

Justice Adrift: Rule of Law and Political Crisis in the Maldives

A Fact-Finding Mission Report

August 2015

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Report of the ICJ-SAHR Joint Fact-Finding Mission to the Republic of the Maldives on 5-13 May 2015

August 2015

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EXECUTIVE SUMMARY

The promulgation of a new democratic constitution in 2008 heralded a move toward greater democracy in the Maldives after decades of authoritarian rule. The 2008 Constitution enshrined provisions to establish institutions of constitutional democracy, respect for rule of law, robust fundamental rights and the separation of powers. That same year, the country elected its first democratically elected president, followed one year later by the country's first multi-party parliamentary election. However, after the assumption of power of a new government in 2013, many of these reforms have stalled and are even in danger of sliding back towards authoritarianism.

Prompted by concerns regarding the independence of the judiciary and the deteriorating human rights situation in the country, a joint delegation of the South Asians for Human Rights (SAHR) and the International Commission of Jurists (ICJ) conducted a fact-finding mission to the Maldives from 5 to 13 May 2015. The purpose of the mission was to assess the human rights situation in the country after the current government assumed power in 2013; of particular concern was assessing the independence and impartiality of the judiciary and other independent institutions aimed at upholding respect for human rights and the rule of law. The delegation met with a broad cross-section of stakeholders from the Maldivian Government, the Parliament, independent constitutional bodies, the legal community, political parties, civil society, the former Chief Justice of the Maldivian Supreme Court and other former officials from the previous government.

The delegation welcomed the commitment expressed uniformly to the delegation by Maldivian government officials to the goal of strengthening the judiciary, rule of law, fundamental rights and the separation of powers in the country. However, the delegation was concerned that, despite some notable progress made, a number of critical institutional and legal reforms called for during the two-year transitional period from 2008 to 2010 in order to consolidate and strengthen independent democratic institutions had yet to take place. The delegation found that this flawed transition contributed to the present deterioration in the rule of law and legitimacy of democratic institutions in the country, marked especially by the crisis in the independence of the judiciary and inadequate protection of human rights.

The delegation was particularly concerned by a clear politicization of the judiciary that has eroded the rule of law. Recent high-profile prosecutions and events in the last two years alone have raised concerns regarding the independence and impartiality of the judiciary, judicial accountability and respect for the principle of separation of powers. These concerns were aggravated by a general lack of capacity in the education and training of the judiciary, as well as inadequate procedural legislations to establish standards and regulate judicial conduct. Furthermore, this politicization of the judicial system compromised the integrity of other independent constitutional bodies and undermined the protection of fundamental rights.

The delegation was equally concerned by the politicization of independent institutions such as the Human Rights Commission of the Maldives (HRCM), the Judicial Service Commission (JSC), the Electoral Commission and the Office of the Prosecutor General. Biased and otherwise unfair judicial proceedings, as well as undue parliamentary interference in the appointment, removal and functioning of these key constitutional bodies, have undermined their independence and impartiality in carrying out their respective mandates. This in turn has further eroded the rule of law and democratic governance in the country.

Strengthening judicial independence, impartiality and accountability are key elements to getting the country back on track towards democratic consolidation. An independent and impartial judicial system is central to upholding the rule of law, protecting human rights and safeguarding the principle of separation of powers. Maldivian authorities must

therefore take all necessary steps to support and strengthen the independence and impartiality of the judiciary, both at an institutional and individual level, in order to uphold the rule of law, accountability and human rights.

Likewise, independent institutions play a central oversight role in ensuring the rule of law, protecting and promoting human rights and strengthening democratic governance. Maldivian authorities must take all necessary steps to safeguard and strengthen the genuine independence and impartiality of these institutions in their appointments, removal and ability to effectively carry out their respective constitutional functions free of undue interference.

To advance these goals, the mission makes the following key recommendations (a more comprehensive list of recommendations is included at the conclusion of this report):

Maldivian Government (President and Executive Branch)

- Given the serious doubts raised about the fairness of the trials, Mr. Nasheed and Mr. Nazim must both be promptly provided with a fair and transparent appeal hearing before an independent and impartial tribunal, and released on an interim basis, with the appeal hearing leading either to their unconditional release or to the provision of a fair retrial before an independent and impartial court. If the appeals fail to ensure fairness and impartiality in either case and there exists no other remedy under Maldives law, the President must exercise his authority under the Clemency Act to pardon the defendants to comply with the Maldives' international obligations.
- The Government must strengthen the independence and impartiality of the judiciary by reforming the JSC appointment process and ensuring the integrity of appointments to the Supreme Court.
- The Government must ensure the integrity and impartiality of appointments to independent constitutional bodies and must not interfere in the exercise of their respective mandates.
- The Government must end the climate of impunity and ensure accountability for violations of fundamental human rights by carrying out prompt, thorough, impartial and independent investigations of suspected violations.
- The Government must take necessary steps to eliminate gender discrimination and increase women's representation in the judiciary and the legal profession at all levels of seniority.

Maldivian Parliament (People's Majlis)

- Parliament must expedite the passage of important long-pending draft laws aimed at strengthening the rule of law and the justice system, including a criminal procedure code, civil procedure code, evidence code and a legal professions bill.
- Parliament must implement constitutional reforms to strengthen the appointment process, the composition and the independent functioning of the JSC. At least half of its members should be judges elected by their peers within the judiciary. The JSC must be equipped to carry out, and to implement effectively in practice, its mandate to hold the judiciary to account for breaches of judicial ethics.
- Parliament must respect and ensure the independence of the HRCM as well as other constitutional commissions, to carry out their respective mandates without arbitrary or otherwise undue interference or intimidation.
- Parliament must initiate constitutional amendments to remove any discriminatory criteria for appointment of judges, including particularly on grounds of religion.

Maldivian Supreme Court

- The Supreme Court must adopt clear and transparent rules governing how cases are selected, and how the composition of the bench to hear a case is selected.
- The Supreme Court must respect the role and mandate of independent constitutional commissions, particularly the JSC and the HRCM, and allow them to fulfill their constitutional functions without undue or unlawful interference.
- Any exercise of the Court's *suo motu* power must be undertaken in an impartial manner that is consistent with human rights, due process and the rule of law.
- The Court must support adequate training and continuing legal education for judges and lawyers on substantive legal developments, constitutional and judicial procedure, judicial ethics, gender sensitivity and protection of human rights under both Maldivian and international law.

International Community including SAARC

- The international community (other states, UN and other international and regional intergovernmental organisations, and international civil society), including the South Asian Association for Regional Cooperation (SAARC) – a regional intergovernmental body of which the Maldives is a member State – should support Maldivian authorities in capacity-building for judges, lawyers, police and other stakeholders in the justice system, including on human rights.
- The international community should maintain its focus on the situation in the Maldives by ensuring there continues to be discussion at the UN Human Rights Council of the crisis in human rights and the rule of law in the Maldives, by continued monitoring through the UN Special Procedures and, where necessary, by providing targeted technical support.

METHODOLOGY

The mission was jointly conducted by SAHR and the ICJ. The SAHR team was represented by: I. A. Rehman, Bureau Member of SAHR and Secretary General of the Human Rights Commission of Pakistan; Ravindran Daniel, Bureau Member of SAHR and former Director of the UN Human Rights Divisions in East Timor, Sudan and Libya; Dr. Deepika Udagama, Bureau Member of SAHR, current Head of the Department of Law at University of Peradeniya, former member of the Human Rights Commission of Sri Lanka and former Chairperson of the Board of Trustees of the UN Voluntary Fund for Technical Cooperation in the Field of Human Rights; and Anushaya Collure, representative of the SAHR Secretariat. The ICJ was represented by Nikhil Narayan, senior legal advisor for South Asia.

The mission's Terms of Reference (TOR) were to examine and assess:

1. The functioning of democratic institutions, their ability to ensure good governance and their respect for the principle of separation of powers.
2. Independence of the judiciary, including due process in the administration of justice and application of criminal justice, national security and counter terrorism legislation and practices.
3. Freedom of expression, media, association, assembly and trade unions, and the protections of human rights defenders.
4. Protection of women, children, minorities and marginalized groups.
5. International and regional commitments and the role of SAARC.
6. All other aspects relevant to the mandate of the mission.

This report is based on meetings the SAHR-ICJ delegation had with members of the Maldivian government, independent institutions, political parties, the legal community, the media and the civil society. In addition, the mission's briefing materials included reports produced by international organizations and Maldivian NGOs. Transparency Maldives briefed the mission members and also made available to the mission its published and unpublished reports and documents. The legal analysis contained in this report is based on a review of the Maldivian Constitution and relevant laws, as well as international human rights law and standards, including as codified in international treaties to which the Maldives is a State Party and therefore legally bound.

The mission would like to thank all those who shared their views concerning the current political and human rights situation of the Maldives with the mission, including: the Prosecutor General's Office, the Police Integrity Commission, the Maldivian Democratic Party (MDP) Foreign Relations Committee, the legal team of former President Nasheed, the legal team of former Defence Minister Colonel (Retd.) Mohamed Nazim, former Environment Minister Mohamed Aslam, former Home Minister Hassan Afeef, former Health Minister Dr. Aminath Jameel, former Chief Justice Ahmed Faiz, Minivan News, Raajje TV, Shaheen Hameed, Hassan Maaz Shareef, Mohamed Faisal, Fareesha Abdullah, former JSC member Aishath Velezinee, the family of missing journalist Ahmed Rilwan, Transparency Maldives, Youth Integrity Network (YIN), DhiYouth Movement (DYM), The Youth Initiative (TYI), Hope For Women, Advocating the Rights of Children (ARC) and the Maldivian Democracy Network (MDN). The mission regrettably was not afforded an opportunity to meet with the HRCM, despite several formal written and verbal requests by both SAHR and the ICJ.

DOMESTIC AND INTERNATIONAL LEGAL FRAMEWORK

The mission's observations and conclusions are based on an analysis of human rights obligations of the Maldives under its Constitution and relevant international human rights treaties and standards.

Maldives Constitution (2008)

The Maldives Constitution (2008) has an extensive fundamental rights chapter encompassing many internationally recognised fair trial and due process rights. Among others, Articles 20 and 42 establish the principle of equality before the law, and the right to a fair, public, independent, impartial and transparent hearing, respectively. Article 48 enshrines the right to habeas corpus. Articles 51 and 53 ensure the right to adequate time and facilities to prepare a defence, and the right to legal counsel, respectively. Article 56 ensures the right to appeal.

Articles 141 and 142 of the Maldives Constitution provide for the judiciary and affirm its independence. Article 141 states, in pertinent part:

(a) The judicial power is vested in the Supreme Court, the High Court, and such Trial Courts as established by law. (b) The Supreme Court shall be the highest authority for the administration of justice in the Maldives. The Chief Justice shall be the highest authority on the Supreme Court. ... (c) No officials performing public functions, or any other persons, shall interfere with and influence the functions of the courts. (d) Persons or bodies performing public functions, through legislative and other measures, must assist and protect the courts to ensure the independence, eminence, dignity, impartiality, accessibility and effectiveness of the courts.

Article 142 of the Constitution states: "The Judges are independent, and subject only to the Constitution and the law. When deciding matters on which the Constitution and law is silent, Judges must consider Islamic Shari'ah. In the performance of their judicial functions, Judges must apply the Constitution and the law impartially and without fear, favour or prejudice."

The Maldives Constitution also addresses other key conditions for judicial independence.

Articles 157 to 166 of the Constitution establish the composition, appointment process and responsibilities of the JSC. The Constitution states that the JSC is to be an independent and impartial institution (Article 157(b)). The JSC is entrusted with the powers, among others, to appoint, promote or transfer judges other than Supreme Court Judges, to make recommendations to the president on the appointment of the Chief Justice and Judges of the Supreme Court and to investigate complaints and take disciplinary action against the judiciary, including recommendations for removal (Article 159(a) and (b)). The composition of the 10-member JSC is set forth in Article 158 of the Constitution and described in greater detail below.

Article 148 guarantees lifetime appointments of judges, with compulsory retirement at age 70. Article 154 establishes the process for removal of judges. There must be a finding by the JSC of gross incompetence or gross misconduct, followed by a resolution recommended by the JSC to the People's Majlis (Parliament) that is passed by a two-thirds majority in the Parliament. The judge may only be removed at the conclusion of the process. Article 152 provides that Parliament will set the salary for judges.

International Law

The Maldives is a party to most of the major international human rights treaties, including the ICCPR and its First Optional Protocol (acceded to in 2006), Convention against Torture (CAT, 2004) and its Optional Protocol (2004), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW, 1993), International Convention on the Elimination of all forms of Racial Discrimination (CERD, 1984), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 2006), Convention on the Rights of the Child (CRC, 1991) and the Convention on the Rights of

Persons with Disabilities (CRPD, 2010). The Maldives signed the Convention on Enforced Disappearances (CED) in 2007, but has not yet ratified it.

Article 2(3) of the ICCPR provides that anyone whose rights recognised by the Covenant have been violated has the right to an effective remedy. States must ensure that anyone who claims their rights have been violated has access to an effective remedy from “competent judicial, legal or administrative authorities.” Article 9 of the ICCPR sets out guarantees against arbitrary detention. Article 14 of the ICCPR sets out fundamental guarantees for the right to a fair trial, including that “[a]ll persons shall be equal before the courts and tribunals” and that “[i]n the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. [...]” The Human Rights Committee, mandated by the ICCPR to interpret and apply its provisions, has said that Article 14 of the ICCPR requires States to ensure the “actual independence of the judiciary from political interference by the executive branch and legislature” through measures including procedures and qualifications for appointment as well as protections “against conflicts of interest and intimidation.”¹

Further elaboration is provided by the *UN Basic Principles on the Independence of the Judiciary*.² Principle 1 affirms that “[t]he independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country” and that it is “the duty of all governmental and other institutions to respect and observe the independence of the judiciary.” Principle 2 provides that the judiciary is to “decide matters before them impartially, on the basis of fact and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter for any reason.” The Basic Principles also address, among other things: freedom of expression and association; qualifications, selection and training; professional secrecy and immunity; and discipline, suspension and removal of judges.

As part of the obligation of non-discrimination under Articles 2(1), 25 and 26 of the ICCPR, and as provided for by Article 10 of the Basic Principles on Independence of the Judiciary, “In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status.” States should ensure that men and women have equal access to the judicial profession and take measures to actively promote gender balance within the judiciary.³

The UN Special Rapporteur on Judges and Lawyers has recommended that to ensure respect for the requirement of judicial independence and impartiality, accountability of judges should be undertaken only through or with the approval of an independent body, preferably composed entirely of judges, retired or sitting, though potentially with some representation of the legal profession or academia. No political representation, however, should be permitted.⁴ Indeed, in respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, an

¹ UN Human Rights Committee, General Comment No. 32, Right to equality before courts and tribunals and right to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

² United Nations Basic Principles on the Independence of the Judiciary, endorsed by General Assembly resolution 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

³ See, e.g., Reports of the UN Special Rapporteur on the Independence of Judges and Lawyers, UN Docs. A/66/289 and A/HRC/17/30 (2011) and A/HRC/23/43/Add.3 (2013); International Commission of Jurists, Women and the Judiciary (Geneva Forum Series no. 1), 2014; Human Rights Council, resolution 29/6 (2015) on Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, para. 2.

⁴ Reports of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/26/32 (28 April 2014), paras. 125 and 126, taken note of by Human Rights Council resolution 29/6 (July 2015), preamble, and UN Doc. A/HRC/23/43/Add.3, para. 44.

authority independent of the executive and legislative powers should be involved, with at least half of its members being judges elected by their peers.⁵

Proceedings concerning discipline or removal of judges should always be based on previously established clear rules or codes of conduct and ethics. Such proceedings should respect the fundamental guarantees of fair trial and due process and suspension or removal must be limited to instances of gross professional misconduct that renders the judge unfit to discharge his or duties.⁶

The *Bangalore Principles of Judicial Conduct* have been recognised by the United Nations as an important resource to assist national judiciaries to establish standards for ethical conduct and a framework for regulating judicial conduct.⁷ The Bangalore Principles emphasize the importance of a “competent, independent and impartial tribunal”, and “public confidence in the judicial system and in the moral authority and integrity of the judiciary.” “Independence” is elaborated as both individual and institutional independence, including freedom from, and the appearance “to a reasonable observer” to be free from, “inappropriate connections with, and influence by, the executive and legislative branches of government.” “Impartiality” is similarly elaborated to require a judge to recuse him or herself from a proceeding if there is actual favour, bias or prejudice or personal knowledge of disputed facts, or “if it may appear to a reasonable observer that the judge is unable to decide the matter impartially.” “Integrity”, according to the *Bangalore Principles*, requires judges to act honourably and free from deceit, and be virtuous in behaviour and character. The *Bangalore Principles* also emphasize other values, including propriety, competence, diligence and equality of treatment of all who appear before the courts. The *Measures for the Effective Implementation of the Bangalore Principles*, adopted in 2010, provide further detailed guidance on such issues as assignment of cases, transparency in the exercise of judicial office, and the appointment and removal of judges.

The *Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence*⁸ also set forth guidance on how to preserve judicial independence, ethics and accountability, of particular importance in the Maldives as a member of the Commonwealth. The *Latimer House Guidelines* recommend independent mechanisms for judicial appointments based on quality, merit and competence of candidates, progressively removing gender imbalances and other discriminatory factors, continuing legal education, including on human rights, for judges and lawyers and accountability through a code of ethics while ensuring due process rights for judges who are accused of misconduct. The Special Rapporteur and the Human Rights Committee have also recommended on several occasions that, in order to strengthen judicial independence, appointment of judges should be undertaken by an independent authority whose own composition is itself sufficiently independent and free of political influence from both the legislative and executive branches to ensure that it acts in an objective, fair and independent manner when appointing judges.⁹ The composition of such an independent

⁵ European Charter on the Statute for Judges, Principles 1.3 and 5.1; Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/11/41 (2009), para. 28.

⁶ Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/26/32 (28 April 2014), paras 118 and 120; Basic Principles on the Independence of the Judiciary, Principles 17, 18 and 19.

⁷ Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity, November 2002, and endorsed by ECOSOC resolution 2006/23, recalled by UN Human Rights Council resolutions including most recently resolution 29/6 adopted in July 2015.

⁸ Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence, adopted 19 June 1998, at a meeting of representatives of Commonwealth Parliamentary Association, the Commonwealth Lawyers’ Association, and the Commonwealth Legal Education Association.

⁹ See Reports of the Special Rapporteur on the Independence of Judges and Lawyers, UN Docs. A/HRC/11/41 (2009), paras. 26-28, and A/HRC/26/32 (2014), paras. 91, 125 and 126; see also Concluding Observations of the Human Rights Committee: Slovakia, 08/04/1997, UN Doc. CCPR/C/79/Add.79 (1997), para. 18; Concluding Observations adopted by the Human Rights Committee at its 105th Session, 9-27 July 2012, UN Doc. CCPR/C/ARM/CO/2 (2012), para. 21.

appointment body should not include political representatives and, while it may have some representatives of the legal profession or academia, should consist of a majority of judges.¹⁰ The Human Rights Committee has also consistently recommended that supervision and discipline of judicial conduct should be judicial, and not parliamentary, in character in order to ensure judicial independence.¹¹

The *Commonwealth Principles on the Accountability of and the Relationship Between the Three Branches of Government (Latimer House Principles)*¹² underscore the importance of respect among all branches for the principle of separation of powers. The *Latimer House Principles* state that the three branches are the “guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability[,]” and that “[i]nteraction, if any, between the executive and the judiciary should not compromise judicial independence.”¹³ Likewise, relations between the parliament and judiciary should be governed by “respect for parliament’s primary responsibility for law making on the one hand and for the judiciary’s responsibility for the interpretation and application of the law on the other hand.”¹⁴ The *Latimer House Principles* further state that “[e]ach institution must exercise responsibility and restraint in the exercise of power within its own constitutional sphere so as not to encroach on the legitimate discharge of constitutional functions by the other institutions.”¹⁵

The UN Human Rights Council, of which the Maldives is presently a member, adopts every one to two years a resolution on “Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers”. The Maldives is in fact among the “core group” of six states who present the resolution. The most recent resolution was adopted by consensus in early July 2015. The resolution stresses that “the security of tenure of judges is an essential guarantee of the independence of the judiciary and that grounds for their removal must be explicit with well-defined circumstances provided by law, involving reasons of incapacity or behaviour that renders them unfit to discharge their functions, and that procedures upon which the discipline, suspension or removal of a judge are based should comply with due process.”¹⁶ It also affirms the “importance of ensuring accountability, transparency and integrity in the judiciary as an essential element of judicial independence and a concept inherent to the rule of law, when it is implemented in line with the Basic Principles on the Independence of the Judiciary and other relevant human rights norms, principles and standards.”¹⁷ Among the standards specifically invoked by the resolution are the Basic Principles on the Independence of the Judiciary, the Guidelines on the Role of Prosecutors and the Bangalore Principles of Judicial Conduct.¹⁸

PART ONE: BACKGROUND TO THE PRESENT CRISIS – STALLED TRANSITION TO DEMOCRACY

The political system in the Maldives prior to 2008 was an authoritarian system governed through absolute dictatorship by, first, a sultanate and then, in 1968 when the country

¹⁰ Reports of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/11/41 (2009), para. 28, and A/HRC/26/32 (2014), paras. 91, 125 and 126.

¹¹ See, e.g., Concluding Observations of the Human Rights Committee: Sri Lanka, 12/01/2003, UN Doc. CCPR/CO/79/LKA (2003), para. 16.

¹² Commonwealth Principles on the Accountability of and the Relationship Between the Three Branches of Government, agreed by Law Ministers and endorsed by the Commonwealth Heads of Government Meeting, Abuja, Nigeria 2003 (“*Latimer House Principles*”), available at <http://www.cpahq.org/cpahq/cpadocs/Latimer%20House%20Principles.pdf>.

¹³ See *Latimer House Principles*, Principles I and IV.

¹⁴ *Latimer House Principles*, Principle II.

¹⁵ *Latimer House Principles*, Principle II.

¹⁶ Resolution 29/6 (July 2015), para. 3.

¹⁷ Resolution 29/6 (July 2015), preamble.

¹⁸ Resolution 29/6 (July 2015), preamble.

became a republic, by the President.¹⁹ The justice system during this time was an administrative system overseen by the Ministry of Justice, which, in turn, was under the Executive and controlled by the President.²⁰ Civil servants were appointed as judges by the Justice Ministry without any discernible, objective criteria or qualifications for their appointments.²¹ Judicial accountability also rested solely with the Justice Ministry. Despite several sitting judges having long-standing complaints against them, including criminal convictions for serious crimes in some cases, no disciplinary action had ever been taken against any of them.²² The judiciary under the prior system functioned as a tool of the regime, issuing sentences and, in many instances, even actual verdicts provided by the Justice Ministry.²³ Article 282(d) of the new 2008 Constitution gives an indication of how the justice system functioned under the prior system: "All matters pending on appeal to the President at the commencement of this Constitution shall henceforth be dealt with and deemed to be pending before the Supreme Court. There shall be no further recourse of appeal from the High Court to the President from then onwards." In other words, the justice system prior to 2008 was an extension of the President, who was himself the ultimate judicial authority in the country.

The Maldives' transition to democracy began with the ratification of a new Constitution²⁴ on 7 August 2008, which paved the way for the country's first multi-party presidential elections on 8 October 2008.²⁵ On 28 October 2008, Maldivian Democratic Party (MDP) leader, Mohamed Nasheed, was elected the fourth president of the Maldives after achieving a 53% majority during the run-off election. In May 2009, the country undertook its first multi-party parliamentary election for the 77 elected seats in the new Parliament (People's Majlis).²⁶

Despite the initial peaceful transition away from dictatorship, the consolidation of democracy has been fraught with many challenges, including lack of experience in constitutional governance and the rule of law, inadequate laws and procedures, widespread corruption, lack of transitional justice and weak accountability, a constrained civil society and, most notably, vested interests of entrenched and still-influential loyalists of the old regime. In this regard, the government faced resistance towards judicial reform by some in the judiciary who were appointed by the pre-reform government and had an interest in maintaining the status quo.

Following the parliamentary elections in May 2009, the JSC was appointed by then-President Mohamed Nasheed.²⁷ The JSC was created under the new Constitution, which affirms that it is to be "an independent and impartial institution", and mandates it to deal with, among other things, judicial appointments, promotions, transfers and discipline.²⁸ As part of the transitional arrangements during the two-year transitional period, Article 285 of the Constitution mandated the JSC to conduct a vetting process for

¹⁹ See U. Phadnis, and E.D. Luithui (1981) 'The Maldives Enters World Politics', *Asian Affairs*, 8:3, pp. 166-179.

²⁰ See <http://velezinee.aishath.com/content/note-maldives-judiciary-need-redress-constitution-article-285> (accessed 28 May 2015).

²¹ See <http://velezinee.aishath.com/content/note-maldives-judiciary-need-redress-constitution-article-285> (accessed 28 May 2015).

²² See <http://velezinee.aishath.com/content/note-maldives-judiciary-need-redress-constitution-article-285> (accessed 28 May 2015).

²³ <http://velezinee.aishath.com/content/note-maldives-judiciary-need-redress-constitution-article-285> (accessed 28 May 2015).

²⁴ The 2008 Constitution established democratic institutions and structures of governance (Chapters III, IV, VI, and VII), provided for interim arrangements for the functioning of institutions in the initial period of transition (Chapter XIV), enshrined the separation of powers of the three branches of the State (Articles 5,6, and 7), and introduced mechanisms for accountability and transparency.

²⁵ The 2008 Constitution also made possible the registration and functioning of political parties (Article 30(a)).

²⁶ The Parliament was initially comprised as follows: Dhivehi Rayyithunge Party (DRP) – 28 seats, Maldives Democratic Party (MDP) – 26 seats, Dhivehi Qaumeey Party (DQP) – 2 seats, People's Alliance (PA) – 7 seat, Republican Party (JP) – 1, and Independents – 13 members. This composition underwent substantial changes due to parliamentary floor crossing. Thus, by December 2011, MDP had acquired 34 seats in the Parliament.

²⁷ Arts. 158 and 281, Maldives Const. (2008).

²⁸ Arts. 157 and 159, Maldives Const. (2008).

all judges in office at the time, assessing the qualifications for sitting judges against constitutional requirements, and determining whether to reappoint them to their respective positions.

As noted above, the judiciary under the prior system was an extension of the regime, appointed by, beholden to, and pronouncing sentences and verdicts on behalf of (and often dictated by) the Ministry of Justice. The President was the ultimate judicial authority, acting as the final arbiter of appeals from the High Courts. Furthermore, until 2003 the only qualification required to become a judge under the prior system was the successful completion of a 6-month certification programme that did not have a prerequisite for entrance.²⁹ From 2003 onwards, judges were required to take a part-time one-year certificate course in "Justice Studies".³⁰ As a result, many of the sitting judges under the pre-2008 regime had little or no formal legal education. In this way, the judiciary under the prior system had neither the requisite capacity nor independence required to function competently. The vetting process to be carried out by the JSC in accordance with Article 285 of the 2008 Constitution was intended to address these and other potential deficiencies and reappoint a judiciary that would be independent, impartial and competent.

There were, however, indications that the judicial vetting process was not carried out by the JSC in the manner foreseen by the new Constitution. Article 149(a) of the 2008 Constitution provides that, to be appointed as a judge, a person must among other things, have the necessary "educational qualifications, experience and recognized competence", and be of "high moral character". Article 149(b) of the Constitution requires that all judges must be "follower[s] of a Sunni school of Islam", and must not have been convicted "for an offence for which a *hadd* is prescribed in Islam, criminal breach of trust, or bribery."

Disagreement emerged in the Maldives as to whether the "high moral character" requirement under Article 149(a) ought to be interpreted narrowly to focus solely on criminal offences or more broadly to include administrative offences in accordance with the spirit of the transitional vetting process under Article 285.³¹ When the JSC adopted a narrow interpretation of the provision, the government and civil society objected that such a narrow vetting standard focusing only on criminal convictions would ignore administrative convictions for serious ethical violations by judges and magistrates under the prior regime.³² The JSC eventually revised its criteria to include such administrative actions, but claims of politicization persisted. Ultimately, only 36 judges were subjected to further review due to prior convictions and, of these, only six were disqualified.³³

By 7 August 2010, the JSC had reinstated 191 out of 197 sitting judges and magistrates from the prior regime amidst continuing allegations of political interference and criticism, including from one member of the JSC itself, that the JSC had failed to establish clear vetting criteria and that the process lacked transparency.³⁴ The UN Special Rapporteur

²⁹ <http://velezinee.aishath.com/content/note-maldives-judiciary-need-redress-constitution-article-285> (accessed 28 May 2015).

³⁰ <http://velezinee.aishath.com/content/note-maldives-judiciary-need-redress-constitution-article-285> (accessed 28 May 2015).

³¹ See International Commission of Jurists, *Maldives: Securing an Independent Judiciary in a Time of Transition*, February 2011, para. 30, available at <http://www.icj.org/maldives-securing-an-independent-judiciary-in-a-time-of-transition/>; Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/23/43/Add.3 (2013), para. 23.

³² See International Commission of Jurists, *Maldives: Securing an Independent Judiciary in a Time of Transition*, Feb. 2011, para. 30.

³³ See International Commission of Jurists, *Maldives: Securing an Independent Judiciary in a Time of Transition*, February 2011, para. 33; Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/23/43/Add.3 (2013), para. 23.

³⁴ See International Commission of Jurists, *Maldives: Securing an Independent Judiciary in a Time of Transition*, February 2011, para. 32-33; Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/23/43/Add.3 (2013), para. 23.

on the Independence of Judges and Lawyers, Ms. Gabriela Knaul, also observed in her report on her mission to the Maldives in 2013 that, while the 2008 Constitution changed the structure of the judiciary, “the same people who were in place and in charge, conditioned under a system of patronage, remained in their positions.”³⁵

Lending credence to the allegations of politicisation was the composition of the JSC itself. Article 158 of the Constitution sets out the composition of the 10-member JSC:

- The Speaker of the People’s Majlis;
- A Judge of the Supreme Court (other than the Chief Justice) elected by the judges of that court;
- A Judge of the High Court elected by the judges of that court;
- A Trial Court Judge elected by the judges of that court;
- A Member of Parliament appointed by the Parliament;
- A member of the general public appointed by the Parliament;
- The Chair of the Civil Service Commission (appointed by the President from a list approved by the Parliament);
- A person appointed by the President;
- The Attorney-General (appointed by the President under article 133); and
- A lawyer elected from among the lawyers licensed to practice in the Maldives.

Following the 2009 parliamentary election, the former regime’s party, PPM, controlled the majority in Parliament. At the same time, under the vetting process implemented under the 2008 Constitution, the judges selected to serve on the JSC throughout the transition period were necessarily appointees of the prior regime. In practice, then, the JSC itself was dominated by loyalists of the prior regime – three members of or appointed by the PPM-majority Parliament, as well as three judges and a Civil Service Commission member previously appointed by former President Gayoom.³⁶ The Special Rapporteur, in her 2013 mission report, also expressed concern over the composition of the JSC and its widespread perception as inadequate and highly politicized.³⁷

The “Transitional Matters” chapter of the 2008 Constitution provides for an interim Supreme Court to temporarily hold office during the transition period. The Constitution explicitly provides that the interim Supreme Court would continue only “until the establishment of the Supreme Court as provided for in Article 145.” The Constitution specifies that the President is to appoint the Chief Justice and other Supreme Court Judges, after consulting the JSC and confirmation of the appointee by a majority of the members of the People’s Majlis present and voting.³⁸ However, Article 145 leaves such basic questions as the court structure and number of judges to be determined by legislation (i.e., a Judges Act and a Judicature Act).³⁹ Political impasse between the executive and legislature, however, led to delays in the adoption of these two laws, which in turn resulted in delay of the appointment of the permanent bench.

³⁵ Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/23/43/Add.3 (2013), para. 51.

³⁶ An ICJ delegation led by Dr. Leandro Despouy, former Special Rapporteur on the Independence of Judges and Lawyers, conducted a fact-finding visit to the Maldives in September 2010 to assess the independence of the judiciary since the transition. The report of the mission documented in detail the ongoing problems surrounding the real and perceived politicization of the JSC during the controversial vetting process and beyond, and its detrimental impact on judicial independence, the rule of law and democratic consolidation in the country. See International Commission of Jurists, *Maldives: Securing an Independent Judiciary in a Time of Transition*, February 2011.

³⁷ Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/23/43/Add.3 (2013), paras. 44 and 49.

³⁸ Arts. 147 and 148, Maldives Const. (2008).

³⁹ The Judges Act and the Judicature Act establish the number and qualifications requirements of judges to be appointed to each court, and the administration and organization of the Maldivian judiciary, including procedural provisions governing timelines for appeals and other judicial administration, respectively. See Judges Act of the Maldives, 2010, Act No. 13/2010; Judicature Act of the Maldives, 2010, Act No. 22/2010, available at <http://www.mvlaw.gov.mv/pdf/ganoon/chapter1/22-2010eng.pdf>.

In early August 2010, the members of the interim Supreme Court sent a letter to President Nasheed announcing their unilateral intention to remain permanently on the bench. On 7 August 2010, the President responded to the interim Court's letter by declaring the Supreme Court defunct and ordering the Maldives National Defence Force (MNDF) to take control of the Supreme Court premises. On a petition the next day by the Prosecutor General acting under his constitutional authority to uphold the constitutional order (Article 223(k)), the Civil Court restored control of the Supreme Court to the Chief Justice with a finding that the President was in violation of the Constitution. On 11 August 2010 the Judges Act was finally adopted and, on the same day, hurried appointments were made of six Supreme Court Judges and the Chief Justice. All five interim Justices were reappointed.

Political tensions escalated again in 2012 with the arrest and detention of Chief Judge of the Criminal Court, Abdullah Mohamed.⁴⁰ On 16 January 2012, the MNDF arrested Judge Mohamed on the orders of then-President Nasheed, for allegedly failing to follow due process, disregarding higher court decisions, delaying cases involving opposition party members, and improperly releasing suspects of serious crimes without hearing.⁴¹

Judge Abdullah Mohamed's arrest was widely condemned at the time as an act of executive interference that undermined the independence of the judiciary. The Supreme Court and High Courts, as well as then-Prosecutor General Ahmed Muizz, condemned the arrest of Judge Mohamed as unlawful.⁴²

In the weeks following the arrest, ongoing anti-government protests, led by the opposition parties citing a range of grievances, escalated until President Nasheed resigned on 7 February 2012. The circumstances of his resignation remain controverted. Former President Nasheed, the MDP and other supporters in the Maldives, as well as some international observers, have maintained that the resignation was made under duress and amounted to a coup d'état by loyalists of the former Gayoom regime. On the other hand, opponents of President Nasheed as well as his successor, then-Vice President Waheed Hassan, have maintained that the resignation was voluntary. Others, including the Commonwealth, of which the Maldives is a member State, were of the view that the circumstances surrounding the resignation were inconclusive and so have refrained from describing it as a coup. In any event, immediately following his resignation on 7 February 2012, an arrest warrant was issued for President Nasheed and Judge Mohamed was released on the same day.

Fresh multi-party presidential elections were eventually scheduled for 7 September 2013 and finally concluded on 16 November 2013, electing Yameen Abdul Gayoom of PPM (the former regime's party) and former President Gayoom's half-brother. In the first round of balloting in the 7 September 2013 presidential election, no candidate had an outright winning majority and the Jumhooree Party (JP) fell short of qualifying for the second round run-off election. A week later, on 15 September 2013, the JP filed a case alleging systematic irregularities in the conduct of the election by the Election

⁴⁰ The Maldives has a three-tier judicial system: The trial level courts include the magistrate courts in the outer atolls and the Superior Courts in Malé, including the Criminal Court, Juvenile Court, Civil Court, etc. The High Court is the appellate level court, and is situated in Malé. The apex court is the Supreme Court. Thus, Chief Judge Abdullah Mohamed is the head judge of the Criminal Court bench; he does not have standing in the High Court or Supreme Court, or in any of the other Superior Courts.

⁴¹ <http://minivannews.com/politics/chief-judge-held-in-good-condition-at-mndf-training-center-girifushi-30952#sthash.q3LJTHqI.dpuf> (accessed 25 May 2015).

⁴² According to the Prosecutor General (PG), the police had failed to follow due procedure that requires them to go through the PG's Office to obtain an arrest warrant for a judge from the High Court. He also accused MNDF of violating the Constitution⁴² as it is the mandate of the police, not the military, to investigate crime, and ordered an investigation led by the HRCM. International outcry also accompanied the response to the arrest of the Chief Judge, with numerous calls on the executive to respect the legal procedures for the investigation of alleged misconduct of a judge. See Report of the Special Rapporteur on Independence of Judges and Lawyers, UN Doc. A/HRC/23/43/Add.3 (2013), para. 27 and fn. 6.

Commission and sought an annulment of the first round results and other orders. On 7 October 2013, one month after the first-round election, the Supreme Court ruled in favour of petitioners and annulled the election results, citing an apparently “secret” police report that alleged voter irregularities and fraud.⁴³ In the same ruling, the Court issued a “16-point electoral guideline” instructing the Election Commission on how it should carry out its mandate and conduct elections.⁴⁴

On 22 March 2014, the country’s second multi-party parliamentary elections were held, in which a coalition led by the prior regime PPM gained control of the Parliament.

PART TWO: JUDICIAL INDEPENDENCE AND ACCOUNTABILITY

The clear pattern that emerged during the course of the mission’s visit was the politicisation of the justice system and its manipulation as an instrument to further vested interests among the government and the ruling party. The judiciary has been a willing participant in this politicisation, as is evident from the events that have transpired since the change of government in 2013.

The ICCPR and the *UN Basic Principles on the Independence of the Judiciary* stress the importance of judicial impartiality and independence from political interference, both in terms of institutional guarantees, and in terms of the position and actions of individual judges in deciding particular cases. Impartiality is defined under international law by both subjective and objective criteria, requiring the absence of actual bias, animosity or sympathy towards any of the parties, as well as the perception or appearance to “a reasonable observer” of such absence of bias.⁴⁵ The *Bangalore Principles of Judicial Conduct* similarly emphasize the importance of independence, impartiality and integrity, as well as the *appearance* of independence, impartiality and integrity “to a reasonable observer”, as essential in maintaining public confidence in the judiciary.

The judiciary has a duty to act within its constitutional sphere of competence, respecting the separation of powers and the functions of the other institutions of government.⁴⁶ The *Latimer House Principles* note that each institution must not encroach on the legitimate discharge of constitutional functions by other institutions.⁴⁷ The *Latimer House Guidelines* also note that “legitimate public criticism of judicial performance is a means of ensuring accountability[,]” and that “criminal law and contempt proceedings are not appropriate mechanisms for restricting legitimate criticism of the courts.”⁴⁸ The *Latimer House Guidelines* emphasize the importance of safeguarding the role and functions of “non-judicial and non-parliamentary institutions” such as the Human Rights Commission, independent legal profession, Ombudsman’s Office, and other independent institutions.⁴⁹

⁴³ See Supreme Court verdict on Jumhooree Party vs. Elections Commission, available at http://www.foreign.gov.mv/new/assets/downloads/Verdict_Unofficial_English.pdf (accessed 29 May 2015); see also the English translation of the leaked “secret” police report, available at <http://www.dhivehisitee.com/election-2013/comment-piece/police-forensic-experts-report-behind-supreme-court-verdict-annulling-79-election/> (accessed 29 May 2015).

⁴⁴ See Supreme Court verdict on Jumhooree Party vs. Elections Commission, available at http://www.foreign.gov.mv/new/assets/downloads/Verdict_Unofficial_English.pdf (accessed 29 May 2015); <http://minivannews.com/politics/translation-supreme-court-verdict-on-jumhooree-party-vs-elections-commission-68169#sthash.10zmHLMh.dpbs>.

⁴⁵ See UN Human Rights Committee, General Comment 32, Right to equality before courts and tribunals and right to a fair trial, UN Doc. CCPR/C/GC/32 (2007).

⁴⁶ 1995 Beijing Statement of Principles on the Independence of the Judiciary; 1959 Delhi Congress Report, ICJ, Congresses and major conferences, Geneva, 1952-2012.

⁴⁷ Latimer House Principles, Principle II.

⁴⁸ Latimer House Guidelines, Guideline VI(I)(b) on judicial accountability.

⁴⁹ Latimer House Guidelines, Guideline VIII.

“Contempt of Court” Proceedings Against Election Commission Members

On 6 February 2014, the Supreme Court issued a regulation vesting itself with the power to investigate, prosecute and adjudicate any matter *suo motu* (on its own initiative).⁵⁰ Article 143 of the Constitution, establishing the Court’s jurisdiction, does not expressly grant original jurisdiction to the Supreme Court on any matters. The Court justified its *suo motu* power on the basis of Articles 141, 144 and 156 of the Constitution, which state that the Court is the “highest authority for the administration of justice” (Article 141(b)), outline the powers of the Court in constitutional matters (Article 144) and grant the Court the power to “protect and regulate” their administrative process (Article 156). The Court did not invoke any provision of Article 143 (on jurisdiction) in justifying its expanded jurisdiction. The regulation issued by the Supreme Court also did not set forth clear guidelines on the scope of its powers and the circumstances or manner in which they may be exercised.

Shortly after issuing the regulation in February 2014, the Supreme Court initiated a *suo motu* contempt of court case against the Election Commission. The Court accused four members of the Commission of contempt of court for alleged public comments criticising the cumbersome nature of the Court’s “16-point electoral guidelines” issued the prior year in its ruling in the Jumhooree Party case.⁵¹ The four members of the Election Commission were summoned to an unannounced trial on 12 February 2014. After being given case documents just minutes before the hearing began, the Commission was given only until 17 February to respond. The case documents did not include any documents outlining specific charges. The charge sheet, which did not specify the acts constituting the charges, was handed to the Commission only minutes before the trial began on 17 February. At the 17 February hearing, the lawyer for the Election Commission asked the Supreme Court to specify the charges, arguing that the Commission could only respond if the Court clarified which statement made – at which location, time and date – amounted to contempt of court. The Commission’s lawyer also asked the Court to specify which of the Commission’s actions constituted disobedience, and to which Court order. Chief Justice Ahmed Faiz did not clarify either of these queries and instead instructed the lawyer to respond to the charges to the extent that he understood them.

On 9 March 2014, the Court dismissed the Election Commission’s President, Fuad Thowfeek, and Vice President, Ahmed Fayaz Hassan, from their posts. The Court issued a six-month suspended sentence against Mr. Thowfeek, and barred him from holding office for three years.

The case prompted domestic and international observers to raise concerns. The European Union Election Observer Mission (EUEOM) noted that the ruling was “clearly an intrusion by the judiciary on the role of the parliament, and a violation of separation of powers.”⁵² The EUEOM further noted that “the fact that this case against the EC was taking place for the duration of the elections had an intimidating impact on the commissioners, created pressure on them, and undermined their freedom of action.”⁵³

The *Latimer House Guidelines* emphasize the importance of independent institutions and that “criminal law and contempt proceedings are not appropriate mechanisms for restricting legitimate criticism of the courts.”⁵⁴

⁵⁰ Based on unofficial translation of the Dhivehi regulation by local civil society consultant.

⁵¹ English translation of the guideline available at <http://minivannews.com/politics/translation-supreme-court-verdict-on-jumhooree-party-vs-elections-commission-68169#sthash.aUsMOI89.dpbs> (accessed 6 June 2015).

⁵² http://www.eueom.eu/files/pressreleases/english/eu-eom-maldives2014-final-report_en.pdf (accessed 28 May 2015).

⁵³ Ibid.

⁵⁴ Latimer House Guidelines, Guideline VI(I)(b) on judicial accountability, and VIII.

The Election Commission is a constitutionally mandated independent institution whose mandate, powers and responsibilities are set forth in Articles 167 to 178 of the Constitution. Article 177 prescribes:

A member of the Elections Commission shall be removed from office only for the reasons specified in article (a), and in the manner specified in article (b):

- (a) on the ground of misconduct, incapacity or incompetence; and
- (b) a finding to that effect by a committee of the People's Majlis pursuant to article (a), and upon the approval of such finding by the People's Majlis by a majority of those present and voting, calling for the member's removal from office, such member shall be deemed removed from office.

The Supreme Court's order for removal from office of the Election Commission members therefore appeared to abuse its contempt powers and usurp the exclusive power of removal explicitly given to the Parliament under the Constitution.

"Treason" Charges Against Members of Human Rights Commission of the Maldives

The Supreme Court invoked its *suo motu* jurisdiction a second time in September 2014, against the HRCM. In its July 2014 submission to the UN Human Rights Council for the Maldives' 2015 UPR review, the HRCM noted that the Maldivian judicial system was controlled and influenced by the Supreme Court, which had weakened the lower judiciary. In response, the Supreme Court initiated a *suo motu* proceeding into the HRCM in September 2014 and charged members of the constitutional body with "undermining the Constitution" and "high treason."⁵⁵

After conducting two hearings in September 2014, in which members of the HRCM were summoned before the Supreme Court for questioning, the *suo motu* investigation had been indefinitely on hold. On 16 June 2015, the Supreme Court reactivated the case and declared the HRCM's UPR submission as unlawful, biased, encouraging terrorism and undermining judicial independence.⁵⁶ The Court also issued an "11-point guideline" that, among others, barred the HRCM from directly communicating with foreign organizations without government oversight.⁵⁷ The Court did not ultimately convict the individual members of any criminal charges.

The Court's action against the HRCM is a clear attempt to stifle legitimate criticism of judicial performance and the legitimate exercise of constitutional functions by an independent institution. The Court's judgment was denounced by the UN High Commissioner for Human Rights, the UN Special Rapporteur on the Independence of Judges and Lawyers, the UN Special Rapporteur on Human Rights Defenders and the President of the UN Human Rights Council, among others.⁵⁸

The Supreme Court's actions towards the HRCM breached a range of international standards. The Court's actions flagrantly contradict the UN Paris Principles relating to the status of national human rights institutions (NHRIs) and the obligation of the State to

⁵⁵ http://www.hrcm.org.mv/Publications/otherdocuments/UPR_submission_Sept_2014.pdf (accessed 27 May 2015).

⁵⁶ <http://minivannews.com/politics/supreme-court-renders-human-rights-watchdog-toothless-99848#sthash.gZCnp7OC.dpbs>.

⁵⁷ <http://minivannews.com/politics/supreme-court-renders-human-rights-watchdog-toothless-99848#sthash.gZCnp7OC.dpbs>.

⁵⁸ UN Press Releases, "Supreme Court judgement gravely undermines Maldives Human Rights Commission – Zeid", 19 June 2015; "Maldives: UN experts urge Supreme Court to reconsider decision against Maldivian Human Rights Commission", 19 June 2015; President of the Human Rights Council, letter to Asian Centre for Human Rights, 29 June 2015 and statement to the Council 26 June 2015 at the opening of General Debate on item 6 (Universal Period Review).

ensure their independence, as well as repeated resolutions of the UN General Assembly and Human Rights Council.⁵⁹ The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), for instance, explicitly affirms the right to advocate for human rights at the national and international levels, including by: communicating with intergovernmental organizations such as the UN; publishing, imparting or disseminating to others views, information and knowledge on all human rights and fundamental freedoms; and having “unhindered access to and communication with” international bodies concerning human rights. The State has an obligation to protect against any “retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action” as a consequence of the exercise of the rights referred to in the Declaration.⁶⁰

January 2015 Circular

On 27 January 2015, the Supreme Court issued an order via “circular” that effectively amended the Judicature Act. Among other things, it purported to amend the statutory appeal period set forth in the Judicature Act, reducing the appeal period of 90 days to 10 days. The circular stated that any appeal application must be submitted to the same trial court holding the hearing and it is the responsibility of this trial court to file the appeal application, with all relevant supporting documents, to the High Court within seven days after the submission of the appeal application. The High Court would then determine whether or not to grant the appeal. The Supreme Court did not give a reason as to the purpose or timing of this circular and the rule change that it purported to enact. The order raises serious concerns of basic due process and fair trial rights of defendants facing criminal charges, by significantly and arbitrarily restricting the available time to prepare and file an adequate appeal.

The same circular restructured the High Court into several regional benches and purported to empower the Supreme Court to assign judges of the High Court to any of the regional benches. This was not a measure provided for in other legislation. No criteria or procedures for making such assignments was included or subsequently announced. While matters concerning the administration of the judiciary should in principle be within the mandate of the judiciary rather than the other branches, the organisation of the High Court should, as a matter of principle, be a decision for the judges of the High Court or for an independent judicial council, and not necessarily for the Supreme Court. Further, concerns about politicization of the Supreme Court have given rise to a reasonable worry that providing itself with such powers could ultimately lead to undue interference with or reprisals against individual High Court judges by the Supreme Court.

Giving credence to this worry, on 21 July 2015, the Supreme Court unanimously decided to transfer three High Court judges to the southern branch of the appellate court.⁶¹ Two of the three judges being transferred are among the five-judge bench hearing the appeal of former Defence Minister Mohamed Nazim (the trial of whom is discussed in detail below).⁶² The transfer is viewed as a demotion, as regional appellate benches only handle appeals of magistrate court cases involving petty crimes while complex civil and

⁵⁹ Paris Principles relating to institutions for the promotion and protection of human rights, General Assembly resolution 48/134 (1994); Human Rights Council, resolution 12/12 (2009) on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, and resolution 27/18 (2014) on national human rights institutions, paras 9-11 and 18-19; General Assembly, resolution 68/171 (2014) on national human rights institutions, paras 11-15.

⁶⁰ Declaration on Human Rights Defenders, General Assembly resolution 53/144 (1999), Arts. 1, 5, 6, 9(4), 12(2).

⁶¹ <http://minivannews.com/politics/three-high-court-judges-transferred-to-southern-branch-100017#sthash.o8UxpcBh.HEJtTLAu.dpbs>.

⁶² <http://minivannews.com/politics/three-high-court-judges-transferred-to-southern-branch-100017#sthash.o8UxpcBh.HEJtTLAu.dpbs>.

serious criminal matters are heard at the Malé superior and appellate courts.⁶³ Meanwhile, just a month prior to this, on 8 June, the JSC had elevated two judges of the Criminal Court to the High Court; these two judges are the same judges that convicted Mr. Nazim to 11 years in prison on the weapons smuggling charges from which he is currently appealing.⁶⁴ Thus it remains to be seen whether the two transferred judges will be removed from the appeal case and the newly promoted judges will be replacing them on the High Court bench hearing the appeal. If so, this would raise serious concerns of conflict of interest and bias in Mr. Nazim's appeal.

Discrimination in the Appointment of Judges

The ICCPR guarantees that all citizens have equal access, without any distinctions or restrictions based on discriminatory criteria such as sex or religion, to public service in the country concerned.⁶⁵

Article 7 of the CEDAW, to which Maldives has been state party since 1997, requires the Maldives to "take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right ... to hold public office and perform all public functions at all levels of government."⁶⁶ The Committee on the Elimination of Discrimination against Women, established by the Convention, has explicitly affirmed the application of Article 7 to the judiciary, at all levels of seniority.⁶⁷ The Convention stresses that formal equality in a constitution or law is not enough; states must "ensure, through law and other appropriate means, the practical realization" of the principle of non-discrimination, including potentially through temporary special measures specifically aimed at achieving de facto equality.⁶⁸ The Committee has specifically mentioned, in this regard, "a wide range of measures ... including recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies."⁶⁹

Additional international standards have specifically stressed the need for governments to adopt measures to ensure women have equal access to the judicial profession, and to actively promote gender balance within the judiciary.⁷⁰

Principle 10 of the UN Basic Principles on the Independence of the Judiciary states that "[i]n the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office

⁶³ See <http://minivannews.com/politics/three-high-court-judges-transferred-to-southern-branch-100017#sthash.o8UxpcBh.HEJtTLAu.dpbs>.

⁶⁴ <http://minivannews.com/politics/three-high-court-judges-transferred-to-southern-branch-100017#sthash.o8UxpcBh.HEJtTLAu.dpbs>.

⁶⁵ See ICCPR, Arts. 2 and 25, guaranteeing the duty of State Parties to respect and ensure to all individuals the rights under the ICCPR without distinction of any kind, including religion, and the right of every citizen, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions, to have equal access to public service in the country.

⁶⁶ CEDAW, Art. 7.

⁶⁷ Committee on the Elimination of Discrimination Against Women, General Recommendation no 23 (1997), paras. 5, 15, 30 and 31.

⁶⁸ CEDAW, Arts. 2 and 4.

⁶⁹ Committee on the Elimination of Discrimination Against Women, General Recommendation no 23, para 15

⁷⁰ See, e.g., Reports of the Special Rapporteur on the Independence of Judges and Lawyers, UN Docs A/66/289 and A/HRC/17/30 (2011), and A/HRC/23/43/Add.3 (2013); International Commission of Jurists, Women and the Judiciary (Geneva Forum Series no. 1), 2014; Human Rights Council, resolution 29/6 (2015) on Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, para 2.

must be a national of the country concerned, shall not be considered discriminatory.”⁷¹ (emphasis added.)

At present, there are only three female judges among the nearly 200 judges and magistrates in the entire Maldivian judiciary – one in the Civil Court, one in the Family Court and one in the High Court. There are no female judges on the Supreme Court. The Special Rapporteur observed during her 2013 visit to the Maldives that there is no policy or strategy in place to increase women’s representation on the bench, and that the few women who do sit on the bench suffer regular discrimination and patronizing attitudes from the rest of the judiciary and justice system.⁷²

As discussed above, Article 149 of the Maldives Constitution sets forth the appointment criteria for the judiciary. Among others, Article 149(b) requires that a judge must “be a Muslim and a follower of a Sunni school of Islam.” This restriction of eligibility for the judiciary based on religion directly violates the non-discrimination provisions of the ICCPR and Principle 10 of the Basic Principles on the Independence of the Judiciary.

Threat of Contempt of Court to Muzzle Free Expression of Lawyers

It was reported to the mission that, in order to register to appear before the Supreme Court, lawyers are required by Court order to first sign an affidavit swearing not to criticise the Court, under penalty of contempt and disbarment. Lawyers interviewed by the mission expressed the concern that this is used to unduly restrict legitimate free expression. Particularly given the lack of a professional bar association or other independent organization to advocate for their collective interests, lawyers are afraid of speaking against arbitrary or otherwise abusive conduct by the Court, for fear of professional repercussions.

The Special Rapporteur observed in her 2013 report on her Maldives mission that the threat of contempt of court to muzzle the freedom of expression of lawyers, Court regulations restricting the ability of lawyers to express their opinions and the restrictive and punitive direct regulation of the legal profession by the executive, judiciary or legislative branch of government, rather than through independent self-governing professional bodies, contradicts the principle of independence of the legal profession.⁷³

Lawyers have a right to freedom of expression like any other individual, including to voice their opinions on legal developments and the merits of judicial decisions.⁷⁴ Restricting lawyers’ ability to criticise the Court under threat of contempt, disbarment, suspension or other professional sanction violates their right to freedom of expression.

PART THREE: UNFAIR CRIMINAL PROCEEDINGS

Article 14 of the ICCPR sets out fundamental guarantees for the right to a fair trial. Article 9 of the ICCPR includes procedural safeguards in relation to deprivation of liberty including in criminal proceedings. The Maldives Constitution has a detailed fundamental rights chapter that incorporates many of the fair trial and due process rights recognized under international law. Article 42 of the Constitution guarantees the right to a fair, public, independent, impartial and transparent hearing. Articles 51 and 53 guarantee the right to adequate time and facilities to prepare a defense, and the right to legal counsel, respectively. Article 56 guarantees the right to appeal.

⁷¹ UN Basic Principles on the Independence of the Judiciary, Principle 10.

⁷² Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/23/43/Add.3 (2013), paras. 77-79.

⁷³ See Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/23/43/Add.3 (2013), paras. 88-89.

⁷⁴ See UN Basic Principles on the Role of Lawyers, Principle 23.

A number of recent criminal proceedings have displayed a pattern of violations of due process and fair trial rights under the ICCPR and the Maldives Constitution.

The mission observed that the Maldives has no procedural laws such as a criminal procedure code, evidence code or codes of conduct for judges or prosecutors. The mission noted that the absence of these basic legal frameworks for criminal proceedings have helped enable courts and prosecutors to conduct criminal proceedings in an often arbitrary or biased manner, without regard for internationally recognised procedural safeguards and other fair trial guarantees.

Although not separately highlighted here, the treatment of the individual Commission Members in the Election Commission and HRCM cases outlined above also violated their individual fair trial rights.

Trial of Former President Mohamed Nasheed

On 13 March 2015, former President Nasheed was sentenced to 13 years in prison based on charges filed under the Terrorism Act.⁷⁵

In July 2012, the then-Prosecutor General arrested and charged President Nasheed with unlawful arrest under Section 81 of the Penal Code⁷⁶ for the arrest of Judge Abdullah Mohamed in 2012. The arrest of Judge Abdullah Mohamed indeed appeared to be unlawful, and the way in which he was removed from office undermined the independence of the judiciary. While some form of accountability should have followed from those incidents, the ICJ has condemned the specific manner in which Mr. Nasheed was ultimately tried, describing it as a gross violation of his right to a fair trial.⁷⁷

At the time, the opposition MDP criticised the arrest and charge as a politically motivated attempt to prevent Mr. Nasheed from contesting the 2013 presidential elections.⁷⁸ Due to escalating protests and increasing international pressure, by May 2013, the case against Mr. Nasheed was postponed and he was allowed to contest the election.

No further steps were taken in the case for almost two years until Muhthaz Muhsin, the new Prosecutor General appointed by President Yameen, took office. The Office of the Prosecutor General is a constitutional body mandated to carry out its responsibilities independently and impartially, "without fear, favour or prejudice," and "on the basis of fairness, transparency, and accountability."⁷⁹ On 16 February 2015, the new Prosecutor General Muhsin suddenly withdrew the initial charge of unlawful arrest under the penal code against President Nasheed without explanation.⁸⁰ On 22 February 2015, Mr. Nasheed was arrested under a new arrest warrant, this time under the new charge of terrorism under the Prevention of Terrorism Act 1990 (Act No. 10/1990) (PTA), which carries a significantly higher penalty for conviction than the unlawful arrest charge. Section 2(b) of the PTA, under which Mr. Nasheed was charged and convicted, defines terrorism to include "[t]he act or the intention of kidnapping or abduction of person(s) or of taking hostage(s)." The PTA carries a minimum sentence of 10 years for any person found guilty of terrorism without the loss of life.

⁷⁵ Prevention of Terrorism Act, Act No. 10/1990, Sec. 2, available at <http://agoffice.gov.mv/english/index.html>.

⁷⁶ Penal Code, Act No. 1/1966, Sec. 81, available at <http://agoffice.gov.mv/english/index.html>. Section 81 of the Penal Code states: "It is an offence, for any state official who has the authority to arrest a person, to arrest, in an illegal manner, a person who has not committed an offence. The penalty for such an offence shall be imprisonment or banishment for a period not exceeding three years, or a fine not exceeding MVR 2,000/-."

⁷⁷ See ICJ Press Statement and Background Brief, available at <http://www.icj.org/maldives-grossly-unfair-nasheed-conviction-highlights-judicial-politicization/>.

⁷⁸ <http://mdp.org.mv/archives/36226> (accessed 31 May 2015).

⁷⁹ See Arts. 220, et seq., Maldives Const. (2008).

⁸⁰ <http://www.maldiveshighcommission.org/news/statements/item/692-q-a-sentencing-of-former-president-nasheed> (accessed 7 June 2015).

On the morning of 23 February 2015, a court summons was issued for Mr. Nasheed to be brought under police custody to the court the same day. Mr. Nasheed's defense team was denied adequate time or notice to consult their client or to attend the hearing.

Following the 23 February hearing, the defense team was given three days to answer the charges and prepare for the next trial date of 26 February. The defense team's request for more time to prepare in light of the new charges and the large volume of documentary prosecution evidence, which was provided only on the day of the hearing, was denied by the court on the grounds that these charges were based on the same alleged facts and evidence as the earlier charges and, therefore, the defense team had had enough time to review them.

The trial therefore commenced in earnest on 26 February and continued until 13 March, when Mr. Nasheed was sentenced. While the defense had been given a large volume of documents purporting to be the prosecution evidence after the 23 February hearing, they were subsequently denied full access to much of the new and previously undisclosed evidence that was actually presented in court during the trial, including audio and video evidence played in court. The trial court repeatedly denied defense cross-examination of prosecution witnesses aimed at challenging their credibility by pointing out inconsistencies between oral testimony and written statements. The defense team was also denied the opportunity to call its own defense witnesses, based on the court's own determination that none of the defense witnesses would negate the prosecution witnesses' testimony.

The defense team recused itself on 9 March 2015, claiming unfairness in the conduct of the trial. Mr. Nasheed's repeated requests for the opportunity to obtain new counsel were denied and the court decided to proceed with the trial without legal representation.

Prosecutor General Muhthaz Muhsin as well as two of the three Criminal Court judges hearing the present case, Judge Didi and Judge Abdul Bari Yoosuf, were close confidants of Criminal Court Chief Judge Abdullah Mohamed, whose 2012 arrest under then-President Nasheed's orders was the central basis for the charges against Nasheed. They had also submitted witness statements in the 2012 investigation against Mr. Nasheed, which were re-submitted as evidence in the terrorism trial in 2015.

On the basis of these pre-existing relationships and the fact that they would otherwise be essentially serving simultaneously as witnesses and judges in the trial, Mr. Nasheed's defense lawyers requested that the two judges recuse themselves. As noted above, judicial impartiality requires the absence of actual or perceived bias or interest in the case; judges must not only be free of actual bias, but must appear to be free of bias to "a reasonable observer". A judge is required to recuse himself from a proceeding where there is or appears to be an inappropriate connection, bias, personal knowledge of disputed facts or other circumstance suggesting an inability to act impartially.⁸¹ International standards for prosecutors also affirm the obligation to act impartially, and to be seen to be acting impartially, and to refrain from playing any part in a matter in which a prosecutor or an association of the prosecutor has a personal interest or other conflict of interest.⁸²

⁸¹ See Bangalore Principles of Judicial Conduct, *supra* note 7.

⁸² UN Guidelines on the Role of Prosecutors, Guideline 13(a): "In the performance of their duties, prosecutors shall ... Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination"; UN Commission on Crime Prevention and Criminal Justice, resolution 17/2 (2008), Annex, "Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors", originally adopted by the International Association of Prosecutors in 1999, Standard 1(e) "Prosecutors shall...strive to be, and to be seen to be, consistent, independent and impartial", Standard 3 on impartiality, and 4 on role in criminal proceedings. UN Office of Drugs and Crime, *The Status and Role of Prosecutors* (2014), p. 40: "A prosecutor should not play any part in a case in which the prosecutor or the prosecutor's family or business associates have a personal, private or financial interest or association."

The apparent conflict of interest on the part of two out of the three judges trying the case clearly meant that a trial of Mr Nasheed before those judges on these charges could by no means be reasonably seen as impartial. Nor could any role the Prosecutor General played in the proceedings be seen to be impartial. Yet the Court refused the defence request and the judges did not recuse themselves.

Mr. Nasheed's legal team has not filed an appeal to date, arguing that, due to the shortened 10-day appeal period and the delay in providing the full and accurate court record until the appeal period had expired, they have been denied the opportunity to file a timely appeal. Mr. Nasheed's international legal team sent a petition to this effect to the UN Working Group on Arbitrary Detention (WGAD) on 30 April 2015, arguing that the Maldivian judiciary denied Mr. Nasheed his right to appeal his conviction under ICCPR Article 14(5).⁸³ Article 14(5) of the ICCPR affirms that "[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." Mr. Nasheed's petition to the WGAD noted that the January 2015 Supreme Court circular purporting to repeal provisions of the Judicature Act and substituting new rules for appeal, drastically shortened the time limit within which an appeal must be filed from 90 to 10 days, and that the defendant can no longer appeal directly because the circular also provided that the Criminal Court in which the case was heard is responsible for sending the appeal petition to the High Court.⁸⁴ Despite Mr. Nasheed's lawyers having indicated in writing that they intended to appeal and asking for the trial record, the Court only provided the trial record on the 11th day after the verdict and after the expiry of the 10-day deadline. Nasheed's lawyers claimed that, as a result, they were effectively blocked from filing an appeal.⁸⁵

Meanwhile, the Prosecutor General's Office and other Maldives authorities have maintained that Mr. Nasheed could have and still can file an appeal, and that it is at the discretion of the court to accept or deny a late appeal based on exigent circumstances.

On 21 June 2015, Mr. Nasheed was transferred to three-day house arrest, which was later extended to eight weeks on 24 June.⁸⁶ On 23 July, the Prosecutor General's Office announced that he would appeal the terrorism conviction against Mr. Nasheed in light of the complaints of procedural irregularities and violations of fundamental rights in the trial.⁸⁷ It was reported on 13 August 2015 that the Prosecutor General had in fact filed the appeal in Mr. Nasheed's terrorism case with the High Court, though there was no indication of the timeframe or court schedule for the hearings.⁸⁸

When asked by the mission about the withdrawal of pending charges and submission of new charges for an elevated offense with a more severe penalty based on the same set of alleged facts and evidence, the Prosecutor General's Office argued that the detention of Judge Abdullah Mohamed by President Nasheed in 2012 amounted to an "abduction", as per Section 2(b) of the Terrorism Act, as opposed to an ordinary "detention" or "arrest" as per the original charge under Section 81 of the Penal Code. Furthermore, it was argued to the mission, by involving the MNDF to carry out the arrest and detention, President Nasheed was acting in his powers as "commander in chief" and not as a "public servant" using "the authority of office he is in" within the meaning of Section 81

⁸³ Petition to UN Working Group on Arbitrary Detention, In the Matter of Mohamed Nasheed, Citizen of the Republic of Maldives v. Government of the Republic of Maldives, Apr. 30, 2015, at 48-49.

⁸⁴ Petition to UN Working Group on Arbitrary Detention, In the Matter of Mohamed Nasheed, Citizen of the Republic of Maldives v. Government of the Republic of Maldives, Apr. 30, 2015, at 49.

⁸⁵ Petition to UN Working Group on Arbitrary Detention, In the Matter of Mohamed Nasheed, Citizen of the Republic of Maldives v. Government of the Republic of Maldives, Apr. 30, 2015, at 49-50.

⁸⁶ See <http://minivannews.com/politics/nasheeds-house-arrest-extended-opposition-backs-age-limits-for-presidency-100085#sthash.mDoTIEVH.dpbs>.

⁸⁷ See <http://minivannews.com/politics/pg-to-appeal-former-presidents-terrorism-conviction-101283#sthash.HedRha3F.dpbs>; <http://www.theguardian.com/world/2015/jul/24/maldives-prosecutor-general-appeal-against-mohamed-nasheed-conviction>.

⁸⁸ <http://maldivesindependent.com/politics/pg-appeals-nasheeds-terrorism-conviction-at-high-court-116385>.

of the Penal Code. Thus, his office claimed that the Prosecutor General deemed the Penal Code did not apply and felt obliged to find a new statutory basis for the charges.

The mission did not find this explanation convincing, particularly given the backdrop of reasonable apprehension of bias arising from the Prosecutor General's personal relationship with Judge Abdullah Mohamed and his having provided evidence in the case. In the circumstances, the Prosecutor General should have recused himself from making such decisions about the conduct of the case.

The Maldives passed a new Penal Code in April 2014 to supersede the outdated Penal Code then in force.⁸⁹ At the time of adoption, the new provisions were initially scheduled to enter into force by January 2015 to allow a period of transition. The Parliament subsequently postponed implementation of the new Penal Code to April 2015, the rationale for which being to allow more time to train judges on the new law, according to those interviewed. After a further delay, the new Penal Code eventually came into force on 16 July 2015.⁹⁰

As regards the offence of unlawful detention with which Mr. Nasheed was originally charged, the new Penal Code would have been a more appropriate statutory basis for the alleged crime than either the old Penal Code or the Terrorism Act, as the Prosecutor General's Office itself admitted to the mission. It would have carried a maximum sentence of three years rather than the mandatory 10 to 15 years of the Terrorism Act under which Mr. Nasheed was ultimately tried and convicted. Under international law, when there are differences between the criminal law in force at the time of an offence and criminal laws enacted after the offence was committed but before a final judgment, the courts must apply the law whose provisions are most favourable to the accused.⁹¹

Against the background of his conflict of interest in the case, the fact that the case against President Nasheed had been languishing for nearly two years without a hearing, and the fact that when the new Prosecutor General suddenly restarted the case in February 2015 the new Code had already been adopted and its entry into force was imminent, the mission found it concerning that the Prosecutor General pressed ahead to complete the trial before the entry into force of the new, more appropriate Penal Code provision. In the specific circumstances, the mission is of the view that the prosecution should have at least discussed with the trial judges and defence counsel the question of whether to apply the new Code or to adjourn the case for a short period until the scheduled entry into force of the new Code.

When the mission raised the issue of the apparent conflict of interest, given the Prosecutor General's role in the 2012 investigation, the Prosecutor General's Office claimed that the Prosecutor General himself was not directly involved in the prosecution of the case. The mission noted to the Prosecutor General's Office that, in accordance with international standards, justice was not only to be done, but also to be seen to be done.⁹² The mission was of the view that, even if the Prosecutor General was not directly prosecuting the trial in the courtroom, there were concerns regarding his role in the strategic management of the case as head of the Prosecutor General's Office. The mission was not able to meet with the Prosecutor General himself and did not have an opportunity to seek his views on the matter.

⁸⁹ Penal Code of the Maldives, 2014, available at <http://penalcode.mv/penal-code/1/en>.

⁹⁰ See Penal Code of the Maldives, 2014, available at <http://penalcode.mv/penal-code/1/en>.

⁹¹ See, e.g., ICCPR, Art.15(1); Human Rights Committee, *Cochet v France*, UN Doc. CCPR/C/100/D/1760/2008 (2010), paras. 7.2 to 7.4; European Court of Human Rights (Grand Chamber), *Scoppola v Italy (No.2)* App No. 10249/03, paras. 106-109.

⁹² See UN Basic Principles of Independence of the Judiciary; Bangalore Principles of Judicial Conduct; Latimer House Principles.

On 30 March 2015, just two weeks after Mr Nasheed's conviction, the Parliament rushed through amendments to the 2013 Prisons and Parole Act⁹³ to disqualify convicted persons from being members or holding leadership positions of a political party or other association membership. The timing and circumstances of its passage has led to inferences that it was specifically aimed at stripping Mr. Nasheed of his membership and status as party president.

Trial of Former Defence Minister Col. (Retd.) Mohamed Nazim

Former Defence Minister under the current Yameen regime, Col. (Retd.) Mohamed Nazim was arrested on 18 January 2015 on charges of importation and possession of illegal weapons. On 27 March, he was convicted of the charges and sentenced to 11 years in prison.

On 18 January 2015, around 3 a.m., more than 30 Specialist Operations police officers forcibly entered and searched the residence of then-Defence Minister Col. Nazim. A few weeks after the raid, the Commissioner of Police Hussein Waheed claimed to the media that police had no prior knowledge that it was the Defence Minister's home, and reported that police had discovered a handgun, three bullets, an improvised explosive device, a gun cartridge and a USB drive allegedly containing plans to overthrow the current government.⁹⁴

On 10 February 2015, Col. Nazim was charged with importation and possession of illegal weapons, under Section 2(a) and Section 9⁹⁵ of Law No. 4/75 (Prohibited Items Act)⁹⁶. On 27 March, Col. Nazim was sentenced to eleven years in prison by the same panel of judges of the Criminal Court that sentenced former President Nasheed on 13 March.

As with President Nasheed's case, there appears to be significant procedural irregularities that amount to a failure to ensure fairness and equality of arms in the treatment of Col. Nazim's defense team. The Court apparently refused to allow the defense to present important rebuttal evidence purporting to show that key prosecution evidence had been fabricated, including: alleged evidence that the latent prints lifted from the items of evidence confiscated from his apartment did not match the fingerprints of Col. Nazim, and alleged evidence that the content of the confiscated USB drive allegedly containing details of a plot to overthrow the government was fabricated.

PART FOUR: PARLIAMENTARY INTERFERENCE WITH INDEPENDENT INSTITUTIONS

Respect for the separation of powers among the three branches is an essential element of the rule of law. Independent constitutional oversight bodies such as the Human Rights Commission, Election Commission and Auditor-General are likewise an important mechanism for accountability whose independence must be similarly safeguarded.

⁹³ Maldives Prisons and Parole Act (2013), Act No. 14/2013.

⁹⁴ See <http://minivannews.com/politics/pistol-and-explosive-device-found-at-nazim's-home-says-police-commissioner-92460#sthash.VZLw6Qsz.dpbs> (accessed 7 June 2015); <http://minivannews.com/politics/former-defense-minister-nazim's-remand-appealed-at-high-court-92717#sthash.ICPdBCNE.dpbs> (accessed 31 May 2015).

⁹⁵ Section 9: "Where any items described in this Act is found in possession of a person in the Maldives, should that person fail to prove how that item came into his possession, that item shall be deemed to have been brought into the Maldives or manufactured in the Maldives by that person."

⁹⁶ *Items Prohibited From Being Brought Into the Maldives* is a general law criminalizing the bringing into the Maldives, the manufacture or production, and the possession in the Maldives of, inter alia: fire arms, gunpowder, explosives, idols used for worship, pornographic material, and live pigs.

Section 2(a): "It is prohibited to bring the following items into the Maldives save for the purposes of the State – (1) Military weapons; (2) Gunpowder; (3) Explosives."

As the *Latimer House Principles* suggest, interactions between the branches of government must be guided by mutual respect for the functions of the other branches and a degree of self-restraint to remain within the constitutional sphere of each. Officials must be guided by principles of ethical governance, with a view to maintaining and enhancing public confidence, transparency and accountability in the exercise of their respective functions.⁹⁷ In exercising its law making function, the parliament must be guided by principles of good governance, to provide adequate parliamentary scrutiny for legislation and public input in the legislative process.⁹⁸

To safeguard the independence and impartiality of the judiciary, the body responsible for discipline of judges, including their removal, should be independent of the executive,⁹⁹ plural and composed mainly (if not solely) of judges and members of the legal profession.¹⁰⁰ Complaints of judicial misconduct must be processed expeditiously and fairly under an appropriate procedure that is subject to independent review.¹⁰¹ The judge in question has the right to a fair hearing before an independent and impartial body.

The right to a fair proceeding includes the right to notice of the accusations against him or her, to adequate time and facilities to prepare and present a defence including through counsel, to challenge the evidence against him or her and to present witnesses. Decisions must be based on established standards of judicial conduct, and sanctions must be proportionate. Decisions to suspend or remove a judge must be limited to cases in which the incapacity or behaviour of a judge renders the individual unfit to discharge his or her judicial duties.¹⁰² Sanctions in disciplinary proceedings should be subject to independent judicial review (although this may not apply to decisions of the highest court or the legislature in impeachment proceedings).¹⁰³

A series of actions by Parliament inconsistent with the above principles of good governance, transparency and accountability suggests a pattern of seemingly arbitrary exercise of its legislative authority to target specific officials and institutions. This in turn has eroded public confidence in Parliament and other public institutions.

Arbitrary Removal of Two Supreme Court Justices

Parliament enacted a controversial amendment to the Judicature Act in December 2014 in a manner that raised serious questions of democratic governance, the rule of law, separation of powers, judicial independence and the constitutionality of the amendment itself. The amendment, submitted by an MDP parliamentarian¹⁰⁴ on 7 December, called

⁹⁷ Latimer House Principles, Principle VI.

⁹⁸ Latimer House Principles, Principle VIII.

⁹⁹ Human Rights Committee, Concluding Observations on Azerbaijan, UN Doc. CCPR/C/AZE/CO/3 (2009), para. 12; Human Rights Committee, Concluding Observations on Honduras, UN Doc. CCPR/C/HND/CO/1 (2006), para. 16; Human Rights Committee, Concluding Observations on Kosovo (Serbia), UN Doc. CCPR/C/UNK/CO/1 (2006), para. 20.

¹⁰⁰ Reports of the Special Rapporteur on the Independence of Judges and Lawyers, UN Docs. A/HRC/11/41 (2009), para. 28-29, and A/HRC/26/32 (28 April 2014), para 126 ; European Charter on the Statute for Judges, Principle 1.3. See also Council of Europe Committee of Ministers Recommendations (2010), adopted 17 November 2010, para. 46.

¹⁰¹ UN Basic Principles on the Independence of the Judiciary, Principle 17 and 20; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Art. 28.

¹⁰² UN Basic Principles on the Independence of the Judiciary, Principle 16; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 20; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Art. 10.

¹⁰³ UN Basic Principles on the Independence of the Judiciary, Principles 17-20; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Arts. 26-31; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Arts. 8 and 11.

¹⁰⁴ MP Ibrahim 'Mavota' Shareef stated that he was of the opinion that a seven member Supreme Court was too large for the Maldives. MDP's national council rejected Shareef's proposed amendment and the party's Parliamentary Group leader stated that Shareef did not consult the party before submitting his amendments.

for reducing the number of Supreme Court judges from seven to five, and reportedly instructed the JSC to select two judges to be removed “based on their competence”.¹⁰⁵

The amendment, moreover, was apparently tabled during an extraordinary night session of Parliament on a Thursday evening, the last working day of the week in the Maldives. Two days later on Sunday morning, 10 December 2014, the next working day, the JSC submitted its recommendation to the Parliament for the removal of Chief Justice Ahmed Faiz Hussain and Justice Muthasim Adnan, citing “gross misconduct” as the basis for removal under Article 154(b) of the Constitution.¹⁰⁶ Parliament approved the removal the same afternoon.

The judges in question were not notified of the proceedings to remove them, or the grounds on which they were being removed, either before or after their removal. It was reported to the mission by the former Chief Justice that they learned of their dismissal in the news the following morning.

To date, they have apparently not been officially informed by the Parliament of the reasons for their removal. The general prevailing perception amongst independent observers with whom the mission met was that the two judges were targeted because they were the two who routinely gave dissenting opinions in several cases in which the government and ruling party had an interest.

The failure to follow a fair and transparent process for removal of the judges is wholly inconsistent with the UN Basic Principles on the Independence of the Judiciary and with the Maldives’ international legal obligations under the ICCPR, as well as other international standards. It severely undermines separation of powers and judicial independence. Likewise, the lack of clear, publicly disclosed criteria against which the judges were evaluated and dismissed raises serious questions about the transparency and fairness of the process, and has further eroded public confidence in the rule of law and public institutions.

Arbitrary Removal of Auditor General

The Maldivian Constitution creates an office of the Auditor General as an independent and impartial constitutional body mandated to oversee the financial management of the government.¹⁰⁷ Article 218 prescribes the basis and procedures by which the Auditor General may be removed, on the grounds of misconduct, incapacity or incompetence by a finding of a parliamentary committee and voted on by the entire Parliament.

The former Auditor General, Niyaz Ibrahim, was appointed by the Parliament in 2011 by then-President Nasheed. During his tenure, Ibrahim presided over a spate of audit assessments into allegations of corruption under Mr. Nasheed’s presidency, which were widely welcomed by the then-opposition, PPM, at the time. In October 2014, however, the Auditor General released an incriminating audit report implicating corrupt dealings by the then-Tourism Minister and recently appointed Vice-President, Mr. Ahmed Adeeb. Shortly thereafter, that same month, the PPM-led Parliament passed an amendment to the Audit Act, the implementing legislation governing the day-to-day administration of the office of the Auditor General, that called for the immediate removal of the Auditor General before the expiration of his constitutionally mandated term of office and bypassed the constitutionally prescribed removal process.

The timing and circumstances surrounding this removal gives the appearance of deliberately targeting an official of an independent constitutional body as retribution for

¹⁰⁵ Based on interviews by the mission with MPs involved in the events.

¹⁰⁶ Unofficial translation of the order by local civil society consultant.

¹⁰⁷ Arts. 209, et seq., Maldives Const. (2008).

the legitimate exercise of his constitutional function. The failure to adhere to the constitutionally prescribed process for removal of an official of an independent constitutional body raises serious concerns with respect to transparency, accountability and the rule of law.

Undue Interference with Human Rights Commission of the Maldives

On 14 March 2015, the day after former President Nasheed's conviction, the HRCM issued a press release raising due process and fair trial concerns in the conduct of his trial. On 16 March 2015, the members of the HRCM were formally summoned by the Parliament Committee on Independent Institutions and questioned at length about their statement on Mr. Nasheed's case during an extraordinary closed-door night session.¹⁰⁸

The HRCM, like other independent constitutional oversight institutions, plays an important role to promote and protect human rights and to ensure public confidence and accountability in government institutions, and must be enabled to carry out its functions independently, effectively and free of undue interference or intimidation.¹⁰⁹ While the Parliament has an oversight role over the government and independent institutions, this authority must be exercised with due respect to the legitimate exercise of such institutions' constitutional mandate. Though it is unknown what questions were put forth to the HRCM by the Parliament, the summoning and interrogation of the HRCM during an extraordinary closed-door night session gives the appearance of undue interference by the Parliament in the legitimate exercise of the HRCM's constitutional mandate.

PART FIVE: REPRESSION OF CRITICAL VOICES

International human rights treaties and other international standards clearly set out the State's obligation to provide effective remedy and to ensure accountability for human rights violations through prompt, thorough and impartial investigation, and, where appropriate, prosecution and punishment. The obligation on the State effectively to investigate such crimes can also apply in relation to acts of private actors that impact on human rights.¹¹⁰

The current crisis in the rule of law and politicisation of the justice system in the Maldives has enabled a culture of impunity that has prevented any accountability for those responsible for serious human rights violations or abuses.

Freedom of Expression and Media

Disappearance of Journalist Ahmed Rilwan Abdulla

On 8 August 2014, Ahmed Rilwan Abdulla, a journalist working for Minivan News, was allegedly abducted, and has been missing since. While the Maldives Police Service maintains they are investigating the disappearance, they have not been forthcoming with information or updates to either the public or Abdulla's family. His family have since taken up a public campaign calling for state authorities to expedite the search and investigation efforts.

¹⁰⁸ http://www.haveeru.com.mv/hrcm_ahmed_tholal/59720 (accessed 27 May 2015).

¹⁰⁹ Latimer House Principles, Principle IX.

¹¹⁰ See, e.g., ICCPR, Art. 2(3); UN Human Rights Committee, General Comment No 31; CAT, Art. 13; see also UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, resolution adopted by the UN General Assembly, 21 March 2006, UN Doc. A/Res/60/147, para. 3; UN Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, UN Doc. E/CN.4/2005/102/Add.1, Principle 19.

The HRCM has stated that authorities are not doing enough to address this matter and local and international actors¹¹¹ have echoed similar concerns. A local NGO, with the help of a UK-based investigator, has undertaken an investigation into Abdulla's disappearance, alleging involvement of gangs and has shared these findings with the police.¹¹² The Home Minister has since acknowledged gang connections to the incident, but denied any state involvement in Abdulla's disappearance and opined that the opposition were hindering investigations with such speculation. The authorities have not concluded or provided any concrete information on the status of the ongoing investigation to date.

Arson Attack on Raajje TV

On 7 October 2013, a group of six masked men armed with machetes, iron rods and petrol set fire to Raajje TV – one of the most popular local television stations and one that is seen as supporting the opposition.

The men forced their way into the building after restraining and stabbing the security guard with a machete. They then broke through a steel door leading to the TV station's studios on the second floor, doused it with gasoline and set it on fire.

The incident happened just a few days after Raajje TV broadcasted a report entitled *Forum 15*, which details the threats the TV station had been receiving.¹¹³ For instance, in February 2013, the station's news director, Ibrahim Asward Waheed, was injured from a near-fatal attack by men on a motorcycle wielding steel bars.¹¹⁴ No credible investigation seemed to have been undertaken to bring to justice the perpetrators.

Arrests and Threats Against Journalists

Media personnel have faced threats in the past by authorities, as well vigilantes, and the space for media to operate freely continues to be undermined. The recent political turmoil has seen a number of journalists intimidated.

Mohamed Afzal, a journalist at the state-run TV station MNBC One, was demoted for filing a police complaint against Criminal Court staff, who forcibly held him and other journalists inside the courthouse on the night of former President Nasheed's sentencing. The court staff did not give any reason for this forced detention and, when Mr. Afzal and the others asked why they were being held, a verbal confrontation ensued. Following the incident, the journalists reported the incident to the HRCM and filed a police complaint against the court staff. The Police dismissed the complaint, and MNBC One subsequently took disciplinary action against Afzal in apparent retribution for the complaint.

On 25 March 2015, two journalists from Raajje TV, Mohamed Wisam and Adam Zareer, and one journalist from Channel One, Mohamed Niyaz, were arrested at an opposition-led protest for "obstructing police duties and disobeying police orders". However, according to the three detained journalists and local media present at the scene, the journalists were arrested in order to prevent live coverage of the protest. They were released after five days in detention.

¹¹¹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14954&LangID=E>; <http://www.ifj.org/nc/news-single-view/backpid/33/article/maldives-journalist-ahmed-rilwan-still-missing-one-month-on/>; and <https://cpj.org/blog/2014/09/minivan-news-reporter-ahmed-rilwan-adbulla-missing.php> (accessed 25 May 2015).

¹¹² <http://minivannews.com/politics/mdn-investigation-implicates-radicalized-gangs-in-rilwans-disappearance-90216#sthash.EAmRPuoU.dpbs> (accessed 25 May 2015).

¹¹³ <http://en.rsf.org/maldives-masked-men-torch-opposition-tv-07-10-2013,45294.html> (accessed 25 May 2015).

¹¹⁴ <https://cpj.org/2013/02/maldives-journalists-assaulted-in-political-violence.php> (accessed 29 May 2015).

Freedom of Association

Civil Society

Since 2013, various civil society organizations (CSOs) that have been critical of the Government have been under threat of dissolution. On 18 March 2013, the Registrar of CSOs had announced plans to dissolve approximately 70 percent of registered NGOs, citing their failure to comply with reporting requirements.¹¹⁵ This sweeping proclamation is inconsistent with international standards on protecting space for civil society organisations to operate, and may have violated Article 30 (b) of the Constitution, which establishes the right to form political parties, associations and societies. While the State has not yet followed through on this matter, it has not rescinded this threat and civil society organizations remain under risk. In October 2013, during the 2013 presidential elections, the registrar of CSOs at the Ministry of Home Affairs announced that Transparency Maldives, NGO Federation, and Tourism Employees Association of the Maldives were under investigation for “unlawful acts” and allegedly challenging a Supreme Court hearing. This warning was prompted following statements from these CSOs denouncing the Court injunction to delay the second round of the 2013 presidential elections. While the threat to dissolve the organisations was not carried out, it underlines the precarious nature of civil society operations in the Maldives in the face of a lack of adequate legal protections.

Right to Peaceful Assembly

May Day 2015 Protest

On 1 May 2015, the opposition comprised of three political parties—Maldivian Democratic Party (MDP), Jumhooree Party (JP) and Adhaalath Party (AP)—organised a protest calling for the release of former President Nasheed and former Defence Minister Nazim, among other members of the opposition who have been detained. The protest mobilised an estimated 20,000 people into the streets of Malé. Media reports suggested that over 7,000 people travelled from outside Malé to join the protest. There have been conflicting accounts by some local and international independent observers as to the level of force employed by the Police and which parties were responsible for instigating the violent confrontations that occurred. According to some reports by local observers, tear gas, pepper spray and stun guns were observed to have been used by the riot police to subdue the crowd. These same observers also reported instances where the riot police had charged into crowds without provocation and pushed back protesters with force. While these accounts differ in parts from those of some international observers, what has been consistently reported and confirmed is that police arrested 193 individuals, including opposition party leaders, during the May Day demonstration. Of the nearly 200 protesters arrested, only 17 were initially released, followed by another 50 more than a week later. As of the conclusion of the mission, two weeks after the protests, nearly 125 individuals remained in detention without charge.

¹¹⁵ Transparency Maldives’ National Integrity Assessment Report (2014) noted: “Under the Associations Act, all registered CSOs are required to prepare an annual report into their activities as well as a financial statement of accounts, and to submit these to the Registrar within 30 days of the CSO’s Annual General Meeting (AGM) and approval by the executive committee (governing body). Many fail to submit the required reports as stipulated in law, and for the study of 2011, 14% reported that the requirements were too difficult. More recently, in March 2013, MOHA announced that about 70 per cent of NGO’s had failed to comply with this reporting requirement and therefore risked being dissolved.”
<http://transparency.mv/files/media/a3de9049ca61eb5f30e4a5a526493f1d.pdf> (accessed 28 May 2015).

PART SIX: CONCLUDING OBSERVATIONS and RECOMMENDATIONS

Concluding Observations

Following the mission, the delegation made the following major observations:

Flawed Democratic Transition: The Maldives embarked on an ambitious democratization process in 2008. However, the transitional process has failed to implement critically needed reforms, thus contributing to the present crisis in constitutional governance and respect for human rights and the rule of law.

Politicized Judiciary Undermining Rule of Law and Respect for Human Rights: The independence and impartiality of the judiciary has been seriously compromised. The JSC failed to carry out a proper vetting process during the transition period, as provided for under the 2008 Constitution and in line with international standards on independence of the judiciary. Since 2013, the independence and impartiality of the judiciary has been further undermined. The government and Parliament have manipulated the legal and judicial system to advance political agendas and target political opponents. The judiciary has at times willingly played a central role, both as an instrument and as a source of manipulation, in the politicization of the legal and judicial system.

Specific concerns regarding the judiciary include:

- **Judicial Independence and Impartiality:** Too often, the Supreme Court and some Superior Courts have not adhered to internationally and domestically recognized principles of judicial independence, impartiality and integrity. The judiciary operates without sufficient regard for standards of fairness, including through codification and respect for procedural safeguards. This pattern is evident in the judiciary's conduct of the various high-profile cases described in this report. The Supreme Court in particular has used and appears ready to use again undue influence over the lower judiciary (i.e., not restricting its role to the review of lower court judgments on appeal) as well as the legal profession, and often exercises this power arbitrarily. At the outset of the period of transition, the judiciary was already lacking independence and impartiality due to the role it played during the period of the dictatorship. A crisis in the independence of the judiciary resulted from the arbitrary and apparently extra-legal military arrest and detention of the then-Chief Justice on orders of the then-President. It was further undermined by the failure of the JSC to act in an independent and impartial way and by undue interference by the Parliament, including through the summary and arbitrary removal of two Supreme Court Justices in 2014.
- **Judicial Accountability:** The higher judiciary appears not to recognise that the principle of judicial independence is interwoven with an obligation of the judiciary to uphold its own impartiality and integrity. In a number of matters highlighted in this report, the Supreme Court has acted in an arbitrary or otherwise unfair manner, and the JSC and other constitutional bodies have not acted in a manner that guarantees judicial accountability as well as its independence.
- **Capacity of Judges:** The judiciary suffers from a systemic lack of adequate legal education or training for judges. Prior to the 2008 Constitution, roughly 80% of the judiciary possessed no more than a 6-month certification course on sentencing.¹¹⁶ While the new Constitution required higher legal educational requirements for judges, the failure of the JSC to carry out a proper vetting and re-appointment during the transition period has perpetuated this systemic crisis in capacity. The judiciary continues to lack adequate and consistent educational background or continuing legal training opportunities.

¹¹⁶ Interview by mission with Ms. Aishath Velezinee, former member of the JSC during the transition period.

Lack of Adequate Legal Procedural Framework to Regulate Judicial Conduct:

The judiciary has violated the principle of impartiality in high profile political cases, specifically the cases against former President Nasheed and former Defense Minister Nazim. This abuse of discretion by the judiciary has been enabled at least in part by the absence of criminal and civil procedure codes and an evidence code that would serve to regulate the conduct of judicial proceedings.

Arbitrary Interference by Parliament: The Maldives Constitution provides the Parliament with certain roles in relation to the judiciary and independent constitutional bodies. However, the Parliament has used its powers to unduly interfere in the legitimate functioning of independent institutions, such as the Auditor General's Office and the HRCM. The arbitrary removal of two Supreme Court Judges, including the Chief Justice, through a hastily passed legislative amendment without due process amounted to a clear violation of the Constitution and the independence of the judiciary.

Independent Constitutional Bodies Under Duress: Independent constitutional mechanisms are compromised.

- ***JSC:*** The JSC has been structurally flawed from its inception, particularly in terms of its composition, and has in practice failed to be independent of government, the Parliament or the Supreme Court.
- ***HRCM:*** The HRCM has come under undue interference and intimidation by both the Parliament and the Supreme Court for carrying out its constitutional functions to promote and protect human rights in the country.
- ***Prosecutor General:*** The Prosecutor General's role in recent cases filed against high-profile political personalities has raised questions regarding the independence and impartiality of the Prosecutor General's Office.

Violations of Civil and Political Rights: Violations of civil and political rights enshrined in both Maldivian and international law have undermined the transition toward a more representative and accountable government.

- ***Fair Trial Rights:*** Serious concerns have emerged regarding the fair trial rights of those perceived as failing to fall in line with the government, as exemplified by the trials of former President Nasheed and former Defense Minister Nazim, as well as the unfair criminal proceedings launched against members of the Elections Commission and HRCM.
- ***Freedom of Expression and Media:*** The right to free expression and media is under threat, as evidenced by attacks on media outlets and journalists.
- ***Freedom of Association and Threats to Human Rights Defenders:*** Civil society organizations and human rights defenders face attacks, threats and governmental restrictions with implications for their continued functioning.
- ***Right to Peaceful Assembly and Prohibition of Arbitrary Detention:*** Concerns for the right to peaceful assembly arise from the events of the May Day demonstration this year, in which nearly 200 protesters were arrested and detained and the necessity and proportionality of the use of force by police has been questioned.

Recommendations

In order to strengthen the independence and accountability of the judiciary as well as other independent democratic institutions, and thereby get the country back on track towards democratic consolidation, the delegation makes the following recommendations:

Maldivian Government (President and Executive Branch)

- Given the serious doubts raised about the fairness of the trials, Mr. Nasheed and Mr. Nazim must both be promptly provided with a fair and transparent appeal hearing before an independent and impartial tribunal, and released on an interim basis, with the appeal hearing leading either to their unconditional release or to the provision of a fair retrial before an independent and impartial court. If the appeals fail to ensure fairness and impartiality in either case and there exists no other remedy under Maldives law, the President must exercise his authority under the Clemency Act to pardon the defendants to comply with the Maldives' international obligations.
 - The Government and opposition parties, as well as other major stakeholders, must engage in a serious dialogue to restart the democratic process begun in 2008 including, on how to secure the independence and impartiality of the judiciary and other independent institutions.
- The Government must strengthen the independence and impartiality of the judiciary by reforming the JSC appointment process and ensuring the integrity of appointments to the Supreme Court.
- The Government must ensure that all persons arbitrarily or otherwise unlawfully detained are released, and that fair trial rights and procedural safeguards for the right to liberty are respected in all cases.
- The Government must ensure that new bills being drafted by the Attorney General's office are in full compliance with international human rights standards.
- The Government must ensure the independence of constitutional commissions, particularly the HRCM and the JSC, and not interfere in the exercise of their constitutional mandates.
 - The appointment procedure and composition of the JSC must be reformed to enable it to operate independently and impartially, and without interference from the Supreme Court or the political branches.
 - The appointment and removal procedures of the HRCM must be reformed in accordance with the Paris Principles, in order to strengthen its independence and capacity to carry out its mandate to protect human rights without interference or intimidation.
- The Government must end the climate of impunity and ensure accountability for the attacks on media, civil society and human rights defenders, by carrying out prompt, thorough, independent and impartial investigations into journalist Rilwan's disappearance, the attack on Raajje TV's studio, the attack on MDN's offices, and other threats to media and civil society.
- The Government must take necessary steps to eliminate gender discrimination and increase women's representation in the judiciary and the legal profession at all levels of seniority, through a clear policy that encourages and provides practical support for women to enter the judicial and legal career, and includes training for judges and lawyers on gender equality and women's rights.
- During the Universal Periodic Review (UPR) before the UN Human Rights Council on 6 May 2015, the Government agreed to examine several recommendations from member States, as set forth under paragraph 143 of the Draft Report of the Working Group on the UPR, before the 30th Session of the Human Rights Council

in September 2015. The Government should accept and fully implement the recommendations from member States set out in paragraph 143, which call for accession to the Convention for the Protection of All Persons from Enforced Disappearance (CED), strengthening the independence and protections for the HRCM in line with the Paris Principles, reforming domestic legislation in conformity with international human rights obligations, strengthening and respecting judicial independence, impartiality and separation of powers, reforming the JSC process for selection and appointment of judges, protecting against arbitrary detentions and treatment of detainees, strengthening and enforcing protections for media freedom, freedom of association, expression and peaceful protest, protections for human rights defenders and civil society and enhancing women's participation in public office.¹¹⁷

- During the UPR session in May 2015, the Government rejected several recommendations from member States as set forth under paragraph 144 of the Draft Report of the UPR Working Group. The Government should reconsider and accept those recommendations from member States set out in paragraph 144 concerning legal requirements preventing non-Muslims from being appointed to the HRCM and other public offices, including the judiciary, and fair trial guarantees and politically-motivated trials.¹¹⁸
 - The Government indicated to the mission that, following the UPR, it will launch a Judicial Reform Action Plan – this plan must be publicized in detail at its earliest, to ensure full transparency and accountability in tracking its progress in implementation.
- The Government must implement the outstanding recommendations of the Special Rapporteur on Independence of Judges and Lawyers set forth in her report following her visit to the Maldives in 2013.¹¹⁹

Maldivian Parliament (People's Majlis)

- Parliament must expedite the passage of important long-pending draft laws aimed at strengthening the rule of law and the justice system, including a criminal procedure code, civil procedure code, evidence code and a legal professions bill.
 - The legal professions bill must be drafted by or, at the very least, in substantive consultation with and agreement by, the legal profession, to ensure a self-regulating and independent professional bar that will develop guidelines for and oversee admission, licensing, ethical conduct and disciplinary action, in line with international standards on independence of the legal profession.
- Parliament must implement constitutional reforms to strengthen the appointment process, the composition, and the independent functioning of the JSC. At least half of the members of the JSC should be judges elected by their peers within the judiciary. The JSC needs to be equipped to carry out, and to implement effectively in practice, its mandate to hold the judiciary to account for breaches of

¹¹⁷ Draft Report of the Working Group on the Universal Periodic Review, Maldives, 21 May 2015, UN Doc. A/HRC/WG.6/22/L.6, paras. 143.10, 143.26-29, 143.31-32, 143.43-67, available at http://www.upr-info.org/sites/default/files/document/maldives/session_22_-_mai_2015/a_hrc_wg.6_22_l.6.pdf.

¹¹⁸ Draft Report of the Working Group on the Universal Periodic Review, Maldives, 21 May 2015, UN Doc. A/HRC/WG.6/22/L.6, paras. 144.4, 144.40-42, at http://www.upr-info.org/sites/default/files/document/maldives/session_22_-_mai_2015/a_hrc_wg.6_22_l.6.pdf.

¹¹⁹ See Report of the Special Rapporteur on Independence of Judges and Lawyers, UN Doc. A/HRC/23/43/Add.3, paras. 98-134, at http://www.upr-info.org/sites/default/files/document/maldives/session_22_-_mai_2015/a_hrc_wg.6_22_l.6.pdf.

judicial ethics. The JSC must protect the independence of the judiciary from the other branches of government, and at the same time must ensure that the judiciary as an institution maintains its impartiality and integrity by holding individual members of the judiciary to account when they fail to act independently, impartially and ethically.

- Parliament must ensure laws and draft bills are fully compliant with Maldives' international obligations and commitments, including pursuant to international human rights treaties and other international standards.
- Parliament must respect and ensure the independence of the judiciary by strictly adhering to the principle of separation of powers and due process for removal of judges in accordance with the Constitution, including that Parliament can only act based on a finding by an independent JSC of wrongdoing of sufficient gravity to warrant removal, when measured against international standards.
- Parliament must respect and ensure the independence of the HRCM and other constitutional commissions, and enhance their ability to carry out their constitutional mandates without arbitrary or undue interference or intimidation.
- Parliament must respect the principles of transparency and the rule of law in the exercise of its legislative authority, by ensuring that parliamentary procedures as set forth in the Maldives Constitution are not circumvented in a manner that undermines human rights or the rule of law.
- Parliament must initiate constitutional amendments to remove any discriminatory criteria for appointment of judges, including particularly on grounds of religion.

Maldivian Supreme Court

- The Supreme Court must adopt clear and transparent rules governing how cases are selected, and how the composition of the bench to hear a case is selected.
- The Supreme Court must end the practice of requiring lawyers to sign in writing that they will not criticize the court, under penalty of contempt or disbarment, and must not otherwise use threat or use of contempt hearings to arbitrarily or unjustly restrict lawyers' right of freedom of expression.
- The Supreme Court must respect the role and mandate of independent constitutional commissions, in particular the JSC and the HRCM, and allow them to carry out their constitutional functions without undue or unlawful interference.
- Any exercise of the Court's *suo motu* power must be undertaken in an impartial manner that is consistent with human rights, due process and the rule of law.
- The Court must support adequate training and continuing legal education for judges and lawyers on substantive legal developments, constitutional and judicial processes, judicial ethics, gender sensitivity and human rights under both Maldivian and international law, in order to ensure uniform qualifications for the judiciary in compliance with international standards.

International Community including SAARC

- The international community (other states, UN and other international and regional intergovernmental organisations, and international civil society), including the South Asian Association for Regional Cooperation (SAARC) – a regional intergovernmental body of which the Maldives is a member State –

should support Maldivian authorities in building capacity of judges, lawyers, police and other stakeholders in the justice system, including on human rights.

- The international community including SAARC should encourage the Maldives authorities to release or, where appropriate, ensure fair retrials with release pending trial of all persons arbitrarily detained, including Mr. Nasheed and Mr. Nazim, to engage in serious dialogue with all major stakeholders in order to restart the democratic consolidation process and to ensure the independence and impartiality of the judiciary and other institutions.
- The international community should maintain its focus on the situation in the Maldives by ensuring there continues to be discussion at the UN Human Rights Council of the crisis in human rights and the rule of law in Maldives, by continued monitoring through the UN Special Procedures and, where necessary, by providing targeted technical support.

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