

# REPORT OF THE FACT FINDING MISSION TO THE REPUBLIC OF THE MALDIVES



6-8 AUGUST 2012





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## EXECUTIVE SUMMARY

South Asians for Human Rights conducted an exploratory Mission to the Republic of the Maldives from 6-8 August 2012. The Mission was founded on the concerns of the South Asian human rights community on the country's prospects for sustainable democracy, its progress in building institutions for democratic governance, respect for the rule of law, and the realisation of human rights and fundamental freedoms.

The transition that began with the adoption of the Constitution in 2008, and the election of the President and the Parliament that followed, had put Maldives on the road to a multi-party democracy. However, subsequent events have dimmed the prospects towards this. The country experienced serious political unrest in the beginning of 2012, culminating in the resignation of President Mohamed Nasheed on 7 February 2012, followed by the immediate swearing in of Vice President Dr. Mohamed Waheed as President on 8 February. Further, concerns regarding the process of appointments, qualifications, accountability and impartiality of the judiciary gave rise to a judicial crisis. The manner in which the change in government occurred shows that Maldives has not adequately addressed the authoritarian trends that needed to be transformed before real democracy prevails in systems of governance. The Mission met with all relevant actors to assess the situation such as legislators, government ministers and other officials, law enforcement officials, heads of independent commissions, lawyers, political leaders and workers, academics, journalists, human rights defenders and other members of the civil society.

The first part of the report examines the democratic transition and governance in the Maldives and notes that the Parliament, Executive and the Judiciary have failed to respect the principle of separation of powers. Every institution has shown a tendency to extend its authority beyond the legitimate domain and reforms necessary to create a correct balance of power are resisted at all levels. Many of the independent institutions have not performed the responsibilities of transition entrusted to them and internal procedures of these institutions to ensure efficiency and transparency have not been worked out. The Judicial Services Commission, in particular, has neglected to investigate complaints of corruption, abuse of power, judicial decisions influenced by political partisanship and even criminal behaviour on the part of many of the reappointed judges. The report further goes on to discuss the critical events and key concerns of democratic transition and governance in the Maldives in particular the judicial crises and the judicial independence and performance.

Interest driven politics has superseded any common aspirations of political parties for reform or to consolidate democratic rule in Maldives and the role of the Parliament in the constitutional crisis is a matter of serious concern. In the absence of any bar on floor crossing in the Constitution, political parties in the Parliament have been enabled to employ undesirable means to gain favourable composition in the Parliament by enticing members to change their allegiance from one party to the other. This has allowed corrupt practices to seep into politics and has compromised principled law making. The information gathered by the Mission and the narrative of events from different sources indicates that the situation just before the President's resignation was highly charged and extremely volatile and the Mission is not convinced that President Nasheed's resignation was voluntary and not the result of fear and coercion.

The second part of the report discusses the country's compliance for human rights and fundamental freedoms. It discusses the constitutional guarantees and further discusses the major concerns in the Maldives such as human trafficking, freedom of assembly and the right to peaceful protest. It notes that the flaws in the processes of appointment and removal of judges seriously compromise the independence of the Judiciary and that the system of judicial accountability is non-functional. Both the previous and the present government in the Maldives have failed to respect the freedom of peaceful assembly. There are also allegations of torture of protestors while in detention. Further, the media in the Maldives has yet to achieve both freedom and independence.

The Mission notes the following recommendations:

- The Mission has noted the announcement of the Election Commission that Presidential elections will be held in September 2013. Free, fair and credible elections would mitigate the bitterness and hostility that has pervaded the political climate since the controversial resignation of former President Mohamed Nasheed. The Mission urges the Maldives Election Commission to ensure transparency in all electoral processes and that civil society and other independent monitors be facilitated in monitoring these processes. All political actors must refrain from any actions that trigger violence before or during the elections.
- The Mission would also caution that any politically motivated action against the former President Mohamed Nasheed could be construed as an attempt to prevent him from contesting the coming Presidential elections might further intensify the political crisis in the country.

- The Parliament may consider a review of the Constitutional provisions on separation of powers and judicial appointments, oversight and accountability in the light of the experiences in the past four years and may make amendments where necessary to ensure smooth governance and methods of judicial accountability that are compatible with independence of the judiciary.
- An independent inquiry must be conducted into the allegations against the Chief Judge of the criminal court.
- A Parliamentary Committee should examine the performance of the Judicial Services Commission. The proceedings of this Committee should be open to the public to ensure transparency and the report of the Committee with its recommendations should be made public.
- The Maldives Police Service and Maldives National Defence Force should be subjected to strict code of conduct in performing their functions of law enforcement during public demonstrations and other forms of assembly.
- The civil society and human rights organisations must be facilitated in their activities for the promotion and protection of human rights. The freedom of association of NGOs should not be constrained through restrictive legislation or complicated registration procedures.



## INTRODUCTION

South Asians for Human Rights (SAHR) conducted an exploratory Mission to the Republic of the Maldives from 6-8 August 2012. Members of the Mission were Justice Leila Seth (India) former Chief Justice of Himachal Pradesh High Court, Dr. Kamal Hossain (Bangladesh) senior lawyer and former Minister of Foreign Affairs, Hina Jilani (Pakistan) lawyer and Chairperson of SAHR, and Dr. Asif Nazrul (Bangladesh) Professor at the University of Dhaka. The Mission was assisted by Nuwan Peiris, SAHR Secretariat, Colombo, Sri Lanka.

SAHR's interest in carrying out an exploratory mission to the Maldives was founded on concerns of the South Asian human rights community regarding the country's prospects for sustainable democracy; its progress in building institutions for democratic governance; respect for the rule of law; and the realisation of human rights and fundamental freedoms by the people.

The country's journey towards democracy began as a result of both internal and external pressures, which caused the introduction of the "Roadmap for Reform" in 2006. The new Constitution was adopted in August 2008 and the first ever multi-party Presidential and parliamentary elections were held in November 2008 and May 2009 respectively. The world viewed these as encouraging signs for Maldives' progress towards democracy. SAHR carried out its first fact-finding Mission to the Maldives in December 2005 at a time when there were positive signs of the urge for democratisation in the political environment. In the foreword to the report of that Mission,

the Founding Chair of SAHR I.K. Gujral, former Prime Minister of India, wrote:

“The decision to carry out a fact finding mission to the Maldives came at a time when positive signals were being sent indicating that the democratic process in that country was slowly but surely moving forward. The report of the SAHR mission proves that the groundwork for multiparty democracy has been laid, although more efforts are required so that the different stakeholders in the Maldivian society can be active members in their country’s political development”<sup>21</sup>

However, the country experienced serious political unrest in the beginning of 2012, culminating in the resignation of President Mohamed Nasheed on 7 February 2012, followed by the immediate swearing in of Vice President Dr. Mohamed Waheed as President on 8 February. The political change became controversial in terms of its legitimacy and the facts surrounding the events were strongly disputed by the various actors involved. Former President Nasheed, who heads the Maldivian Democratic Party (MDP), has claimed that he was forcibly deposed in a military-led coup.

Maldives received international attention at the time of the political crisis. The Commonwealth Ministerial Action Group carried out a mission to ascertain the facts of February’s events and the Secretary General’s Special Envoy to Maldives, Rt. Hon. David McKinnon also visited the country in May 2012. The present Government established a Commission of National Inquiry (CoNI) to undertake an investigation into the circumstances that led to the transfer of power on 7 February 2012. The Opposition led by MDP leader

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1 The Reform Process and the State of Human Rights in the Maldives; Report of the South Asians for Human Rights Fact Finding Mission to the Maldives. ISBN 9555-1489-00-4, March 2006.

Mohamed Nasheed had earlier expressed lack of confidence in the CoNI. However, after negotiations on strengthening the powers of the CoNI, better focusing its scope of inquiry and broadening its composition, the political opposition led by the former President cooperated with the inquiry. The report of the CoNI was released at the end of August 2012, after the Mission was conducted and before the completion of this report.

The Mission met with all relevant actors to make an assessment of the situation pertaining to democracy, rule of law, human rights and the role of the civil society in the country's political and social development. Those that the Mission met included legislators, government ministers and other officials, law enforcement officials, heads of independent commissions, lawyers, political leaders and workers, academics, journalists, human rights defenders and other members of the civil society. SAHR thanks the members of the Mission and all those who cooperated with the Mission in its endeavours to elicit information.

## PART ONE : DEMOCRATIC TRANSITION AND GOVERNANCE

The Maldives' transition to democracy began with the adoption of the new Constitution on 7 August 2008. While the Constitution established democratic institutions and structures of governance, it also provided for interim arrangements for the functioning of institutions in the initial period of transition. One of the important features of the Constitution is the clear separation of powers spelt out in different provisions of the Constitution and the limits of the power of each of the three main organs of the State – the legislature, the judiciary and the executive - and their special role in driving and guiding the transition. The democratic transition of the Maldives can be measured and its constraints best understood by examining the functioning of the three organs of the State and the role they have played in the current political context.

### **The Parliament**

The People's Majlis (Parliament) functions as a unicameral legislature. The first ever multi-party election in Maldives was held in May 2009, and Members of Parliament (MPs) were elected for a five-year term. The political parties and their initial strength in the 77 member parliament were as follows:

|                                  |            |
|----------------------------------|------------|
| Dhivehi Rayyithunge Party (DRP)  | - 29 seats |
| Maldivian Democratic Party (MDP) | - 25 seats |
| Dhivehi Qaumeey Party (DQP)      | - 2 seats  |

|                      |            |
|----------------------|------------|
| Jumhooree Party (JP) | - 1 seat   |
| Independents         | - 13 seats |

However, the composition of the Parliament has subsequently changed substantially from the initial make-up due to “floor-crossing” by opposition members and the independent members joining one of the other political parties in the Parliament. For instance, by December 2011 the MDP<sup>2</sup> had acquired 34 seats in the Parliament. The Constitution places no bar on “floor-crossing” by MPs and no penalties are prescribed for this practice.

## **Powers and Functions**

The Majlis has the power to amend the Constitution, legislate or repeal laws, pass the annual budget or supplementary budget, call for referendum on matters of public importance, and discharge other duties specified in the Constitution. The powers of the Majlis is considerably extended beyond its legislative functions by the Constitution conferring on it the authority to supervise the exercise of executive authority and to take steps to ensure that executive authority is held accountable for the manner in which it exercises its powers. The Majlis can require the presence of Ministers and other government functionaries for responding to questions on matters related to their office; Summon any person to appear before it to give evidence under oath, or to produce documents; Require any person or institution to report to it; And receive petitions, representations or submissions from interested persons or institutions.

In addition to the power to remove the President or the Vice President for reasons provided in the Constitution, the Majlis also has the

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<sup>2</sup> The party in government at the time and headed by former President Mohamed Nasheed.

competence to move a no-confidence motion against any member of the Cabinet and, on such a motion being passed, the Minister concerned would cease to hold office.

The Parliament also has the power to determine all matters relating to independent commissions created by the Constitution that have a critical role in oversight and accountability of bodies concerned with governance. Treaties entered into by the Executive in the name of the State with foreign states and international organizations are subject to the approval of the Parliament and can come into force only in accordance with the decision of the Parliament. Compliance with the terms of the treaties is only binding in accordance with law enacted by the Majlis.

### **Institutional Independence and Privileges**

The privileges of MPs prescribed in the Constitution protect them against any proceedings in a court or from arrest, detention or prosecution for anything said in, produced before, or submitted to the Parliament or any of its committees, or with respect to any vote given if the same is not contrary to any tenet of Islam. At the same time, all persons and publications are protected against any liability in respect of any report or proceedings made or published under the authority of the Parliament or in accordance with rules prescribed by the Parliament<sup>3</sup>. The validity of the proceedings of the Parliament cannot be questioned in any court<sup>4</sup>. The Constitution prescribes the criteria for qualification and disqualification of MPs, and any question concerning the qualifications or removal of members, or vacating of seats is to be determined by the Supreme Court.

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<sup>3</sup> Article 90 of the Constitution

<sup>4</sup> Article 88(b) of the Constitution

## **Transparency and Accountability of the Parliament: Integrity Mechanisms in the Constitution**

The Constitution requires all MPs to submit an annual statement of assets, business interests and liabilities to the Secretary General of the Majlis<sup>5</sup>. The Constitution places a solemn responsibility on MPs to be guided in their actions by considerations of national interest and public welfare, and not to exploit their official positions in any way for their own benefit or for the benefit of those with whom they have special relations. They are expected to represent not only their constituencies but the country as a whole<sup>6</sup>. In addition, the Constitution prohibits MPs and persons appointed or employed by them from using their position or any information entrusted to them to improperly benefit themselves or any other person.

In regulating procedures or adopting principles for the conduct of its business, the Parliament is bound to give due regard to representative and participatory democracy, accountability, transparency and public involvement<sup>7</sup>. While the Constitution provides for all proceedings of the Parliament and the Parliamentary Committees to be open to the public, it also provides a wide discretion to the Parliament in this matter and a majority of the members present at any such meeting may exclude the public for reasons they may deem appropriate<sup>8</sup>. The Constitution, nevertheless, requires all proceedings of the People's Majlis to be published in the minutes of the People's Majlis and available to the public.

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<sup>5</sup> Article 76 of the Constitution

<sup>6</sup> Article 75 of the Constitution

<sup>7</sup> Article 88.2 of the Constitution

<sup>8</sup> Article 85 of the Constitution

The Constitution also emphasizes proper representation in law making. For instance, while the presence of 25% of the total membership constitutes the quorum for Parliamentary business, when a matter to be voted upon requires compliance by citizens, the presence of 50% of the total membership constitutes the legal quorum<sup>9</sup>.

## **The Judiciary**

The authoritarian system preceding that provided for by the new Constitution in which the President was also the supreme judicial authority, has been particularly taxing for the establishment of a credible judicial system and for assuring complete independence of the judiciary.

### **Structure and Jurisdiction**

The Constitution lays down a judicial system with Magistrates (Trial) Courts as the courts of first instance, the High Court, and the Supreme Court at the apex of the judicial hierarchy<sup>10</sup>. While the Supreme Court is the final authority to rule on the Constitutional validity of laws enacted by the Parliament, all courts have been conferred the jurisdiction to determine matters concerning the interpretation and application of any provision of the Constitution<sup>11</sup>.

### **Independence of the Judiciary**

Clearly articulated provisions provide for the independence of the courts and the judiciary. They are protected against any interference or influence in their functioning; those performing public functions

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<sup>9</sup> Article 86 and 87 (b) of the Constitution

<sup>10</sup> Article 141 of the Constitution

<sup>11</sup> Article 143 and 145 (c) of the Constitution



have a duty to protect and ensure the independence and dignity of the courts<sup>12</sup>; judges are subject only to the Constitution and the law and must apply the law impartially and without fear, favour or prejudice<sup>13</sup>.

The tenure of a judge is protected by the Constitution. No term of office can be imposed on the appointment of a judge (including the Supreme Court and the High Court). All judges retire at the age of 70. However, for a period of 15 years from the date of commencement of the Constitution, judges can be appointed for a maximum term of five years only and the period of appointment must be specified in the terms of their appointment<sup>14</sup>.

A judge can only be removed from office if the Judicial Services Commission (JSC) finds the judge incompetent, or guilty of gross misconduct. In such a case, the JSC must recommend his/her removal to the Parliament, which can then act on that recommendation by impeaching the judge by a vote of a two-thirds majority of the members present and voting.

## **Appointment**

The Chief Justice and judges of the Supreme Court were to be appointed by the President after consulting the JSC. All appointments to the Supreme Court require confirmation by the Parliament<sup>15</sup>. The number of judges constituting the Supreme Court, in addition to the

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<sup>12</sup> Article 141 (d) of the Constitution

<sup>13</sup> Article 142 of the Constitution

<sup>14</sup> Article 148 (c) and (d) of the Constitution

<sup>15</sup> Articles 147 and 148 of the Constitution

Chief Justice, was to be prescribed by law enacted by the Parliament<sup>16</sup>. The Constitution only prescribes that this number should be uneven<sup>17</sup>.

The JSC has the power to appoint all other judges, including those in the High Court. Except for the provision that the number of judges in the High Court should be uneven, the Constitution again leaves the number of judges for all courts to be prescribed by law<sup>18</sup>.

## Qualifications

Some qualifications are prescribed for judges appointed at all levels of the judicial system. These include the requirement of being a Sunni Muslim, of sound mind and that the person has not been convicted for an offence for which punishment (*hadd*) is provided in the Quran, criminal breach of trust or bribery. The minimum age requirement for all judges, except the Supreme Court is 25 years. The minimum age for a judge of the Supreme Court is 30 years. Qualifications for a judge of the Supreme Court, as well as the Chief Justice, include at least seven years experience as a judge or a practicing lawyer and education and training in Islamic Shariah or law. Other qualifications for judges, as prescribed by the Constitution, are too general and may have been left for a law to define more specifically.

The Constitution of 2008 bound the Parliament to enact a law relating to judges and the administration of justice. The Judicature Act of Maldives (Act 22 of 2010) was enacted by the Parliament in August 2010 – two years after the adoption and enforcement of the

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<sup>16</sup> Article 149 (d) of the Constitution. The current strength of the Supreme Court is seven judges, including the Chief Justice, as prescribed by the Judicature Act of the Maldives enacted in August 2010.

<sup>17</sup> Article 145 (a) of the Constitution

<sup>18</sup> The Judicature Act prescribes the number as 10.

Constitution. The Judicature Act prescribes the structure of the judicial system in the Maldives, defines the jurisdiction of courts at different levels and regulates the administration of justice in accordance with the provisions of the Constitution in the post transitional period.

The critical importance of this law becomes evident in the light of Constitutional provisions that left many matters related to the courts, including the Supreme Court, to be determined by the law to be enacted by Parliament, without which the process of constitution of courts and appointment of judges in accordance with the Constitution could not be completed. Some features of this law that add to Constitutional provisions regarding the judiciary are the number of judges to be appointed to the Supreme Court and the High Court, exclusive jurisdiction of the Supreme Court over certain constitutional matters, defining and prescribing the punishment for contempt of court, making compliance with orders of all courts a legal obligation for, amongst others, the Parliament, the Executive and all independent bodies performing functions of the State, and implementing the Constitutional provisions granting all courts (even the local courts of first instance) the jurisdiction to enforce fundamental rights guaranteed by the Constitution<sup>19</sup>.

## **The Executive**

The 2008 Constitution established a Presidential system of government as a result of the people's choice expressed in the referendum held prior to the adoption of the Constitution. All executive powers are vested in the President who is the Head of State, Head of Government and Commander in Chief of the Armed Forces. The President is to be elected through direct elections for a term of five years, and cannot

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<sup>19</sup> Schedule 1, 2 and 5 of the Judicature Act read with Chapter II Fundamental Rights and Freedoms of the Constitution

serve more than two terms, consecutive or otherwise. Presidential candidates require a minimum of 50% of the votes polled to succeed in the election and, in case no candidate is able to do so, a “run-off” election is to be held, contested by the two candidates securing the highest number of votes.

Every Presidential candidate has to declare his choice for the post of Vice President before the election. The President must be only a citizen of the Maldives, born to parents who are citizens, be a Sunni Muslim by faith, at least 35 years of age, and of sound mind. Conviction for an offence for which punishment is prescribed by the Quran (*hadd*), or for fraud, deception or criminal breach of trust would be a permanent disqualification for the office of President. Conviction for any other offence and a sentence for more than 12 months would be a disqualification for three years from the date of completion of the sentence or pardon for the offence<sup>20</sup>. The Supreme Court has the sole jurisdiction to rule on disputes concerning the qualification or disqualification, election, status, of a presidential candidate or running mate or removal of the President by the People’s Majlis. The integrity mechanisms for the President include measures for financial transparency and a bar against holding any other public office or office of profit or using his position or any information entrusted to him by virtue of his office to improperly benefit himself or any other person<sup>21</sup>. The President has no immunity against criminal prosecution for any offence, whether committed before or during his term of office. However, the Parliament may, if it deems appropriate, pass a resolution barring the continuation of any criminal proceedings against the President until after the expiration of his term of office<sup>22</sup>.

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<sup>20</sup> Article 109 of the Constitution

<sup>21</sup> Articles 119 and 120 of the Constitution

<sup>22</sup> Article 127 of the Constitution

The Parliament has the power to remove the President for direct violation of a tenet of Islam, the Constitution or law; serious misconduct unsuited to the office of the President; inability to perform the responsibilities of office of President on a resolution moved by one-third of the members. The resolution and reasons for removal are subject to debate in the Parliament. The President has the right to be heard and defend himself and a right to legal counsel. The President can be impeached by vote of two-thirds of the total membership of Parliament<sup>23</sup>.

In addition to his responsibilities in governance through the different government departments and ensuring implementation of and compliance with the Constitution, the President has the authority to formulate the fundamental policies of the State; determine, conduct and oversee foreign policy; enter into international treaties<sup>24</sup>; to declare states of emergency; to appoint temporary commissions to advise the President on national issues and conduct investigations; and to ensure that the security services comply with their obligations as provided in this Constitution.

The President has the authority to establish all ministries required within the Government, and to determine their areas of jurisdiction. However, all information on the ministries and their jurisdiction as determined by the President has to be submitted to the Parliament for its approval before these Ministries can start functioning. The power of the Parliament to remove a member of the Cabinet by moving a motion of no confidence effectively circumscribes the executive power of the President over the formation of his Cabinet.

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<sup>23</sup> Article 100 of the Constitution

<sup>24</sup> Any international treaties that involve compliance by the citizens require the approval of the Parliament. See Article 93 and 115(k) of the Constitution

## **Independent Commissions**

The Constitution provided for the establishment of five independent commissions to aid transparency and ensure good governance and the rule law.

- **Judicial Services Commission** - With the power to appoint, promote and transfer Judges other than the Chief Justice and Judges of the Supreme Court, and to make recommendations to the President on the appointment of the Chief Justice and Judges of the Supreme Court. It is also mandated to investigate complaints against members of the judiciary and to take appropriate action against them, including recommending their removal to the Parliament.
- **Elections Commission** - Authorized to conduct, manage, supervise, and facilitate all elections and public referendums; to enable the proper exercise of the right of vote and to ensure that all elections and public referendums are conducted freely and fairly, without intimidation, aggression, undue influence or corruption.
- **Civil Service Commission** - To deal with all matters related to the civil services including recruitment, appointment and dismissal.
- **A five member Human Rights Commission** to be appointed by the President after approval by the Parliament to promote and monitor the respect for human rights. The Commission is authorised to receive complaints, investigate and report on violations, to secure appropriate redress for victims and to research and public education on human rights.
- **Anti-corruption Commission** - To receive and investigate complaints and information on corruption, to recommend

prosecution of alleged offences to the Prosecutor General and to carry out research and recommend action for the prevention of corruption to the concerned authorities.

## **Transitional Arrangements**

The Constitution gave due recognition to the reality that, at the time of its commencement, Maldives lacked democratic systems and processes as well as institutions that were independent and transparent. It, therefore, spelt out various transitional arrangements to facilitate governance and to ensure the emergence of institutions through proper representative and participatory processes.

The Constitution determined the period between the commencement of the Constitution until the election of and assumption of office by the President and the Parliament as the period of transition during which the interim arrangements specified in the Constitution were to apply<sup>25</sup>. A period of two years was granted to finalize all elections or appointments to posts and the establishment of all institutions specified in the Constitution<sup>26</sup>.

Notable amongst the transitional provisions were those regarding the judiciary. The Constitution provided for an interim JSC to be appointed within 30 days of its commencement with the mandate to aid the President in appointing a five member interim Supreme Court. The interim Supreme Court would continue till the appointment of new judges in accordance with the Constitution. The JSC that would be appointed by the President elected under the new Constitution would replace the interim one. The JSC was given a period of two

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<sup>25</sup> Article 275 of the Constitution

<sup>26</sup> Article 295 of the Constitution

years to determine whether or not the Judges in office at the time possess the qualification of Judges specified in the Constitution.

Within 30 days of the commencement of the Constitution, the Executive was to prepare and present to the Parliament a list of all laws that were inconsistent with the Constitution. The Parliament was required to approve, within 90 days, a course of action till such laws could be amended or repealed.

## **Critical Events and Key Concerns**

Despite a Constitution that promises institutions founded on a respect for the rule of law, human rights and commitment to participatory democracy, the country has found it difficult to overcome the challenges that a transformation contemplated by the Constitution would necessarily face. Not the least of its difficulties in securing a sound democratic future is the legacy of the country's authoritarian past. Even though the framing of the Constitution and its adoption signified a broad consensus on democratisation of the system of governance and the rule of law, subsequent events show that this consensus may have been illusory. The presumption that institutions would act in good faith to work collectively to achieve the transition envisaged by the Constitution proved incorrect to a large extent. Deep political divisions and conflicting interests within the political class created an environment of polarization. Every institution showed a tendency to extend its authority beyond the legitimate domain. The reforms necessary to create a correct balance of power were resisted at all levels, and power centres of the past continued to assert control and influence over key institutions.

Even though institutions were created the transparency in their creation and working as well as the independence of many of the institutions is widely questioned. Any intentions of good governance



were frequently obstructed by the failure of the Executive and the Legislature to act in unison and rise above political contentions. Even by the time that the two year period allowed by the Constitution ended on 7 August 2010, the laws necessary to implement the Constitutional requirements had not been legislated, many of the independent institutions had not performed the responsibilities of transition entrusted to them and internal procedures of these institutions to ensure efficiency and transparency had not been worked out. The lack of institutional norms and trained personnel, too, has affected the development of institutions.

In the face of these realities, it is difficult to avoid the conclusion that, despite the promising beginnings, the prospects for the country's transition to democracy have been dimmed by a collective failure of the political class to fulfil the people's expectations in the post Constitutional period. These failures are manifest in some key events that have occurred since the Presidential election in October 2008 and the factors that triggered them.

## **Political Turmoil**

The comprehensive Constitutional powers granted to the Parliament had given it a critical role not only in the process of democratic transition, but also in governance. While designing the system of checks and balance and separation of powers the Constitution has privileged the Parliament and has vested it with control over Executive functions through legislations, motions and parliamentary processes. In the peculiar political configuration in the Maldives this design has had its disadvantages for governance in the Presidential form of government prescribed by the Constitution.

Deep political differences became apparent very soon after the assumption of office by the newly elected President in November

2008. The new government faced many structural challenges in the absence of institutions, laws, procedures or norms as well as sufficiently trained personnel to carry out Constitutional mandates. Political polarisation marked the two years following the first multi-party elections in May 2009 because of tensions between the Executive and the opposition dominated parliament. Key transitional measures remained suspended and many functions of state institutions were disrupted due to the failure of the Parliament to pass relevant legislation and make related decisions in the specified timeframe. The sessions of parliament were frequently disrupted and legislative agenda could not progress. Appointment to public offices became a subject of controversies and no-confidence motions against government ministers were moved in the Parliament by the opposition. The Cabinet of President Nasheed resigned *en masse* on 29 June 2010 alleging that it could not perform its Constitutional responsibilities because of deliberate obstructions by the Parliament. The President re-instated the cabinet on 7 July 2010. The Parliament later approved just five out of twelve ministers after a prolonged legal battle in the courts.

On 30 June 2010 two opposition MPs, Abdullah Yameen Gayoom and Qasim Ibrahim, were detained without any formal charges filed against them. They were both held in Dhoonidhoo jail till their detention was held illegal by the Supreme Court and they were released on 12 July 2010. Abdullah Yameen Gayoom was again taken into custody on 15 July by the Maldives National Defence Force (MNDF) on orders of the President. He was released after one week. The Civil Court subsequently held this custody to be unconstitutional. The Mission heard reports that the MNDF had refused to obey summons issued by the court hearing a petition in connection with Mr. Yameen's custody.

The President's action against the opposition MPs exacerbated the already volatile political environment and the opposition parties

used these events to launch an anti-Nasheed campaign. Towards the end of 2011 a coalition of the parties opposed to Nasheed emerged as the “December Coalition”, accusing him of undermining the Constitution, acting in excess of his powers and contravening the tenets of Islam. Protests launched as a part of this campaign continued till the dramatic end of the Nasheed government in February 2012.

The Mission examined the events that preceded the end of the Nasheed government as well as the allegations of unconstitutional actions for which the former President was held directly responsible. Many Maldivians share the opinion that power centres of the past retain a sufficiently strong influence within key institutions to prevent the agenda for change to gather momentum or be realized to any significant extent. Many of those interviewed during the Mission pointed out that the combined opposition (now in government) was largely composed of parties and individuals closely allied to Maumoon Abdul Gayoom. They considered the stalling of the process of democratisation a part of the scheme to restore power to the political elite of the past.

The Mission is of the view that interest driven politics had certainly superseded any common aspirations of political parties for reform or to consolidate democratic rule in Maldives. There are several examples of obstructions and delays caused by the Parliament between 2009 and 2012 that resulted in hampering the legitimate functions of the Government. Some of the objections put forward by the opposition in the Parliament to Executive proposals were unnecessary and contentious. There is also some evidence of collusion between certain elements in the judiciary and Nasheed’s opponents to thwart attempts by his government to investigate and prosecute cases of corruption during the Gayoom regime. This would undoubtedly be frustrating for any government.

However, events do indicate that, even if the opposition had obstructed President Nasheed's reform agenda by design, they succeeded in this purpose by using his own failures in governance as well as the arbitrary actions he took in violation of the Constitution to discredit him in public view. No reasonable explanation or legal justification for the arrest of the MPs was forthcoming from supporters of the former President. Accusations that they were involved in conspiracies to overthrow the Government were never brought before a court of law. The arrest of the Chief Judge of the Criminal Court, Abdulla Mohamed, gave the opposition a cause to launch the protests immediately preceding the end of Nasheed's government in February 2012. If his opponents acted in bad faith, he himself undermined the very ideals that he claims to be safeguarding when he reacted with illegal measures against politicians and judges who he suspected of conspiring to derail democracy.

The details of the events that led to the resignation of President Nasheed have been widely published in the global media and reports of different organisations. It is reported that President Nasheed announced his resignation on 7 February 2012 in the midst of opposition demonstrations against his government and a crisis precipitated by the police and, subsequently, the military demanding the President's resignation. However, on 8 February he claimed that he had been forced to resign by the mutinying police and military forces. More recently the CoNI established by President Dr. Waheed to inquire into these events and to determine the constitutionality of the change of government has published its report. The Commission has concluded that the resignation of the former President was not the result of any "illegal coercion or intimidation nor any *coup d'etat*".

While the Mission does not claim to have conducted an inquiry of the scope undertaken by the CoNI, it has heard credible accounts that do not completely support the finding of the Commission. Multiple

sources, including eye witnesses, have related the details of the anti-Nasheed rallies by the opposition, the role and conduct of the police, the changing loyalty of the MNDF and the part played by different political actors during the critical hours in the crisis. The most essential difference between these accounts and the depiction of the situation in the CoNI report is with regard to the menacing quality and intensity that the police revolt had acquired after midnight of 6 February and in the early hours of 7 February. Around midnight, amongst other acts of violence directed towards government supporters, the police personnel involved in the revolt attacked the Headquarters of President Nasheed's political party, the MDP, and manhandled MDP workers.

It is at this point that manipulation of events by political opponents of President Nasheed becomes most apparent and, who the CoNI report calls the "three critical participants"<sup>27</sup>, retired Colonel Mohamed Nazim, retired Deputy Commissioner of Police Abdullah Riyaz, and Mohamed Fayaz, who is at present the State Minister of Home Affairs, appear on the scene. All narratives of the events confirm that since the beginning of the demonstrations on the evening of 6 February leaders of the opposition had started to call for the resignation of the President. The accounts related to the Mission, as well as the timeline of events announced by the CoNI, refer in particular to the speech made by a leader of the Adaalath Party<sup>28</sup> announcing the decision of the opposition coalition to support the Vice President Dr. Waheed and calling upon the police to arrest the President and certain members of his cabinet.

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<sup>27</sup> Report of the Commission of National Inquiry, Maldives; p. 43.

<sup>28</sup> A religious political party with no representation in Parliament, but leading the "December Coalition"

The Mission has also noted the mention in the CoNI report, and the timeline it relied upon, of a meeting of members of the opposition coalition with the then Vice President on 30 January 2012. The report states that Dr. Waheed was asked if he “was prepared to carry out [his] legal responsibilities. He is known to have replied in the affirmative. On the same day, the leaders of the opposition political parties held a press conference to announce their endorsement of the Vice President.” The CoNI has not commented on the implications of the question put to him or of Dr. Waheed’s response. Nevertheless, subsequent events give credence to the allegations against the opposition that President Nasheed’s resignation was the desired outcome of the campaign launched by the anti-government coalition that had come together at the end of 2011. Suggestions that intensity was deliberately infused in the police revolt to establish the inevitability of a violent confrontation with the military if it attempted to intervene can also not be rejected.

With the appearance of the three persons named above the police, who had so far demanded only the end to issuance of what they considered illegal orders, and for assurances of immunity against their violent actions, now became relentless in their demand for the resignation of the President. The Mission finds it difficult to share the belief expressed in the CoNI report that these persons intervened purely out of a sense of “moral obligation” and “public duty”<sup>29</sup>. The association of these three people with the opposition groups gathered at the venue of the confrontation and the fact that both bore serious grudges against President Nasheed and his government is not disputed. It is also a matter of record that they had assumed leadership and control of the mutinying police force. Mohamed Nazim had taken it upon himself to go inside the MNDF headquarters to negotiate with the military to convey to the military leadership the demand, amongst

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<sup>29</sup> Report of the Commission of National Inquiry, Maldives; p. 43.

others, for the President's resignation. His address to the opposition demonstrators gathered outside as he came out of the military headquarters is very revealing and is reproduced in the CoNI report. He informed the crowd that he had conveyed the demand that "the President should resign without condition. And, after that, to transfer all powers to the Vice President." He also announced that "We told them these are non-negotiable conditions. These are not things up for further discussion." He assured the crowd of the military support for him and that "God willing, things will happen today as we want."

The Mission has also heard convincing evidence of manhandling of police officers close to the former President by police and military personnel on the morning of 7 February. Some of these incidents occurred close enough to the MNDF headquarters where the President was present till he finally left for his office to announce his resignation. The information gathered by the Mission and the narrative of events from different sources does, in the opinion of the Mission, indicate that the situation just before the President's resignation was highly charged and extremely volatile. Forces hostile to the President had already resorted to violence and were threatening more violence unless their demand for the President's resignation was met. The overall effect was intimidating enough for the President to fear not only imminent threat to public security, but also a danger to his own physical safety and that of his family. Reportedly, amongst the first concerns the President expressed after announcing his willingness to resign while still at the MNDF headquarters was that for the safety of his family. Mr. Abdullah Yameen Gayoom, leader of the Progressive Party of Maldives, also recalled the former President's concern during his conversation with the members of the Mission. That his family shared this fear is evident from the ex-President's wife asking her security to shift her and her children to a safe location while he was engaged in dealing with the situation from within the military headquarters, as mentioned in the CoNI timeline.

The Mission has not gone into the question of the legality of the change of government on 7 February 2012. It nevertheless must observe that facts gathered by it strongly indicate conduct on the part of the police that may be characterized as a mutiny and, in such circumstances all those encouraging or joining an act of rebellion would have acted against Constitutional order. Ex-President Nasheed's opponents narrate a long list of actions that they allege were committed by him in contravention of the Constitution and in excess of powers granted to him under the Constitution. A significant portion of the CoNI report is also focused on allegedly unconstitutional acts of the former President and his government.

The Mission is of the view that the Constitution prescribes a precise procedure for the removal of the President on the grounds that are used to justify the events preceding Mr. Nasheed's controversial resignation<sup>30</sup>. All through the turmoil the Parliament remained silent. The Mission was unable to get any explanation for the failure to adopt the Constitutional means for the removal of the President and to avoid a legally and politically dubious course that has led to serious consequences for democratic progress. The Mission has also noted that there is no reflection by the CoNI on this significant aspect. In view of the facts gathered and circumstances apparent to the Mission, it is difficult for it to accept that the former President resigned voluntarily and without fear or coercion influencing his decision.

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<sup>30</sup> See Article 100 of the Constitution



## **The Judicial Crises**

The interim Supreme Court of five judges was confirmed after the adoption of the Constitution by the then President Maumoon Abdul Gayoom under the transitional arrangements. According to the scheme of the Constitution, these judges would continue to hold office till a new Supreme Court could be appointed after the elections of the President and the new Parliament. In the meanwhile, the legislature was expected to enact the law relating to judges.<sup>31</sup> As this law would determine the number of Judges to be appointed to the permanent Supreme Court, the delay in its enactment affected the timely appointment of the Judges of the Supreme Court within the two year deadline provided in the Constitution. The political turmoil that had affected the process of law making, coupled with the failures of the JSC in its functions related to the appointments in the Supreme Court, precipitated a crisis in August 2010, when the Constitutional dead line for finalisation of all steps related to appointments for all posts had ended.

While the uncertainty and confusion over the appointment of judges and establishment of a permanent Supreme Court continued, the five judges of the Court decided to appoint themselves as permanent Supreme Court judges and notified President Nasheed of this decision through a letter. The President reacted by declaring the Supreme Court defunct on 7 August 2010. The MNDF took control of the Supreme Court premises, preventing the court from functioning and the judges and staff from entering the premises. On a petition by the Prosecutor General the civil court restored control of the Supreme Court to the Chief Justice on 8 August, with the finding that the declaration by the President was in violation of the Constitution.

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<sup>31</sup> As required by Article 149 (d) of the Constitution

This event is illustrative of the complete lack of commitment on all sides to act in accordance with law. There is no provision of the Constitution that can even remotely be construed as giving the power to judges of the interim Supreme Court to appoint themselves as permanent judges. The Constitution only allowed them to continue in office till the new Supreme Court could be established with the appropriate appointments made as prescribed in the Constitution. The delay in establishing the Court as envisaged in Article 145 did not confer a permanent status on the judges or the Supreme Court established as a transitional arrangement. At the same time, the President had no power to declare the Court defunct however provocative the judge's action may have been in the circumstances that prevailed at the time.

The drama came to an end with the enactment of the Judicature Act on 11 August and the hurried nomination, Parliamentary approval and appointment by the President of six Supreme Court Judges and the Chief Justice on the same day. While the outcome did signal the ability of the actors involved to save the situation in such a crisis, there is no denying that last minute deals compromised the transparency and the credibility of the appointment process. The five judges of the interim Supreme Court were all reappointed without any finding of the JSC that they were qualified to hold office as required under Article 285 (b) of the Constitution.

There is a general view that with regard to its responsibilities in the transitional context and its role in improving quality of judges and setting norms and standards for oversight of the judiciary, the performance of the JSC has been, to say the least, disappointing. The Mission heard criticism of the JSC from MPs, independent commissions, civil society and from one former member of the JSC itself. President Nasheed appointed the JSC on 29 July after the Parliamentary election in May 2009. The JSC was mandated under

the Constitution to examine the qualification of judges in office at the time of the commencement of the Constitution and, within a period of two years, assess their suitability or otherwise for re-appointment. Much of the criticism against the JSC stems from its failure to perform its task impartially, objectively and in a transparent manner. The Mission was told that the JSC did not develop the criteria for such an assessment or for the appointment of judges.

In fact, the task of reappointment of judges entrusted to it was hurriedly performed at the very end of the deadline between 4-7 August 2010 and almost 200 judges were reappointed amidst internal divisions and public controversies over the role of the JSC. The concern that the process lacked transparency and was not grounded in any clearly established rules repeatedly surfaced in conversations with different interlocutors during the Mission. The perception that decision-making within the JSC is influenced by the polarized political environment seems to have undermined its independence and credibility in the public view. The Mission also heard allegations that the JSC has neglected to investigate serious complaints of corruption, abuse of power, judicial decisions influenced by political partisanship and even criminal behaviour against judges.

The Mission finds it relevant to examine the facts of the incident involving the arrest of Judge Abdulla Mohamed, Chief Judge of the Criminal Court, by the Government of President Nasheed, both in the context of Executive interference with judicial independence and the ineffective manner in which the JSC exercised its powers of oversight and accountability of judges. The Chief Judge of the Criminal Court was arrested on 16 January 2012 by the MNDF on the orders of President Nasheed. His arrest was widely condemned by the international community as an arbitrary act by the executive and an attack on the independence of the judiciary. The High Court held that the arrest was in violation of the Judges Act and ordered his

immediate release, followed by a similar order of the Supreme Court. The MNDF did not comply with these orders and continued to hold the Judge, allegedly *incommunicado*. The Prosecutor General also made public statements that the arrest was clearly illegal. The Human Rights Commission of Maldives (HRCM) issued a statement that the arrest was not only illegal but amounted to contempt of court. He was released on 7 February, a few hours after the alleged resignation of former President Nasheed.

Reportedly, the former President and members of his government justified the arrest and made public allegations against the Judge of corruption, judicial misconduct, association with criminal elements and decisions influenced by political partisanship. There are also allegations that MDP activists held rallies intended to intimidate the judiciary and that some of those who had condemned the government's action were threatened. The Mission has also seen a report alleging that the Prosecutor General was threatened by government officials with removal from office for publicly announcing his opinion about the illegality of the arrest.

The Mission raised the issue of the arrest in its interview with the former President. He responded by making accusations against the Judge similar to those reported above. He also informed the mission that numerous complaints together with reference to several cases to support the allegations were filed with the JSC, who had avoided action against the judge. He insisted that he was left with no option when institutions failed to fulfil their constitutional responsibilities and obstructed the course of transition by allowing remnants of the previous authoritarian system to defeat the spirit of the Constitution. While it may be possible to understand his frustration, the Mission firmly believes that no unconstitutional and patently illegal measure can, under any circumstances, protect or strengthen the prospects for democracy. The Mission regrets that Mr. Nasheed who had, in the

past, staunchly supported judicial independence and respect for the rule law, should have failed, when in power, to observe the same principles.

The Mission, nevertheless, must also take into account credible information that does raise questions about the integrity of Judge Abdulla and his suitability to hold a judicial office. The Mission has been able to establish that the JSC had received serious complaints about the Judge, not only from the former President or his government, but from other sources as well. It has also established that the JSC had, in November 2011, found that the Judge had breached the ethical standards expected of a judge. Yet the JSC did not take any disciplinary action against him nor recommended his removal to the Parliament. The Judge had, on the other hand, sought and been granted an order by a civil court restraining the JSC from taking any action against him until the court decides the matter on merits. It is unclear whether the JSC challenged the jurisdiction of the Civil Court to make such an order and the constitutionality of the order in view of the clear mandate of the JSC in the Constitution and the Judicial Service Commission Act. The Mission also takes note of a statement issued (on 17 January 2012) after the arrest of the Judge in which, while holding his arrest by the MNDF as illegal, and asserting its own exclusive jurisdiction to receive and investigate and give findings on complaints against the judiciary, the JSC has publically announced that it has not decided to take action against the judge. No explanation was ever offered by the JSC for not taking action on its own findings of misconduct against a judge.

## **Judicial Independence and Performance**

Even though the Constitution of the Maldives has made detailed provisions for safeguarding the independence of the judiciary, there are concerns regarding the process of appointments, qualifications, accountability and impartiality of the judiciary. Many of these concerns are linked to the serious flaws in the JSC processes and its failure to perform its critical role prescribed in the Constitution. The Mission noted the lack of public confidence in the judiciary that manifested itself in complaints that the judiciary is politicised and the concept of impartiality and objectivity is seriously undermined because of polarisation that affects the judiciary as much as other institutions in the country. Added to these concerns was the lack of efficiency and competence in the subordinate judiciary in particular. At the same time, the Mission was disturbed to hear of incidents during the government of former President Nasheed of threats to the judiciary, defiance of court orders by the military and public demonstrations by his political party exhorting his government to ignore Supreme Court decisions.

While the situation of judicial independence in the post-Constitutional period presents immense challenges for the rule of law, the Mission must acknowledge that there is a broad social consensus on strengthening the judiciary as an independent institution. The political rhetoric is all for judicial independence. However, the general perception amongst the people is that all political elements, as well as members of the judiciary themselves, have undermined judicial independence for their own interests and little has been done by political parties to protect the judiciary or to ensure improvement in the quality of its performance.

## PART TWO: HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

### **Constitutional Guarantees**

The Constitution of the Maldives is one of the most advanced and comprehensive documents on recognition and guarantees of human rights and fundamental freedoms. It protects the full range of civil and political rights recognized under international human rights law and provides guarantees for a substantial number of economic, social and cultural rights that are very much in line with economic, social and cultural aspirations of a South Asian population. The Constitution also creates mechanisms and provides detailed processes to ensure implementation of the Constitutional guarantees.

Independent commissions established under the Constitution have well articulated mandates for the promotion and protection of human rights. The work of all the Independent Commissions is generally related to the strengthening of rule of law and human rights. The most relevant to human rights and directly related to their promotion and protection is the HRCM.

The Commission is a five-member Constitutional body appointed by the President after approval by the Parliament of the list of nominees placed before it. The broadly worded Constitutional mandate is specified through statutory provisions of the Human Rights Commission Act of 2006. The statutory powers of the Commission

include receiving complaints, investigating violations, to providing redress to victims, reporting on the observance of human rights in accordance with the constitutional guarantees, advise government on law reform to give legal recognition to and to strengthen enforcement of human rights, identify laws or provision of laws that are contrary to human rights values and to advise the government on ratification or accession to international human rights treaties, and to participate in the formulation of international conventions. An important aspect of the mandate of the Commission is its function to assist and support Non-Governmental Organisations (NGOs). This provision in the law makes it obligatory for the Commission to work with and to institutionalize its relationship with the civil society.

The HRCM currently holds 'B' status accreditation with the International Co-ordination Committee of National Human Rights Institutions (ICC). It is also an associate member of the Asia-Pacific Forum of National Human Rights Commissions (AFP).

While many of the independent bodies and offices established by the Constitution have yet to establish their credibility in the public view, positive comments were received by the Mission from the civil society about the performance of the Election Commission and the office of the Prosecutor General. The HRCM has a broad mandate and its work spans a wide range of human rights and the Mission was briefed by members of the Commission on a number of initiatives that the Commission had undertaken to investigate violations and recommend action for accountability; to promote legislation, policy and procedures to strengthen enforcement of human rights; recommend reforms in institutional structures and practices for better implementation of constitutional guarantees; and to report on the observance of human rights to national and international bodies. While the Mission appreciates the volume of work undertaken by the Commission, it also notes the many challenges that the Commission still needs to



overcome. The most critical of these challenges is establishing the degree of public credibility and support that such a state institution needs in order to fulfil its mandate and to safeguard its independence and integrity. The Commission, while enjoying broad powers, has yet to assert itself within the State structures in order to ensure that its recommendations are taken seriously and are implemented by the Government and other state institutions. The Mission also noted that many of the Commission's actions or positions on politically sensitive issues are viewed with scepticism by a significant section of the civil society, including the human rights community in the country.

## **Major Concerns**

Owing to the brevity of the Mission and its primary focus on democratic progress in the light of recent events, it was not possible to make a detailed survey of the degree to which constitutional guarantees for the realisation of human rights are fulfilled by state authorities. This report, therefore, lists some of the areas over which different sections of the society expressed concern in their conversations with the Mission.

### **Human Trafficking**

The incidence of human trafficking is primarily related to problems faced by migrant workers, mainly from Bangladesh. Lack of regulation for the protection of migrant workers, neglect to monitor recruitment practices, failure to employ procedures for identification of victims of trafficking and for their protection and insufficient measures for the prevention of the incidence of trafficking feature as the main areas of criticism. The Mission was referred to one incidence widely reported in the press pertaining to posters posted at some commercial establishments by employers announcing cash bounties for recovery of missing/absconding foreign workers. The

Mission was also told that this particular incident was condemned as being illegal by some authorities. Nevertheless, it was still not rare to find such announcements posted at different places in Male.

Apprehensions were expressed over reports of the recruitment of some women for forced prostitution in Male. The Mission was referred to a case involving women from Sri Lanka who were allegedly forced in to prostitution by suspected Maldivian traffickers. This is a case in which the Maldivian police was reportedly coordinating with the Sri Lankan police. The Mission heard concerns that Maldivian children were transported to Male from other Islands and forced into domestic service.

The Mission notes with some satisfaction references made to some of the measures adopted more recently to make progress in the elimination of this practice. These include approval of an anti-trafficking action plan for 2011-12; the establishment of an anti-human trafficking and People Smuggling Unit to implement the Action Plan; establishment of an integrated investigation unit of the Department of Emigration and the Maldives Police Services (MPS) for taking law enforcement steps against human trafficking. The Mission also notes that according to most of the people who spoke about this issue, the efficacy of these measures is yet to be seen.

The Mission refers to a report issued by the UN Human Rights Committee in July 2012 calling on the Maldives to expedite the enactment of legislation prohibiting and punishing all forms of trafficking in person. The report also noted the lack of statistical data related to victims, investigations, prosecutions and convictions, as well as the absence of any coherent strategy to combat human trafficking. It also stressed the importance of providing protective measures, in particular shelters, as well as rehabilitation and compensation to the victims.

## The Freedom of Assembly and the Right to Peaceful Protest

The Maldives Constitution provides a very progressive and forward looking scope to the freedom of assembly by adding to this freedom the right to hold a peaceful assembly “without prior permission of the state”<sup>32</sup>. This article is subject to the provisions of Article 16 that allows restrictions to be placed on fundamental freedoms within reasonable limits prescribed by law. However, these limits must be “demonstrably justified in a free and democratic society”<sup>33</sup>. The right is regulated by a 2006 law, which was ratified under the General Regulations Act, 2008 after the enforcement of the Constitution. The High Court invalidated some sections of the 2006 “Regulation Concerning Assembly” on 25 April 2012, finding these in contravention of Article 32 of the freedom of assembly. The contravening sections set limits requiring prior notice to and permission of the authorities, allowing the police to deny permission, and setting time limits for the duration of the demonstration<sup>34</sup>.

In its Shadow Report submitted to the UN Human Rights Committee in June 2012, the HRCM has listed a number of incidents spanning a period of two years (July 2010 to February 2012) during which it found that violations of the freedom of assembly by state authorities had occurred. This report does indicate that despite the progressive provision of the Constitution, respect for the freedom of assembly and the right to protest never gathered strength and violation of this right continued regardless of the government in power and their political rhetoric of protecting the Constitution and respecting fundamental rights guaranteed therein. The report, however, does not elaborate

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<sup>32</sup> Article 32 of the Constitution

<sup>33</sup> Article 16 of the Constitution

<sup>34</sup> Human Rights Commission of the Maldives: *Shadow Report on the International Covenant on Civil and Political Rights In Response to the Maldives*, Initial State Report, June 2012.

on the maintenance of a “green zone” by the authorities where, reportedly, demonstrations are prohibited. The report also does not throw any light on how this policy is distinguishable from a restriction on the freedom of assembly by reference to any law that creates this distinction or justifies this as a reasonable restriction. This may well be a security measure to protect sensitive areas. However, the Mission was unable to determine this issue as it did not get reference to any law that backs this policy.

The freedom of assembly became a critical issue during protests against the arrest of the Chief Judge of the Criminal Court by the former MDP government. This became an even more contentious issue because of the violent suppression of public protests following the events leading to the controversial resignation of former President Nasheed. The Mission heard detailed accounts of both sets of protests and concluded that in the case of both these series of events constitutional guarantees for the exercise of the freedom of assembly and the right to protest were flagrantly violated.

In many of the instances cited to the Mission, the police had used unnecessary and disproportionate force to disperse the demonstrators who posed no threat to the police. Arrest of demonstrators is common and is frequently accompanied by torture as well as cruel, inhuman and degrading treatment by the MPS or MNDF. The police as well as the MNDF have acted against demonstrations under political influence and in many instances played a partisan role in suppressing demonstrations and inflicting physical and mental harm on the protestors. The police in riot gear resorted to the use of tear gas, pepper spray, water cannons and batons, which resulted in serious injuries to the protestors. Female protestors were inappropriately manhandled and seriously harmed by male police during many of the demonstrations. The Mission heard complaints against the police and military about restrictions placed on media coverage and disruption

of such coverage during demonstrations, and of intimidation, harassment and beating of journalists and media workers who were covering the protests.

There is an apparent denial of due process and failure on the part of the authorities to observe human rights principles in relation to detentions following participation in peaceful protest. Families of those arrested from a demonstration and detained in different detention facilities are generally not informed of the arrest or the whereabouts of the detainee. There were also allegations of *incommunicado* detentions of political activists following their participation in public demonstrations. The Mission was told that the incidence of arrests from demonstrations had reduced during the tenure of the previous government. More recently, it has become of serious concern. People are detained and kept for up to 24 hours before being released without the charges being dropped. The authorities then use these cases for further harassment, particularly of opposing political activists. There were reports of false cases being registered to harass those marked by the police for participating in politically sensitive demonstrations. Some cases were brought to the attention of the Mission in which demonstrators had been released on condition that they should never participate in another demonstration or be seen in particular vicinity or at any public place at a specific time. The Mission was worried by allegations that the police are particularly hostile towards human rights defenders monitoring or observing a demonstration, particularly if they have a camera with them. The case of one NGO worker was brought to the Mission's attention who was arrested only because he had photographed police brutality on a demonstrator.

The HRCM and the Police Integrity Commission in their meeting with the Mission referred to different provisions of the Police Act

and police regulations, such as on Use of Force and Fire Arms, which prescribe the conduct of law enforcement officials and lay down standard operating procedures for demonstrations and crowd control. It appears that the police, or the military when called in for law enforcement, have little regard for these standards. While the Mission believes that all sides of the political spectrum have generally failed to protect the freedom of assembly in the Maldives, it notes with concern the view of the HRCM recorded in its Shadow Report that actions of the police against peaceful demonstrations on 8 February 2012 were “unlike any other seen before in dispersing a protest”.

Both the HRCM and the Police Integrity Commission investigated the incidents on that day. In the light of the view expressed by the prime human rights body in the country, the Mission finds it strange that only one police officer was found guilty of brutality against an MDP activist on that day. This indicates a level of impunity for violations of the freedom of assembly that would make it difficult to reform police conduct and bring practices for dealing with the right to protest within the rule of law and the human rights framework. The Mission recalls that Maldives was a co-sponsor of the resolution in the UN Human Rights Council that established the mandate and created the mechanism of a Special Rapporteur on the Freedom of Assembly and Association. It hopes that the country’s commitment to protect these freedoms at the international level will inspire its government and institutions to ensure that the people of the Maldives are able to exercise these freedoms in their own country.

### **Freedom of the Press and the Electronic Media**

The Constitution guarantees the freedom of thought, opinion and expression, provided these are communicated in a manner that is not contrary to the tenets of Islam. The Constitution also protects the press and other media against any compulsion to reveal the source

of any information published by them. In reality, however, freedom of the press and electronic media has become a concern as much as the polarisation of the media on political lines. This polarisation has resulted in biased media coverage, deliberate disinformation to favour or harm a political party or group, targeting of some media houses by the government and attempts by state agencies and functionaries to obstruct the work of journalists and media workers seen as associated with political opponents by the government. The extent of polarisation in the electronic media, in particular, is apparent from the public knowledge of which channel supports which political party.

The Mission heard several reports of politically motivated violence against journalists, ransacking of offices of television news channels and harassment by the police of television journalists belonging to channels associated with opposition political parties. Many of the incidents of violence and media harassment, reported to the Mission, occurred during demonstrations and are related to media coverage of public gatherings. The Maldives Journalists Association is known to have raised this issue repeatedly. Independence of the media is affected not only because of fear, but also because of the failure of the media to observe the principles of objectivity, accuracy of reporting and transparency at all times.

### **Additional Issues**

Some other important issues which need more detailed information gathering for a comprehensive reporting are the freedom of religion, gender based violence and discrimination, violence against children and torture and cruel, inhuman and degrading treatment in detention facilities. The situation of human rights defenders and the role of the civil society would be an essential part of any further human rights studies on the Maldives.

## **The Civil Society**

The Maldives has a small but increasingly active civil society that had an important role in triggering the political reforms that put the country on the course towards democracy. While professional groups such as journalists and lawyers have yet to create associations that are independent and engaged with issues of public importance, human rights groups are emerging, especially those working on women and children's rights. Many of these groups monitor and report on human rights issues and are a major source of information for the international community on the situation in the country. Much of the human rights activity is conducted by NGOs. As most of the organisations have a project oriented approach, the culture of building movements for attaining civil and political, or social, economic and cultural rights, is still absent.

The Mission was concerned to hear about the registration regime imposed on NGOs that requires compulsory registration and penalises organisations that do not fulfil this requirement. The Mission is of the view that this law restricts the freedom of association and would impede the freedom of human rights defenders to promote and protect human rights through collective action. It is also contrary to the spirit of the Declaration on Human Rights Defenders<sup>35</sup>

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<sup>35</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by UN General Assembly resolution 53/144 of 9 December 1998



## SUMMARY OF CONCLUSIONS

### **Democratic Transition and Governance**

The transition that began with the adoption of the Constitution in 2008, and the election of the President and the Parliament that followed, had put Maldives on the road to a multi-party democracy. Subsequent events have, however, dimmed the prospects for a sustained process of transition that is necessary for institutions to build their capacity and a culture of democratic governance. The manner in which the change in government occurred at the beginning of this year has shown that Maldives has not adequately addressed the authoritarian trends that needed to be transformed before real democracy prevailed in systems of governance.

The Parliament, the Executive and the Judiciary have failed to respect the principle of separation of powers. Every institution has shown a tendency to extend its authority beyond the legitimate domain. The reforms necessary to create a correct balance of power are resisted at all levels, and power centres of the past continue to assert control and influence over key institutions.

Many of the independent institutions have not performed the responsibilities of transition entrusted to them and internal procedures of these institutions to ensure efficiency and transparency have not been worked out. The lack of institutional norms and trained personnel, too, has affected the development of institutions. The Mission concludes that the JSC, in particular, has neglected to investigate complaints of corruption, abuse of power, judicial decisions influenced by political

partisanship and even criminal behaviour on the part of many of the reappointed judges. There is a strong perception amongst the general public and political circles that the process of reappointment of many judges lacked transparency and was not grounded in any clearly established rules. Lack of confidence in the JSC and in its independence could hamper the rule of law, administration of justice and maintenance of constitutional order in the country in the future as well.

The Mission is of the view that interest driven politics has superseded any common aspirations of political parties for reform or to consolidate democratic rule in Maldives. The role of the Parliament in the constitutional crisis is a matter of serious concern. There are several examples of obstructions and unnecessary delays caused by the Parliament between 2009 and 2012 in hampering the legitimate functions of the Government, failure in passing necessary laws or repealing laws inconsistent with the Constitution and also in running the proceedings in a suitable and appropriate manner.

In the absence of any bar on floor crossing in the Constitution, political parties in the Parliament have been enabled to employ undesirable means to gain favourable composition in the Parliament by enticing members to change their allegiance from one party to the other. This has allowed corrupt practices to seep into politics and has also compromised principled law-making.

## **Resignation of President Nasheed and change of government in February 2012**

The Mission finds weight in the allegations that President Nasheed's resignation was the desired outcome of the campaign launched by the anti-government coalition that had come together at the end of 2011. Suggestions that intensity was deliberately infused in the police revolt to establish the inevitability of a violent confrontation with the military if it attempted to intervene can also not be rejected.

The information gathered by the Mission and the narrative of events from different sources indicates that the situation just before the President's resignation was highly charged and extremely volatile. Forces hostile to the President had already resorted to violence and were threatening more violence unless their demand for the President's resignation was met. The overall effect was intimidating enough for the President to fear not only imminent threat to public security, but also a danger to his own physical safety and that of his family. The Mission is, therefore, not convinced that President Nasheed's resignation was voluntary and not the result of fear and coercion.

Failure to follow the Constitutional requirements for the removal of the President, if the former President had acted against the Constitution as alleged by his opponents, is in itself a suspect omission and only heightens the possibility of that there was a planned intent to force a resignation from him.

The Mission has taken note of several recent statements by Mr. Nasheed alleging that the Government is resorting to legal harassment against him and his allies on politically motivated charges. The Mission has also watched with concern events and incidents that

indicate that his freedom of movement and his right to campaign for the coming elections are repeatedly violated.

## **General**

Independence of the Judiciary is seriously compromised by the flaws in the processes of appointment and removal of judges. The system of judicial accountability is non-functional. Both the competence as well as impartiality of judges is generally questioned with serious allegations against many judges of corruption and their amenability to political influence.

Both the previous and the present government in the Maldives have failed to respect the freedom of peaceful assembly. The police and the MNDF have resorted to the use of disproportionate force, arbitrary detention and harassment of protestors, particularly during the events just preceding and after the resignation of the former President. There are also allegations of torture of protestors while in detention.

The media in the Maldives has yet to achieve both freedom and independence. The press and the electronic media are, with a few exceptions, affiliated to one or the other political party. The culture of targeting the media outlets affiliated to the opposition by the political party in power is common. The police and the MNDF have not shown any respect for the right of media personnel to report on important events or occurrences and have frequently violated their right to security and liberty while they perform their professional duties.

## RECOMMENDATIONS

The Mission has noted the announcement of the Election Commission that Presidential elections will be held in September 2013. Free, fair and credible elections would mitigate the bitterness and hostility that has pervaded the political climate since the controversial resignation of former President Mohamed Nasheed. The Mission urges the Maldives Election Commission to ensure that transparency is maintained in all electoral processes and that the civil society and other independent monitors be facilitated in monitoring these processes. All political actors must refrain from any actions that trigger violence before or during the elections.

The Mission would also caution that any politically motivated action against the former President Mohamed Nasheed by the present government that could be construed as an attempt to prevent him from contesting the coming Presidential elections, may further intensify the political crisis in the country. This could have a lasting and negative impact on the country's progress towards democracy and political stability.

The Parliament may consider a review of the Constitutional provisions on separation of powers and judicial appointments, oversight and accountability in the light of the experiences in the past four years and may make amendments where necessary to ensure smooth governance and methods of judicial accountability that are compatible with independence of the judiciary.

The Mission recommends that an independent inquiry be conducted into the allegations against the Chief Judge of the criminal court. Such an inquiry, if conducted in a credible manner, would strengthen the rule of law and remove the perceptions that judges are immune from accountability.

The performance of the JSC should be examined by a Parliamentary Committee. The proceedings of this Committee should be open to the public to ensure transparency. The report of the Committee with its recommendations should be made public, so that the people of Maldives are fully informed and aware of the state of their institutions and any flaws in their performance.

The MPS and MNDF should be subjected to strict code of conduct in performing their functions of law enforcement during public demonstrations and other forms of assembly. This code should be in conformity with the Code of Conduct for Law Enforcement and the Basic Principles on the use of Force and Firearms by Law Enforcement Officials adopted by the United Nations.

The civil society and human rights organisations must be facilitated in their activities for the promotion and protection of human rights. For this purpose their access to information and places relevant to their functions of monitoring, information gathering and reporting should be ensured. The freedom of association of NGOs should not be constrained through restrictive legislation or complicated registration procedures.

It would be in the interest of the civil society organizations in the Maldives to strengthen networks and to build platforms on issues of common concern. The SAHR network looks forward to more participation of human rights organisations, bar and press associations, academics and other civil society actors in regional initiatives and activities for the promotion and protection of human rights.



SAHR is a democratic regional network with a large membership base of people committed to addressing human rights issues at both national and regional levels. SAHR seeks to contribute to the realization of South Asian peoples' right to participatory democracy, good governance and justice by strengthening regional response, including regional instruments, monitoring human rights violations, reviewing laws, policies and practices that have an adverse impact on human rights and conducting campaigns and programmes on issues of major concern in the region.

SAHR comprises both institutional and individual members. An elected bureau works as the organisation's executive body while the membership committee oversees enrolment of members. The SAHR Chairperson and Co-Chairperson are Ms. Hina Jilani of Pakistan and Dr. Nimalka Fernando of Sri Lanka respectively. The Secretariat is located in Colombo, Sri Lanka.



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