory. Although the death penalty for murder can be applied in a mandatory fashion under Sharia law,²⁰ courts have discretion whether to impose a death sentence.²¹ The heirs of the victim may be sought for a determination of whether or not they wish for retributive death penalty or pardon, but the Supreme Court is vested with final authority on issuing (or affirming) the sentence.²²
12. Gender stereotypes can act to the benefit or the detriment of women in the sentencing of violent crime. Courts generally impose lesser sentences upon women when the courts perceive them to conform to their societal gender roles, such as being a caring mother or innocent victim. Courts tend to impose harsher sentences on women when courts perceive that they have deviated from these roles.²³ The fact that Hana and her boyfriend were unmarried and that she

¹⁶ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 2018), at 13, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

¹⁷ Convention on the Elimination of All Forms of Discrimination Against Women. *List of issues and questions in relation to the sixth periodic report of Maldives*, due in 2019, (18 Nov. 2019) U. N. Doc. CEDAW/C/MDV/Q/6, ¶ 4.

¹⁸ Convention on the Elimination of All Forms of Discrimination Against Women. *List of issues and questions in relation to the sixth periodic report of Maldives*, due in 2019, (18 Nov. 2019) U. N. Doc. CEDAW/C/MDV/Q/6, ¶ 8.

¹⁹ Maldives Independent. *Court Upholds Sentence for Murder Accomplice*. Maldives Independent. 10 May 2016, <https://maldivesindependent.com/crime-2/court-upholds-death-sentence-for-murder-accomplice-124155>.

²⁰ International Commission Against the Death Penalty, The death penalty and the “most serious crimes” (Jan. 2013) 7, http://www.icomdp.org/cms/wp-content/uploads/2013/02/Most-serious-crimes_final_6Feb2013.pdf.

²¹ When the State Kills, email to DPW, DPW Maldives Doc. E-1, May 25, 2014. Maldives teenager could face death penalty, Aljazeera, May 23, 2014, <http://www.aljazeera.com/news/asia/2014/05/maldives-teenager-could-facedeath-penalty-201452345910586561.html>.

²² Ahmed Rilwan, “Death penalty can be implemented starting today: Home Minister, Minivan News,” Minivan News, Apr. 27, 2014, <http://minivannews.com/politics/death-penalty-can-be-implemented-starting-today-homeminister-83666>.

²³ *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 6, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

had consumed alcohol before falling asleep at the time of the murder may have influenced the court's decision to sentence her to death.

13. Women on death row for the crime of murder often have not themselves committed an intentional killing, yet they are often sentenced as accomplices to their husbands or other male figures.²⁴ This tendency to perceive women's actions as extensions of their male partners' wills reinforces gender roles and stereotypes. Sentencing women based on their association with male co-defendants jeopardizes women's right to an individualized judicial process.

III. Women human rights defenders, including women who vocally oppose the death penalty, face threats, intimidation, and death-eligible criminal charges for their advocacy (List of Issues paragraph 12)

14. The Committee requested information for protections for women human rights defenders and their organizations.²⁵ In response to the List of Issues, the State Party outlines that Article 27 of the Constitution grants the right to freedom of expression and that Article 30 (b) guarantees the freedom to form societies and associations.²⁶ The Maldives Police Service investigates any complaints of harassment or threats against civil society organizations. The State Party in the Reply to the List of Issues also provided a list of the 39 investigations regarding claims of harassment against civil society organizations since 2013.²⁷ During its second Universal Periodic Review, the Maldives received 18 recommendations to protect freedom of expression and guarantee the safety of human rights defenders and civil society. It accepted all of those recommendations.²⁸
15. Despite these commitments, the State Party has failed to protect human rights defenders and civil society organizations, including people and groups who defend women's rights. President Solih's government has engaged in a crackdown on civil society and political dissent. In 2019, authorities shut down the Maldivian Democracy Network (MDN), the oldest working human rights organization in the Maldives and one of the only organizations in the country to speak

²⁴ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 2018), at 8, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

²⁵Convention on the Elimination of All Forms of Discrimination Against Women. *List of issues and questions in relation to the sixth periodic report of Maldives*, due in 2019, (18 Nov. 2019) U. N. Doc. CEDAW/C/MDV/Q/6, ¶ 12.

²⁶ Convention on the Elimination of All Forms of Discrimination Against Women. *Replies of Maldives to the list of issues and questions in relation to its sixth periodic report*, due in 2019, (20 Aug. 2020), CEDAW/C/MDV/RQ/6, ¶ 136 –137.

²⁷ Convention on the Elimination of All Forms of Discrimination Against Women. *Replies of Maldives to the list of issues and questions in relation to its sixth periodic report*, due in 2019, (20 Aug. 2020), CEDAW/C/MDV/RQ/6, ¶ 142.

²⁸ The Advocates for Human Rights, *The Maldives' Compliance with The International Covenant on Civil and Political Rights: Suggested List of Issues Prior to Reporting Relating to the Death Penalty*, by The Advocates for Human Rights, The World Coalition Against the Death Penalty, Capital Punishment Justice Project, Anti-Death Penalty Asia Network, Reprieve (Minneapolis, Minnesota, USA), 17 Aug. 2020. ¶ 16.

out against the death penalty, contending the organization was “contrary to the tenets of Islam.”²⁹

16. While the Criminal Code does not directly stipulate that the death penalty can be applied for criticizing or denouncing Islam, the Criminal Code lists “Hudud Offenses” as limitations on the application of sentencing guidelines. If courts find the defendant guilty of an offense for which the Quran prescribes punishments, the punishment can incorporate those penalties.³⁰ Whether apostasy is a hudud offense punishable by death is a question to be resolved within the court’s discretion; apostasy therefore remains a criminal offense that may be subject to the death penalty.
17. The possibility of facing the death penalty or other harsh charges deters women human rights defenders from continuing their work. Human rights defenders, including people speaking out for women’s rights and/or against the death penalty, often face charges of blasphemy. Authors of an MDN report, *A Preliminary Assessment of Radicalisation in the Maldives*, faced blasphemy allegations following its publication.³¹ The Maldives Police Service investigated MDN regarding the content of the report, and in 2019 the Maldives Government ordered the cancelation of the MDN’s registration and banned them from operating in the Maldives (although the MDN still operates out of Geneva). In response to a November 2019 Special Procedures complaint regarding 5 members of the MDN and a Joint Communication by Special Procedures in 2020, the Government of the Maldives asserted that the MDN report contradicted Islamic beliefs, made insulting remarks about the Prophet Muhammed, and challenged established principles of Islam, and therefore the report “compromised a fundamental tenet of the Maldivian State.”³²
18. A woman human rights defender associated with MDN decided not to return to the country, fearing political persecution as well as death threats by non-state actors. While she does not face any formal charges yet, the President and Commissioner of Police have announced in broadcasts that the police are pursuing people associated with MDN for anti-Islamic activity.³³
19. There are also widespread reports of extremist groups harassing and attacking the media and civil society groups, especially organizations and individuals critical of the government. Organized extremist groups have subjected individuals associated with MDN—including women human rights defenders speaking out against the death penalty and in defense of

²⁹ The Advocates for Human Rights, *The Maldives’ Compliance with The International Covenant on Civil and Political Rights: Suggested List of Issues Prior to Reporting Relating to the Death Penalty*, by The Advocates for Human Rights, The World Coalition Against the Death Penalty, Capital Punishment Justice Project, Anti-Death Penalty Asia Network, Reprieve. (Minneapolis, Minnesota, USA), 17 Aug. 2020. ¶, 17.

³⁰ Maldives Penal Code, art. 1205, Law No. 6/2014.

³¹ Personal communication with NGO, 20 Sept. 2020

³² The Government of Maldives. *The Response by the Government of Maldives to the Joint Communication by Special Procedures*, (15 Jan 2020), MDV1/2019, ¶ 9.

<https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=35112>

³³ Personal communication with NGO, 20 Sept. 2020.

women on death row—to harassment, stalking, and death threats. Authorities have not held offenders accountable or protected these women.³⁴

IV. Suggested recommendations for the Government of the Maldives

- Abolish the death penalty and replace it with a sentence that is fair, proportionate, and consistent with international human rights standards.
- In the interim, eliminate the death penalty as a possible sentence for offenses that do not involve an intentional killing committed at the hands of the person being sentenced.
- In the interim, eliminate the death penalty as a possible sentence for non-violent crimes, including apostasy, in accordance with international human rights standards.
- In the interim, provide all judges who have sentencing authority with comprehensive gender-sensitization training, including with respect to women and girls in conflict with the law who have experienced gender-based violence, focusing on gender-based discrimination, domestic violence, and tactics of coercive control that may lead women to commit death-eligible offenses.
- Decriminalize consensual extramarital sexual relations.
- Abolish flogging and other forms of corporal punishment, including the death penalty.
- Ensure that survivors of sexual violence are not prosecuted for illegal sexual conduct or similar offenses.
- Ensure that no woman or girl is sentenced to death for any crime committed when under the age of 18 years.
- Implement legislative reforms to prevent the application of the death penalty when women and girls who have experienced gender-based violence, including early and forced marriage as well as rape and sexual assault, act against their abusers.
- Collaborate with civil society organizations to conduct trauma-informed gender sensitization training for all judges handling serious criminal cases.
- Guarantee that each woman receives an individualized judicial process and is not charged through association with a male spouse, partner, or family member.
- Ensure that all women accused of capital crimes have access to free and effective legal representation by attorneys who specialize in capital representation.

³⁴ The Advocates for Human Rights, *The Maldives' Compliance with The International Covenant on Civil and Political Rights: Suggested List of Issues Prior to Reporting Relating to the Death Penalty*, by The Advocates for Human Rights, The World Coalition Against the Death Penalty, Capital Punishment Justice Project, Anti-Death Penalty Asia Network, Reprieve. (Minneapolis, Minnesota, USA), 17 Aug. 2020. ¶, 18.

- Commute the sentences of women sentenced to death for killing close family members who perpetrated gender-based violence against them.
- Commute the sentence of every woman sentenced to death for an offense that does not involve an intentional killing committed at the hands of the woman.
- Ensure that all prison authorities adopt gender-sensitive policies in relation to women's detention, based on the Bangkok Rules and the Nelson Mandela Rules, ensuring women's safety and security pre-trial, during admission to any detention facility, and while incarcerated.
- Provide and publish transparent information on the number of women sentenced to death and on death row, disaggregated by age, age of dependent children (if any), nationality, ethnic group, crimes of conviction, date of conviction, and date of execution (if applicable), to facilitate analysis of the demographics of women on death row.
- Take steps to ensure that women human rights defenders are able to carry out their work without fear of harassment, violence, criminal investigations, or other reprisals.
- Take measures to prevent threats against women human rights defenders and hold perpetrators accountable.