

# MALDIVES: RETRACING STEPS FOR A BETTER JOURNEY AHEAD

*Maldivian Democracy Network<sup>1</sup>*

## 1. Context

The first National Human Rights Institution (NHRI) in the Maldives was established and its members appointed in 2003 by presidential decree. The Human Rights Commission Act<sup>2</sup> was passed in 2005, creating an independent NHRI; whose members are voted in by the parliament. The Act was amended in 2006 and is the current enabling law for the Commission. It is also noteworthy that the new and democratic Constitution was ratified in 2008, paving the way for the first democratic transition in Maldivian history.

However, the NHRI has constantly been criticised for its lack of pro-activeness and timidity in invoking the authority and powers vested in it by the HRCM Act. This report will review how recommendations by the ANNI over the past five years have been addressed by the Human Rights Commission of the Maldives (HRCM). The ANNI found the HRCM to be inconsistent in applying pressure and implementing its mandate. This could be due to the changing political situation; and also to some extent linked to the personalities of commissioners in different tenures of the institution. The ANNI review in 2011 found that the HRCM made strong statements against actions of the executive and other political actors, especially violence related to politics and arbitrary arrests of political actors<sup>3</sup>.

The 2011 ANNI report also highlighted that the statements were made at a time when the President's Office was about to make recommendations to the parliament for new commissioners. The review in 2012 found the Commission to have taken a strong stand on the arrest of the Chief Judge of the Criminal Court, finding human rights violations to have occurred, and subsequently requesting the Prosecutor General to press charges on the former President of the Republic, Mohamed Nasheed<sup>4</sup>.

What is more interesting is that Mohamed Nasheed was forced to resign and his government ousted by a *coup d'état* amidst violence and damage to public property just months after this episode. However, the HRCM refused to conduct an investigation into the incidents claiming, that the Commission was not allowed to conduct criminal investigations. This raised questions over political bias. The ANNI

---

<sup>1</sup> Shahindha Ismail ([shahindha@mdn.mv](mailto:shahindha@mdn.mv)) and Yoosuf Ziyaan.

<sup>2</sup> Law number 6/2006, [www.mvlaw.gov.mv](http://www.mvlaw.gov.mv)

<sup>3</sup> 2011 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, FORUM-ASIA, Bangkok, 2011, <http://forum-asia.org/documents/ANNIReport2011.pdf>.

<sup>4</sup> 2012 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, FORUM-ASIA, Bangkok, 2012 [http://www.forum-asia.org/uploads/books/2012/nov/05033\\_ANNI%202012.pdf](http://www.forum-asia.org/uploads/books/2012/nov/05033_ANNI%202012.pdf).

review in 2012 found that the HRCM was conservative in times of turmoil, not having proactively attended to hundreds of victims of police brutality during the violent transition of power<sup>5</sup>.

The review in 2014<sup>6</sup> found that the HRCM was proactive in invoking its *amicus curiae* mandate in the case of a 12 year old rape victim whom the court sentenced to flogging for fornication, and the intervention proved to save the girl from inhumane and unjust punishment, for which the Juvenile Court came down heavily on the Commission.

However, although the Commission has been known to act positively in protecting children, the report also found that the HRCM did not act appropriately in cases relating to gross violation of freedom of expression and free press and also on the issue of rising radicalism in the country, which leads to the perception that the Commission has taken to address ‘safer’ or ‘softer’ rights.

Finally, the review in 2015 found that the Commission had been disappointingly lethargic in addressing the enforced disappearance of journalist Ahmed Rilwan; whose case still remain a mystery. Further, no proactive action was seen on the prevention of torture despite the fact that the Anti-Torture Act was ratified, granting the HRCM its parenthood. The report found that judicial overreach was extremely high in all areas, and especially in the work of the Commission. The Supreme Court’s *suo moto* case of treason against all individual Commissioners, following their stakeholder submission to Universal Periodic Review (UPR) human rights obligations of the Maldives held in May 2015,<sup>7</sup> being an emblematic incident.

Undue influence on the work of the HRCM by political actors, as well as the judiciary, may have contributed to its ineffectiveness over the years, and highlights the need to empower the Commission in future. The contradiction is that the Commission is established as a constitutional and statutory body, with one of the strongest legislation in the country granting extraordinary authority and power to prevent human rights violations and take legal action against those violating rights.

## **2. NHRI and Its Mandate to Protect Human Rights**

### **2.1 General**

The HRCM has in general been an institution much criticised for being unwilling to implement its full mandate. The Maldives has faced numerous crises where fundamental rights have been violated by the State – by the law enforcement agencies

---

<sup>5</sup> 2013 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, FORUM-ASIA, Bangkok, 2013, <http://www.forum-asia.org/uploads/books/2013/ANNI%202013-FINAL.pdf>.

<sup>6</sup> 2014 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, FORUM-ASIA, Bangkok, 2014, <http://www.forum-asia.org/uploads/books/2014/ANNI%202014%20FINAL.pdf>.

<sup>7</sup> 2015 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, FORUM-ASIA, Bangkok, 2015, [https://www.forum-asia.org/uploads/wp/2015/09/ANNI\\_Report\\_2015.pdf](https://www.forum-asia.org/uploads/wp/2015/09/ANNI_Report_2015.pdf).

and the judiciary especially. Although the enabling law grants the Commission extraordinary powers and authority, the Commission time and again has chosen to bask in its shade, interpreting it in the narrowest manner at times.

The main objective of the Human Rights Commission of the Maldives (HRCM) is to protect, promote and sustain human rights in the Maldives in accordance with *Shari'a* (Islamic law) and the Constitution of the country. Some of the most significant moves by the parliament over the year 2015 were two amendments to the Constitution: the first was to lower the age limit for presidential candidates and the second allowing foreign investors to own land, which was proposed, passed, and ratified amidst high controversy, in just 48 hours with no public consultation<sup>8</sup>. The HRCM remained silent in both cases.

The most recent formal restriction on the Commission is the 11-point guideline for practice ruled by the Supreme Court as part of the sentence following a *suo moto* trial for treason against each individual commissioner of the former Commission<sup>9</sup>. The charges were brought against the HRCM following the UPR stakeholder submission by the Commission in 2015 which stated that the Supreme Court had influence over the lower courts and the judiciary in general.

The guidelines require the blessings of the government before the HRCM can share any reports with foreign organisations. After the Commissioners changed in 2016, it is interesting that the new HRCM has defended these same guidelines at a press conference; with the Vice-Chair of the Commission stating that the guidelines, in fact, assist in the work of the Commission<sup>10</sup>. The current Vice-Chair of the Commission was a former lawmaker who in his single term in parliament moved from the largest opposition party to the ruling party, and in between that move spent some time as an MP for a minority party as well, creating doubt over his independence and non-partisanship.

While the Commission has the power to compel production of evidence and witnesses, and to visit places of deprivation of liberty<sup>11</sup>, the HRCM has not made its complaints handling procedures or written guidelines publicly available. The only way to check the status of a complaint is to call the HRCM helpline. Therefore it is impossible to find out what the Commission has been investigating without a series of bureaucratic enquiries. The Commission does not believe it has the authority to protect complainants or witnesses from any form of retaliation. It has informed MDN that the Commission intends on drafting a regulation to include such powers.

---

<sup>8</sup> “New land law in Maldives gives India China chills”, *Indian Express*, 23 July 2015, <http://indianexpress.com/article/india/india-others/new-land-law-in-maldives-gives-india-china-chills/>.

<sup>9</sup> “Supreme Court renders human rights watchdog toothless”, *Minivan News*, 16 June 2015, <http://minivannewsarchive.com/politics/supreme-court-renders-human-rights-watchdog-toothless-99848>.

<sup>10</sup> “Human rights watchdog defends restrictions imposed by supreme court”, *Maldives Independent*, 28 March 2016, <http://maldivesindependent.com/politics/human-rights-watchdog-defends-restrictions-imposed-by-supreme-court-123077>.

<sup>11</sup> Law Number 6/2006 (The Human Rights Commission Act).

According to the Commission's website a complaint can be lodged through the submission of a complaints form, a letter, by phone or by personal visit. However, according to information provided by the Commission for this report, complainants may have to wait for up to three months for a response from the relevant authorities against whom the complaints were made. Furthermore, the Commission does not have the power to warrant any type of reparation for the victims.

The HRCM was granted *amicus curiae* at the High Court in 2013 during the case of a 15 year old rape victim whom the Criminal Court had sentenced to flogging by 100 lashes and eight months of house arrest on charges of fornication. The intervention by the HRCM greatly contributed to the overturning of the sentence and this was the first time the HRCM exercised its role as *amicus curiae*<sup>12</sup>.

The Commission's enabling law states that if the Commission receives information related to an infringement of a fundamental right of a person in an ongoing trial, the Commission with the permission of the presiding Judge, may submit the information to the court. It also states that unless the Judge permits the information to be shared, the Commission shall not interfere with the proceedings of the trial in any manner<sup>13</sup>.

## 2.2 Compliance in Practice

The HRCM conducted a national inquiry on child rights in 2014. It is the only such comprehensive action taken by the Commission to address an issue of human rights violation that engaged in open with the general public. Child abuse is a serious human rights issue in the Maldives; and MDN warmly welcomes the efforts by the Commission to address and prevent child abuse. The HRCM did raise issues and recommendations with relevant authorities following the national inquiry into child abuse, but the status of follow up or further action is not known.

In the years following the 2012 transition of power, a large number of police brutality cases surfaced on social media in relation to continued protests. However, the HRCM has not yet conducted a national inquiry into police brutality or torture despite the Anti-Torture Act stating the HRCM as the primary caretaker of the law. The Commission does not publish reports related to follow up on their recommendations to public authorities, and MDN's enquiry into procedure found that almost all preventive and monitoring procedures are unpublished internal procedures, or are in the process of being drafted.

## 2.3 NHRI and HRDs and WHRDs

The situation of human rights defenders (HRDs) in the Maldives has been viewed with severe criticism and concern around the world, with statements of concern from the United Nations Office of the High Commissioner for Human Rights and other

<sup>12</sup> 2015 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, FORUM-ASIA, Bangkok, 2015,, [https://www.forum-asia.org/uploads/wp/2015/09/ANNI\\_Report\\_2015.pdf](https://www.forum-asia.org/uploads/wp/2015/09/ANNI_Report_2015.pdf).

<sup>13</sup> Human Rights Commission Act, 2006, <http://www.hrcm.org.mv/publications/otherdocuments/HRCMActEnglishTranslation.pdf>.

agencies. These backsliding accelerated following retrogressive actions by the government which has embarked on an authoritarian course for the country.

The situation especially worsened for women human rights defenders; with rising Islamic radicalism in the country spreading opinions that are oppressive of women and girls in particular. Radicalism has come hand in hand with violence. A desperate situation is created with radicalisation of violent gangs, who have also developed links with politicians who are willing to finance their criminal activities in order to use violence against human rights defenders and rival political activists.

Women have been particularly outspoken and courageous in addressing issues of fundamental rights in the Maldives. The turnout of women at rallies and protests, and sub-groups within and outside political parties who assist those who are persecuted is extraordinarily high in the Maldives. HRDs work individually most often and are disconnected from other HRDs or organisations; which proves difficult for organisations with access to international remedies to assist them. There is insufficient financial capacity to create a platform where HRDs can come together and pool resources. The Maldives being an archipelago of 1,190 islands geographically divided by the Indian Ocean requires costly transportation and logistics to access those working outside the capital, and vice-versa.

There is no legal recognition of HRDs at the national level; and neither has the HRCM been known to make any proposals to the government or the parliament for such law. There is no special mechanism at the Commission for the protection of HRDs, despite recommendations to this effect by the ANNI every year. The HRCM has repeatedly explained the lack of a dedicated department or unit for HRDs owing to financial constraints. MDN has recommended that the Commission assign at least one of their employees as a focal point or help desk for HRDs, to no avail. The last response in 2015 to the issue was that the complaints mechanism at the HRCM is also available to HRDs.

The HRCM conducted a national level conference of human rights NGOs in 2014 with support from the UNDP. The conference brought several NGOs together, highlighting their situation and identifying possible partnerships and areas of support to one another. However no follow up has been made to the knowledge of MDN, and no action has been taken as recommended in the conference. The relationship between HRDs and the HRCM has not changed at all, meaning that the Commission has no distinction between HRDs and regular complainants.

Later in the year the HRCM in collaboration with the OHCHR representative in the Maldives conducted a two-day workshop for organisations making stakeholder submissions for the second cycle of the country's Universal Periodic Review in Geneva scheduled for May 2015. The Commission also participated in a two-day workshop conducted by MDN and Forum-Asia to assist organisations in preparing the stakeholder submissions. In this conference the HRCM participated fully by sharing information about areas which the Commission would report on so that other civil

society organisations could cover other areas, presenting a broader picture for the review.

The HRCM seem to have adopted a trend of issuing statements in reaction to gross human rights violations. However, action against perpetrators and efforts to ensure redress or due process for victims of these violations is extremely slow or lacking. This has been the case with the terrorism charges and trials of opposition leaders and also the events related to the May Day rally in 2015 which have been condemned by several local and international organisations.

The family and friends of local journalist Ahmed Rilwan, disappeared since August 2014, organised a rally to mark the first year anniversary of the disappearance. The silent marchers carried placards displaying a question mark on it. Despite the peaceful nature of the walk, the police obstructed the march, pepper-spraying the marchers including the family of Rilwan<sup>14</sup>. The HRCM did not take any action to intervene to protect the marchers or to prevent the police from obstructing the march. The family of Rilwan later filed a complaint at the Commission<sup>15</sup>; in response to which after several months, the Commission concluded that none of the police had committed an unlawful act.

## **2.4 NHRI and Freedom of Expression**

The Maldivian Constitution states that the people have the right to express themselves without contradicting the principles of Islam. Different drafts of the Freedom of Expression bill have been presented to parliament since 2015 and the Act was passed on 9 August 2016. There have been various laws that violate freedom of expression such as the Freedom of Peaceful Assembly Law, the Religious Unity Act and the Anti-Terrorism Act. The Freedom of Expression and Defamation Law was passed and ratified in August 2016. The law undermines freedom of expression in the name of domesticating the right, by criminalising defamation once again; after defamation was decriminalised in 2009<sup>16</sup>.

The current Defamation Law defines the parameters within which freedom of expression can be exercised in the Maldives. The bill gives power to the state media regulatory bodies to take action against the media without conducting an inquiry. They can now force media outlets to remove their content and to make a public apology, suspend media outlets or programmes, and also impose hefty fines in addition to imprisonment. The law also states that a sentence can only be appealed

---

<sup>14</sup> “Rights NGO condemns police obstruction of memorial walk for missing journalist”, *Maldives Independent*, 9 August 2015, <http://maldivesindependent.com/society/rights-ngo-condemns-police-obstruction-of-memorial-walk-for-missing-journalist-116273>.

<sup>15</sup> “Complaint filed over pepper spray use, obstruction of Moyameehaa walk”, *Maldives Independent*, 19 August 2015, <http://maldivesindependent.com/society/complaint-filed-over-pepper-spray-use-obstruction-of-find-moyameehaa-walk-116573>.

<sup>16</sup> “Maldives commended for decriminalizing defamation”, *Dhivehi Observer*, 4 December 2009, <http://doreview.blogspot.com/2009/12/maldives-commended-for-decriminalizing.html>.

after paying the fines, in addition to several more unconstitutional and illogical prescriptions.

Social media users may also face prosecution for “defamatory” posts on social media<sup>17</sup>. Parliamentarian Ali Hussain was summoned to court after police confiscated his phone for tweeting that everyone has the right to defend themselves against unfair use of force by police officers. Shammoon Jaleel, a social media activist was also arrested allegedly for using social media to “foment unrest in society and inciting hatred among the public towards security forces”. The criminal court issued a court order to confiscate his phone and extract all his conversations, text messages and other interactions<sup>18</sup>.

There has been no strategic action taken by the HRCM regarding the protection of freedom of expression. However, the HRCM submitted a proposal to the interim committee selected to review the bill, asking it to reduce penalty fines listed in the defamation bill. The memorandum said that freedom of speech and expression are basic tenets in the constitution and as such a defamation bill should balance protection against defamation with protection of the right to free speech. Other than that there have been no interventions from the HRCM on this issue<sup>19</sup>.

### **3. Conclusion**

The Human Rights Commission of the Maldives has failed to consider or implement the recommendations made by the ANNI to improve the effectiveness and independence of the Commission. It is also evident, while recognising that the Commission operates under heavy political environment that the Commission has not made sufficient efforts to counter or contest such pressure. Engagement and partnership with the human rights community has been close to none. Such a partnership could prove to be extremely beneficial to both the NHRI and the human rights community consisting of civil society organisations and individual HRDs, as all these actors operate with differential access to resources including networks for solidarity.

One potential area of support from civil society to the NHRI is to counter the political pressure that the NHRI faces in carrying out their mandate. However, it is disappointing that despite having reached out to the HRCM consistently over the past five years with the objective of securing its independence from the government, the NHRI has yet to engage with MDN and other civil society organisations on these issues to find a way forward.

---

<sup>17</sup> “Defamation bill on Majlis Agenda as free speech campaign gains momentum”, *Maldives Independent*, 31 July 2016, <http://maldivesindependent.com/politics/defamation-bill-on-majlis-agenda-as-free-speech-campaign-gains-momentum-125778>.

<sup>18</sup> “Social media activist arrested for ‘inciting hatred’”, *Maldives Independent*, 30 July 2016, <http://maldivesindependent.com/politics/social-media-activist-arrested-for-inciting-hatred-125764>.

<sup>19</sup> “HRCM proposes to strike off Defamation bill penalty fees”, *Avas Online*, 6 August 2016, <https://avas.mv/en/20926>.

The ideal HRCM that the Constitution designed does not function in the spirit of the Constitution. In the exercise of its constitutional authority, the Commission has yet to gain the confidence of human rights defenders. All queries made regarding the implementation of its mandate were met with the same response: that the Commission has an internal Standard Operating Procedure on the matter; or that the Commission is presently drafting an internal regulation to address a particular mandate. The MDN is of the view that such internal procedures should surely have been developed in the twelve years that the Commission has been in existence.

The Commission conducts very thorough assessments of the situation of human rights in the country, and hence is extremely knowledgeable of the challenges that the country face in the people exercising their fundamental rights. The reports published by the Commission outlining findings of its assessments and some of the monitoring activities are rich in information. MDN is also aware that some recommendations are made to the parliament by the Commission with regard to legislation on occasion; and in critical situations at other times.

However the Commission has not been consistent or transparent in some crucial situations of fundamental rights. The HRCM has always been proactive in addressing children's rights, which is warmly welcomed by MDN. The Commission has not shown such enthusiasm or interest in addressing gross violations of the freedom of assembly as highlighted in the thematic case-study for the 2016 ANNI report. Unfortunately, critical issues such as the implementation of the death penalty highlighted by organisations and individuals fighting to prevent state killings of innocent people have not been taken up by the Commission.

Although there has not been a study undertaken to assess public confidence in the NHRI by an independent organisation, feedback from social media and public rallies show that confidence is extremely low. The MDN has been one of the organisations assisting victims and families to seek redress through the HRCM; and the results have been negative in every instance. The loss of confidence in the HRCM is slowly leading to a culture of civil litigation in human rights cases. This is a huge loss to the HRD community as the criminal aspect of the violations is then forgone; and considering the current judicial culture, it is highly unlikely that a civil case for compensation receives fair consideration.

The ANNI assessments over the years have made constructive recommendations to the HRCM to improve its performance as well as to counter pressure from different actors outside of the Commission. It is imperative that these recommendations be taken on board and an effort made for their implementation; or where the HRCM face difficulty in taking these forwarded to create a healthy dialogue between the Commission and civil society organisations such as the MDN to address these issues.



**Recommendations to the Human Rights Commission of Maldives:**

1. Create a dedicated help desk or focal point for human rights defenders and develop a special mechanism to address urgent appeals to the Commission in cases of safety and security of HRDs;
2. Develop a Memorandum of Understanding with MDN and other civil society organisation on the implementation of ANNI recommendations;
3. Publish its Standard Operating Procedures and internal regulations to create more transparency in the complaints-handling process;
4. Develop strategies for intervention in situations of gross human rights violations.

**Recommendations to the Parliament of Maldives:**

1. Consider the findings of the ANNI report in the Special Majlis Committee for the Oversight of Independent Institutions;
2. Consult human rights NGOs regularly in relation to the oversight and accountability of the HRCM;
3. Invite human rights NGOs to observe interactions (those not specified as confidential due to national security) between the Special Majlis Committee for the Oversight of Independent Institutions and the HRCM.

**Recommendations to the Global Alliance of National Human Rights Institutions:**

1. Include for consideration the practical performance of the NHRI in addition to the feedback from the NHRIs and performance reviews of the NHRIs such as the ANNI report, for the APF evaluation of NHRIs and where necessary review the current grading mechanism to be able to address on the ground performance of NHRIs in terms of effectively carrying out its mandate.

\*\*\*