Submission to the Commonwealth Ministerial Action Group Maldives

18 September 2016

1. This submission from the Commonwealth Human Rights Initiative draws attention to serious failures of the Maldives government to make progress on six priority areas identified by the Commonwealth Ministerial Action Group (CMAG) in February 2016.[1]

2. CHRI visited the Maldives from 4-7 September, 2016, to document, and assess first-hand, latest developments. Staff held meetings with various stakeholders including civil society representatives, political leaders, lawyers, jurists and journalists.[2] This submission is based on the evidence gathered during the visit.

3. CHRI expresses grave apprehension at the continuing and persistent deterioration of human rights, rule of law and democracy in the Maldives. T**here has been a steady deterioration since CMAG's last meeting in April 2016. The government of the Maldives continues to act with little regard to constitutional principles or Maldives' international commitments, in particular the Commonwealth Charter. Events and developments on the ground give *further* evidence of curbing fundamental rights, targeted persecution of opposition leaders, misuse of state institutions (including the judiciary, legislature and the police) to restrict, crush and punish dissent, stifling political debate, and crippling independent institutions.** It is clear that the government is not engaging sincerely with the Commonwealth or the United Nations to implement reforms that will strengthen democratic institutions and enable realization of fundamental rights.

4. We take note of the formation of the Maldives United Opposition (MUO) on 1 June, 2016, formed to remove President Yameen through legal means and

[1] This is CHRI's second submission to CMAG on the Maldives. We provided a submission to CMAG in April 2016.
[2] CHRI had sought appointments with the Government of Maldives. The meeting was cancelled in the end.

with a pledge to work towards facilitating free and fair presidential elections.[3] That the MUO brings together former allies of President Yameen, such as the Adhaalath Party and jailed Vice President Ahmed Adeeb, together with the largest political party, the Maldives Democratic Party, is a sign of growing unpopularity of the present administration.

5. We further express concern about the mounting allegations of corruption against officials at the highest political level. The release of "Stealing Paradise", a documentary by Qatar-based Al Jazeera reveals the involvement of President Yameen and his deputies in massive theft and money laundering. The documentary lends weight to previous allegations made by several of President Yameen's former deputies of his close involvement with criminal gangs in the archipelago.[4] Yet, the government has not shown any inclination to investigate these very serious allegations and bring the perpetrators to account. **The total lack of accountability combined with the rollback of constitutional rights and democratic norms has led to deep frustration and disillusionment among the people of the Maldives.**

6. **CHRI strongly believes that the current environment is not at all conducive to free and fair presidential elections due in 2018. In fact, the nation is sliding into a dictatorial system once again. CHRI is worried that, if allowed to continue, the situation will soon push the island nation into the brink of violence and anarchy. In this light, CHRI urges firm action by the Commonwealth, in particular by CMAG, at its 2016 meeting.**

7. With respect to the six priority areas, we note the following:

i. Political Dialogue: Following CMAG's last meeting in April, the United Nations advisor Mr Tamrat Samuel was appointed at the invitation of the government to revive all-party talks.[5] Nearly five months later, a political stalemate persists. Following his first visit in April 2016, Mr Samuel pointed to "few promising areas of possible convergence of views and compromise

[3] Agreement to form United Opposition, Maldives United Opposition, 1 June 2016: https://maldivesunitedopposition.com/wp-content/uploads/2016/06/Agreement_FINAL_ENGLISH.pdf.
[4] Former home minister Umar Naseer, former defence minister Nazim and former PPM spokesperson Ahmed Mahloof have at various points highlighted Yameen's links with criminal gangs. See Azra Naseem, "Getting away with murder," *Dhivehisitee*, March 22, 2015: http://www.dhivehisitee.com/judiciary/getting-away-with-murder/.
[5] The UN mediation is the third attempt at facilitating political dialogue. The first round was announced by the Government of Maldives following the May Day rally in 2015 and began on 1st July 2015. The talks failed when the opposition accused the Government of reneging on its promises of releasing its leaders, including President Nasheed, even as MDP complied with its commitments which include extending support to the government on several legislative changes. In February 2016, the Government once again proposed all-party talks but this time, the opposition refused to engage without release of its leaders.

to end the current stalemate and pave way for dialogue."[6] His second visit in July 2016, however, ended with no meaningful progress.[7] The UN has agreed to maintain all channels of communication for the moment.

The government's lack of commitment and sincerity to the talks has been evident right from the start. President Yameen's administration refuses to comply with the demand of opposition parties to release jailed political leaders as a way to demonstrate its good will.[8] The government has branded the Maldivian United Opposition as unlawful, claiming the coalition has no legal status, as it is not registered as a political party.[9] Even though the MOU is without legal status, it is a grouping of legitimate political parties, each of which is registered. There is nothing to prevent the government from talking and negotiating with the MOU.

Additionally, law is being used to cripple opposition parties. On 27 August, 2016, the parliament passed an amendment to the Political Parties Act of 2013 mandating re-registration of all members of political parties using forms requiring fingerprints.[10] The amendment applies retroactively which means parties established before this requirement was first introduced in 2010 will have to submit fingerprints of all members, or face de-registration. Membership will also impact funds these parties receive from the state.[11] Notably, the ruling party Progressive Party of the Maldives is not required to submit membership forms as the party, formed in 2011 after the Election Commission order, claim to already have fingerprints on file.

These actions not only signal the government's unwillingness to initiate political dialogue, but also indicate that the government is taking steps to actively impede and obstruct any kind of political dialogue. There is

[6] United Nations, Press Releases, "Senior UN Official concludes official visit to the Maldives," April 29, 2016: http://www.un.org.mv/un-news-room/press-releases/senior-u-n-official-concludes-official-visit-to-the-maldives/.
[7] United Nations, Statements, "Note to Correspondents: UN Senior Official concludes visit to the Maldives," 21 July 2016: https://www.un.org/sg/en/content/sg/note-correspondents/2016-07-21/note-correspondents-senior-united-nations-official.
[8] During our meeting with the Maldives Democratic Party, it was pointed out that the government first asked them to share legal options on which political leaders including former President Nasheed may be released. But once the opposition submitted a plan, the government refused to even discuss it and rejected it outright.
[9] Interview with Maldives Democratic Party and Adhaalath Party, 5-6 September 2016, Male'.
[10] It is important to note that the initial order was given by the Election Commission in July 2015 when it asked all parties except the ruling Progressive Party of the Maldives to re-register its members with fingerprint forms. Opposition parties MDP and Adhaalath party challenged the order in the civil court where it was upheld. Consequently, a PPM MP introduced an amendment to the Political Party in the parliament which got passed with 40 votes. "Political parties given deadline to re-register members under new fingerprint law," *Maldives Independent*, August 27, 2016: http://maldivesindependent.com/politics/political-parties-given-deadline-over-fingerprint-rules-126183.
[11] In Maldives, state funding to political parties is determined by membership. A party requires at least 10,000 members to receive state funds with the size of grant varying depending on the size of the party

clearly no intention on the part of the government to find a political solution.

ii. Release of political prisoners: No steps have been taken to enable release of jailed political leaders. The country's Supreme Court has upheld sentences of several political leaders without responding to arguments and concerns regarding fair trial and due process of law raised by several international bodies including the Commonwealth. President Nasheed's conviction was upheld by the Court on the grounds that his legal rights were protected at the lower courts, he was provided adequate time to prepare his defence, and had been given access to a lawyer.[12] This is in sharp contrast to the observations of the UN Working Group on Arbitrary Detention that ruled Nasheed's imprisonment to be "politically motivated" and "arbitrary".

While the Supreme Court upheld sentences of most opposition leaders, the president himself foreclosed the only legal avenue available to him to enable release. Under the Clemency Act of 2010, the president has the discretion "to commute the sentence of person convicted of a criminal offence on grounds of age, health, treatment they are undergoing, their status and circumstances, or from a humanitarian perspective".[13] But he has refused to consider this option for the opposition leaders. Once the Court upheld the sentences, the president published new rules on clemency on June 16, stating that inmates convicted of terrorism are eligible for clemency only after having served half of their sentence. The president, therefore, limited his own discretion in granting clemency allowed under Section 29 (c) of the Clemency Act. **The timing of the new rules seems clearly targeted at blocking any legal avenue to facilitate release of political leaders. It is important to note that in his first year in office, President Yameen pardoned 169 offenders serving criminal offences under Section 29 of the Clemency Act.**[14]

iii. Abuse of Anti-Terrorism Act and other Legislations: In brazen disregard to its commitment to the CMAG, the government of the Maldives continues to persecute political leaders and public officials. On 18th and 25th July 2016, Ahmed Mahloof, the only independent member of parliament, was convicted on two consecutive charges of obstruction of duty and sentenced to 10 months and 24 days in jail. Notably, Mahloof was the former spokesperson of the ruling Progressive Party of the Maldives and one of the

[12] "Supreme Court upholds verdict against Maldives ex-President," Maldives Independent, June 27 2016: http://maldivesindependent.com/politics/supreme-court-upholds-verdict-against-maldives-ex-president-125056.
[13] Section 29 (c), Clemency Act 2010: http://www.agoffice.gov.mv/pdf/sublawe/CB.pdf
[14] President's Office, President Yameen's 365 days: http://www.presidencymaldives.gov.mv/Index.aspx?lid=174.

few leaders to openly criticize President Yameen's high-handedness. In early June 2016, former Vice President Ahmed Adeeb was convicted on two counts of terrorism with a cumulative sentence of up to 25 years. Once considered President Yameen's protégé, Adeeb came under attack following a bomb blast on President Yameen's boat in September 2015. Adeeb was arrested shortly thereafter. Yet again, fair trial standards were openly flouted with the trials being closed to the public, the accused not being allowed to cross-examine the prosecution's witnesses, and, in the case of Adeeb, conviction being based on two anonymous witnesses.[15] **Both these cases only confirm the pattern whereby political leaders who are either critical or opposed to the current administration are being targeted and reveal the politicized nature of the justice system in the Maldives.**

Despite growing concern over Maldivians joining foreign conflicts, there's not been a single conviction under the Anti-Terrorism Act 2015 as yet on this count. On 5 June, 2016, three Maldivian men were deported from the Turkey-Syria border and are the first to stand trial for travelling abroad with the intent of joining a terror group, an offence under the Anti-Terrorism Act.[16] This comes two years after initial reports about Maldivians leaving for Syria. The accused are contesting the terrorism charge and claim they were traveling to Turkey on business.[17] **The sharp contrast between the swift prosecution of political leaders on terrorism charges and others must be noted.**

iv. Separation of powers and independence of judiciary: Steps undermining judicial independence continue in the Maldives, particularly to curtail powers of the independent Judicial Service Commission (JSC), a constitutional body. Through a series of circulars,[18] the Supreme Court of Maldives has centralized administrative decisions in its hands, including

[15] See for instance Amnesty International, Public Statement, 13 June 2016, "Maldives: Fair Trial concerns around conviction of former Vice President,": https://www.amnesty.org/en/documents/asa29/4254/2016/en/.

[16] "Trial begins for three jihadis," *Maldives Independent,* June 5, 2016: http://maldivesindependent.com/crime-2/trial-begins-for-three-men-arrested-on-turkey-syria-border-124662.

[17] "Jihadis plead not guilty to terror charges," *Maldives Independent,* August 31, 2016: http://maldivesindependent.com/crime-2/jihadis-plead-not-guilty-to-terror-charges-126299.

[18] These include: a circular that mandates the approval of the Supreme Court of any verdict by lower court and the High Court that repeal laws and regulations, or any of its provisions, even if the party does not file any appeal; a circular which allows the apex court to penalize judges if trials are delayed for an unreasonable amount of time; a circular that requires all magistrates and judges to seek permission of the Supreme Court before taking time off; and a regulation that requires the apex court's approval for transferring judges, in contrast to the constitution that entrusts the responsibility of appointment, transfer and promotion of judges with the independent Judicial Service Commission. CHRI does not have access to English version of these circulars. See "Supreme Court to validate some lower courts rulings," *Maldives Independent,* January 26, 2016: http://maldivesindependent.com/politics/supreme-court-to-validate-some-lower-court-rulings-121796.

the power of transferring judges, a function that is vested with the JSC. **Recent actions confirm that the apex court is using its control over lower courts not to ensure adherence to standards of fair trial and protection of constitutional rights, but to influence the administration of justice in the interest of the government**. The Criminal Court of the Maldives, for instance, underwent a major overhaul just as the court was preparing for trials with major political implications. On 15 February 2016, the chief judge of the Criminal Court, Judge Abdullah, was transferred to the Family Court following his refusal to order former Prosecutor General Muhthaz Muhsin's detention.[19] He was replaced instead by Judge Abdul Bari Yoosuf, a highly controversial judge now under fire for his conduct in the trials and sentencing of leading opposition leaders.[20]

In another instance, Dr Azmiralda Zahir, a senior female judge at the High Court, resigned on 12 May, 2016, in protest against her transfer to the newly established southern branch of the High Court. Dr Zahir is among three judges who were hurriedly transferred to the southern branch.[21] Notably, Dr Zahir points out that appeals of certain high profile cases were heard in the High Court *immediately* after their transfer, even though some of the transferred judges sat in the original panel of judges in these cases.[22] This suggests the transfer was aimed at excluding the views of certain judges in these high profile cases. Moreover, the transfer amounts to a demotion, for the southern branch of the High Court can only hear appeals from the magistrate courts in the region. It neither has jurisdiction over appeals from the superior courts (Civil court, Criminal court, Family court and Juvenile court) and tribunals (Employment and Tax Appeal Tribunals) where major commercial and criminal cases are heard, nor over constitutional motions such as elections complaints.

These developments further point to a worrying trend of excluding judges trained in common law and western jurisdictions, as opposed to locally qualified judges and judges trained in Arab countries. The handful of judges trained in common law face tremendous pressure, shared Dr Zahir. Most (including three female judges) have either resigned or retired in the past two years alone. A significant impact of this is that it limits the ability of the judiciary to apply international standards, norms and best practices, with English language being the deterrent to those who can only communicate in

[19] "Criminal Court chief judge transferred to Family Court," *Maldives Independent*, February 15, 2016: http://maldivesindependent.com/politics/criminal-court-chief-judge-transferred-to-family-court-122215.
[20] These include former President Mohamed Nasheed, former Defence Minister Col. Nazim and Adhaalath Party leader Sheikh Imran.
[21] The other two judges transferred are Chief Justice Abdul Ghanee Mohamed and Justice Shuhaib Hussein Zakarriya.
[22] Interview with Dr Azmiralda Zahir, 6 September 2016, Male'.

Dhivehi and/or Arabic. **Apart from compromising merit, there are legitimate concerns about the scope this creates for the spread of radicalization in the justice system.**

Notably, the Supreme Court of the Maldives launched an Action Plan 2016-2017 in February 2016.[23] The plan focuses on four areas: enhancing access to justice; improving timeliness and quality of justice delivery; measures to enhance accountability, integrity and oversight and increasing coordination in the criminal justice system. Although the plan proposes cooperation with civil society and NGOs, a Multi-Stakeholder Judicial Sector Law Reform Committee, with no civil society representation, is largely responsible for the implementation of the plan.[24]

Some of the measures enlisted in the plan are important by way of building public confidence in the judiciary.[25] Yet, the plan fails to address fundamental concerns regarding independence and accountability raised by several expert bodies including the UN Special Rapporteur on Independence of Judges and Lawyers.[26] Key among these include the need to strengthen the Judicial Service Commission, to establish performance indicators to assess administration of justice, mandatory training in human rights law, and measures to improve the representation of women in the judicial sector. Without these measures, Maldives will not see any progress towards realizing fair administration of justice.

v. Freedom and space for civil society: The Maldives continues to curtail fundamental freedoms through regressive legislative measures and numerous incidents of harassment and violence against journalists.

In defiance of concerns raised by CMAG (among other international actors) in its April meeting regarding the country's move to criminalise defamation, and in violation of the Commonwealth Charter, the Maldives passed the Protection of Reputation and Good Name and Freedom of Expression Act, popularly known as the Defamation Act, on 10 August 2016. **By criminalizing defamatory remarks and expressions contrary to national interest, tenets of Islam and societal norms, and by disallowing**

[23] Supreme Court of the Maldives, Action Plan 2016-2017: http://www.supremecourt.gov.mv/mediafolder/action_plan_2016-2017_final.pdf.
[24] The Committee comprises of Minister of Home Affairs, Attorney General, Prosecutor General, Commissioner of Police, and Minister of Finance and Treasury.
[25] These include emphasis on improved and regular training of judges, lawyers and court staff; and building public awareness through workshops, community engagement and use of social media.
[26] United Nations, Human Rights Council, Report of the Special Rapporteur on Independence of Judges and Lawyer, Gabriela Knaul, 21 May 2013: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-43-Add3_en.pdf.

applications to appeal until after the penalty of fine is paid,[27] the government has further clamped down on freedom of expression in the Maldives.

The act follows previous attempts to incapacitate media freedom,[28] and notably, comes at a time when the involvement of state officials in a massive corruption case amounting to MVR 1.22 billion is being investigated. Already, those speaking out on corruption in the country are being targeted.[29] **The act will only shorten a shrinking space for speaking out against accusations of corruption involving state officials and provide a powerful tool for the government to control information flow, thereby perpetuating state impunity.** Although no arrests have yet been made under the Act, at least three private television stations and one FM radio channel have decided to shut down in fear of the prospects of repression following the passing of the act.[30]

Another recent regressive law is the Freedom of Peaceful Assembly Amendment Act enacted on 17 August, 2016. The amendment requires prior written approval of the Maldives Police Service for gatherings in Malé.[31] This contravenes Article 32 of the Constitution that guarantees right to freedom of peaceful assembly *without prior permission* of the state and Section 27 of the Freedom of Peaceful Assembly Act 2013 (hereafter 2013 Act) that explicitly exempts permission to hold a specific gathering. The reasons behind the amendment are suspect, given that the 2013 Act clearly stipulates procedure to be followed for organizers to inform the police in advance, and for the police to work together with the organizers to avoid traffic congestion and social disturbances.[32] The crux of the matter is that the 2016 Amendment Act is clearly unconstitutional and must be challenged. **Additionally, the fact that the amendment comes closely on the heels of**

[27] Anyone convicted under the Act will have to pay an initial fine ranging from 25000 MVR (US $ 1600 approx.) up to MVR 2 million (US$ 1,30,000). The failure to pay fine will amount to imprisonment up to one year. This information is based on interviews held with journalists and civil society during our visit. CHRI has not seen the Act as there is no English translation available.

[28] These include forced shut down of Maldives oldest newspaper *Haveeru* in April 2016 and the arrest of 16 journalists on 3 April 2016 protesting peacefully outside the President's Office against measures to curb media freedom. More over, investigations against many Rajje TV journalists arrested at different times through 2015 on grounds of obstruction of police duty have not made any headway.

[29] For instance, in June 2016, Channel News Maldives, an online news outlet was forced to shut down stating pressure from government officials. The shutdown followed immediately after the paper published a series of reports naming the First Lady in a number of corruption and abuse scandals. See "Critical news website closes citing unrelenting political pressure," *Maldives Independent*, June 25, 2016: http://maldivesindependent.com/politics/maldives-news-website-closes-citing-political-pressure-125022.

[30] The TV channels include Dhi TV, Dhi FM Plus and D25 whereas the radio channel is Dhi FM.

[31] "President ratifies first amendment to the Freedom of Peaceful Assembly Bill," The President's Office, Press Release, 23 August 2016: http://www.presidencymaldives.gov.mv/Index.aspx?lid=11&dcid=17141.

[32] Article 23, Freedom of Peaceful Assembly Act 2013

the formation of the Maldivian United Opposition indicates that the legislation is aimed at preventing rallies or assemblies by the Opposition, thereby, undermining a fundamental tenet of democracy.

Even before (without) these regressive legislations, journalists, social media activists and civil society groups were routinely subjected to harassment. During our visit, journalists pointed out how death threats had become a daily occurrence without any action taken against the perpetrators. Zaheena Rasheed, editor of the *Maldives Independent*, escaped to Sri Lanka because of threats she received in the build up to the release of Al Jazeera's documentary.[33] Several members of parliament and other political leaders have been summoned by the police for questioning over tweets that in some way question the action of police. [34] A popular social media activist, Shammoon Jaleel was arrested on 30 July, 2016, over a tweet that highlighted heavy-handed police crackdown.[35] He was released on 8 September, 2016, after spending over a month in remand.[36] **These incidents point to the increasing crackdown on social media and are symptomatic of the environment of fear and intimidation created by the government.**

vi. Technical Assistance: CHRI takes note of the invitation and cooperation extended by government of the Maldives to representatives from the Commonwealth and the United Nations, in particular the engagement with Commonwealth Special Envoy, Dr Willy Mutunga and United Nation advisor Mr Tamrat Samuel. We are, however, concerned that the Commonwealth's notice for the legal advisor for the JSC was not received positively by the Maldivian government.[37]

CHRI's Recommendations

8) CHRI commends the efforts of the Commonwealth to advocate, assist and engage with the government of the Maldives on strengthening democratic institutions, promoting adherence to rule of law and human rights in the country. In particular, we welcome the appointment of Dr. Willy Mutunga

[33] She remains in Colombo at the time of submission.
[34] This includes Jumhooree Party MP Ali Hussain who was summoned on 25 July 2016; and Ms Shidhatha Shareef, President of Adaalath Party's foreign relations committee, former MP Ahmed Thasmeen Ali and former youth minister Hassan Latheef who were summoned on 28 August 2016 by the police. Interview with Adaalath Party representatives, Male.
[35] "Social media activist arrested for 'inciting hatred'," *Maldives Independent*, July 30, 2016: http://maldivesindependent.com/politics/social-media-activist-arrested-for-inciting-hatred-125764.
[36] "Opposition activist arrested over tweet released with conditions," *Maldives Independent*, 8 September 2016: http://maldivesindependent.com/politics/opposition-activist-arrested-over-tweet-released-with-conditions-126451.
[37] "Maldives judicial watchdog denies requesting Commonwealth for legal advisor," *Mihaaru*, August 25, 2016: http://en.mihaaru.com/maldives-judicial-watchdog-denies-requesting-commonwealth-for-legal-advisor/.

as Special Envoy of the Secretary General in supporting a sustainable political dialogue process for the purpose of leading to a stronger climate of pluralism and inclusive elections in 2018.

9) We would, however, stress that since coming into power in November 2013, through a dubious election, President Yameen's government has taken many arbitrary legislative and administrative measures in violation of the 2008 Constitution UN and Commonwealth standards. More than three years later, evidence on the ground confirms that the situation in the country is deteriorating daily and that this government has no intention of adhering to democratic values and processes. It has failed to take meaningful steps on priority areas, repeatedly disregarded international commitments, diluted fundamental rights, and weakened state institutions. It is clear that this government is no longer serving to protect the interests of its people.

10) Because of CMAG's mandate as a custodian of Commonwealth values and principles; and in solidarity with the many journalists, writers, bloggers, activists, civil society groups, lawyers, magistrates, government officials and other citizens working under constant threat and struggling to fight for their rights, **CHRI strongly believes this is the time for resolute action and urges the Commonwealth Ministerial Action Group to:**

- S**USPEND** Maldives from the Councils of the Commonwealth, which will inter-alia
- **EXCLUDE** the government of the Maldives from all Commonwealth inter-government meetings and events, including ministerial meetings and CHOGM;
- **HALT** all Commonwealth technical assistance, other than the mandate of the Special Envoy;

In doing so, we strongly recommend CMAG to:

i. *Recognize* publicly the failure of clear, measurable progress on the priority areas and express CMAG's disapproval of such serious violations of fundamental democratic values;
ii. *Highlight* the grave threats to democracy, human rights and rule of law persistent in the Maldives;
iii. *Urge* other governments in the region and the Commonwealth Secretariat to issue démarches by way of expressing disapproval;
iv. *Stipulate* that the lifting of Maldives's suspension will be conditional on the Maldives government developing an Action Plan within a strict six-month timeframe, in consultation with opposition political parties, civil

society groups and other relevant stakeholders, containing measurable outcomes in a time-bound manner to emerge from the current political impasse;

v. *Designate* an appropriate independent mechanism or point person, such as the Special Envoy, to monitor the development of the Action Plan to ensure the process is truly transparent and participatory and within the timeframe set.

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