

CHRI 2016

# Searching for a Lost Democracy

## A Fact Finding Mission Report on the Maldives



# COMMONWEALTH HUMAN RIGHTS INITIATIVE

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The European Union is made up of 28 Member States who have decided to gradually link together their know-how, resources and destinies. Together, during a period of enlargement of 50 years, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.

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We would also like to express deep gratitude to Mr. Satyabrata Pal, Ms. Kishali Pinto-Jayawardena and Mr. Asad Jamal – our mission’s three members who made it all possible by bringing their deep knowledge, expertise and experience to guide the mission on the ground and hone the report’s findings and recommendations.

A number of CHRI staff were instrumental in providing commentary and support to produce this report. The lead writer, Uladzimir Dzenisevich, conducted field research and interviews with stakeholders in the Maldives, and diligently drafted the report. Devika Prasad and Cheryl Blake helped to develop the final text. We would also like to thank Devyani Srivastava for her input and insights in the early stages of the research.

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## EXECUTIVE SUMMARY

### INTRODUCTION

The Commonwealth Human Rights Initiative (CHRI) undertook a fact-finding mission to the Maldives on November 22–26, 2015. The fact-finding was prompted by grave concerns regarding the protection of human rights, democracy and the rule of law in the Maldives.<sup>1</sup> The mission's objective was to evaluate the compliance of the Maldives with the Commonwealth's fundamental political values and core documents, including the Commonwealth Charter and Latimer House Principles, as well as international standards. This report details and explains the findings of the mission.

CHRI commissioned an independent fact-finding team. We were fortunate to constitute a diverse and expert team made up of: Mr. Satyabrata Pal, a former member of the Indian National Human Rights Commission, Ms. Kishali Pinto-Jayawardena and Mr. Asad Jamal, both prominent legal practitioners from Sri Lanka and Pakistan respectively, and Mr. Uladzimir Dzenisevich from CHRI.

The fact-finding mission was able to arrive at several clear conclusions. First and foremost, the survival of democracy itself is at stake in the Maldives. Since coming to power in November 2013, President Abdulla Yameen's government has curtailed human rights, democracy, and rule of law in violation of the Maldives Constitution, UN and Commonwealth standards. As a result, fundamental rights stand alarmingly weakened and democratic processes further eroded. It appears clear that this government is working to silence dissenting voices, paving the way to possibly revert back to an authoritarian system.

This trend toward a restricted civic and political space is accompanied by the rise of radicalised non-state actors keen on harassing those who are unorthodox and perceived as secular or "un-Islamic", with the government failing to take meaningful measures against radical groups. The joint effect of an increasingly authoritarian state, tolerating (or – as some interviewees suggested – using) radicalised non-state actors

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<sup>1</sup> See e.g., UN Human Rights Council, "Report of the Special Rapporteur on independence of judges and lawyers, Gabriela Knaut: Mission to Maldives", 21 May 2013, available at <http://bit.ly/1aLRjT1>; Transparency Maldives (2014), "Democracy at the Crossroads: The Results of 2013 Democracy Survey", available at <http://bit.ly/1SHYS0U>; Transparency Maldives (2014), "National Integrity System Assessment. Maldives 2014", available at <http://bit.ly/1VnFxA5>; Amnesty International (2015), "Maldives: Assault on Civil and Political Rights", available at <http://bit.ly/1OZrNHS>; and ICJ and SAHR (2015), "Justice Adrift: Rule of Law and Political Crisis in the Maldives", available at <http://bit.ly/1nQBSAa>;

as its arsenal, is changing Maldivian society in the most dramatic way. It is disenfranchising the Maldivian people and physically endangering political opposition, human rights organisations, journalists and activists, who are now finding that the space to act and express themselves has shrunk significantly. Predictably, women are on the frontlines of this marginalisation.

The implications are both severe and numerous. In this report we describe the 1) increasing human rights violations committed with impunity; 2) shrinking space for civil society, opposition and independent media to operate; 3) degradation of Constitutionalism and the rule of law; 4) decay of independent institutions in particular and good governance in general; 5) judicial overreach and interventionism; 6) politically motivated criminal charges and imprisonments; 7) increasing police harassment and violence; as well as 8) increasing harassment and violence committed by radical elements.

This report is compiled with a view to share these essential findings with the Commonwealth, governments and international organisations. Recommendations to all relevant stakeholders are included at the end of the report.

## TERMS OF REFERENCE

The mission's terms of reference were to examine, assess and document:

1. The functioning of the Maldives government, and its willingness to uphold constitutional rights, rule of law and good governance;
2. The relationship between the executive, People's Majlis, judiciary and independent institutions, civil society as well as the political opposition;
3. The specific role of the government in the current deterioration of democracy and rule of law;
4. The role of and current challenges before independent institutions and civil society;
5. The steps taken by the government to counter decline of rule of law, good governance and democracy;
6. Effectiveness of the recourse to remedies for human rights violations;
7. Causes and ramifications of the November 2015 emergency;
8. Implications and recommendations regarding Maldives' status in the Commonwealth.

We sought to answer these questions with a focus on events from the 2013 Presidential elections to the present.

## APPROACH

This report is based on desk research, legal analysis<sup>2</sup> and interviews with a wide variety of relevant stakeholders in the Maldives. All information received from the stakeholders interviewed was crosschecked and analysed to ensure the information presented here fully and accurately represents the situation on the ground.

During the visit, the fact-finding mission interviewed representatives of the ruling political party and the opposition, officials from independent bodies, namely Anti-Corruption Commission, National Integrity Commission and staff members of the Prosecutor General's office, members of civil society, journalists from independent media outlets as well as legal practitioners.<sup>3</sup>

Unfortunately and despite numerous requests, we were not able to meet any government officials, all of whom, we were informed in advance, were "not in town" on the dates of the mission. Yet, upon arriving in Malé, we discovered that most of the officials we requested to meet were in the capital at that time. Subsequently, we filed individual meeting requests with several Ministries, but in most cases we were not given appointments.

Although we were granted advance permission to interview the imprisoned former President Mohamed Nasheed, just 15 minutes before the meeting the fact-finding mission was informed by phone that the meeting was cancelled for unspecified reasons. Our request for clarifications, filed with the Maldives Correctional Services and the Home Ministry, remains unanswered.<sup>4</sup>

## LEGAL FRAMEWORK

The Constitution of the Maldives, Commonwealth commitments, and international human rights law formed the backdrop against which the fact-finding mission analysed the legal framework and situation on the ground.

### Constitution of the Republic of the Maldives, 2008

The Maldives Constitution, 2008, as the supreme law of the land, enshrines the principle of separation of powers and vests legislative, executive and judicial powers

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<sup>2</sup> It is difficult to access official English translations of laws in the Maldives. For analysis of laws, the team had to rely heavily on unofficial translations and summaries of the text of laws;

<sup>3</sup> The identities of our interviewees are largely kept anonymous in this report except where individuals gave consent to state their names;

<sup>4</sup> See Annexure I;

in the People's Majlis (Parliament), the President and the Judiciary respectively. The Constitution also establishes a number of independent commissions and offices. These include the Judiciary Service Commission (JSC), the Civil Service Commission (CSC), the Human Rights Commission of the Maldives (HRCM), the Anti-Corruption Commission (ACC), Auditor-General and Prosecutor-General.

Chapter II of the Constitution commits the state to respecting a wide range of fundamental rights and freedoms, including civil, political, economic and social rights as well as specific provisions to guarantee fair trial rights. Article 18 of the Constitution specifies that it is the duty of the State "to follow the provisions of this Constitution, and to protect and promote the rights and freedoms [provided in Chapter II]".

### Commonwealth Charter, 2013

The Charter of the Commonwealth commits member states to the core values and principles of the Commonwealth which include: democracy; human rights; international peace and security, tolerance, respect and understanding; freedom of expression; separation of powers; rule of law; good governance; sustainable development; protecting the environment; access to health, education, food and shelter; gender equality; importance of young people of the Commonwealth; recognition of the needs of small states; recognition of the needs of vulnerable states; and the important role of civil society.

### Commonwealth (Latimer House) Principles on the Accountability of and the Relationship between Three Branches of Government, 2003

The Commonwealth Principles provide an effective framework for implementation of the Commonwealth's fundamental values by ascertaining separation of powers, accountability and respect between the three branches of government. Principle I stipulates that "Each Commonwealth country's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability". The Principles pay much attention to judicial independence, providing for transparent and merit-based judicial appointments, security of tenure and interactions between the Judiciary and the Executive that "should not compromise judicial independence".<sup>5</sup> The Principles also underscore the important role played by the independent institutions meant for accountability, media and civil society in overseeing the government.

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<sup>5</sup> Commonwealth Principles, 2003, Principle IV;

Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence, 1998

The Latimer House Guidelines further elaborate on the independence of the judiciary. In particular, they stress the importance of adequate judicial training, judicial ethics as a means of accountability, as well as merit-based independent processes for judicial appointments, which “should be designed to guarantee the quality and independence of mind of those selected for appointment at all levels of the judiciary”.<sup>6</sup>

UN Principles relating to the Status of National Institutions (The Paris Principles), 1993

The Paris Principles, adopted by the UN General Assembly, lay down a broad framework of standards that should govern functioning of independent state institutions, bodies and commissions. Most importantly, they are required to be representative, pluralist and independent.

International human rights law

The Maldives has ratified most leading international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), Optional Protocol to ICCPR, International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Optional Protocol to CEDAW, Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Optional Protocol to CAT and Convention on the Rights of the Child (CRC). The Maldives has signed, but not ratified International Convention for the Protection of All Persons from Enforced Disappearance (CED).

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<sup>6</sup> Latimer House Guidelines, 1998, Guideline II(1).

## PART I: POLITICAL CONTEXT

In 2008, following 30 years of authoritarian rule, the Maldives became a “sovereign, independent, and democratic republic”. The new Constitution that came into effect in August 2008 committed the Maldives to rule of law, principles of equality and non-discrimination, respect for fundamental rights and freedoms, an independent judiciary, and accountability through a range of independent oversight bodies. The first-ever multi-party elections took place in October 2008 leading to the victory of the pro-democracy movement leader Mohamed Nasheed who secured 54 percent of the vote.<sup>7</sup> With this, 30 years of dictatorial rule under President Maumoon Abdul Gayoom came to an end.

During Nasheed’s time in office (2008–2012), the Maldives implemented important political reforms, such as holding successful parliamentary and local council elections. However, his government faced stiff resistance from supporters of Gayoom, who were present in all state institutions, which resulted in frequent obstacles to the implementation of important structural reforms. These include an impasse on the drafting and passing of foundational laws such as the revised Penal Code, Code of Criminal Procedure and Evidence Act. While the new Penal Code was enacted only recently, on 16 July 2015, the others are yet to be finalised.<sup>8</sup> Undoubtedly, the administration of criminal justice in the country is vitiated by the absence of these basic legal frameworks.

On 7 February 2012, President Nasheed was forced to resign.<sup>9</sup> Since then, the human rights situation has worsened due to state violence and arbitrary action targeting the Opposition. The day after his removal, the state violently cracked down on pro-democracy and pro-Nasheed protests particularly in two largest cities, Malé and

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<sup>7</sup> “Maldives human rights activist wins presidential elections,” *The Guardian*, 29 October 2008, available at <http://bit.ly/1KA7TBi>;

<sup>8</sup> “New penal code comes into effect,” *Maldives Independent*, 16 July 2015, available at <http://bit.ly/1nwcBvg>;

<sup>9</sup> While the government-appointed Commission of National Inquiry declared the transfer of power as legitimate, an independent legal review of the CONI report criticised it for exceeding its mandate, basing its conclusion on hastily gathered evidence without due regard to fundamental safeguards, for selective use of evidence, and for acting against fundamental tenets of natural justice. See “A Legal Review of the Report of the Commission of National Inquiry, Maldives,” available at <http://bit.ly/1OSYOp6>;

Addu.<sup>10</sup> The political environment came to be marked by deep polarisation characterised by “mistrust, categorical negative framing of one another and by the lack of self-accountability of the institutions, politicians and their parties for their role in existing political crisis”.<sup>11</sup> The space for alternate and independent voices shrunk further.

A case was registered against President Nasheed for his decision to arrest and subsequently detain Criminal Court judge Abdulla Mohamed in January 2012 in violation of court orders.<sup>12</sup> Nasheed was prosecuted under Section 81 of the Penal Code<sup>13</sup> that invited a maximum punishment of 3 years imprisonment. The charges were later upgraded under the old Anti-Terrorism Act of 1990 and in March 2015 the former President was sentenced to 13 years in prison.<sup>14</sup>

The situation has further deteriorated since the presidential elections of 2013. Although Nasheed’s Maldives Democratic Party (MDP) won the majority of votes, the Supreme Court cancelled the election and ordered a new round of voting. No candidate gained a majority and a further round of voting was held in November 2013, when Abdulla Yameen was elected President. Taking advantage of its majority in Parliament,<sup>15</sup> President Yameen’s government is diluting constitutional rights and safeguards through legislative action. It has also failed to take measures to ensure an independent and impartial judiciary.

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<sup>10</sup> Police Integrity Commission, Maldives, *Findings and Conclusions of the Investigation Conducted by the Police Integrity Commission to Determine Police Conduct in Dispersing the MDP protest in Male’ on 8 February 2012*, available at <http://bit.ly/1Nvyy21>.

<sup>11</sup> Transparency Maldives, *Pre-Election Assessment: 2013 Presidential Elections in the Maldives*, 28 March 2013, p.1, available at <http://bit.ly/1PNK4HS>;

<sup>12</sup> There were several allegations of judicial misconduct against Judge Abdulla. At least 14 official complaints had been registered with the Judicial Service Commission since 2008. President Nasheed ordered police to investigate the matter but Judge Abdulla refused to cooperate. For more details, see United Nations Working Group on Arbitrary Detention, Petition titled Mohamed Nasheed v. Government of the Republic of Maldives, April 30, 2015, available at <http://bit.ly/1OK9IVM>;

<sup>13</sup> Section 81 of the Penal Code reads: “It shall be an offence for any public servant to use the authority of his office to intentionally arrest or detain any innocent person in a manner contrary to Law. A person guilty of this offence shall be punished with exile or imprisonment for a period not exceeding 3 years or a fine not exceeding Mrf. 2,000.00”. See Bar Human Rights Committee of England and Wales (BHRC), A Report on hearing in the case of former President Mohamed Nasheed, and meetings with lawyers, politicians and journalists, 3-6 November 2012, p.11, available at <http://bit.ly/1K6Wxdf>;

<sup>14</sup> “Maldives ex-president Nasheed jailed for 13 years on terrorism charges”, *The Guardian*, 13 March 2015, available at <http://bit.ly/19jda13>;

<sup>15</sup> President Yameen’s People’s Party of Maldives (PPM) won majority of seats on March 22 2014 People’s Majlis election. See Report of the Commonwealth Observer Group, available at <http://bit.ly/1Jys7AA>;

On 4 November 2015, Yameen declared a state of emergency, curbing a number of rights and freedoms, including freedom from restraint, right to privacy, right to strike, freedom of assembly, freedom of movement, freedom from unlawful arrest, detention and imprisonment; and freedom from search and seizure without reasonable cause. The declaration of emergency came two days before a rally planned on 6 November 2015 to protest against “unjust and autocratic rule”. The state of emergency was widely condemned and it was lifted on 10 November 2015.<sup>16</sup>

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<sup>16</sup> “Maldives revokes state of emergency amid global outcry and tourism worries”, *The Guardian*, 10 November 2015, available at <http://bit.ly/1S8mOux>;

## PART II: GROWING AUTHORITARIANISM OF THE GOVERNMENT

There is an overwhelming belief among the stakeholders we interviewed that the Commonwealth's core value of separation of powers is not respected in the Maldives. The incidents and views expressed suggest that the three branches of government do not fulfil their independent mandates and often coordinate their actions, which hints at their collusion. The Parliament and the Executive are acquiescing in and condoning judicial overreach, while the judiciary does not hold the government to its constitutional mandate.

One common theme of the interviews is that the government is divided into hostile factions rallied around influential figures. Their conflicts over patronage and power, which both flow from Presidential favour, sometimes lead to the abrupt and arbitrary dismissals of the "losers", often followed by their arrest and pressing of charges. Most high-profile political trials, including those of former Home Minister Mohamed Nazim and former Vice President Ahmed Adeeb, are believed to fall into this pattern. The judiciary is perceived as deeply politicised and corrupt, lacking public trust and confidence.<sup>17</sup>

These deeply pessimistic views are in line with a recent survey of the public mood in the Maldives. It found that 62 % of Maldivians have "no confidence at all" in the Parliament. Political parties, local councils and the President's office follow with 58 %, 50 % and 43 % respectively.<sup>18</sup> Parliament and the political parties are perceived to be the two most corrupt institutions in the country,<sup>19</sup> though in another recent study by Transparency Maldives all three branches of government score very low in independence, integrity and accountability.<sup>20</sup>

At the same time, the government is trying to control all independent institutions, the media, the political process and the discourse that these actors produce by employing a wide range of legislative and non-legislative measures, leading to a sharp fall in

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<sup>17</sup> According to Transparency Maldives' 2013 Global Corruption Barometer Survey, Judiciary was one of the top three institutions perceived as most corrupt in the country with more than 55 % of those surveyed believing it to be "extremely corrupt" (study available at <http://bit.ly/1S8szbR>). Transparency Maldives's 2015 report titled "Democracy at the Crossroads" (available at <http://bit.ly/1SHYS0U>). indicates that 46 % of respondents have "no confidence at all" in the court system;

<sup>18</sup> Transparency Maldives (2015), "Democracy at the Crossroads", available at <http://bit.ly/1SHYS0U>;

<sup>19</sup> Transparency Maldives (2013), "Global Corruption Barometer Survey", available at <http://bit.ly/1S8szbR>;

<sup>20</sup> Transparency Maldives (2014), "National Integrity System Review", available at <http://bit.ly/1VnFx5>;

democratic standards and good governance, and a continual erosion of the rule of law and freedom of expression. These disturbing problems are discussed throughout this report.

#### ADOPTION OF LAWS AND OTHER MEASURES THAT RESTRICT HUMAN RIGHTS

The Parliament has passed several laws and other non-legislative measures that restrict constitutional rights and freedoms of Maldivians, most notably the right to a fair trial and freedom of expression. In restricting constitutional rights through legislation, Parliament is misusing power vested in it under Article 16 of the Constitution, which authorises it to prescribe “reasonable” limits to constitutional rights and freedoms. Article 16, however, clearly specifies that “any law can limit the rights and freedoms to any extent only if demonstrably justified in a free and democratic society”. These measures to restrict human rights not only violate the Constitution but also Maldivian obligations under international law.

Below is an overview of most significant legislative and non-legislative measures restricting human rights, adopted by the current administration.

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##### [Anti-Terrorism Act, 2015](#)

The Anti-Terrorism Bill was introduced at the Parliamentary committee stage in June 2015 and passed on 27 October 2015. The Bill did not incorporate any of the 60 amendments presented by the opposition Maldives Democratic Party (MDP) and was signed into law by the President the next day after passing by the People’s Majlis. The Bill was amended by the ruling party to enter into force immediately upon the President’s signing it, instead of after the usual three months.

While the Act was not available in English for analysis, the mission’s interlocutors argued that it is not justified by present or potential security threats, nor is it in line with international standards. It reportedly does not include a list of terrorist organisations, but grants the President unchecked power to proscribe organisations and groups.

It is also feared that the Act will serve to further curtail civil liberties and constitutional rights. A number of stakeholders suggested to us that it restricts fair trial rights for terrorism suspects, including the right to remain silent, the right to be released from pre-trial detention and the right to access legal counsel. It authorises the Home Ministry to carry out extensive surveillance of suspects relying solely on police intelligence reports. While only one intelligence report is needed to place an individual under surveillance for two years, the integrity and impartiality of these reports are open to question.

The government claims it will not abuse the law,<sup>21</sup> but the fear was expressed that the Act defines terrorism so broadly<sup>22</sup> that it can be used against the political Opposition and activists. For example, disruption of public transport, which often happens during political rallies, can be considered an act of terrorism.

Legal experts share these concerns. The review of the Act, released by the Maldivian Democracy Network, a prominent human rights NGO based in Malé, points to other troubling provisions.<sup>23</sup> For example, the Act stipulates that counter-terrorism activities are to be headed by a Presidential appointee who needs no Parliamentary approval, and that evidence that “could be construed as hearsay”, such as footage of client-attorney discussions, can be admitted in court. The review points out that certain provisions of the law violate articles 9, 14 and 17 of the ICCPR and warns that the Act poses a danger to “all dissidents, civil society actors, journalists, lawyers and other human rights defenders” given the country’s historically repressive politics.

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### Bill to Prohibit Calls for Tourism Boycott and Sanctions against the Maldives, 2015

On its face, the Bill to Prohibit Calls for Tourism Boycott and Sanctions against the Maldives unreasonably restricts freedom of expression. The Bill was tabled in the Parliament on 12 October 2015,<sup>24</sup> and criminalises “calls for tourism boycotts and sanctions”. This includes:

- a. Encouraging or participating in any work in and outside the Maldives that calls for a tourism boycott or sanctions against the Maldives;
- b. Calling to boycott tourism or impose sanctions in the Maldives, in and outside the Maldives;
- c. Agreeing to work with or assisting a certain party in or outside the Maldives to boycott tourism or call for sanctions against the Maldives, as well as supporting, endorsing or promoting such calls;

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<sup>21</sup> “Maldives says won't abuse new anti-terrorism law”, *Haveeru Online*, 28 October 2015, available at <http://bit.ly/1JBtka9>;

<sup>22</sup> Definition uses descriptions like “undue influence against the government”, “creating fear among the public” and “promoting particular political, religious or any other ideology unlawfully”. See MDN (2015), “The review of the Anti-Terrorism Act 2015”, available at <http://bit.ly/1SVmgrp1>;

<sup>23</sup> MDN (2015), “The review of the Anti-Terrorism Act 2015”, available at <http://bit.ly/1SVmgrp1>;

<sup>24</sup> The Bill was passed on 25 November 2015, but was returned to the Parliament for reconsideration by the President. See “President vetoes bill banning calls for sanctions, tourism boycotts”, *Maldives Independent*, 23 December 2015, available at <http://bit.ly/1UoIRuC>;

- d. For any reason, encouraging or calling in and outside the Maldives to boycott a certain resort, hotel, island, atoll or a region; endorsing and promoting such calls;
- e. Speaking about anything that would create fear among tourists or visiting the Maldives and spreading any such information.<sup>25</sup>

The punishment for the crimes described above is two to ten years of house arrest or imprisonment or a fine of 500,000 to 5,000,000 MVR (\$32,425 – 324,254), “depending on the degree of participation”.<sup>26</sup> If the Act is passed, those who violate it will also be punished by cancelling their business licences and, if applicable, withdrawing any received state honours and discontinuing state allowances.<sup>27</sup>

The Bill appears to be a reaction to growing calls, both domestically and internationally, to boycott the Maldives as a tourist destination.<sup>28</sup> The most vocal proponents of the boycott are the MDP and Mohamed Nasheed’s international legal team. Both came out strongly against the Bill.<sup>29</sup>

While some experts opposed the calls for a tourism boycott on the grounds that a substantial decrease in tourism will result in unemployment and create favourable conditions for radicalisation,<sup>30</sup> such concerns cannot be addressed through methods which present a direct attack on freedom of expression, protected by Article 27 of the Constitution, Article 19 of the ICCPR and the Commonwealth Charter.

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### Other legislative efforts to restrict freedom of expression and freedom of the press

Freedom of the media and independent journalism, which are deeply interwoven with freedom of expression, are also under serious threat. Article 28 of the Constitution guarantees “everyone the right to freedom of the press, and other means of

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<sup>25</sup> Bill to Prohibit Calls for Tourism Boycott and Sanctions against the Maldives, 2015, s. 3. Available at <http://bit.ly/1NxNvAJ>;

<sup>26</sup> *Id.*, s. 5;

<sup>27</sup> *Ibid.*;

<sup>28</sup> See e.g. “Maldives Backslides Into Repression as the World Calls for President Nasheed's Release”, *The Huffington Post*, 14 October 2015, available at <http://huff.to/1ShcT49>;

<sup>29</sup> See “Maldives opposition denies push for tourism boycott”, *Haveeru Online*, 13 October 2015, available at <http://bit.ly/1KCqyMO>; and “Maldives Backslides Into Repression as the World Calls for President Nasheed's Release”, *The Huffington Post*, 14 October 2015, available at <http://huff.to/1ShcT49>;

<sup>30</sup> “International cooperation needed to fight jihadism in the Maldives”, *East Asia Forum*, 26 September 2015, available at <http://bit.ly/1Pi18tv>;

communication, including the right to espouse, disseminate, and publish news, information, views and ideas”.

However, the state has enacted a series of laws interfering with the independence and freedom of the press. Parliamentary Privileges Act, 2013, for example, allows Parliament or any of its committees to summon anyone to give witness or hand over information, which Parliament wishes to seek.<sup>31</sup> This empowers Parliament to force journalists to reveal their sources of information. This violates Article 28 of the Constitution, which prohibits any person from being compelled “to disclose the source of any information that is espoused, disseminated, or published by that person”.

Another restriction on press freedom can be found in the Freedom of Peaceful Assembly Act, 2013, which allows the police to restrict the distance from where reporters are to monitor and report on public gatherings, including when a gathering is being dispersed.<sup>32</sup> Giving the police the discretion to establish a perimeter from which the media can report on assemblies and protests undermines its ability to serve as an effective watchdog on the content, conduct, and dispersal of protests.

A recent, and especially alarming, effort to chill free speech is the ironically titled draft Freedom of Expression Bill, prepared by the Attorney General’s office, which would criminalise expressions “contrary to national interest” or that insults or “questions the validity of a tenet of Islam”.<sup>33</sup> Four types of expressions are labelled as being “contrary to national interest”: encouraging harm to a person or damage to private party; calling for the illegal overthrow of the government; threatening the country’s independence, sovereignty and security; and accusing a person of committing a *hadd* offence without conclusive evidence.

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<sup>31</sup> Press Release, Maldives Journalist Association, “MJA concerned over Parliamentary Privileges Act,” 11 March 2013, available at <http://bit.ly/1Pi6m8v>;

<sup>32</sup> Freedom of Peaceful Assembly Act, 2013, s. 54(d);

<sup>33</sup> Ahmed Naish, “Bill proposes criminalizing ‘expressions contrary to national interest and Islamic tenets,” *Maldives Independent*, 19 July 2015 available at <http://bit.ly/1JBRcus>;

## Limiting political rights of prisoners

In March 2015, Parliament amended the Prison and Parole Act, 2015<sup>34</sup> to remove an inmate's right to membership in a political party.<sup>35</sup> The right to participate in, and join activities of, any political party is guaranteed to “every citizen” under Article 30 of the Constitution. While there is obvious merit in the criticism that this amendment targeted imprisoned former President Nasheed,<sup>36</sup> it has wide implications for the political rights of all prisoners.

## Invasive regulation of civil society

On 1 October 2015 the Government published a new regulation on civil society organisations. While the English text of the regulation was not available to the mission, certain highlights of the regulation were shared with us.

### Highlights of 1 October 2015 regulation on civil society

- Non-Governmental Organisations (NGOs) are required to annually disclose membership lists to the Ministry of Home Affairs;
- NGOs must seek permission from the Registrar at the Ministry of Home Affairs prior to the start of any projects exceeding 25,000 Rufiyaa (approx. 1500 USD);
- NGOs are required to share the details of project activities and budgets with the Registrar every year;
- NGOs are required to share the details of fundraising and donors;
- Overseas fundraising can only be carried out after approval of the NGO Registrar;
- An audit must be conducted by a government approved auditing firm;
- NGOs can be suspended:
  - Upon complaint filed by any board member to the Registrar;
  - When it engages in any activity that could cause loss of harmony or a national security threat as stated by law;

<sup>34</sup> Press release, People’s Majlis, “Bill on Amendment to the Prison & Parole Act passed by Majlis”, 30 March 2015, available at <http://bit.ly/206KRi2>;

<sup>35</sup> “Maldives parliament approves measure to eliminate political party membership for inmates”, *Jurist*, 31 March 2015, available at <http://bit.ly/1npGIno>; and “New Maldives law strips ex-president of party membership”, *AP*, 30 March 2015, available at <http://yhoo.it/1WOYpcw>;

<sup>36</sup> “UN Working Group on Arbitrary Detentions mentioned the adoption of this act as one of the grounds to believe that Nasheed’s trial was politically motivated. See UN WGAD, Opinion No. 33/2015 (The Maldives), 4 September 2015, para 97, available at <http://bit.ly/1WPU9tb>; See also, Maldives parliament approves measure to eliminate political party membership for inmates”, *Jurist*, 31 March 2015, available at <http://bit.ly/1npGIno>; “New Maldives law strips ex-president of party membership”, *AP*, 30 March 2015, available at <http://yhoo.it/1WOYpcw>;

- Upon actions that will result in defamation of an individual;
- Following a court order.

The provisions of the regulation are disproportionately invasive. It aims to control, rather than regulate, civil society organisations, and further undermines the independence and capacity of civil society. The Maldivian Democracy Network argues that the regulation “solidifies anti-democratic practices” and “grants the Registrar at the Home Ministry extraordinary discretionary powers”.<sup>37</sup>

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### Re-introduction of death penalty

On 27 April 2014 the Maldives overturned a six decades-old moratorium on the death penalty. The regulation mandates lethal injection for the offences of premeditated murder or deliberate manslaughter.<sup>38</sup> Under Sharia law, a certain category of offences known as *hadd* offences – which include theft, fornication, adultery, consumption of alcohol, and apostasy – may also attract death penalty. While the age of criminal responsibility in the Maldives is 10 years, it is 7 years for *hadd* offences.<sup>39</sup> This means children as young as 7 years of age may be sentenced to death. Imposing the death penalty on persons who were below the age of 18 at the time of an offense is strictly prohibited under the Convention on the Rights of the Child and ICCPR.<sup>40</sup>

The regulation creates an expedited procedure for carrying out the death penalty. The President is required to order implementation of the death sentence within three days of the sentence being pronounced.<sup>41</sup> Very troublingly, the power of the President to commute death sentences to life imprisonment under the Clemency Act has been removed,<sup>42</sup> severely compromising the right to seek pardon or commutation of sentence guaranteed under Article 6 of the ICCPR.

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<sup>37</sup> MDN (2015), “Communication to the UN Special Rapporteur on the Situation of Human Rights Defenders”, available at <http://bit.ly/20DG9oM>;

<sup>38</sup> “Children could get death penalty as Maldives brings back executions,” *CNN*, 1 May 2014, available at <http://cnn.it/1iewo8K>;

<sup>39</sup> *Ibid*; see also, “Maldives should repeal the death penalty – UN Human Rights Office,” *Minivan news*, 30 April 2014, available at <http://bit.ly/20qT7G4>;

<sup>40</sup> ICCPR, Art. 6(5); CRC, Art. 3

<sup>41</sup> “Maldives enacts death penalty regulations,” *Haveeru Online*, 27 April 2014, available at <http://bit.ly/1Qq6f9S>;

<sup>42</sup> The International Federation for Human Rights (FIDH), “Death Penalty: The Maldives turns its back on history and children’s rights,” 21 May 2014, available at <http://bit.ly/1TIMEdN>;

According to the Death Penalty Worldwide, in the Maldives there were 20 people on death row in 2014,<sup>43</sup> though the mission heard that this number is now 11 people, five of whom are minors. The re-introduction of the death penalty has prompted debate in the Maldives, particularly in the controversial case in which a woman was sentenced to death by stoning for adultery for the first time in the known history of the country.<sup>44</sup>

In November 2015, it was reported that the office of the Attorney General had begun drafting legislation on the implementation of the death penalty.<sup>45</sup> It remains unclear whether the law will address the problematic issues outlined above.

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### Prose and poetry regulations

In September 2014, the government enacted regulations subjecting the publication of all prose and poetry to government approval.<sup>46</sup> In order to “ensure that literature published or made public in the Maldives fits Maldivian laws and regulations as well as societal norms”, the regulations mandate approval from the National Bureau of Classification for publishing any literary material. It is feared that, in effect, the regulations provide the state with a legal framework for extensive censorship.

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### Amendments to Parliament’s Standing Orders

Through amendments made to Parliament’s Standing Orders, the ruling party also restricted rights of the Opposition to participate in the legislative process. Firstly, the Standing Orders were amended to allow only members of Parliament from the ruling party, the Progressive Party of Maldives (PPM), to submit bills on taxation or that would otherwise have implications for the national budget. Secondly, amendments were made to deny early day motions and resolutions that the Opposition submits to the floor or the Committees. And, finally, the amendments removed the standard provision that there be 3 days’ notice once a Bill has been submitted before voting. Now, Parliament can submit, debate and vote on a bill in one sitting, thereby denying the Opposition time to review the bills. This will greatly impact the quality of

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<sup>43</sup> Cornell Law School’s Death Penalty Worldwide (2014), “Maldives”, available at <http://bit.ly/1nNfR5m>;

<sup>44</sup> “Maldives court sentences woman to death by stoning”, *Maldives Independent*, 18 October 2015, available at <http://bit.ly/1W0NrE4>; and “Maldives in South Asia: Let’s talk about Saudis”, *Dhivehi Sitee*, 2 December 2015, available at <http://bit.ly/1JBWGp2>.

<sup>45</sup> “Maldives drafts death penalty law”, *Haveeru Online*, 16 November 2015, available at <http://bit.ly/1ScPF0M>;

<sup>46</sup> “New regulations mandate government approval before publishing literature”, *Minivan News*, 10 September 2014, available at <http://bit.ly/1nwcBvg>;

legislative oversight over budget and financial matters, as well as restrict – if not deny – effective participation by the Opposition in the legislative process.

## POLICE VIOLENCE AND INTIMIDATION

Police violence, harassment and intimidation were named as real and pervasive threats to Maldivian political activists, civil society workers and independent journalists. The Maldives Police Service is not perceived to be the independent and impartial institution as prescribed by the Constitution and Maldives Police Service Act, 2008. The police have routinely interrupted and dispersed the Opposition's rallies and small demonstrations, arrested protestors and journalists, and used pepper spray and physical force disproportionately. Police actions pose a serious threat to exercising rights and freedoms, most notably, freedom of assembly and freedom of expression.

The two biggest protests that took place in 2015 were met with a violent response from the police which culminated in bulk arrests being made. The largest Opposition rally since the 2004 pro-democracy protests was broken up in May 2015, which saw 192 protestors and three political leaders arrested.<sup>47</sup> The Opposition protests in November 2015 met with an equally violent response from the police, with 13 people arrested.<sup>48</sup> Amnesty International reported that the Criminal Court imposed unreasonable conditions on the protestors' release, including barring them from areas where they had taken part in protests, thus unlawfully restricting their participation in future protests.<sup>49</sup>

A number of journalists also informed us that they and their colleagues had been subject to constant police harassment while performing their professional duties. The police harassment is exemplified by arrests and assaults of journalists working with TV station Raajje TV, which has been repeatedly banned from covering government events. Two cases were brought to our attention. On the first occasion in March 2015, two Raajje TV journalists were groundlessly arrested while covering opposition protests, which prompted the Committee to Protect Journalists (CPJ) to urge their

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<sup>47</sup> "Maldives arrests leaders of opposition parties after violent protests", *The Guardian*, 2 May 2015, available at <http://bit.ly/1QgTY7s>;

<sup>48</sup> "Maldives police break up opposition protest for a 2nd day", *CNS News*, 28 November 2015, available at <http://bit.ly/1mabpMn>;

<sup>49</sup> Amnesty International (2015), "Maldives: Assault on Civil and Political Rights", p. 11-12, available at <http://bit.ly/1OZrNHS>;

release.<sup>50</sup> The situation repeated itself in November 2015, when three Raajje TV reporters were arrested while covering a “bomb threat” and allegedly beaten in police custody.<sup>51</sup>

At the same time, the police were accused by a number of interviewees of inaction in cases involving assaults on Maldivian dissidents by gangs and radicalised elements, which is discussed in more detail in Part V of the report.

#### IGNORING LOCAL AND INTERNATIONAL CRITICISM

The overwhelming opinion among interviewed stakeholders was that the government is “unwilling to listen” and not responsive to criticisms and suggestions for legal and political reform. This concerns the government as well as police and independent institutions (discussed below). At the level of the central government, Parliament, as the key representative institution, was criticised as the most unresponsive. In particular, the fact that the Parliament has ignored the increasing harassment of and attacks on activists, journalists and opposition members led several interviewees to suggest that it is the policy of the ruling party to silence dissent both within and outside the Parliament.

The government tries to control the narrative that non-governmental actors produce within the country and is increasingly intolerant of the political Opposition, independent media, NGOs and activists, which results in attempts to restrict free speech, discussed above and throughout the report. As the Secretary-General of the ruling Progressive Party of Maldives (PPM), suggested to us, “Opposition members travel abroad and tell lies to the diplomats”. In his opinion, MDP’s concerns are not genuine; the party is motivated by the desire to return to power and “release three people from jail”.

Internationally, the government was similarly defensive, at one point even threatening to leave the Commonwealth after the country had been placed on the Commonwealth Ministerial Action Group’s (CMAG) agenda.<sup>52</sup> In August 2015, the Foreign Minister Dunya Maumoon dismissed international calls for the release of former President Nasheed from the UK, USA and the UN High Commissioner for

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<sup>50</sup> CPJ (2015), “Three journalists arrested in Maldives while covering protests”, available at <http://bit.ly/1VGeaRQ>;

<sup>51</sup> “Police accused of beating three Raajje TV journalists”, *Maldives Independent*, 3 November 2015, available at <http://bit.ly/1Pd1ZYR>;

<sup>52</sup> “Maldives threatens leaving Commonwealth amidst talk of being placed on CMAG Agenda”, *Raajje TV*, 2 July 2015, available at <http://bit.ly/1KCJCKT>; and “President requests Majlis counsel on leaving Commonwealth”, *Maldives Independent*, 19 July 2015, available at <http://bit.ly/1Piecz1>;

Human Rights, stating that “we do not accept the statements by these countries, nothing that contravenes the Maldivian Constitution and laws have occurred”.<sup>53</sup>

The Maldives was criticised again by the UN High Commissioner for Human Rights at the 30<sup>th</sup> Session of the UN Human Rights Council. In his opening statement, the High Commissioner stated that “given the deeply tainted nature of this case, I urge the government to release [Nasheed], and to review several hundred pending criminal cases against opposition supporters in relation to protests in recent months”. The government responded quickly, dismissing the remarks as “completely baseless,” and “wholly inappropriate”.<sup>54</sup>

The government also rejected the UN Working Group on Arbitrary Detention’s (UNWGAD) unanimous opinion that Mr. Naseed’s detention was arbitrary, and which called for his immediate release.<sup>55</sup> Foreign Minister Dunya Maumoon called the UNWGAD opinion “arbitrary”<sup>56</sup> and “disappointing”.<sup>57</sup> The Ministry of Foreign Affairs also released an official statement rejecting the opinion as “flawed and premature”, failing “to address a number of salient points submitted by the Government”, and, consequently, refusing to “be made to act on the basis of a non-binding opinion”.<sup>58</sup>

Instead of addressing international criticisms, the government has hired two lobby and public relationship firms, Podesta Group and Omnia Strategy, to advise the government and improve the country’s image abroad.<sup>59</sup> The 6 month contract with

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<sup>53</sup> “Government dismisses international concern over Nasheed’s re-imprisonment”, *Maldives Independent*, 26 August 2015, available at <http://bit.ly/1WMM88g>;

<sup>54</sup> “Government criticises UN rights chief over ‘inappropriate’ calls for Nasheed’s release”, *Maldives Independent*, 14 September 2015, available at <http://bit.ly/1KjWTqs>;

<sup>55</sup> “UN Working Group Finds Detention of Mohamed Nasheed Arbitrary and Urges his Immediate Release”, *Doughty Street Chambers*, 5 October 2015, available at <http://bit.ly/1PQbZXQ>;

<sup>56</sup> “Who said what? Foreign Minister’s meetings in New York”, *Maldives Independent*, 3 October 2015, available at <http://bit.ly/1KRxckp>;

<sup>57</sup> “Government calls UNWGAD opinion “disappointing,” insinuates that Nasheed is “selfish””, *Raajje TV*, 6 October 2015, available at <http://bit.ly/1OWrkpK>;

<sup>58</sup> Ministry of Foreign Affairs (2015, September 30), “Press Statement”, available at <http://bit.ly/1nNtrWi>;

<sup>59</sup> “Maldives Backslides Into Repression as the World Calls for President Nasheed's Release”, *The Huffington Post*, 14 October 2015, available at <http://huff.to/1ShcT49>;

Podesta Group—which will cost \$300,000—requires the group to lobby the US Congress on US-Maldives relations.<sup>60</sup>

#### CONTROVERSIAL STATE OF EMERGENCY

President Yameen declared a month long state of emergency on 4 November 2015 citing a “serious threat to the people and to national security”. The decree referenced the recovery of arms and ammunitions from two locations, the explosion on the Presidential speedboat, and “definitive information of plans by *some* [our emphasis] individuals to use these explosives and weapons”.<sup>61</sup>

The President’s decree restricted a number of constitutional rights and freedoms, including freedom from restraint, right to privacy, right to strike, freedom of assembly, freedom of movement, freedom from unlawful arrest, detention and imprisonment; and freedom from search and seizure without reasonable cause. CHRI condemned the declaration, noting that a state of emergency is “an extreme measure resorted to in exceptional circumstances.” Here, the threats named as reasons for the emergency were “specific [and] limited in nature”, and could be addressed “without resort to measures that affect the entire population across all islands of the archipelago, and rights and liberties of the entire population”.<sup>62</sup>

Additional circumstances also support reasons for strong doubt. The declaration of emergency came two days before a mass protest rally against “unjust and autocratic rule” was to take place on 6 November 2015. There had also been demands for the immediate release of all political prisoners including party leader and former president Mohamed Nasheed, following the UN Working Group on Arbitrary Detention decision that his imprisonment is unlawful. In the light of the ban on public assembly, the MDP postponed the protests, but took to the streets on 6 November for a “tea party”, complete with snacks and sandwiches, as an act of small-scale resistance to an unprecedented state of emergency that the MDP council has called “unnecessary

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<sup>60</sup> “Maldives hires US lobbyist Podesta Group for US\$300,000”, *Maldives Independent*, 27 September 2015, available at <http://bit.ly/1lOXyuT>;

<sup>61</sup> Ministry of Foreign Affairs, “English translation of the Presidential Decree issued on 4 November 2015”, 4 November 2015, available at <http://bit.ly/1nmQk2o>;

<sup>62</sup> Press Statement, CHRI, “CHRI urges the lifting of the state of emergency and restoration of constitutional rights and freedoms in the Maldives”, 6 November 2015, available at <http://bit.ly/1VqgJXZ>;

and politically motivated". The police dispersed the participants, four of whom, including a journalist from independent Raajje TV, were briefly detained.<sup>63</sup>

On November 5, the second day of emergency, the People's Majlis abruptly voted to impeach the Vice President Ahmed Adeeb. He was arrested on suspicion of being behind the presidential speedboat explosion on 24 October. Accusations of lack of due process served to deepen the political crisis. Under the state of emergency, the constitutional period given to the Vice President to prepare for a Majlis hearing on his removal was reduced from fourteen to seven days – a move entirely unrelated to the threats underlying the state of emergency. It essentially amounts to illegal amendment of Article 100(d) of the Constitution<sup>64</sup> to endanger a fair trial right of a particular individual. Adeeb's right to a fair trial was further jeopardised when the Supreme Court suspended a total of six of Adeeb's lawyers and revoking their licenses.<sup>65</sup>

Further, news outlets reports that the Maldives Broadcasting Corporation (MBC) warned private television stations during the emergency that their licenses would be suspended if they aired content deemed to pose a threat to national security.<sup>66</sup> This was not only an attack on the freedom of the press, but also an illegal attempt to limit freedom of expression which is specifically excluded from restriction even in times of emergency as per Article 255(b) of the Constitution.

The practical effect of the MBC threat is not clear. On the one hand, the editor of one leading independent newspaper informed us that his news outlet did not feel compelled to modify its publications under the emergency. On the other hand, Raajje TV, a popular independent TV station, shut down its broadcasting on 6 November 2015, stating that that "current atmosphere in the Maldives does not permit media, especially broadcasters to continue an independent broadcast, without the fear of persecution and other physical threats". In its press statement, the station specifically requested MBC to provide details on what content would be considered threatening to national security and lead to withdrawal of licenses. Raajje TV also stated that "the

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<sup>63</sup> "Police crash MDP 'emergency tea party,' make arrests", *Maldives Independent*, 6 November 2015, available at <http://bit.ly/1kA6bJB>;

<sup>64</sup> Article 100(d) of the Constitution reads as follows:

"At least fourteen days notice of the debate in the People's Majlis concerning such a resolution shall be given to the President or Vice President, and the President or the Vice President shall have the right to defend himself in the sittings of the People's Majlis, both orally and in writing, and has the right to legal counsel."

<sup>65</sup> See Part III of the report;

<sup>66</sup> "Maldives declares state of emergency – as it happened", *Maldives Independent*, 4 November 2015, available at <http://bit.ly/1Hqn4LP>;

harassment and threats have increased more than two folds since the declaration of State of Emergency”.<sup>67</sup> The station resumed broadcasting on 9 November 2015 “for the sake of viewers”, having failed to obtain the aforementioned clarifications from the authorities.<sup>68</sup>

Another incident that was brought to our attention was the police raid of private broadcaster Sangu TV, carried out on 5 November 2015, during which “all the hard drives on all the systems, computers, laptops, live coverage equipment and even Wi-Fi routers” were confiscated.<sup>69</sup> The police believed that the video threatening the attack against the President, former Commissioner of the Police and then-Tourism Minister Ahmed Adeeb was uploaded from the Sangu TV’s premises. However, the station questioned the police motives, given the fact that the raid took place more than two months after the video had been uploaded.

The charged political situation and the curtailing of the freedom of the press during the emergency led two major international organisations of journalists – International Federation of Journalists and Reporters without Borders – to issue strong statements expressing fears for media freedom and urging the government to stop harassment of journalists.<sup>70</sup> To the best of our knowledge, the government has ignored these statements.

The emergency was lifted on 10 November 2015. A press release from the Ministry of Foreign Affairs stated that the Maldives police had made important progress in the investigation into the explosion on the Presidential speed boat and that all fundamental rights were restored.<sup>71</sup>

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<sup>67</sup> “Amid fear of safety of its journalists, RaajjeTV shuts down news broadcasts”, *Raajje TV*, 6 November 2015, available at <http://bit.ly/1TmPJdB>;

<sup>68</sup> “Raajje TV resumes politics coverage ‘for the sake of viewers’”, *Maldives Independent*, 9 November 2015, available at <http://bit.ly/1NztI9A>;

<sup>69</sup> “After raid, Sangu TV resumes live transmission”, *Maldives Independent*, 10 November 2015, available at <http://bit.ly/1NztI9A>;

<sup>70</sup> International Federation of Journalists, “Fears for media freedom after State of Emergency declared in the Maldives”, 9 November 2015, available at <http://bit.ly/1K9ThxI>; and Reporters without Borders, “Maldivian authorities urged not to gag media”, 6 November 2015, available at <http://bit.ly/1DJMqq>;

<sup>71</sup> Ministry of Foreign Affairs, “Government of Maldives lifts state of emergency with immediate effect”, 10 November 2015, available at <http://bit.ly/1kIvUzf>;

## SUMMARY

Governance in the Maldives at present is plagued by steadily growing authoritarianism, a collusion of the three branches of power and an intolerance of dissent, bringing the government and its practices in conflict with the Commonwealth Charter and international human rights law. A number of controversial laws and non-legislative measures have been passed to restrict fair trial and freedom of expression; other troubling Bills are pending. The government is increasingly insensitive to local and international criticism, which it refuses to acknowledge and address. The weeklong state of emergency exemplified and brought to the surface most of the problems that currently bedevil politics in the Maldives – political divisions, opportunism, factionalism, the silencing of dissent, police violence and disrespect for human rights.

## PART III: TYRANNY OF THE JUDICIARY AND CHALLENGES TO THE LEGAL PROFESSION

In August 2015, the International Commission of Jurists (ICJ) and South Asians for Human Rights (SAHR) released a damning report about the poor state of affairs in the Maldivian judiciary, noting in particular its lack of independence and high degree of politicisation.<sup>72</sup> Previously, the UN Special Rapporteur on the Independence of Judges and Lawyers had made three visits to the Maldives, issuing a number of recommendations for the reform and strengthening of an independent and accountable judiciary.<sup>73</sup>

The mission met a number of stakeholders, including the Deputy Prosecutor-General, several lawyers, human rights defenders and a former judge, to evaluate international reports and independently analyse issues of judicial independence, accountability, independence of lawyers, and the ability of the judiciary to guarantee a right to a fair trial. Unfortunately, our attempts to meet the members of the Supreme Court and Judicial Service Commission (JSC) were unsuccessful.

We came to the conclusion that Maldivian courts remain deeply politicised and increasingly unaccountable. Despite the centrality of judicial reforms in the 2008<sup>74</sup> Constitution, and sharp criticism by international bodies,<sup>75</sup> the current administration has shown no interest in making the judiciary independent and impartial. We saw no evidence that the government accepted the recommendations made by the UN Special Rapporteur and the ICJ, or would implement them. In our view, the situation has worsened since those recommendations were made.

### STRUCTURAL PROBLEMS AND EXTERNAL INTERFERENCE

Significant structural problems within the judiciary, combined with external interference in judicial processes and decision-making, negatively affect the administration of justice. Obstacles include the lack of an adequate legal framework,

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<sup>72</sup> ICJ and SAHR (2015), “Justice Adrift: Rule of Law and Political Crisis in the Maldives”, available at <http://bit.ly/1nQBSAa>;

<sup>73</sup> See UN Human Rights Council, “Report of the Special Rapporteur on independence of judges and lawyers, Gabriela Knaul: Mission to Maldives”, 21 May 2013, available at <http://bit.ly/1aLRjT1>;

<sup>74</sup> Up until 2008, the President was supreme executive and judicial authority;

<sup>75</sup> The UN Human Rights Committee noted in its concluding observations in July 2012 that “the judiciary is desperately in need of more serious training, and higher standards of qualification. This must be done to guarantee just trials and fair judgments for the people of Maldives”, available at <http://bit.ly/1PiTIpK>;

the politicised set-up and operation of the Judicial Service Commission, and the lack of proper qualifications and training for judges.

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### Lack of adequate legal framework

At present, the judiciary lacks essential legal frameworks that would allow the courts to function in line with the 2008 Constitution and with sufficient legal certainty. In 2013, the UN Special Rapporteur on the Independence of Judges and Lawyers observed that several fundamental pieces of legislation are outdated, lacking or had been pending before the Parliament for years. At the time of our visit, two years later, the situation remains generally the same. While the new Penal Code was enacted very recently, on 16 July 2015, the Code of Criminal Procedure and Evidence Act are yet to be finalised.<sup>76</sup> It is important to reinforce that consistency and quality in the administration of criminal justice is directly affected by the absence of these basic legal frameworks.

During our interview with the Deputy Prosecutor-General and his colleagues, it emerged that a major challenge is legal confusion, presented by new pieces of legislation and judicial procedures that differ from court to court. Furthermore, according to the Deputy Prosecutor-General, judges in the lower courts are reluctant to follow precedents set by the higher courts, which makes a cohesive and harmonious administration of justice difficult. His comments echo the concerns expressed by the UN Special Rapporteur on the Independence of Judges and Lawyers in 2013, who stated that there are serious inconsistencies in jurisprudence due to a wide application of Sharia by the lower courts.<sup>77</sup> The Office of the Prosecutor-General has informed us that they are working closely with the judiciary to overcome these challenges.

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### Judicial Service Commission (JSC): flawed composition, failed mandate

The Constitution establishes the JSC as an independent and impartial institution<sup>78</sup> to appoint, promote and transfer judges other than the Chief Justice and Supreme Court's judges, investigate complaints about the judiciary and take disciplinary

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<sup>76</sup> "New penal code comes into effect," *Maldives Independent*, 16 July 2015, available at <http://bit.ly/1nwcBvg>;

<sup>77</sup> According to art. 142 of the Constitution, when the Constitution and the laws are silent on a particular legal matter, the judges should consider Islamic Sharia. The Special Rapporteur was preoccupied with the reports that Sharia law is sometimes applied in contradiction with fundamental human rights protected by the Constitution and international human rights instruments. See UN Human Rights Council, "Report of the Special Rapporteur on independence of judges and lawyers, Gabriela Knaul: Mission to Maldives", 21 May 2013, para 35, available at <http://bit.ly/1aLRjT1>;

<sup>78</sup> Constitution, 2008, Art. 157(b);

action, including recommendations for dismissal, and other functions essential for the efficient and healthy functioning of the judiciary.<sup>79</sup>

However, this basic nature of the Commission is compromised by its very set-up. Article 158 of the Constitution stipulates that the JSC shall consist of 1) the Speaker of the People's Majlis; 2) a Judge of the Supreme Court other than Chief Justice, elected by the Judges of the Supreme Court; 3) a Judge of the High Court, elected by the Judges of the High Court; 4) a Judge of the Trial Courts, elected by the Judges of the Trial Courts; 5) a member of the People's Majlis appointed by it; 6) a member of the general public appointed by the People's Majlis; 7) the Chair of the Civil Service Commission; 8) a person appointed by the President; 9) the Attorney General; 10) a lawyer elected from among the lawyers licenced to practice in the Maldives by themselves. Therefore, out of 10 members of the Commission, six are either elected representatives or political appointees.

The JSC composition opens the Commission to penetration by a wide variety of personal and political interests. Furthermore, there is overlap and competition among the groups and interests at play in the Commission. For example, in the election of the lawyers' representative, judges who are in the lawyers' registry can vote, effectively giving them two votes for representatives to the commission. This practice was upheld by the Supreme Court in 2014. The interviewed stakeholders almost unanimously claimed that the JSC's composition opens it to external influence and compromises its ability to discharge its mandate. The mission was given several examples of the reshuffling of judges and sudden transfers, done through the JSC or with its complicity, that disrupt the functioning of the judiciary.

The external influence on the JSC and frequent political interference in its supposedly independent work is particularly dangerous given its mandate. Two other disturbing instances of abuse of the Commission's powers occurred during the vetting of judges during the post-2008 transitional period and the Commission's role in the removal of two Supreme Court judges at the end of 2014.

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### Vetting of Judges

Under the 2008 Constitution, the JSC was tasked to develop new standards for the recruitment and appointment of judges and, on this basis, to screen and re-appoint judges other than the Chief Justice and judges of the Supreme Court. However, the vetting exercise soon became a heavily politicised process, "with many actors feeling

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<sup>79</sup> Constitution, 2008, Art. 159;

their personal and political interests were at stake”.<sup>80</sup> At the end of the two-year period, the JSC failed to introduce any new standards and reappointed 191 of the 197 judges and magistrates who had been sitting before 2008.<sup>81</sup> In the words of the UN Special Rapporteur on the Independence of Judges and Lawyers, “the same people who were in place and in charge, conditioned under the system of patronage, remained in their positions”.<sup>82</sup>

The JSC’s failure to establish and initiate an open, transparent and accountable judicial appointment process and to adequately vet sitting judges leads to the perception that the majority of judges in the country, including the Supreme Court judges, are both unaccountable and aligned to the old regime.

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### Removal of Chief Justice and another Justice from the Supreme Court

A recent manifestation of the JSC’s politicised practices is the alacrity with which it acted on the parliamentary decision to reduce the Supreme Court bench from seven to five judges. On 10 December 2014, Parliament passed an amendment to the Judicature Act, 2010, calling upon the JSC to forward names of two Supreme Court judges deemed as incompetent.<sup>83</sup> The JSC held an emergency meeting on 11 December 2014 and forwarded the names of Justice Muthasim Adnan and Chief Justice Ahmed Faiz Hussain for removal. On 14 December 2014, the Parliament voted in favour of removing the two judges.

This case exemplifies the lack of transparency and due process in the Commission’s decisions. The parameters on which the JSC assessed the two judges were not disclosed.<sup>84</sup> They were however often the only voices of dissent from the majority opinion in the Court.<sup>85</sup> Furthermore, neither Justice had notice of the action brought against him, nor was there an opportunity to respond. This is out of line with

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<sup>80</sup> UN Human Rights Council, “Report of the Special Rapporteur on independence of judges and lawyers, Gabriela Knaul: Mission to Maldives”, 21 May 2013, para 23, available at <http://bit.ly/1aLRjT1>;

<sup>81</sup> UN Human Rights Council, “Report of the Special Rapporteur on independence of judges and lawyers, Gabriela Knaul: Mission to Maldives”, 21 May 2013, para 23, available at <http://bit.ly/1aLRjT1>;

<sup>82</sup> *Id*, para 51;

<sup>83</sup> Transparency Maldives, Parliament Update: December 2014, 5 January 2015, available at <http://bit.ly/1SJxuJa>;

<sup>84</sup> Maldivian Democracy Network, Press Statement, Amendment to Law Number 22/2010 – the Judicature Act, 13 December 2014, available at <http://bit.ly/1JE8Yxa>;

<sup>85</sup> Aishath Velezinee, “Mutiny of the State: Maldives gets away with another coup d’etat,” *Dhivehi Sitee*, 16 December 2014, available at <http://bit.ly/1PAFhZU>;

international standards. According to the UN Basic Principles on Independence of the Judiciary, judges have a right to a fair hearing and to be tried under an appropriate procedure.<sup>86</sup>

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### Lack of training and capacity-building for judges

Stakeholders repeatedly voiced concern that lack of adequate education and training for judges results in limited capacity to efficiently and fairly administer justice. Lack of ethics among judges was also constantly pointed to us as a serious problem the judiciary is facing.

*“A judge without ethics is a judge open to influence”*. – Aishath Velezinee, former JSC member.<sup>87</sup>

Before 2003, the minimum qualification for a position of a judge was a special 6-months certificate programme (Certificate in Sentencing), with no basic entrance requirement, and “many who joined had no secondary schooling”.<sup>88</sup> Between 2003 and 2008, judges did “a part-time, 1-year, tailor-made programme for sitting judges” with a Certificate in Justice Studies awarded at the end of the course to “all but a few of the sitting judges”.<sup>89</sup> The JSC has re-appointed the vast majority of these pre-2008 judges.

The new Constitution laid down a list of qualifications for judges to guarantee their capacity and integrity. According to Article 149 of the Constitution, the person, appointed as a judge must possess “the educational qualifications, experience and recognised competence necessary to discharge the duties and responsibilities of a Judge” and must be “of high moral character”. Still, uplifting the judiciary to this standard proved to be a challenge. According to the JSC’s 2014 Annual Report, of the 182 sitting judges two hold Ph.D.s, 10 hold a master’s, 61 hold bachelor’s degrees and 96 hold diplomas. Fourteen magistrates remain who lack even diplomas.<sup>90</sup> While these statistics may not seem terribly alarming at first, several lawyers we spoke with

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<sup>86</sup> UN Basic Principles on Independence of the Judiciary, 1985, available at <http://bit.ly/1Satvwf>;

<sup>87</sup> Aishath Velezinee (2012), *The failed silent coup: In defeat, they reached for the gun*, p. 1;

<sup>88</sup> Aishath Velezinee, “Note on Maldives Judiciary: Need to Redress Constitution Article 285”, 12 January 2013, available at <http://bit.ly/1SJAU5w>;

<sup>89</sup> *Ibid*;

<sup>90</sup> “Judges’ integrity and ethics in question five years after life appointment”, *Maldives Independent*, 4 August 2015, available at <http://bit.ly/20sbIBV>;

questioned the quality of the judges' degrees.<sup>91</sup> Moreover, it was suggested that the judges are not trained in common law, but in the Sharia, which could at least partially explain the wide application of the latter in lower courts.<sup>92</sup>

In September 2015, it was reported that the Supreme Court had decided to establish a Judiciary Academy to train judges, judicial sector employees and lawyers, with a curriculum developed with the help of experts from the International Centre for Law and Legal Studies, Supreme Court staff and UNDP Maldives.<sup>93</sup> While this is a positive development, concerns remain about the high degree of control the Supreme Court will exercise over the new institution.

### SUPREME COURT'S JUDICIAL OVERREACH

Under the current administration, the Supreme Court has taken several arbitrary actions to establish its authority and consolidate control over the judiciary through actions described by interviewees as "judicial overreach" or even "judicial tyranny", rooted in a misunderstanding of the concept of independence of the judiciary. As the UN Special Rapporteur on the Independence of Judges and Lawyers stated in her 2013 report, the Supreme Court had acted in accordance with the belief that they are the "supreme authority for the interpretation of the Constitution" and "that any document bearing their stamp is binding on all".<sup>94</sup> Consequently, the Supreme Court had not observed due process and had made several interventions that were "perceived as arbitrary and serving the judges' own personal interest".<sup>95</sup>

Several instances of Supreme Court's overreach given to the mission include its subversive interference in the electoral process, punitive proceedings against independent commissions, assuming powers to regulate the legal profession, and infringing on the right to a fair trial by amending the Judicature Act, 2010, which also violates the principle of separation of powers.

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<sup>91</sup> See *ibid*;

<sup>92</sup> UN Human Rights Council, "Report of the Special Rapporteur on independence of judges and lawyers, Gabriela Knaul: Mission to Maldives", 21 May 2013, para 35, available at <http://bit.ly/1aLRjT1>;

<sup>93</sup> "Supreme Court to set up 'judicial academy'", *Maldives Independent*, 1 September 2015, available at <http://bit.ly/1SaAJR0>;

<sup>94</sup> UN Human Rights Council, "Report of the Special Rapporteur on independence of judges and lawyers, Gabriela Knaul: Mission to Maldives", 21 May 2013, para 39, available at <http://bit.ly/1aLRjT1>;

<sup>95</sup> *Ibid*;

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## Subversion of the electoral process

The 2013 presidential elections, which ultimately ran from September into November, were marked by extensive judicial interventions. The first round of elections were held on 7 September 2013, in which Mohamed Nasheed of the MDP secured a major lead with 45 % of votes. The result was challenged in the Supreme Court by another candidate, Gasim Ibrahim of the Jumhoree Party, who secured 24.5 % of votes, and run-off elections were held.

The Supreme Court then annulled the first round of elections entirely, citing electoral irregularities identified in a secret police report. However, national and international observers had unanimously applauded the elections for being fair, credible and inclusive. In particular, allegations surrounding irregularities in voter registration were noted as being unfounded by the Commonwealth Observer Group.<sup>96</sup> Elections were rescheduled for October 19, which could not be held due to intervention by the Maldives Police. Finally, the final presidential elections took place on 9 November 2013, and a run-off between the two leading candidates on 16<sup>th</sup> November led to the victory of Abdulla Yameen, leader of the Progressive Party of Maldives (PPM).

Undoubtedly, this series of disruptions and manipulations fundamentally altered the outcome of the election. The interventions of the Supreme Court utterly violate the principle of separation of powers. Article 172(a) of the Constitution invests the High Court, not the Supreme Court, with the power to hear any challenge to the decision of the Election Commission concerning the results of an election. Yet, the Court agreed to hear the Jumhooree Party's petition requesting annulment of the first round of elections. Shockingly, the Election Commission was not given an opportunity to respond to the evidence of irregularities presented by Jumhooree Party and the police on the basis of which the annulment was ordered.

Further, the court issued a set of guidelines to be followed by the Election Commission for the conduct of fresh elections. Among other things, the guidelines included mandatory approval of the electoral rolls by the candidates, which in effect gave candidates the right to veto the polls. This is a serious encroachment on the powers of the Election Commission, an independent body answerable to the Parliament under the Constitution.

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<sup>96</sup> See The Commonwealth, Commonwealth Observer Group, Reports on Maldives Presidential Election, 7 September 2013, Re-Run of Maldives Presidential Election, 9 November 2013, and Maldives Presidential Run-Off Elections, 16 November 2013, available at <http://bit.ly/1SJH71f>;

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### *Suo motu* regulations and trials

In February 2014, the Supreme Court issued *suo motu* regulations, conferring on itself the power to initiate proceedings for contempt of court and act as both the prosecution and the judge.<sup>97</sup> Several contempt charges were then brought against a number of parties. For speaking out against the annulment of the first round of presidential elections in 2013, members of the Election Commission were charged with contempt of court, and subsequently dismissed, two weeks before the parliamentary elections in March 2014.<sup>98</sup> It was an internationally condemned decision, with the US State Department calling it an “unprecedented expansion of judicial powers” that undercuts the Commission’s independence.<sup>99</sup>

Another set of regulations issued in July 2014 authorised the courts to initiate legal proceedings against and punish individuals for “any expression, action, gesture, or piece of writing inside or outside a courtroom” that could be considered contempt of court.<sup>100</sup>

Following that, in September 2014, the Human Rights Commission of the Maldives (HRCM) was charged by the Supreme Court with “treason” for questioning the independence of the judiciary in its Universal Periodic Review (UPR)<sup>101</sup> submission to the UN Human Rights Council. The trial was held on 16 June 2015, lasted only a few hours, and the Court found the HRCM’s UPR submission “unlawful”. The Court then issued an 11-point guideline for the HRCM’s future reporting, which, among other things, required the Commission to seek approval from relevant government institutions before communicating with international organisations, thereby undermining the independence that NHRIs must have under the Paris Principles. The Court did not punish individual members of the Commission.

In doing so, the Supreme Court blatantly disregarded provisions of the HRCM’s founding statute that explicitly grants it immunity from legal liability for discharging

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<sup>97</sup> “Supreme Court initiates contempt charges against the EC, begins surprise trial,” *Minivan news*, February 12, 2014, available at <http://bit.ly/1nzQuUT>;

<sup>98</sup> See *ibid*;

<sup>99</sup> Press Statement, US Department of State, “U.S. Concerns on Dismissal of Maldivian Elections Commissioners”, 10 March 2014, available at <http://1.usa.gov/1ROJUGg>;

<sup>100</sup> “Supreme Court enacts new contempt of court regulations,” *Minivan news*, July 27, 2014 available at <http://bit.ly/1ROK0h1>;

<sup>101</sup> UPR is a periodic review of the human rights records of all UN members states by other UN member states organised as the Working Group. Other relevant stakeholders including NGOs, national institutions and UN agencies can make submission and attend the review session. See, UPR Info, “What is UPR?”, available at <http://bit.ly/1m4glPN>;

their duties in good faith.<sup>102</sup> The UN Commissioner for Human Rights called the judgement “unacceptable” and the role of the judiciary in this instance “deeply flawed.”<sup>103</sup>

*“The Supreme Court judgement is yet another example of the judiciary undermining human rights protection in the Maldives. National human rights institutions play a pivotal role in independently monitoring and protecting human rights and should be empowered to report on rights issues without fear”. – Zeid Ra’ad Al Hussein, UN High Commissioner for Human Rights<sup>104</sup>*

Further, the Commonwealth’s Latimer House principles on judicial independence categorically state that “contempt proceedings should not be used to restrict legitimate criticism of the performance of judicial functions.”<sup>105</sup> The Supreme Court is not only acting out of line with international standards but also stifling Maldivians’ constitutional right to freedom of expression by criminalising objections to its decisions.

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### Assuming power to regulate the legal profession and arbitrary suspensions of lawyers

On 4 November 2015, the first day of the state of emergency declared by President Yameen, the Supreme Court nullified existing regulations on the licensing of lawyers and adopted the power to pronounce and enforce regulations of its own.<sup>106</sup> These regulations required lawyers to re-apply for licences to continue their practice.<sup>107</sup> Previously, the task of licensing lawyers was vested with the Office of Attorney General. While the previous arrangement was criticised by the UN Special Rapporteur

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<sup>102</sup> Forum-Asia & MDN, “The Maldives: Human Rights Commission of Maldives (HRCM) Latest Victim of Judicial Overreach”, 19 June 2015, available at <http://bit.ly/1PUPEbs>;

<sup>103</sup> United Nations Office of the High Commissioner for Human Rights, “Supreme court judgment gravely undermines Maldives Human Rights Commission – Zeid,” 19 June 2015, available at <http://bit.ly/1UspD77>;

<sup>104</sup> *Ibid*;

<sup>105</sup> Commonwealth (Latimer House) Principles on Three Branches of Government, 2004, p.12;

<sup>106</sup> The new licensing commission will include Supreme Court’s bench, Chief Justice (also a member of the Supreme Court) and Attorney General. See, “Maldives top court takes over licensing of lawyers”, *Haveeru Online*, 4 November 2015, available at <http://bit.ly/1ROK0NZ>; and “Maldives extends deadline for lawyers to reapply for licence”, *Haveeru Online*, 3 January 2016, available at <http://bit.ly/1PCqI8l>;

<sup>107</sup> The deadline was the end of December, but was extended in January 2016. See “Maldives extends deadline for lawyers to reapply for licence”, *Haveeru Online*, 3 January 2016, available at <http://bit.ly/1PCqI8l>;

on the Independence of Judges and Lawyers as allowing for external pressure and interference,<sup>108</sup> the licensing of lawyers by the Supreme Court is not acceptable for the same reasons.

*“The regulation of disciplinary measures against lawyers falls outside of the prerogative of the judiciary or any other branch of power and contradicts the principle of independence of the legal profession” – Gabriela Knaul, UN Special Rapporteur on the Independence of Judges and Lawyers.<sup>109</sup>*

It is worth noticing that in June 2014 the Home Ministry on the initiative of the Supreme Court dissolved the Maldives Bar Association.<sup>110</sup> The organisation was not a statutory body, but a privately founded association of around 900 Maldivian lawyers. This action was detrimental to the lawyers’ freedom of association, protected by UN Basic Principles on the Role of Lawyers.<sup>111</sup>

The mission was told that the Supreme Court has had a history of arbitrarily and selectively suspending lawyers for contempt of court, its choice of victims reflecting a political bias, because these were lawyers who represented opposition politicians, politicians who have fallen out of favour with the government, or independent institutions or activists.

Again, the UN Special Rapporteur on the Independence of Judges and Lawyers noted examples of this practice as early as 2013.<sup>112</sup> The cases noted by the Special Rapporteur were those of Abdulla Haseen, who represented a large number of pro-democracy protestors and was suspended for hosting a TV programme about constitutional rights and the justice system, and that of Imthiyaz Fahmy, who was suspended for his critical views of judiciary.<sup>113</sup>

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<sup>108</sup> The regulating power was previously held by the Office of Attorney General. See, UN Human Rights Council, “Report of the Special Rapporteur on independence of judges and lawyers, Gabriela Knaul: Mission to Maldives”, 21 May 2013, para 88, available at <http://bit.ly/1aLRjT1>;

<sup>109</sup> See *ibid*;

<sup>110</sup> “Home ministry dissolves Bar Association”, *Haveeru Online*, 24 June 2014, available at <http://bit.ly/1UsAf6c>;

<sup>111</sup> UN Basic Principles on the Role of Lawyers, Principle 23, available at <http://bit.ly/1gQmJZ0>;

<sup>112</sup> UN Human Rights Council, “Report of the Special Rapporteur on independence of judges and lawyers, Gabriela Knaul: Mission to Maldives”, 21 May 2013, para 88, available at <http://bit.ly/1aLRjT1>;

<sup>113</sup> MDN, Letter to Special Rapporteur on the Independence of Judges and Lawyers, “Repressive actions against legal practitioners in the Maldives”, 16 November 2015, available at <http://bit.ly/1kzQfYb>;

Hassan Latheef<sup>114</sup> and Hisaan Hussain, both MDP lawyers, were also suspended by the Supreme Court in 2013. The reason cited for Hisaan Hussain's suspension was "for speaking on public media and social networks platforms against the Supreme Court injunction ordering the EC [Elections Commission] to postpone the second round of the presidential election".<sup>115</sup> Former Attorney General Husnu Suood, who was representing the Elections Commission, was suspended at the same time.<sup>116</sup>

Another wave of appalling suspensions came in November 2015, when the Supreme Court revoked the licenses of six defence lawyers representing impeached Vice President Ahmed Adeb and his co-accused. The lawyers were not notified or given an opportunity to defend themselves,<sup>117</sup> and the Supreme Court issued an intimidating statement threatening action against lawyers "who spread falsehoods and undermine public trust and confidence in the Judiciary".<sup>118</sup>

The International Commission of Jurists (ICJ) also reported that lawyers are required by the Court to sign an affidavit swearing not to criticise the Court under penalty of contempt and disbarment.<sup>119</sup> The Maldivian Democracy Network (MDN) confirms the allegation, specifying that all practicing lawyers were forced to sign such a resolution in June 2012.<sup>120</sup>

The UN Basic Principles on the Role of Lawyers clearly indicates that the government must ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel and to consult with their clients freely; and must not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken

<sup>114</sup> Hassan Latheef, who now represents former President Nasheed, was also prohibited from visiting his clients in jail in 2015 for a post on social media on behalf of his client, inviting Indian Prime Minister to the Maldives to "disentangle us from the mess we are in". This time he was suspended by the Home Minister Umar Naseer. See, "Lawyer barred from visiting former president in jail", *Maldives Independent*, 27 October 2015, available at <http://bit.ly/1MsbhnJ>;

<sup>115</sup> "Supreme Court suspends lawyers Hisaan Hussain, Hassan Latheef and Husnu Al Suood", *Sun Online*, 24 September 2013, available at <http://bit.ly/1WP5o5c>;

<sup>116</sup> MDN, Letter to Special Rapporteur on the Independence of Judges and Lawyers, "Repressive actions against legal practitioners in the Maldives", 16 November 2015, available at <http://bit.ly/1kzQfYb>;

<sup>117</sup> *Ibid*;

<sup>118</sup> "Supreme Court threatens lawyers with 'legal action' for contempt of court", *Maldives Independent*, 8 November 2015, available at <http://bit.ly/1JHpc8A>;

<sup>119</sup> ICJ and SAHR (2015), "Justice Adrift: Rule of Law and Political Crisis in the Maldives", available at <http://bit.ly/1nQBSAa>;

<sup>120</sup> MDN, Letter to Special Rapporteur on the Independence of Judges and Lawyers, "Repressive actions against legal practitioners in the Maldives", 16 November 2015, available at <http://bit.ly/1kzQfYb>;

in accordance with recognized professional duties, standards and ethics.<sup>121</sup> The Principles also protect the lawyers' freedom of expression and association.<sup>122</sup> The Supreme Court repeatedly flouts these principles with contempt.

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### Undermining the right to a fair trial

On 27 January 2015 the Supreme Court issued a circular that, in effect, summarily amended the Judicature Act, 2010 by shortening the appeal period from 90 to 10 days.<sup>123</sup> This was cited as one of the reasons why former President Nasheed's lawyers were not able to appeal his conviction by the Criminal Court. According to them, they only received the case documents necessary to file an appeal on the 11<sup>th</sup> day, thus making it impossible to appeal within the 10-day period.

Following international outcry, the Prosecutor General filed an appeal to the High Court on Nasheed's behalf, listing the shortened appeal period as one of the grounds for appeal. The High Court's judgement, a copy of which was given to the mission, held that the shortened appeal period did not infringe the right to a fair trial, since there is nothing in the law to prevent the defendant from filing an appeal after the expiration of the 10-day period if there is a valid reason.

The High Court's order is self-serving and tendentious, because it will be the judiciary that will decide if there was a valid reason for an appeal being filed after 10 days. This drastic reduction of the appeal period from 90 to 10 days seriously affects the right to a fair trial, given the extreme time and resource constraints it imposes on the accused. The Maldivian lawyers we interviewed agree that the new period is not long enough to prepare and lodge an adequate appeal. Consequently, the right to a fair trial will be impaired for many people as a result of Supreme Court's interventionism.

## TRIAL OF FORMER PRESIDENT MOHAMED NASHEED

The Maldives' political opposition estimates that more than 1700 people are being prosecuted for their political activities,<sup>124</sup> though the police have recently claimed that only 109 people were arrested in "politics-related incidents".<sup>125</sup> While the exact

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<sup>121</sup> UN Basic Principles on the Role of Lawyers, Principle 16, available at <http://bit.ly/1gQmJZ0>;

<sup>122</sup> *Id.*, Principle 23;

<sup>123</sup> "Supreme Court has removed right of appeal, claim legal experts", *Minivan News*, 28 January 2015, available at <http://bit.ly/1ROOt3g>;

<sup>124</sup> MDP, "Government Must Deliver On Its Side of Talks Bargain - MDP", 24 July 2015, available at <http://bit.ly/1Slu9VU>;

<sup>125</sup> "Claims of 1,700 political prisoners were false: Police", *Vnews*, 27 January 2016, available at <http://bit.ly/1PlbeJZ>;

numbers are difficult to determine, there have been a number of prosecutions of former and current politicians, often criticised as politically motivated. For example, in December 2015, the EU Parliament denounced the prosecutions of former president Mohamed Nasheed, former vice-president Ahmed Adeeb, former defence ministers Tholhath Ibrahim and Mohamed Nazim, and the Adhaalath Party's President Sheikh Imran Abdulla as politically motivated.<sup>126</sup>

Procedural irregularities, found in each of these prosecutions, are exemplified by the trial of former President Nasheed; these are also emblematic of the Judiciary's failure to adhere to constitutional and international obligations and guarantee the accused the right to a fair trial.

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### Background to Nasheed's case

The ex-President was tried for ordering the detention of Chief Judge Abdulla of the Criminal Court in January 2012. Initially, legal proceedings against him were initiated for illegal detention under Section 81 of the Maldivian Penal Code with a maximum punishment of three years. In February 2015, however, the new Prosecutor General Muhthaz Muhsin, who had served as a Judge in the Criminal Court under Abdulla, withdrew the charge of arbitrary detention against Nasheed. Just six days later, Nasheed was arrested on terrorism charges under the Anti-Terrorism Act, 1990.<sup>127</sup>

On the next day, during his first hearing Nasheed was officially charged at the Criminal Court of the Maldives. While the charge was changed, the factual circumstances remained the same – former President Nasheed was still tried for his role in the abduction of Judge Abdulla. On 13 March 2015, less than three weeks after his arrest, Nasheed was held guilty and sentenced to 13 years imprisonment by the Criminal Court.

Nasheed's legal team did not appeal the judgement, since they did not receive the trial report in time to meet the deadline for appeal, which was shortened from 90 to 10 days a few weeks before his arrest (discussed above). Nevertheless, on 23 July 2015, the Prosecutor General, who levied charges against Nasheed in the Criminal Court, decided to appeal the conviction in the High Court on Nasheed's behalf as the case

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<sup>126</sup> European Parliament resolution of 17 December 2015 on the situation in the Maldives (2015/3017(RSP)), available at <http://bit.ly/20efqyT>;

<sup>127</sup> "Former President Nasheed arrested on terrorism charge," *Raajje*, 22 February 2015, available at <http://bit.ly/1Kd9pOW>. The text of the Anti-Terrorism Act, 1990 can be found at <http://bit.ly/20efqyT>;

involved “national interest”.<sup>128</sup> During our meeting, the Deputy Prosecutor-General explained that his office wanted to correct any violations of due process that might have occurred, given local and international criticism of the trial.

The appeal was rejected by the High Court on 10 September 2015, but it ruled that Nasheed was free to appeal his sentence despite the expiration of the 10-day period. The former President’s team did not take this option because two of the three judges, who sentenced Nasheed, were sitting at the High Court’s bench by that time.<sup>129</sup>

On 19 September 2015, the Prosecutor-General requested the Supreme Court to overturn the High Court’s decision to reject the appeal, which was accepted by the Supreme Court a month later.<sup>130</sup> In December 2015, it was also reported that Nasheed has decided to launch a separate appeal with the Supreme Court.<sup>131</sup>

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### UN WGAD decision

Meanwhile, in April 2015 Nasheed’s international legal team took his case to the UN Working Group on Arbitrary Detention (UN WGAD), which issued a decision on 4 September 2015. The Working Group unanimously found that Nasheed’s deprivation of liberty was arbitrary and illegal, being in contravention of articles 9, 10, 19, 20, and 21 of the Universal Declaration on Human Rights and articles 9, 14, 19, 22, and 25 of the ICCPR. The UN WGAD requested the Maldivian government to release Nasheed immediately and “accord him an enforceable right to compensation”.<sup>132</sup>

In particular, the UN WGAD found that the case has no legal basis, was politically motivated and fraught with due process violations.

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<sup>128</sup> MDN, “Brief: Former President Nasheed’s Appeal Status and Medical Condition”, 4 October 2015, available at <http://bit.ly/1LbjtX8>;

<sup>129</sup> “Nasheed to appeal sentence at Supreme Court”, *Maldives Independent*, 12 December 2015, available at <http://bit.ly/1nRvRmH>;

<sup>130</sup> “Supreme Court to review Nasheed’s terrorism sentence”, *Maldives Independent*, 25 November 2015, available at <http://bit.ly/1UtdIGl>;

<sup>131</sup> “Nasheed to appeal sentence at Supreme Court”, *Maldives Independent*, 12 December 2015, available at <http://bit.ly/1nRvRmH>;

<sup>132</sup> UN WGAD, Opinion No. 33/2015 (The Maldives), 4 September 2015, para 112, available at <http://bit.ly/1WPU9tb>;

Firstly, the Working Group observed that the government failed to explain “how the arrest of Judge Abdulla, which was carried out by the MNDF [Maldives National Defence Forces] under an order given by a third party, could constitute terrorism”.<sup>133</sup>

Secondly, several factors led UN WGAD to believe that the trial was politically motivated. They include (i) the history and pattern of proceedings brought against Nasheed [...]; (ii) the sudden way in which charges were reinstated against Nasheed after the original case had been inactive for 2.5 years when the government lost a key coalition partner in the Parliament; (iii) the fact that, two weeks after Nasheed was sentenced, the government adopted a law banning all prisoners from being members of political parties; and (iv) the fact that Nasheed will not be able to participate in the 2018 presidential election as a result of his conviction.<sup>134</sup>

Finally, the Working Group pointed to a number of due process violations:

- (i) the fact that only 20 days elapsed between Mr. Nasheed’s arrest and conviction in a trial involving a serious charge of terrorism, and proceedings commenced the day after Mr. Nasheed’s arrest, suggesting that the result was pre-determined;
- (ii) an apparent conflict of interest on the part of the Prosecutor General and two of the three presiding judges who were friends and colleagues of Judge Abdulla [...]
- (iii) refusal to allow Mr. Nasheed to call any witnesses or evidence, and the limits placed on his cross-examination of prosecution witnesses;
- (iv) limited provision of evidence to the defence team, including CDs and video evidence;
- (v) the absence of legal representation for Mr. Nasheed at key points during the trial;
- (vi) refusal of adjournment after the withdrawal of Mr. Nasheed’s counsel;
- (vii) limitations on how many observers and members of the public could attend Mr. Nasheed’s trial [...];
- (viii) a sudden change by the Supreme Court of the appeal rules, and the delay in providing the trial record to the defence.<sup>135</sup>

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<sup>133</sup> UN WGAD, Opinion No. 33/2015 (The Maldives), 4 September 2015, para 94, available at <http://bit.ly/1WPU9tb>;

<sup>134</sup> *Id.*, para 97;

<sup>135</sup> *Id.*, para 103;

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## Nasheed's trial: A Kafkaesque nightmare

The UN WGAD decision touched upon many aspects and instances of Nasheed's trial that can only be characterised as a Kafkaesque nightmare.

The first court hearing was scheduled within hours of his arrest, which meant his lawyers could not attend, since the Criminal Court's procedure requires legal representation to register two days prior to hearing.<sup>136</sup> Furthermore, the defence team was given only three days to prepare for the trial.<sup>137</sup> When defence attorneys requested 30 days to prepare for the case, since Nasheed is facing a completely different charge, the prosecution responded that although the charge was different, the materials of the case were the same.<sup>138</sup> Similarly, when presented with a long list of witnesses, the defence requested 30 days to evaluate them, but was given only one day.<sup>139</sup> Being unable to review documentary evidence and adequately prepare for the trial, Nasheed's lawyers excused themselves from representing their client during the seventh court hearing on 8 March 2015, but the court proceeded without them for the rest of the trial (four more hearings).<sup>140</sup> The final eleventh hearing lasted only 13 minutes. The Court refused to summon any defence witnesses deciding that they would not be able to prove Nasheed's innocence.

*"When considering summoning defence witnesses, we believe that they have not been submitted to disprove the prosecutor's claims" – Judge Didi.<sup>141</sup>*

Therefore, on the basis of documentary evidence, several audio and video recordings and a total of seven prosecution witnesses the Criminal Court of the Maldives found former President Nasheed guilty of terrorism and sentenced him to 13 years in prison. These bizarre proceedings might have been considered comic if they had not been driven by such sinister motives or had such serious consequences, for the former President and for the rule of law in the Maldives.

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<sup>136</sup> MDN, "Briefer on the Trial of Former President Mohamed Nasheed", 25 February 2015, available at <http://bit.ly/1KHZxHL>;

<sup>137</sup> *Ibid*;

<sup>138</sup> MDN, "Briefer on the Trial of Former President Mohamed Nasheed", 7 March 2015, available at <http://bit.ly/208BZrX>;

<sup>139</sup> MDN, "Briefer on the Trial of Former President Mohamed Nasheed", 4 March 2015, available at <http://bit.ly/1UtsVr0>;

<sup>140</sup> MDN, "Briefer on the Trial of Former President Mohamed Nasheed", 8 March 2015, available at <http://bit.ly/1OSo691>;

<sup>141</sup> MDN, "Briefer on the Trial of Former President Mohamed Nasheed", 13 March 2015, available at <http://bit.ly/1JJ3ktx>;

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## Nasheed's medical condition and recent developments

The mission's attention was drawn to the conditions under which the former president was being held in prison, including arbitrary restrictions on visitation rights and continuing ill-treatment, an example of which was a floodlight shining directly into his cell 24 hours a day. The mission was told that, though Nasheed suffered from chronic back pain, for which he had been medically advised to exercise and swim, he was not allowed to do so. He was denied proper medical attention, with bureaucratic formalities invoked to avoid sharing medical reports with Nasheed and his lawyers and to delay processing of his request to travel abroad for medical treatment.

In order to independently assess the validity of these allegations, the fact-finding mission requested and was granted permission by the Maldives Correctional Services (MCS) to meet with former President Nasheed in Maafushi Prison on 26 November 2015 at 14.30 following a series of text messages and communications between government officials and the mission members. However, after the mission arrived at Maafushi Island just 15 minutes before the meeting was due to take place at the prison, the members were informed by phone that the meeting had been cancelled for unspecified reasons. Neither MCS nor authorities at Maafushi Prison were able to offer the mission any explanation for this sudden cancellation. Instead, the mission was merely informed that the directive to cancel the meeting had come from the Ministry of Home Affairs, which made itself incommunicado to the mission at that point. The subsequent formal request for clarifications, addressed to the MCS and Home Ministry, remains unanswered<sup>142</sup>.

However, the mission was happy to learn that Nasheed's request to travel abroad for treatment was finally granted by the government on 16 January 2016<sup>143</sup> and that he had left the country two days later.<sup>144</sup> However, this was marred by the government's attempt to secure his return by demanding a "guardian", who would be criminally liable in case of Nasheed failing to return. The mission obtained a translated copy of the declaration the guardian was required to sign that specified this condition.<sup>145</sup> This deplorable condition was subsequently removed after it became known and was roundly criticised in the international media.

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<sup>142</sup> See Annexure I;

<sup>143</sup> "Former Maldives President Mohamed Nasheed allowed foreign trip", *BBC*, 16 January 2016, available at <http://bbc.in/1nRMdM8>;

<sup>144</sup> "Supporters jubilant as Nasheed leaves the Maldives", *Maldives Independent*, 18 January 2016, available at <http://bit.ly/1NhDN5r>;

<sup>145</sup> See Annexure II;

*“Ideally, I would like to go to a Maldives, which is free, where meaningful political activities can happen.” – Mohamed Nasheed, former President of the Maldives.<sup>146</sup>*

## SUMMARY

The tyranny of the judiciary has become a part of political life of the country. While the roots of the problem are historical and structural, the Supreme Court’s judicial overreach and its increasingly repressive practices are inherently undemocratic, thrive on impunity, pose an existential threat to the constitutional order, and will make it impossible for good governance to be established in the Maldives. Instead of trying to meet the standards and discharge the mandate set for it by the 2008 Constitution, the judiciary has remained as politicised and unaccountable as it was under the authoritarian dispensation when most of its members were appointed, and with which they appear to be aligned. Former President Nasheed’s case exemplifies the systemic failures of the judiciary and the impact it has on rights and lives in the country.

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<sup>146</sup> “The human rights lawyer and Former Maldives President Mohamed Nasheed speak with Christiane Amanpour about him being deposed from power and jailed”, *CNN*, 26 January 2016, available at <http://cnn.it/1nyLQG0>;

## PART IV: DECAY OF INDEPENDENT INSTITUTIONS

The mission was told that the decay of independent institutions was a symptom of the regression of democracy in the Maldives. Apart from the structural problems of the Judicial Service Commission (JSC) and the Supreme Court's illegal actions against the Electoral Commission (EC) and Human Rights Commission of Maldives (HRCM), discussed in the previous part, politicisation and lack of independence were cited as problems plaguing the independent institutions.

The mission met members of the Anti-Corruption Commission (ACC), which investigates corruption offences, and National Integrity Commission (NIC), investigating complaints against all law enforcement agencies, which was established by merging the Police Integrity Commission (PIC)<sup>147</sup> and Customs Integrity Commission (CIC) in October 2015. An appointment with HRCM was cancelled with no reasons given.

### LACK OF CAPACITY

The ACC officials informed us that they lack capacity to effectively fight corruption. They cited the absence of an adequate legal framework, such as an Evidence Act, within which the Commission's mandate can be exercised. Currently, the gathering, submission and analysis of evidence is based on a five-article law, which "is basically no law". Neither did they have adequate and assured funding. Though the number of complaints to the Commission had gone up, its budget had been cut by 6%.

*"The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding". - Principles relating to the Status of National Institutions (The Paris Principles), 1993.*

Consequently, the Commission has a significant shortfall of financial and human resources, which hampers their work. It only has 40 investigators, many of whom are fresh graduates. Investigators have to travel to many islands, which is expensive and difficult; in some cases it took more than a year to arrange a trip. The outcome is a backlog of cases. Statistical data for 2009-2013, which ACC provided to us, indicates that out of 4846 complaints lodged with the Commission, only 1937 cases were concluded.

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<sup>147</sup> Maldives was the only South Asian country to have a dedicated and specialised police complaints body in the Police Integrity Commission (PIC). While the PIC had its share of constraints and weaknesses, considering the recurring and grave abuses by the police, the lack of a specialised police oversight body will have serious consequences for the quality and weight of police accountability;

Although we were not able to meet with officials of every independent institution, the interviews with a range of stakeholders indicate that the problems ACC is facing are endemic to all independent institutions. For example, in the 2016 budget passed by People’s Majlis in November 2015, the government made extreme cuts to the funding of HRCM, “to the extent that the HRCM will not be able to carry out its mandate”.<sup>148</sup> NIC is suffering from additional accumulation of unresolved complaints, since they took over all the cases of the disbanded PIC and CIC.

## COMPROMISED INTEGRITY AND INDEPENDENCE

While members of independent institutions assured the mission that they are entirely independent in discharging their duties, a number of instances brought to our attention by other stakeholders indicate that the integrity and independence of these institutions have been compromised.

### Arbitrary removals, politicised appointments

Several removals deemed to be arbitrary by several stakeholders have taken place under the current administration. They include the dismissals of Assistant Attorney General Ismail Visham, who was working on the government’s defence in UN WGAD proceedings as well as that of his wife Hana Waheed, prosecutor at the Prosecutor-General’s Office;<sup>149</sup> Auditor-General Niyaz Ibrahim, who was removed two years before his term ended, violating constitutional guarantees of security of tenure;<sup>150</sup> and the members of the Elections Commission, suspended by the Supreme Court (see Part III).

At the same time, the mission was provided with sufficient evidence to conclude that the government is stacking the independent institutions with its own loyalists and pro-government activists. For example, in August 2015, Parliament, acting on the President’s recommendation, appointed three new HRCM members, who included Moosa Ali Kaleyfaanu, a former National Disaster Management Centre employee charged with fraud at the time of his appointment, and Aishath Afreen, the wife of PPM MP Hussain Mohamed Latheef.<sup>151</sup> A former member of the ruling party Shifaq

<sup>148</sup> “Death chamber, isolation cells, and new jails”, *Maldives Independent*, 17 November 2016, available at <http://bit.ly/1ZY0cMq>;

<sup>149</sup> “Assistant AG’s wife suspended after drugs bust”, *Haveeru Online*, 30 September 2015, available at <http://bit.ly/1PXzGgO>;

<sup>150</sup> Transparency Maldives, “Parliament updates – political developments surrounding the work of the Parliament in 2014”, 11 March 2015, available at <http://bit.ly/1UuPonp>;

<sup>151</sup> “Official accused of corruption nominated to human rights watchdog”, *Maldives Independent*, 3 August 2015, available at <http://bit.ly/1PXAaKh>;

Mufeed was appointed as a new HRCM's head.<sup>152</sup> These appointments were not based on merit, experience and recognised competence, as required by Article 191 of the Constitution. For instance, activists who had been in touch with the new HRCM members found that they were not familiar with the contents of the HRCM Act, 2006, including the Commission's power to launch investigations on its own initiative.

The arbitrary dismissals and politicised appointments contravene the UN Principles relating to the Status of National Institutions (The Paris Principles), 1993 that require fair representation of social forces, pluralism and independence.

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### Selectivity in investigating breaches of law

Numerous stakeholders suggested to the mission that independent institutions, while facing capacity-related challenges, are reluctant to investigate complaints from the Opposition, activists and journalists. We were informed about many cases of police brutality and inaction, submitted to the HRCM and NIC respectively, which had been pending for months or even years. It is a given that the credibility and trust that independent institutions must have are both eroded if they do not deal promptly with cases, or are perceived as having no interest in doing so.

Bias also extends to the cases chosen for investigation. The most recent example of this is the ACC investigation against Maldives Marketing and Public Relations Corporation (MMPRC), state owned corporation responsible for promotion of tourism and leasing of islands and lagoons for resort development. After former Vice-President and Tourism Minister Ahmed Adeeb had been arrested in October 2015, corruption charges were brought against him, for abuse of power that led to embezzling \$40-60 million. ACC responded with the "largest ever" audit of MMPRC.<sup>153</sup>

This case is important and disturbing because it shows that the ACC acts under political influence, and that institutions that act independently are victimised. When former Auditor General Niyaz Ibrahim flagged the same issue in his 2014 report, when the Vice-President had not fallen from grace, not only did the ACC take no action,

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<sup>152</sup> "Maldives parliament okays new rights chief, deputy", *Haveeru Online*, 13 October 2015, available at <http://bit.ly/11ZWJzB>; "Official accused of corruption nominated to human rights watchdog", *Maldives Independent*, 3 August 2015, available at <http://bit.ly/1PXAAKh>;

<sup>153</sup> "Maldives graft watchdog says 'largest ever' probe in final stages", *Haveeru Online*, 3 January 2016, available at <http://bit.ly/1nXs5IB>;

Niyaz Ibrahim was removed from the office in violation of the Constitution (see above).<sup>154</sup>

*“The President [Yameen] was informed about Adeb’s corruption early on. Money that should have gone into the state’s accounts were instead transferred to Adeb and his aides’ accounts. Islands and projects were sold to the party that proposed the highest bribes. All of that has been documented in the audit report. [...] The President said it was not my duty to look into such matters, he alleged that I had a personal grudge against Adeb. [...] I don’t think ACC can undertake an independent investigation. The government of Maldives has systematically paralysed all oversight agencies of the state. Plus, members of ACC are likely to face impeachment if they ever initiate an investigation into Yameen’s alleged involvement in these corruption cases.” – Niyaz Ibrahim, former Auditor General.<sup>155</sup>*

### Questionable sale of real estate to the members of independent offices and institutions

The mission was informed that in April 2015 the Housing Ministry sold ten flats in Malé’s luxurious Rehendi Residency to judges, independent offices’ holders, and commissions’ members at prices significantly lower than market prices.<sup>156</sup> The government ironically claimed that this had been done to “ensure their integrity”.<sup>157</sup> Reportedly, the flats were sold at discount prices to the Chief Justice, four Supreme Court judges, a Criminal Court, Prosecutor General at the time, Commissioner General of Taxation and Information Commissioner.<sup>158</sup> Transparency Maldives raised an alert over this case of acceptance of “arbitrary gratuities” and called for criminalisation of illicit enrichment.<sup>159</sup> However, ACC, the President of which had also received a flat in Rehendi Residency, found no evidence of corruption in this case.<sup>160</sup>

<sup>154</sup> “The rot at the top: Will President Yameen answer for corruption?”, *Maldives Independent*, 14 January 2016, available at <http://bit.ly/1VAJm4Z>;

<sup>155</sup> “The rot at the top: Will President Yameen answer for corruption?”, *Maldives Independent*, 14 January 2016, available at <http://bit.ly/1VAJm4Z>;

<sup>156</sup> “Government hands discounted flats to judges, commission heads”, *Minivan News*, 2 April 2015, available at <http://bit.ly/1P1upVE>;

<sup>157</sup> *Ibid*;

<sup>158</sup> *Ibid*;

<sup>159</sup> “Transparency Maldives urges state officials not to accept ‘arbitrary gratuities’”, *Minivan News*, 22 April 2015, available at <http://bit.ly/1VAKROH>; and “Transparency Maldives call for criminalisation of illicit enrichment”, 2 July 2015, available at <http://bit.ly/1KORQiC>;

<sup>160</sup> “Watchdog rules out corruption in sale of luxury flats to state officials”, *Maldives Independent*, 3 January 2016, available at <http://bit.ly/1nCWXTN>;

## SUMMARY

Maldivian independent institutions face a number of challenges that undermine their capacity, integrity and independence. On the one hand, they lack financial and human resources as well as adequate legal framework to fulfil their respective mandates. On the other hand, independent institutions operate in the environment of incessant interference from the judiciary and the government. Recent years have seen institutions' members arbitrarily removed and replaced by pro-PPM individuals. Inducements, such as sale of real estate to the holders of independent offices and commission members, have further compromised the credibility of these institutions.

## PART V: CREEPING RADICALISATION

Radicalisation is a critical but often overlooked problem in the Maldives. It is steadily advancing and changing the fabric of Maldivian society, putting in physical danger dissent, diversity and richness of opinions as well as religious freedom, while undermining Commonwealth core values of respect, tolerance and understanding.

While there are no known jihadist organisations in the Maldives, the preaching of violent ideologies, which has been permitted and tolerated by the ruling dispensation, has had its effect, seducing significant numbers of locals into joining the ranks of terrorist outfits abroad. It is estimated that more than 200 Maldivians are in Syria and Iraq with different fighting factions, including Islamic State (Isis) and the Al-Nusra Front. There are more Maldivian jihadi fighters in Syria and Iraq than from any other South Asian country,<sup>161</sup> and, according to local journalists, newspapers frequently report new departures and casualties.

Within the country, networks of radicalised elements harass, threaten and attack those they perceive as “secular” or “un-Islamic”. This has a direct impact on democracy and human rights, and on those who advocate these values, since these are denounced as imported, western concepts, incompatible with the Islamic way of life.

### HISTORY OF RADICALISATION IN THE MALDIVES

The Maldives became a Muslim country in 12<sup>th</sup> century and was characterised by moderate Islamic practices that used to merge and coexist with local religious beliefs, e.g. in spirits and djinns.<sup>162</sup> However, in recent years there has been a rapid and expansive spread of Wahhabi and Salafi beliefs and practices, spearheaded by radical scholars, and by ultra-conservative groups that have sprung up in the last decade.<sup>163</sup>

The mission had several opportunities to inquire into the history, causes and implications of the ongoing radicalisation. The interviewees unanimously agreed that the 2004 Indian Ocean tsunami was a turning point. It was described by Wahhabi and Salafi scholars and other conservative religious figures as “god’s wrath” for living in the “land of sin” that did not practice true Islam. The religious “reformation” that

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<sup>161</sup> Azra Naseem (2015), “The honeymoon is over: Maldives as a growing security threat in the Indian ocean”, *Irish Studies in International Affairs*, vol. 26, p. 117;

<sup>162</sup> Sudha Ramachandran (2016), “The Maldives: Losing a Tourist Paradise to Terrorism”, *Terrorism Monitor*, vol. 14(2), available at <http://bit.ly/1SwmOD2>;

<sup>163</sup> *Ibid*;

followed was made possible by generous funding from various sources in the Muslim world, but especially from Pakistan and Saudi Arabia.<sup>164</sup> Many Islamists entered the country under the guise of humanitarian charities, including Idara Khidmat-e-Khalq (IKK), which is affiliated with the Pakistan-based Jamaat ud Dawa/Lashkar-e-Taiba.<sup>165</sup>

*“We have taken on a very narrow understanding of Islam. And that understanding has very much become the mainstream.” – Mohamed Nasheed, former President of the Maldives.<sup>166</sup>*

President Gayoom’s administration did not tolerate the open expression of any extremist ideology, but a number of developments took place during his tenure that allowed these ideologies to take root. In 1994 the Maldives adopted the Protection of Religious Unity Act, which imposed Sunni Islam on Maldivians by restricting their freedom to practice other religions; this restriction was also built into the 1997 and 2008 Constitutions.<sup>167</sup> Arabic-medium schools were set up, which used Saudi Arabian textbooks that promoted a puritanical vision of Islam, instead of the liberal interpretation prevalent before,<sup>168</sup> and contributed to the rise of Wahhabi and Salafi ideologies. Scholarships and placements in universities and madrasas of Saudi Arabia and Pakistan were made available to Maldivians, who upon return promoted radical Islamic ideologies.<sup>169</sup> The American Foreign Policy Council regards this as “a core means of radicalising Maldivians locally”.<sup>170</sup> In February 2010, the number of unregistered Maldivian students in Pakistan was estimated at 200-300.<sup>171</sup>

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<sup>164</sup> Azra Naseem (2015), “The honeymoon is over: Maldives as a growing security threat in the Indian ocean”, *Irish Studies in International Affairs*, vol. 26, p. 117;

<sup>165</sup> American Foreign Policy Council (2014), “World Almanac of Islamism: Maldives”, p. 3, available at <http://bit.ly/1JTwFli>;

<sup>166</sup> “The human rights lawyer and Former Maldives President Mohamed Nasheed speak with Christiane Amanpour about him being deposed from power and jailed”, *CNN*, 26 January 2016, available at <http://cnn.it/1nyLQG0>;

<sup>167</sup> Sudha Ramachandran (2016), “The Maldives: Losing a Tourist Paradise to Terrorism”, *Terrorism Monitor*, vol. 14(2), available at <http://bit.ly/1SwmOD2>;

<sup>168</sup> *Ibid*;

<sup>169</sup> *Ibid*;

<sup>170</sup> American Foreign Policy Council (2014), “World Almanac of Islamism: Maldives”, p. 3, available at <http://bit.ly/1JTwFli>;

<sup>171</sup> US Department of State (2011), “Country Reports on Terrorism 2010 – Maldives”, available at <http://bit.ly/1nz1rW2>;

The government turned a blind eye and did not develop a coherent policy to counter these developments; the ramifications were swift and inevitable. The first-ever terrorist attack on Maldivian soil, targeting foreign tourists, took place in 2007, while, as noted, significant numbers of Maldivians have joined terrorist organisations abroad.<sup>172</sup>

Paradoxically, the democratisation of Maldivian politics and society during Nasheed's tenure permitted radicalised elements to operate on an unprecedented scale and with far greater outreach and visibility than before. Numerous groups sprang up to promote ultra-conservative, misogynist and outright violent ideologies. They include NGOs and political parties such as Jamiyyatul Salaf, Islamic Foundation of the Maldives and Adhalaath Party, the latter having particularly strong influence over Ministry of Islamic Affairs.<sup>173</sup>

The vocabulary and narrative promoted by these groups was used to oust Nasheed from power in 2012. Two months before the "peaceful coup d'état", a "Defend Islam" campaign, spearheaded by the PPM and the Adhalaath Party, was launched accusing Nasheed of promoting western ideals and culture, defiling Islam and restricting the spread of more conservative religious practices.<sup>174</sup> This also exemplifies the use of Islam for political purposes. As several stakeholders pointed out to us, dichotomy between the Islamic and the un-Islamic guides many Maldivians in their opinions and political choices.

*"All policies, whether economic, social or political, were criticised on the basis they were anti-Islam. Democracy was denigrated as a concept imported by 'infidels', with Nasheed depicted as their agent in the Maldives. Religious figures told the public it was their 'religious duty' as Muslims to topple Nasheed, an 'irreligious' and anti-Islamic leader". – Dr. Azra Naseem, scholar at Dublin City University.<sup>175</sup>*

A number of interviewees suggested to us that prisons proved to be an additional means of radicalisation, especially since extremists are not segregated from other

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<sup>172</sup> Azra Naseem (2015), "The honeymoon is over: Maldives as a growing security threat in the Indian ocean", *Irish Studies in International Affairs*, vol. 26, p. 117;

<sup>173</sup> American Foreign Policy Council (2014), "World Almanac of Islamism: Maldives", p. 8, available at <http://bit.ly/1JTwFli>;

<sup>174</sup> *Id*, pp. 4-5;

<sup>175</sup> Azra Naseem (2015), "The honeymoon is over: Maldives as a growing security threat in the Indian ocean", *Irish Studies in International Affairs*, vol. 26, p. 117;

inmates in Maldivian jails.<sup>176</sup> As a result, notorious Malé gangs have become increasingly radicalised.

*“There is nothing to do. You think about your life. The only thing to read is the Qur’an or religious literature. There are also lots of older militants and young guys look up to them.”*  
- Hafez, Buru gang leader.<sup>177</sup>

Most notably, the leaders of two rival gangs – Buru and Kuda Henveiru – were radicalised during their imprisonment and formed a separate religiously-minded gang upon release.<sup>178</sup>

There are also numerous socio-economic reasons that underpin radicalisation. The World Bank cited “inactivity and apathy, unemployment, drug use, the need to belong and form brotherhood, and the need for young men to prove their masculinity” as main reasons for gang recruitment.<sup>179</sup> Interviewed stakeholders confirmed to the mission that the same socio-economic factors contribute to the radicalisation process. With the help of external forces and infrastructure, the identity of an extremist has also become more appealing to young men than the identity of a gang member. Unsurprisingly, many gang members have left the country to join jihadi groups in Syria and Iraq.<sup>180</sup>

Finally, social media, growing in reach and popularity,<sup>181</sup> was cited as an efficient medium of radicalisation in the Maldives, catalysed by the rise of Isis. A study into online recruitment of Maldivians has shown that ultra-conservative and radical groups and individual preachers demonstrate a heavy presence and significant popularity on many media platforms including Facebook, Twitter, Instagram, YouTube, Flickr, Ask FM and others.<sup>182</sup> In addition, there are separate websites

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<sup>176</sup> “Paradise jihadis: Maldives sees surge in young Muslims leaving for Syria”, *The Guardian*, 26 February 2015, available at <http://bit.ly/1JQPOTQ>;

<sup>177</sup> “Paradise jihadis: Maldives sees surge in young Muslims leaving for Syria”, *The Guardian*, 26 February 2015, available at <http://bit.ly/1JQPOTQ>;

<sup>178</sup> *Ibid*;

<sup>179</sup> World Bank (2014), “Youth in the Maldives: Shaping a New Future for Young Women and Men through Engagement and Empowerment”, p. vii, available at <http://bit.ly/20hXs1M>;

<sup>180</sup> “Paradise jihadis: Maldives sees surge in young Muslims leaving for Syria”, *The Guardian*, 26 February 2015, available at <http://bit.ly/1JQPOTQ>;

<sup>181</sup> 43 % of the Maldivian population are active on social media, as compared to 9 % and 7 % in neighbouring Sri Lanka and India respectively. See “Leaving ‘paradise’ for Jihad: Maldivian fighters in Syria, and the Internet”, *Voxpol*, 13 May 2015, available at <http://bit.ly/1KRJbg2>;

<sup>182</sup> See *ibid*;

dedicated to the promotion of extremism and terrorist groups. Two most significant websites are *Haqqu*, run in Dhivehi and dedicated solely to the promotion of Isis, and *Bilad Al-Sham Media*, dedicated to jihad-related news, literature and discussion as well as documenting the lives and deaths of the Maldivians fighting in Syria.<sup>183</sup>

## IMPLICATIONS

The spread of ultra-conservative and radical ideologies in the Maldives has wide implications, which are increasingly visible, for Maldivian society. They include an increase in flogging and introduction of other Sharia punishments, degradation of women's rights and role in the society, and attacks against "secular" and "anti-Islamic" groups and individuals.

### Increase in the use of flogging and introduction of other Sharia punishments

Though flogging is a corporal punishment, illegal under international human rights law,<sup>184</sup> it is a long-standing practice in the Maldives, which has often been criticised for letting it continue.<sup>185</sup> Flogging is usually prescribed as a punishment for adultery and fornication according to Sharia law,<sup>186</sup> and women are the usual victims; while men are rarely flogged.<sup>187</sup> According to the Office of the Prosecutor General, convictions for adultery and fornication are primarily based on confessions, and if the allegations are denied the charges are usually dropped.<sup>188</sup> This line of defence is more difficult for women, who often come under pressure from their community or since the commission of crime is evident if they become pregnant.<sup>189</sup> Flogging places a

<sup>183</sup> "Leaving 'paradise' for Jihad: Maldivian fighters in Syria, and the Internet", *Voxpol*, 13 May 2015, available at <http://bit.ly/1KRJbg2>;

<sup>184</sup> UN Human Rights Committee, General Comment 20, Article 7, para 5, available at <http://bit.ly/1VELqZl>;

<sup>185</sup> See e.g. OHCHR, "Opening remarks by UN High Commissioner for Human Rights Navi Pillay at a press conference during her mission to the Maldives", available at <http://bit.ly/1QVRAoY>;

<sup>186</sup> The culture of flogging in the Maldives: a systematic abuse of human rights", *Minivan News*, 25 March 2013, available at <http://bit.ly/1nBpWBN>;

<sup>187</sup> Amnesty International (2013), "60<sup>th</sup> Session: The Republic of Maldives – Review of the combined fourth and fifth periodic report", available at <http://bit.ly/1SpkHCW>;

<sup>188</sup> *Ibid*;

<sup>189</sup> *Ibid*;

serious stigma on the convicted women, whose lives are irreparably “socially stained” as a consequence.<sup>190</sup>

*“In my 10 years serving as a court official during the 90’s, I have witnessed many people being subjected to public flogging. Although we are, in fact, a Muslim nation, most of these sentences were for cases of extra marital sex. [...] The majority of those who did get flogged were women” – Faheem, former court official.*<sup>191</sup>

While recent data on use of flogging or other Sharia punishments is unavailable,<sup>192</sup> it was reported that in mid-2009 150 women were facing a public flogging.<sup>193</sup> Reliable anecdotal evidence obtained by the mission suggests that the use of flogging has increased in the Maldives due to pressure from ultra-conservative groups. Other Sharia punishments are also being introduced. For example, in October 2015, a woman accused of adultery was sentenced to death by stoning for the first time in known history of the country.<sup>194</sup> The ruling was subsequently overturned by the Supreme Court,<sup>195</sup> but the case indicates the growing incidence of Sharia punishments in the Maldives.

*“The issue of flogging for adultery remains one of the most controversial issues within family law in Maldivian society. Hitherto moderate and liberal views have become fiercely and loudly opposed by a growing conservative voice commanding a highly politicised religious platform” – Hope for Women’s shadow report to CEDAW, 2012*<sup>196</sup>

<sup>190</sup> Hope for Women (2012), “Maldives NGO Shadow Report to the Committee on the Elimination of Discrimination against Women”, para 292, available at <http://bit.ly/1m9EfMS>;

<sup>191</sup> “The culture of flogging in the Maldives: a systematic abuse of human rights”, *Minivan News*, 25 March 2013, available at <http://bit.ly/1nBpWBN>;

<sup>192</sup> Amnesty International filed a request for information on the application of flogging with the Prosecutor General’s office in 2013, but the information was not provided. See, Amnesty International (2013), “60<sup>th</sup> Session: The Republic of Maldives – Review of the combined fourth and fifth periodic report”, available at <http://bit.ly/1SpkHCW>;

<sup>193</sup> “150 women face adultery flogging on Maldives”, *Independent*, 22 July 2009, available at <http://ind.pn/1m9vfrj>;

<sup>194</sup> “Maldives court sentences woman to death by stoning”, *Maldives Independent*, 18 October 2015, available at <http://bit.ly/1W0NrE4>; and “Maldives in South Asia: Let’s talk about Saudis”, *Dhivehi Sitee*, 2 December 2015, available at <http://bit.ly/1JBWGp2>.

<sup>195</sup> “Maldives top court annuls woman's stoning ruling”, *Haveeru Online*, 18 October 2015, available at <http://bit.ly/1KT8tKI>;

<sup>196</sup> Hope for Women (2012), “Maldives NGO Shadow Report to the Committee on the Elimination of Discrimination against Women”, para 292, available at <http://bit.ly/1m9EfMS>;

Ultra-conservative and radical groups, which have advocated for the expansion of the use of Sharia punishment, oppose the government's efforts to limit their application. For instance, Jamiyyathul Salaf mounted a strong opposition to the new Penal Code, 2015 on religious grounds, as it does not criminalise apostasy or include punishments of stoning for adultery and amputation for theft.<sup>197</sup>

*"We note with regret that this law has been formulated on a secular, liberal basis that is alien to the purposes of Islamic sharia, after changing the whole shape of the Islamic sharia that should be enforced upon Muslims in an Islamic country" – from statement by Jamiyyathul Salaf.*<sup>198</sup>

Previously, the religious groups have forced the government to condemn the call for public debate on flogging, made by the UN High Commissioner for Human Rights Navi Pillay during her visit to the Maldives in 2011.<sup>199</sup> In a case where a 15 year-old victim of rape was sentenced to flogging for fornication, drawing international condemnation, Jamiyyathul Salaf strongly criticised the government for calling for a review of the sentence.<sup>200</sup> In 2013, the same NGO formally urged the government to use beheadings and firing squads to carry out the death penalty, instead of lethal injections proposed by the Attorney General.<sup>201</sup>

The interviewed stakeholders suggested that the influence of the ultra-conservative and radical on public policy has been growing steadily. Therefore, it is unlikely that the cruel, inhuman and degrading punishment of flogging will be removed from Maldivian jurisprudence. Even a reduction in its use does not appear feasible.

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### Degradation of women's rights

While the entrenchment of flogging that disproportionately targets women is an extreme and violent example of the adverse effects radicalisation has had on women's lives and rights in the Maldives, an array of their other rights have been affected. They

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<sup>197</sup> "New penal code will 'bury' Islamic sharia", *Minivan News*, 14 April 2015, available at <http://bit.ly/1nBrDzg>;

<sup>198</sup> "New penal code will 'bury' Islamic sharia", *Minivan News*, 14 April 2015, available at <http://bit.ly/1nBrDzg>;

<sup>199</sup> "Islamic Minister, MPs, PPM and religious groups condemn UN Human Rights Commissioner", *Minivan News*, 27 November 2011, available at <http://bit.ly/1RWWqnh>;

<sup>200</sup> American Foreign Policy Council (2014), "World Almanac of Islamism: Maldives", p. 7, available at <http://bit.ly/1JTwFli>;

<sup>201</sup> "Religious NGO Jamiyyathul Salaf recommends beheading, firing squad over lethal injection", *Minivan News*, 26 February 2013, available at <http://bit.ly/1PRuaSK>;

include freedom of expression, freedom of movement, right to education, and right to health and physical integrity.

Interviews with women's rights advocates in the Maldives reveal the negative impact the rise of radical groups has had on the lives of women in the Maldives. They highlighted rising violence against women, decreasing participation of women in public life, limited effect education has for women empowerment, as well as increasing acceptance of the ultra-religious demand that women should not be seen unaccompanied by male family member in public. The cruel practice of female genital mutilation (FGM), which had apparently ceased in the Maldives by the early 1990s,<sup>202</sup> is believed to have resumed.

In its 2012 shadow report to CEDAW, the NGO Hope for Women raised concerns about a wide range of women's rights issues, attributed to the promotion of ultra-conservative views, which confirm the mission's findings.

*"The 2008 Constitution guaranteed freedom of expression in its most comprehensive sense. This however, has been an opening in some respects for the completely unchecked expression of all kinds of views, including conservative religious views which negatively affect the situation of women. The promotion of gender stereotypes, sex segregation in social organisation and attempts to solidify gender roles that are arguably unfeasible in many respects in the socio-economic context of the Maldives, are increasingly endorsed" – Hope for Women's shadow report to CEDAW, 2012<sup>203</sup>*

Among many things highlighted in the report, several are worth mentioning.

Firstly, despite the passage of a rather progressive Prevention of Domestic Violence Act in 2012, several issues were omitted in the Act due to the influence of ultra-conservative actors and their sympathisers in the Parliament, including criminalising marital rape.<sup>204</sup> This is especially problematic in the light of the findings of a 2007 Ministry of Gender and Family report, which found that one in three Maldivian women aged 15-49 experienced some form of physical or sexual violence.<sup>205</sup>

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<sup>202</sup> "Reported increase in practice of female circumcision raises alarm", *Minivan News*, 30 October 2011, available at <http://bit.ly/1VFcS9A>;

<sup>203</sup> Hope for Women (2012), "Maldives NGO Shadow Report to the Committee on the Elimination of Discrimination against Women", para 133, available at <http://bit.ly/1m9EfMS>;

<sup>204</sup> *Id*, para 127;

<sup>205</sup> Ministry of Gender and Family (2007), "The Maldives Study on Women's Health and Life Experiences", p. vi, available at <http://bit.ly/1NOcbFl>;

Furthermore, the report outlines the emerging practice of gender segregation in schools, endorsed by increasingly conservative religious views.<sup>206</sup> These views penetrate many unexpected areas of women's lives, including their freedom to participate and compete in sports, where the Maldives witnessed a rapid decline in and, in some islands, complete stoppage of women's sporting activity.<sup>207</sup> The report also suggests possible re-emergence of FGM and points at continuing endorsement of the practice by the conservative religious actors.<sup>208</sup>

The report cites reliable anecdotal evidence of girls being removed from schools before puberty, which is allegedly underpinned by the view that "educating girls is unimportant and girls do not need to study for too long".<sup>209</sup> However, during our interviews with women's rights advocates it was noted that the number of girls graduating is growing. Nevertheless, we were informed that despite this, it does not necessarily lead to genuine women's empowerment and greater participation in public life. On the contrary, educated women are becoming increasingly confined to private settings of home and family.

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### Harassment of dissidents

During our time in the Maldives, numerous examples of violence against journalists, civil society activists and other "disliked" individuals, allegedly perpetrated on religious grounds, were brought to our attention. Such intimidation tactics are not new to the Maldives. Traditionally, this role has been reserved for local gangs, which often have strong relationships with political figures.

*"The politicians need us to intimidate opponents or stop rallies, or stop other gangs stopping their rallies. Almost all the gangs are connected to political figures in one way or another"*  
 - Ibrahim Nafeez, leader of the Buru gang.<sup>210</sup>

However, in recent years intimidation tactics have acquired overtly religious undertones, which can be partly attributed to the radicalisation of the gangs. The overwhelming opinion among the interviewed stakeholders as well as factual circumstances in many cases strongly suggest that radicalised elements play an

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<sup>206</sup> Hope for Women (2012), "Maldives NGO Shadow Report to the Committee on the Elimination of Discrimination against Women", para 199, 204, available at <http://bit.ly/1m9EfMS>;

<sup>207</sup> *Id*, para 269;

<sup>208</sup> Hope for Women (2012), "Maldives NGO Shadow Report to the Committee on the Elimination of Discrimination against Women", para 311, available at <http://bit.ly/1m9EfMS>;

<sup>209</sup> *Id*, para 319;

<sup>210</sup> "Paradise jihadis: Maldives sees surge in young Muslims leaving for Syria", *The Guardian*, 26 February 2015, available at <http://bit.ly/1JQPOTQ>;

important part to silence dissenting voices. One interviewed journalist directly linked the attacks and harassment to ultra-conservative NGO Jamiyyathul Salaf. The overlap between gangs and radicalised elements means that the increasing attacks on and harassment of the political opposition, and of others perceived as independent, could be interchangeably driven by either political or religious motives, or both.

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### Death threats

All stakeholders, associated with the media, civil society and/or political activism, informed the mission that they are regularly harassed by unknown individuals. Death threats are the most notable means of harassment, which the interviewees claim to receive “every now and then”. The death threats are usually delivered through text messages or phone calls, though cases of online threats and death threats delivered in person were also reported to the mission. The threats take on political and – increasingly – religious undertones, with messages often claiming their targets “infringe on religion”.

The targeted individuals informed the mission that they initially reported the death threats to the police, but, though mobile numbers can be traced, the police either did not respond or responded far too slowly.

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### Attacks and abductions

There has been a string of politically and religiously motivated attacks and abductions since 2011. The most prominent cases reported to the mission include

- stabbing of then Judicial Service Commission’s (JSC) member Aishath Velezinee (2011), who exposed corruption and malfunction within JSC and the judiciary. The police closed the case citing insufficient evidence, despite having video footage of the attackers;<sup>211</sup>
- brutal hacking and murder of MP Dr. Afrasheem Ali (2012), after he voiced his support for open debate on religious issues. Hussain Humam was accused of the attack and is currently appealing death sentence in the Supreme Court, although his defence maintains his innocence;<sup>212</sup>
- life-threatening attack on openly gay blogger Ismail “Hilath” Rasheed (2012), who advocated for religious tolerance and freedom and had been attacked before in 2011. The mission is not aware of the outcome of the

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<sup>211</sup> “Our protectors have failed us”, *Maldives Independent*, 8 September 2015, available at <http://bit.ly/1UDPjg2>;

<sup>212</sup> “Maldives initiates final appeal in death sentence over MP's murder”, *Haveeru Online*, 26 November 2015, available at <http://bit.ly/1PvZvIK>;

police investigation into the attack. Ismail Rasheed has subsequently fled the country;

*"We are not a secular country. When you talk about religion there will always be a few people who do not agree" - Police Spokesperson Hassan Haneef responding to the attack on Ismail Rasheed.<sup>213</sup>*

- life-threatening attack on Ibrahim Waheed (2013), a journalist working with independent Raajje TV. The attack remains uninvestigated;<sup>214</sup>
- arson attack on Raajje TV (2013) that took place despite the station receiving and broadcasting the plan of the arson attack on the station few days before the attack. The attack remains uninvestigated;<sup>215</sup>
- stabbing of opposition MP Alhan Fahmy (2014). Suspect Mohamed Naseem was arrested and tried for the crime by the Criminal Court.<sup>216</sup> The outcome of the trial is unknown to the mission;
- abduction of Ahmed Rilwan (2014), a journalist critical of the government and a strong opponent of religious fundamentalism. The police has opened investigation, but made little effort to find the culprits. Rilwan's family took a complaint against the police's negligence to the Police Integrity Commission; no action was taken;<sup>217</sup>
- stabbing of Mahfooz Saeed (2015), lawyer of former President Mohamed Nasheed, who called on Maldivians to "come out and join the war against the government".<sup>218</sup> He was attacked in the middle of the day on a busy street in Malé with dozens of witnesses and CCTV cameras around. One suspect was arrested.<sup>219</sup>

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<sup>213</sup> "Hilath Rasheed attack "nothing to do with religious extremism", government claims", *Minivan News*, 10 July 2012, available at <http://bit.ly/20lQadq>;

<sup>214</sup> Amnesty International (2015), "Maldives: Assault on Civil and Political Rights", p. 13, available at <http://bit.ly/1OZrNHS>;

<sup>215</sup> "MDP condemns government as RaajjeTV arson remains not investigated", *Vaguthu*, 7 October 2015, available at <http://bit.ly/1nBVc3F>;

<sup>216</sup> "Hearing against Alhan Fahmy stab suspect cancelled", *Sun Online*, 21 May 2015, available at <http://bit.ly/20lO1P4>;

<sup>217</sup> "Missing journalist's family accuses police of negligence, files complaint", *Minivan News*, 29 October 2014, available at <http://bit.ly/1Kn9Ki2>;

<sup>218</sup> "No ordinary crime: The stabbing of Mahfooz Saeed", *Maldives Independent*, 5 September 2015, available at <http://bit.ly/20lXzcN>;

<sup>219</sup> "Maldives arrests one over opposition lawyer's stabbing", *Haveeru Online*, 20 October 2015, available at <http://bit.ly/1RXwOqf>;

Radical elements have persecuted social media users. In the summer and autumn of 2014, a number of attacks and abductions took place, targeting individuals perceived as atheist or homosexual. The radicals were particularly interested in the people behind the Facebook pages “Colourless”, which promotes tolerance and understanding, “Maldives Atheists” and “Secular Democratic Maldives Movement”. Several individuals perceived as homosexual or atheist were attacked and abducted on the streets of Malé and forced to give away confidential login details to their social media accounts.<sup>220</sup>

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### Self-censorship as a result of intimidation

Harassment and attacks against “disliked” individuals and groups has wide implications for freedom of speech in the Maldives. Interviewed journalists, civil society workers and political activists informed the mission that all of them employ self-censorship to some extent to protect themselves. To minimise the risk of harassment and attacks they “watch what [they] say” in relation to religious and political matters. The unabated intimidation of dissenting publicly prominent individuals also affects regular citizens, who now have to self-censor themselves, especially on social media.

## LACK OF ADEQUATE RESPONSE TO RADICALISATION

Though the onset of radicalisation predates the current administration, it is criticised for denying that the problem exists, for not doing enough to counter it and, in fact, for giving the radicals leeway to operate. Critics point out that there is neither a legal framework nor a policy to prevent and counter radicalisation or deal with terrorism. The Anti-Terrorism Act, 2015 is universally seen and condemned as merely a tool to target anyone opposed to the government. They argue that the indifference and inaction of the police on the harassment and attacks on moderates reflects government policy, and that the police are among the most radicalised institutions in the country.

The refusal of the police and political establishment to tackle radicalisation is exemplified by the 300-strong march of Isis supporters that took place on 5 September 2014. The participants waved Isis flags, chanted slogans against democracy and secularism and prayed for the success of mujahedeen fighting abroad. The event

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<sup>220</sup> “Vigilante mobs abduct young men in push to identify online secular activists”, *Minivan News*, 9 June 2014, available at <http://bit.ly/1WZxA5j>; and “Perceived atheists and homosexuals targetted as campaign of attacks continues”, *Minivan News*, 10 June 2014, available at <http://bit.ly/1P2wH9h>;

caused a huge media outcry, but no arrests were made.<sup>221</sup> The police's and government's attitude in this case stands in stark contradiction with the treatment of protesters at the Opposition's rallies.<sup>222</sup>

The mission heard allegations that the Maldivian government does nothing to stop Maldivians leaving for Syria and Iraq or to hold accountable those returnees who committed crimes while in Syria and Iraq. At the same time, it has apparently released dangerous and radicalised gang members from prisons.

Finally, the claim was made that the government overlooks the root causes of radicalisation, failing to address socio-economic factors that facilitate this and to provide a counter-narrative to radical groups. This is especially evident at the level of school education, where gender stereotypes and ultra-conservative narratives of Islam dominate textbooks.<sup>223</sup>

#### SUMMARY

Radicalisation presents an existential threat to the survival of Maldivian democracy. It has provided the opponents of the democracy with both the justification and courage to harass and attack dissidents, including independent journalists, civil society workers, political activists, lawyers and all those perceived as "secular", "homosexual", "atheist" or "un-Islamic". The rise of ultra-conservative and openly radical groups has also dealt a severe blow to the advancement of women's rights and gender equality. The problem is too large to ignore and the implications serious, but the current administration is cynically indifferent to this threat, which it has tried to manipulate for selfish political ends.

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<sup>221</sup> "Protesters march with IS flag calling for enforcement of Islamic Shariah", *Minivan News*, 6 September 2014, available at <http://bit.ly/1KTI67f>; and "The Islamic State has supporters in paradise", *The Washington Post*, 10 September 2014, available at <http://wapo.st/1KTIbrD>;

<sup>222</sup> See Part I of the report;

<sup>223</sup> MDN (2015), "Love for Islam vs Holy War: A Review of Islamic Studies Textbooks in the Maldives", available at <http://bit.ly/1UFlzj6>; and Hope for Women (2012), "Maldives NGO Shadow Report to the Committee on the Elimination of Discrimination against Women", para 204, available at <http://bit.ly/1m9EfMS>.

## RECOMMENDATIONS

In order to reverse the authoritarian shift and tackle the radicalisation the fact-finding mission makes the recommendations below to various stakeholders. Considering the resistance of the Maldives government to recommendations and external advice, the mission calls on the Commonwealth and international community particularly to continue to exert targeted and sustained pressure on the Maldives government to demonstrably re-establish the rule of law, properly exercise democratic values and restore the primacy of the Constitution in governance.

### Government of the Maldives:

- respect the principle of separation of powers, constitutional mandates, and rights and freedoms enshrined in Chapter II of the Constitution;
- nullify non-legislative measures, referred to in Part II of the report, that restrict human rights;
- take steps to ensure impartiality and accountability of the Maldives Police Service, including investigating and punishing delinquent police officers;
- release all individuals unlawfully or arbitrarily detained;
- ensure capacity and independence of constitutionally mandated institutions and offices and cease interference into their functioning;
- recognise legitimacy of domestic and international criticism of the government and engage in meaningful dialogue with local and international stakeholders;
- recognise the extent of radicalisation and take steps to tackle the problem, including adoption of appropriate strategies and policies where applicable, after consultation with domestic and international stakeholders;
- take steps to rectify the lack of training and capacity-building for judges;
- take steps to ensure the establishment of a truly independent process or mechanism, in line with best practice from other jurisdictions, to conduct a fair and objective vetting of the judiciary;
- develop an adequate gender equality policy to ensure protection of women's rights and their meaningful participation in public life;
- immediately lift the bar on the Maldives Bar Association and allow it to function freely and independently;
- amend the 2015 regulation on civil society in consultation with civil society organisations and experts to ensure that it puts in place fair and reasonable procedures that do not unduly restrict, impede or curtail civil society organisations

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### Parliament (People's Majlis):

- play its due role in enacting legislation in accordance with internationally established standards and obligations;
- adopt a Criminal Procedure Code and Evidence Act drafted in accordance with the Maldives' obligations under international law and standards and also to fulfil its constitutional obligations;
- enact necessary legislation to provide for due process to ensure implementation of fair trial rights, such as appropriate period of limitation for appeals against decisions made by trial courts;
- enact proper legislation for the exercise of due powers of the superior courts (high court and supreme court) as well as trial courts;
- nullify the laws and amendments to Parliament's standing orders, referred to in Part II of the report, that restrict human rights;
- enhance parliamentary oversight through the appropriate mechanisms of the Supreme Court for its independent working and reform the JSC appointment process to ensure fair administration of justice and to prevent the Court's encroachment into legislative domain;
- outlaw flogging as illegal corporal punishment.

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### Supreme Court of the Maldives:

- abide by the Constitutional mandate in administering justice;
- ensure that courts of all levels are administering justice in an independent and impartial manner;
- cease politically motivated prosecutions;
- ensure any *suo motu* regulations passed are in compliance with the constitutional framework and do not unduly interfere with independent institutions;
- nullify the Court guidelines that curtail and impede the HRCM's reporting;
- withdraw suspensions of lawyers and avoid this practice in the future;
- nullify January 27 circular and return the 90-day appeal period.

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### Maldives Police Service:

- abide by the mandate set in the Constitution and Maldives Police Service Act to reverse increasing politicisation;
- respect rights of journalists, protesters and detainees, and avoid using physical force;
- investigate threats, abductions and attacks against activists, journalists and political opposition carried out on political and religious grounds;

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### Independent institutions

- abide by the mandate set in the Constitution and founding statutes, and act in a non-partisan and independent manner;
- impartially investigate cases of human rights violations, corruption and police inaction;
- do a technical review of all the laws and draft laws that curtail and dilute constitutional rights to establish their unconstitutionality and campaign for amendment or repeal as needed;
- resist attempts to undermine credibility of the institutions by refusing to accept gratuities from the government.

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### The Commonwealth

- conduct a thorough investigation into the abuse of power, human rights violations and threats to democracy extant at today's date so that the Maldives can be assisted to reverse and nullify them;
- release at the earliest the findings of the CMAG members visit to the Maldives widely into the public domain;
- continue to keep the Maldives under scrutiny subject to an agreed timeline against which it must re-establish the rule of law, properly exercise democratic values, and ensure the separation of the Executive, Judiciary and Legislature in keeping with Commonwealth values. Failing which, the Maldives must be suspended from the Commonwealth. Maldives' reinstatement should only be considered when the State demonstrates a return to these values;
- call on the Maldives to unconditionally release all political prisoners including former President Nasheed as well as all individuals detained unlawfully or arbitrarily;
- make it clear that it values the role of civil society, will consult and protect it and expects the Maldives government to ensure its free participation in all aspects of government.

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### International community

- continue to keep the Maldives under scrutiny and resort to sanctions if the situation deteriorates;
- call on the Maldives to unconditionally release all political prisoners including former President Nasheed as well as all individuals detained unlawfully or arbitrarily;
- engage with the Maldives to formulate strategies to tackle radicalisation;
- continue supporting Maldivian civil society and capacity building of independent institutions.

## ANNEXURES

Annexure I. CHRI letter to Umar Naseer, Minister of Home Affairs and Maldives Correctional Services regarding cancelled meeting with former President Nasheed in Maafushi prison.



## Commonwealth Human Rights Initiative

New Delhi, India. London, UK. Accra, Ghana  
NGO in Special Consultative Status with the Economic & Social Council of the United Nations

**Director**  
Maja Daruwala

**International Advisory Commission**  
Yashpal Ghai - Chairperson

**Members**  
Alison Duxbury  
Wajahat Habibullah  
Neville Linton  
Vivek Maru  
Edward Mortimer  
Sam Okudzeto  
Maja Daruwala

**Executive Committee (India)**  
Wajahat Habibullah - Chairperson

**Members**  
B. K. Chandrashekar  
Nitin Desai  
Sanjoy Hazarika  
Kamal Kumar  
Poonam Muttreja  
Ruma Pal  
Jacob Punnoose  
A P Shah  
Maja Daruwala

**Executive Committee (Ghana)**  
Sam Okudzeto - Chairperson

**Members**  
Akoto Ampaw  
Yashpal Ghai  
Wajahat Habibullah  
Neville Linton  
Kofi Quashigah  
Juliette Tuakli  
Maja Daruwala

**Executive Committee (UK)**  
Neville Linton - Chairperson

**Members**  
Richard Bourne (Acting Chair)  
Clare Doube (Vice Chair)  
Meenakshi Dhar  
Joanna Ewart-James  
Frances Harrison  
Sadakat Kadri  
Sashy Nathan  
Katherine O'Byrne  
Rita Payne  
Joe Silva  
Michael Stone

**To: Mr. Umar Naseer, Minister of Home Affairs**  
**Cc: Maldives Correctional Service (MCS)**

Dear Mr. Naseer,

As you are aware, the Commonwealth Human Rights Initiative (CHRI) undertook a fact-finding mission to the Maldives on November 22-26. The mission's objective was to assess the validity of the reports regarding human rights, democracy and rule of law in the Maldives and to evaluate compliance of the Maldives with the Commonwealth's fundamental political values and core documents, including the Commonwealth Charter and Latimer House Principles as well as international standards. The members of the fact-finding mission were Ambassador Satyabrata Pal, a former High Commissioner of India to Pakistan, Ms. Kishali Pinto-Jayawardena and Mr. Asad Jamal, both prominent legal practitioners from Sri Lanka and Pakistan respectively, and Mr. Uladzimir Dzenisevich from the CHRI.

While in the Maldives, the mission requested and was granted permission by MCS to meet with former President Mr. Mohamed Nasheed in Maafushi Prison on November 26 at 14.30 following a series of text messages and communications between government officials and the mission members. However, after the mission arrived at Maafushi Island just 15 minutes before the meeting was due to take place at the prison, the members were informed by phone that the meeting had been cancelled for unspecified reasons. Neither MCS nor authorities at Maafushi Prison were able to offer the mission any explanation for this cancellation. Instead, the mission was merely informed that the call for cancellation came from the Ministry of Home Affairs, which was not immediately reachable for clarification at that point.

We would like to express our regret at this manner of dealing with the mission. The mission missed an opportunity to meet with Mr. Nasheed and independently assess the conditions of his imprisonment in the face of reports regarding the conditions and manner of his detention, which is a cause for considerable concern in South Asia and elsewhere. Regrettably, this extraordinary decision to cancel the mission's meeting with Mr. Nasheed at the last minute can only lead us to infer that the government had something to hide and that the complaints about conditions of the former President's imprisonment are valid.

We anxiously await official reasons to be given by the relevant Maldivian authorities regarding the last minute cancellation and would appreciate an explanation that will assist us to understand the same.

In particular, the reports regarding the conditions of Mr. Nasheed's detention and alleged arbitrary restrictions on visitation rights, especially his legal counsel. The allegations also include ill-treatment (a floodlight installed outside of his cell and shining directly into the cell 24 hours a day) and denial of adequate medical attention. Regarding the latter, reports received by members of the mission indicate that Mr. Nasheed is suffering from chronic back pain, in regard to which he has been medically advised to exercise and swim but which privileges have been

**CHRI**

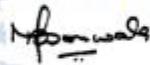
allegedly denied to him. Furthermore, Mr. Nasheed is reported to be denied adequate medical treatment by a way of creating impediments to accessing the said treatment, including the use of bureaucratic formalities to avoid sharing medical reports with Mr. Nasheed and his lawyers and to delay processing of his request to travel abroad for medical treatment.

Unfortunately, the CHRI mission was unable to assess the validity of these allegations. However, we would like to point out that, whatever the situation may be, Constitutional safeguards and international standards on treatment of prisoners should be followed at all times.

In particular, the CHRI would like to draw the Ministry's and MCS's attention to the body of relevant international standards, including the UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), as well as ECOSOC Procedures for the effective implementation of the said Rules; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; UN Basic Principles for the Treatment of Prisoners; and ECOSOC Arusha Declaration on Good Prison Practice.

The documents referred to above are attached to this letter for your convenience.

Yours Sincerely,



Maja Daruwala  
Director, CHRI



## Annexure II: Translated copy of the guardian's declaration

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

(National Emblem)

**Maldives Correctional Service**  
Male', Republic of Maldives

(Slogan)

**Declaration by the guardian of the detainee traveling abroad for medical treatment**

I guarantee to provide the information required by this Service during the period of medical treatment of Mohamed Nasheed, G.Kenereege at United Kingdom. After the completion of medical treatment and arrival of Mohamed Nasheed, G.Kenereege to Male', and until his return to this Service, I will remain in Male' as his guardian. I also agree to return him to this Service upon completion of his medical treatment. I also agree to remain in Male' during this period. If I fail to comply with the above said, I am aware that this Service will inform Maldives Police Service to initiate proceedings for the crime of non-compliance with orders.

Therefore, with this regard, it is a violation for me to travel out of Male' prior to Mohamed Nasheed's arrival from United Kingdom after medical treatment. If I am required to travel out of Male', it shall only be done upon approval of this Service.

17 January 2016

**Guardian from Male'**

Name:

Permanent Address:

ID card No.:

Current Address:

Relationship with the detainee:

Contact No.:

Age:

Signature:

Finger print:

## CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. CHRI furthers this belief through strategic initiatives and advocacy on human rights, access to justice and access to information. It does this through research, publications, workshops, information dissemination and advocacy.

### Access to Justice

**Police Reforms:** In too many countries the police are seen as an oppressive instrument of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that the police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In South Asia, CHRI works to strengthen civil society engagement on police reforms. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

**Prison Reforms:** CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractices. A major area is focussed on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock-on effect on the administration of justice overall.

### Access to Information

CHRI is acknowledged as one of the main organisations working to promote access to information across the Commonwealth. It encourages countries to pass and implement effective right to information laws. We routinely assist in the development of legislation and have been particularly successful in promoting right to information in India, Bangladesh and Ghana where we are the Secretariat for the RTI civil society coalition. We regularly critique new bills and intervene to bring best practices into governments and civil society knowledge both in the time when laws are being formulated and when they are first being implemented. Our experience of working across even in hostile environments as well as culturally varied jurisdictions allows CHRI to bring valuable insights into countries seeking to evolve and implement new laws on right to information. In Ghana, for instance we have been promoting knowledge about the value of access to information which is guaranteed by law while at the same time pushing for introduction of an effective and progressive law. In Ghana as and when the access to information law comes into being we intend to build public knowledge in parallel with monitoring the law and using it in ways which indicate impact of the law on system accountability – most particularly in the area of policing and the working of the criminal justice system.

### Strategic Initiatives Programme:

CHRI monitors member states' compliance with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the Commonwealth Ministerial Action Group, the UN and the African Commission for Human and People's Rights. Ongoing strategic initiatives include: Advocating for and monitoring the Commonwealth's reform; Reviewing Commonwealth countries' human rights promises at the UN Human Rights Council and engaging with its Universal Periodic Review; Advocating for the protection of human rights defenders and civil society space; and Monitoring the performance of National Human Rights Institutions in the Commonwealth while advocating for their strengthening.

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