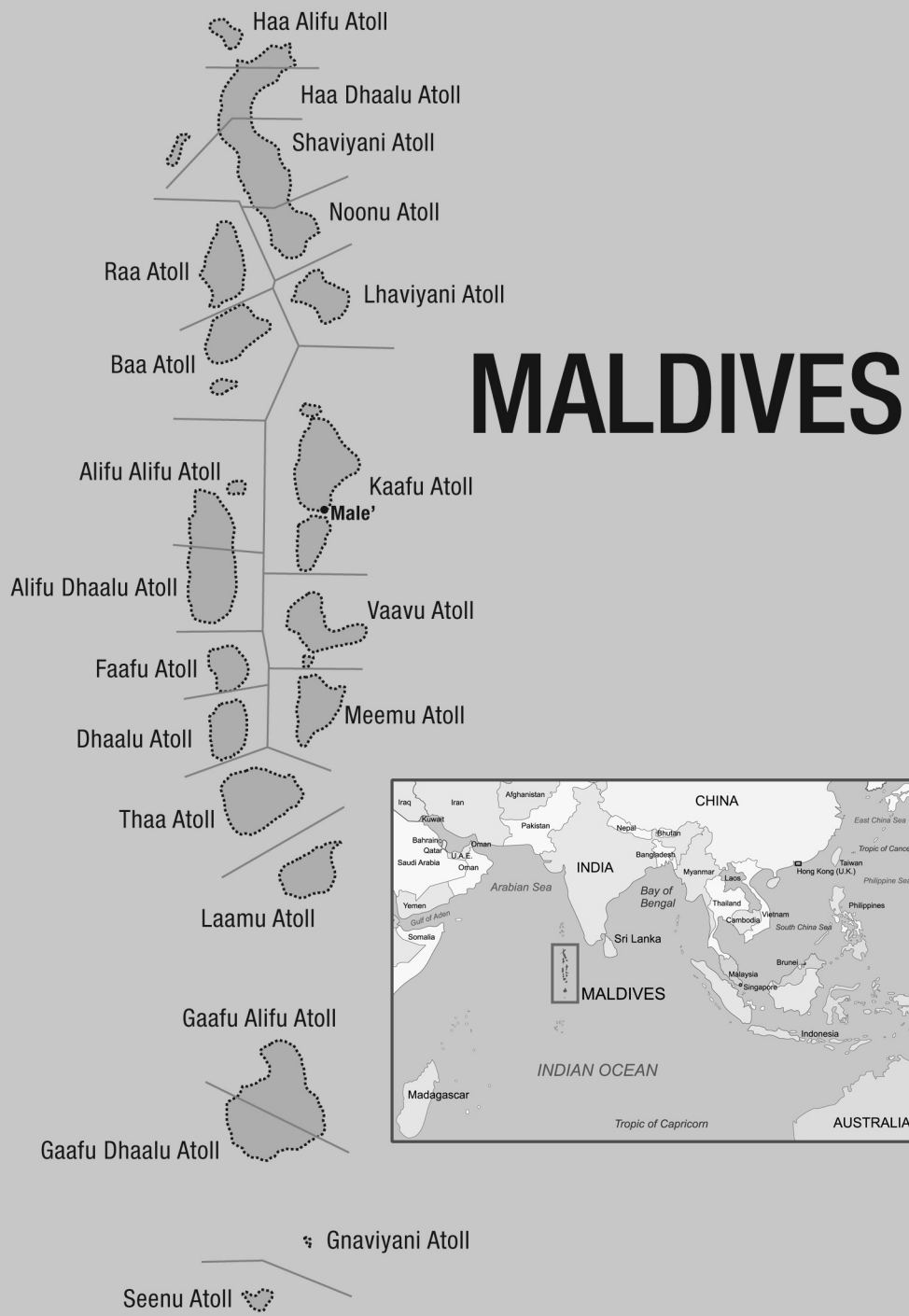


# FROM SUNRISE TO SUNSET

Maldives backtracking on democracy

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,





Map of Maldives

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# Executive Summary

Since 2008, the Republic of Maldives has gone through considerable constitutional changes, ending a period of 30 years of authoritarian rule by President Maumoon Abdul Gayoom. While his regime had been challenged from the early 1980s, President Gayoom was eventually forced to introduce a reform process in 2004, which later on led to the enactment of a new constitution in 2008. The latter guaranteed the full separation of powers, as well as the creation of independent institutions to monitor the three branches of power and safeguard human rights.

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

Besides, due to poisonous party politics, the reform process was brought to a standstill several times. At the occasion of the 2009 parliamentary elections, less than a year after the presidential elections, the ruling party - the Maldivian Democratic Party (MDP) - was unable to secure a majority. A number of important legislations, including the Penal Code, the Criminal Procedure Code, the Civil Procedure Code, the Evidence Act, and the legislation on the right to peaceful assembly therefore remained pending.

Despite commendable attempts by various institutions to act independently, all suffered from political polarization, often resulting in conflict of interest and inertia. Despite constitutional changes, the different sections of the judiciary failed to become fully independent.

Tensions culminated when Mohamed Nasheed ordered on 16<sup>th</sup> January 2012 the arrest of Chief Judge of Criminal Court Abdulla Mohamed. On 6<sup>th</sup> February, a police mutiny sided with the opposition and on 7<sup>th</sup> February, Mohamed Nasheed resigned. The Vice-President, Mohamed Waheed, took on the responsibilities of President, which the MDP immediately labelled as a coup. President Waheed rejected international calls for early elections saying it was neither practical nor constitutional and, instead, established a Commission of National Inquiry to "explore the facts, circumstances and causes of the events of 7<sup>th</sup> February 2012 that resulted in the transfer of power in the Maldives". The Commission's report was made public on 30<sup>th</sup> August, concluding that the change of President of 7<sup>th</sup> February was legal and constitutional.

However, more than six months after taking over power, the coalition government of Mohamed Waheed has been accused of a wide range of human rights violations, from violent repression of street protests, arbitrary arrests, sexual harassment of female protestors, torture and harassment of pro-opposition media, to legal and physical harassment of members of the opposition. The authorities have also failed to investigate crimes on an impartial basis. Despite all the evidence available, the investigation for the attempted murder of human rights defender Hilath Rasheed on 4<sup>th</sup> June 2012, has been stalled.

Last July, the UN Human Rights Committee raised the issue of the right to peaceful assembly in the Maldives and the UN High Commissioner for Human Rights expressed concern at the excessive use of force by security forces. The Human Rights Commission of Maldives has brought out in August a series of reports condemning the police crackdown on 8<sup>th</sup> February and torture of detainees by security forces.

President Waheed has also been accused of influencing the judiciary to charge members of the opposition, among them, Mohamed Nasheed, a move seen as politically motivated by the international community, as it would prevent him from running in the next presidential elections.

In addition, the Majlis (Parliament) has been indefinitely suspended since 31<sup>st</sup> July 2012, hence delaying the passing of important bills. The exploitation of religion for political gains has posed a threat to the drafting of new legislations by potentially limiting existing human rights. Due to the highly controversial character of the issue of freedom of religion in the Maldives, local media, politicians and civil society have been reluctant to publicly defend religious tolerance out of fear of repression by extremist groups.

Despite an apparent respect for women's rights, in practice women have suffered and still suffer from the absence of a strong legal framework, thus making them vulnerable to various forms of exploitation. The anti-domestic violence bill passed in April 2012 is a clear sign of attempted progress. Nevertheless, the reform process being at an early stage, women's rights could potentially be curbed by religious parties influencing the governing coalition and pushing for the full implementation of Sharia.

While no execution has taken place in the Maldives since 1953 thanks to the Clemency Act, some members of Parliament and the current Home Minister have been actively campaigning for it as a solution to a recent surge in crimes. With the current state of the judiciary and the incapacity of the police to properly investigate crimes, analysts fear judicial errors would result in the death of innocent people.

To conclude this report, FIDH makes recommendations to the Government of Maldives and the international community to take further steps to advance and safeguard the democratic reform process.



# About This Report

FIDH organized a fact-finding mission in the Maldives from 30<sup>th</sup> July to 2<sup>nd</sup> August 2012, i.e. a month before the release on 30<sup>th</sup> August of the report by the Commission of National Inquiry (CoNI) established in February 2012 by presidential decree to “explore the facts, circumstances and causes of the events of 7<sup>th</sup> February 2012 that resulted in the transfer of power in the Maldives.”

FIDH team met with a wide range of stakeholders from government institutions, opposition, United Nations resident coordinator’s office, and civil society groups including NGOs, journalists, human rights activists and victims of police brutality (see full list in annex).

The main purpose of the mission was to collect facts and hear views from various stakeholders following reports of widespread impunity in the context of the events of 7<sup>th</sup> February. Secondly, the mission aimed at calling for the promotion and protection of fundamental human rights in the Maldives, as well as for further steps to be taken to consolidate and strengthen democratic institutions established in 2008 in the context of the on-going reform process in the Maldives.

The present report is addressed to the Government of Maldives as well as international organizations and individual States monitoring the human rights situation in the Maldives, and supporting democratic reforms in the country.

In particular, the Commonwealth has been mediating the recent crisis through its special task force, the Commonwealth Ministerial Action Group (CMAG), which is due to review progress at its next regular meeting in September 2012. The United Nations and some States have been closely monitoring the situation in the Maldives, and have expressed serious concerns over police brutality, restrictions to freedom of peaceful assembly, and other cases of impunity including the absence of investigation over the attempted murder of a human rights defender.

FIDH thanks all its interlocutors in the Maldives for their availability and valuable collaboration.

# I. INTRODUCTION

## 1. General facts on the Republic of Maldives

- ▶ An archipelago 400 km south-west of India in the Indian ocean, comprising of approximately 1190 islands grouped into 26 atolls;
- ▶ Only 200 inhabited islands, and approximately 90 islands used as tourism resorts;
- ▶ A population of approximately 394,451 people, and 80,000 to 110,000 migrant workers, mostly from South Asia<sup>1</sup>;
- ▶ The capital Male' hosts over one third of the total population;
- ▶ Islam is the State religion;
- ▶ Maldivian law is a combination of Sharia and Common Law;
- ▶ Maldives obtained its independence from the United Kingdom on 26<sup>th</sup> July 1965 and has been a member of the Commonwealth since 1982;
- ▶ Constitutional changes in 2008 ended the 30-year authoritarian rule of Maumoon Abdul Gayoom.

## 2. Background

Prior to the constitutional changes of 2008, the Republic of Maldives has been governed by a succession of authoritarian regimes, first under the rule of Ibrahim Nasir, president of Maldives from 1968 to 1978, and then under the rule of President Maumoon Abdul Gayoom from 1978 to 2008. Both regimes were characterized by widespread human rights violations and restriction of liberties.

The authoritarian rule of President Gayoom was challenged from the early 1980s, in the form of satiric publications, outspoken activists, artists and members of parliament, as well as coup attempts by Nasir supporters in 1980, 1982 and 1988. President Gayoom's leadership was accused, among other things, of carrying out arbitrary arrests and torture aiming at silencing any form of criticism or dissent.

In September 2003, Evan Naseem, a young prisoner in Maafushi jail was beaten up to death by his guards, sparking a riot in which 3 other inmates were shot dead, and several others injured. Although this incident was not the first case of custodial death in the Maldives, it also caused unprecedented riots in the capital Male' where a frustrated youth set government buildings on fire, thereby denouncing the systemic ill-treatment of prisoners and more widely the repressive regime. Dissidents left the country to set up the Maldivian Democratic Party (MDP) in exile, with the aim of establishing a more organised opposition to the regime. Those events, seen by many as the birth of the reform movement, forced President Gayoom to introduce a reform process in 2004, which later on led to the enactment of the new constitution in August 2008.

Between 2003 and 2008, in parallel to the political struggle, independent and pro-opposition media as well as human rights NGOs began operating underground or from abroad. Back

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1. See: [http://photos.state.gov/libraries/adana/231771/PDFs/trafficking\\_in\\_persons\\_report\\_2011\\_maldives.pdf](http://photos.state.gov/libraries/adana/231771/PDFs/trafficking_in_persons_report_2011_maldives.pdf)

then, the civil society was only allowed to carry humanitarian or community-development activities. In August 2004, following the arrest of 200 protestors attending a mass-rally in the capital, the Maldivian Detainee Network (MDN – later Maldivian Democracy Network) was set up to collect testimonies of prisoners and to inform them of their rights. As the flourishing civil society kept the international community informed of human rights violations, thereby becoming a pillar of the reform process, the government eventually allowed them to operate legally in the country.

In 2004, a special assembly composed of the Majlis (Parliament) and cabinet ministers, was created to reform the 1998 constitution. In 2005, political parties were allowed; then in 2006, the Maldives ratified the two international human rights covenants<sup>2</sup>. Independent institutions were also created in response to internal and external pressure. While some of these were created from 2003, they were further strengthened with the adoption of the 2008 Constitution, which included a chapter on transitional arrangements allowing for the creation of independent bodies. However, President Gayoom appointed people perceived as loyal to him at their head. The citizens of Maldives decided to continue with the presidential system by public referendum in 2007, during the drafting of the new constitution. The President was to be constitutionally elected by universal suffrage for a 5-year mandate, only renewable once.

With the adoption of a multi-party system in 2005, six political parties were able to contest in the 2008 presidential elections. The European Commission sent an Election Expert Mission and the European Delegation based in Sri Lanka informally took the lead of a group of 14 diplomats of member states and non-member states (USA, Switzerland, Australia, Canada) to visit and observe elections in a selection of islands. Other small international election observation teams, or individual observers, were sent by the Commonwealth and the United Nations<sup>3</sup>. The peaceful transition brought by transparent and fair elections was a key landmark of the reform process. MDP leader Mohamed Nasheed (aka ‘Anni’) became the first democratically elected president of the Maldives for a 5-year mandate, with the support of a coalition of political parties to oust former President Gayoom from power. Ministries were distributed to different political parties, yet the coalition was weak and dissolved rapidly, leaving only the MDP and the Vice-President Waheed’s party, National Unity (Gaumee Itthiaad – GI) part of the government.

Political forces remained polarized and eventually, the dissolved coalition that supported the election of Mohamed Nasheed became his opposition contesting some of the reforms undertaken, in particular steps towards the liberalisation of the economy and religious affairs. For instance, President Nasheed’s attempts to recognise the State of Israel, grant alcohol licenses to hotels in the capital or the revision of the school curriculum to make Islam classes optional in high school became a rallying cause for the opposition. President Nasheed was also confronted with a parliament dominated by the opposition, and a judiciary and institutions still perceived as loyal to for President Gayoom.

Due to poisonous party politics, tensions between the different branches of power, particularly over the interpretation of the Constitution, brought the reform process to a standstill on several occasions. In 2009 and 2010, opposition parliamentarians brought no-confidence motions

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2. See: <http://www.ohchr.org/EN/countries/AsiaRegion/Pages/MVIndex.aspx>

3. See OECD report p. 69: <http://www.oecd.org/countries/maldives/47234192.pdf>



against the foreign minister, the education minister and the auditor general, a right provided by Chapter V, article 129 (c) and chapter III, article 101 (c) of the 2008 Constitution.

In June 2010, the entire cabinet eventually resigned<sup>4</sup> to express its outrage after the Majlis voted amendments to article 7 of the Public Finance Act, requiring any decision relating to the leasing of state assets to be sent to parliament for approval<sup>5</sup>. Around the same time, President Nasheed ordered the arrest of two members of parliament on allegations of corruption without following due process.

From December 2011, a coalition of opposition parties and religious NGOs formed the ‘23 December Coalition to protect Islam’. They organised mass rallies demanding the Government:

*“To formally condemn UN Human Rights Chief Navi Pillay for her comments on Sharia law; to deny El Al and other Israeli airlines service to the Maldives; to remove the SAARC monuments in Addu; to reverse the decision on declaring areas of inhabited islands uninhabited in order to permit alcohol sales; and to close Male’ brothels”.*<sup>6</sup>

Political tensions culminated when Mohamed Nasheed ordered on 16<sup>th</sup> January 2012 the arrest of Chief Judge of Criminal Court Abdulla Mohamed by the MNDF (Maldives National Defence Force) after the government accused him of crimes and various forms of misconduct including political bias, obstructing police, stalling cases, links with organised crime and protecting key figures of the former government from human rights violations and corruption cases. A first case against Abdulla Mohamed had already been brought to the President’s Office by the then Attorney General Dr Hassan Saeed, back in 2005.

Following this decision, Mohamed Nasheed faced ongoing opposition demonstrations in the capital Male’. The then Vice-President Mohamed Waheed met with the 23 December coalition on 31<sup>st</sup> January 2012 and agreed to:

*“Take on the responsibilities in accordance with the constitution [...] if the position of president was vacated for whatever reason”.*<sup>7</sup>

On 6<sup>th</sup> February, a police mutiny sided with the opposition and on 7<sup>th</sup> February, Mohamed Nasheed resigned. He was replaced by a coalition government of opposition parties led by his former Vice-President Mohamed Waheed. The appointment of close allies and family members of former President Gayoom in key government positions has contributed to defeat the democratic exercise undertaken in 2008.

On 8<sup>th</sup> February and the following days, Mohamed Nasheed and his supporters demonstrated in the capital and other parts of the country alleging the transfer of power was a coup. Demonstrations were violently repressed, which left scores of protestors injured, and led to further popular protests across the country demanding early elections. Due to the confusing situation, the

4. See: <http://www.aljazeera.com/news/asia/2010/06/201062915490741700.html>

5. See: <http://minivannews.com/politics/ruling-coalition-to-reverse-own-restrictions-on-sale-and-lease-of-state-property-42013>

6. See: <http://www.haveeru.com.mv/news/39572>

7. See: <http://www.haveeru.com.mv/news/40026>

Maldivian civil society remained mostly silent on human rights abuses at first, and became more engaged at a later stage in denouncing police violence.

President Waheed rejected international calls for early elections saying it was neither practical nor constitutional to hold a fresh vote before July 2013.

A Commission of National Inquiry (CoNI) was first established late February by presidential decree to investigate the circumstances that led to the transfer of power in Maldives on 7<sup>th</sup> February 2012. The first Commission failed to meet decent standards of transparency and independence. As a result of Commonwealth<sup>8</sup> mediation, the Government of Maldives agreed on 15<sup>th</sup> May to include a Singaporean retired Supreme Court Judge G.P Selvam to co-chair the CoNI along with the government appointed chair Mr Ismail Shafeeu. The Government also agreed to include Mr Ahmed Saeed, a member selected by Mohamed Nasheed. The Commonwealth and the United Nations provided an expert adviser for support.

Two days before the release of the report on 30<sup>th</sup> August, MDP nominee Ahmed Saeed resigned stating in a press conference:

*“Having made my concerns known to the other members of CoNI, my conscience no longer permits me to carry on associating myself with work that has failed to make the effort required to establish the relevant facts”.*<sup>9</sup>

The Commission’s report of its investigation submitted to President Waheed concluded that:

- *“The change of President in the Republic of Maldives on 7 February 2012 was legal and constitutional.*
- *The events that occurred on 6 and 7 February 2012 were, in large measure, reactions to the actions of President Nasheed.*
- *The resignation of President Nasheed was voluntary and of his own free will. It was not caused by any illegal coercion or intimidation.*
- *There were acts of police brutality on 6, 7 and 8 February 2012 that must be investigated and pursued further by the relevant authorities”.*<sup>10</sup>

Nevertheless the report also stated that:

*“Justice may take time, but needs to be speedy and needs to be seen to be done in order to reassure the public and inspire their confidence. This is unlikely to materialize in the absence of the rule of law which depends on effective institutions and the scrupulous conduct of responsible authorities over time”.*

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8. See: <http://www.thecommonwealth.org/document/248019/200612cmagchairstatement.htm>

9. Public statement circulated to stakeholders on 29<sup>th</sup> August 2012

10. See: <http://www.coni.org.mv/coni/wp-content/uploads/CONI-Report.pdf>

Among its recommendations, the report listed the following:

- *“Immediate steps be taken to provide assistance and encouragement to the State institutions”*
- *“Concerning allegations of police brutality and acts of intimidation, there is an urgent need for investigations to proceed and to be brought to public knowledge with perpetrators held to account and appropriately sanctioned”;*
- *and “Maldives needs to be assisted in strengthening the rule of law such that the institutions of the State may enjoy the public confidence necessary for a democratic society.”*

The report was welcomed by the United Nations, the United States, the European Union, India and the Commonwealth, a grouping of Britain and many of its former colonies that includes the Maldives. The UN Secretary-General Ban Ki-moon:

*“Urged all parties to accept the findings of the Commission and now begin the process of national dialogue aimed at resolving the political problems facing the country”.*

Commonwealth Secretary-General Kamalesh Sharma urged all parties to respect the report’s conclusions. Its Special Envoy, Sir Donald McKinnon from New Zealand, asked all stakeholders to respect the Commission’s findings and to take time to reflect carefully on how to act upon them in a manner that maintains harmony in Maldivian society and helps strengthen democratic practice.

Michael Mann, spokesperson for EU foreign affairs chief Catherine Ashton stated that the European Union recalls that all political groupings had previously undertaken to respect the CNI’s findings, although the report would certainly have been controversial whatever the outcome. He added that it was now more than ever essential that genuine efforts be made by all political actors to work together in the interests of the country to ensure that the democratic system is upheld; to allow the normal business of government to continue; and to prepare for free and fair elections, which should be held as soon as possible.

The US State Department spokesperson Victoria Nuland said that the United States has consistently called for all Maldivians to respect the findings of the Commission of National Inquiry. Now that the commission had released its report the United States urged all parties to respect those findings, to exercise restraint, obey the rule of law, and continue to express themselves in a peaceful and nonviolent manner.

The Indian Ministry of External Affairs called on all political parties in the Maldives to take up the issues arising out of the Commission of National Inquiry report through a peaceful political dialogue, to make a way forward for resolving the political situation in the country.

# II. Challenges to the Separation of Powers

The reform process undertaken in 2004 brought important democratic changes in the Maldives. The adoption of a new constitution guaranteed the full separation of powers, as well as the creation of independent institutions to monitor the three branches of power and safeguard human rights, such as the Judicial Service Commission (JSC), the Anti-Corruption Commission (ACC) and the Police Integrity Commission (PIC) in addition to the Human Rights Commission of the Maldives first established by presidential decree on 10<sup>th</sup> December 2003 then made a constitutionally established autonomous body in August 2005.

## 1. Continued interference by the executive

Prior to the constitutional changes in 2008, President Gayoom controlled all branches of power. Despite the introduction of a new constitution in 1998 repealing the 1968 constitution<sup>11</sup>, he continued to influence not only the executive, but also the judiciary and the legislative by appointing all judges, the chief justice, judges of the high courts, atoll chiefs, the auditor general, eight members of parliament out of fifty, and the commissioner of elections. The executive interference into other branches of power was to end with the adoption of the 2008 constitution.

From the onset of his presidency, Mohamed Nasheed attempted to break off from a tradition of interference by the executive with an ambitious decentralisation policy: local council elections were organised allowing the population to directly elect their island and atoll representatives for the first time in February 2011. Maldives was divided into 7 provinces headed by State Ministers appointed by President Nasheed to oversee the development of local governments. Local counsellors were given decision-making powers on, among other sectors, education, health and housing policies, all previously the prerogatives of central ministries.

Yet, tensions with the judiciary and the opposition-dominated parliament, led him to take unilateral decisions that exceeded his prerogatives, such as ordering the arrest of opposition leaders and a judge without following due process, or by declaring the Supreme Court defunct. Since Mohamed Nasheed took over power, executive interference has continued. Indeed, he has been accused of influencing the judiciary to charge members of the opposition, among them, Mohamed Nasheed, a move seen as politically motivated by the international community<sup>12</sup>, as it would prevent him from running in the next presidential elections. Mohamed Nasheed has been charged on 15<sup>th</sup> July for “*the unconstitutional arrest of an innocent person under Article 81 of the Penal Code*” in relation to the arrest of Judge Abdulla Mohamed in January. The case has been forwarded to the Hulumale’ court near Male’.

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11. See: <http://www.asianlii.org/mv/legis/const/1998/1.html>

12. See: <http://www.international.gc.ca/media/aff/news-communiqués/2012/07/27b.aspx?view=d>

## 2. Blockages in the legislative reform process

Prior to 2004, the Majlis (Parliament) acted as a rubber stamp within the Gayoom system. Despite their election in the 1990s and early 2000s, the few reformist members of parliament were silenced by threats or jail sentences. But with the advent of a multi-party democracy, the Majlis became active in the drafting of the new constitution and somehow achieved a certain level of independence. In 2006, a special assembly was created to reform the 1998 constitution. Composed of members of parliament from the Majlis and cabinet ministers, it drafted a new constitution guaranteeing the separation of power and devolving decision-making to the Majlis, which was to be constituted of elected members only.

On the occasion of the 2009 parliamentary elections, less than a year after the presidential election, the ruling party - the Maldivian Democratic Party (MDP) - was unable to secure a majority.

Between 2009 and the transition of power in February 2012, the animosity between political factions considerably hampered the reform process. According to a report by the International Commission of Jurists (ICJ) in February 2011:

*“The People’s Majlis has not demonstrated collaborative leadership that reaches across the partisan divide, required in the name of consolidating the democratic transition”.*<sup>13</sup>

Due to political feuds in the Majlis, a number of important legislations, including the Penal Code, the Criminal Procedure Code, the Civil Procedure Code, the Evidence Act, and the Legislation on the Right to Peaceful Assembly have remained - and are still – pending, thus creating a backlog. The recent adoption of important legislations, such as the Drugs Bill<sup>14</sup> (29 December 2011) and the Prevention of Domestic Violence Bill<sup>15</sup> (9 April 2012) are encouraging but are not sufficient to consolidate the reform process. Nevertheless, FIDH learnt that 60% of recommendations on the new legislations submitted by the NGO Maldivian Democracy Network (MDN) were taken into account by the Majlis, among them, recommendations on the Drugs Bill, the Domestic violence Bill and the Judges Bill, considered landmark reforms.

The 2008 constitution guarantees most of Maldives’ human rights obligations; however these have so far failed to be translated into domestic law. In the interim period, the General Regulations Act passed in 2007 constituted a parent legislation for over 80 regulations<sup>16</sup>, and prolonged the lifespan of these regulations for a one-year period until new legislations were to be adopted to reflect the constitutional changes. The Act has been renewed every year since 2007 to prevent a legal void. It was once again renewed on 5<sup>th</sup> August 2012 until April 2013.<sup>17</sup>



The Majlis  
(Parliament)

13. See: <http://www.icj.org/dwn/database/Maldives%20ICJ%20Mission%20Report%2021-02-11.pdf>

14. See: <http://minivannews.com/politics/drugs-bill-supports-rehab-cracks-down-on-dealers-30101>

15. See: <http://www.haveeru.com.mv/news/41596>

16. Regulations on political parties, freedom of assembly, criminal justice procedures, companies, finance leasing transactions, insurance, jails and parole, freedom of information, etc.

17. See: <http://minivannews.com/politics/parliament-agrees-to-extend-general-regulations-act-in-spite-of-majlis-suspension-41629>



Meanwhile, the reform process has suffered another toll following a decision by the Speaker on 31<sup>st</sup> July 2012 to suspend Majlis' sessions indefinitely<sup>18</sup>. The Speaker justified his decision by stating that *"a peaceful atmosphere could not be assured"*. Since the February events, the Majlis has become the theatre of political tensions, as MDP parliamentarians have been accusing the government of harassing protestors. The opening of the Majlis had already been disrupted as President Waheed attempted to give his first address in Parliament on 19<sup>th</sup> March, while hundreds of people demonstrated<sup>19</sup> outside the Majlis calling for early elections. After weeks of party-talks the Speaker announced on 30<sup>th</sup> August that the third session of the Majlis would begin on 1<sup>st</sup> October.

### 3. The state of the Judiciary

As outlined above, under the 1998 constitution, the President used to be the highest authority of the judiciary. In the 2008 constitution, the judiciary has been given a more significant role. Therefore, strengthening the judiciary has been seen by many observers, as a key to a successful reform agenda and a lasting democratic transition.

In this regard, the independence of the judiciary is guaranteed under Chapter VI, article 141 (c) of the 2008 constitution:

*"No officials performing public functions, or any other persons, shall interfere with and influence the functions of the courts" and article 142: "The Judges are independent, and subject only to the Constitution and the law. When deciding matters on which the Constitution or the law is silent, Judges must consider Islamic Sharia. In the performance of their judicial functions, Judges must apply the Constitution and the law impartially and without fear, favour or prejudice".*

Despite these significant constitutional changes, the different sections of the judiciary have failed to become fully independent and still lack adequate expertise. Most judges do not meet educational standards and only hold a certificate in Sharia without the experience or the competence to interpret the new constitution and legislations. President Nasheed has requested assistance from the Commonwealth in the training of judges. However, his public confrontations with members of the judiciary did not facilitate a climate of cooperation and created distrust among the public.

The Supreme Court has only one qualified judge educated in Common Law, while most judges were partly educated in Islamic madrassahs in Pakistan. The Court became permanent in August 2010, after yet another power struggle<sup>20</sup> between the Presidency, the Majlis and the Judicial Service Commission.

The Judicial Service Commission (JSC) was established through the 2008 Constitution to oversee the work of judges, appointments and dismissals and to act as a 'watchdog' institution.

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18. See: <http://minivannews.com/politics/parliament-sittings-canceled-indefinitely-by-speaker-41370>

19. See BBC news coverage: <http://www.bbc.co.uk/news/world-asia-17430997>

20. See p.15 of ICJ report.

It has however been accused of lacking transparency and also of being divided as a result of conflict of interest. It should allow greater scrutiny of their work by civil society groups.

According to article 285 of the Constitution, the JSC was to appoint all judges before the end of the interim period on 7<sup>th</sup> August 2010, during which a Judges Act reflecting the constitutional changes was to be enacted by the Majlis to allow for the appointment of judges. By that point the Majlis had not passed the Judges Bill, prompting the then President Nasheed to unilaterally declare the Supreme Court bench defunct, and to appoint a four-member appellate court to oversee the administration of the Supreme Court by decree. He further requested the army to take control over the Supreme Court premises<sup>21</sup> to prevent judges from entering the Court until the matter of their reappointment was dealt with.

In fact, according to testimonies from members of the judiciary met by the FIDH team in Male', under the successive administrations, no political party has actually ever shown any willingness to establish an independent judiciary since each seems to benefit from the existing system. Moreover, the judiciary is allegedly under the influence of the business sector. For instance, the member of the JSC appointed by the Majlis is also one of the main business tycoon of the country. His presence in the body overseeing the conduct of judges, as well as the general pressure imposed upon the business sector on the judiciary, has therefore been subjected to controversy.

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21. See p. 15 of ICJ report «Maldives: Securing an Independent Judiciary in a Time of Transition», February 2011: <http://www.icj.org/dwn/database/Maldives%20ICJ%20Mission%20Report%202021-02-11.pdf>

# III. Human Rights Violations and Impunity

## 1. A legacy of human rights violations

From 1978 to 2008, widespread human rights violations have been recorded under Gayoom's regime. Its leadership has been accused, among other things, of carrying out arbitrary arrests and torture, especially aiming at silencing any form of criticism or dissent. Throughout the 1990s and early 2000s, human rights organisations began campaigning for the release of political prisoners, among them Mohamed Nasheed, future president of the Maldives. Prominent journalists and human rights activists were often persecuted and tried on charges of terrorism. One of the key cases that sparked an international outcry was the arrest of Jennifer Latheef, a human rights activist who documented the 2003 riots. She was sentenced for terrorism in 2005, in a trial that failed to meet international standards.

Following Mohamed Nasheed's election in 2008, a full range of fundamental rights has been promoted, and human rights abuses reduced drastically. In particular, freedom of expression improved considerably<sup>22</sup>. In 2009, it moved from 104<sup>th</sup> to 51<sup>st</sup> rank in the Reporter Without Borders Press Freedom Index. During her visit to the Maldives in November 2011, Navi Pillay, the UN High Commissioner for human rights, commended:

*“The dramatic reduction in the incidence of torture, partly as a result of the setting-up of the National Prevention Mechanism within the Human Rights Commission of Maldives”.*<sup>23</sup>

Besides, the Maldives became known for its active role in promoting human rights internationally, especially as a member State of the Human Rights Council.

However, there was also a substantial lack of progress. Prison conditions remained to some extent similar as under Gayoom, and flogging of women - commonly practiced in Maldives under Sharia - continued. Human rights abuses against migrant workers' rights were unaddressed while it has been reported that human trafficking is deeply rooted and widespread<sup>24</sup>. Since its inception, the Human Rights Commission of Maldives has received a great deal of complaints from migrants workers victims of various forms of exploitation, including fraudulent recruitment, confiscation of identity and travel documents, withholding or non-payment of wages, or debt bondage.

Most importantly, Mohamed Nasheed did not take any steps to investigate human rights abuses that occurred prior to 2008, thereby creating a culture of impunity for perpetrators of past human rights violations, despite numerous complaints and documented cases. Upon winning

22. See: [http://en.rsfo.org/spip.php?page=classement&id\\_rubrique=1001](http://en.rsfo.org/spip.php?page=classement&id_rubrique=1001)

23. See: [http://www.unog.ch/80256EDD006B9C2E/%28httpNewsByYear\\_en%29/FC72249B830660E7C1257952004CD7EA?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/%28httpNewsByYear_en%29/FC72249B830660E7C1257952004CD7EA?OpenDocument)

24. See: [http://photos.state.gov/libraries/adana/231771/PDFs/Trafficking\\_in\\_Persons\\_Report\\_2012\\_Maldives.pdf](http://photos.state.gov/libraries/adana/231771/PDFs/Trafficking_in_Persons_Report_2012_Maldives.pdf)

the Presidential elections Mohamed Nasheed stated:

*“A test of our democracy will be how we treat Maumoon [former President Maumoon Abdul Gayoom]. I don't think we should be going for a witch-hunt and digging up the past”.*<sup>25</sup>

Victims of the former regime seeking reparation were frustrated with this decision as they were reluctant to submit their complaints to existing institutions, which they still perceived as loyal to the former president. Moreover, the Human Rights Commission of the Maldives was not provided with the mandate to investigate torture cases that occurred prior to 2000.<sup>26</sup>

To this date, the only case of custodial death investigated by the authorities was the death of Evan Naseem. On the other hand, the shooting that followed his death in Maafushi jail, or the death of Hussain Solah, another young prisoner who was mysteriously found dead floating in the port of Male', have never been properly investigated. Despite testimonies of inmates collected by the Human Rights Commission of Maldives, the only suspect charged for Hussain Solah's murder was recently acquitted.<sup>27</sup>

The civil society that was flourishing and vocal during the democratic struggle became less visible during the presidency of Mohamed Nasheed. Human rights NGOs have then focused on community awareness project and training. Most of them also suffered from a highly polarised environment in which they encountered difficulties in receiving complaints from victims of human rights violations. In the wake of the recent political violence, they have flagged human rights violations and police violence against protestors, with recommendations to the authorities. Nevertheless, they need strong support in terms of capacity building and international outreach.

Impunity has not applied to human rights violations only, it also affected large-scale corruption cases, some of which involving State officials, as they were not properly investigated if at all. Ms Aishath Velezinee, former commissioner at the Judicial Service Commission, has openly criticised the corrupt practices of some judges. She was stabbed in January 2011 by unknown thugs in the streets of Male' for, it is widely believed, her public stances on the judiciary. According to her, following the February 2012 events, the police stopped investigating this attack. Only one person, out of the four suspected culprits, was condemned for one year for 'carrying a dangerous weapon in the public sphere'.

Mohamed Nasheed's resignation was precipitated by the arrest, under his presidency, of a number of opposition leaders and of a judge, Abdulla Mohamed, without due process of law. The persecution of blogger and human rights defender Hilath Rasheed, who was violently attacked by unknown assailants in June 2012, began under Nasheed's presidency. Firstly, the Ministry for Islamic Affairs blocked his blog in November 2011. Then, he was detained from 14<sup>th</sup> December 2011 to 9<sup>th</sup> January 2012 for "his own safety" while demonstrating peacefully in favour of religious tolerance.<sup>28</sup>

25. See: <http://www.hindustantimes.com/world-news/Maldives/Maldives-despot-s-record-reign-ends/Article1-347938.aspx>

26. See Redress /Torture Victims Association's report «This is what I wanted to tell you», June 2012: [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/REDRESS\\_Maldives\\_HRC105.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/REDRESS_Maldives_HRC105.pdf)

27. See: <http://hussainsolah.blogspot.fr>; <http://www.haveeru.com.mv/news/35275>

28. See RSF press release: <http://en.rsf.org/maldives-leading-journalist-released-but-09-01-2012,41646.html>

Since last February, however, repression has intensified as a reminder of Gayoom’s era. Practices to silence political dissent that had disappeared in the course of Nasheed’s presidency, have once again become prevalent under Mohamed Waheed’s presidency. In spite of such a stepback, the mass rallies that have rocked the capital Male’ for the past months have been a clear indication of popular support for democracy and respect for human rights.

## 2. Human rights violations since February 2012



More than six months after taking over power, the coalition government of Mohamed Waheed has been accused of a numerous range of human rights violations, from violent repression of street protests, arbitrary arrests, sexual harassment of female protestors, torture, harassment of pro-opposition media, and legal and physical harassment of members of the opposition.

During its mission in August 2012, FIDH collected testimonies from ordinary citizens, none of whom were affiliated to the MDP nor to any political party, who were all

*Demonstration of 28<sup>th</sup> February 2012 in Male’ calling for early elections, to stop police violence and for justice.*

victims of police brutality. Most of the violence occurred during the arrests. One protestor explained how, while sitting peacefully in front of a police line, he was beaten and sustained injuries to his leg. A young man reported how he was passing by demonstrations and arbitrarily arrested with force. A recent report by the Human Rights Commission of Maldives (HRCM) indicates that:

*“17 people were treated for varying degrees of injuries caused during the unrest in Addu City”.*

The injuries included a fractured bone and half-inch deep head wound. During a visit to a detention centre in Addu City, the HRCM team observed “*signs of torture*” on the bodies of 10 detainees who alleged mistreatment, including bruises and wounds on most of them as well as a two-inch deep gash on the shoulder of one detainee. The team also observed

*“Signs of a cigarette burn on the soles of the feet of one detainee.”*<sup>29</sup>

The HRCM also visited Dhoonidhoo detention centre near Male’ and observed:

*“Bruises all over the body” of one of the MPs, while her eyes were bloodied and swollen.”*

29. See: <http://minivannews.com/politics/security-forces-did-not-take-sufficient-measures-to-control-addu-city-unrest-hrcm-42541>



It reported in its concluding observations that:

*“Police officers acted very harshly towards the politicians in ways that could cause physical and psychological harm even though they showed no resistance”.*<sup>30</sup>

On 12<sup>th</sup> July, the UN Human Rights Committee raised the issue of the right of peaceful assembly in Maldives:

*“The Committee, while noting that article 32 of the Constitution guarantees the right of peaceful assembly for everyone and without prior permission, is concerned at the “Regulation concerning Assembly”, which requires at least three persons representing the organizers of public assemblies to submit a written form fourteen days in advance. It is particularly concerned at reported cases of excessive use of force by the Police and the National Defence Forces during demonstrations”.*<sup>31</sup>

It also flagged:

*“The poor conditions of detention, the high rate of overcrowding in some prisons and the lack of complaint mechanism for inmates [...] Suspects may be detained by Police/National Defence Forces for more than 48 hours without appearing before a judge and without charge. Suspects don’t always benefit from legal assistance”.*

On 17<sup>th</sup> July 2012, following days of pro-opposition protests, the UN High Commissioner for Human Rights<sup>32</sup> expressed concern:

*“At the excessive use of force by security forces [...]. Instances of apparent brutality have been captured on camera. These include the seemingly deliberate and uncalled-for use of some kind of spray on former President Nasheed<sup>33</sup>, and the driving of police vehicles at high speed into crowds of protestors”.*

The FIDH mission found that the general public still has little trust in public institutions, including independent ones, and that these institutions are seen as ineffective in breaking impunity of perpetrators of human rights violations. Due to the highly politicised and polarised environment, these institutions have been perceived as partisan to the new regime. FIDH was informed that some policemen had been summoned to the police after giving testimonies to the Police Integrity Commission to denounce some violent actions by armed forces<sup>34</sup>. Six resigned afterwards.

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30. See: <http://minivannews.com/politics/police-crackdown-on-february-8-brutal-without-warning-hrcm-42434>

31. See: UN Human Rights Committee Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, paragraph 23

32. See: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12363&LangID=E>

33. Video footage of M. Nasheed peppersprayed: [http://www.youtube.com/watch?v=gaB\\_15VEiho&feature=related](http://www.youtube.com/watch?v=gaB_15VEiho&feature=related)

34. See video: [http://www.youtube.com/watch?v=qhu7MIDDvcM&feature=player\\_embedded](http://www.youtube.com/watch?v=qhu7MIDDvcM&feature=player_embedded)

The mandate of the Police Integrity Commission (PIC) is inscribed into the Police Act (18<sup>th</sup> section). It was set up in July 2009 and makes recommendations to the Home Ministry. Although the 19<sup>th</sup> section states it is an independent commission, in effect, it is regulated by the Home Ministry. During the Presidency of Mohamed Nasheed, the Home Minister changed three times leading to inconsistencies. The PIC currently has 29 staff members and 5 permanent commissioners. However, it has been poisoned by executive interference. FIDH was informed that the internal struggle between the different members loyal to different political parties has stalled any attempts to launch an investigation into police violence.

Despite claims by the Government of Maldives that the Human Rights Commission of Maldives has been established in accordance with the Paris Principles, it has been listed under the B status, i.e. it is not fully compliant with these principles. This is partly due to the citizenship clause that requires all members of the Commission to be Muslims<sup>35</sup>, or some of the shortfalls of the Commission's mandate which is for instance restricted to investigate torture cases that occurred after 2000. During a meeting with FIDH, the Commission's members stated that they received only 3 formal complaints since the 7<sup>th</sup> February events.

Yet it is important to highlight, as mentioned above, that the Commission has brought out in late August a series of reports condemning the police crackdown of 8<sup>th</sup> February and torture of detainees by security forces. Among its conclusions, the Commission stated:

*“On 8<sup>th</sup> February 2012, due to the unrest in Addu City, some people taken into police custody reported to have been tortured, treated inhumanly low and deprived of their fundamental rights.”*<sup>36</sup>

Besides, the authorities have failed to investigate crimes on an impartial basis. Following the murders of a prominent lawyer and a policeman (respectively on 1<sup>st</sup> and 22<sup>nd</sup> July 2012), the police completed the investigation rapidly, on the basis of confessions of the suspects. The couple charged for the murder of the lawyer was sentenced on 19<sup>th</sup> July and the man accused of the murder of the policeman confessed on 31<sup>st</sup> July and is awaiting a sentence. On the other hand, despite all the evidence available, the investigation for the attempted murder of human rights defender Hilath Rasheed on 4<sup>th</sup> June 2012, has been stalled. Likewise, the authorities have not launched any investigation into cases of police brutality against protestors in Male' and Addu.

Shortly after the release of the CoNI report, the Police has reportedly stated:

*“That it will arrest any person who accuses them of staging a “coup” or call any police officer a “traitor.”*<sup>37</sup>

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35. See: [http://www.ohchr.org/Documents/Countries/NHRI/Chart\\_Status\\_Nls.pdf](http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_Nls.pdf)

36. See: <http://minivannews.com/politics/police-crackdown-on-february-8-brutal-without-warning-hrcm-42434>

37. See: <http://www.haveeru.com.mv/news/44262>

Amidst political tensions in the capital and other parts of the country, eleven protestors have been arrested, among them one minor, and leaving one protestor severely injured<sup>38</sup>. In a statement circulated to stakeholders on 30<sup>th</sup> August, the Maldivian Democracy Network (MDN) has shared the following public concerns regarding the actions of the police forces:

- ▶ *Barricading and closing down roads ahead of time and obstructing protestors' ability to assemble (in areas permitted by law);*
- ▶ *Preventing the video and photo documentation of protests by stopping those who do so and ordering them to delete their photos and videos;*
- ▶ *Not having a service number visible on their uniform which could be utilized to identify individual Police officers.<sup>39</sup>*
- ▶ *Using inappropriate language when dealing and communicating with the protestors.*

In other words, the situation remains at the time of release of this report relatively confused and uncertain; however the coming weeks will be crucial to test the Government's ability and willingness to prevent further acts of police brutality and, in general, a deterioration of the human rights situation.

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38. See : <http://www.aljazeera.com/indepth/features/2012/09/20129116544631378.html>

39. Police officers are permitted to cover their faces according to circumstances but the regulation also stipulates they have to wear an identification number.

# IV. The Rise of Fundamentalism

## 1. The ban on freedom of religion

Maldives law is a mixture of Sharia and Common law. While the legal framework has been detrimental to civil, political and religious rights over the past decades, the interpretation of Sharia has been rather moderate. Although the 2008 constitution has brought some significant improvements in some fields, extremist groups have been pushing for the full implementation of Sharia, which could potentially result in a regression in human rights for both men and women. Unlike the 1998 constitution, the 2008 constitution includes a religious clause to the citizenship<sup>40</sup>:

*“Despite the provisions of article (a) a non-Muslim may not become a citizen of the Maldives”.*

This provision blatantly violates the prohibition of discrimination on religious grounds, enshrined in all international human rights instruments, and part of international customary law. The progressive approach of the new constitution was hampered at the drafting stage by the influence of radical clerics and populist politicians misusing religion.

During the Universal Periodic Review (UPR) of the Maldives in March 2011 at the UN Human Rights Council, the Government refused to withdraw the reservation under article 18 of the International Covenant on Civil and Political Rights (ICCPR)<sup>41</sup> and the reservation under article 14 of the Convention of the Right of the Child (CRC)<sup>42</sup>, both pertaining to freedom of religion.

Although former President Nasheed was elected on a human rights platform, he was unable to address growing fundamentalism, often being accused of ‘destroying the Islamic faith’ by his political opponents. In January 2012, a pamphlet authored<sup>43</sup> by Mohamed Jameel (current Home Minister of President Waheed’s administration) was widely distributed, accusing former President Nasheed of undermining Islam:

*“Instead of strengthening the Islamic faith of Maldivians, he tried to weaken it. Instead of preserving the Islamic identity of Maldivians, he worked in ways that would allow other religions on this Maldivian soil. Instead of*

40. See: <http://www.presidencymaldives.gov.mv/Documents/ConstitutionOfMaldives.pdf>

41. The reservation reads as such: “The application of the principles set out in Article 18 of the Covenant shall be without prejudice to the Constitution of the Republic of Maldives.”

42. The reservation reads as such: “The Government of the Republic of Maldives expresses its reservation to paragraph 1 of article 14 of the said Convention on the Rights of the Child, since the Constitution and the Laws of the Republic of Maldives stipulate that all Maldivians should be Muslims.”

43. On Mr Jameel’s pamphlet «President Nasheed devious plot to destroy the Islamic faith», see: <http://minivannews.com/politics/translation-president-nasheed%E2%80%99s-deviuous-plot-to-destroy-the-islamic-faith-of-maldivians-30991>

*aiding Muslims and the Islamic ummah [community], he tried to please adversaries of Islam and aid them”.*<sup>44</sup>

In November 2011, High Commissioner for Human Rights Navi Pillay warned against:

*“A rise in religious intolerance among a small but intimidating minority in the Maldives, and the impact this is having on women [...] Religious intolerance has also manifested itself in disturbing acts such as the closing down of a blog by the Ministry of Islamic Affairs because of the religious views of its creator, Ismail Hilath Rasheed”.*

Public protests<sup>45</sup> were held against her for her comments condemning flogging and religious intolerance.<sup>46</sup> During the SAARC summit in Addu Atoll, Southern Maldives, monuments representing member states were vandalised for depicting “worship idols”.<sup>47</sup>

On 7<sup>th</sup> February 2012, a mob of fundamentalists took advantage of the unrest to destroy historical artefacts and Buddhist statues pre-dating the Maldives conversion to Islam and exhibited at the Maldives National Museum.<sup>48</sup>

As already highlighted, human rights defender Hilath Rasheed was attacked<sup>49</sup> last June by religious extremists for openly advocating religious tolerance. He had also exposed illegal marriages of under-aged girls by Salafists in his blog. He narrowly survived after being stabbed in the neck and had to flee Maldives. The Government meagrely condemned the attack and failed to ensure a proper investigation of the crime despite available close-circuit television (CCTV) coverage.



© photo: Anonymus

*Blogger and Human Rights defender Hilath Rasheed.*

Due to the highly controversial character of the issue of freedom of religion in the Maldives, especially in a context where fatwas have been issued against people vocal about this issue, local media, politicians and civil society have been reluctant to publicly defend Hilath Rasheed or other advocates of freedom of religion out of fear of repression by extremist groups. Auto-censorship is frequent as a mean to avoid public backlash.

44. See: <http://minivannews.com/politics/translation-president-nasheed%E2%80%99s-devious-plot-to-destroy-the-islamic-faith-of-maldivians-30991>

45. See: <http://www.haveeru.com.mv/news/38887>

46. See: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11641&LangID=E>

47. See: <http://www.haveeru.com.mv/news/38747>

48. See: <http://minivannews.com/society/mob-storms-national-museum-destroys-buddhist-statues-a-significant-part-of-our-heritage-is-lost-now-31813>

49. See: <http://minivannews.com/society/mob-storms-national-museum-destroys-buddhist-statues-a-significant-part-of-our-heritage-is-lost-now-31813>



## 2. The deterioration of women's rights

The Maldives have inherited from a matriarchal society pre-dating the conversion to Islam. Women have the right to education, to vote, to divorce, and have inheritance rights almost equal to men. The adoption of the 2008 constitution was a major improvement in women's rights by providing women access to high offices such as judge, minister or president of the Maldives. While polygamy is practised, there is no culture of arranged marriages.

Despite this apparent progressive corpus of rights, in practice women have suffered and still suffer from the absence of a strong legal framework, thus making them vulnerable to various forms of exploitation. According to a national survey on "Women's Health and Life Experiences", which was conducted with the support of UNFPA, UNICEF and the WHO in 2007:

*"One in every three Maldivian women aged between 15 and 49 reported experiencing some form of physical or sexual violence at least once".<sup>50</sup>*

Although cases of rape have been investigated in recent years, it has been reported that in smaller communities, women and young girls are often afraid to speak up to avoid persecution by the community, especially if it involves incest. The NGO Transparency Maldives has expressed concerns that bribes in the form of sexual favours were being solicited by officers of the court from women seeking divorce or other legal actions. UN High Commissioner for Human Rights, Navi Pillay also remarked during her visit to the Maldives:

*"Only five of the country's almost 200 judges and magistrates are women; [...] the widespread domestic violence against women in the Maldives indicates a lack of respect – as does the failure to enact the draft law designed to deal with this issue."*

In this context, the anti-domestic violence bill passed in April 2012 is a clear sign of attempted progress. Nevertheless, the reform process being at an early stage, women's rights could potentially be curbed by religious parties influencing the governing coalition and calling for the full implementation of Sharia instead of following the progressive spirit of the constitution and Maldives' international obligations since ratifying the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2006. It should be noted that Maldives also made reservations to the CEDAW, concerning the right of women to participate in the political and public life of the country, as well as the equal rights of women concerning marital and family life.

With the influence of imported Wahabi school of thought in recent years, the majority of women have begun to wear the headscarf, a garment that is not traditional to the Maldives. Following the 2004 tsunami, radical preachers have visited devastated islands and scared women into covering their hair by claiming that: "it was a punishment from God". A small group of radical elements of society are now actively advocating for women to wear the niqab, arranged marriages and child brides. Women wearing "Western clothes" are often subjected to verbal abuse in the streets. Women criticizing conservative preachers are threatened. For instance, women rights advocate Aishath Anya has received death threats for publishing an

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50. See: <http://sgdatabse.unwomen.org/uploads/Survey%20-%20Maldives%20-%202007.pdf>

article<sup>51</sup> denouncing and mocking the tactics of extremist preachers to entice women to wear the veil. According to her, women are also confused by this new style of Islam, which is contradictory to traditional practices<sup>52</sup>. They are forced to outwardly comply with demands on public behaviour and dress to avoid being further pressured or labelled negatively.

### 3. The debate on death penalty

Recent murders (at least 9 in 2012) have sparked a national debate on whether to implement the death penalty. No execution has taken place in the Maldives since 1953 thanks to the Clemency Act, allowing the President to commute death sentences into life imprisonment. Some members of parliament and the current Home Minister Mohamed Jameel are actively campaigning for it as a solution to the recent surge in crimes<sup>53</sup>.

On 12<sup>th</sup> July, the UN Human Rights Committee raised the issue of the recent push by Government's members and lawmakers to enforce death penalty in the Maldives. Mohamed Jameel responded to the panel:

*“Human rights in the Maldives streamlined with Islam with very few minor exceptions. [...]The general acceptance of Muslim jurists is that Islamic human rights were there long before we subscribed to universal human rights”.*

With the current state of the judiciary and the incapacity of the police to properly investigate crimes, analysts fear judicial errors would result in the death of innocent people. Under the current climate of repression, extremist groups in favour of the death penalty could influence the drafting process and the parliament debate when certain laws will be tabled. It may in particular be the case of several pending legislations such as the revised Penal Code, Criminal Procedures Code, Evidence Bill and Witness Act.

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51. See: <http://maldives-discourse.blogspot.fr/search?updated-min=2007-01-01T00:00:00-08:00&updated-max=2008-01-01T00:00:00-08:00&max-results=2>

52. Aishath Aniya's blog: <http://maldives-discourse.blogspot.fr/>

53. See: <http://minivannews.com/politics/lawyer-najeeb-murdered-supreme-court-and-ag-call-for-action-as-public-demand-death-penalty-40156>

# V. CONCLUSION AND RECOMMENDATIONS

The adoption of a new constitution by the Maldives in 2008 guaranteed, for the first time since its independence in 1965, the full separation of powers, thus opening a new chapter in the political history of the country. The constitution also helped, in spite of serious shortcomings, promote democratic values associated to it. Such a turning point resulted in rapid progress in the field of human rights. However, there were also setbacks. In particular, newly-established institutions failed to become fully independent and kept suffering from polarization, often resulting in conflict of interest and inertia.

The political turmoil that led on 7<sup>th</sup> February 2012 to what was termed, on 30<sup>th</sup> August, as a legal and constitutional transfer of power by the Commission of National Inquiry, was followed by yet another new phase of interference and political divisions. Most worryingly, the coalition government established following the transfer of power proved incapable to prevent and counter what can be perceived as signs of regression, rather than progress, in the reform process. In particular, it failed to prevent police brutality during the demonstration of 8<sup>th</sup> February and the months that followed. It failed to fight widespread impunity for past and recent crimes. It also contributed to the rise of fundamentalist views in the wider Maldivian society but also within the Maldivian political system. Disturbingly enough, the same government made a clear alliance with former President Maumoon Abdul Gayoom whose influence on various institutions, including independent commissions, has come to light on many occasions. In other words, there is growing evidence that the Maldives has been backtracking on the democratic reform process.

FIDH therefore makes the following recommendations to further advance the reform process and strengthen the rule of law as well as the democratic institutions established in the Maldives since 2008:

## **To the Government of Maldives:**

- ▶ In accordance with the recommendations of the report by the Commission of National Inquiry, take immediate steps to strengthen independent commissions including the Police Integrity Commission, the Judicial Service Commission, and the Human Rights Commission of Maldives. These commissions should enact rigorous and transparent rules of procedure and consult civil society groups to avoid actual and perceived conflicts of interest, giving the public confidence in the fairness of their independent authority.
- ▶ Ensure in all circumstances, respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments ratified by the Maldives.
- ▶ In particular, remove from the domestic legal framework all provisions that restrict

individual rights based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, in conformity with Art. 2 of the International Covenant on Civil and Political Rights (ICCPR). Lift the reservation made to Art 18 of the ICCPR, Art. 14 of the CRC as well as Arts. 7 and 16 of the CEDAW, as they are incompatible with the object and the purpose of those conventions.

- ▶ Urgently enact, through the Majlis, pending legislations including a Penal Code, Criminal Procedure Code, Civil Procedure Code, Anti-Torture Bill and Evidence Act, without which judges and magistrates are unable to deliver justice fairly, consistently and efficiently. Make sure that civil society is consulted in that framework, and ensure that those texts fully conform with international human rights commitments of the Maldives.
- ▶ Refrain from enshrining the death penalty in those texts, in conformity with Art. 6 of the ICCPR and the global abolitionist trend worldwide.
- ▶ Submit a response to the 2009 report of the subcommittee on Prevention of torture and other cruel, inhuman or degrading treatment regarding the Optional Protocol to the Convention against Torture (OPCAT).<sup>54</sup>
- ▶ Immediately provide dates for a mission in the Maldives to the Special Rapporteur on Freedom of Peaceful Assembly since an invitation has already been extended, and implement recommendations of Special Procedures that have already visited such as the Special Rapporteur on the Promotion and Protection of the right of freedom of opinion and expression (2009), the Special Rapporteur on the independence of judges and lawyers (2007), and the Special Rapporteur on freedom of religion and belief (2006).
- ▶ In view of the severe violations of migrant workers' rights under successive administrations, urgently ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- ▶ Guarantee in all circumstances the physical and psychological integrity of human rights defenders, journalists and members of the opposition in the Maldives; in particular, order an immediate, thorough and transparent investigation into the assault against Mr. Hilath Rasheed with a view to establish the truth and to sanction all those responsible for this attack.
- ▶ Guarantee the right to freedom of expression and opinion, in application of article 19 of the ICCPR and in line with General Comment 34 of the UN Human Rights Committee, criminalize and prosecute all attacks, intimidation and coercion for the exercise of these rights. Condemn and prosecute in particular any advocacy of hatred that constituted incitement to discrimination, hostility or violence, in application of Article 20.2 of the ICCPR.<sup>55</sup>

54. See: [http://www2.ohchr.org/english/bodies/cat/opcat/spt\\_visits.htm](http://www2.ohchr.org/english/bodies/cat/opcat/spt_visits.htm)

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

## **To the international community:**

- ▶ Publicly raise concerns regarding human rights violations in the Maldives and request the Maldivian authorities to take all necessary measures to prevent violence, respect the due process of law and stop arbitrary arrests.
- ▶ Advocate for the preservation and consolidation of democratic achievements and take all necessary steps to guarantee the conditions for free and fair elections in July 2013 or earlier.
- ▶ Provide technical assistance to the Government of Maldives, to strengthen the rule of law and support the development of public institutions, in particular independent commissions such as the Human Rights Commission of Maldives, the Police Integrity Commission, and the Judicial Service Commission.
- ▶ Provide support to civil society organizations to raise public awareness about the role of public institutions and the importance of separation of powers; develop human rights education programs to foster tolerance and raise awareness about universal human rights principles. Civil society organizations should play a key role in monitoring progress in the building of democratic and independent institutions.

# ANNEX: List of meetings in Male'

FIDH organised a fact-finding mission in the Maldives from 30<sup>th</sup> July to 2<sup>nd</sup> August 2012. FIDH team met with a wide range of stakeholders from the United Nations, the government, the opposition, and civil society groups including journalists, NGOs, human rights activists and victims.

## United Nations

- Andrew Cox, UN resident coordinator and Anna Liboro-Senga, head of the resident coordinator's office

## Government

- Members of the Human Rights Commission of the Maldives, including Maryam Azra Ahmed, President, Ahmed Tholal, vice-President, Ahmed Ameen, director, and Aly Shameem, member
- Shahindha Ismail, Chairperson of the Police Integrity Commission
- Justice Ahmed Muthasim Adnan, Justice of the Supreme Court
- Mohamed Zahid, Deputy Minister, Ministry of Family, Gender and Human Rights

## Opposition

- Members of the Maldivian Democratic Party, including Mohammed Nasheed, former president; Hamid Abdul Ghafoor, Spokeperson, International; Eva Abdulla, member of parliament; Imthiyaz Fahmy, member of parliament; Ibrahim Ismail, legal advisor and chairman of the council, Mandhu College

## Journalists

- JJ Robinson, Chief Editor of Minivan News
- Journalists from Raajje TV

## Non-government organizations

- Fathimath Ibrahim Didi, Executive Director, and Khadeeja Hamid, Project Coordinator, Maldives Democracy Network
- Ilham Mohamed, Executive Director, Transparency Maldives
- Jude Laing, Director-Founder, Raajje Foundation

## Human rights activists and victims

- Aishath Velezinee, former commissioner at the Judicial Service Commission/blogger
- Human rights activists
- Victims of police brutality





### **Establishing the facts**

#### **investigative and trial observation missions**

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

### **Supporting civil society**

#### **training and exchange**

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level

### **Mobilising the international community**

#### **permanent lobbying before intergovernmental bodies**

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

### **Informing and reporting**

#### **mobilising public opinion**

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

# FIDH represents 164 human rights organisations on 5 continents



inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

## ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

### **A broad mandate**

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

### **A universal movement**

FIDH was established in 1922, and today unites 164 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

### **An independent organisation**

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

# fidh

Find information concerning FIDH's 164 member organisations on [www.fidh.org](http://www.fidh.org)