

**From: Commonwealth Human Rights Initiative**

**URGENT MEMORANDUM**

**CHRI'S FACT FINDING MISSION TO THE MALDIVES**

**INTRODUCTION**

The Commonwealth Human Rights Initiative (CHRI)<sup>1</sup> undertook a fact-finding mission to the Maldives on November 22-26. In light of alarming reports<sup>2</sup> about the situation with human rights, democracy and rule of law in the Maldives, the mission's objective was 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 intelligence CHRI has collated strongly echoes the Commonwealth's and the international community's concerns regarding The Maldives which, is in clear violation of the fundamental political values of the Commonwealth (reaffirmed by all member states, including The Maldives) enshrined in the 2013 *Charter*, the principles of the *Harare Declaration* and the *Commonwealth Principles on the Accountability of and the Relationship between the Three Branches of Government* (Latimer House principles). This is in addition to numerous international standards, including ICCPR, CAT, and CEDAW, to which The Maldives is a party.

Most worrying, we have found that the gradual, but sure slide to authoritarianism, accompanied by a flagrant disregard to rule of law, good governance and human rights, is taking place in the Maldives. The survival of democracy itself is at stake. This is supported by the rise of radicalised non-state actors relentlessly harassing those perceived to be secular or "un-Islamic". With a government unwilling to punish the perpetrators and further using or, at best, tolerating radical non-state actors as its arsenal, Maldivian society is being directed into turning to pathways that seriously threaten democratic and Commonwealth values. It is disenfranchising and, in some cases, jeopardising political opposition,

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<sup>1</sup> CHRI is an independent, non-partisan, international non-governmental organisation, founded in 1987 and mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

<sup>2</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>;

endangering the functioning of human rights organisation, activists and journalists, and narrowing the space for expression with speed.

CMAG's decision to place The Maldives under consideration on their formal agenda is welcomed and CHRI fully supports this move. In light of CMAG members' visit to the Maldives we place before you now a summary of CHRI's fact finding visit made in November 2015.

The final fact-finding report will be released shortly and CHRI looks forward to sharing it with the official and non-official Commonwealth and other stakeholders.

## **OBJECTIVE**

The mission's objective was to gauge the Maldives government's level of adherence to the Commonwealth's fundamental political values and principles that commit members to democracy, rule of law, access to justice and human rights. Of particular relevance and importance in the case of the Maldives are the Latimer House Guidelines (1998) and Principles (2003), which govern the balance of power between the Executive, Legislature and Judiciary with particular emphasis on the independence of the latter.

## **TEAM**

The members of the fact-finding mission consisted of

1. Ambassador Satyabrata Pal, a retired Indian diplomat,
2. Ms. Kishali Pinto-Jayawardena, a prominent legal practitioner from Sri Lanka,
3. Mr. Asad Jamal, a prominent legal practitioner from Pakistan and
4. Mr. Uladzimir Dzenisevich , Program officer with CHRI's Police Reforms team.

## **APPROACH**

The team interviewed a variety of stakeholders, including representatives of the ruling political party, the opposing party; officials from independent bodies (Anti-Corruption Commission and National Integrity Commission); journalists and legal practitioners including the Deputy Prosecutor General. The team specifically requested meetings with government officials and were advised that they were "out of town" and not available for meeting. The team also requested a meeting with former President Nasheed and were granted a visit in jail. However, 15 minutes before the meeting was due to take place the team members were informed that the meeting had been cancelled. No reasons was given.

## **FINDINGS**

### **Growing authoritarianism of the ruling party**

The fact-finding team observed the growing authoritarianism of the ruling party, which prevents the separation of powers and threatens democratic culture and practices in general. The Executive is headed by President Abdulla Yameen, whose Progressive Party of Maldives (PPM), holds the majority in Parliament. Since 2013. The PPM-dominated Parliament has passed a number of restrictive, and often oppressive, laws and measures.

This includes the widely condemned<sup>3</sup> Anti-Terrorism Act, the re-introduction of the death penalty, limitation of prisoners' political rights and a number of legislative efforts curtailing the freedom of expression. More is on the way. For instance, a pending bill, will punish *calls* for tourism boycott and sanctions with imprisonment and heavy fines.

Using the Parliament's Standing Orders the ruling party has effectively restricted the rights of the Opposition and other parties to participate in the legislative process. For example, allowing only PPM MPs to submit bills on taxation and those that would have any implications on the budget strongly affects the quality of legislative oversight over budget and financial matters. The Parliament has refrained from action or comment on the increasing harassment and physical attacks on activists, journalists and opposition members. Several of those CHRI interviewed suggest that the ruling party acquiesce the silencing of dissent both within and outside the Parliament's walls.

The PPM's tenure has also been marked by a series of abrupt and arbitrary dismissals of state officials and interference with independent constitutional bodies and the judiciary. Most notably, in December 2014, two Supreme Court judges were hastily removed by Parliament following the amendment of the Judicature Act. While the independence of the Judiciary is being seriously challenged, the Supreme Court, ironically, has taken actions that interfere with the political process in the country, and consolidate unchecked control over the lower judiciary and regulation of the legal profession. The Supreme Court has also intervened in the electoral process, initiated several contempt of court proceedings that target independent institutions, undermined the right to a fair trial by violating due process in several cases and severely limiting appeal period, and singlehandedly assumed the Attorney General's power to license lawyers – a move that was quickly followed by the suspensions of six former Vice President's defence attorneys. As a consequence the judiciary is widely regarded as acutely politicised and unaccountable. The impartiality and independence of Maldivian courts is also deeply questionable. These views echo and support criticisms levelled internationally against The Maldives.<sup>4</sup>

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<sup>3</sup> For overview of domestic response, see Maldives Independent (2015, October 31), "Human rights watchdog calls for review of anti-terrorism law", available at: <http://bit.ly/1RzvCji>. See also, Transparency International (2015, November 5), "Transparency International and Maldives chapter deeply concerned about State of Emergency [Press release]", available at <http://bit.ly/1nxN7NR>; and Maldives Democracy Network (2015), "Review of the Anti-Terrorism Act, 2015", available at <http://bit.ly/1SVmgp1>.

<sup>4</sup> The Commonwealth (2014, March 12), "Statement, Commonwealth Secretary-General, Maldives" available at <http://bit.ly/23ejm5c>; UN (2013, February 24), "UN expert urges greater independence for courts in the Maldives", available at <http://bit.ly/20eeoTi>; UN (2015, June 19), "Maldives court decision undermines human rights protections in country, warns senior UN official", available at <http://bit.ly/1ZM6p35>; OHCHR (2015, March 19), "Maldives: "No democracy is possible without fair and independent justice," UN rights expert", available at <http://bit.ly/1PpEfzM>; and The Hindu (2014, March 13), "Maldives rejects world's criticism of judiciary", available at <http://bit.ly/1OFrou5>. For a detailed report on rule of law and judiciary in the Maldives please see ICJ and SAHR (2015), "Justice Adrift: Rule of Law and Political Crisis in the Maldives".

The Judiciary's incapacity to strongly resist authoritarian pressure is partly to blame for the large number of political prisoners. While the government denies the existence of political prisoners,<sup>5</sup> many high profile political figures have been recognised as such across the globe. The European Parliament resolution of 17 December 2015 on the situation in the Maldives refers to former president Mohamed Nasheed, former vice-president Ahmed Adeeb and former defence ministers Tholhath Ibrahim and Mohamed Nazim, together with Sheikh Imran Abdulla and "other political prisoners".<sup>6</sup> Political opposition in the Maldives identifies more than 1700 individuals as convicted, detained or charged on political grounds, often as a result of participation in protests.

The authoritarian shift has exposed independent institutions, including Anti-Corruption Commission, Human Rights Commission of the Maldives, National Integrity Commission and Election Commission as being extremely vulnerable. The team has learnt that the government has targeted and succeeded in undermining the independence, impartiality and accountability of these institutions affecting their credibility and making it hard for them to fulfil their mandates. Questionable appointments, judicial interventions, conditional real estate gifts that can constitute bribes; as well as marginalising and ostracising dissenting members of the said bodies were strong examples of external pressure and interference.

### **Growing radicalisation and the lack of policy response**

The geopolitical shift of the Maldives to Middle Eastern spheres of influence have been demonstrated by indications by the government that it is embracing a new identity for the country, with Wahhabi and Salafist ideologies dominating the religious discourse.<sup>7</sup> Recent incidents reveal that this is being used as a cloak to target political opposition and other dissenters by labelling them "un-Islamic". This rhetoric played a pivotal role in ousting former President Nasheed and continues to gain prominence.

Such labels carry a real threat because non-state networks, which tend to these views, are increasingly being seen as the perpetrators of harassment and attacks on opposition members, activists and journalists. While there are no known Jihadist organisations within the Maldives, the country provides fertile ground for recruitment of terrorist fighters from among the local sympathisers of the violent ideologies. In an island state of 345 thousand people scattered over 26 atolls, it is estimated that more than 200 Maldivians travelled to Syria to join different fighting factions, including ISIS and Al-Nusra Front.<sup>8</sup> Local newspapers frequently report new departures and casualties among Maldivian fighters

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<sup>5</sup> Haveeru (2015, July 13), "Maldives has no political prisoners' says Home Minister", available at <http://bit.ly/1nloRyI>.

<sup>6</sup> EU Parliament (2015, December 17), "Resolution of 17 December 2015 on the situation in the Maldives", available at <http://bit.ly/20efqyT>.

<sup>7</sup> Naseem, A. (2015), "Maldives in South Asia: Let's talk about Saudis", *Maldives Independent*, available at <http://bit.ly/1Of3W5U>.

<sup>8</sup> Sudha Ramachandran (2016), "The Maldives: Losing a Tourist Paradise to Terrorism", *Terrorism Monitor*, vol. 14(2), available at <http://bit.ly/1SwmOD2>;

abroad. This grounds the accusation that the Maldivian government does not do enough to prevent Maldivians leaving for Syria and Iraq.

Despite the fact that radicalisation predates the current administration, the government has been criticised in equal measure for denying the problem's existence, not doing enough to counter it and/or giving the radicals leeway to operate. The current restrictive environment makes independent research and assessment of the threats posed by radicalisation near impossible – publication and discussion even more so.

Nevertheless, two broad concerns were repeatedly expressed about this issue. Firstly, legal and policy framework to prevent and deal with the radicalisation and terrorism is lacking. Recently adopted Anti-Terrorism Act, 2015 is not regarded as a meaningful response to the threat of radicalisation and universally condemned as a tool of oppressing those opposed to the government. Secondly, indifference and poor performance of the police in tackling the incessant harassment and regular attacks is evidence of the government's unwillingness to intervene. Independent institutions responsible for overseeing the police were equally unresponsive to the complaints against police inaction in these cases. These mechanisms have been pointed out as being so inefficient that targeted individuals have stopped reporting regular death threats to the police. Tellingly, in a small society, where much is shared and must be taken as well grounded fact, the police themselves are seen as among most radicalised institutions in the country.

Unwillingness 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 success of "mujahedeen" fighting in the wars abroad. The event caused huge media outcry, but, reportedly, no arrests were made. This is of a piece with the allegation that the government is releasing dangerous and radicalised gang members from prisons were widely articulated.

We particularly request the CMAG team to consider as a makeweight in assessing the Maldives adherence to Commonwealth values, the deteriorating rights and access to opportunity its governance holds for women. The near-sponsorship afforded to ultra-conservative values and the tolerance afforded to groups that openly espouse violence is a sure pre-cursor to increasingly curbing rights and opportunities women have hitherto enjoyed in The Maldives. This is exemplified by the increase in the use of flogging – the corporal punishment that disproportionately targets women – as well as degradation of women's rights, including freedom of expression, freedom of movement, right to education, and right to health and physical integrity.

While we appreciate that the present mandate of the CMAG team is to 'reach out to Maldives in a positive way...(and to) support Maldives in building stronger democratic institutions and culture.'<sup>9</sup> We believe that the empathy afforded to radicalised elements by an authoritarian government is the motive to both dismantle democracy and mould

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<sup>9</sup> The Commonwealth (2016), "Commonwealth Ministerial Action Group delegation to visit Maldives", available at <http://bit.ly/1PZcvCC>.

Maldivian society according to values and beliefs that stand in stark contradiction to the core values and principles of the Commonwealth.

We urge that there be no compromise on the importance of upholding every aspect of these values nor any leeway given to holding Maldives to them. The new Charter and the newly reaffirmed value deserve no less if the Commonwealth is to have credibility in what is first examination of a test case after renewed commitments were made in 2013

### **IMPLICATIONS**

The forces of authoritarianism and radicalisation have had a significant impact on Maldivian society. These are, though not limited to;

- 1) An increase in 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) A decay of good governance and independent institutions in particular in particular;
- 5) Inappropriate judicial overreach and interventionism;
- 6) Politically motivated criminal charges and imprisonment;
- 7) Adverse effect on gender equality and women's rights;
- 8) Increasing police harassment and violence.

### **RECOMMENDATIONS**

CHRI calls on the Commonwealth and CMAG to

1. 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.
2. Release at the earliest the findings of the CMAG members visit to the Maldives widely into the public domain.
3. Continue to keep 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.
4. Call on the Maldives to unconditionally release all political prisoners including former President Nasheed
5. 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.