



**The Maldives' Compliance with The Convention against Torture and Other Cruel,
Inhumane or Degrading Treatment or Punishment
Suggested List of Issues Prior to Reporting Relating to the Death Penalty**

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996,

The World Coalition Against the Death Penalty,

and

The Maldivian Democracy Network (MDN)

75th Session of the Committee against Torture

31 October–25 November 2022

Submitted 13 June 2022

The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental 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. 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, 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.

The Maldivian Democracy Network (MDN) is a non-governmental, non-profit organisation advocating for human rights and democracy in the Maldives. MDN was formed in 2004, allowed to register in the Maldives in 2006 and arbitrarily shut down following blasphemy allegations by the Government of Maldives in 2019. MDN currently works out of Geneva, Switzerland.

EXECUTIVE SUMMARY

1. This report addresses the Maldives' compliance with its human rights obligations with respect to the death penalty. Despite its long-standing, de facto moratorium on executions, the Maldives sentenced two people to death in 2019, after sentencing no one to death in 2018.¹ At the end of 2019, there were 19 people on death row in the Maldives – three of whom had exhausted their appeals and five of whom were juveniles when the crime was committed.² The Maldives sentenced another individual to death in 2022, which represented the first time the country sentenced a foreign national to death.³ The continued use of the death penalty in sentencing is particularly concerning given evidence of due process violations, including the use of torture to obtain confessions, the lack of effective and accessible complaint mechanisms for detained individuals, the lack of an independent judiciary, and the use of the death penalty as a sentence for crimes committed by juveniles.

The Maldives fails to uphold its obligations under the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (“CAT”).

2. The Maldives has not yet ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty.

I. The conditions in detention centers in the Maldives are inhumane and there are insufficient channels for complaints of abuse and neglect (Concluding Observations paragraph 9).

3. In its 2018 Concluding Observations, the Committee Against Torture (“the Committee”) expressed serious concern over the high number of complaints relative to the low number of investigations of torture and ill-treatment and a lack of accountability and punishment for such offenses.⁴
4. According to the Report of the Special Rapporteur, there was significant overcrowding in places of deprivation of liberty throughout the country, “often with occupancy rates ranging from 150 to 190 per cent of the actual capacity” and “up to five persons sharing cells designed for single occupancy...forc[ing] the inmates to sleep in shifts with their heads practically touching the toilet while others stood because of the exiguity of the space.”⁵ Compounding the ill effects of the overcrowding is the fact that inmates are allowed little to no time outdoors to experience fresh air and physical activity while the conditions inside of the detention center are reportedly squalid. The Report of the Special Rapporteur explains that “[i]nmates are locked up in cramped, hot, humid and poorly ventilated cells. They have no access to educational, recreational, vocational, physical or intellectual activity. In several facilities, inmates do not have their own bed or mattress, and sleep either on thin mats or directly on the

¹ Amnesty International, *Death Sentences and Executions 2019*, ACT 50/1846/2020, 2020, also available online at <https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>.

² *Id.*

³ *Bangladeshi national sentenced to death for murdering Maldivian businessman*, THE EDITION (28 February 2022), available at: <https://edition.mv/news/24033>.

⁴ Human Rights Committee, *Concluding observations on the initial report of Maldives* (19 December 2018), U.N. Doc. CAT/C/MDV/CO/1, ¶ 9.

⁵ Human Rights Council, *Visit to Maldives: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer* (28 December 2020), U.N. Doc. A/HRC/46/26/Add. 1, ¶ 46, 76.

hard floor (cement or tiles).⁶ This overcrowding combined with otherwise poor conditions and lack of access to fresh air and physical and mental stimulation has led to increased violence in detention centers.⁷ The Special Rapporteur concluded “that the conditions of detention [...] amount to cruel, inhuman or degrading treatment and, where intentionally and purposefully inflicted, may even amount to torture.”⁸

5. Torture in police custody and prisons has been well documented throughout the Maldives.⁹ Although recent reform has led to some change, “independent investigators have reported instances of beating or kicking prisoners; using excessive and cruel restraints, including cross-cuffing (chaining legs to hands); and even pepper-spraying underwear” and “[t]he Special Rapporteur . . . reported that no Maldivian official has ever been held accountable for torture.”¹⁰ It has been noted that “some forms of torture, including sleep deprivation, have become ‘normalized’ among both prisoners and prison officials and that there was no procedure to confidentially file complaints about torture or other ill-treatment.”¹¹ Since the Anti-Torture Act came into effect in 2013, there have been hundreds of cases of alleged torture investigated by the Human Rights Commission, but few completed because officials opt out of testifying against their fellow officers.¹² The government formed a commission to conduct a full prison audit in line with the Mandela Rules.¹³ The resulting report highlighted issues of torture and corruption within the prison system.¹⁴ The report provided 182 recommendations, one of which has been implemented to date.¹⁵
6. The Special Rapporteur also found the medical care in detention centers to be deficient with a lack of access to basic medical care, no preventative programs in place, insufficient staffing, unacceptable delays in treatment and inadequate documenting of incidents.¹⁶ In 2020, the Human Rights Commission of Maldives similarly noted that “the prisons overseen by the Maldives Correctional Services lacked timely access to medical care.”¹⁷ The Special Rapporteur also found that, “[f]rom a medical perspective, the sleeping conditions, quality of food and ventilation are inadequate in many places of detention, and inmates’ access to fresh air, physical work and recreational activities is clearly insufficient and in some cases, the cause of illness.”¹⁸

⁶ *Id.*, ¶ 48.

⁷ *Id.*, ¶ 47.

⁸ *Id.*, ¶ 50.

⁹ Human Rights Watch, “*I Could Have Been Next*” *Stymied Reforms in the Maldives*, April 14, 2022, <https://www.hrw.org/report/2022/04/14/i-could-have-been-next/stymied-reforms-maldives>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Humaam Ali, *Prison Audit Report Publicized*, Raajje.mv, 28 May 2019, <https://raajje.mv/56982>.

¹⁴ Humaam Ali, *Prison Audit Report Publicized*, Raajje.mv, 28 May 2019, <https://raajje.mv/56982>.

¹⁵ Written information from Maldivian Human Rights Defender, 6 June 2022.

¹⁶ Human Rights Council, *Visit to Maldives: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer* (28 December 2020), U.N. Doc. A/HRC/46/26/Add. 1, ¶ 51-55.

¹⁷ Amnesty International, *Maldives: Investigate death of prisoner and allegations of torture in custody*, September 20, 202, <https://www.amnesty.org/en/latest/news/2021/09/maldives-investigate-death-in-custody-and-allegations-of-torture-on-individuals-in-custody/>.

¹⁸ Human Rights Counsel, *Visit to Maldives: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer* (28 December 2020), U.N. Doc. A/HRC/46/26/Add. 1, ¶ 54.

7. Additionally, the Special Rapporteur received credible allegations of police brutality during interrogations aimed at coercing confessions from the accused.¹⁹ Such allegations detailed that it is a common practice to beat detainees while they are cross-cuffed and shackled.²⁰
8. According to the sixth anti-torture report of the Human Rights Commission and the Prison Audit Commission report, the Maldives Police Service does not maintain files for detainees who are held for less than 24 hours.²¹ This leads to an inability of third parties to verify complaints and identify parties responsible for potential abuse.²²
9. Further, the Special Rapporteur reported that there is no “effective system of oversight and accountability” in the Maldives and that although “since the entry into force of the Anti-Torture Act in 2013, several hundred complaints of torture and other forms of ill-treatment have been submitted to those bodies, no official has ever been held accountable, nor has any victim received redress, if only through official acknowledgement on the part of the Government.”²³ It was also reported that complaints are routinely dismissed by governing bodies citing a lack of evidence, which the Special Rapporteur says suggests “either serious systemic shortcomings in investigative mechanisms or a lack of political will to properly investigate the allegations and/or to hold suspected officials accountable” and ultimately results in impunity for serious offenses.²⁴ Finally, the Special Rapporteur noted that statutes of limitation apply to such cases of abuse which further prevents prosecution of potential crimes.²⁵

II. The independence of the judiciary in the Maldives has been called into question and fair public trials are not guaranteed (Concluding Observations paragraphs 11-12).

10. In the 2018 Concluding Observations, the Committee expressed serious concern about the independence of the judiciary and qualifications of judges.²⁶
11. The Maldivian judiciary is not entirely independent and was subject to external influence. In 2019 alone, there were several allegations of judicial impropriety, including bribes or intimidation at all levels of the judicial system. Moreover, some magistrate judges were unable to interpret common law or Islamic Sharia because they lacked adequate English or Arabic language skills. Judges across all Maldivian courts hold lifetime appointments but have only a certificate in Islamic Sharia without a law degree. Moreover, approximately a quarter of Maldivian judges had criminal records.²⁷ These flaws in the judicial system are particularly concerning, given that the Maldivian Government justifies its use of the death penalty by referencing the strict procedural guidelines of Islamic Sharia as a safety net. If the

¹⁹ *Id.*, ¶ 76.

²⁰ *Id.*

²¹ *Id.*, ¶ 29.

²² *Id.*

²³ *Id.*, ¶ 39.

²⁴ *Id.*, ¶ 39-40.

²⁵ *Id.*, ¶ 15.

²⁶ Human Rights Committee, *Concluding observations on the initial report of Maldives* (19 December 2018), U.N. Doc. CAT/C/MDV/CO/1, ¶ 11.

²⁷ *Maldives 2019 Human Rights Report*, Country Reports on Human Rights Practices for 2019, United States Department of State, Bureau of Democracy, Human Rights and Labor, available at: <https://www.state.gov/wp-content/uploads/2020/02/MALDIVES-2019-HUMAN-RIGHTS-REPORT.pdf>.; Written information from Maldivian Human Rights Defender, 6 June 2022.

Maldivian judiciary is not independent and judges are unable to interpret the very law meant to prevent injustices with respect to the death penalty, the probability that a miscarriage of justice may occur increases.

III. The death penalty remains an available punishment in the Maldives (Concluding Observations paragraph 33-34).

12. In its 2018 Concluding Observations, the Committee noted that although the Maldives has upheld its six-decade moratorium on executions, the death penalty remains a legal method of punishment for certain crimes. The Committee expressed concern that some of the individuals sentenced to death were convicted for crimes allegedly committed when they were juveniles.²⁸ The Committee recommended that the Maldives continue to uphold its moratorium on executions, commute all remaining death sentences and consider amending its laws to abolish the death penalty for all crimes.²⁹
13. The Maldives has noted that the new Penal Code, which came into force in 2014, specifically authorizes the death penalty, and as a result, it must be utilized according to the principles of Islamic Sharia. The Maldives has pointed out that the death penalty is seldom used in practice due to the high evidentiary threshold required, other procedural mechanisms and principles of Islamic Sharia. The Maldives has further stated that the Maldivian Government is committed to upholding its informal moratorium on executions and has asserted to the Human Rights Committee that judicial reform is more important than resuming executions.³⁰
14. Despite these representations, certain government conduct presents cause for concern. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited the Maldives from 17 to 24 November 2019. The 2019 Report of the United Nations Special Rapporteur (Nils Melzer) on torture and other cruel, inhuman or degrading treatment or punishment (the “Report of the Special Rapporteur”) noted a new facility on a visit to the Maafushi Prison: “a new purpose-built facility for carrying out death sentences by hanging... The facility is fully equipped with three waiting cells, gallows on the upper floor, and on the ground floor, an adjacent room with three mobile stretchers, facilities for the washing of the dead bodies, and a dedicated funeral transportation vehicle.”³¹ Construction of the facility cost approximately 4 million MVR (258,000 USD) and maintenance costs continue.³² The resources dedicated to the execution facility over other much-needed improvements to the Maafushi Prison illustrates that the facility was a high priority, considering the prison units are in such a bad state that overcrowding, lack of light, and lack of ventilation may amount to

²⁸ Human Rights Committee, *Concluding observations on the initial report of Maldives* (19 December 2018), U.N. Doc. CAT/C/MDV/CO/1, ¶ 33.

²⁹ Human Rights Committee, *Concluding observations on the initial report of Maldives* (19 December 2018), U.N. Doc. CAT/C/MDV/CO/1, ¶¶ 34.

³⁰ Human Rights Committee, *Concluding observations on the initial report of Maldives, Addendum, Information received from Maldives on follow-up to the concluding observations* (7 November 2019), U.N. Doc. CAT/C/MDV/CO/1Add.1, ¶¶ 129-132.

³¹ Human Rights Counsel, *Visit to Maldives: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer* (28 December 2020), U.N. Doc. A/HRC/46/26/Add. 1, ¶ 45.

³² Written information from a Maldivian Human Rights Defender, 6 June 2022.

conditions of torture for people detained there.³³ The construction of a new execution facility is inconsistent with the Maldives' stated commitment to uphold its moratorium on executions—in fact, it suggests an intention to resume executions in the future. Moreover, the Special Rapporteur expressed concern with regard to “significant shortcomings in the investigative and judicial process, which often lack the capacity to objectively establish the facts, identify causal chains and determine legal responsibilities with sufficient reliability, as required by the fundamental principles of justice and the rule of law.”³⁴ These findings are particularly concerning because (i) they indicate that Maldivian authorities may have actually taken steps toward *resuming* executions during the review period and (ii) shortcomings innate to the Maldivian judicial system make the miscarriage of justice more probable with respect to the death penalty.

15. The current government has been avoiding the question of the death penalty while refusing to commit to a moratorium or commutation. When questioned recently in Parliament, the Minister of Home Affairs stated that the government would uphold the moratorium “as the Maldives has continued for the past five decades.”³⁵ It is unclear, however, whether his statement refers to a moratorium on executions or on the death penalty as the government voted against a Resolution on a Moratorium on the use of the Death Penalty at the UN General Assembly in 2020.³⁶ Some recent actions of the government to appease certain religious groups and parties indicate that executions could resume whenever the government feels pressure from these groups.³⁷
16. Several members of the Maldivian Government have taken public positions in favor of the death penalty. The Prosecutor General, for instance, stated “...capital punishment cannot be abolished in The Maldives. From what I believe, the death penalty cannot be abolished in The Maldives without bringing change[s] to the laws in the country.”³⁸ The Attorney General expressed similar opinions during the Maldives' 2020 UPR, stating that the government will not change the laws without first consulting public opinion.³⁹
17. The Maldives sentenced a Bangladeshi national, Shah Alom Mia (Salim), to death in early 2022 for the murder of a Maldivian businessman on 13 October 2021. This sentence represents the first time a foreign national has been sentenced to death in the Maldives. The death sentence was imposed in compliance with Islamic Sharia pursuant to the Act on Prohibiting Threatening

³³ Written information from a Maldivian Human Rights Defender, 6 June 2022; Human Rights Counsel, *Visit to Maldives: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Nils Melzer (28 December 2020), U.N. Doc. A/HRC/46/26/Add. 1, ¶ 50.

³⁴ Human Rights Counsel, *Visit to Maldives: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Nils Melzer (28 December 2020), U.N. Doc. A/HRC/46/26/Add. 1, ¶ 44.

³⁵ Areeba, *Government Upholds Moratorium on the Death Penalty*, The Times of Addu, 6 June, 2022, <https://timesofaddu.com/2022/06/06/government-upholds-moratorium-on-the-death-penalty/#:~:text=Mal%C3%A9%2C%20Maldives%20%E2%80%93%20Minister%20of%20Home,do%20during%20the%20previous%20governments>.

³⁶ “UNGA Moratorium Resolution Map,” International Commission Against the Death Penalty, accessed June 9, 2022, <https://icomdp.org/unga/>.

³⁷ Written information from a Maldivian Human Rights Defender, 6 June 2022.

³⁸ Ameera Osmanagic, *Death Penalty Cannot Be Abolished in the Maldives*, The Times of Addu, Nov. 8, 2020, <https://timesofaddu.com/2020/11/08/death-penalty-cannot-be-abolished-in-maldives/>.

³⁹ *Id.*

and Possession of Dangerous Weapons and Sharp Objects. The Chief Judge informed Salim that he will have the opportunity to appeal the sentence as required by Maldivian law.⁴⁰

Maldivian law authorizes courts to sentence juvenile offenders to death.

18. The Maldives has since explained its intention to reform the Maldivian juvenile justice system. The Juvenile Justice Bill and the new Child Rights Bill are meant to ensure the values of the United Nations Convention on the Rights of the Child are incorporated into the Maldivian legal system. The Juvenile Justice Bill sets the minimum age of criminal responsibility at 15 years of age, and requires special procedures and standards for the investigation, prosecution and trial of certain offenses, including those that necessitate the death penalty under Islamic Sharia.⁴¹ The first amendment to the Juvenile Justice Bill went into force in December 2020, removing the death penalty for anyone under 18 when the crime was committed.⁴² The law provides that minors will receive $\frac{3}{4}$ of an alternative punishment; in the case of a death sentence the punishment would amount to a reduced sentence of life in prison.⁴³ Notwithstanding the Maldives' stated intention to broadly reform its juvenile justice system, according to Amnesty International, at the end of 2019 there were multiple individuals on death row who were sentenced for crimes committed as juveniles.⁴⁴ It remains concerning that these sentences have purportedly not been commuted to life imprisonment or a lesser sentence.

IV. The Maldivian government employs repressive tactics against human rights defenders and activists, including civil society organizations critical of the death penalty.

19. In the Maldives, there is a high prevalence of violence and discrimination against human rights defenders and activists, and “the government has repeatedly failed to protect rights or prosecute those who carry out attacks.”⁴⁵ According to Human Rights Watch, “[o]ne of the most damaging cases was the government’s decision in November 2019 to yield to pressure from influential clerics and political opposition figures to deregister the Maldivian Democracy Network (MDN), the country’s leading human rights organization.”⁴⁶ MDN has been a vocal opponent of the death penalty. For instance, MDN contested a regulation establishing the death penalty for cases of intentional murder in the High Court in 2016, stating the regulation was unconstitutional and requesting a stay of an impending execution at the time.⁴⁷ The High Court ruled in favor of the stay, yet the Supreme Court immediately intervened and ordered the High

⁴⁰ *Bangladeshi national sentenced to death for murdering Maldivian businessman*, The Edition (28 February 2022), available at: <https://edition.mv/news/24033>.

⁴¹ Human Rights Committee, *Concluding observations on the initial report of Maldives, Addendum, Information received from Maldives on follow-up to the concluding observations* (7 November 2019), U.N. Doc. CAT/C/MDV/CO/1Add.1, ¶¶ 20, 64.

⁴² Written information from Maldivian Human Rights Defender, 6 June 2022.

⁴³ Written information from Maldivian Human Rights Defender, 6 June 2022.

⁴⁴ Amnesty International, *Death Sentences and Executions 2019*, ACT 50/1846/2020, 2020, also available online at <https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>.

⁴⁵ Human Rights Watch, *“I Could Have Been Next” Stymied Reforms in the Maldives*, April 14, 2022, <https://www.hrw.org/report/2022/04/14/i-could-have-been-next/stymied-reforms-maldives>.

⁴⁶ *Id.*

⁴⁷ Written information from a Maldivian Human Rights Defender, 6 June 2022.

Court to transfer the case to the Supreme Court.⁴⁸ The case was never scheduled in the Supreme Court.⁴⁹

V. Suggested questions for the Government of the Maldives:

- What steps has the Maldivian Government taken to commute the sentences of individuals on death row who were sentenced for crimes committed when they were under the age of 18?
- How has the Maldivian Government addressed the shortcomings in the investigative judicial process noted by the UN Special Rapporteur during the reporting period?
- If the government is committed to upholding a moratorium on executions, what specifically does the Maldivian Government intend to use execution facilities for? What current plans does the Maldivian Government have to remodel execution facilities, including the Maafushi Prison's execution chamber, for more productive purposes?
- Please clarify the government's specific intentions with respect to the Minister of Home Affairs' recent statement to Parliament that the government will uphold the moratorium.
- Please provide data relating to the number of individuals currently on death row in the Maldives, and data relating to all individuals sentenced to death during the reporting period, including: the age of the defendant on the date of the alleged crime; the crime(s) of conviction; date of arrest; date of trial; date of sentencing; the results of any decisions on appeal; current location or date of execution, as applicable.
- What steps have Maldivian authorities taken to ensure the independence of the judiciary and reduce the presence of bribes and intimidation within the court system?
- Has the Maldivian government taken any steps to ensure that Maldivian judges are properly educated and literate in all languages necessary to interpret and apply applicable laws?
- How do Maldivian courts ensure that evidence or confessions obtained through the use of torture or other forms of ill-treatment are not used to convict the accused individual?
- How has the Maldivian Government taken steps to create appropriate channels for detainees to make allegations of torture and other ill-treatment? How has the Maldivian Government created systematic processes to investigate such claims?
- What steps have Maldivian authorities taken to ensure perpetrators of torture are held accountable and do not operate with impunity?

⁴⁸ *Supreme Court Overturns Stay Order Halting Executions*, Maldives Independent, Jul. 25, 2016, <https://maldivesindependent.com/politics/supreme-court-overturns-stay-order-halting-executions-125638>.

⁴⁹ Written information from a Maldivian Human Rights Defender, 6 June 2022.

- How have Maldivian authorities addressed the inhuman prison conditions in the Maldives noted by the Special Rapporteur during the reporting period? Specifically:
 - i. What measures have been taken to reduce overcrowding?
 - ii. What measures have been taken to address the lack of opportunity for exercise and lack of access to fresh air?
 - iii. What measures have been taken to address the lack of available beds?
 - iv. What measures have been taken to improve the educational opportunities for individuals in prison?
- How has the Maldivian government attempted to protect human rights defenders and civil society organizations from threats and attacks? What steps have been taken to prevent violence and discrimination targeting human rights defenders and civil society organizations focusing on human rights?
- Please provide detailed information about steps taken toward implementing the recommendations made in the Prison Audit Report of 2019.