



Human rights in the Maldives: an update at the occasion of the Commonwealth Ministerial Action Group meeting in London, April 2013

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I. BACKGROUND

The Commonwealth Ministerial Action Group (CMAG) 's newly reformed mandate, approved at the 2011 Commonwealth Heads of Government Meeting (CHOGM) in Australia, includes “situations that might be regarded as constituting a serious or persistent violation of Commonwealth values”, and the “systematic denial of political space, such as through detention of political leaders or restriction of freedom of association, assembly or expression.” These situations have continuously characterized the political environment of the Maldives especially since the change of power of 7 February 2012.¹

Concerns regarding police brutality and impunity have, for the past year, been raised by the Human Rights Commission of the Maldives (HRCM), the Police Integrity Commission (PIC), as well as civil society groups such as the Maldivian Democracy Network (MDN) and the general public. Last July, the UN Human Rights Commissioner also raised serious concerns². Recommendations made by the Commission of National Inquiry³ on these matters were publicly dismissed by senior government officials; this could only encourage the security forces to disregard the rule of law and commit further human rights abuses in impunity.

Support from the international community, in particular the CMAG, remains essential. International mechanisms for monitoring the country’s human rights situation based on clearly defined benchmarks, accompanied by the provision of technical assistance to the Government of the Maldives, will play an integral role in advancing human rights in the country and set the conditions for free and fair presidential elections due to take place in September 2013. Moreover, support should be extended to Maldivian civil society organizations to raise public awareness about the role of democratic institutions and the importance of separation of powers. Non-governmental organizations should be invited to contribute to monitoring human rights violations and the functioning of existing institutions.

The reform and empowering of the Human Rights Commission of the Maldives (HRCM), the

1 See FIDH, «From sunrise to sunset: Maldives backtracking on democracy», September 2012.

(<http://www.fidh.org/IMG/pdf/maldivesen.pdf>)

2 Ibid.

3 Established in 2012 to “explore the facts, circumstances and causes of the events of 7th February 2012 that resulted in the transfer of power in the Maldives”

Police Integrity Commission (PIC), and the Judicial Service Commission (JSC) should be of utmost priority as the report by the Commission of National Inquiry clearly indicated these were the main failures that led to the change of power in February last year. CMAG should monitor and contribute to guide the Government of Maldives in this process in order to achieve a stable and democratic environment in the country.

FIDH and MDN welcome the decision of the CMAG at its latest meeting on 28 September 2012 to keep monitoring the situation in the Maldives.⁴ At the occasion on the upcoming CMAG meeting on 26 April in London, clear benchmarks representing the views of all parties should be defined and acted upon in order to ensure that this process remains meaningful and supportive to human rights and democratic values defended by the Commonwealth.

II. UPDATE ON THE HUMAN RIGHTS SITUATION

1. Conditions for free and fair elections

Less than six months before the September 2013 presidential elections in the Maldives, there are clear signs indicating that the coalition government in power since February 2012 has so far failed to set the conditions for free and fair elections in which “all parties and leaders are able freely to conduct election campaigns”.⁵

The most critical matter in this regard is the continued interference of the executive on other branches of power, as manifested by the trial of several opposition members to prevent the opposition from running in the upcoming elections.⁶ Former president Nasheed was first arrested on 8 October 2012 after failing to appear before the Hulhumale Magistrate Court to face charges of abuse of power over the arrest and subsequent detention of Chief Judge of the Criminal Court Abdulla Mohamed in January 2012. The court issued the arrest order after Nasheed questioned the legitimacy of another special court to try him on the charges. In February 2013, after the Court ordered the police to produce him in court for a hearing of his trial, Nasheed took temporary asylum inside the Indian High Commission in Male'.

Mohamed Nasheed was once again arrested on 5 March 2013. He was both times arrested and detained in Dhoonidhoo Detention Center. Although Article 48(a) requires a person detained to be produced in front of a judge to determine the legitimacy of the arrest procedure, and whether the circumstances demanded the person to be held in remand for any further period, this procedure was not followed. Eighty-four arrests have been reported within the 24 hours which followed the arrest of Mohamed Nasheed and subsequent protests.

Mohamed Nasheed was reportedly picked up on a street by a police SWAT team and credible sources report that he was not shown an arrest warrant until after his arrest.

Furthermore, authorities have so far failed to ensure a 'free and fair' atmosphere with respect to freedom of information or freedom to assembly. Statistics show that while there will be 31,000 new eligible voters, no efforts have been initiated thus far by the relevant authorities to inform and educate voters on their electoral rights and responsibilities.

Additionally, a recent pre-election assessment produced by Transparency Maldives raised

4 See details in annex.

5 CMAG concluding statement, 28 September 2012, para. 17, available at: <http://www.thecommonwealth.org/news/250249/280912cmagconcludingnyc.htm>

6 Apart from former president Mohamed Nasheed, these include MP Ali Waheed and MPs Abdulla Jabir and Hamid Abdul Gafoor, whose cases are still pending with the prosecutor general.

concerning issues which surfaced at the Elections Commission during 2012. This includes 'a sit-down strike' by 45 of the 49 Elections Commission staff members in March 2012, alleging that Commissioners were "not impartial", "were working in violation of laws and regulations", suggesting an atmosphere of intimidation and mistrust within the institution. In June 2012, 43 of 46 staff members of the Elections Commission was reported to have submitted a petition to the Parliamentary Oversight Committee on Independent Institutions, "questioning the independence and impartiality" of 3 of the members of the Commission.⁷

2. Police brutality, torture and impunity

Following Mohammed Nasheed's democratic election in 2008, a full range of fundamental rights was promoted, and human rights abuses reduced drastically. However, there was also a substantial lack of progress. Most importantly, Nasheed did not take any meaningful step to investigate human rights abuses that occurred prior to 2008, thereby creating a culture of impunity for perpetrators of past human rights violations.

The Torture Victims Associations and REDRESS, in a report on torture submitted to the Human Rights Council in July 2012,⁸ noted that some steps have been taken in the past decade, especially over the death in custody of Evan Naseem in 2003. Police reform started in November 2004, and several bodies were then established to respond to complaints by victims of torture and other forms of ill-treatment. However, almost no case has so far been investigated.

Under Police Act (5/2008), Mohamed Nasheed abolished a Public Complaints Bureau which had investigated 57 torture cases from 2004 to 2006, without ensuring that the newly-established institutions investigate other pre-2006 cases. It was replaced with the independent Police Integrity Commission (PIC) which took over investigations from the Public Complaints Bureau. However, the Police Act includes a clause which limits PIC's power to investigate any allegations dating back to more than two years, thus institutionalizing impunity. Until today, PIC reports are not made public. Only a summary with key points, conclusion and recommendations is made public.

A Presidential Commission was established in 2009 but its mandate was limited to the post-2008 period and it was disbanded in 2012. While it was mandated to 'look into police torture', it never did. In early 2009, the Maldivian Democracy Network requested the Presidential Commission to investigate torture cases, providing it with a dossier of evidence. The dossier was initially prepared for submission to Amnesty International's Prisoners of Conscience Appeal Fund. More than 30 such files were endorsed. However, the Presidential Commission did not acknowledge the dossier.

The mandate of the Human Rights Commission of Maldives (HRCM), established in 2006, has a time limitation for events it can investigate. While a clause allows the Commission to exceptionally decide to look into past human rights violations, it has so far never done so.

The coalition government established in February 2012 has been accused of a wide range of human rights violations, from violent repression of street protests, arbitrary arrests, sexual

⁷ Pre-election Assessment : 2013 Presidential Elections in the Maldives, 28 March 2013, Transparency Maldives, pg. 27-28

⁸ "This is what I wanted to tell you: addressing the legacy of torture and ill-treatment in the Maldives", June 2012, Torture Victims Associations and REDRESS (http://www2.ohchr.org/english/bodies/hrc/docs/ngos/REDRESS_Maldives_HRC105.pdf)

harassment of female protestors, torture, harassment of pro-opposition media⁹, to legal and physical harassment of members of the opposition. Since the HRCM made public its reports on these allegations in August 2012, no action has been taken for investigation or redress. In December 2012, UK based NGO Friends of Maldives called upon the Scottish government to suspend training of Maldivian police personnel, following released video clips of Scottish trained Maldivian police personnel brutalising protestors in Male'. Friends of Maldives also noted that policemen seen in video clips torturing and brutalising civilians were also promoted shortly after the incidents.

In January-February 2013, a parliamentary select committee heard testimonies from former Commissioner of Police, former chief of police intelligence department and former Chief of Defense Force. After hearing their testimonies, the Committee identified systematic omissions in the report by the Commission of National Inquiry. The omissions were serious enough to raise fundamental questions about the accuracy of the report's conclusions. A previous review of the report by a group of Sri Lankan lawyers showed¹⁰ that the investigation used selective evidence, had major inconsistencies within the report itself and was not fit for acceptance.

3. Uncertainties in the legal reform process

Since the change of power in February 2012, the legal reform process has gone through a new phase of slowdown. As a result of political tensions, the opening of the Majlis in 2012 was seriously hampered by political tensions. While the Majlis was due to open on 1 March, it was not until 19 March that the legislative assembly was finally opened as per regulations. While a total of 100 Majlis assemblies should have convened in 2012, only 81 in fact took place. This situation further delayed the passage of important pending legislation, including the Penal Code, the Criminal Procedure Code, the Civil Procedure Code (not yet in parliament), the Evidence Act, which all remain pending. None of these legislation except the Penal Code have been open for public consultation.

The Right to Freedom of Peaceful Assembly Act - passed by Majlis in December 2012 and ratified in January 2013 – raises serious concerns about new restrictions of several fundamental freedoms.¹¹ The announcement by the Maldives Police Service in February 2013 that they are considering using irritants and dyes (a new development - no known usage of such chemicals previously) to disperse protestors is an alarming development.

While no execution has taken place in the Maldives since 1953, some radical groups, but also some members of parliament and the current Home Minister have been actively campaigning for death penalty as a solution to a recent surge in crimes. A bill on Implementing Death Penalty has been drafted in December 2012 by the Attorney General's Office and circulated for comments. With the current state of the judiciary and the incapacity of the police to properly investigate crimes, it is certain that judicial errors and the subsequent death of innocent people would follow. From January 2001 to December 2010, a total of 14 people were sentenced to death by Maldivian courts. However, all verdicts have been commuted to life sentences.

Besides, despite an apparent respect for women's rights, in practice women have suffered and still suffer from the absence of a strong legal framework. The Domestic Violence Prevention Act

9 Maldives ranked 103th in the RSF 2013 Press Freedom Index, for 73th in 2012. On 23 February, Ibrahim Waheed of Raajje TV, as well as two female MBC journalists, were attacked. Waheed sustained severe injuries.

10 See minivannews.com/files/2012/09/CONI-A-Legal-Analysis.pdf

11 See joint statement by MDN and Transparency Maldives; available at: <http://www.mvdemocracynetwork.org/wp-content/uploads/2013/01/MDN-TM-Joint-Press-Release-Eng-02Jan13.pdf>

passed in April 2012 is a sign of attempted progress; nevertheless, the reform process being at an early stage, women's rights remain at risk of being curbed by religious parties influencing the governing coalition and pushing for the full implementation of Sharia. More sensitisation of criminal justice and social workers is required to ensure protection the bill sought to provide.

During its mission to Maldives in August 2012, FIDH was able to witness first hand the influence of fundamentalist groups on women's rights, which was demonstrated on 4 September 2012 with the sentencing of a 16-year old girl to flogging. In January 2013, a 15-year old girl and rape victim was sentenced to 100 lashes for having premarital sex, causing international uproar. The girl pleaded not guilty in court, and her trial was marked by the absence of evidence and witness.

The rising tensions with regard to interpretations of Islam in Maldives is particularly an area of concern. More fundamental views being introduced by the Adalat party and some religious groups, mainly those that are being linked with Shari'a and harsh punishments have resulted in the issue escalating to as far as flogging of victims of sexual abuse and the promotion of death penalty by the government. Bearing in mind that there is absolutely no public trust in the judiciary to have the capacity to deliver justice under these circumstances, those critical of these interpretations have faced violent consequences.

Dr Afrasheem Ali, Member of Parliament and an Islamic scholar who was respected for his knowledge and also his moderate take on Islam, was threatened for a few months over the phone and also on the internet before he was brutally murdered in October 2012 as he entered the building where he lived. The recent announcement of a coalition by the incumbent president Waheed and the Adalat Party which promotes such fundamentalist views, so close to the 2013 presidential elections in September raises more concerns, as the contents of this agreement is unknown. In June 2012, Hilath Rasheed, journalist, blogger and advocate for religious tolerance sustained a brutal attack where he barely survived a slash to the throat, which was clearly an attempt to murder him.

Previously, in January 2011, former member of the Judicial Service Commission, whistle-blower and vocal advocate for judicial reform, Ms Aishath Velezinee, was also stabbed in the back by unknown attackers during daytime in Male'. To date, there are no reports of an investigation or any on-going effort to find the perpetrators of these crimes.

III. KEY RECOMMENDATIONS

FIDH and MDN make the following recommendations:

To the Government of Maldives:

1. In accordance with the recommendations of the report by the Commission of National Inquiry, take further steps to strengthen independent commissions including the Police Integrity Commission, the Judicial Service Commission, and the Human Rights Commission of Maldives. These commissions should enact rigorous and transparent rules of procedure and consult civil society groups to avoid actual and perceived conflicts of interest, giving the public confidence in the fairness of their independent authority.
2. Urgently enact, through the Majlis, pending legislations including a Penal Code, Criminal Procedure Code, Anti-Torture Bill and Evidence Act, without which judges and magistrates are unable to deliver justice fairly, consistently and efficiently; make sure that civil society is consulted in that framework, and that those texts fully conform with

international human rights commitments and obligations of the Maldives.

3. Refrain from enshrining the death penalty in those texts, in conformity with Art. 6 of the ICCPR and the global abolitionist trend worldwide and maintain the existing moratorium which has been practiced in the Maldives since 1953. Reform, as a priority, the judiciary and the criminal justice system.
4. Engage in the review process of national law to adopt an implementing legislation of the Statute of the International Criminal Court.
5. Significantly reduce the scope of its reservation to Art. 16 of the CEDAW, as agreed by the Government in its response to the country's Universal Periodic Review in March 2011.
6. Submit a response to the 2009 report of the subcommittee on Prevention of torture and other cruel, inhuman or degrading treatment regarding the Optional Protocol to the Convention against Torture (OPCAT)¹² and implement the recommendation of the UN Human Rights Council 105th Session in its Concluding Observations on the need to investigate allegations of torture
7. Initiate a national campaign to address past human rights violations (1978-2008), including accountability for perpetrators, acknowledgement, truth-telling mechanisms, reparations, and legal and institutional reforms to prevent occurrence of new violations. Such mechanisms would also act as a deterrent to prevent any future form of harassment, intimidation, arbitrary arrest or ill-treatment by State security personnel.
8. Immediately provide dates for a mission in the Maldives to the Special Rapporteur on Freedom of Peaceful Assembly since an invitation has already been extended, and extend an invitation to the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.
9. Implement recommendations of Special Procedures that have already visited such as the Special Rapporteur on the independence of judges and lawyers (2013),¹³ the Special Rapporteur on the Promotion and Protection of the right of freedom of opinion and expression (2009), and the Special Rapporteur on freedom of religion and belief (2006).
10. Guarantee in all circumstances the physical and psychological integrity of human rights defenders, journalists and members of the opposition in the Maldives.
11. Guarantee the right to freedom of expression and opinion, in application of article 19 of the ICCPR and in line with General Comment 34 of the UN Human Rights Committee, criminalize and prosecute all attacks, intimidation and coercion for the exercise of these rights. Condemn and prosecute in particular any advocacy of hatred that constituted incitement to discrimination, hostility or violence, in application of Article 20.2 of the ICCPR.¹⁴

To the Commonwealth Ministerial Action Group (CMAG):

12 See: http://www2.ohchr.org/english/bodies/cat/opcat/spt_visits.htm

13 Report to be submitted to the Human Rights Council in June 2013.

14 See UN Human Rights Committee, General Comment No.34 CCPR/C/GC/34, <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR-C-GC-34.doc>

1. Raise concerns regarding human rights violations in the Maldives, especially allegations of police brutality and torture, and request the Maldivian authorities to take all necessary measures to prevent violence, respect the due process of law and prevent arbitrary arrests.
2. Review CMAG position on the report by the Commission of National Inquiry with reference to later developments and ensure that all information and evidence provided to the investigation is used properly and without bias.
3. Advocate for the preservation and consolidation of democratic achievements and take all necessary steps to guarantee the conditions for free, fair and inclusive elections in September 2013.
4. Provide technical assistance to the Government of Maldives, to strengthen the rule of law and support the development of public institutions, in particular the judiciary, independent commissions such as the Human Rights Commission of Maldives, the Police Integrity Commission, and the Judicial Service Commission.¹⁵
5. Provide support to civil society organizations to raise public awareness about the role of public institutions and the importance of separation of powers; develop human rights education programs to foster tolerance and raise awareness about universal human rights principles. Civil society organizations should play a key role in monitoring progress in the building of democratic and independent institutions.

IV. ANNEX

Timeline of events from 7 February 2012 to 19 April 2013:

- 7 February 2012: Resignation of president Mohammed Nasheed who declares his resignation was forced. Later, the new coalition government rejects international calls for early elections saying it was neither practical nor constitutional and, instead, establishes a Commission of National Inquiry to “explore the facts, circumstances and causes of the events of 7th February 2012 that resulted in the transfer of power in the Maldives”.
- 5 June 2012: Freelance journalist and blogger Ismail “Hilath” Rasheed narrowly survives a murder attempt. No investigation has so far been launched.
- 29 July to 4 August 2012: During a fact-finding mission in Male', FIDH was able to ascertain the deterioration of freedom of assembly and freedom of press in Maldives, and collected accounts of victims of police brutality and arbitrary arrests.
- July 2012: The UN Human Rights Committee raised the issue of the right to peaceful assembly in Maldives and the UN High Commissioner for Human Rights expressed concern at the excessive use of force by security forces.
- August 2012: The Human Rights Commission of Maldives brings out a series of reports condemning the police crackdown on 8 February 2012 and torture of detainees by security forces.
- 30 August 2012: The Commission of National Inquiry concludes the transfer of power was legal and constitutional.

15 See International Commission of Jurists, «Maldives: securing an Independent Judiciary in a Time of Transition», February 2011: http://www2.ohchr.org/english/bodies/hrc/docs/ngo/ICJ_Maldives_HRC102.pdf

- 27 September 2012: MDN, FIDH and CHRI submit a closed letter to CMAG calling the group to address the issue of human rights in Maldives during its meeting on 28 September 2012 in New York.
- 28 September 2012: CMAG agreed to continue to monitor the situation in Maldives, and to move consideration of Maldives in future to its agenda item “Matters of Interest to CMAG”. Ministers looked forward to Maldives’ resumption of full participation at CMAG’s next meeting, in the absence of any serious concerns. CMAG underlined their concern that “all parties in Maldives needed to work towards resolving the climate of division and discontent in order to bring about lasting national reconciliation”. They further emphasised the need to ensure that “all parties and leaders are able freely to conduct election campaigns”. Finally, the CMAG highlighted the need to investigate acts of police brutality.
- 2 October 2012: Killing of MP Afrasheem Ali; police declared the murder was politically-motivated while the opposition accused the police of attempting to pin Afrasheem’s murder on them. Due to threats and violent messages aimed at Dr Afrasheem Ali, later found on websites known to promote fundamentalist views, some allege that this was an act of hatred by Islamic fundamentalists. Investigation was launched and one person was charged for the murder. A number of opposition activists were arrested and detained for long periods of time on this case, but were eventually released by courts. The trial of the alleged murderer is on-going.
- 8 October 2012: First arrest of Mohamed Nasheed by an aggressive, masked police SWAT team which caused damage to property during the arrest, in a house on the island of Fares Maathodaa.
- 25 to 27 January 2013: Secretary-General’s Special Envoy to Maldives, Sir Donald McKinnon, visited Maldives to discuss efforts to strengthen democratic institutions especially the judiciary, as well as independent institutions such as the police integrity commission and the national human rights commission.
- 2 February 2013: At the occasion of a visit to Male, British Foreign Office Minister Alistair Burt emphasised the importance of moving swiftly towards free, fair and inclusive elections later this year. UK government urged Maldives to ensure that all political parties are able to participate in the upcoming presidential election with the candidate of their choice.
- 17-24 February 2013: The UN Human Rights Council Special Rapporteur on the independence of judges and lawyers, Ms. Gabrielle Knaul, visited the Maldives, at the invitation of the Government. The purpose of the mission was to examine measures taken to ensure the independence of the judiciary, prosecutors and lawyers, as well as their protection, and the obstacles encountered for an adequate, impartial and independent administration of justice. In her end of mission statement, she called on the government to take measures to de-politicize the judiciary. She also stressed having heard from various sources that the current composition of the Judicial Services Commission, the body in charge of the appointment, transfer, and removal of judges, was inadequate and politicized. A report of her conclusions and recommendations will be presented to the Human Rights Council in June 2013.
- 5 March: Second arrest of Mohamed Nasheed by a masked police SWAT team on the streets of Male’, allegedly without producing an arrest warrant. Following this arrest of president Nasheed, unrest broke out and subsequently 84 protesters were arrested within 24 hours.
- 7 September 2013: Presidential elections.