



# PRISONER IN PARADISE

A CASE REPORT ON THE INCARCERATION OF LAHIRU MADUSHANKA  
IN THE MALDIVES

AMNESTY  
INTERNATIONAL





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## A CASE REPORT ON THE INCARCERATION OF LAHIRU MADUSHANKA IN THE MALDIVES

He was waiting for his flight back to Colombo in the departure lounge of the Velana International Airport in the Maldives when they arrested him; a police officer in plain clothes along with four others.<sup>1</sup> Sri Lankan Lahiru Madushanka Manikkaudura (hereafter referred to as Lahiru Madushanka), who had flown to the Maldives in search of business opportunity and better prospects, had no idea on 23 October 2015 that he was to be embroiled in a saga worthy of a Bollywood storyline. Aged 27 at the time, and with a wife and their child, aged three, awaiting his return home, Lahiru has been charged with nothing less than participating in a conspiracy to assassinate the President of the Maldives Abdulla Yameen, along with co-defendant and former Vice President Ahmed Adeen, and two others.<sup>2</sup> Lahiru's family and his lawyer assert that he has never had any military training in his life but was a driver in Colombo, and yet he is now accused of being a highly trained sniper who was brought to the Maldives to assassinate the President of the country.

Lahiru's lawyer and his family have raised serious allegations of violations of his right to a fair trial, of torture and of inhumane conditions of detention in the Maldives. Amnesty calls on the government of Maldives and the Human Rights Commission of Maldives to investigate these allegations. We further call on the Maldives Correctional Services and Maldives Police Services to provide humane conditions of detention; and the Prosecutor General, the Criminal Court and Judicial Service Commission of the Maldives to guarantee the right to a fair trial of Lahiru Madushanka.

## CONCERNS REGARDING THE RIGHT TO A FAIR TRIAL

### RESTRICTED ACCESS TO A LAWYER

Lahiru Madushanka's lawyer and family told Amnesty International that he was not informed of his right to access a lawyer and did not have legal representation on arrest or during interrogations<sup>3</sup> and repeated remand hearings.<sup>4</sup> Although the family sent a lawyer from Sri Lanka to visit Lahiru in detention, in December 2015, this lawyer was unable to represent Lahiru's interests at any hearing or interrogation because he was not admitted to practise in the Maldives. Between March and August 2016, Lahiru did have pro bono representation by a defence lawyer. When the trial began on 10 August 2016,<sup>5</sup> Lahiru attended without legal representation and told the court he wanted the assistance of a lawyer, and charges were filed against him by the Prosecutor General.<sup>6</sup> The court granted him 10 days to secure it and from 24 August 2016 Lahiru's family was able to retain a private lawyer to represent him in court hearings.<sup>7</sup>

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<sup>1</sup> Description provided by the lawyer of Lahiru Madushanka to Amnesty International, on 18 August 2018.

<sup>2</sup> Description provided by the lawyer of Lahiru Madushanka to Amnesty International, on 18 August 2018.

<sup>3</sup> Amnesty International interview with Lahiru Madushanka's lawyer, Colombo, Sri Lanka, 13 August 2018 and 17 August 2018, and interview with family of Lahiru Madushanka, Sri Lanka, 3 August 2018. Names of interviewees withheld.

<sup>4</sup> Interview with the lawyer of Lahiru Madushanka, Colombo, Sri Lanka, 13 August 2018 and 17 August 2018; Interview with family of Lahiru Madushanka, Sri Lanka, 3 August 2018. Names of interviewees withheld.

<sup>5</sup> Interview with the lawyer representing Lahiru Madushanka, Colombo, Sri Lanka, 13 August 2018 and 17 August 2018. Name of interviewee withheld.

<sup>6</sup> Description of facts provided by the lawyer of Lahiru Madushanka to Amnesty International, on 18 August 2018.

<sup>7</sup> Interview with lawyer representing Lahiru Madushanka, Colombo, Sri Lanka, 13 August 2018 and 17 August 2018, and interview with family of Lahiru Madushanka, Sri Lanka, 3 August 2018. Names of interviewees withheld.

During his detention, Lahiru has been transferred between Maafushi prison, Dhoonidhoo prison and Malé prison; he is presently incarcerated at Maafushi prison. In Malé prison, prison officers remained in hearing distance of Lahiru's meetings with his lawyer, restricting his ability to speak openly and undermining confidence in exercising the privilege of lawyer-client confidentiality.

In May 2018, the Maldives Correctional Services imposed new restrictions on this lawyer's access to Lahiru at Maafushi prison, which prevented her meeting him between May and August 2018. They demanded she obtain documents from the court stating the date of the next hearing before they would consider each request for access to Lahiru.<sup>8</sup> Since a date for the next hearing had not been scheduled, she could not produce such a document. She wrote to the Criminal Court and the Human Rights Commission of Maldives protesting these arbitrary demands on 6 June 2018 and regained access to him on or around 9 August 2018.<sup>9</sup>

Access to a lawyer is a cornerstone of the right to a fair trial under international human rights law as well as domestic law in the Maldives. The right to counsel pre-trial is guaranteed by Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR), which provides, among other things, that "every person charged with a criminal offense shall have the right to... adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing"<sup>10</sup>; and Article 14(3)(d) "To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him".

The guarantee of access to legal representation pre-trial is an important precaution against unlawful detention, torture or other cruel, inhuman or degrading treatment or punishment (other ill-treatment), including to force "confessions" and enforced disappearances. Article 51(f) of the Constitution of the Maldives provides that every person has a right to "be tried in person, and to defend himself through legal counsel of his own choosing". Article 48 of the Constitution provides that every person upon arrest has the right to "retain or instruct legal counsel without delay and to be informed of this right, and to have legal counsel facilitated until the conclusion of the matter for which he is under arrest or detention"; and "to remain silent, except to establish identity, and to be informed of this right".<sup>11</sup>

### LAHIRU MADUSHANKA: INCARCERATED IN THE MALDIVES FOR THREE YEARS



***Lahiru's family has been agitating for his release for three years. He has left behind his wife, elderly parents, and son who was just three years old at the time of his arrest. Picture provided by the Family of Lahiru Madushanka ©***

Lahiru's family has campaigned for him for three years, including through social media<sup>12</sup> and press conferences in Colombo, Sri Lanka.

<sup>8</sup> Interview with lawyer representing Lahiru Madushanka, Colombo, Sri Lanka, 17 August 2018. Name of interviewee withheld.

<sup>9</sup> Letter sent to the Criminal Court, by the lawyer representing Lahiru Madushanka, 6 June 2018; Letter sent to the Human Rights Commission of Maldives by the lawyer representing Lahiru Madushanka, 6 June 2018

<sup>10</sup> Article 14(3)(b) of the ICCPR

<sup>11</sup> Article 48(b) and (c), Constitution of the Maldives 2008.

<sup>12</sup> <https://www.facebook.com/Maldives-Free-Our-Madushanka-1098137373569641/posts>

## RIGHT TO BE BROUGHT PROMPTLY BEFORE A JUDICIAL OFFICER

Amnesty International has been informed that Lahiru was not brought before a magistrate within 24 hours, as required under Maldivian law.<sup>13</sup> Under international law, an arrested person must be produced before a judge “promptly”.<sup>14</sup>

He was produced before the Criminal Court in Malé on 25 October 2015 for his first remand hearing. According to Lahiru’s family and lawyer, for at least six months thereafter he was not physically brought before a magistrate, as all hearings for extension of remand were done via remote video link, which he joined from a videoconference room in prison.<sup>15</sup>

Bringing a detainee physically before a judge is an important safeguard against a variety of human rights violations. In its General Comment on Article 9 of the ICCPR, the Human Rights Committee, the expert UN body charged with overseeing this Covenant’s implementation, stated, among other things: “The individual must be brought to appear physically before the judge or other officer authorized by law to exercise judicial power. The physical presence of detainees at the hearing gives the opportunity for inquiry into the treatment that they received in custody, and facilitates immediate transfer to a remand detention centre if continued detention is ordered. It thus serves as a safeguard for the right to security of person and the prohibition against torture and cruel, inhuman or degrading treatment.”<sup>16</sup>

## TORTURE AND OTHER ILL-TREATMENT

On 28 October 2015, five days after his arrest, Lahiru was interrogated harshly in the Police Headquarters in Malé, according to what he has told his present lawyer. He had been beaten, and lost consciousness. When he regained consciousness, he felt as though drawing pins were being pushed into his face, and there was blood on his shirt. He was then taken back to Dhoonidhoo prison where he was again detained. His family further alleges that he was severely beaten by the Maldivian police during interrogation with cables, that he was kicked, and that they had pushed drawing-pins into his face. His family also allege that the beating has resulted in a temporary loss of hearing in one ear.<sup>17</sup>

Amnesty International is deeply concerned that Lahiru’s interrogation reportedly involved brutality constituting cruel, inhuman or degrading treatment or punishment, and even likely amounting to torture. Torture and other ill-treatment are prohibited absolutely under international law. According to the Human Rights Committee, “... any direct or indirect, physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt” is prohibited.<sup>18</sup>

The Maldives Police Services has a responsibility to be “conscientious for the medical conditions of persons under police custody and where such person needs medical attention immediate steps are taken to provide the required assistance”.<sup>19</sup> The brutal manner of interrogation, which according to Lahiru’s family temporarily affected his hearing, would clearly violate the duty not to “act cruelly, in a degrading manner, inhumanely or mercilessly towards any person in any circumstances, and shall not allocate or allow another person to commit such an Act”.<sup>20</sup>

**‘... any direct or indirect, physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt’ is prohibited.**

Human Rights Committee

<sup>13</sup> Article 48(d) of the Constitution of the Maldives 2008.

<sup>14</sup> Article 9(3) of the ICCPR provides: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”

<sup>15</sup> Interview with lawyer representing Lahiru Madushanka, Colombo, Sri Lanka, 13 August 2018 and 17 August 2018. Name of interviewee withheld.

<sup>16</sup> Human Rights Committee, General Comment No. 35, Article 9: Liberty and security of person, UN Doc. CCPR/C/GC/R.35/Rev.3, 10 April 2014, para23.

<sup>17</sup> According to his family he has not complained of hearing loss in recent times and therefore they assume the the loss of hearing was temporary.

<sup>18</sup> Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007)

<sup>19</sup> Police Act Law Number 05/2008, section 7(12)

<sup>20</sup> Police Act Law Number 05/2008, section 7(11)



The Maldives is a state party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture), and there have been serious concerns raised in the past as to custodial torture in the Maldives. The Constitution of the Maldives prohibits torture in no uncertain terms. Under Article 54 of the Constitution, “No person shall be subject to cruel, inhuman or degrading treatment or punishment or to torture.” Article 48(c) of the Constitution provides that everyone has the right to remain silent “except to establish identity, and to be informed of this right”. In addition, Article 57 of the Constitution provides that “Everyone deprived of liberty through arrest or detention as provided by law... shall be treated with humanity and respect for the inherent dignity of the human person.”

## **ACCESS TO TRANSLATIONS AND INFORMATION ON CHARGES AGAINST HIM**

The first arrest warrant given to Lahiru on 24 October 2015 was written in Divehi, a language he did not understand, and he told his family no translation or interpretation was provided.<sup>21</sup> His initial and subsequent remand hearings until the first trial hearing on 10 August 2016 were also conducted in Divehi with no interpretation provided.<sup>22</sup> It is not clear whether an interpreter was present on 10 August 2016, when the charges against him were read out. Thus, for Lahiru, who did not speak Divehi when he arrived in the Maldives, these were proceedings that he could not understand.<sup>23</sup> On the other hand, in August 2017, court hearings were cancelled because the court appointed translator failed to attend.<sup>24</sup>

Article 14(3)(f) of the ICCPR requires state parties to guarantee the right to an interpreter during criminal trials. In addition, Principle 14 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) similarly states that the right to an interpreter during pre-trial phases must be guaranteed. The right to translations is also protected in Maldivian law. Under Article 51(a) of the Constitution, persons under criminal proceedings have a right “to be informed without delay of the specific offence in a language understood by the accused”. Under Article 51(d), accused persons have a right to an interpreter provided by the state since they “did not speak the language in which the proceedings [were] conducted”. The denial of translations at proceedings and these hearings were a denial of Lahiru’s right to a fair trial under both domestic and international human rights law.

## **SECRET WITNESSES, UNDISCLOSED EVIDENCE AND ALLEGED FALSE WITNESS STATEMENTS UNDER TORTURE**

The first three hearings in Lahiru’s case were open hearings, but thereafter all hearings took place as closed-door hearings. The five prosecution witnesses giving evidence in Lahiru’s trial were all secret witnesses. On 24 August 2016, the Criminal Court in the Maldives permitted the prosecutor to introduce the witnesses identified only by numbers 1 to 5, to “keep the identities confidential and arrange them to give evidence in secret”.<sup>25</sup> At the hearings on 19 September 2016 and on 22 September 2016, witnesses 1 to 4 gave evidence via audio with their voices masked. All the prosecution evidence submitted in the case is also “undisclosed”. The court permitted the prosecution to submit “undisclosed circumstantial evidence” in three documents identified only by document numbers 1 to 3.<sup>26</sup> According to the lawyer representing Lahiru, this was undisclosed circumstantial evidence from undisclosed sources, submitted to court only.

Lahiru’s lawyer has also raised serious concerns as to the reliability of evidence provided by some of the witnesses. She told Amnesty International that witnesses 3 and 4, who gave evidence on 22 September 2016, revealed during the hearing that they had been forced to provide false evidence under duress from the Maldivian police. Key witness 3 had told the court that his younger brother had been arrested and tortured by Maldivian police to force him to return to Malé and give false testimony in this case.<sup>27</sup>

Article 15 of the UN Convention against Torture requires states parties to ensure that “any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” In an authoritative General Comment, the Committee against Torture, the expert body charged with

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<sup>21</sup> Interview with lawyer representing Lahiru Madushanka, Colombo, Sri Lanka, 13 August 2018 and 17 August 2018. Name of interviewee withheld.

<sup>22</sup> Description of facts provided by lawyer representing Lahiru Madushanka, Colombo, Sri Lanka, 18 August 2018.

<sup>23</sup> Interview with lawyer representing Lahiru Madushanka, Colombo, Sri Lanka, 13 August 2018 and 17 August 2018. Name of interviewee withheld.

<sup>24</sup> Interview with lawyer representing Lahiru Madushanka, Colombo, Sri Lanka, 13 August 2018 and 17 August 2018. Name of interviewee withheld.

<sup>25</sup> Description by the lawyer representing Lahiru Madushanka, 18 August 2018, at p5.

<sup>26</sup> Description provided by the lawyer representing Lahiru Madushanka, 18 August 2018, at p6.

<sup>27</sup> Description provided by the lawyer representing Lahiru Madushanka, 18 August 2018, at p11.

overseeing the implementation of this Convention, has clarified that it considers this prohibition to apply to other cruel, inhuman or degrading treatment or punishment as well.<sup>28</sup>

The right to a public hearing in a criminal case is protected, among others, by Article 14(1) of the ICCPR; Article 14(1) also explains the exceptional circumstances in which a trial can be restricted:

“The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”.

Amnesty International is concerned that these exceptional circumstances have not been met by the court when determining that the hearings would be closed.

Amnesty International has challenged the use of secret witnesses, since it can compromise the presumption of innocence, and undermine the accused’s right to examine the witness.<sup>29</sup> The calling of secret witnesses and undisclosed evidence which disadvantages the defence is clearly also in violation of Article 42(a) and (b) of the Maldivian Constitution which guarantee the right to a fair and public hearing, within a reasonable time, and the right to judicial proceedings which are conducted with justice, transparency and impartiality. Further, the Constitution guarantees that everyone charged with an offence has the right “to examine the witnesses against him and to obtain the attendance and examination of witnesses”.<sup>30</sup> The prosecution in this case has relied entirely on secret witnesses and undisclosed evidence. This has fatally undermined the defence’s ability to challenge the charges and violated Lahiru’s right to a fair trial.

## RESTRICTED ACCESS TO FAMILY



*Lahiru Madushanka in happier times, with his wife and child, photo provided by the family of Lahiru Madushanka ©*

<sup>28</sup> Committee against Torture, General Comment No. 2 (Implementation of Article 2 by states parties), UN Doc. CAT/C/GC/2, 24 January 2008, para6.

<sup>29</sup> Amnesty International *The International Criminal Court: Making the right choices – Part II – Organizing the court and ensuring a fair trial* (Index: IOR 40/011/1997), pp59-61.

<sup>30</sup> Article 51(g) of the Constitution of 2008. For English text see, for instance, <http://www.majlis.gov.mv/en/wp-content/uploads/Constitution-english.pdf>



# RIGHT TO HUMANE DETENTION CONDITIONS AND FREEDOM FROM TORTURE AND OTHER ILL-TREATMENT



Lahiru Madushanka has been detained in several different prisons in the Maldives, managed by the Maldives police and by the Maldives Correctional Services.<sup>31</sup>

Amnesty International is concerned by reports from Lahiru's family and lawyer that his right to humane conditions of detention has not been respected. Article 10(1) of the ICCPR stipulates that "All persons who are deprived of their liberty have a right to be treated in a manner that respects the inherent dignity of the human person". States have an obligation to ensure at least minimal conditions, recently encoded in the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)<sup>32</sup> which include family visits, adequate and appropriate food, washing and sanitary facilities, bedding, clothing, ample space, adequate health care, natural light, recreation, physical exercise, facilities to allow religious practice and communication with others, including those in the outside world.<sup>33</sup>

Denial of humane conditions of detention can also amount to ill-treatment or, when done deliberately for purposes such as coercion, intimidation or punishment and causing severe pain or suffering, to torture, violating both the Convention against Torture and the ICCPR. Torture is prohibited under domestic law in the Maldives, as described previously.

## TRANSFERRED TO SOLITARY CONFINEMENT

Lahiru was transferred to solitary confinement on 6 August 2018, with no reasons given at the time. Prison authorities did not inform his lawyer of the transfer or reasons for it. She only heard of it by word of mouth from lawyers, who informed her after being alerted by Lahiru's fellow detainees. On her inquiry, the prison authorities claimed he "was being kept in a separate cell for safety and security of the prison" but gave no further explanation.<sup>34</sup>

Lahiru's lawyer believes he remained in solitary confinement in a dark, unlit cell from 6 August 2018 to around 2 September 2018. Lahiru is presently no longer in solitary confinement and is sharing a cell with two other detainees.

International standards allow the use of solitary confinement by prison officials as a disciplinary measure, but only as a last resort, as regulated by law or regulations and subject to several restrictions. These restrictions are set out in detail in the Nelson Mandela Rules. They include not lowering the general living conditions such as adequate space, light and access to physical exercise, and not imposing it on certain groups of prisoners such as children and pregnant women, or when it could exacerbate the condition of persons with disabilities. The Nelson Mandela Rules also stipulate that solitary confinement may only be imposed by a competent authority and subject to independent review.<sup>35</sup>

All prolonged solitary confinement, defined by the Nelson Mandela Rules as exceeding 15 consecutive days, is prohibited as it constitutes cruel, inhuman or degrading treatment or punishment, and could amount to torture.<sup>36</sup>

<sup>31</sup> He was initially detained at the police headquarters in Malé. He was later transferred to Dhoonidhoo prison, managed by the police. Thereafter he was held in the Malé prison managed by the Maldives Correctional Services. He was later transferred to Maafushi prison in mid-2017.

<sup>32</sup> UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by UN General Assembly resolution 70/175, 17 December 2015, Annex.

<sup>33</sup> Nelson Mandela Rules, specifically Rules 12-17 on minimum conditions of accommodation, Rules 19-21 on clothing and bedding, Rule 22 on food, Rule 23 on exercise and sport, Rule 65-6 on religion.

<sup>34</sup> Letter received by the lawyer representing Lahiru Madushanka, from Maldives Correctional Services, 26 August 2018.

<sup>35</sup> Nelson Mandela Rules, Rules 37-9, 41-6.

<sup>36</sup> Nelson Mandela Rules, Rules 43, 44.

Amnesty International is deeply concerned that Lahiru was arbitrarily placed in solitary confinement, in inhumane conditions and for a period exceeding that allowed by international standard. His solitary confinement therefore amounted to ill-treatment, and possibly to torture.

## POOR FOOD QUALITY

At Maafushi prison, detainees are provided with meals by the prison authorities, but Lahiru's lawyer claims the food was often off, and prepared under poor standards of hygiene. In May 2018, Lahiru and his cell mates were violently ill after eating food provided for breaking fast during the Ramadan period.<sup>37</sup> Lahiru's lawyer complained to the Human Rights Commission of the Maldives in June 2018 saying, "During this fasting month, one of his cell mates found cockroaches in the food brought to them. After eating that food, all seven inmates had a bout of vomiting which lasted for three days, and yet none of them were given any medical attention".<sup>38</sup> Rule 22 of the Nelson Mandela Rules provides, among other things, that food in prisons should have "nutritional value adequate for health and strength, of wholesome quality and well prepared and served". Amnesty International is concerned that this basic human rights standard has not been followed in the case of Lahiru.

## ACCESS TO FRESH AIR AND EXERCISE

At Dhoonidhoo prison, Lahiru was taken out of his cell once a week to cut his hair and nails. He was also permitted to sit, or walk back and forth for 20 minutes a day while he was incarcerated there with his hands cuffed behind him in an outdoor metal cage.<sup>39</sup>

Lahiru is currently incarcerated at Maafushi prison where his lawyer says he is allowed out of his cell only once a month – or at times, once every two months – to cut his hair and nails.<sup>40</sup> In June 2018, Lahiru's lawyer complained to the Human Rights Commission of the Maldives that he was only being allowed out of his cell once a month or once every two months.<sup>41</sup> His lawyer says that otherwise he is in his prison cell at all times: "they do not take him out except for when he's being taken for consultation with the doctor... or when I visit him as the lawyer".<sup>42</sup>

**'they do not take him out except for when he's being taken for consultation with the doctor... or when I visit him as the lawyer'**

Lawyer representing Lahiru Madushanka, August 2018, Sri Lanka

According to Rule 32(1) of the Nelson Mandela Rules, "Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits." The regime that Lahiru has been under obviously falls far short of this standard.

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<sup>37</sup> Interview with lawyer representing Lahiru Madushanka, Sri Lanka, 17 August 2018. Name of interviewee withheld.

<sup>38</sup> Letter to the Human Rights Commission of the Maldives, sent by the lawyer representing Lahiru Madushanka, 6 June 2018.

<sup>39</sup> Description of facts provided by the lawyer representing Lahiru Madushanka, 18 August 2018. Email correspondence with lawyer representing Lahiru Madushanka, 11 October 2018.

<sup>40</sup> Description of facts provided by the lawyer representing Lahiru Madushanka, 18 August 2018. Interview with the family of Lahiru Madushanka, 3 August 2018. Names of interviewees withheld.

<sup>41</sup> Letter to the Human Rights Commission of Maldives sent by the lawyer representing Lahiru Madushanka, 6 June 2018.

<sup>42</sup> Interview with lawyer representing Lahiru Madushanka, Colombo, Sri Lanka, 17 August 2018. Name of interviewee withheld.





## OVERCROWDED CELLS, RESTRICTED ACCESS TO CLOTHING AND UNHYGIENIC CONDITIONS TO SLEEP

Initially, when Lahiru Madushanka was incarcerated at Dhoonidhoo prison, he had told his lawyer that his cell was filthy and the rain came in. Prisoners slept crowded on plastic mats on a concrete floor. He found it very hard to sleep so he asked his family to send him towels to use as pillows; but the prison authorities only accepted one towel at a time.<sup>43</sup>

Lahiru is presently incarcerated at Maafushi prison. His clothing is worn out and he has been denied access to the clothes in his original luggage. His family was able to send clothes twice through his lawyer but thereafter the prison authorities have denied permission.

In her letter of 6 June 2018 mentioned previously, Lahiru's lawyer formally complained to the Human Rights Commission of the Maldives that he was sharing a cell with six others at Maafushi prison, with limited ventilation. They sleep on the floor on a mat, with barely enough space for sleeping given the crowded cell which they occupy.<sup>44</sup> Lahiru's lawyer and family are not aware of any on-site monitoring of prison conditions. He is presently sharing a cell with two others at Maafushi prison.

Healthy, clean accommodations with adequate space, ventilation and light, and clothes that are clean and in good condition are key requirements in the humane treatment of prisoners, as detailed in the Nelson Mandela Rules.<sup>45</sup>

## ACCESS TO MEDICAL CARE

Under international human rights law, everyone is entitled to the highest attainable standard of health, including those in custody as set out in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to health also includes access to food, water and sanitation. In the case of a prisoner, the Nelson Mandela Rules provide detailed guidance on the provision of medical care, based on the principles that “health care for prisoners is a State responsibility” and that “prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.”<sup>46</sup>

According to his family, Lahiru was not given a medical examination upon arrest and did not suffer from any chronic ailments at the time. However, in detention his eyesight has deteriorated and his mother says he “developed a hearing problem and couldn't hear very well after the initial beating he suffered through because they used the heel of a shoe to hit him”.<sup>47</sup>

His lawyer also states that access to medical care has been restricted for Lahiru several times in detention, and he has been punished for protesting such delay. One time, at Dhoonidhoo prison, Lahiru had chest pains and breathing difficulties, and the prison staff took four days to arrange a medical check-up for him.<sup>48</sup> His cell mates had started a hunger strike, demanding medical attention for him, and Lahiru had joined in solidarity. As punishment, the prison guards had then moved him to a far worse cell, in the middle of the night without any of his belongings, and threatened far worse conditions if he continued the strike.<sup>49</sup>

While incarcerated at Maafushi prison, since 13 July 2018, Lahiru has been administered multiple drugs and told his lawyer he did not know what they were or why he needed them. Such practices would contravene respect for prisoners informed consent in the doctor-patient relationship as required in the Nelson Mandela Rules, Rule 32(1)(b), in particular, the obligation to “Adherence to prisoners' autonomy with regard to their own health and informed consent in the doctor-patient relationship.” Lahiru's lawyer requested details of

<sup>43</sup> Interview with lawyer representing Lahiru Madushanka, Colombo, Sri Lanka, 17 August 2018. Name of interviewee withheld.

<sup>44</sup> Interview with lawyer representing Lahiru Madushanka, Colombo, Sri Lanka, 13 August 2018. Name of interviewee withheld.

<sup>45</sup> See, for instance, Rules 13-14, 19-20.

<sup>46</sup> Rule 24(1). And see Rules 24-35.

<sup>47</sup> Interview with family of Lahiru Madushanka, Sri Lanka, 3 August 2018. Names of interviewees withheld.

<sup>48</sup> Description provided by the lawyer representing Lahiru Madushanka, 18 August 2018, at p7.

<sup>49</sup> Description provided by the lawyer representing Lahiru Madushanka, 18 August 2018, at p7.

his medical care from the Maldives Correctional Services and received a letter on 26 August 2018 confirming that he was prescribed several medicines, along with a prescription issued by the Maafushi prison medical centre on 13 July 2018.<sup>50</sup>



### **ACCESS TO MEDICAL CARE**

In the case of a prisoner, the Nelson Mandela Rules provide detailed guidance on the provision of medical care, based on the principles that “health care for prisoners is a State responsibility” and that “prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.” See (Rule 24(1)).

## **ACCESS TO FAMILY**

Since November 2017, Lahiru has not been permitted to call his family. He was previously allowed a five-minute phone call every two weeks, which his family describes as his lifeline. His lawyer also complained to the Human Rights Commission of the Maldives in June 2018 that following the denial of such phone calls, he had suffered from “sleeping difficulties”.<sup>51</sup>

International law protects detainees’ rights to access family, which may be restricted only if “strictly required for the maintenance of security and order” and only for a limited period of time.<sup>52</sup> The Nelson Mandela Rules (2015) recognizes the right to have access to family (Rules 43(3) and 58), as does Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988).

### **GUARANTEE THE RIGHT TO A FAIR TRIAL, AND TO HUMANE CONDITIONS OF DETENTION IN THE MALDIVES**

In the context of the information and analysis provided here, Amnesty International urges the government of the Maldives to urgently investigate the serious allegations raised in this submission, and:

- To guarantee humane conditions of detention and freedom from torture and other ill-treatment for all persons deprived of liberty in the Maldives, including access to family and to the outside world and to the highest attainable standard of health in accordance with international law and standards;
- To guarantee to Lahiru Madushanka, and all prisoners incarcerated in the Maldives, access to a fair trial without recourse to the death penalty, and in the specific case of Lahiru, taking into special account the delay in concluding the case. Guarantees must include the following:
  - Right to adequate time and facilities to prepare his defence;
  - Right to be tried within a reasonable time or to release;
  - Right to be tried without undue delay;
  - Right to a public hearing;
  - The exclusion of any statement obtained using torture or other ill-treatment as evidence;
  - Right to call and examine witnesses;
  - Right to an interpreter and to translations.
- We specifically call on the Human Rights Commission of Maldives to investigate these allegations.
- We further call on the Maldives Correctional Services and Maldives Police Services to provide humane conditions of detention to Lahiru Madushanka and all prisoners incarcerated in the Maldives.
- We call on the Prosecutor General, the Criminal Court and Judicial Service Commission of the Maldives, to guarantee the right to a fair trial of Lahiru Madushanka.

<sup>50</sup> Letter from Superintendent of Prisons, Maldives Correctional Services, Malé, to the lawyer representing Lahiru Madushanka, 26 August 2018.

<sup>51</sup> Letter to the Criminal Court of the Maldives, sent by the lawyer representing Lahiru Madushanka, 6 June 2018.

<sup>52</sup> Rule 43(3), Nelson Mandela Rules, 2015.



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