



FAIR TRIAL STANDARDS IN THE MALDIVES

WORLD DAY AGAINST THE DEATH PENALTY 2020

On the 10th of October, the World Coalition Against the Death Penalty, its members, and the global abolitionist community unite to celebrate the World Day Against the Death Penalty. This day aims to unify the abolitionist movement by encouraging political and general awareness of the movement against the death penalty. Every year, the World Day focuses on a specific issue that arises from capital punishment.

For the 18th World Day Against the Death Penalty this year is dedicated to the right to effective legal representation for individuals who face death sentences around the world.

The theme of access to counsel reinforces the importance of fair trial standards in every legal system and judicial context. It provides an opportunity to remind states of their commitment to their international obligations to protect and uphold these standards in all stages of the justice process. This is particularly pertinent in the context of death penalty proceedings due to the irreversible nature and finality of the death penalty. As such, capital punishment cases require the strictest maintenance of fair trial rights.

INTERNATIONAL FAIR TRIAL STANDARDS

There is a vast body of international human rights law that regulates fair trial rights. States may be party to a myriad of different treaties, bodies and declarations including the following:

- *International Covenant on Civil and Political Rights* = **ICCPR**
- *Universal Declaration of Human Rights* = **UDHR**
- *Convention on the Rights of a Child* = **CRC**
- *ASEAN Declaration of Human Rights* = **ADHR**
- *UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment*
- *Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty (Approved by the Economic and Social Council Resolution 1984/50 of 25 May 1984)* = **DPS**
- *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, GA Res 67/187, UN Doc A/67/458* = **ALA**

In the Maldivian context, the following documents are also relevant.

- *Constitution of the Republic of Maldives* = **Constitution**
- *Penal Code of the Maldives* = **Penal Code**

RIGHT/ GUARANTEE	INTERNATIONAL FAIR TRIAL STANDARD	RELEVANCE OF RIGHT/GUARANTEE
RIGHT TO BE PRESUMED INNOCENT UNTIL PROVEN GUILTY	<p>ICCPR Art. 14(2): Everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.</p> <p>UDHR Art. 11(1): Accused persons have the right to be presumed innocent until proven guilty in a public trial in which all the guarantees necessary for a defence are made out.</p>	<p><i>Explanation:</i></p> <ul style="list-style-type: none"> ○ The presumption of innocence allows the defence to put the prosecution to proof. ○ The prosecution must establish their case beyond reasonable doubt.

ADHR Art. 20(1): Every person charged with a criminal offence shall be presumed innocent until proven guilty according to law in a fair and public trial, by a competent, independent and impartial tribunal, at which the accused is guaranteed the right to defence.

CRC Art. 40(2)(b)(i): A child accused of infringing penal law is presumed innocent until proven guilty.

Relevant provisions in Maldivian legislation:

- **Constitution Art. 51(h)**
- **Penal Code s15(a)**

RIGHT TO BE INFORMED PROMPTLY AND IN DETAIL, IN A LANGUAGE WHICH THE ACCUSED UNDERSTANDS, OF THE NATURE AND CAUSE OF THE CHARGE AGAINST HIM OR HER

ICCPR Art. 14(3)(a): To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.

CRC Art. 40(2)(b)(ii): Every child alleged must be informed promptly and directly of the charges against him or her, and have legal or other appropriate assistance in the preparation and presentation of his or her defence.

Explanation:

- The availability and provision of information enables accurate consideration of fair trial issues.
- Discovery requires the prosecution to provide evidence to the accused that will be used in presenting its case, as well as exculpatory evidence.

Relevant provisions in Maldivian legislation:

- **Constitution Art. 48(a)**
- **Constitution Art. 51(a)**

RIGHT TO HAVE ADEQUATE TIME AND FACILITY TO PREPARE A DEFENCE AND COMMUNICATE WITH COUNSEL OF THE ACCUSED'S OWN CHOOSING

ICCPR Art. 14(3)(b): To have adequate time and facilities for the preparation a defence and to communicate with counsel of the accused's own choosing.

ADHR Art. 20(1): Every person charged with a criminal offence ... is guaranteed the right to a defense.

Explanation:

- A lack of access to/communication with counsel severely limits the fair trial rights of accused persons.
- It denies them accused persons a voice in legal proceedings and to present the circumstances of their case.

Relevant provisions in Maldivian legislation:

- **Constitution Art. S51(e)**
- **Constitution Art. s53(a)**

RIGHT TO CHOOSE LEGAL ASSISTANCE, AND IF UNABLE TO SELECT LEGAL ASSISTANCE, THE RIGHT TO STATE-PROVIDED LEGAL ASSISTANCE

ICCPR Art. 14(3)(d): To defend oneself through legal assistance of one's own choosing; to be informed of the right to counsel and to have legal assistance assigned without payment where the accused does not have sufficient means of payment.

CRC Art. 40(2)(b)(ii): Every accused child is guaranteed to be informed promptly and directly of the charges against them and to have legal or other appropriate assistance in the preparation and presentation of a defence.

Explanation:

The provision of legal aid is quintessential to protecting marginalized and disadvantaged accused persons who cannot afford private representation.

The provision of a lawyer should be upheld during:

- detention,
- preliminary stages of proceedings,
- at trial,
- during appeal,
- upon constitutional court review, and
- throughout the clemency process.

ALA Principle 3: Legal aid should be available for persons suspected of or charged with a criminal offence.

Relevant provisions in Maldivian legislation:

- **Constitution Art. 51(f)**

DPS: Capital punishment may only be carried out after a legal process which gives all possible safeguards to ensure a fair trial including the right to adequate legal assistance at all stages of the proceedings.

RIGHT TO BE TRIED WITHOUT UNDUE DELAY

ICCPR Art. 14(3)(c):

To be tried without undue delay

UDHR Art. 9: No one shall be subjected to arbitrary arrest, detention or exile.

CRC Art. 40(2)(iii): To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians.

Explanation:

- Length of time that constitutes delay is not defined by international standards.
- Reasonable time is based on the complexity of the case, conduct of accused, severity of the penalties.
- Delay can occur at several stages including pre-trial; trial; appeal process; and clemency.
- Consequences of undue delay: significant stress on the accused, causing mental health issues and economic detriment.

Relevant provisions in Maldivian legislation:

- **Constitution Art. 51(c)**

RIGHT TO HAVE AN INTERPRETER

ICCPR Art. 14(3)(f): To have the free assistance of an interpreter if the accused cannot understand or speak the language used in court.

CRC Art. 40(2)(vi): To have the free assistance of an interpreter if the child cannot understand or speak the language used.

Explanation:

- Particularly significant for those accused who belong to ethnic minorities or are foreign nationals.

Relevant provisions in Maldivian legislation:

- **Constitution Art. 51(d)**

PRIVILEGE AGAINST SELF-INCRIMINATION

ICCPR Art. 14(3)(g): Not to be compelled to testify against himself or to confess guilt.

Explanation:

- This right is crucial to minimize the risk of convicting innocent people.
- This right must not be abused by the prosecution to establish its case on a prima facie basis.
- Silence should not immediately cause the jury to believe guilt.

Relevant provisions in Maldivian legislation:

- **Constitution Art. 48(c)**
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**RIGHT TO
APPEAL
CONVICTION
AND SENTENCE**

ICCPR Art. 14(5): Everyone convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.

UDHR Art. 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law.

Explanation:

- Accused persons are entitled to have their decision reviewed by a higher court or tribunal.
- Every person must be entitled to exercise the right to a review of both their conviction and sentence, to be heard by a higher, independent, impartial and competent tribunal.

Relevant provisions in Maldivian legislation:

- **Constitution Art. 56**
- **Penal Code S. 1204(d)**

For more information on the World Day Against the Death Penalty and how you can get involved, please visit the World Coalition Against the Death Penalty's webpage: <http://www.worldcoalition.org/worldday.html>.

Maldivian Democracy Network is a non-partisan NGO which aims to promote human rights and the values and principles of democracy, founded in the Maldives in 2004; based in Switzerland since 2020. The organization has a broad mandate on anti-torture, gender equality, transitional justice and human rights defenders' protection. Over the years, MDN has earned a place within the civil society sector as a strong voice that works effectively to strengthen the rule of law in the Maldives. The organization is also recognized as an important entity in the promotion of open democracy and international human rights in the South Asia region.

The **World Coalition Against the Death Penalty** is an alliance of more than 160 NGOs, bar associations, local authorities and unions. 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. The World Coalition gives a global dimension to the sometimes-isolated actions taken by its members on the ground. It complements their initiatives, while constantly respecting their independence. The World Coalition Against the Death Penalty created the World Day against the Death Penalty on 10 October 2003. For the 18th World Day, the World Coalition would like to help activists worldwide rally to oppose the death penalty and unite behind the struggle for universal abolition.



www.worldcoalition.org

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