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# REPUBLIC OF MALDIVES

## @Prisoners of conscience and unfair trial concerns

### 1990 - 1993

#### Introduction

Amnesty International has expressed concern to the Government of Maldives about several prisoners of conscience and other political prisoners who were arrested in 1990 and 1991. Some have been detained for long periods without trial. Others have been sentenced to imprisonment or banishment after trials which the organization believes fall short of international standards for fair trial. Some had been charged under legislation passed in December 1990, the Prevention of Terrorism Act (PTA), which was applied retroactively. The organization is also concerned about reports that certain prisoners have been ill-treated in detention, including by being held in solitary confinement for long periods.

Some of the prisoners whose cases Amnesty International raised have been released, but others remain imprisoned and Amnesty International's general concerns about the fairness of trial procedures and the treatment of prisoners remain valid.

Amnesty International delegates visited the Republic of Maldives in November 1991 and October 1992. The delegate who made the first visit had hoped to observe the trial of a political prisoner who was being tried under the PTA. The delegate was refused access to the court and so could not observe the trial, but did discuss aspects of trial procedures and the legal system with several government officials. These discussions, together with earlier correspondence between Amnesty International and the government and information gathered from other sources, provided the basis for a memorandum regarding unfair trial concerns which Amnesty International submitted to the government in May 1992. Amnesty International expressed its desire to discuss the memorandum with the government and to clarify any misunderstandings there might be. The second delegation visited the Republic of Maldives in October 1992. Despite having submitted the memorandum well in advance, the delegates found that it had not been circulated to the relevant government authorities prior to their visit. In addition to meeting government officials, Amnesty International requested that its delegates be permitted to visit Dhoonidhoo detention centre and Gamadhoo prison. No such visits were permitted.

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**Map of Republic of Maldives**

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This report summarizes Amnesty International's concerns about the imprisonment of prisoners of conscience and the unfair trial or detention without trial of other political prisoners in the Maldives. It also contains information on the alleged ill-treatment of some prisoners. It is based on the organization's findings from its two visits to the country, information provided by the government in letters, as well as information gathered from non-governmental sources both before and after its visits. Where officials provided contradictory information on Amnesty International's concerns and uncertainty remains about procedures followed or the facts of a case, this is reflected in the text.

## The Prisoners

The prisoners in the Maldives of concern to Amnesty International fall into several categories. Some are prisoners of conscience, sentenced for expressing opinions critical of the government. Others are possible prisoners of conscience, arrested in November and December 1990 in connection with an alleged conspiracy to explode home-made petrol bombs during the fifth SAARC summit in Male', and for allegedly planning to fire marine signal flares into the Presidential Palace. Several people involved in these cases were journalists and writers who had been critical of the government. Some of these prisoners have been sentenced under the PTA, which has been applied retroactively. Another group of prisoners whose cases have a political dimension are those arrested for throwing a petrol bomb at the home of the Head of the Police Division in August 1991. The device is said to have caused little damage.

Not all of the prisoners of concern to Amnesty International have been charged and tried. Some have been held for up to two years in detention without trial, sometimes for long periods in solitary confinement. Some prisoners have described to Amnesty International the ill-treatment they suffered during this period, including being held in hinged hand-cuffs for up to six weeks which greatly restricted their movement and chafed their wrists. Some have described being held in stocks and have witnessed the beating of others.

Information on political prisoners detained since 1990 whose cases have been reported to Amnesty International is given in the table in Appendix I. Not all of those listed in the table are still in detention. Several illustrative cases are described below.

### Illustrative Cases

A period of political liberalization followed parliamentary elections held in the Republic of Maldives in November 1989. During these few months a number of members of parliament, editors, journalists and others began to express their views openly about alleged corruption within government, and their wish to promote democratic change and greater respect for human rights. The authorities responded in the first half of 1990 by arresting a number of government critics.

One group of seven people arrested in March 1990 were supporters of Mohamed Waheed, an independent member of parliament who had been critical of the government. The seven were

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arrested for distributing leaflets which alleged vote-rigging in the elections. Amnesty International considers them to be prisoners of conscience, detained solely for expressing their non-violent political opinions. They were sentenced by police courts<sup>1</sup> to terms of banishment<sup>2</sup> of between two years and ten months, to seven years. They had been charged under Articles 40(a), 38(b), 88(b) and 72(c) of the Penal Code.<sup>3</sup> Two of the seven - **Zakariyya Jameel** and **Ali Mohammed Fulu** - were released in an amnesty announced by President Gayoom in late 1991. Two more - **Abdul Majeed Shameem** and **Adam Ali** - were released by the President on 24 March 1993. The remaining three - **Ibrahim Waheed**, **Ibrahim Rasheed** and **Ahmed Khaleel** - are believed still to be serving their sentences of three and four years' banishment.

As part of the government's crackdown, curbs were also imposed on the media. Several new, independent publications had started up and in June 1990 two publications which were apparently critical of government - the weekly news magazine *Sangu* and the weekly newspaper *Hukuru* - were closed down by the authorities. All copies of the first issue of a new newspaper, *Manthiri*, which was published in Sri Lanka, were reportedly confiscated and the paper did not publish thereafter. A number of journalists or contributors to these publications were arrested. For example, **Moosa Wajdee**, editor of *Hukuru*, was detained several times during 1990 apparently in connection with articles published in *Hukuru*. In October 1992 he was said by a government official to be on bail awaiting trial; details were not given of the charges against him. A journalist convicted for his writing was **Thimarafushi Mohammed Jaleel**, a retired government official who had written about corruption in *Hukuru*. He was reportedly convicted in early 1991. Amnesty International does not know the specific charges against him, and it is possible that he has completed his sentence. Another writer for both *Hukuru* and *Sangu* was **Abdulla Hameed Fahmy**, who is believed to have been arrested, released and rearrested several times in connection with three cases against him. In October 1992 Amnesty International's delegates were told by a government official that he may have been sentenced to six months' banishment, but the precise charges against him were not revealed.

Dozens more people were arrested around the time of the Fifth South Asian Association for Regional Cooperation (SAARC) summit in Male', the capital of the Republic of Maldives, in November 1990, several of whom were journalists for the above-named papers. During the conference there had been two arson incidents in Male', which were extraordinary occurrences in the Maldives. In one, a home made bomb was placed in a launch beached for repair, destroying the launch. In the other incident an explosive device was set off in a tin can in Sultan park in Male'. Although in the latter case no injury or damage was caused, the government stated that the "enormity of the crime planned remains unchanged and the effect on the people of such misdeeds urged the government to take action." In addition to these two incidents, the government alleges that there was also a conspiracy to explode home-made

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1 Police courts were abolished in 1990, but the sentences they passed still stand.

2 Maldivian punishments include imprisonment in a prison, banishment and house arrest. People who are banished are required to live for a specified period of time on an island remote from their home. They are permitted to work during their banishment, but are not permitted to leave the island until the end of their sentence.

3 These sections cover hindering a person appointed by the President in carrying out his duty; inciting hatred or rebellion; disobeying an order of the court; and withholding information about a crime which has been committed. Amnesty International June 1993AI Index: ASA 29/01/93

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petrol bombs at the venue of the SAARC summit, and at the venue where the President of the Maldives hosted a banquet in honour of the six visiting Heads of State/Government of the SAARC countries. Some of those arrested were also accused of planning to fire marine signal flares into the Presidential Palace.

The government has stated that a total of fifty-four people were arrested in November 1990 on suspicion of complicity in the arson incidents and the alleged conspiracies. In May 1991 the Maldivian High Commissioner in Sri Lanka said that there was sufficient evidence against twenty-nine of the fifty-four to put them on trial. Of these, AI knows of at least 15 people who have been tried under the PTA despite the fact that the crimes of which they were accused are alleged to have taken place prior to 9 December 1990, the date on which the PTA came into force. Amnesty International is not aware of any cases under the PTA which concern acts allegedly committed after the PTA came into force.

**Naushad Waheed** (a brother of parliamentary candidate Mohamed Waheed) was a cartoonist for *Sangu* and *Hukuru*, and was arrested on 20 November 1990. According to a government official who met Amnesty International's delegates in October 1992, he was sentenced under the PTA to three and a half years' imprisonment for withholding information about the plans to plant a bomb. According to a letter to Amnesty International from the government sent in October 1991, however, he had been tried under Section 38(a) of the Penal Code, which concerns incitement to rebellion, anger or hatred against the Government of the Maldives or between sections of the public. He was later transferred to house arrest. Another of Mohamed Waheed's brothers, **Ali Waheed**, was a camera-man working for Maldives television. He is said to have coordinated Mohamed Waheed's election campaign in 1989. He was arrested on 18 December 1990 and sentenced in August 1991 to four years' banishment under the PTA for withholding information about the bombing conspiracy. **Naushad** and **Ali Waheed** are both said to have spent two months in solitary confinement before being tried. In October 1992 they were both released after being pardoned by the President.

Another person who had campaigned on behalf of Mohamed Waheed during the parliamentary election was **Masood Imad**, a businessman and administrator and a contributor to *Manthiri*. He was arrested in November 1990 and sentenced in October 1992 to four years' banishment for withholding information about the bombing conspiracy.

**Mohamed Nasheed** was assistant editor of *Sangu*. He had written an article on corruption in government which was published in both *Sangu* and a Sri Lankan newspaper, and as a result was sentenced in August 1990 to six month's house arrest. He was under house arrest when, in November 1990, the editor of *Sangu* and others were arrested for conspiracy to explode a device at the SAARC conference. On 24 November 1990 he, too, was arrested. He was taken to Dhoonidhoo detention centre, which is on an island a short distance from Male', where he was held in solitary confinement for 18 months. He was finally sentenced on 8 April 1992 to three years' imprisonment for withholding information about the conspiracy, four months for talking to unauthorised people while under house arrest and six months for endangering the peace and stability of the country. It is believed that these latter two convictions relate to interviews he gave to foreign journalists in which he criticized the government. He has denied any knowledge of a conspiracy to plant a bomb. Mohamed Nasheed appealed against his

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sentence, but in May 1993 the High Court upheld his sentence. He is believed to have been transferred from Gamadhoo island prison to house arrest in Male'.

On 20 May 1993 the following four people, who had been convicted under the PTA, were released. **Mohammed Shafeeq**, the editor of *Sangu*, had been arrested on 18 November 1990 and sentenced in early 1992 to 11 years' imprisonment under the PTA for planning and causing an explosion and for burning a car, and four months' banishment for speaking to journalists. He had reportedly confessed to involvement in these crimes. He is believed to have appealed for pardon from the President. **Abdullah Muaaz Ahmed** had been a merchant seaman and a correspondent for *Sangu*. He is believed to have been arrested in late 1990 and was sentenced in November 1991 to five years under the PTA. He is believed to have been implicated in Mohammed Shafeeq's confession. **Ilyas Hussein** is a librarian and was owner of *Manthiri*. He had been arrested in November 1990 and tried under the PTA for withholding information. In early 1992 he was sentenced to three years' imprisonment, which was commuted to house arrest. **Mohammed Khaleel** was sentenced to four years' banishment under the PTA, starting on 22 October 1992. He had been convicted for withholding information. **Mohamed Nasheed** was not among those released on 20 May 1993, despite the fact that his conviction in the bombing case is believed to have depended upon Mohammed Shafeeq's confession. Shafeeq is said to have later retracted the confession in court.

**Mohammed Latheef**, member of the Citizen's Majlis, was arrested on 19 September 1990 reportedly because he was attempting to canvass support among other members of parliament for a no-confidence motion against the government. Amnesty International believes him to have been a prisoner of conscience. The government told Amnesty International in October 1991 that Mohammed Latheef had been convicted for contravening Article 8 of Law No. 4/68, a legal provision which Amnesty International believes permits the imprisonment of prisoners of conscience (see Appendix II). The government said that Mohammed Latheef had stepped beyond the limits of criticism permitted to parliamentarians under the law. Law No. 1/79 permits criticism within parliament, but does not extend to statements made outside parliament. The government argued that:

*The member of Parliament ... clearly was unable to demarcate the area to which immunity was granted. His tirades and accusations were voiced in public places. In fact two of his employees have testified to the fact that the member ... openly vilified the President, members of the Cabinet and other high officials, in venues outside the Parliament, with words calculated to incite rebellion.*

In October 1992, government officials pointed out that Mohammed Latheef had not attempted to use the correct mechanism to express discontent with the government,

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but had chosen an illegal course of action. The trial against Mohammed Latheef started in early 1991 and continued intermittently for approximately three months. He spoke in his own defence and did not ask for legal assistance. He was given the opportunity to cross-examine the two witnesses called by the prosecution. He did not apply to the court to call witnesses himself. Mohammed Latheef was sentenced towards the end of April 1991 to six months' banishment to Muladhoo atoll. Three weeks before the end of his sentence he was pardoned by President Gayoom and released.

## The Unfair Trial of Political Prisoners

Amnesty International strives to ensure that all political prisoners are given a fair trial within a reasonable period of time. The term "political prisoner" applies to anyone who is imprisoned where there is a political element in the case. Amnesty International considers as a political prisoner anyone whose detention or imprisonment appears to be politically motivated, or where the alleged acts or the motivation for the acts of the prisoner appear to be political. Amnesty International urges that all political prisoners be given a fair trial within a reasonable period or, if charges are not brought, that they be released. If they are prisoners of conscience - that is any person held by reason of his or her political, religious or other conscientiously-held beliefs or by reason of his or her ethnic origin, sex, colour or language, provided that he or she has not used or advocated violence - Amnesty International urges that they be immediately and unconditionally released.

Amnesty International has urged the Government of Maldives to release immediately and unconditionally any prisoner who may have been detained for the peaceful expression of his or her political beliefs, and to ensure that any other prisoner held on charges with a political background is guaranteed a trial which satisfies international standards for fair trial. The government denied that any prisoners of conscience or other political prisoners have been detained or tried, and stated that it believes Maldivian trial procedures to be fair. Two government ministers told Amnesty International's delegates that Maldivian law does not distinguish political crimes from other crimes, and considers only the criminal acts themselves and not the motivation for them.

In examining trial procedures, Amnesty International seeks to establish whether a trial is being held according to established international standards which guarantee a fair and public hearing by an independent and impartial tribunal as laid down in Articles 10 and 11 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights (ICCPR). Amnesty International's sole concern is with adherence to international human rights standards which have been accepted and applied in all regions of the world. The organization takes no position on the cultural and religious values underlying a country's legal system.

### Independence of the judiciary

A fundamental prerequisite for fair trial is that the judiciary be independent from the executive. Amnesty International is concerned that in the Republic of Maldives, this independence is not guaranteed. The Constitution of the Republic of Maldives contains only limited reference to the administration of justice. Article 85 specifies that "The administration of justice and Shariath shall be conducted by a body appointed by the

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President of the Republic." Article 86 requires that "No Law contradicting the Constitution shall be promulgated."

Criteria for assessing the independence of the judiciary are contained in the United Nations (UN) Basic Principles on the Independence of the Judiciary, as adopted by the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the UN General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. Principles 1 and 12 stipulate the legal basis necessary to guarantee the independence of the judiciary, and the necessity for judges to have guaranteed tenure of office:

*1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary. ...*

*12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.*

Principles 17 - 20 specify the basis for and methods by which judges can be disciplined, suspended or removed and require that they may only be removed "*for reasons of incapacity or behaviour that renders them unfit to discharge their duties*" (Principle 18), and that the proceedings "*shall be determined in accordance with established standards of judicial conduct*" (Principle 19) and that the decisions should be "*subject to an independent review*".

In the Maldives, judges can be dismissed from office by the President and have no fixed term of office. In so far as the potential exists for summary removal from office by the President, this situation militates against judicial independence.

The government assured Amnesty International that no members of the judiciary are subject either to influence or direction from the government and that they derive their decisions solely from the "Laws of the Republic and the Islamic Shariath".

Allegations by some non-governmental sources that the President has the final say in legal cases were consistently denied by government authorities. They said that the President is a trained lawyer who might take a professional interest in the conduct of a case but that he does not determine sentences. While he might exercise clemency by reducing a sentence he does not have the power to increase sentences passed by the courts. The Constitution specifies in Article 33 that "The President of the Republic reserves the right to grant pardon and amnesty to offenders."

Amnesty International was informed that discussion had started in the Citizens' Majlis

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(the parliament) several years ago on constitutional amendments which would separate the powers of the executive and the judiciary. However, there was no expectation that any conclusion would be reached in the foreseeable future.

*The High Court buildings in Male'. Amnesty International's representatives were refused access to view the court room in October 1992.*

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## Legal representation

International human rights standards require that defendants have the right to legal assistance, with adequate time and facilities to prepare their case and to communicate with counsel of their choosing.

The legal profession is still small in the Maldives. Three Maldivians have qualified in law abroad and others have been trained since 1988 at the Institute for Islamic Studies. According to the Director of the Institute, 15 people had completed their training there and registered with the Ministry of Justice as lawyers by October 1992. Most of these work in government departments. Prior to 1988, lawyers had to train themselves and then sit a public examination.

The Government of Maldives told Amnesty International in October 1991 that "Maldivian Law provides for qualified and registered lawyers to represent their clients", that lawyers are trained at the Institute of Islamic Studies, and that there is a Law Society "to provide for the professional advancement of lawyers." In November 1991 the acting Attorney General assured the Amnesty International delegate that private lawyers are permitted to appear in any court case.

The information Amnesty International has gathered suggests that in practice lawyers may not be permitted to appear in all cases and that very few, if any, defendants in political cases appear in court with the assistance of a lawyer. There is no provision for legal aid in the Maldives, and the courts do not see the provision of legal assistance as their responsibility. Furthermore, according to one authoritative source, private lawyers would not want to appear in political cases because they would not want to take on cases they would be likely to lose.

Amnesty International is concerned that the right to legal assistance is not yet adequately guaranteed in the Maldives. It is accepted in international law that one of the most basic principles of a fair trial is the right of the accused to have a lawyer present a full defence to the court. This is guaranteed, for example, by Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR). Amnesty International would be particularly concerned if there are situations where defendants are expressly denied the right to be represented in court.

## The right to appeal

The right to appeal against a sentence is guaranteed in the Maldives. Convicted persons can appeal to the High Court, and then petition the President. However, different authorities gave differing information about the rules for lodging appeals. According to the legal adviser in Presidential Secretariat, appeals to the High Court

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must be filed within 90 days for people from Male' and within six months for people from the islands. Petitions to the President should then be filed within 30 days of the decision of the High Court. The Acting Attorney General, however, said that the time limits for filing appeals to the High Court were one month for people from Male' and three months for other islanders. Different accounts were also given on the role of the President in the appeals process. Most authorities said that following appeal to the High Court, sentenced persons could appeal for clemency to the President. However, one senior government legal officer said that the President conducts a judicial review of cases which come to him on appeal, assisted by his legal staff. This process, he claimed, was not equivalent to granting clemency.

There have been complaints from sentenced prisoners that they do not have adequate facilities to prepare their appeal. In particular, some have been unable to acquire a copy of the original judgment against them. Amnesty International's delegates were told in October 1992 that prisoners can purchase a copy of the judgment from the court which sentenced them, but that it would not necessarily be available to others. Prisoners, on the other hand, have complained that it can be very difficult for them to get this document within the time frame allowed for lodging the appeal.

#### Retroactive application of penal law

Both the Universal Declaration of Human Rights, in Article 11 (2), and the ICCPR, in Article 15 (1), prohibit retroactive application of penal law. In the Republic of Maldives, Article 69 of the Constitution prohibits retroactive application of any law, "unless it is specifically so provided in that Law." The PTA does expressly provide for retroactive application of the law under section 7 to "those persons whose cases are still pending". Of particular concern is the fact that the PTA, which is phrased overall as a general law, seems to have been passed with the specific intention of targeting this specific group of prisoners. Several of the political prisoners whose cases Amnesty International has raised have been charged retroactively under the PTA.

The Government of Maldives has offered different and contradictory explanations for the retroactive nature of the PTA. On the one hand, it has acknowledged that it is a retroactive law but argued that this was necessary because the type of offence concerned had never been anticipated in the Maldives. In October 1991, the government told Amnesty International:

*In fact the issue of retroactive legislation has been approached with caution. Article 69 of the Maldivian Constitution states: 'A law shall only be applied to circumstances that occur after its passage. No law shall have a retroactive application unless it is specifically provided therein.' Being a peaceful nation, the Maldives did not foresee the*

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*need to introduce legislations against terrorist activities. Those who see fit to exploit this trail shall not be allowed to do so. Terrorists and their tactics of terror shall not be condoned on the ground that a peace loving nation did not foresee the issue.*

The government further argued that the provisions of the PTA should not be called into question because it had been passed by a democratic parliament.

On the other hand, the government has also argued that the PTA is not in fact a retroactive law. By this argument, the PTA did not create a new penal offence unknown to national law at the time that it was passed, because "under the Shariath", on which Maldivian law is based, "any act of terrorism whether directed at the State or at the individual is a penal offense".

In order that trials be conducted fairly, and that the law is not applied in an arbitrary manner, it is essential that the law in force be clear at all times and that people are able to know the legal status of their acts at the time they carry them out and the penalties they might incur. As explained to Amnesty International's delegates, Maldivian law is based upon and reflects the principles of Shariath but does not contain everything which is contained in Shariath law and also draws from other sources. Amnesty International fully respects the right of states to formulate legislation in accordance with their own social, cultural, religious or other traditions. However, where such legislation falls short of internationally agreed standards for the protection of human rights, Amnesty International is constrained to point this out, and to propose that the law be changed to bring it into line with these standards.

#### Open trial in the presence of outside observers

The right to open trial in the presence of outside observers does not appear to be adequately protected in the Maldives. Amnesty International's delegate was not granted permission by the Ministry of Justice to attend the trial of Mohammed Shafeeq at Court No. 6 in Male, where most political cases are tried, apparently on the grounds that foreigners are not permitted to meet judges or observe court proceedings. Amnesty International's delegates were refused access even to view the courtroom by the Ministry of Justice in October 1992. Journalists are required to have prior permission from the Ministry of Justice to attend a trial.

The authorities whom Amnesty International met during its visits gave different opinions about the openness of political trials. In 1991, the delegate was told that normally only two members of the public are permitted to attend trials in Court No. 6 at any one time. In 1992, however, Amnesty International was told that there was no such rule, but that perhaps at the time space had been restricted informally. Sources

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consulted in 1991 said that permission to attend Mohammed Shafeeq's trial had to be obtained from the judge, and that the hearings had been held intermittently since mid-August 1991. When the trial was adjourned, no date was apparently fixed for the next hearing, making it even more difficult for interested members of the public to attend future hearings.

Article 14 (1) of the ICCPR clearly states that all criminal trials should be open to the public except in very exceptional and limited circumstances set out in the article. Amnesty International is concerned that in the Maldives political trials may effectively be closed to the public and press by placing informal limits on the number of members of the public permitted to observe the trial, the prohibition of foreigners observing the trial, the requirement that prospective observers seek permission of the presiding judge to attend the trial, the requirement that journalists must have permission from the Ministry of Justice, and the fact that the dates of hearings are not announced in advance.

The right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment and the right not to have evidence extracted under duress or torture admitted in court

The condemnation and prohibition of torture and other cruel, inhuman or degrading treatment or punishment is a fundamental principle of both international customary and treaty law, including international instruments such as the Universal Declaration of Human Rights and the UN General Assembly Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Indeed, the prohibition on torture is a peremptory norm of international law which cannot be contravened even in exceptional circumstances such as a public emergency.

Amnesty International is concerned by reports that political and other prisoners have been subjected to torture or ill-treatment and that confessions were made under duress.<sup>4</sup> Before they are brought to trial, political prisoners appear generally to be kept at Dhoonidhoo detention centre, which comes under the direct responsibility of the

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<sup>4</sup> Beatings and ill-treatment are not only reported by political prisoners who have been held at Dhoonidhoo. People arrested on criminal charges such as drug offences have also complained that they were forced to confess under duress by the police. One person charged with dealing in marijuana, for example, complained that he was beaten by police at Dhoonidhoo while he was handcuffed; that at times, while his right leg and left hand (or left leg and right hand) were cuffed together, he was forced to try to walk on sharp coral, and that a two-inch thick wooden beam was forced between his buttocks while one officer pushed down on his shoulders and another stood on his feet. He says he lost consciousness during the interrogation and signed a confession because the pain was too great. The judge dismissed the allegation of torture, saying he had not proved it in court, and sentenced him to 13 years' imprisonment. The judge does not appear to have ordered any medical examination of the defendant or any other inquiry into the allegation of torture.

police. Several prisoners who have been held at Dhoonidhoo have complained of ill-treatment there during the period of their interrogation. Some say they were held in solitary confinement for several months after denying knowledge of the charges against them. Some were held in solitary confinement for as long as 18 or 24 months. Some say that for up to about six weeks, during the period of solitary confinement, they were held in handcuffs joined together by a single hinge which greatly restricted their movement, interfering with their ability to eat and to keep themselves clean. These restraints chafed their skin, and some prisoners complain of lasting stiffness and weakness in their limbs as a result. They say the cells in which they were held in this period were small - about four or five feet by seven or eight feet - and made from corrugated iron sheets which became extremely hot.

International standards for the humane treatment of prisoners prohibit the holding of prisoners in restraints except in very specific circumstances to prevent escape during a transfer, on medical grounds or to prevent the prisoner injuring him or herself. Rules 33 and 34 of the UN Standard Minimum Rules for the Treatment of Prisoners (adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, 1955, and endorsed by the UN General Assembly Resolution 39/118, 14 December 1984) sets out these provisions and the strict procedures that should be followed to ensure prisoners are protected. The UN Human Rights Committee<sup>5</sup> has also said that prolonged solitary confinement can amount to torture or other ill-treatment. Amnesty International also considers that lengthy solitary confinement of prisoners and the use of instruments of restraint while they are under interrogation, and especially when they are also in the custody of their interrogators, constitutes a form of duress.

Confessions are extremely important under Maldivian rules of evidence, and it is essential that safeguards are introduced to ensure that prisoners do not confess under duress. The confessions of political prisoners were reportedly read out on television and radio and reproduced in a government newspaper before the prisoners are brought to trial. The rules of evidence require that two witnesses must be called by the prosecution to support the charge, but that a conviction can also be secured solely on the basis of a confession by the accused.

Article 12 of the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits the use of evidence extracted under duress from being used to incriminate anybody:

*Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.*

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<sup>5</sup> The Human Rights Committee is an 18-member expert committee which monitors implementation of the ICCPR. AI Index: ASA 29/01/93 Amnesty International June 1993

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The government has said that allegations of torture and ill-treatment are totally unfounded, but has produced no evidence that it has seriously investigated these complaints. Indeed, the government appears to expect such complaints and treats them lightly: in October 1991, for example, it told Amnesty International that "it is a common practice that most prisoners tend to retract their confessions however voluntary made at the trial or on second thought."

Government officials consistently denied that conditions of detention were harsh, but most would only talk about Gamadhoo, the prison island situated some distance from Male' where prisoners who have been held at Dhoonidhoo are sent after they are sentenced.<sup>6</sup> Gamadhoo is administered by the Prison Division within the Home Ministry. Some officials denied any knowledge of, or refused to talk about, Dhoonidhoo, which comes under the authority of the National Security Service (of which the police are one part).

The acting Attorney General informed the Amnesty International delegate in November 1991 that trials open with a statement of the case by the prosecutor. The evidence of the witnesses is then heard, and if the accused has confessed, the confession is read out. If the accused alleges that the confession was not made voluntarily, the Attorney General is directed to investigate the matter. He would do so by questioning the police about the matter, and report his findings to the judges. Amnesty International considers that this procedure would be inadequate to ensure that the complaint has been fully and impartially investigated as it appears to depend solely upon questioning the police.

### Arrest and detention procedures

In order to prevent detainees being subjected to ill-treatment and duress while they are under interrogation it is essential that basic safeguards be incorporated into arrest and detention procedures. Basic safeguards include restrictions on incommunicado detention, the separation of authority over detention and interrogation, the right of the detainee to challenge the legality of his or her detention and regular visiting of places of detention by independent people.

As explained by the Head of the Police Division, the law allows for suspects to be detained in police custody for up to 15 days. The police can then apply to the President for an extension of custody for up to 45 days. For approval to be granted, sufficient reasons would have to be put forward. Prisoners cannot be held by the police for more

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<sup>6</sup> According to the Head of the Prison Division, Gamadhoo also has a section where remand prisoners are held awaiting trial. Amnesty International does not know whether any political prisoners have been held in remand at Gamadhoo. Those the organization is aware of were held at Dhoonidhoo.

than 45 days, he said, and usually the police try to complete their investigation within 40 days. After this time, prisoners who are to be charged would either be released or put under house arrest, which is not a form of police custody. He said that prisoners are held at police headquarters while in police custody, and admitted that some are also held at Dhoonidhoo. He said that relatives could usually visit detainees under supervision at police headquarters, but that there was no provision for lawyers to visit and that given the scarcity of lawyers in the Maldives and the fact that most Maldivians would be unable to afford a lawyer, this would not be a practical option. Prisoners have no right to challenge the legality of their detention, but could write to the detaining authority or to the President. There is therefore no independent judicial or other supervision of prisoners. Ultimately, the supervision of the legality of the detention and the welfare of prisoners lies with the Minister of Defence, who is the President.

Given the reports of ill-treatment in police custody, Amnesty International believes that it is essential for arrest and detention procedures to be reviewed in order to ensure that the police are not responsible for the custody of those they are interrogating, that there is judicial supervision of detention and in order that prisoners cannot be held for long periods of time in solitary confinement and in restraints.

The Head of the Police Division expressed doubts that separation of responsibility for custody and responsibility for interrogation would be practical in the Maldives, given the country's small population and the possibility that prisoners would use personal contacts to influence their custodians. However, if the most basic rights of prisoners to humane treatment and fair trial are to be achieved, Amnesty International believes that such separation is essential.

Amnesty International also believes it is important that the detention of prisoners is subject to independent, judicial supervision. This could be achieved by

- requiring that prisoners be brought *promptly* before a judge after they have been arrested (the present period of fifteen days detention in police custody without any external supervision is too long);
- replacing the President with the courts as the body that approves extension of police custody;
- ensuring that prisoners have the right to go to court to challenge the legality of their detention or their treatment in prison.

As the number of lawyers increases in the Maldives, it should become possible to provide detainees with access to lawyers, who would provide an additional check on prisoners' welfare and facilitate prisoners' access to the courts. Even without this provision, however, an independent panel of prison visitors could be appointed who would be empowered to visit all places of detention and interview prisoners individually

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and confidentially, and take remedial action where necessary.

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## Provisions of the law allowing for the detention of prisoners of conscience<sup>7</sup>

The charges which have been brought against the political prisoners include some Amnesty International believes may in effect criminalise legitimate political dissent, and lead to the imprisonment of prisoners of conscience.

An example of such a charge is section 38 of Penal Code. Section 38(a) reads:

*It shall be an offence for a citizen of the Maldives, or any alien within the territory of the Republic of Maldives, to cause by anything said or written any anger or hatred in, or incite a rebellion by, any section of the Maldivian public against the lawfully elected government of the Maldives. It shall also be an offence to similarly cause anger or hatred or incite a rebellion between sections of the public.*

Section 38(c) specifically excludes as offences the expression of dissatisfaction, orally or in writing in a registered newspaper or magazine, with anything the government or a government employee has done or omitted to do, if the account given is true and the purpose is to affect reform. Nevertheless, a broad definition of acts deemed to cause hatred or rebellion is given in section 38(d): disobeying an order of the government and demonstrating against the government, or trying to do these things, are included as acts considered to cause hatred or rebellion under section 38(a). Amnesty International believes that prisoners of conscience could be charged and imprisoned under these provisions.

Another criminal charge which Amnesty International believes may be used to imprison prisoners of conscience is Article 8 of Law No. 4 of 1968. This article reads:

*It is unlawful to make public either in writing or orally one's thoughts on the following topics:*

- *Anything against the religion of Islam;*
- *Anything that might endanger the peace and stability of the country;*
- *Anything that could be libellous to anybody.*

### Conclusion

Amnesty International much appreciated the opportunity to discuss its concerns with government officials, and hopes that the government will now take steps to ensure greater protection of human rights in the Republic of Maldives. In particular, Amnesty International makes the following recommendations for basic human rights safeguards:

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<sup>7</sup> Amnesty International is not aware of any official English-language translations of Maldivian law and is mostly working from unofficial translations from the Divehi text. Translations of some individual sections of the penal code, however, were provided by the government.

## 1. Ratification of international human rights instruments

In order to demonstrate its commitment to human rights protection Amnesty International recommends the government to ratify or accede to, and implement, the International Covenant on Civil and Political Rights and its (first) Optional Protocol and the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

## 2. Review of existing legislation

Existing legislation should be reviewed with a view to ensuring that:

- the judiciary is fully independent of the executive;
- provisions of the law which permit the imprisonment of prisoners of conscience are repealed;
- criminal law cannot be applied retroactively;
- trial procedures conform to international standards for fair trial;
- all persons facing trial have the right to legal assistance, perhaps through the introduction of a legal aid scheme, and facilities for preparing a full defence.

## 3. Treatment of prisoners

Amnesty International has received consistent reports over several years of the ill-treatment of prisoners, especially while they are in police custody. In order to protect prisoners from such treatment, Amnesty International recommends that:

- reports of ill-treatment in custody should be fully investigated by an independent and impartial body. The perpetrators should be identified and brought to justice and the victims should be entitled to compensation and rehabilitation. The government should expressly forbid and condemn such practices;
- arrest and detention procedures should be revised to ensure that prisoners cannot be detained for long periods in the custody of their interrogators, as this provides a ready context for ill-treatment;
- there should be judicial supervision of detention, with prisoners brought before the courts promptly after their arrest and the courts empowered to approve extensions of police custody;
- prisoners should have access to a judge to challenge the lawfulness of their detention and to complain about treatment their treatment;
- the government should consider introducing a system of independent prison visitors who would visit all places of imprisonment and safeguard the rights of prisoners.

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#### 4. Existing political prisoners

Amnesty International urges the government to ensure that:

- all prisoners of conscience are immediately and unconditionally released;
- the cases of all other political prisoners are reviewed according to international standards of fair trial;
- any untried political prisoners are promptly and fairly tried on recognizably criminal charges or released.

## APPENDIX I

List of political prisoners known to have been detained in the Republic of Maldives between 1990 and 1993<sup>8</sup>

NAME	PERSONAL DETAILS	DATE OF ARREST	ADDITIONAL INFORMATION AND C (known)
Abdullah Muaaz Ahmed	28, officer on merchant ship and correspondent for <i>Sangu</i>	Not known. Probably late 1990.	Believed to have been implicated confession as the person who supplied at the Presidential Palace. He was sentenced in November 1991 to 5 years' prison. Released on 20 May 1993.
Adam Ali		April 1990	Sentenced to 7 years' banishment to <i>Haveeru</i> newspaper of 2/5/90. 1993.
Abdulla Hameed Fahmy	Columnist for <i>Hukuru</i> and <i>Sangu</i> . Writer of short stories and novels.	Probably late 1990.	Believed to have been released times in connection with three cases sentenced to six months' banishment
Ali Mohammed Fulu	51-year-old businessman	April 1990	Sentenced to 2 years imprisonment released under October 1991 amnesty
Mohamed Haleel	Member of the Special Majlis	late 1990	Reportedly held in solitary confinement and to have confessed to burning. Sentenced to unknown term. Believed arrest in Male'.
Hassan Haleem	22-year-old former soldier	22 August 1991 together with four or five others	Arrested on suspicion of involvement in bomb at the house of the Head of Male'. Held in Dhoonidhoo. Tried, but
Abdul Hannan	26, Senior administrator for Islamic Centre	December 1990	Arrested with Ali Waheed and Nausheen to 3 years under the PTA for making a device; sentence increased to 5 years to one account, or to 4 years' banishment another. Moved from prison to house in 1992. Pardoned by the President by
Abdullah Hassan	26, part-time store keeper. Also said to be surveyor and secretary, Minister of Home Affairs	December 1990	Arrested with Ibrahim Waheed and held at Gamadhoo. Charged with assault and giving false information. Sentenced to imprisonment.

<sup>8</sup> This list includes people who Amnesty International believes may be prisoners of conscience as well as political prisoners convicted after unfair trials and political prisoners believed to have suffered ill-treatment while in police custody. It is not a complete list of political prisoners in the Republic of Maldives. Amnesty International has information on a further 10 people arrested in connection with political offences during this period which is still incomplete or awaiting verification. The list does not include the remaining prisoners convicted for participation in the attempted coup of 1988.

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Ilyas Hussain	Librarian Islamic Centre. Owner of <i>Manthiri</i>	Initially in June 1990, then released, re-arrested, put under house arrest, rearrested in November 1990	Tried under PTA for withholding explosion. Trial began in mid 1991. Sentenced to 3 years' imprisonment but transferred to house arrest. Released in November 1990
Massod Imad	37, government official	November 1990	Sentenced to 4 year's banishment in November 1990
Azmeel Ahmed Jaleel	17, student.		Arrested with his brother, Abdullah. Said to be held in stocks and sentenced to three and a half years by the PTA in September 1991. Probably released in October 1991
Thimarafushi Mohammed Jaleel	50, journalist for <i>Hukuru</i> . Retired government official.	30 June 1990	Tried in early 1991 under PTA for withholding information. Held in Gamadhoo. Probably finished sentence in October 1991
Saudullah Jameel	28, radio technician at Maldives Airport Authority and instructor at Male' Fitness Club	17 February 1991	Charged with withholding information about PTA activities. Held for one month in jail before trial. Released for two years before his trial began. Trial announced on 21 March 1993.
Zakariyya Jameel	Said to have been involved with <i>Hukuru</i>	March 1990	Sentenced to 3 years imprisonment. Released in an amnesty in October 1991
Ahmed Khaleel		March 1990	Sentenced to 2 years' banishment. Possibly transferred to house arrest. Released in October 1992. Released.
Mohammed Khaleel (alias Maako)	28, librarian		Sentenced to 4 years banishment for withholding information about the PTA. Released in October 1992. Released on 20 May 1993
Mohammed Latheef	Member of parliament and businessman	September 1990	Sentenced to six months' banishment. Released shortly before end of sentence.
Abdul Shameem Majeed	38, teacher	March 1990	Sentenced to six and a half years' imprisonment in March 1990 for distributing leaflets; possibly released in October 1991. Released on 24 March 1993
Ibrahim Ali Maniku	Business man, in exile since 1983. In Sri Lanka he was granted the status of a protected person by United Nations High Commissioner for Refugees in Sri Lanka.	On 30 September 1991 he was taken from his home in Maharagama, Sri Lanka, by Sri Lankan immigration officials. Was later handed to officials of the Maldivian Embassy and taken back to Male' against his will on 1 October 1991.	For five months, was held without trial. On 18 February 1992 he was transferred to Male', and was charged in court by Members of Parliament in order to prevent Presidential candidate. Not known if trial completed.
Mohamed Musthafa	19, student	22 August 1991 with four or five others	Arrested in connection with throwing stones at home of the Head of the Police, M. Musthafa was read out on television in September 1991 in reference to his uncle who took part in the 1991 coup. Tried, but sentence unknown

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Mohammed Nasheed	24, journalist for <i>Sangu</i>	November 1990	Tried and sentenced on 8 April 1990 to 10 years' imprisonment under the PTA and to 10 years' banishment for talking to foreign journalists. Transferred to house arrest. An appeal by the Attorney General, he was not challenged. The Court upheld his sentence on appeal.
Ali Rasheed	27, economics student in Kuwait	December 1990 while visiting the Maldives from Kuwait	Arrested with Azmeel Ahmed Jaleel and others. Held under house arrest. Possibly sentenced to banishment. Released on 24 March 1991.
Ahmed Rasheed, alias Handu	28, shopkeeper	20 November 1990	Sentenced to between 11 and 15 years' imprisonment for setting the explosion in Sultan Muhammad Ali Mohammed Shafeeq. Held at Gamaaru.
Ibrahim Rasheed	29, grocery store holder. Brother of Mohamed Waheed.	Early December 1990	Tried under the PTA for failing to give information. Sentenced to three years' imprisonment and to three years' banishment. Transferred to house arrest in October 1991. Released by the President in November 1992. Released after completing sentence on another charge of tapping a telephone conversation.
Ibrahim Rasheed	19, trainee teacher.	April 1990	Sentenced to 4 years banishment (to be run concurrently) on 1 May 1990 under sections 88(b) and 72(c) of the Penal Code. Released with others according to Haveeru newspaper.
Mohamed Rasheed	Fishing gear technologist, working for Ministry of Fisheries	November 1990	Sentenced to 15 years' imprisonment and to 15 years' banishment in August 1992 for causing an explosion.
Mohamed Rashwan	18, student	22 August 1991; arrested with four or five others	Arrested in connection with throwing a bomb at the home of the Head of the Police in Malé. Sentence read out on television. Tried, sentenced to 10 years' imprisonment. Transferred to house arrest in October 1991.
Mohammed Shafeeq (alias Sappey)	28, editor of <i>Sangu</i>	18 November 1990	Sentenced to 11 years' imprisonment for planning and causing an explosion and to four months' banishment for causing an explosion. Transferred to house arrest. Released in October 1991.
Hassan Shakir	Involved in publication of <i>Nooru</i> , religious magazine. Also worked for <i>Maavashi</i> which was banned before publication and <i>Hukuru</i> . Poet.	26 April 1992	According to the Acting Attorney General, sentenced to six months' house arrest but released in October 1991.
Ahmed Shiham	20, former soldier	22 August 1991 with four or five others	Arrested on suspicion of involvement in throwing a bomb at the home of the Head of the Police in Malé. Sentence not known.
Ajwad Waheed	21, taxi driver	November 1990	Arrested in connection with distributing leaflets. Sentenced to banishment. Sentence probably served in October 1991.
Ali Waheed	34, television cameraman	18 November 1990	Arrested with Naushad Waheed. Sentenced to 4 years' banishment on 18 November 1990. Information. Released October 1991.

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			petitioning the President.
Ibrahim Waheed	34, manager of a pharmacy	March 1990	Sentenced to 4 years' banishment in 1990 with six others, reportedly for having seen anti-government literature. Pardoned by the President in November 1992.
Naushad Waheed	28, cartoonist for <i>Hukuru, Sangu</i> and <i>Manthiri</i>	18 November 1990	Sentenced to three and a half years' PTA for withholding information. Released in October 1992, probably pardoned by the President.
Moosa Wajdee	36, editor of <i>Hukuru</i>	Late 1990	Repeated short term arrests. On 18 October 1992. Charges unknown. Released from the PTA.
Mohamed Waleed	21, former soldier	22 August 1991 together with four or five others	Arrested on suspicion of involvement in a bomb at the home of the Head of State. Confession was read out on television. Charges unknown.
Ahmed Waheed Ali	Reporter for <i>Manthiri</i>	18 November 1990	Sentenced to six months' banishment. Pardoned by the President and released in October 1992.
Yusuf Rafi (Yoosay)	Satirist	18 November 1990	Sentenced on two charges to six months' PTA. Released in October 1992.

## APPENDIX II

### Texts of relevant Maldivian laws<sup>9</sup>

Prevention of Terrorism Act, No. 10/90 of 9 December 1990

1. Name: This Act is called the Prevention of Terrorism in Maldives Act, 1990.

2. Acts of Terrorism. What is specified in this section are terrorist actions as defined by this Act

(a) the killing of a person or persons for a political motive; the killing of a person or persons to cause fear amongst the general population or a group of people or committing such an act in a way which would intimidate a person or persons.

The planning of or carrying out of such an action for such motives as mentioned above, that would cause bodily harm to a person or persons.

(b) the kidnapping of a person or persons; holding and/or hiding a person or persons by force; holding a person or persons hostage; the planning of and/or carrying out of such an action.

(c) the planning and/or hijacking of any vehicle (sea/air/land).

(d) the conspiring to or actual importation, production, sale, giving or keeping of such items as guns, pistols, ammunition, bombs or any other such firearms without express government approval.

(e) the usage of or conspiring to use any forms of firearms, bombs, or any other items which can be construed as weapons and/or its ammunition, as a means of causing death, grievous bodily harm or damage to property.

(f) the conspiring of or carrying out of any forms of arson as to cause death, grievous bodily harm or damage to the property of a person or persons. The conspiring of or carrying out of any such actions as to cause death, grievous bodily harm or damage to the property of a person or persons.

(g) conspiring to cause or the actual causing of fear among the general population; the intimidation of a person or persons verbally or in written form by threatening to cause any form of grievous bodily harm or damage to property.

3. Spending, aiding (financial and/or otherwise) and conspiracy: Conspiring to carry out or help a person or persons to carry out any of the actions specified in section 2 above, by providing financial and/or help of any kind shall be considered as acts of terrorism.

4. Cancellation of the registration of organisations that aid terrorism: Any institution/establishment/organisation/business which is registered with the government that provides financial assistance or assistance of any kind for an act of terrorism will have its registration cancelled.

5. Payment of compensation: In addition to facing the penalties stated in Section 6 of this Act, a person or persons convicted of such an act or acts are liable to pay compensation for any damages cause due to the act, the amounts which will be decided upon by the Court.

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<sup>9</sup> Unofficial translations

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#### 6. Penalties:

(a) the penalty for a person or persons convicted of an act of terrorism which causes death is death or life sentence in jail or banishment for life. The penalty for any person or persons convicted of conspiring to carry out or taking part in such an act is also death. The penalty for aiding to carry out such an act or withholding of information about such an act is 10 - 15 years in jail or banishment for 10 - 15 years.

(b) the penalty for a person or persons convicted for an act of terrorism which does not cause death is jail or banishment for 10 - 15 years. The penalty for a person or persons convicted of conspiring is also jail or banishment for 10 - 15 years. The penalty for aiding and/or withholding information about such an act is jail or banishment for 3 - 7 years.

(c) it is within the discretion of the court to include hard labour with the jail sentences stated in Section 6 (a) and (b).

7. Implementation of the Act: This Act can be retroactively applied to those persons whose cases are still pending.

Section 38 of the Penal Code:

"(a) It shall be an offence for a citizen of the Maldives, or any alien within the territory of the Republic of Maldives, to cause by anything said or written any anger or hatred in, or incite a rebellion by, any section of the Maldivian public against the lawfully elected government of the Maldives. It shall also be an offence to similarly cause anger or hatred or incite a rebellion between sections of the public.

...

"(c) Where any person dissatisfied with anything done, or continued to be done or omitted by the government or a government employee in pursuance of his duties, expresses orally, or in writing in a lawfully registered newspaper or magazine, a true account of the act or omission with the purpose of revealing the act or omission or criticizing the act or omission so as to affect its reform, such expression shall not constitute an offence under this Article."

Section 88 (a) of the Penal Code:

"It is unlawful to disobey any court order or any authority with legal powers. The sentence for anybody found guilty of the above crime is either imprisonment, banishment or house arrest for a maximum of six months or a fine of not more than Rf. 150,-."

Article 8 of Law No. 4/68:

"It is unlawful to make public either in writing or orally one's thoughts on the following topics:

- anything against the religion of Islam
- anything that might endanger the peace and stability of the country
- anything that could be libellous to anybody."

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## APPENDIX III

### Officials met during Amnesty International's visit to Republic of Maldives in November 1991

Executive Secretary to the President  
Minister of Justice  
Minister of Transport & Shipping (former Attorney General)  
Acting Attorney General  
Speaker of the Citizens' Majlis (the Parliament)  
Head of the Police Department  
Officials in the Ministry of Foreign Affairs

### Officials met during Amnesty International's visit to Republic of Maldives in October 1992

Executive Secretary to the President  
Minister of Justice  
Minister of Transport & Shipping (former Attorney General)  
Minister of Foreign Affairs  
Acting Attorney General  
Head of the Police Department, National Security Service  
Head of Prison Division, Home Ministry  
Director of Centre for Islamic Studies