

Submission to the United Nations Universal Periodic Review

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Transparency Maldives was officially registered at the Maldives Ministry of Home Affairs in July 2007 and started its work in February 2008. TM is the local representative of Transparency International and is a non-partisan organization that promotes good governance and advocates to eliminate corruption from the daily lives of the Maldivian people. TM engages in a wide range of activities to incorporate and advocate for good governance, stop corruption and to promote democracy and civic participation at the local and national levels. TM does not have ECOSOC status.

I. INTRODUCTION

1. The following submission by TM to the Universal Periodic Review focuses on a number of issues related to human rights in the Republic of Maldives (Maldives) and TM's core areas of interest, including good governance and democracy promotion.

2. In the course of TM's work, TM has produced various research publications dealing with core treaty issues including: contributions to Transparency International's Global Corruption Barometer and Reports, a National Integrity Systems assessment, election assessments, Parliamentary performance assessments, civil society reviews and policy papers on freedom of information and association. The submission is based on TM's research and builds on the linkages between human rights, its mechanisms and good governance. The submission seeks to provide an update on the implementation of recommendations made to the Government of Maldives (GoM) during the first cycle of the Review. It primarily focuses on the following areas of rights issues: freedoms of association, expression, democratic participation, migrant workers and access to justice.

II. BACKGROUND AND FRAMEWORK

3. Maldives is a State Party to eight of the nine core international human rights instruments.

4. The adoption of the 2008 Constitution forms the basis of the State with full separation of powers. The Constitution also catalogues fundamental human rights in Chapter Two and established independent institutions to monitor the three branches of government.

5. Following from the initial Review, some new enabling legislation, and reforms to existing ones, for the implementation of core rights instruments are pending in the Parliament, the Attorney-General's Office and other concerned State bodies. A range of domestic legislative reforms is promptly needed to bridge gaps in existing legislation to ensure the State remains in compliance with its obligations under core rights instruments.

Recommendation:

6. TM notes the State's announcement of the "legislative agenda 2014-2018" in 2013 and calls on the State to speedily assess reforms to existing legislation, and to ensure that any new legislation contained within the agenda are fully compliant with international human rights commitments.

III. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Achievements, best practices and priority areas of concern

1. Freedom of association

7. The Constitution of the Maldives indemnifies Freedom of Association in Article 30 and in other related and enabling legislation such as the Associations Act and Political Parties Act.

Threats to participate in political parties

8. Maldives guarantees the right to establish and participate in political parties in Article 30 (a) of the Constitution. The Political Parties Bill that was passed by the Parliament on December 27, 2012 contained a stipulation in Article 11 of an arbitrary 10,000 minimum membership for the formation of a political party. In the same month, the Maldives Elections Commission moved to dissolve eleven registered political parties under this Act.

9. Following a petition by the GoM, the Supreme Court (SC) intervened and in September 2013 countermanded Article 11 in a verdict declaring 3000 members to be the minimum requirement for political party registration on the basis of the 2005 Political Party Regulation, until the Political Party Act is reworked in accordance with guidelines provided in the ruling.

10. On February 6, 2014 the Elections Commission again dissolved eight political parties that did not meet the 3000 registered members criteria and provided a three-month window to increase membership to meet the minimal cutoff. Such restriction goes against the freedom of association guaranteed by the Constitution and by international human rights law to which Maldives is party. Although the SC ruling is commendable in upholding established freedoms of association, formation and participation in political parties, it was undertaken under controversial circumstances. This is discussed in detail in 5 under “Access to Justice and Rule of Law”.

Recommendation:

11. Remove limitations and ambiguity in legislation on minimal requirements to form and sustain political parties to bring it in line with international norms.

Threats, intimidation and harassment of civil society

12. In 2013, the GoM actively engaged in making direct threats of dissolution to Non-Governmental/Civil Society Organizations. During the 2013 Presidential election, the registrar of NGOs at the Ministry of Home Affairs announced in October 2013 that NGOs: TM¹, NGO Federation and Tourism

¹ Translation of letter:

Reference is made to your press statement dated 28th September 2013 regarding a specific call for action in relation to the SC ruling in the case of the Presidential Elections of 2013.

As per Article 141(c) of the Constitution of the Maldives, no officials performing public functions, or any other persons, shall interfere with and influence the functions of the courts. As stated under the Associations Act Section 19 (b), any activities that breach the Constitution and laws of Maldives are grounds for de- registration of the association by the right afforded to the Registrar of Associations under Section 32 (a) of the Associations Act.

Employees Association of the Maldives were under investigation for “unlawful acts” and allegedly challenging a SC ruling. This warning was prompted following statements from the NGOs contending the Court injunction to delay the second round of the 2013 Presidential Election. While the dissolution warning was not followed through, it goes to underline the precarious nature of civil society operations in the Maldives in the face of a lack of resolute legal protections and civic values.

13. On 18 March 2013, the Registrar of NGOs, announced plans to dissolve approximately 70 percent of registered NGOs², citing their failure to comply with reporting requirements. This proclamation was in violation of Article 30 (b) of the Constitution. While the State has not yet followed through on this matter, it has not rescinded this threat and civil society organizations that do not meet the above criteria remain under risk.

14. In 2014, the SC ordered the local NGO Maldives Bar Association to change its name citing the word “bar” is used in other countries to refer to an official body comprising members of the legal profession. And in June 2014, citing the Supreme Court ruling, the Home Ministry dissolved the organization for failure to change its name³. It is to be noted that the Association name was registered with the pre-approval of the Ministry and the Attorney-Generals Office.

Recommendation:

15. Cease intimidation and harassment of civil society organizations.

Issues with the legal framework

16. There are severe deficiencies in the existing legal framework - the 2003 Associations Act - that are detrimental to the effective functioning of civil society. One such deficit is the amalgamation of all types of associations under one umbrella, limiting the functioning of a variety of associations. A separate legislative framework that guides and protects civil society organisations does not currently exist.

17. The State has acknowledged the existing legal framework is limiting freedom of association in the Maldives and accepts that it is not in line with

Therefore, we advise that you act within the boundaries set by the Constitution of the Maldives, the legislations and the Associations Act. And it is hereby informed that steps will be taken in accordance with the Associations Acts should such actions continue on your part.

The letter from the Registrar of the Associations implied that TM's statement interfered and/or influenced the functions of the courts. As such the letter warned TM that action could be taken under the “Cancellation of registry of an Association” of the Associations Act 2003.

² 1,300 of 1,853 legally registered civil society organizations.

³ The Bar Association had stated that while it will not move to change its name, it would step aside once new legislation provides for an official Bar Council comes into being. The Association was a vocal critic of the misconduct of SC justices at the time of dissolution.

international standards and needs to be revised in order to align it with the 2008 Constitution to create a conducive environment for establishing a vibrant civil society⁴.

Recommendations:

18. Implement commitments to put in place a regulatory framework that is in-line with international best practices on the freedom of association.

19. Expedite the amendment of legislation to decriminalize unregistered and informal associations.

2. Freedom of expression and media freedom

20. The Constitution guarantees freedom of expression and freedom of the media in Articles 27 and 28, provided that freedom is exercised in a manner “not contrary to any tenet of Islam” notwithstanding it being in contravention of international human rights instruments Maldives is party⁵.

21. The initial Review made recommendations to the State to ensure Freedom of the media and expression⁶. TM welcomes the State’s ratification of the domestic Right to Information Act in 2014 as a positive contribution to good governance and reiterates the importance of the expedient implementation of its provisions. In 2013, Maldives recorded a backslide of 30 places on the Reporters Without Borders Press Freedom Index, and a further five places (to 108th) in 2014 - a snap back to pre-Maldives’ first democratic election levels. During the period between reviews, the State enacted some legislation that undermined the 2008 Constitution, curtailed freedom of expression, freedom of the media and posed serious challenges to independent journalism⁷. In February 2012, following the contentious transfer of power and throughout the 2013-2014 Presidential and Parliamentary election periods, journalists and dissenters were arbitrarily arrested during the coverage of protests and were intimidated by state security forces⁸. A number of media organisations were

⁴ In collaboration with International Foundation for Electoral Systems, TM is currently in the process of implementing a project to reform the existing Associations Act. In 2012 and 2013, under the programme, TM has drafted a best practice legislation and have engaged the State in pursuing the establishment of these reforms through legislative processes. The State has been very conducive to the process and has committed to a full-fledged reform of the existing Associations legislature.

⁵ Reference is made to Article 19 of the ICCPR and HRC General Comments on ICCPR No. 10 and 34.

⁶ Initial Review recommendations (accepted by State): 100.22, 100.25, 100.34, 100.35, 100.36, 100.37, 100.103, 100.119.

⁷ Restrictions on journalists in covering protests in Public Assembly legislation, 2014 Contempt of Court regulations, provisions in the Parliamentary Privileges Act that infringe on international norms of media freedom.

⁸ Some notable incidents of violence regarding media freedom include:

a. On February 20, 2012, Rilwan Moosa, with the privately owned Villa Television, was attacked while covering a protest organised by the opposition Maldivian Democratic Party (MDP).

obstructed, and one particular media organization was actively discriminated against⁹ by the State. During this period, human rights advocates and individuals have been subjected to attacks, often life-threatening, for exercising their freedom of expression¹⁰.

22. During the Review period, civil society organizations¹¹, journalists¹² and elected officials¹³ also received death threats. In August 2014, Ahmed Rilwan Abdulla, a

b. On February 22, 2013, Aishath Leeza and Aminath Saani of the state broadcaster - Maldives Broadcasting Corporation, were attacked with a volatile substance thrown at them.

c. On the same night, head of news for Raajje TV, Aswad Waheed was attacked by unknown assailants with an iron bar resulting in serious head injuries. He was later flown out to Sri Lanka for treatment and underwent major surgery. Following extensive rehabilitation, he later returned to the Maldives on April 19, 2013.

d. On October 7, 2013, Raajje TV's - a television station widely viewed to be opposition-aligned - broadcast station was destroyed in an arson attack, which involved a life-threatening assault on an onsite security official, causing widespread damage to property and infrastructure, and took the channel offline. The Maldives Police Service were forewarned by the station on the possibility of an attack, but the Service failed to offer adequate protection, citing resource constraints.

e. On March 2010, Dhi TV, then widely-seen to be opposition aligned, staff were attacked by gang members following reporting on a gang leader.

⁹ The arson attack on Raajje TV occurred a few weeks after police issued a statement stating they would not "cooperate" with the Raajje TV, accusing the station of making false and slanderous allegations against security forces. In 2012, during President Mohamed Waheed's tenure, his President's Office announced ceasing cooperation with Raajje TV. Other media faced no such restrictions. The Civil Court ruled in April that such discrimination was unconstitutional and ordered the President's Office to rescind the ban. This incident reflects a worrying trend of impunity by the State in infringing on freedoms of the media, especially when this is carried out by the highest public office of the GoM.

¹⁰ Some notable incidents regarding freedom of expression include:

a. In January 2011, Aishath Velezinee, former President's Member to the judicial watchdog - the Judicial Services Commission (JSC), was stabbed in broad daylight. This attack, viewed by TM as likely to be politically motivated, occurred following Velezinee's campaign to highlight issues of corruption and sedition against members of the JSC, politicians and public figures.

b. In June 2012, unidentified assailants slashed the throat of Ismail Hilath Rasheed, who blogged about taboo topics in the Maldives including gay rights and religious issues. Following his recovery, Rasheed alleged the attack was carried out by religious fundamentalists. Some religious groups in fact, welcomed the attack on social media. The State failed to undertake a proper investigation into the attack and to date, no one has been brought to trial. The GoM responded to international media, without any evidence or based on facts, stating the attack had nothing to do with religious extremists, but alleged that Rasheed was a gang member and claimed the attack was carried out by rival gang members.

c. In October 2012, then-government-aligned PPM Parliament Member Dr. Afraasheem Ali, was murdered following a stabbing attack outside his home. Dr. Ali was widely viewed as an Islamic moderate who professed progressive opinions on various issues of jurisprudence.

¹¹ TM received death threats pertaining to the issue of statements concerning the conduct of the 2013 Presidential elections. While this incident was reported to the Maldives Police Service, follow-up investigative action was not taken.

journalist working for Minivan News, disappeared and was allegedly abducted. Abdulla has been missing since August 8, 2014¹⁴. The Human Rights Commission has stated that authorities are not doing enough and domestic and international actors have communicated their concerns regarding the incident.

23. TM is concerned that the State has so far failed to ensure that attacks on journalists, Parliament members and human rights advocates are quickly investigated and those responsible brought to justice. In some of these instances, the State has actively sought to politicise incidents at the cost of delaying addressing of such violations.

24. The most recent spate of restrictions on the freedom of expression is the promulgation in September 2014 of the legislation regulating publication of literature. This regulation prohibits publishing literary works without pre-approval from the State and puts in place a bureaucratic censorship regime. TM notes that this is a major step backwards in consolidating democratic freedoms post-2008 as it contravenes the freedom of expression (Article 27) enshrined in the 2008 Constitution and breaches Maldives' obligations under ICCPR.

Recommendations:

25. Cease all intimidation, discrimination and harassment of media and demonstrate commitment to guarantee protection of journalists, earnestly investigate threats and bring perpetrators to justice.

26. Immediately remove restrictions on media freedom and freedom of expression by repealing problematic provisions and amending the recent publication of literature regulation to conform to the Constitution and international norms.

3. Right to participate in public affairs and in democratic government

27. TM notes the legal framework guiding elections, established by the 2008 Constitution, are adequately in line with international standards. Under this framework, Maldives' second multiparty presidential elections were initially held on September 7, 2013. The election process was noted as transparent, fair, and credible by international observers, as well as by TM's 400-strong domestic election observation¹⁵. However, the SC annulled the elections, citing voting irregularities. New elections were held on November 9, and following a run-off, a new President was elected on November 16. The election period manifested widespread efforts to

¹² In August 2014, 15 journalists received death threats as a result of their reporting on criminal gang activity.

¹³ Six opposition MDP Parliament members were also threatened with such messages via SMS.

¹⁴ While the Maldives Police Service maintain 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.

¹⁵ The country's first scientific election observation utilising a quick count.

subvert electoral processes¹⁶ and unprecedented interference by the SC, political actors and the State in electoral processes, leading to a tumultuous and fearful environment in the country that resulted in various human rights abuses (as noted under the above themes).

28. A crucial issue is the uncertainty regarding the interventions of the judiciary during elections, and, in particular, the 16-point guideline for conducting all elections in the Maldives, issued by the SC on October 7, 2013 during the Presidential election. TM is of the view that the guideline does not improve upon the technical aspects of electoral administration, and furthermore, the guideline creates room for political parties, candidates and others to obstruct the electoral process by bypassing remedies for complaints through existing electoral complaint and judicial mechanisms. As a result of these infringements by the State on the democratic norm of separation of powers and the independence of institutions, the fundamental and constitutional right to full public participation in democratic government is limited.

Recommendations:

29. Address and resolve legal discrepancies and inconsistencies between the 16-point guidelines and other related legal framework supporting elections in the Maldives.

30. Secure the independence of the Elections Commission from state interference.

4. Migrant worker rights and protections

31. Maldives being a receiving country for migrant workers, there are approximately 200,000¹⁷ documented and undocumented foreign workers, mostly working in the construction and tourism industries¹⁸.

32. As per recommendations made in the initial Review¹⁹, the State has taken a number of positive actions to address the problem. It has ratified the ILO core conventions in January 2013 and cooperates with ILO to carry out labour rights promotion. Following international pressure in 2011, the GoM undertook the implementation of a human trafficking prevention action plan and passed the Anti-Trafficking Act in 2013. GoM has also voiced its commitment to accede to the

¹⁶ TM observed documented cases of abuse of state resources, extensive vote buying from political parties, character assassination tactics and media space being favourably given to pro-state candidates. Lack of political finance transparency resulting from gaps in the electoral legal framework and oversight mechanisms also plays into this issue. This was backed by the country's first democracy survey that recorded 15% of respondents were offered money or other incentives in exchange for their vote.

¹⁷ US State Department Trafficking in Persons Report 2014

¹⁸ Some of these individuals, mostly originating from South Asian countries, are victims of forced labour, including through debt bondage, withholding of identity documents and non-payment of wages, as evidenced by the caseload handled by TM's legal aid centre.

¹⁹ Initial Review recommendations: 100.107, 100.114.

International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (ICRMW)²⁰.

33. While the GoM must be commended for its commitment to solving this issue, there are large gaps that need to be addressed. There are discrepancies between the existing legislation and international standards. Most migrant workers are not aware of available redress mechanisms. The mechanisms available are not, in reality, accessible due to language impediments. All documents to access services, including court forms are in Dhivehi, the local Maldivian language. Due to resource constraints, translators are sometimes not made available to migrant workers at the investigation and/or court stages, which further victimises an already vulnerable group. Resource mobilisation efforts, on implementing provisions of the action plan, are inadequate. Recent changes to government structure following the inauguration of the new government in 2013 have brought in bureaucratic hurdles²¹ that have stymied coordination between the oversight committee established by the Act and state bodies and concerned civil society organizations.

Recommendations:

34. Sign, ratify the ICRMW in full and bring domestic law in line with international human rights commitments, including all ILO core conventions.

35. Improve the implementation of the Anti-Trafficking Act, expedite amendments to bring it in line with international standards, and strengthen mechanisms for handling labour related complaints to make it more accessible to migrant workers.

5. Access to justice and the rule of law

36. The initial Review made broad recommendations to the State to improve human rights education of the judiciary and public, and to fully implement the Basic Principles on the Independence of the Judiciary²². Following the visit of the UN Special Rapporteur for the Independence of Judges and Lawyers, Gabriela Knaul in February 2013, specific recommendations were made in her report to address concerns with the judicial sector²³. While the GoM has commenced various undertakings to reform the judicial system including capacity building and re-training, serious reform of law and legal procedures have stagnated. Further exacerbating the situation is the lack of tolerance on the part of the judiciary to criticism.

²⁰ Initial Review recommendations: 100.1, 100.2, 100.3, 100.5, 100.7, 100.8, 100.9, 100.78.

²¹ The changes to issuance of work visas and work quotas with the change of concerned government office structures were problematic.

²² Initial Review recommendations (accepted by State): 100.22, 100.79, 100.80, 100.81, 100.83.

²³ The GoM came out with a statement saying while it welcomed the recommendations made, while calling for international bodies to refrain from undermining the country's judiciary.

Independence of the judiciary and limiting access to justice

37. During the review period the executive actively interfered with judicial independence on a number of occasions including the locking of the SC premises, the arrest of the chief judge of the criminal court in 2012, and the irregular conduct of the trial of President Nasheed in 2012 (for the arrest of the judge)²⁴.

38. In February 2014²⁵, the SC instigated a contempt of court charge under its new “Suo Motu” regulation²⁶ against the Elections Commission members stating they disobeyed SC rulings in dissolving eight parties²⁷. One major problem in this particular instance is that the SC is the Judge in its own case. In March 2014, the SC ruled to remove the Elections Commission President Mr. Fuwad Thowfeek and Vice President Ahmed Fayaz Hassan and decreed Mr. Thowfeek serve a suspended prison sentence of six months.

39. These expulsions are contrary to the Constitutional provisions on dismissal of Elections Commission members. This ruling also calls into question the irregular nature of the “Suo Motu” powers of the Court in that it may derail constitutionally-guaranteed fundamental human rights protections such as the right to the appeal process. The larger implications of the Courts interpretations of contempt of court without strong procedures in place is that severe restrictions are placed on constitutionally guaranteed freedoms and violates principles of separation of powers and upholding the autonomy of independent commissions.

Accountability

40. The Judicial Services Commission has failed to ensure its main function of holding judges to account. TM is concerned about the adverse impacts on the integrity of the SC resulting from the alleged questionable conduct of SC Justices and failure of state institutions to resolve these allegations against Justices²⁸ and the institution of the Supreme Court. This negligence to

²⁴ There exists many irregularities in the formation and composition of the special magistrate court to undertake the trial.

²⁵ The charges were filed as the Elections Commission were in the process of organizing Parliamentary Elections in March 2014.

²⁶ Enacted by the Court on February 6, 2014.

²⁷ The procedure regarding the filing of charges and subsequent hearings were irregular:

- The Elections Commission did not receive a formal charge sheet until the defense team attended the SC for the second hearing on 18 February.
- The case was presided over by 5 out of the 7 SC Justices. The Suo Motu Regulations specify that cases under it should be presided over by the full bench unless decided otherwise by the SC.
- The SC had not provided to the defense team the specific statements that allegedly involved contempt. The SC also had not clarified the exact manner EC violated SC's ruling and order on political parties. In addition, the SC brought up charges on alleged violation of orders and ruling during the Presidential Elections.

²⁸ In June 2014, the Judicial Services Commission cleared the SC Justice Hameed of misconduct charges, citing lack of evidence.

address these integrity issues has created avenues for political and other actors to question the conduct and verdicts of the Court. Inability to manage conflict of interest is also one of the main issues with the JSC. For instance, the SC judge sitting on the JSC has passed rulings in cases submitted to JSC regarding SC²⁹. Judges and lawyers on the JSC are sitting judges and practicing lawyers, creating conflict of interest scenarios when drafting laws and deciding on the appointment, promotion and disciplinary action taken against judges.

Recommendation:

41. Implement recommendations forwarded by the Special Rapporteur on the Independence of Judges and Lawyers.

42. Amend Suo Motu regulation to ensure it does not violate fundamental rights principles.

43. Ensure JSC is fully independent, free from judicial interference and resolve SC integrity issues including alleged misconduct of judges.

44. Refrain from misconstruing principles of judicial independence and ensure the concept of separation of powers is fully respected.

²⁹ An example is the case of SC judge Ali Hameed's alleged misconduct probe.