

# **LST REVIEW**

Volume 17 Issue 231 January 2007



## **STATE OF HUMAN RIGHTS IN THE MALDIVES**

**LAW & SOCIETY TRUST**

## CONTENTS

<b>Editor's Note</b>	<b>i - iii</b>
<b>Report of a Fact Finding Mission to the Maldives by the Law and Society Trust, Sri Lanka and the Asian Human Rights Commission, Hong Kong (17- 23<sup>rd</sup> November 2006)</b>	<b>01 - 15</b>
<b>Threats to Human Rights Defenders in the Maldives</b>	<b>16 - 21</b>
<i>- Shahindha Ismail -</i>	
<b>Report on Press Freedom in the Maldives by the Raajje Foundation</b>	<b>22 - 31</b>
<b>The Paul Robinson Proposals for Reform of the Criminal Justice System of the Maldives</b>	<b>32 - 42</b>

Printed by:  
Law & Society Trust,  
3, Kynsey Terrace, Colombo 8  
Sri Lanka.  
Tel: 2691228, 2684845 Telefax: 2686843  
e-mail: [lst@eureka.lk](mailto:lst@eureka.lk)  
Website: <http://www.lawandsocietytrust.org>

ISSN - 1391 - 5770

## *Editor's Note .....*

The Maldivian constitutional framework is singular in that, while its Constitution claims it to be a Republic and encompasses the citizens within the framework of the State, actual sovereignty is not vested in the people. Instead, sweeping and predominant powers are reposed in the office of the Executive Presidency, which effectively remains the nerve centre of governance in the island nation. This inward looking constitutional structure has resulted in the almost complete negation of democratic checks and balances on executive power.

In turn, this has enabled the extraordinary abuse of human rights of political activists, journalists and dissentients. Arbitrary arrests and detentions bypassing basic guarantees of due process such as the right to be told of the reasons for the arrest, the right to have charges served upon the arrestee and the right to trial without undue delay are commonplace.

While some detainees are released following international and domestic protests, others who are charged are imprisoned and then released without formal notification of the charges being dropped against them. Yet others are pardoned by presidential intervention while their colleagues, (often arrested and detained on similar charges), are not given this same clemency. The manner in which charges are left pending evidences a common tactic of harassment and intimidation. The overriding arbitrariness of the process merits stern criticism.

Though a range of proposals towards constitutional reform has been announced (including a draft Constitution, the redrawing of electoral boundaries and the introduction of a voter education programme) with multi-party elections to be held in 2008, there is widespread public cynicism as to whether the Government headed by President Abdul Maumoon Gayoom is committed towards implementing these reform proposals.

The Review publishes the findings of a fact finding mission undertaken to the Maldives in November 2006 collaboratively by the Law and Society Trust (LST) and the Asian Human Rights Commission (AHRC).

The Report of the mission emphasizes the fact that if democratic rule is to be enhanced in the Maldives, the present totalitarian authority of the Presidency will need to be drastically reduced and/or replaced by a politically pluralistic framework

which balances powers between the office of the presidency (the executive), a democratically functioning legislature and an independent judiciary.

It is imperative that the country's judicial and legal system is headed by a Supreme Court with judges including the Chief Justice, appointed through an independent process and with security of tenure rather than manifesting the present total dependency on the President. The Constitution should have a justiciable chapter on rights that can be enforced through the Supreme Court. Systematic codes of criminal and civil procedure, evidence and a revised Penal Code should be enacted. The office of the Attorney General should be made independent and divested of the political colour in which it is currently shrouded. Promulgation of *ad hoc* Presidential decrees amounting to a replacement of properly enacted laws should be stopped forthwith.

Freedoms of the life and liberty of the subject should be secured by laws and regulations ensuring due process. Freedoms of speech and expression, association and assembly should be guaranteed both in law and practice. The Freedom of the Press Bill should be re-drafted in consonance with international human rights standards and should not be allowed to give rise to new media crimes. Political parties should be allowed to enjoy their rights of democratic assembly and association. Arbitrary arrests of political activists on charges of high treason or terrorism purely for taking part in demonstrations or engaging in comment critical of the Government should be halted.

Bodies vested with the task of monitoring abuses by government officials such as the National Human Rights Commission ought to be allowed to function independently. The NHRC should be staffed by members possessing established credentials in the field of human rights who are chosen through a process of consultation with political parties and civil society rather than appointed purely by the President.

A supplementary paper written on invitation of the Review by Maldivian activist *Shahindha Ismail*, pointing to current concerns with the state of human rights in the islands, follows the Report of the fact finding mission.

The Review also publishes in this context a survey of the status of press freedom in the islands by the *Raajje Foundation*, pointing to many formal and informal restrictions in this regard.

In commenting on the survey, it is noteworthy that the Commonwealth Human Rights Initiative (CHRI), a rights monitor based in New Delhi concluded that “ The co-ordinated use of these restrictions appear to be used to impute false motives to opposition activists and to give the government a greater ‘plausible deniability’ in the face of accusations of violating press freedom. ”

The press freedom report points to formal censorship occurring through the absence of an independent media regulator, use of criminal defamation, very high entry barriers for new press publications and barring military personnel from reading publications critical of the government. It is specifically noted that the lack of an independent employment tribunal allows arbitrary dismissal of media employees.

The Report makes the common observation that without an effective separation of state powers, the police, information ministry and judicial system exist solely to service the objectives of the ruling party and form part of a highly problematic state structure that needs to be changed if the Maldivian system is to serve the interests of its citizens.

Finally we publish as a useful background context to these discussions, the *Paul Robinson Proposals for Reform of the Criminal Justice System of the Maldives*. Though these proposals were formulated by Professor Robinson in 2004, they still remain the benchmark for pending law reform and provide valuable insights into the improvement of the current unsatisfactory status of the law.

***Kishali Pinto-Jayawardena***



**Report of a Fact Finding Mission to the Maldives by the  
Law and Society Trust, Sri Lanka and the Asian Human Rights  
Commission, Hong Kong  
(17- 23<sup>rd</sup> November 2006)<sup>4</sup>**

**1. Introduction**

Pro-democracy protests in the Maldives and consequent government oppression of dissentients<sup>1</sup> have been intense in recent years. Particular incidents are distinguished by reason of their importance in the reform process. In September 2003, it was during such protests consequent to the killing of four prisoners that Ms Jennifer Latheef<sup>2</sup> was arrested and detained. She was later charged with treason and has since then, become a spokesperson for urging committed reform of the Maldivian political and legal system.

Similar demonstrations during August 2004 calling for the release of four reformists who had been arrested previously, led to the proclamation of emergency by President Maumoon Abdul Gayoom on 13 August 2004 consequent to which a number of arrests were made and many persons were detained without charge.

A clear pattern during these arrests and detentions is the bypassing of basic guarantees of due process, including most importantly, the following<sup>3</sup>;

- right to be told of the reasons for the arrest;
- the right to have charges served upon the arrestee;
- the right to fair trial without undue delay, before a competent and independent court or tribunal and on commonly accepted presumptions relating to innocence until proven guilty and conviction on grounds of proof beyond reasonable doubt;
- the right of appeal to an independent body
- the right to have access to legal representation and members of the family and the right to correspondence;
- right to freedom from torture while in detention

---

<sup>4</sup>This report is consequent to a fact finding mission to the Maldives undertaken on the initiative of the Law and Society Trust's deputy director & lawyer/media columnist Kishali Pinto-Jayawardena, President's Counsel/senior law academic Dr J de Almeida Guneratne in collaboration with the Asian Human Rights Commission's Executive Director Basil Fernando during November 2006. Attorneys-at-law Preethi Fernando and Sasanka Alwis provided volunteer resource support during the mission. The mission visit was on invitation of NOOR (Native Operators on Rights) a Male based informal activist network, which requested an objective and rigorous scrutiny of the Maldivian legal system, its laws and procedures. Many who were interviewed during this mission requested anonymity due to fear of retaliation by the Government. Those who consented to being named are cited at various instances in the Report.

<sup>1</sup>The Maldives comprise some two hundred inhabited islands out of 1, 200 islands altogether. The population numbers approximately 338, 000 people out of which 75,000 Maldivians reside in the capital Male. The current President, Maumoon Abdul Gayoom, has ruled the Maldivian islands since 1979

<sup>2</sup> The daughter of founder member and spokesman of the Maldivian Democratic Party (MDP), Mohammed Latheef, she was charged with terrorism and was sentenced to ten years imprisonment, becoming therein an Amnesty International 'prisoner of conscience.' She was recently pardoned by President Gayoom in what is widely believed to be a concession to international pressure. See segment 6 in this Report.

<sup>3</sup> See case studies in segment 6 in this Report.

A striking feature of such detentions is that, while some detainees are released following international and domestic protests, other detainees who are similarly charged and imprisoned, are then released without formal notification of the charges being dropped against them. In certain instances<sup>4</sup>, the charges are re-activated at a later point of time. The manner in which charges are left pending will be discussed in this report as evidencing a common tactic of harassment and intimidation.

Increased pressure by domestic pressure groups, political parties, as well as the international community appear to have prompted the Government to announce a range of proposals towards constitutional reform<sup>5</sup> and to proclaim its intention of holding multi-party elections in 2008. These reform proposals include a draft Constitution, the redrawing of electoral boundaries and the introduction of a voter education programme.

However, though the promised reforms appear to be praiseworthy *prima facie*, the current continuation of practices of extreme oppression of political activists and journalists in particular do not bode well for the commitment of the government towards actual implementation of these reforms as would be discussed later in this report.

In early November 2006, there was a spate of arrests of opposition politicians as well as political activists. Some cases are dealt with in detail in segment 6 of this Report.

## **Lack of Basic Tenets of the Concept of Separation of Powers**

### ***1.1. The Legislature and the Executive***

While the Maldivian Constitution claims it to be a Republic and encompasses the citizens within the framework of "the State"<sup>6</sup>, actual sovereignty is not vested in the people.<sup>7</sup>

Instead, sweeping and predominant powers are vested in the office of the Executive Presidency, which effectively remains the nerve centre of governance in the island nation. The omnipotent presence of the office of the Presidency<sup>8</sup> governs every aspect of Maldivian political life. **Clearly this is an office positioned above the law and as such, its impact upon democratic rule has been**

---

<sup>4</sup> *Ibid*

<sup>5</sup> On November 11, 2003, President Gayoom proclaimed that he would spearhead a process towards improvements in the protection of human rights. Thirty one proposals were presented in that respect on June 9, 2004 with a Roadmap for the Reform Agenda being released to the public on March 27, 2006. These include the creation of the post of Prime Minister, clear separation of the positions of Head of State and Head of Government, the separation of powers between the executive, legislature and the judiciary and the limitation of the number of presidential terms.

<sup>6</sup> Article 3 read with Article 4(1)

<sup>7</sup> In contrast, see Article 3 of the Constitution of Sri Lanka read with Article 83(a) which makes the concept of 'sovereignty in the people' justiciable as determined in several judgements of the superior courts. In India and in Sri Lanka in particular, judicial articulation of the 'public trust' doctrine has cautioned that political power is held in trust by a particular government for the people and therefore, cannot be abused in any form. These are instructive examples for the Maldives.

<sup>8</sup> Among the qualifications prescribed by Article 34 of the Constitution for election as president, it is a foremost condition that only males can qualify for election. A resultant similar bar operates in the case of elections for the vice-presidency as well. There has been some dissatisfaction expressed regarding these conditions which are seen as gender discriminatory by Maldivian activists. In contrast, women can contest parliamentary seats and there are, in fact, highly vocal and articulate women members in parliament. Some atoll chiefs are also women.

**inimical**. Indeed, this inward looking constitutional structure has resulted in the almost complete negation of democratic checks and balances on executive power.

The President is elected not by the people but by a majority of the People's Majlis (Parliament). Article 4(2) of the current (1997) Constitution of the Maldives, (hereinafter, the Constitution), states that the executive power shall be vested in the President and the legislative power vested in the People's Majlis (Parliament) as well as the People's Special Majlis, (the Constituent Assembly called into existence by the President at any point that amendments are called for to the Constitution).

However, this perfunctory separation between the legislative and executive sphere is undercut by other constitutional provisions that effectively vests all powers in the office of the presidency. The President is not answerable to Parliament in any manner whatsoever. On the contrary, the power of intervention that the President is constitutionally vested with in the affairs of Parliament, is contrary to all modern norms of constitutionalism and separation of powers.<sup>9</sup>

Firstly, the manner in which the legislative bodies are constituted is unhealthily dependent upon the President. The Majlis comprises forty-two elected members and eight members appointed by the President.<sup>10</sup> Its Speaker as well as its Deputy Speaker are appointed if they are found 'in the opinion of the President' to have the requisite competence to discharge the duties of the offices. Equally problematically, these officials can be removed from office by the President without reason assigned.<sup>11</sup>

The People's Special Majlis (Constituent Assembly) comprise the fifty members of the Majlis as well as a further duplicate forty two seats from each of the elected constituencies together with a further duplicate eight members appointed by the President. In addition, the Constituent Assembly also comprises members of the Cabinet, who are not necessarily from the Parliament but are appointed by the President. The Constitution does not prescribe any limitation on the number of Ministers.<sup>12</sup> The Constituent Assembly itself is without any limitation on the number of its members.

Effectively therefore, the possibilities of the Assembly predominating or 'being packed' with those who have political affiliations to the office of the Presidency, deprives the body of any substantial independence in the sense of being held accountable to the people. Thus, the Maldivian political structure (though holding out as being a 'Republic') is conditional or dependant wholly on Presidential fiat, both in regard to its creation and survival.

---

<sup>9</sup> The powers of the Presidency are heightened by the fact that he is deemed to be the supreme authority to propagate the tenets of Islam.

<sup>10</sup> The elected forty-two seats comprise two members elected from Male and two members elected from each atoll of the Maldives. The members hold office for five years. In the present Parliament, there are 50 MPs in total: 10 elected members for the opposition Maldivian Democratic Party (MDP), 4 independents and 26 government members (18 elected and 8 appointed)

<sup>11</sup> Articles 68 and 70 of the Constitution. The Speaker is not a member of the Parliament though somewhat inexplicably, the Deputy Speaker is stipulated to be a member (Articles 68(3) and 70(3) of the Constitution).

<sup>12</sup> Articles 54 and 5 of the Constitution state only that there shall be a Cabinet of Ministers appointed by the President and that the Cabinet shall be presided over by the President. It shall consist the Vice President, if any, Ministers charged with responsibility for Ministries and the Attorney General. Currently there are fifteen Ministers in the Government.

Further, all bills passed by the Parliament and the Constituent Assembly needs to be assented to by the President before they are passed into law. Article 79 (1) and (2) of the Constitution states that upon a Bill being referred back by the President to the Parliament for reconsideration, it shall be passed only by two thirds of the members of the Parliament. Given the political composition of the Parliament in which, the government members predominate, the likelihood of achieving such a two-thirds majority is remote.

The President also has extensive powers in regard to the declaration of a state of emergency which powers have been used effectively to stifle pro-democracy protests.<sup>13</sup> The President has the overriding power to issue pardons. Practice has demonstrated that on many occasions, these powers are used without conformity to basic norms of fairness. Thus as activists put it, "we are arrested, the cases are kept pending against us and then some of us are pardoned while others are not."<sup>14</sup>

Generally, Presidential control over the legislature, the judiciary and indeed, all processes of governance in the Maldives as would be discussed further, have been likened by some critics as constituting the 'foremost obstacle to genuine constitutional reform' in the islands.<sup>15</sup>

## **1.2. Executive and the Judiciary**

The frightening omnipresence of the office of the Presidency reinforces the equally frightening *ad hoc* nature of laws, practices and regulations. Consequently, there is an almost complete lack of legal accountability within the Maldivian legal system particularly in regard to the laws and procedures applicable to the protection of the rights of life and liberty.<sup>16</sup>

### *1.2.1. No Justiciable Constitutional Safeguards*

The Constitution has a generally impressive chapter on rights, all of which are not justiciable and the courts have declined constitutional jurisdiction in that respect. This chapter, to all intents and purposes, is a dead letter.

---

<sup>13</sup> Article 144 of the Constitution. See the Introduction to the Report for one occasion where these powers were used against pro-democracy protests.

<sup>14</sup> For example, due to tremendous international pressure, the government has been forced to back down as demonstrated in the recent presidential 'pardon' of Ms Jennifer Latheef, an Amnesty International Prisoner of Conscience. Here, other prisoners who were charged along with her for similar offences were not pardoned resulting in Latheef insisting that they be treated in the same manner. See segment 6 in this Report.

<sup>15</sup> Interviews with Ms Mariya Ahmed Didi, (former Director of Public Prosecutions, currently member of Parliament for the Maldivian Democratic Party and Shadow Minister of Law and Justice) and independent member of Parliament for Dhall Atoll, Mr Ahmed Nashid

<sup>16</sup> The Maldivian legal system is based on Shari'ah law, which is applicable to personal and family laws, including inheritance laws. Specific laws pertaining to areas such as contracts and company law are based on the Shari'ah law.

### *1.2.2. Deficient Criminal Laws and Lack of Due Process*

As a former Attorney General of the islands put it, the current Penal Code which was put together in a haphazard manner from extracts of the Sri Lankan Penal Code, is long since outmoded.<sup>17</sup> Systematic laws of criminal procedure and evidence are non-existent.<sup>18</sup>

Though the Government has been developing an agenda of reforms of the penal laws, one complaint of activists is that this reform process has been ongoing for several years with no perceptible improvements in the patterns of arbitrary arrests and detentions as well as the impunity which surrounds government officers when they violate rights.<sup>19</sup>

The issuance of Presidential decrees<sup>20</sup> in areas of criminal justice and the law has further restricted basic rights in this regard. Act No 5/78 (11/3/1978) stipulates that all those arrested can be held after a period of seven days after obtaining approval from a three member committee appointed by the President. Further extension of the detention period can extend up to 15 days. At the end of the fifteen days, the detainee should be brought before a judge who has discretion to extend detention to a further period of thirty days. Then again, the detainee can be kept in detention till the end of the case depending on the discretion of the judge in the circumstances of the case.

This law which confers powers on such an unidentified three-member committee appointed by the President to decide whether detention should be extended beyond the legal limit of seven days has been heavily criticised. Activists monitoring the functioning of this Committee do not know its composition and fear that the very government officials responsible for arbitrary arrests and detentions serve on this body. Moreover, in a situation where the judiciary itself is not independent from the executive as discussed below, the safeguard of further detention being contingent upon the discretion of a judge is inadequate protection against abuse.

Lawyers representing many of those who had been arrested complain that, in some instances, they are not allowed ready access to their clients to advise them on their rights.<sup>21</sup>

There is no right and hence no practice of habeas corpus applications. Even where cases are lodged in court, many drag on for interminable lengths of time. The applicable burden of proof in criminal trials

---

<sup>17</sup> Interview with Dr M Munawver former Attorney General of the Maldives.

<sup>18</sup> Astonishingly, in 2002-2003 for example, 97% of cases were confession based and involved instances where the defendant was able to see his or her own confession according to a the June 2006 Report of a Fact Finding Mission to the Maldives by the United Kingdom Conservative Party Human Rights Committee. Though the government insists that the numbers of confession based cases have reduced considerably now, this remains a significant problem.

<sup>19</sup> A draft Penal Code and Criminal Procedure Code has been pending for some years. In December 2004, a National Criminal Justice Plan was announced which took into account lacunae in the criminal justice system and the government expressed commitment to rectify such lacunae by 2008.

Ed Note: This National Criminal Justice Plan based on the recommendations by jurist Paul Robinson is reproduced in this Review owing to its continuing central importance to reform of the Maldivian criminal justice system.

<sup>20</sup> In terms of Article 42(e) of the Constitution, the President has the power to promulgate decrees, directives and regulations 'as may be required from time to time for the purposes of ensuring propriety of the affairs of the government and compliance with the provisions of the Constitution and law.'

<sup>21</sup> Interview with senior lawyer, Mr A. Muizzu

is not proof beyond reasonable doubt but rather 'as the court seems satisfied'. Defence lawyers are sometimes not allowed to cross-examine witnesses.

The above law also has a peculiar provision whereby if the Ministry of Defence and National Security regards that a person may be arrested in the context of a case relating to private debts and finance, the Ministry has the discretion of detaining and arresting such a person and the detention of whom shall be in accordance with permission granted by the aforesaid unidentified committee of three persons. The possibility of abuse implicit in such a provision is horrendous.

Further, it infringes the international human rights principle that no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

A Presidential Decree applies to the regulation of offences as those that allow detention and those that do not allow detention. However, often, it is the *ipse dixit* (mere word) of an arresting officer that concludes the question as to the detention of a person who is arrested.

Further, though "Rules relating to the Conduct of Judicial Proceedings" stipulate that only cases relating to minor offences could be proceeded with under summary proceedings, in many instances where political activists are arrested ostensibly on the basis of 'unlawful assembly', they are tried summarily in that their trials last only several minutes and they are not given the opportunity to obtain legal representation.<sup>22</sup> In addition, the existing Maldivian bail regulations contain ample provision for abuse by the detaining authority who is given the authority to determine bail conditions, rather than an appropriate court. In practice, a judge hearing the matter rarely interferes with the decision of the detaining authority.<sup>23</sup>

All these provisions and practices violate the cardinal international law principle of a right to due process and a fair trial.

Indeed, the inchoate nature of these decrees and the absence of a coherent structure of laws are reflected in almost every aspect of societal functioning. For example, convictions for traffic offences are arbitrary. Failure to pay the stipulated fine may result in the offender being sent to a 'holding cell' to be kept indefinitely and in some cases, these minor offences have been used to harass political activists.<sup>24</sup> The same paucity in the lack of regulatory law and procedure applies to drug offenders.

In all these cases, the absence of a well structured Prisons Act and Regulations have enabled practices of brutal and inhumane detention.<sup>25</sup>

---

<sup>22</sup> For example, the trials of some demonstrators involved in the 14-20 May 2006 protests. More than 200 protestors were detained out of which at least nine persons were summarily tried and convicted for unlawful assembly and sentenced to four months imprisonment. Interview with Mr Ahmed Nazim Sattar, deputy editor, Minivan Daily.

<sup>23</sup> *Ibid*

<sup>24</sup> See case of Mr Imran Zahir where Zahir's alleged commission of a traffic offence (riding a motorcycle without a license) as a minor was stated to give him a criminal record and prevent him from registering an NGO.

<sup>25</sup> See the cases in Segment 6 of this Report for complaints by detainees of abuse within prison.

### 1.2.3. *A non-independent Judiciary*

The basic lack of an independent judiciary is one of the most disturbing factors in the current functioning of the legal system. The courts system is rudimentary with no Supreme Court but a High Court exercising appellate power which comes under the President's office and from which appeals lie thereon to the President.

As Article 39 of the Constitution postulates, the final Court of Appeal is the office of the President. The said Article provides thus;

The President shall be the highest authority of administering justice in the Maldives<sup>26</sup>

This must surely rank as the provision most obnoxious to the Rule of Law in this Constitution. In terms of this very provision itself, it is demonstrable that, there is no separation of powers between the executive (the Presidency) and the judiciary in regard the functioning of the judiciary.

Furthermore, even in regard to the appointment of judges to the loosely structured judiciary in this island nation, the President has a free hand to appoint at his whim and fancy<sup>27</sup> and most significantly, has the power to remove any judge from such office without assigning reason but merely "at his discretion."<sup>28</sup>

Taken individually or cumulatively, these provisions defy the irreducible minimum in regard to the functioning of an independent judiciary. One illustration of the arbitrary nature of these provisions was in 1967 when a Cabinet Minister (also appointed by the President) was appointed as the Chief Justice only to be later dismissed by the President who appointed the Minister of Justice to the said highest judicial office. There is no separation between the executive and the judiciary both in substance and in form. Practically, lawyers state that judges tend to be openly partial towards the Government

The Maldivian legal system contains many other aberrations linked to the overwhelming authority of the President.<sup>29</sup> The lack of independence of a body titled the Judicial Services Commission is conspicuous. This body was created on November 11, 2005<sup>30</sup> and consists the Minister of Justice, the Attorney General, four members of the judiciary appointed by the President, two members from the legal profession and two members of the general public.

---

<sup>26</sup> In mid 2006, the prisons population was approximately 400, according to data contained in the June 2006 Report of a Fact Finding Mission to the Maldives by the United Kingdom Conservative Party Human Rights Committee. This Report also highlights the extremely disturbing fact that, in the absence of well regulated by prison officials, "prisoners have been running the prisons and abusing other prisoners", vide at page 8 of the Report

<sup>27</sup> Article 118 (1) of the Constitution

<sup>28</sup> Article 123 of the Constitution

<sup>29</sup> See also Article 117 which states that "Where, in the opinion of the President, the Chief Justice or a Judge of the High Court fails to satisfactorily discharge his duties and responsibilities or in the event such a person becomes disqualified under Article 113, the President may remove such person from office." Article 113 relates to disqualification *inter alia*, on grounds of convictions. In addition, Article 42(a) vests powers of appointment and removal of judges in the hands of the President.

<sup>30</sup> apparently by Presidential decree

The Attorney General is wholly a political position and does not even claim to possess independence of office. He is appointed by the President and can be removed from office at the discretion of the President. Retribution is swift if the holder of the post is seen to be acting against the office of the President or departing from government policy. Interference of the President's Office in his functioning is not uncommon.<sup>31</sup> The previous Attorney General, Dr Mohammed Munawwer was detained without charge some months after he was dismissed from office. The detention was after the declaration of a state of emergency on 13<sup>th</sup> August 2004.

Incongruously, most of the judges possess Middle Eastern legal training and come from a Sharia law background while many practicing lawyers come from the common law traditions of the Commonwealth, thus resulting in fundamental discrepancies in the manner in which the purpose and the nature of the law is viewed. Use of formal legal precedent is not evidenced as a matter of common practice and there does not appear to be any system of law reporting.

## **2. The Functioning of the Police**

The Maldivian police earlier came under the National Security Service but were later constituted as a separate force. Activists detained in police cells and stations state that while many police officers are decent and attempt to help detainees, they too are constrained by systematic practices of ill treatment of detainees since they fear that they would lose their jobs if they protest.

However, the Maldivian Riot Police known as Star Force are infamous throughout the islands for their abuses of human rights and inhuman treatment of detainees. They are usually helmeted and uniformed, armed with batons, shields and pepper gas. Documented instances of their attacks on peaceful demonstrators and entering peoples' homes for the purpose of arresting people have been recorded.

## **3. Repression of Activists and Journalists**

As deficient as the laws are, the manner in which they are used to intimidate and harass the people is correspondingly worse.

One current case involves the arbitrary arrest and detention of Mr Ahmed Abbas, a well-known artist and political cartoonist who had critiqued the dreaded Maldivian riot police for using excessive force, observing that they would understand the negative consequences of such force only if they were given a dose of the same treatment. Mr Abbas was then asked to give a statement to the police, taking responsibility for this assertion.

On 1<sup>st</sup> November 2006, a pro-government website published a court order claiming that Mr Abbas has been sentenced in absentia to 6 months in jail for 'disobedience to order'.

---

<sup>31</sup> In interviews, former Attorney General of the Maldives Dr Munawwer outlined instances where the office of the Presidency had intervened in instances where he had attempted to use his authority as Attorney General to implement the law. One direct instance where the President had countermanded his order was in relation to his asking the Commissioner of Elections to inquire into allegations of political tampering with votes at an election where the President himself was one of the candidates.

This loosely framed charge under Section 88 of the archaic Maldivian Penal Code is made punishable by imprisonment ranging up to six months or up to one/two years in aggravated contexts. Activists complain that this is a clause frequently used by the government to intimidate and threaten persons who exercise the right to criticize. While the charge itself was highly debatable in terms of its legal applicability, the complete absence of procedural justice thereafter was even worse.

Upon being informed of this 'sentencing' in absentia, Mr Abbas had questioned from the Attorney General's office over the telephone as to whether this was, in fact, true and had been answered in the positive. Two days later, after his frantic requests for political asylum were unsuccessful, he was detained by riot police and was detained in the infamous Maafushi Prisons in Male.

Meanwhile, the editor of the *Minivan* newspaper in which his statement was published as well as the sub editor were also charged for 'disobedience to order.' These charges have been left pending against them, demonstrating the arbitrariness of the procedures. Indeed, persons similarly arrested and detained (whose cases are painstakingly documented by activists), point out that cases are intentionally left pending in order to use the charges as easy weapons of intimidation.

Ms Shahindha Ismail, head of one well known non-governmental organisation (NGO) working with detainees called the Detainee Network stated categorically that they had documented numerous reports of beatings and torture of detainees. In certain cases, mass arrests are made after pro democracy protests during which even bystanders are arrested and kept in custody without formal charges being filed. They are not allowed access to the detainees and their letters to the police go unanswered. In some instances, activists monitoring cases are not even allowed access to court hearings in regard to trials of detainees

#### **4. Freedom of Assembly/Association and Labour Rights**

The same restraints apply in other areas. There is no visible labour movement. For example, there are associations of workers belonging to a particular industry such as the fisher trade or engaged in a particular occupation such as taxi drivers with some being more organised than the others,<sup>32</sup> but these do not appear to be trade unions operating on member-generated funds. The monopoly of the industry lies in the hands of some companies that are government owned, some of which lie, most significantly, in the hands of prominent ministers. This is aided by the fact that the business regulatory and legal environment is inchoate<sup>33</sup>, production bases are not equitably distributed<sup>34</sup> and there is a vast concentration of wealth in the hands of a few persons.<sup>35</sup>

---

<sup>32</sup> For example, the taxi drivers have formed themselves into an association that has had a collective voice on issues affecting their trade. Laws governing conditions of employment are primitive and child labour appears to be widely prevalent.

<sup>33</sup> Businessmen whom we met complained of various lacunae in the relevant regulatory and legal framework such as the lack of duty concessions for export oriented companies, lack of good financing and leasing systems, an outdated Companies Act and the absence of adequate knowledge of the intricacies governing company and business law disputes on the part of judges hearing the cases.

<sup>34</sup> There is only one vegetable market in Male to which islanders from the atolls have to travel to, which is a long and laborious journey for them.

<sup>35</sup> 90% of the foreign exchange revenue was said to lie in the hands of a few powerful political personages. The Maldives Association on Tourist Industry has the membership of some of the richest men in the islands and the fact that key political figures possess prominent stakes in the hotel industry is too stark to be discounted.

Freedoms of association<sup>36</sup> and assembly are minimal and arbitrary laws govern the exercise of these rights. As detailed below, one of the commonest excuses for detention of persons is their participation in demonstrations. Registration of non-governmental organisations is denied on the flimsiest of excuses. Ms Aminath Najeeb, the editor of the *Minivan* newspaper had been persevering for some years to get a non-governmental organisation (NGO)<sup>37</sup> registered under her name along with another activist. The involvement of the latter had been objected to on the basis that he had a criminal record as he had been found driving a motor cycle without a licence. While no specific objection had apparently been raised to Ms Najeeb herself, her application for the registration of her NGO remains pending.

Registration of the Detainee Network had been delayed for over a year following amendments being repeatedly called for in regard to the Articles of Association. However, when after repeated attempts this NGO was, in fact, registered, it was the initial version of the Articles that were accepted for registration (excepting amendment of one clause only) rather than the much revised version.<sup>38</sup> These incidents fuel the suspicion of activists that the delays on the registration process imposed by government authorities amount to deliberate attempts to harass them. Many of these activists work 'in the shadows' as it were and run the risk of being arbitrarily arrested and detained.

## 5. Repression of Women

In general, though literacy rates of women remain high as well as life expectancy indicators and the government has indicated its commitment to improving the legal and regulatory framework pertaining to women<sup>39</sup>, the civil and political rights of Maldivian women have not been secured to an appreciable extent. As noted above, women cannot contest for the post of the Presidency and the Vice Presidency though their civic rights are not hampered in any other manner. Most seriously, the treatment of women in the prisons and detainee cells has been extremely abusive. Women political activists such as Ms Jennifer Latheef and her sister Ms Marnie Latheef have been subjected to arbitrary arrests, detention and torture. Their cases only exemplify the plight of many women political activists and journalists who have been sexually victimised and abused while in detention. There appears to be no acknowledgement by the government of persistent patterns of sexual abuse by custodial agents and consequently no efforts made to redress this situation.

## 6. Opposition Political Parties

Political rallies are routinely attended by mass arrests and detentions, sometimes of mere bystanders who were watching the processions go by. Political repression practised against members of the opposition Maldivian Democratic Party, (MDP), of which some eighty five members were detained at

<sup>36</sup> There are some laws that are applicable to the forming of associations but these are themselves problematic as for instance, clause 19 of the Associations Act of Maldives which makes it an offence to establish an association that "brings diminution to the rights of Maldivians or section thereof or to create disharmony among the public." This is a classic example of a vaguely worded provision which enables the arbitrary penalising of an association if it engages in the challenge of the political establishment in any manner whatsoever.

<sup>37</sup> The title of the NGO being 'HUMAN RIGHTS ASSOCIATION, MALDIVES.' Interview with Ms Najeeb.

<sup>38</sup> interview with Ms Shahindha Ismail, head of the Detainees Network

<sup>39</sup> The Family Act, which was enacted in December 2000 and came into force in July 2001 mandates the strengthening of family relations, the protection of women, custody of children and care of elderly persons. However, some of its provisions such as the discouragement of divorce has been critiqued as encouraging familial abuse rather than providing a framework whereby the concerns of abused women within the family could be taken into account.

the time of the mission, is predictably severe. The high profile trials of MDP leaders such as Messers Mohamed Nasheed and Ibrahim Hussein Zaki are being closely monitored by international observers. Four of these cases are detailed below.<sup>40</sup> In all these cases, common patterns of abuse during arrest, while in detention and in prison are recorded. Other cases of political activists arrested and detained in similarly harsh and arbitrary circumstances are found in annex one to this report.

### *1. Case Study Concerning Ms Jennifer Latheef*

Ms Jennifer Latheef (daughter of exiled MDP spokesman and founder member Mr. Mohamed Latheef) was arrested on charges of terrorism shortly following her participation in the popular protests that took place on 20 September 2003 consequent to the custodial killing of five prisoners. The charges focussed primarily on allegations that she threw a stone that hit a policeman on the leg.

Reports were to the effect that the police kicked her on her back on numerous occasions during detention in August 2004. During her period of detention at Mafushi prison, rotten food, stones were hurled into her cell and she was abused in bad language.

She was sentenced by the Criminal Court to ten years imprisonment on 18 October 2005 and was put under house arrest in December 2005 for medical treatment. She had acute pain in her spinal cord after the police beat her up during early detention. Her arrest, detention and torture invoked international condemnation, most notably from Amnesty International who named her a Prisoner of Conscience, Reporters Sans Frontiers and Article XIX.

Her appeal at the High Court was obstructed in many ways, most notably by the Criminal Court not giving a judgement of the conviction and sentencing which was necessary in order for the appeal to be lodged within the stipulated ninety days time. Even after the appeal was lodged, a date was not given for hearing despite reminders being sent during a period of seven months.

Though released under presidential pardon in late 2006, (while her appeal at the High Court was pending), she has refused to accept the pardon. Her reasons for the refusal (apart from the objection raised that her sentencing for charges of terrorism was contrary to law since she did not commit terrorist acts and had been denied due process in her trial) were that a similar pardon had not been given to the other detainees who had been sentenced along with her on similar charges, which treatment was arbitrary and discriminatory. Though she has asked for the appeal at the High Court to be heard, this has been refused on the basis that she has been pardoned.

### *2. Case Study Concerning Mr Mohammed Nasheed (Anni) - Chairperson of the Maldivian Democratic Party*

Mr Nasheed was arrested on 12 August 2005 (undergoing physical injuries in the process) while participating in a peaceful demonstration and held at Dhoonidhoo Island Detention Center. He was charged with treason and terrorism and put under house arrest from November 2005. His arrest,

---

<sup>40</sup> The mission met with three of these detainees, namely Ms Jennifer Latheef and Messers Mohammed Nasheed and Ibrahim Hussain Zaki and also with family members of Mr Ahmed Falah.

detention and trial proceedings are rife with procedural irregularities. He was not informed of the reasons for his arrest or the charges against him at the time of arrest.

The specific charges (informed much later) included the contents of a speech given in Thoddu Island on 29 July 2005 critical of President Gayoom to which was later added other acts allegedly committed against the state over the past fifteen years. These allegations included conducting an interview on the BBC's Crossing Continents radio programme, where the detainee appealed to the international community to release tsunami aid to the Maldivian government with attached conditions, planning to gather people near the Presidential Palace, having knowledge of other gatherings that took place in Male' the past two years, leading a walk on the streets of Male' on his return from self-imposed exile, trying to gather near the People's Majlis to hinder the passing of Bill allowing political parties in Maldives, gathering people in various corners of Maldives and creating hatred amongst the Maldivian public against the lawful government, culminating in manufacturing iron rods to be used during a mass demonstration on 12th August 2005.

These additional charges were levelled against Mr Nasheed with no notice to him or to his lawyer and he was denied adequate access to the evidence and information regarding the charges against him. He was also denied the ability to confront witnesses and dispute the evidence put forward by the prosecution. His family members and lawyer only learnt of his date of trial on the same day as the trial itself, 28 August 2005.

His trial was also marked by a delay in its proceedings. From the date of arrest (August 12, 2005) to the sixth date of hearing on June 18, 2006, he had been given no indication of the trial schedule or a time frame for ruling. The court sitting on his case had also failed to respond to several applications to court filed by his lawyers.

Access of lawyers and members of his family had been impeded on many occasions by government officials while Mr Nasheed was being detained. His trial is being monitored by international rights organisations.

**3. *Case Study Concerning Mr Ibrahim Hussein Zaki* - Member of Parliament, formerly held ministerial posts for Tourism and Planning and former Secretary General of SAARC.**

**Charged after exhorting the islanders of one atoll to practice "peaceful revolution."**

Earlier, he had been arrested on 13 August 2004 following participation at a demonstration and transferred to house arrest on 21 October 2004 after sixty eight days in detention. Released from house arrest on 14 December 2004. Charges of Acts against the State were brought against him on 5 December 2005 and were apparently withdrawn but not formally notified to him.

**4. *Case Study Concerning Mr Ahmed Falah* - Brother-in-law of exiled MDP spokesman Mr. Mohamed Latheef.**

Mr Falah was arrested on 7 May 2006 and sentenced to six months imprisonment for disobedience to order. His name was on a list of persons charged for participating in the demonstration organized by the MDP on 24 January 2006.

He had previously served a six-month prison sentence following conviction in June 2005 for being “party to an unlawful assembly” in a prison cell in November 1998. It was noteworthy that the offence for which he had been sentenced had occurred seven years ago. This is one instance which highlighted the pending nature of charges against political activists and the clearly arbitrary nature of such prosecutions and trials.

The verdict by which sentence was passed on him (on 8 June 2005) is relevant as being an example of many more such orders and is therefore reproduced in full in annexure 2 to this Report. During another previous detention period in August 2004, Mr Falah had been blindfolded, handcuffed, forced to squat while four police officers systematically beat him during the arrest and early part of his detention. He had been beaten during his transfer from Girifushi to Dhoonidhoo Detention Centre.

## **7. Efficacy of Independent Oversight Bodies<sup>41</sup> – the National Human Rights Commission**

Oversight mechanisms by independent monitoring bodies are also deficient. Though the Maldives had established a National Human Rights Commission (NHRC), it has been beset with controversy over the past years with its Chairman resigning at one point due to governmental interference in its functioning. Its lack of institutional independence has resulted in it being denied entry into regional bodies such as the accredited Asia Pacific Forum (APF) of National Human Rights Institutions.

While a fairly good revised law on the NHRC was recently passed by the legislative members<sup>42</sup>, the quality and commitment of its members, (chosen by the President), have given give rise to concerns that the body would not function independently. Activists whom we met expressed strong scepticism that the body would function as a credible monitor of rights violations in the islands.

## **8. Freedom of Expression and the Media**

The media had been largely government controlled and some space for independent media has opened up only very recently. Rules governing the publication of newspapers, magazines and other such items state that the editor of any such publication must be registered at the Ministry of Information, Arts and Culture and must have the requisite qualifications which includes the completion of a journalism course<sup>43</sup> or possess relevant experience.

The Rules specify that an editor should not “have too many offences on his or her offence records”<sup>44</sup> and further, even more disturbingly, that “in the past three years, the editor should not have been convicted in a legal trial of an offence relating to any piece of writing he or she had written.”<sup>45</sup>

---

<sup>41</sup> In 2002, Parliament passed a law on the Prevention and Punishment of Corruption which defined the offences of bribery and corruption and prescribed appropriately harsh penalties. However, in the absence of a well functioning legal systems and judicial structures, the impact of these laws remain minimal

<sup>42</sup> Interview with Mr Ahmed Saleem, member of the Human Rights Commission.

<sup>43</sup> Clause 10 (c) of the Rules. Journalists allege that this course is run by the Government and, in effect, this means that entry into the profession is subject to rigid government approval.

<sup>44</sup> Clause 10(d) of the Rules

<sup>45</sup> Clause 10(e) of the Rules. Vicarious liability of the editor (though clumsily framed) is also provided for in this clause.

Journalists attached to newspapers perceived to be linked to the opposition such as the *Minivan* newspaper work under constant threat of being arrested, charged or detained as demonstrated in the case of Mr Ahmed Abbas discussed in this report previously.<sup>46</sup> In a context where writers and editors are often under threat of convictions for challenging the Government, the arbitrary impact of this clause is clear.

The Rules also contain some alarmingly undemocratic clauses such as the virtual banning of the use of pseudonyms and the prohibition of criticism of any pending bill or issues proposed to be debated in the Peoples' Majlis (the Parliament). These are prohibitions that have long since been abandoned in modern jurisdictions and their prevalence in the Maldives is to be deplored.

A Maldives Bill on Freedom of the Press has been heavily critiqued as allowing for abuse and repression of the media.<sup>47</sup>

## **9. Some Reflections on the Socio-Economic Conditions Prevalent in the Maldives**

Dependency on the office of the Executive President transcends the civil and political structures in the islands. As one prominent lawyer who had been formerly associated with the current Government lamented "If one needs foreign travel for medical purposes, one has to appeal to the President who will release money. This is what I would refer to as institutionalised begging."

Articles 2 and 23 of the Constitution recognise the right to acquire and own property and the protection of the same. These are provisions that go beyond the highly developed and democratic conditions of the modern world. However these provisions are reduced to a mere constitutional boast by reason of the fact that they are non-justiciable, (they cannot be invoked and upheld in court).

## **10. Conclusion<sup>48</sup>**

In the course of our mission, we were told that, given the historically loose feudal structures of governance of the Maldives from which its emergence has been relatively recent, the 'democratisation' of this island nation must be, of necessity, painfully slow and studied rather than a process of rushing headlong into tumultuous republicanism, with its inevitable dangers of societal disintegration.

---

<sup>46</sup> Interview with Ms Aminath Najeeb, Editor, *Minivan* newspaper. The mission found that there was no proper understanding among public officials as well as journalists of the applicability of concepts such as contempt of court, criminal and civil defamation and the like to the functioning of the media. This was hardly surprising given the lack of a coherent framework of media laws and regulations relating to freedom of speech, expression and publication and relevant jurisprudence to that effect.

<sup>47</sup> See Report by the international non-governmental organisation Article XIX dated May 2006 which commented on the fact that the Press Bill created 'new media crimes.' Its prohibitions on publications were also termed as vague and open-ended, which meant that they could be abused for political purposes.

<sup>48</sup> The issue of freedom of religion in the Maldives is not specifically dealt with in this Report though this is a serious concern. The practice of any religion apart from Islam is prohibited by law and it is compulsory that the members of the island's political authorities, from the highest to the lowest, must be Muslims.

While it must be conceded that the path of reforms need to be structured, we are not of the opinion that this should serve as a convenient excuse for the continuing repression of Maldivian political activists, dissentients and journalists.

The activism of the Maldivian people in response to patterns of extreme repression as detailed in this Report has been both spontaneous and courageous. The Government's recent accession to international human rights treaties such as the International Covenant on Civil and Political Rights (including its First Optional Protocol), the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention Against Torture signifies that it is taking note of criticism of its human rights record.

However, it needs to demonstrate genuine commitment by effecting substantive changes of its laws, regulations and practices, particularly relating to protection of the lives and liberties of its citizens and implementing these legal changes. The constitutional framework of the Maldives needs to be radically revised as pointed out in this Report in order to minimise the preponderance of powers in the Executive Presidency.

Sustained domestic, regional and international activism and advocacy should endeavour to bring about these changes.

# Threats to Human Rights Defenders in the Maldives

*Shahindha Ismail<sup>^</sup>*

## **Introduction<sup>1</sup> - Preliminary Reflections on Human Rights Protections in the Maldives**

President Maumoon Abdul Gayoom who is the President of the Maldives is Asia's longest serving leader. He was re-elected for a record sixth five-year term in 2003, having first taken office in 1978. Although generally considered a liberal and moderate voice on the Maldivian political scene, Gayoom has in recent years been heavily criticized for his autocratic rule. The country aims to hold its first multiparty elections by the end of 2008. Parliament voted to introduce a multi-party democracy in 2005; previously, political parties had been banned, although there had been no official ban on political activity.

President Gayoom has been subjected to growing pressure, with human rights groups accusing him of running an autocratic state and unprecedented antigovernment violence flaring in the streets. Amnesty International reports that, in recent years, the country has detained over a dozen prisoners of conscience, some of whom have been held without charges and have suffered torture and ill-treatment in jail.

In the past few years, incidents of human rights violations have led to popular uprisings and riots. In September 2003, a 22-year old prisoner, Eevan Naseem, was killed by members of the National Security Service (NSS). This incident triggered civil unrest in Malé, the island capital, as well in Maafushi prison, where Naseem was incarcerated. In response to these incidents, the President established the National Human Rights Commission but concerns with its independence and freedom from government control has led to the body being unable to function effectively.

## **Special Concerns Affecting Maldivian Human Rights Defenders**

The Maldivian government does not recognize the work of human rights defenders or indeed, of human rights oriented non-governmental organisations (NGOs). NGOs were not allowed registration until 2005 when international pressure forced the system to accept NGOs. The fact being so, the general public does not understand what the term means. The majority of the public is generally unaware as to what basic human rights are, and hence is incapable of understanding much of the work that defenders engage in. Defending human rights or speaking out against human rights violations is viewed and treated as anti government propaganda and as such, is an offense. Perceived offenders are subjected to arbitrary prosecutions.

---

<sup>\*</sup>Head, Detainees Network, Maldives. The Network engages in comprehensive monitoring and documentation of status of detainees, including observing court trials carried out in this regard.

<sup>1</sup>Full name - Republic of Maldives: Population-338,000 (UN, 2005): Capital- Male: Area - 298 sq km (115 sq miles): Major language- Divehi: Major religion-Islam: Life expectancy-67 years (men), 66 years (women) (UN): Monetary unit- 1 rufiyaa = 100 laari: Main exports- Fish, clothing: GNI per capita- US \$2,390 (World Bank, 2006) The Republic is made up of a chain of nearly 1,200 islands, most of them uninhabited, which lie off the Indian sub-continent and are vulnerable to a rise in sea levels associated with global warming.

Most defenders are labeled as political activists with the consequent result that local NGOs are demonised, marginalised or discriminated in terms of public assistance and cooperation. Many defenders work without sufficient funding. As a result, when a respective defender from an NGO is targeted by the government, it is the family and the organization as a whole that the government attacks without compunction. Most organisations are left dysfunctional after key members are arrested and their families are left with no financial assistance.

### **Nature of threats faced by Maldivian Human Rights Defenders**

The most common and most feared threat relates to arbitrary arrest and detention. Legal and professional arrest procedures are lacking in the Maldives. Police force themselves on individuals as and when they want and arrest people without having to produce a legal warrant. No reason for arrest is given at all or until much later. People are beaten, sprayed with pepper gas, handcuffed and abused during arrest; all this occur in the presence of family members, especially minors, inside their homes.

Thereafter, they are forcibly walked, pushed, dragged or carried to police vehicles on the streets in full view of the public. People are held in solitary confinement in ill-ventilated cells on an island far distant from the capital for weeks or months without interrogation, without access to a lawyer and without access to family members. It is normal for detention facilities in the Maldives to deny proper medical assistance or edible food and bedding to detainees.

Among other threats to defenders in Maldives include the fear of being charged randomly without interrogation, the conducting of unfair trials with no legal representation or opportunity to present witnesses. An appeal takes months to process, many times longer than the sentence itself. It is common for judicial authorities to sentence individuals *in absentia* and without informing of the sentence until the police arrives to detain him/her.

Many people hesitate from being openly active for fear of discrimination or termination from employment. A large proportion of the population (35,000-38,000) being civil servants, the government controls outspoken individuals by intimidating them or their families by the threat of termination. Many have been transferred to inferior departments or bodies within the government or have been demoted or terminated.

Active defenders doing private business lose potential opportunities due to corruption and systematic bias within the system. Others lose any chance of employment as a civil servant. Defenders face the problem of not being able to ensure due process within the governing system. For example if a defender should file a case at any of the courts or lodge a complaint at the police station, it may be ignored for several months or not acknowledged at all.

There have been incidents of street violence against activists in the country. People riding motorcycles have been forced off the street. One recent incident occurred when a group of policemen beat a popular activist close to death on the street near his home. Homes and business premises have been attacked with stones and crude oil. Anonymous letters of threats have been found thrown on the streets. Fear of becoming a target of organised crime gangs has left many unable to walk the streets of the island.

A major fear of activists is that their families may have to take the brunt of their actions. Many children of such families face psychological trauma due to abuse being leveled against their parents from classmates in school. When the state media publicise an individual as a 'terrorist' or someone 'who brings a bad name to the country', children very often lash out at relatives of such people. Furthermore, children face discrimination by teachers and other school personnel. Many children from families of active defenders of human rights are shunned or ridiculed in school. Many such children are denied fair education opportunities

### **The Problematic Prisons and Detention Structures**

The Maafushi island prison, Maldives' most well known prisons, is administered by the Department of Penitentiary and Rehabilitation Service and consists of blocks. Each block is a prison cell, which accommodates up to 100 people or more at times. The newly built solitary confinement cells completely block the prisoner from the natural flow of air, natural light, sound or human contact. The toilets in the cells are in fetid condition. Cells often get flooded from poor sewerage in toilets. Toilet bowls and wash basins are broken in most cells. Proper bedding is not provided to detainees.

Many prisoners are made to sleep on mats or on cement blocks. Sheets and clothing provided by the detaining authorities are reused among prisoners. Basic toiletries are controlled by the detaining authorities. The food provided to them is not nutritionally balanced and is extremely unhygienic with insects, plastic and bits of glass contained inside cooked food that is served to the prisoners. Prisoners who need special food due to medical conditions oftentimes face difficulties. The prisoners are not provided with proper drinking water and are instead ordered to drink from the taps in the toilets.

The prison has a medical officer at the premises although no emergency health facility is available on the island. Prisoners are kept from consulting specialist medical personnel unless in critical condition. Long term treatments prescribed for prisoners by doctors are ignored by the detaining authorities.

Extremely basic education is provided in the prison. Very limited recreation facilities such as a TV and brief periods out of the cell for exercise is provided for male prisoners. No recreational facilities are allowed for the female prisoners. Most of the prisoners and detainees held in Maafushi prison and detention centers are drug related cases. As the drug menace has reached a phenomenal level in the Maldives, it is imperative that rehabilitation is provided for the detainees. Most of these detainees are very young, from the age of 16 to 25 years and continue to suffer withdrawal, often lapsing into comas followed by death.

The prisons are often used to inflict torture and cruel and degrading treatment on the detainees. Forms of torture includes the following; spraying high pressure water from all sides while the prisoner is tied to a position in the centre of the room, prisoner is made to run in small circles for hours, prisoner is made to strip, hands cuffed around tree trunks and left for hours with sugar syrup or condensed milk poured on the body in order that ants and other insects swarm onto the body, prisoners are made to strip and roll on the rocks surrounding the beaches of the island and in other cases, are locked up in solitary confinement for weeks without any human contact.

The forms of abuse that take place at Dhoonidhoo Island and other detention centres around the country are even worse. All detention centres are administered by the Maldives Police Service and not

by the Department of Penitentiary and Rehabilitation Service, this depriving the detainees of an important element of administrative supervision

### **Profile of Abuse of a Detainee**

Ms Zaheena Rasheed was an exceptional student and activist.<sup>2</sup> She came into focus after she held one end of a banner calling for the resignation of President Gayoom at a gathering organised by the government. She has since been labeled a rebel to society. Ms Rasheed had been employed with the United Nations Development Project (UNDP) 'Atoll Development for Sustainable Livelihood' under the Ministry of Atolls.

In November 2006, the Maldivian Detainee Network called upon interested individuals to volunteer to act as and accompany International Observers in anticipation of mass arrests following a demonstration advertised by the principal opposition party at present. Ms Rasheed volunteered. A group of eight international observers in total were activated by the Maldivian Detainee Network. Ms Rasheed was one of them. The police and the UNDP were fully informed of the activities of the observers as strictly neutral and non partisan observers. Names and identification of all individuals in the group was forwarded to both offices. The first demonstration took place on 6 November 2006.

Ms Rasheed was terminated from her post at the Ministry of Atolls/UNDP project on 9 November 2006. The Minister of Atolls, Mr Mohamed Waheedhudheen verbally accused Ms Rasheed of participating in an unlawful assembly. Her termination letter stated that she had been careless at work. The Maldivian Detainee Network (MDN) sent a written explanation to the Minister of Atolls, of Ms Rasheed's actions on 6 November 2006. The Minister showed total disregard to the explanation, taking the position that this will not be changed unless the UNDP and police provided written explanations. MDN contacted both the police and the UNDP. However, there has been no relief forthcoming to Ms Rasheed. This incident demonstrates very well the various forms of intimidation and harassment that defenders undergo in the Maldives.

### **Information and Media**

The media industry in the Maldives is heavily state-regulated and new press freedom legislation proposed in 2006 has been critiqued for its potential to reinforce government powers. The government runs the national television and radio channels. Three daily newspapers, *Haveeru*, *Miadhu* and *Aafathis* are widely circulated. However, they are all subjected to government censorship to a certain extent. In the late 1990s, many underground newsletters and websites, such as the Dhivehi Observer were published in opposition to the Maldivian government. Local internet users are generally denied access to these particular websites by the government.

---

<sup>2</sup>Ms Rasheed was best student (Maldives) in GCSE Ordinary Level (2004) and obtained the International Baccalaureate Diploma in 2006. Her work included (2006) – UNDP ADSL2 project under the Ministry of Atolls, (2006) – Volunteer for the Maldivian Detainee Network as a protest observer, (2006) -Member of working group, Maldivian Red Crescent, (2005 – 2006) – Volunteer for Mother Theresa's Home, Pune, Maharashtra India, (2005) - Volunteer for the South Asian quake Relief Effort, (2005) - Volunteer for the Tsunami relief effort in India, (2004 – 2006) - Volunteer for an HIV Positive Childrens home - India

## **Socio-economic concerns affecting the Maldivian people**

Securing the civil and political rights of the Maldivian people is further hampered by negative socio-economic factors of their lives. The tsunami shattered the fragile Maldivian economy, causing damage equivalent to 64% of GDP. Both the tourism and fisheries sectors suffered widespread destruction and the national current account deficit doubled to 25% of GDP. The government is currently seeking to stabilize the economy by pursuing policies of fiscal stringency. The Maldivian economy has been considered as buoyant due to the development of the tourism and fisheries sectors, as well as favourable external conditions, aid flows and sound economic management. Nevertheless, the Maldivian economy is highly vulnerable, as both these sectors can be severely affected by external shocks as we saw in regard to the tsunami.

The first tourist resort opened in 1972 on Kurumba Island, in Malé atoll and since then the country has undergone tremendous economic and social change. More than a quarter of a million people visit Maldives annually and in 2002 the industry contributed around 30% of National GDP. There has been an increase in the intensity and extent of tourism in the last decade, with 90% of government tax revenues generated by the tourism sector. Although this undoubtedly contributes enormously to the local economy, there are concerns that the local workforce is not participating sufficiently in it. In some resorts, nearly two-thirds of employees are expatriate workers, mostly from neighbouring South Asian countries. The absence of minimum wage legislation and labour laws are also serious concerns.

Maldives is extremely vulnerable to global warming and rising sea levels. 80% of the land area is less than 1 meter above mean sealevel. Therefore even slight environmental changes have devastating consequences for the country.

The provision of health services to all Maldivians is difficult and expensive, due to the geography of the islands. These islands are dispersed across 90 000 square kilometers and the transportation infrastructure is not well developed. There are no proper health facilities on every island but only health posts that lack the equipment and human resources to attend to general ailments and are wholly incapable of providing services in terms of serious illnesses or bodily injury. Rural populations have limited access to hospitals and emergency care and maternal mortality remains high. Many babies and women die in labour while traveling in boats to reach a health facility near their residing islands. Another major health concern is malnutrition, especially amongst children under five years of age. Maldives has a high prevalence of the genetic blood disorder, Thalassaemia. Numerous children grow up with disabilities because surgery could not be performed in time.

Neither is there a well functioning education system. Many islands are left without a proper school. Where there are schools, there are seldom enough qualified human resources to enable them to be run properly. Almost every island with a population that measures up to the extent stipulated by the education provision policy has been promised a school by the government. Yet, very few Maldivians question as to why there has been over two decades of delay on fulfilling this promise. The lack of critical scrutiny is due to the fear of antagonising the government.

There is no domestic transport system within the country which is 99% ocean and 1% land mass. Four domestic airports across the islands does not mean that the people of the country have been provided

with decent or affordable or efficient transportation. There is no ferry service. People travel by paying private boat owners whatever that the owner demands. People who cannot afford this do not travel.

It is crucial however that proper transport facilities are provided between the islands and Male as the hospitals are situated there and so are the schools. The only commercial centre in the country is Male. Since the islands cannot grow sufficient vegetation, the only food supply - be it staple food such as rice and flour or vegetables, have to be purchased at the capital. The only food source available to the islanders is fish.

Meanwhile, Male itself has become extremely congested with one third of the total population of the islands living on the capital despite its small land mass. There is not enough land to accommodate the people living in it. The people cannot afford to rent living space because the real estate prices sky rocketed years ago, whereas the basic salary scheme has not kept pace with the rise in real estate prices.

### **The Impact of Religion**

Islam is a central pillar of Maldivian society and religion pervades the social and cultural life of the nation. The country converted to Islam in 1153 and Maldivians, (most of whom are Sunni Muslims), take great pride in their Islamic heritage. There are strong cultural ties to the Middle East as well as to the Islamic states of East Asia. Maldives is considered a moderate Islamic nation.

What is of predominant concern to human rights defenders is that rumors are spread by certain sections of the government, labeling human rights defenders and NGOs as being 'un-islamic' or trying to bring 'un-islamic' ideologies into a hundred percent Muslim country. This further aggravates the hostile conditions under which defenders work.

### **Conclusion - The Biggest Human Rights Challenge in the Maldives: Lack of Public Awareness**

The Maldivian culture of blind faith and unquestioning obedience to authority has lead to the prevalence of numerous violations of human rights. Only few persons question the authority of official figures. Many do not understand what their rights are.

It is the responsibility of defenders to enable Maldivians to recognise their rights and to agitate for a better way of life in what has been referred to as the 'paradise islands' but in which hundreds of ordinary people lead traumatised and subjugated lives.

# **SURVEY OF PRESS FREEDOM IN THE MALDIVES**

## **Human Rights Defenders in the Maldives**

*The Raajje Foundation\**

### **1. Executive Summary**

This short survey outlines examples of press freedom restrictions in the Maldives. It covers state monopoly and state sponsored media, principal news websites as well as independent and opposition oriented press. The survey provides examples of administrative restrictions, arbitrary regulatory oversight, biased judicial prosecution as well as threats and harassment against media personnel.

The survey indicates that press freedom is lacking in the Maldives and recommends continued and close monitoring of press freedom issues. The survey also raises concerns in regard to inadequate scrutiny of proposed media legislation, the lack of self-regulatory bodies, the lack of a media debate on democratic reform as well as the lack of an independent judiciary to protect the basic rights of the Maldivian people.

### **2. Introduction**

#### **2.1 Purpose, scope and method of survey**

The purpose of this survey is to provide a benchmark for continued monitoring of press freedom violations in the Maldives. This survey is the first effort to compile violations of press freedom in the Maldives, which is considered as an important indicator of the measure of progress in regard to democratic reforms announced by President Gayoom in June 2004.

The method of data collection was through published news reports and confidential interviews. Confidentiality was provided to help protect against possible reprisals and to limit the incentive for public grandstanding.

#### **2.2 Categories of press freedom restrictions**

Press freedom is commonly understood as the ability of the media to engage in issues of public interest. Restrictions in press freedom are, correspondingly, those actions which undermine the opportunity for the media to engage with issues of public interest. The survey has divided these restrictions into the following five categories, reflecting increasing severity of persecution:

1. Censorship – Formal restrictions on media channels to prevent views critical of the government appearing in the public domain.

---

\* The Raajje Foundation is a politically independent non-profit company incorporated in Sri Lanka to support regional civil society initiatives and to strengthen development oriented projects.

2. Intimidation and harassment – Acts of blackmail, threats and the creation of a persistent annoyance for the purpose of dissuading someone from broadcasting items critical of the government. Such acts are typically of an unofficial nature allowing the persecutors to claim plausible deniability.
3. Arbitrary arrest and politically motivated prosecution – The arbitrary use of the police and judicial services to intimidate individuals and organisations from broadcasting views critical of the government. This form of persecution seeks to provide a veneer of legitimacy while demonstrating the absolute power of the President over the citizen-subject.
4. Physical assault and arson – The use of physical violence against journalists and media personnel by both the police and gangs in government pay.
5. Death threats – Government threats of assassination and murder made to dissuade an individual or group from or punish an individual or group for broadcasting critical opinions of the government.

### 2.3 Overview of media operations in Maldives

State monopoly broadcasters include *Television Maldives*, *Dhivehi Raajjeyge Adu Radio* as well as the *Hamaroalhi* weekly newspaper.

Pro-government weekly newspapers owned by Presidential associates include *Haveeru*, owned by former Minister Zahir Hussain, *Aafathis*, owned by the President's brother-in-law and current Speaker of Special Citizens' Majlis Abbas Ibrahim, and *Miadhu*, owned by Cabinet Minister Ahmed Abdulla. Fortnightly news magazines that have engaged in political reportage critical of the government include *Addivas*, *Fiyes* and *Manas*. These magazines have been subject to persecution. The opposition oriented *Minivan Newspaper* was registered in June 2004 and has complained the most about government harassment and persecution.

In addition, there are a number of pro-government and opposition oriented websites. The pro-government websites include 'www.factmaldives.com', 'www.themaldivian.org' and 'www.olhuala.com'. These write in both Dhivehi and English, and have been subject to complaints submitted to the United Nations over defamatory attacks on human rights defenders.

These attacks typically accuse political opponents and human rights defenders as sexual deviants or Christian missionaries, both highly charged accusations given the conservative nature of Maldivian society and that Maldivian citizens must be Muslim by law. The opposition oriented websites all operate from outside the Maldives. The oldest opposition websites are 'www.maldivianculture.com', which is run by a dissident husband and wife team from Australia, and 'www.dhivehiobserver.com', which is run by a self-exiled Maldivian in the UK. Both of these websites are blocked in the Maldives.

The largest opposition oriented website accessible in the Maldives is 'www.minivannews.com', which is affiliated to the *Minivan* newspaper and provides much of the newspaper's English language content.

Finally, there is also an opposition affiliated *Minivan Radio* which has been broadcasting Dhivehi language news media from exile since late 2004. The *Minivan Radio* signal has been blocked in Male' and the larger islands but has been accessible to the outer islands which do not have regular access to the print journals.

#### **2.4 Summary of international concerns on press freedom in Maldives**

There has been substantial international criticism and concern over the lack of press freedom and the restrictions on free expression in the Maldives.

Since the highly publicised prison killings and riots in late 2003, President Gayoom has responded to international criticism by promising significantly greater freedoms for the press within a wider programme of democratic reform. Political parties were allowed to register in a restricted form in 2005, some new press laws have been proposed, including the removal of criminal defamation and a right to information bill, and some new newspapers have been allowed to register.

However, organisations including the International Federation of Journalists, International Press Institute, Amnesty International, Commonwealth Press Union, South Asia Free Media Association and Article 19 have remained skeptical of the government's commitment to reform. There is a concern that changes are part of an exercise in deception, a window dressing effort to appease donor states.

This is illustrated by the persistent harassment of critical journalists, including criminal prosecutions and a police raid on the *Minivan* offices in Sri Lanka following the request of the Maldivian Commissioner of Police. In addition, opposition oriented websites remain blocked, even while access is still granted to pro-government hate websites that depict the graphic murder of opposition members.

The 2005 US State Department Report also highlighted the continuing fear of persecution which had led to a high degree of media self-censorship. This is of obvious concern within a democratic reform process because a free press is the primary vehicle by which citizens engage with national issues as well as participate in scrutiny of government.

A recent South Asians for Human Rights delegation to the Maldives noted that all permitted television and radio media was government owned and the newspapers received financial subsidy in proportion to the support they provided to the government, with the opposition oriented press receiving none. This includes financial subsidy as well as the provision of free premises, which is highly significant given the very high commercial property rents in Maldives.

### **3. Survey**

#### **3.1 Summary of Survey**

The survey provides examples of the formal and informal restrictions on press freedom in the Maldives. The co-ordinated use of these restrictions are used to impute false motives to opposition activists and to give the government a greater 'plausible deniability' in the face of accusations of violating press freedom.

Examples of these co-ordinated actions include the planting of drugs into the clothes of journalists immediately prior to a police strip-search as well as the use of agent provocateurs to instigate violence within otherwise peaceful assemblies and so provide a plausible justification for a crackdown on any media demonstration.

#### **Censorship**

Formal censorship occurs through the absence of an independent media regulator, use of criminal defamation, very high entry barriers for new press publications and barring military personnel from reading publications critical of the government. The lack of any independent employment tribunal allows arbitrary dismissal of media employees.

#### **Arbitrary arrest and prosecution**

Without an effective separation of state powers, the police, information ministry and judicial system service solely the objectives of the ruling party. Journalists critical of the government have been charged with criminal defamation and appear to have been framed for narcotics abuse, which carries a sentence of life imprisonment in the Maldives.

#### **Intimidation and assault**

Police and street gangs allegedly in the pay of government ministers have physically assaulted dissident journalists. The use of physical violence by the police, including choking and continued assault while the apprehended individual is bound and handcuffed, is in excess of what is required to subdue a potential suspect. The police have physically and sexually assaulted journalists in detention. Media personnel are frequently prevented from travelling abroad for indefinite periods even after release.

The police assault opposition journalists during civil protests and deliberately destroy photo and video equipment of journalists and ordinary citizens in an apparent effort to ensure there is no imagery to contradict official accounts. The use of street gangs to target journalists has increased following increased international scrutiny on police conduct.

The police have used international police co-operation channels to harass media operations abroad, including the making of false allegations to the Sri Lankan police that a dissident news operation was an arms smuggling operation.

Anonymous death threats are made frequently following the publication of articles critical of senior government officials. Complaints have been submitted to the police but no action has ever been taken, leading some to speculate that it was the police who were making these threats in the first place.

### **3.2 Survey results relating to censorship**

*Fiyas* sub-editor Mr Mohamed Abdulla Shafeeq was held in solitary confinement and denied any toiletry items for seven days and then with over one hundred people in a single cell with only one functioning toilet in 2003. The police told Mr Shafeeq that his detention was for not submitting an article on a sensitive topic to police censorship prior to publication. Mr Sharfeeq reported he was released without charge but lost his then employment as a result of the extended detention.

*Minivan* sub-editor Ahmed Nazim Sattar reported he was refused permission to register a newspaper seven months after submitting an application in January 2004 because he did not have five years editorial experience in a previously registered newspaper. Mr Sattar lodged a complaint to the Human Rights Commission of the Maldives on the grounds that this represents a breach of his fundamental rights and is not consistent with a commitment to press freedom. Mr Sattar is awaiting a response from the Human Rights Commission.

Throughout 2005 and 2006 reporters working for state controlled radio station *Dhivehi Raajjeyge Adu* received 'verbal directives' to report unsubstantiated and highly slanderous allegations of political opponents of the President and refrain from reporting any critical news of the government. Journalists also reported they practiced self-censorship in order to escape "cautioning" by senior officials.

Reporters working for the state-controlled Television Maldives told of demotions and other administrative measures used against employees who did not report a news item from solely the government's perspective. A technician was first demoted in January 2005 for failing to broadcast a video clip of President Gayoom and then dismissed for reporting his demotion to the *Minivan* Newspaper and for refusing to submit a letter stating that *Minivan* misreported his case.

*Adduvas* and *Fiyas* magazines and the *Minivan* newspaper were banned from all military and police institutions following an internal memo issued by Major Nazim dated 2 January 2006. Major Nazim stated in the memo that these and other print media were involved in criminal and seditious acts which might turn police and military personnel against the elected government.

### **3.3 Survey results relating to intimidation and harassment**

*Adduvas* Reporter Mr Muhsin, was verbally abused and physically assaulted on 10 August 2004 while covering a protest at the Peoples' Majlis. Mr Muhsin reported that he was standing away from the protesting crowd when he was targeted by the security services

because he was taking photographs. No other spectator close to him was similarly assaulted at the same time.

Mr Muhsin and *Adduvas* photojournalist Mr Ali Fahd were apprehended by the security services on 14 July 2005 – during a period of perceived international scrutiny within the Maldives following the return of the opposition leader from exile in April 2005 – while taking photographs of newly appointed members of the Cabinet. Mr Muhsin and Mr Fahd reported they were drenched from the rain and purposefully forced to wait in a highly air-conditioned room until they deleted certain photographs as directed by the security services.

Commissioner of Police Adam Zahir, signed a request to the Sri Lankan Police Force to raid the *Minivan Radio* office in Sri Lanka on allegations of smuggling guns from the United Kingdom with the assistance of an Italian pilot. The Sri Lankan authorities visited the *Minivan Radio* office on 28 December 2005 but informed *Minivan* staff that the visit was a formality and they did not consider the allegations credible. *Minivan* staff reported the request was probably intended solely to intimidate them.

*Minivan* reporter Mr Abdulla Saeed received an anonymous call from a person claiming to be a policeman offering advice not to further criticize the police. *Fiyas* journalist Mr Thayyib Shaheem received repeated threats of dismissal from his second job as the Public Relations Officer at Maldives Transport and Contracting Company in response to *Fiyas* coverage of corruption issues in other government agencies in July 2005. Mr Shaheem has also endured a sequence of unexplained dismissals and same-day reinstatements following his efforts to engage in critical reporting in July 2005. Mr Thayyib Shaheem, an interviewer, was also dismissed by Television Maldives on 4 February 2006 due to previous reports considered to be critical of the government.

The Ministry of Information announced that it had requested the Attorney General to press criminal defamation charges against former *Minivan* journalist Mr Hussein Nazeer for writing articles critical of the government. On 15 February 2006, Mr Nazeer was dismissed from his post at the Ministry of Justice on the grounds of “acting in ways that could disrupt the stability of the juridical system.” Mr Nazeer was not served with a more specific charge other than this vague allegation.

### **3.4 Survey results relating to arbitrary arrests and politically motivated prosecutions**

Aminath Najeeb, editor of the *Minivan* newspaper was arrested, sexually harassed and beaten during a police investigation into her role and conduct in regard to the escorting of a team of foreign journalists in early August 2004. These journalists had later commented on the human rights situation in the country. Ms Najeeb was jailed for seventy-eight days and placed one month under house arrest. Criminal charges were dropped before the prosecution case was lodged at the Criminal Court.

*Fiyas* magazine’s editor Mr Siraj, sub-editor Mohamed Abdulla Shafeeq and journalist Thayyib Shaheem were threatened with criminal prosecution by the Ministry of Information, Arts and Culture on 22 July 2005 for refusing to sign pre-prepared statements acknowledging

they had violated the law and journalism regulation by publishing interviews with opposition leader Ibrahim Ismail and Ahmed Shafeeq Ibrahim Moosa, a self-exiled internet dissident based in the UK.

The police questioned *Minivan* newspaper's editor Aminath Najeeb, sub-editor Nazim Sattar and reporter Hussein Nazeer in August 2005 following the publication of an article which said the police did not appear to comprehend the pain they were inflicting on the ordinary people. Ms Najeeb was banned from travelling abroad. Mr Sattar was summoned to court on 18 April 2006 and charged for "disobeying an order". The prosecutor later clarified that the article had 'traumatized' the police.

*Addivas* managing editor Ibrahim Rasheed was arrested, transported to Dhoonidhoo Island Detention Centre and made sit for protracted periods of time for talking to street protestors between 12 August 2005 and 14 August 2005. Mr Rasheed's press identity card was on display around his neck at the time of arrest. Mr Rasheed was handcuffed and not provided a life-jacket during transportation by boat from Male' to Dhoonidhoo Island Detention Centre.

Printers of the *Minivan* newspaper received repeated anonymous telephone calls on 15 August 2005 insisting they stop printing the newspaper on threat of arson. The printers ceased printing on that day and *Minivan* newspaper staff resorted to using office photocopier machines to produce approximately half their daily circulation. Under Maldives Press Regulations, newspaper licenses are automatically withdrawn should the newspaper fail to print three consecutive issues.

The Ministry of Information, Arts & Culture announced over state controlled public media on 20 September 2005 that six *Minivan* newspaper articles had been sent to the Attorney General's Office for criminal prosecution. State media announced that this would result in prison sentences for the senior *Minivan* newspaper staff; editor Aminath Najeeb, sub-editor Ahmed Nazim Sattar, reporter Hussein Nazeer, reporter Abdulla Saeed, reporter Hidaayathulla, columnist Mohamed Nasheed and columnist Ali Zahir. *Minivan* Newspaper was not informed of the specific charges against them. Mr Nazeer later resigned from the *Minivan* newspaper due to concerns caused as a result of the pending criminal prosecution.

The *Haveeru* newspaper reported on 2 September 2005 that nine cases had been sent by the Ministry of Information, Arts & Culture to the Attorney General for criminal prosecution. These include six articles in the *Minivan* newspaper, one article in *Addivas* and the publication of an advert for a CD of religious songs in the *Haveeru* newspaper and *Fiyas* magazine which the government considers, follows an anti-regime policy.

*Minivan* columnist Mohamed Nasheed, (popularly known as Colonel), was summoned by the police on 12 October 2005 regarding "a matter that was being investigated." The police did not disclose any further details to Mr Nasheed but detained him in solitary confinement for three weeks in Dhoonidhoo Island Detention Centre until 4 November 2005, transferred him to house arrest and released him without charge the following day. *Minivan* journalist Abdulla Saeed was imprisoned for ten years on 19 April 2006 for the possession of narcotics. The police alleged Mr Saeed was carrying drugs on his person when he voluntarily attended a

police station following a summons relating to an undisclosed matter given to him the previous day. State controlled public media announced that Mr Saeed had been jailed for drugs possession at the time of his arrest. Mr Saeed claimed the police planted narcotics in his clothes as punishment for writing critical articles. Prior to his trial, Mr Saeed was detained in solitary confinement for eight days and transferred by boat to Dhoonidhoo Island Detention Centre for fifty-one days. The police kept Mr Saeed handcuffed and did not provide him with a lifejacket during transportation. At his trial, the judge refused to allow Mr Saeed or his witnesses to speak.

*Manas* magazine's editor, Abdul Hameed was forcefully apprehended and held on 20 April 2006 on treason charges. This apprehension followed the publication of an advertisement giving notice to a public demonstration over the high cost of living in the Maldivian capital. *Minivan* journalist and former *Haveeru* editor Mr Mohamed Yushau was arrested by the police in April 2006 and charged with terrorism offences and obstructing a government officer in the execution of their duties. Mr Yushau had publicly admonished the government appointed Atoll Chief for ignoring the views of an island community. Mr Yushau is a local representative for the International Federation of the Red Cross and may lose his representative status because his continued detention prevents him participating in the activities of the organisation. Mr Yushau was previously forced to resign from the pro-government *Haveeru* newspaper because of his perceived affiliation with the political opposition.

### **3.5 Survey results relating to physical assault**

*Minivan* newspaper photographer Mr Imran Zahir was arrested and beaten by the police on 4 September 2005 for taking photographs of the police removing loudspeakers during a meeting of the opposition Maldivian Democratic Party. He was apprehended by the police after the speakers had already been confiscated and was dragged into a police van where six policemen punched, kicked and choked him. He was held for sixteen days in Dhoonidhoo Island Detention Centre and transferred to house arrest for twenty days before being released.

Sub-editor of *Fiyas* magazine, Mr Mohamed Abdulla Shafeeq was physically assaulted by a street gang believed to be in government pay while photographing and video-recording a public rally by supporters of the detained chairperson of the Maldivian Democratic Party. State controlled public media later denied the assault and referred to those who assaulted Mr Shafeeq and others as 'peace loving youth.'

*Minivan* newspaper journalist Mr Abdulla Saeed who had accompanied a delegation of the opposition party was prevented from flying from Addu Atoll to Male' on 13 January 2006 when street gangs believed to be in government pay threw stones at the aircraft as it attempted to take off.

On the evening of the same day, four policemen overturned the contents of the Addu office of the opposition Maldivian Democratic Party and assaulted Mr Abdulla Saeed, Parliamentary Member Ibrahim Mohamed Didi and a young boy. *Minivan* reporter Ali Sawad was assaulted

by a pro-government gang on 21 April 2006 who, following now routine tactics, deleted photographs on his camera and threw objects at him.

### **3.6 Survey results relating to death threats**

Editor of the *Minivan* newspaper Aminath Najeeb, journalist Hidaayathulla and other employees of *Minivan* newspaper received repeated anonymous phone calls on 23 January 2006 issuing threats of death and arson. The *Minivan* newspaper reported these incidents to the police but the police undertook no action or follow up. These threats are typically pronounced immediately prior to public gatherings and assemblies of the opposition Maldivian Democratic Party.

Journalists at *Adduvas*, *Manas* and *Fiyas* have reported regular threats of murder and assault from anonymous callers throughout 2005 and 2006. These calls typically occur within the days following publication of any article critical of the government or government agency, such as the police. Log entries of such calls have not been kept because the journalists believe the threats come from the same law enforcement authorities ostensibly required to investigate and protect against such threats.

## **4. Conclusion**

### **4.1 Press freedom as part of a democratic reform agenda**

The very small size of the Maldivian population, limited number of publications and the government's pronouncements on democratic reform lends greater significance to each of the examples in this survey. A lack of press freedom removes an essential check on government impunity and undermines the emergence of 'national conversations' that enable meaningful participation of the people with the political life of the country.

This continued media suppression has consequently left President Gayoom open to the allegation that his rhetoric of reform is intended only to mask continuity as change, thereby placating donor states upon whom the government is dependent. Another covert tool used by the government to censor the free press is the extensive use of patronage. Anecdotal evidence suggests government advertising in media outlets is conditional on favourable reporting and journalists are paid large cash bribes and offered undue professional promotions to promote government propaganda and slander political opponents.

### **4.2 Providing greater media protection**

A sincere commitment to press freedom can only exist with acceptance shown by the government that uninhibited scrutiny is necessary to maintain probity in public institutions and public life.

That any press scrutiny, albeit handicapped by state persecution and violence, has occurred has been due to the protective space provided by the continued concern and attention of the international community. This protective space can be developed through greater independent

monitoring and establishing strong alliances with international press unions and advocacy groups.

Ultimately, however, the durable protection of media independence is contingent upon the creation of a secure and independent judiciary and apolitical law enforcement. Governance in the Maldives can only be arbitrary so long as a single body decrees, interprets and implements the law, effectively allowing the government to construe any politically inconvenient discussion or criticism as illegal.

Developing the conditions for a durable democratic system further requires the development of a civic consciousness that understands the necessity of maintaining a system of checks-and-balances intended to ensure government accountability. This, in turn, can best be provided by an independent press who should foster these discussions and debates and allow national and civic institutions to effectively engage with the people.

# **Paul Robinson Report on the Criminal Justice System of the Republic of Maldives, 2004\***

**Summary Conclusion.** The author's review suggests that the Maldivian criminal justice system systematically fails to do justice and regularly does injustice, that the reforms needed are wide-ranging, and that without dramatic change the system and its public reputation are likely to deteriorate further. The author also determines that there are many people involved in the Maldivian criminal justice system who are keenly committed to its reform and who are prepared to devote themselves to bringing greater justice to the people of the Maldives.

## **Recommendations**

What follows is a very general agenda for reform of the Maldivian criminal justice system. Of the 65 items below, the 24 items in bold are judged to be the most important. Many of the items below are presented in the most general of terms and will require extensive investigation and study by a reform group charged with making specific proposals.

### **1. Police**

**1.1 Shift to a civilian force** – This important reform is already scheduled for September of this year.

**1.2 Published rules & procedures** – A comprehensive Police Act is needed to set out specific rules governing the authority and procedures of police.

**1.3 Explicit limitations on search, seizure, arrest, including judicial warrants** – Most important in 1.2 are the adoption of statutes, and police regulations, that will clearly delineate the powers and limitations on police to question, arrest, detain, search, and seize. In many instances, the rules should require a judicial warrant before police action in a particular case is authorized. (The value of a judicial warrant system can only be realized, of course, if the judiciary has a secure measure of independence from the executive branch, per item 4.1.) These police rules will need to balance the important need to protect the rights of citizens from governmental intrusion as against the important need of citizens to be free from crime.

**1.4 Oversight by a board with civilian representation** – Even after police procedures and a judicial warrant system is in place, there is value in the existence of a oversight committee that includes police, other government officials, and members of the public.

---

\* At the request of Attorney General Dr. Hassan Saeed and under the sponsorship of the United Nations Development Program, the author (Paul H. Robinson, Colin S. Diver Distinguished Professor of Law, University of Pennsylvania Law School) during the period July 12th through July 19th, 2004, met with government officials and others involved in the criminal justice system of the Maldives.

Ed Note: Amended laws relating to criminal procedure and evidence, which are based on the Paul Robinson proposals are pending in the Maldives. Activists however have expressed concern that the pace of pending reform is too slow and that the government has yet to show effective commitment to have the reforms implemented.

**1.5 Reduce reliance on confessions** – The government has already acknowledged the need to move away from the present practice of relying primarily on confessions as the basis for establishing criminal liability. Investigators should recognize a right of suspects to remain silent and should shift their focus to the use of other investigatory methods, including witnesses and forensic evidence.

**1.6 Improved training** – The reform proposed in 1.5 is not possible without a significant investment in the training of police investigators and in provision for greater investigative resources. Such training cannot be accomplished overnight but there is the danger that the need for such training can be used as an excuse to delay the shift away from confessions. More training can always be useful but ought not delay the important shift urged in 1.5. While the initial training in investigative techniques will be most important, effectiveness cannot be assured without a program of continuing education for all investigators.

**1.7 Closer coordination with prosecutors** – Effective investigation and case preparation can be enhanced by providing closer cooperation between line investigators and line prosecutors. The current practice of imposing many layers of bureaucratic review between investigators and prosecutors makes the needed close cooperation impossible. The practice also introduces the specter of political influence, which can only damage the credibility of the criminal justice system in the eyes of the public. The planned shift of the police from the Defense Ministry to the Ministry of Home Affairs will be helpful for a variety of reasons, including improving public perception of police and improving the likelihood of police cooperation with prosecutors. In this same vein, it may be appropriate to allow the police to prosecute minor cases, in order to reduce the load on the prosecution force.

**1.8 Better record keeping; statistical summaries for policy makers** – Sound policy making for the police requires adequate record keeping and data analysis, which does not now exist.

**1.9 Limit use of criminal justice to crimes; exclude private debt collection** – The present use of the criminal justice system as a means of private debt collection is a serious drain on police and prosecution resources. It may be that the most effective means of avoiding this problem is to provide citizens with an effective means of debt collection through civil process, something that is not now available. "Small claims" courts could quickly process most of these private disputes at little cost and with little procedural extravagance. Also required however, would be an effective system for the enforcement of court judgements, which does not at present exist.

## **2. Criminal Procedure**

**2.1 Published procedural rules** – The single most important reform here is to articulate a set of comprehensive rules governing the operation of courts in adjudicating criminal cases, including rules of evidence to govern the introduction and implications of evidence during trials. Most importantly, the rules must give clear voice to the requirement that proof at trial must be established beyond a reasonable doubt. Anything less is unfair to defendant's and will not earn the criminal justice system the credibility with the public that it needs to be effective.

**2.2 Less elaborate protections for less serious cases** – The rules called for in 2.1 can properly distinguish between cases of greater and lesser seriousness and can provide greater procedural

projections to defendants in the more serious cases, that is, in cases where the potential for punishment is greater, as in a potential for a term of imprisonment.

**2.3 Permit pre-trial diversions in less serious cases** – Less serious cases also can be diverted pre-trial from the criminal justice system entirely if this is consistent with the demands of justice and will reduce the likelihood of future criminality. Such diversion programs can help concentrate court and prosecution resources on the more serious cases. These programs can include such "restorative processes" as parental conferencing, sentencing circles, and victim-offender mediation, or any variety of other measures, as long as they have been shown to be effective in doing justice and avoiding future crime.

**2.4 Counsel at all stages** – An essential aspect of a fair system of criminal justice is the right to counsel at all stages, including during questioning of a suspect in police custody. This practice has recently been begun, although it appears that defense counsel are not always permitted to consult with their clients in private. Where a defendant is indigent and where prison is a possibility, counsel should be provided at government expense. Any other rule would have fairness depend upon the defendant's financial means.

**2.5 Allow effective representation** – Provision of counsel is of limited value if counsel is limited in his or her ability to effectively represent the client. Such limitations ought to be removed. For example, counsel should have the right of private consultation, as long as there is no evidence that such would contribute to a further criminal enterprise. Also, defense counsel (and prosecutors) should have a right to directly examine witnesses in court. The judge ought to leave such presentation of evidence to the two parties and limit the judicial role to that of an impartial observer judging the evidence presented.

**2.6 Pre-trial discovery** – Adequate preparation for trial, for both sides, requires some degree of pre-trial discovery. Parties should exchange witness lists and statements, forensic reports, etc. at some fixed date prior to trial (perhaps 30 days prior, or some such period). Prosecutors should provide defense counsel with all recorded defendant statements. Some of these items are now provided but there appears to be no legal obligation to do so and thus there is little assurance that all relevant material is being provided and no enforcement mechanism is available for a failure to do so.

**2.7 Allow pre-trial release on bail if not dangerous and appearance assured** – Effective defense preparation and a proper limitation of governmental restraint of persons not yet convicted suggests that pre-trial release of defendants on bail ought to be permitted unless there is a danger that no bail conditions will assure the defendant's appearance at trial or there is a clear danger of offenses while awaiting trial.

**2.8 Speedy trial rules, especially if held in custody** – Prompt adjudication ought to be assured within specific periods from the time of arrest to the time of trial (perhaps within 3 months, or some such period), unless the parties agree to a delay. Where an offender is held in custody pending trial the timetable should be shorter than where he is released on bail pending trial.

**2.9 Published trial procedures and evidentiary rules** – Any fair system of justice must set out explicit rules by which a trial is to be conducted. The operation of a trial ought not depend upon the

particular judge assigned and should not be a matter of surprise to litigants. Fair notice, effective preparation, and uniformity in adjudication require that a comprehensive set of rules be articulated beforehand to govern the operation of all trials.

**2.10 Uninterrupted trial proceedings until complete** – Once a trial is begun it ought to continue uninterrupted unless justice demands a delay for usual reasons. The present practice of conducting a trial in a series of short hearings unnecessarily inconveniences litigants and witnesses and makes it difficult to fairly evaluate the evidence accumulated during the often drawn out periods. This reform will become all the more important with the shift away from primary reliance upon confessions, for the shift inevitably will make the prosecution's case more complex, with more witness and forensic evidence. The present system also produces a delay in adjudication that is both unfair to the defendant and frustrating to police and the community.

**2.11 Authority of appellate courts to forego review in cases without real issues** – Once a set of clear rules of procedure are in place, there will no longer be a need for appellate review of every case. An appellate court may quickly determine that a case has been adjudicated within the rules and conclude that a full formal review is unnecessary. This will help concentrate judicial appellate resources on those cases for which real issues of concern exist.

**2.12 Standing Criminal Justice Council to identify and resolve criminal justice problems** – The demands of fair and effective criminal justice are such that a one time reform program will not be adequate. A standing council or commission should be established that includes all of the major participants of the criminal justice system, to oversee its operation and to continue to make those adjustments and improvements that will advance the cause of justice.

### **3. Prosecutors & Defense Counsel**

**3.1 Improved training, in both law & Shari'a, and setting minimum qualifications** – Especially with a shift away from primary reliance upon confessions, prosecutors will need training and continuing education. The same concerns urge establishment of minimum qualifications for all attorneys, including training in both law and Shari'a.

**3.2 Consolidation of government criminal lawyers into single office (the AGs)** – With the shift of the Police out of the Defense Ministry, there is little need for police to have a department of criminal lawyers separate from the Attorney General's office. All prosecutors might best be centralized in the AG's office, except for those that may be needed for legal advice to police during a transitional period in which the greater cooperation between police and prosecutors (see item 1.7) is being established.

**3.3 AG prosecutors on Islands** – In this same vein, prosecutions in the Islands ought to be performed by prosecutors who are part of the centralized prosecution force. This will assure not only the same standards of performance throughout, but also will reduce the unfortunate perception that can arise, when a prosecutor is answerable to the local atoll chief, that prosecution decisions may be influenced by politics. This coverage of the Island prosecutions by a centralized prosecution service will be made more feasible by the consolidation of Island courts proposed in item 4.8.

**3.4 Centralized prosecution authority, independent of political influence** – There should be clear authority in the AG and only in the AG to bring or forego prosecutions. While the AG is and should be subject to appointment and dismissal by the President, the prosecution decisions should be made free of political influence and should be based solely upon the demands of justice and uniformity in application. In the same vein, the AG should have the authority to insist upon a criminal investigation by police.

#### **4. Judiciary**

**4.1 Independent branch of government** – The constitutional reform proposed by the government, which would give the judiciary independent status separate from the executive branch, is essential to a fair and credible criminal justice system.

**4.2 Centralized judicial authority in Chief Justice or Supreme Court** – Within the judicial branch, there should be a single central judicial authority, either the Chief Justice, or the Supreme Court with the Chief Justice as its presiding officer. The present system of divided authority and responsibilities between the trial courts and the High Court is not consistent with an orderly judiciary in which clear rules bind all trials and the same rules are the grounds for appellate review.

**4.3 Authority in Supreme Court to render interpretations of law binding on all courts** – It must be made explicit that the Supreme Court has authority to render interpretations of law that are binding on all courts, and that the opinions of the Court establish precedent that binds them as well in subsequent actions. Anything less will not provide the orderly and predictable judicial process required for fair and effective criminal justice.

**4.4 Published rules & procedures governing operations** – Explicit and public rules are needed that will govern all aspects of the courts' operations. The courts can earn the reputation for fairness and reliability that is needed only if they can assure a uniformity, consistency, and transparency in their operation.

**4.5 Minimum qualifications & training, in both law & Shari'a** – There seems to be nearly universal agreement by all parties outside of the judiciary that the current level of judicial competency is inadequate or worse. But persons with little or no legal training can hardly be expected to know how to conduct a fair and effective trial. Serious efforts must be made to provide substantial training to current judges in order to insure that all have the background they need in both law and Shari'a. Perhaps more importantly, no judge should be hired who does not already have the needed training. As noted previously in other contexts, this training must be supplemented with a permanent continuing education requirement that will keep judges informed of the latest legal developments and will refresh their knowledge of existing legal rules and procedures. As has been noted with regard to the police and prosecutors, the coming shift away from primary reliance on confessions will increase the complexity of trials and require judges with substantially greater training and intellect. It may well be that to attract fully competent and trained judges, judicial compensation will need to be improved.

**4.6 Published ethics rules and standards & procedures for impeachment** – To insure that the judicial branch has the credibility with litigants and the public that is needed, it must be clear to all that the judges are beyond corruption and political influence. This cannot be done without public rules

on judicial ethics and impeachment and removal that will avoid not only judicial impropriety but also the appearance of impropriety.

**4.7 Publish appellate opinions of any significance** – To insure consistency in application and informed trial judges and to promote the goal of consistency and predictably reinforced in item 4.3, all opinions of the Supreme Court should be published in a form that makes them fully available to all who may have an interest in them.

**4.8 Supreme Court sit in different locations** – The fact that the country extends over many islands suggests that the Supreme Court might do well to sit in more locations than in Male'. Perhaps a southern location and a northern location should be added to its regular calendar, so as to spread the inconvenience of travel more evenly across all parties. This also would have the advantage of allowing more citizens to see the court in operation or to at least feel that they had a realistic opportunity to do so. Once the judiciary becomes an independent branch, it will have to take greater responsibility for establishing and maintaining its reputation with the public.

**4.9 Consolidate Island courts per caseload history** – There exists some inefficiency in the present allocation of Island courts. For some courts, the caseload is so low as to fail to justify the expense of their continuing existence. Further, the large number of Island courts makes it more difficult to establish uniformity and accountability in adjudication. Especially in an age of modern communication, there is less need to have courts on so many islands.

**4.10 Chief judicial administrative officer answerable to the Chief Justice** – An independent judicial branch must have control of its own administration through a chief administrative officer answerable to the Chief Justice. (This does not preclude a Supreme Judicial Council, as has been proposed, that would provide oversight to the judicial system in order to insure its fair and effective operation.)

**4.11 Better record keeping; statistical summaries for policy makers** – As in other contexts, it is difficult to make reliable policy decisions without full and accurate information about how a system is working in practice. Better record keeping and data analysis about the operation of the courts in adjudicating and sentencing criminal cases is a necessary prerequisite for informed decisionmaking by policy makers for the judiciary as well for the prosecution, police, and prison officials.

## **5. Criminal Code**

**5.1 Comprehensive: all offenses, defenses, liability rules** – The single most important reform may be the adoption of a comprehensive and coherent criminal code. Without it, even efficient courts with clear procedures will not produce just results. And the single most important aspect of a new criminal code is that it be comprehensive. It must clearly define all offenses (including the specific elements that must be proven at trial), the elements of all available defenses, and the rules governing all principles of liability (such as the requirements for complicity liability or liability by omission). Such comprehensiveness is essential if the criminal code is to perform its basic functions: to provide fair notice to those person bound by its commands, to provide uniformity in application to all defendants, to minimize the potential for abuse of discretion, and to preserve the criminalization decision to the most democratic branch, the legislature. An absence of comprehensiveness means that the missing

rules must be created ad hoc by the court, a practice that fails to provide fair notice, increases the possibilities of disparity in treatment between similar defendants and among different courts, increases the opportunity for abuse of discretion, and provides a de facto shift of criminalization authority away from the legislation and to the court.

**5.2 Plain language** – The same concerns that motivate the need for comprehensiveness also suggest a need to use plain language that can be understood not only by trained lawyers but by police officers and the average citizen. Terms or phrases that do not have a clear common meaning need to be defined. The ultimate objective is to have a code whose rules are clear to all who are bound by it.

**5.3 Primary drafting criteria: produce results that are fair & just** – A criminal code might be drafted according to any number of guiding criteria but only one goal – doing justice – is both feasible and more important than the rest. It is essential not only for the abstract value of justice for its own sake, but also for its practical value in earning the criminal law the moral credibility with the public that it needs to effectively control crime.

**5.4 Rational & proportionate grading of all offenses according to relative seriousness** – An essential part of a just criminal code is a system of grading offenses according to the seriousness of their violation. Deserved punishment must be a function of the personal blameworthiness of the offender, including all those factors about which we agree can alter a person's blameworthiness, such as the capacities and situation of the defendant. A just and rational system of punishment must begin with a grouping of offenses according to their seriousness.

**5.5 Statutes of limitation for less serious offenses** – Under the present criminal law there are no statutes of limitation in the prosecution of offenses. It may be useful to consider whether a limitation period would be useful, at least for the less serious offenses.

## **6. Sentencing**

**6.1 Sentencing Guidelines** – For many of the same reasons that drive the need for a comprehensive criminal code, in item 5.1, the sentencing of criminal offenders ought to be guided in some way to insure uniformity in application (the sentence ought to depend upon the crime and the offender, not upon the selection of sentencing judge), to best advance the interests of justice and crime prevention (which can require information and expertise that the individual sentencing judge may not have), and to reduce the possibility of abuse that is inherent in judgements of unguided discretion. The use of guidelines is particularly important for judges with limited training, as is presently the situation. The guidelines ought to be sophisticated enough to take account of the wide-range of offense conduct and offender characteristics relevant to punishment. It may not be feasible to introduce sentencing guidelines until a comprehensive criminal code is in place with a proportionate and coherent offense grading system upon which the guidelines can be built. This reform also may have to wait for completion of the move to an integrated and independent judicial branch. The judges who will be administering the guideline system must play an active role in its development.

**6.2 Avoid statutory mandatory minimums** – Just sentencing requires a court to take account of not only the offense but also the offender and his personal capacities and characteristics. The use of

statutory mandatory minimums, which insist on a particular sentence for any given offense, necessarily ignore important factors relevant to deserved punishment and should be avoided.

**6.3 Greater use of non-incarcerative sentences** – A greater use of non-incarcerative punishments is recommended for a variety of reasons. They tend to be less costly than imprisonment. They reduce family and employment dislocation and thereby reduce the likelihood of recidivism. Such alternative sanctions need not and ought not produce something less than the punishment that is deserved. The offender and the public ought not come to see nonincarcerative sanctions as an escape from deserved punishment. The fact is that such sanctions can provide the kind of suffering and intrusion into an offender's life that counts as punishment. Their use simply requires the sentencing court to adjust the amount of the sanction to take account of its punitive bite. Sanctions with less bite will require longer duration to satisfy the punishment needed. Such an alternative-sanction system can impose a combination of sanctions upon a single offender -- fine, house arrest, community service, mandatory drug treatment – where the particular combination selected is that which will best reduce the chance of future criminality. The present practice of banishment is in some ways attractive as a sanctioning alternative to imprisonment but its present administration is problematic. For wealthy offenders, the inconvenience can be minimal. For poor offenders, the situation can leave them in desperate circumstances with strong incentives to return to crime to survive, which hardly makes the use of banishment popular with the receiving island. A better approach might be to limit how comfortable a wealthy offender can make himself, at least for some initial period, and to provide some minimum level of support to insure basic living needs.

**6.4 Elimination of flogging as legal form of punishment** – I am aware that this form of punishment is rarely used but there is nonetheless value in expressly excluding it from the punishments that the law formally allows. My sense is that most Maldivians would find such punishment offensive. Thus, its legal recognition only brings the criminal justice system into disrepute, an effect that can damage the system's moral credibility and, thereby, its long-term criminal control power.

**6.5 Eliminate early-release decisions (but maintain parole supervision function of Parole Board)** – Under the current system of disparate and often unjust sentences, the Parole Board provides an important service. But with a rational sentencing guidelines system in place, the Board's early release of offenders, before they have fully served the sentence imposed, can only serve to undercut the credibility of the punishment system, as it creates a perception that offenders are escaping the punishment they deserve. It may well be that some nominal portion of a sentence, perhaps 15% or less, might be forgiven as a reward for good conduct while incarcerated, but other rewards and punishments available to prison administrators typically are adequate to maintain the control and discipline that a safe prison requires.

**6.6 Every sentence to prison include term of parole on release** – While the Parole Board's early release power should be eliminated, it is essential to maintain the Board or some similar body to administer a system of supervision of those recently released. To make such supervision possible, every sentence of imprisonment should as matter of law include a term of parole, during which such supervision is authorized and restrictions on liberty can be imposed for violations of release rules. Note that, contrary to the current system in which the earlier the release (presumably suggesting a better behaved prisoner) the longer the parole term. A more rational system would provide the longer

term to the prisoner held longer, for it is such prisoner who is more likely to be in need of more and longer supervision.

**6.7 Published rules & procedures governing adjudication & enforcement of sentence** – As has been suggested in other contexts, transparency and predictability require sentence and parole supervision administrators to publish the rules and procedures that will govern the operation of their systems.

**6.8 Formula for multiple offenses: each additional offense adds increasingly less** – The current practice of imposing fully consecutive sentences for all multiple related offenses fails to account for our shared human intuitions of justice that, when sentencing for multiple offenses, the punishment for two related offenses -- stealing loaves of bread from two adjacent shops -- does not call for twice the punishment of a single such offense. On the other hand, concurrent sentencing, in which the sentences for two offenses are served concurrently, also is problematic because it tends to trivialize the second offense. A better sentencing principle is to have every offense count for something but for each additional offense to count for increasingly less. The ultimate goal here is to have criminal sentencing track our shared community intuitions of what is just.

**6.9 Drug sentences should vary not with drug weight but rather with number of doses, addictiveness of drug, and drug's association with violent behavior** – Because drug offenses account for a very large portion of prison terms being served, it is worth noting a change in the sentencing scheme for such offenses. Drug weight, now the sole criterion, fails to take account of and to vary sentences as it should according to the factors that most directly influence the seriousness of a drug violation. Those rules should adjust sentences according to the number of doses, the addictiveness of the drug, the drug's association with violent behavior, as well as with the nature of the defendant's role in the offense, chief organizer or collateral figure.

## **7. Prison**

**7.1 Improved humanitarian conditions, with regular monitoring** – There is reason for concern about the state of prison conditions. Recent improvements have been made. And regular inspection visits by the newly created Human Rights Commission will no doubt help further. But the reforms should be seen as permanent and the inspection and improvement process should continue.

**7.2 Improved training of correctional officers** – Effective prison officers require special training, in part because of the unfortunate common tendency to see one's criminal charges in a less than human light. The professionalism required to be a successful prison officer is not something that police officers or infantry soldiers can pick up on their own.

**7.3 Provide prisoners with activities and facilities** – There are good practical reasons to provide prisoners with activities and facilities. It can keep prisoners occupied and reduce the anger and bitterness with which many come to prison. It can also increase the means available to prison officials to control their conduct through reward and punishment.

**7.4 Provide prisoners with job training & educational programs** – There is also practical value in providing job training and educational programs to prisoners. Not only does it keep prisoners

occupied and increase the means of controlling their conduct through reward and punishment, similar to 7.3, but it also increases the chances of a prisoner being able to arrange a more productive life upon release.

**7.5 Preparation of a release program prior to release** – Item 6.5 urges a system of post-release supervision. Successful reintegration requires not only such supervision but some planning beforehand, while the prisoner is still incarcerated. This means that prison staff or some portion of them must be given the specific responsibility and the necessary training to help prisoners develop a post-release life plan.

**7.6 New correctional facilities (e.g., on Male') to permit fuller range of sentencing options, such as work-release** – The possibility for more alternative forms of punishment than straight incarceration, suggested in 6.3, is not feasible without some kind of detention facility in Male' from which offenders can serve sentences of work release or intermittent confinement.

**7.7 Better record keeping; statistical summaries for policy makers** – As has been urged in other contexts, policy makers – in prison as well as in policing, parole, and sentencing – cannot make informed judgements without the data and data analysis that prison authorities are in a position to provide.

## **8. Drug Abuse**

**8.1 Recognize severity of problem** – The drug problem is serious – 75% of the prison population is serving sentences for drug offenses – yet there seems limited recognition of the seriousness of the problem by those responsible for solving it.

**8.2 Recognize potential to get much worse** – The group most vulnerable to drug abuse are youths and almost 50% of the country's population is under 17. Given the failure of the present drug abuse fighting program, demographics alone will insure that the extent of drug abuse will get worse.

**8.3 Recognize serious limitations on possibility of interdiction** – it cannot be the solution – This is an island nation with 200 inhabited islands and with 120 (and increasing) number of resorts most of which cater to foreigners. These facts and the interdiction experience to date demonstrate the simple impossibility of solving the drug problem through interdiction. No matter what resources are devoted to the task, drug interdiction will inevitably capture only a small proportion of the drugs being brought into the country. The solution to the growing problem must be found elsewhere.

**8.4 Encourage new thinking & creative solutions; take advantage of programs in other countries that have shown success** – If substantially reducing supply is not possible, the only other solution can be found in reducing demand. One possibility is drug treatment programs that will limit recidivism. Unfortunately, many if not most of these programs are notoriously ineffective. Reducing demand also means preventing youth from beginning the use of drugs. The present program of an hour lecture to students and parents, which includes teaching parents how to identify drugs or drug paraphernalia when they see it, seems to be of limited impact, at least in light of the enormity of the problem. The kind of reforms that may have more effect, such as improving the society's economic outlook to provide more job opportunities, are those over which government can have influence but

typically only longterm. Religious institutions, schools, and other social institutions can contribute by altering the perceptions about drug use among the target population, but again this is a difficult and long-term process. All and all the situation can seem bleak. What does seem clear is that only new thinking and creative solutions will be able to make headway. The most promising approach may be to take advantage of the experience of programs in other countries – drug abuse is unfortunately a world-wide problem – and to try those programs that have been proven to be successful elsewhere.

**8.5 Centralize government drug policy and administration** – The fashioning of an effective drug program requires that there be some single authority responsible for developing and implementing that program, who will be responsible for its success or failure. The present decentralized structure -- in which the Narcotics Control Board, the Drug Task Force, and other governmental units each have some involvement -- creates ambiguity in who is responsible and splinters policy making.

**8.6 Remove obstacles to effective private drug treatment programs** – Given the difficulty of the drug abuse situation (see item 8.4) it makes sense to let anyone who has something to offer to contribute to a solution. It seems counterproductive to put hurdles in the path of private treatment programs, as long as there is reason to believe that they can have a measure of success.

**8.7 Provide policymakers with data on abuse and on effectiveness of treatment programs** – Once again, good policy making depends upon a full and accurate understanding of the situation as it really exists. That requires that drug authorities to collect, analyze, and distribute data on the problem and on the success and failures of their responses to it.

## Subscriptions

The annual subscription rates of the LST Review are as follows:

Local: Rs. 1250 (inclusive of postage)

Overseas: South Asia/Middle East	US\$ 36
S.E.Asia/Far East/Australia	US\$ 41
Europe/Africa	US\$ 46
America/Canada/Pacific Countries	US\$ 51

Individual copies at Rs.150/- may be obtained from the Trust, No. 03 Kynsey Terrace, Colombo-08, and BASL Bookshop at No.153, Mihindu Mawatha, Colombo-12.

For further details, please contact;

Law & Society Trust  
No. 3, Kynsey Terrace  
Colombo-08  
Tel: 2691228 / 2684845  
Fax: 94 11 2686843

N  
o  
w  
A  
v  
a  
i  
l  
a  
b  
l  
e

**An Activist's Manual on the International Covenant on  
Economic, Social and Cultural Rights**

This book is dedicated to the promotion of economic and social rights by means of parallel reporting to the United Nations Committee on Economic, Social and Cultural Rights. The Committee reviews state reports on the progress made in implementing the human rights set forth in the International Covenant on Economic, Social & Cultural Rights. Activists and NGOs are invited to help evaluate state reports by presenting alternative sources of information both in writing and in person. **Part I** of this book explains how to participate in the Committee's review process, the general nature of obligations under the Covenant and the basic scope of most rights. **Part II** consists of thematic chapters that may be of use for workshops, background reading and for those who draft special reports. **Part III** consists of annexes, including the full text of the Covenant, some practical guides to web research and addresses and full text of the Committee's General Comments as of 2003.

*Price: Hard Cover Rs. 1250/- Soft Cover Rs. 1000/-*

**Fundamental Rights and the  
Constitution - II  
- A Case Book -**

The first casebook, *Fundamental Rights and the Constitution* was published by the Law & Society Trust in 1988 to give a background to human rights law through judgements of the Supreme Court. *Fundamental Rights and the Constitution II*, is an update of the earlier publication.

Most cases in the first book have been excluded in book II to find room for important new cases on Article 12 that found no place in the first book. Interpretation placed on "executive and administrative action" has been dealt with in a separate Chapter.

The contents of the book include state responsibility; executive and administrative action; president's actions and Article 35; torture, cruel inhuman and degrading treatment; appointments; promotions; transfers; extensions; award of tenders; terminations; termination of agreements; freedom from arbitrary arrest and detention and freedom of speech, assembly and association.

*Price : Rs. 1250/-*



**Law & Society Trust**

3, Kynsey Terrace, Colombo 8, Sri Lanka  
Tel: 2691228, 2684845 Tele/fax: 2686843

E-mail: [lst@eureka.lk](mailto:lst@eureka.lk) Website: <http://www.lawandsocietytrust.org>.