

# ***Arrested Democracy***

**The legality under International Law of the 2012 transfer of power in the Maldives and alleged human rights violations perpetrated by Maldivian security forces**

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## Summary of conclusions

We conclude that President Nasheed resigned as President of the Maldives under duress, and that his resignation cannot be considered voluntary or otherwise ‘in accordance with law’.

The revolt of the Maldivian Police and the seemingly unwillingness or inability of the Maldivian Military to restore law and order left the President with no choice but to accept the demand for his resignation that was put before him in mid-morning on February 7<sup>th</sup>, 2012. To the extent that a ‘*coup d’etat*’ can be defined as the ‘illegitimate overthrow of a government’, we must therefore also consider the events as a *coup d’etat*.

We conclude that the coerced resignation of President Nasheed and the refusal by the new Maldivian government to hold new elections violate the right of the Maldivian people to democratic governance as manifested in Article 25 of the United Nations Covenant on Civil and Political Rights and in the right to self-determination.

We cannot conclude with absolute certainty that the forced resignation of President Nasheed was a *pre-planned coup d’etat*, but we nevertheless find the factual circumstances surrounding the resignation of President Nasheed extremely damaging to the credibility of the new government and its claim that it did not instigate the transfer of power in the Maldives.

In light of the existing circumstantial evidence, it should not be for the opposition to prove that the new government under the presidency of Dr. Waheed orchestrated the forced resignation by President Nasheed, but rather for Dr. Waheed and his new government to prove that they did not.

We also conclude that the Maldivian security forces have committed a number of human rights violations in the months that have passed since the transfer of power.

First of all, we conclude that the Maldivian security forces have violated the rights to freedom of speech, association and assembly by resorting to excessive use of force; discriminating against protesters based on their viewpoints; restricting demonstrations without a legitimate reason and for failing to distinguish between those protesters that cause trouble and those that are peaceful.

We consider it fair to assume that the actions of the security forces against anti-government protesters has made these reluctant to exercise their legitimate rights to freedom of speech, association and assembly. We find, in other words, that the acts of the security forces have had a ‘chilling effect’ on the enjoyment of fundamental freedoms in the Maldives.

In addition, we also find that the Maldivian security forces have violated the right to personal security by resorting to excessive and indiscriminate use of batons, pepper-spray and tear gas in violation of international standards; by failing to protect peaceful demonstrators from rogue elements, and by occasionally mistreating individuals, including a number of female demonstrators, in governmental custody.

Furthermore, we conclude that the Maldivian security forces have not always fulfilled their obligations under international law to inform arrestees about the reasons for the arrest and the charges against them.

Responsibility for the worsening human rights record among the security forces must rest with the leadership of the forces who have clearly failed to discharge their duties in compliance with applicable democratic and human rights standards.

Overall responsibility for the numerous human rights violations in the Maldives over the course of the last six months must, however, rest with the new Maldivian government who are ultimately responsible for the acts perpetrated by its security agencies. The government appears to have taken no concrete actions in order to stop the violence against the anti-government protesters nor has it distanced itself from it.

So far, no security force officials have been held accountable for any of the incidents listed in this report.

## Introduction

The purpose of this report is to conduct an analysis under international law of the events that led to the resignation of the Maldivian President Mohamed Nasheed on February 7<sup>th</sup>, 2012, and the subsequent actions taken by the Maldivian security forces against anti-government protesters.

The report, which has been prepared following a request by the Maldivian Democratic Party (MDP), has been authored by an independent team of international lawyers and human rights experts headed by Associate Professor of International Law, PhD, Anders Henriksen, Attorney-at-law, LL.M., Rasmus Kieffer-Kristensen, and Asia-expert & Senior Policy Fellow Jonas Parello-Plesner.

The report is based on testimonies collected on a June 2012 field trip to the Maldives as well as a number of written and visual materials provided by various individuals and organisations in the Maldives, as well as international news organisations. In addition, since most of the events on February 7<sup>th</sup>, 2012, were broadcast live on national television, a substantial amount of footage documentation is publicly available. Among the material used is an extensive report on the facts surrounding the transfer of power<sup>1</sup> as well as a number of legal documents prepared by various actors in Maldivian society.

Following the events in February, the Maldivian Government established a Commission of National Inquiry (CoNI) to probe the circumstances surrounding the transfer of power. Its report is expected on July 31 July 2012. Since the members of the Commission were selected by the new President, the Commonwealth found it neither impartial nor independent and asked for a number of changes in the composition. While the new Maldivian government eventually agreed to certain changes in the composition of the Commission, a 'timeline of events' was released to the public by the Commission before these changes took place.

At the time of writing, the only official government information on the events that led to the transfer of power is this 'CoNI timeline'.<sup>2</sup>

The report is structured as follows. Part I discusses the legality under international law of the events that led to the resignation of President Nasheed on February 7<sup>th</sup>, 2012, while Part II analyses the legality under international law of the actions taken by the Maldivian security forces (the Maldivian Police Service and the Maldivian Defence Forces) against protesters of the new government in the months following the transfer of power. The report rounds up with a brief conclusion and some perspectives on the current status of the young Maldivian democracy.

# Part I. The legality under international law of the transfer of power on February 7<sup>th</sup>, 2012

## **I. Factual background**

### **1. The events leading up to the transfer of power<sup>3</sup>**

The weeks leading up to the transfer of power was marked by numerous demonstrations in the Maldivian capital of Malé by the opposition against the government of President Nasheed. Events escalated on January 16<sup>th</sup>, 2012, when government authorities took the Chief Justice of the Criminal Court, who allegedly had close ties with the opposition, into custody. The Maldivian Judicial Services Commission had previously decided to take disciplinary action against the judge for obstructing police investigations regarding bribery and corruption of opposition figures but he had nevertheless been allowed to continue his service on the bench.<sup>4</sup>

On the evening of February 6<sup>th</sup>, 2012, opposition parties and a coalition of religious Non-Governmental Organizations gathered to protest as they had for the past three weeks. The protests began at the so-called Artificial Beach area and like previous nights both the anti-government protesters and pro-government supporters were at the scene. Police forces were also present.

Around 10:00 or 10:30 pm a riot control unit of the military was sent to replace the police forces present. The police, however, refused to withdraw. Senior police officials were sent to the scene to pressure the police officers to obey their orders and live television coverage shows a troop of military officers in riot gear arriving at the Artificial Beach area around 11:30 pm. After their arrival, the police left and headed for the Police Headquarters despite orders to convene at a different location.

After bringing the Artificial Beach area under control, at around 11.45 pm, the military retreated to a nearby location. This led to a renewed escalation between the protestors from opposing sides still present in Artificial Beach. The chaos continued until it was put to end around 12.00 am by military officers who returned to the Artificial Beach area.

Just as the protest area was brought under army control, a number of police officers headed towards the Artificial Beach area from their Headquarters, where they charged and attacked pro-government supporters. Around midnight some police officers headed to the headquarters of President Nasheed's political party – the Maldivian Democratic Party (MDP) – where they attacked the individuals present before returning to the Republican Square.

At 12:17 am, the anti-government protesters announced the end of their protest for the day, but around 200 to 300 anti-government protestors gathered elsewhere and recommenced protesting.

Initially, about 40 police officers were gathered at Republican Square in protest against the Government. These officers stayed separately from the other police officers that were mostly scattered in small groups across the Republican Square. These police officers were requesting a meeting with the Commissioner of Police leading to assurances that they would not receive 'any more illegal orders', and provide them full assurance that no disciplinary or legal action would be taken against them for their actions earlier that night, such as attacking MDP protesters and destroying the MDP headquarters.

The Commissioner of Police insisted, however, that the Police officers who had joined the mutiny and disobeyed the commands of their superiors had violated the Police Act and were involved in a coup against the government. He therefore did neither accept the demands nor engage in a meeting.

As word spread that the military was preparing to arrest the protesting police officers, more officers joined the mutinying police on Republican Square.

According to intelligence reports some of the mutinying police officers maintained contact with opposition politicians and efforts were made to bring additional police to the Republican Square from neighbouring islands. More riot gear was also brought to the Republican Square in order to strengthen the mutinying police officers in preparation for possible combat with the military.

Confronted with a mutinying police force, the Defense Minister ordered the military to bring the mutinying police under their custody and to clear Republican Square. The military commander did apparently not believe that going for combat with the mutinying police was the right decision, fearing that if the military was to be deployed, the soldiers would face-off with relatives and family members engaged in the mutiny. By then the number of mutinying police officers protesting at the Republican Square had risen from 40 to 150 and additional mutinying police officers had started arriving at that area, thereby deteriorating the already unstable security situation.

Even though the security situation was clearly getting out of hand and the military officers were not done with the arrangements and preparations necessary in order to bring the mutinying police officers under military custody.

As these events unfolded, local broadcasting channels were conveying supportive messages from anti-governmental leaders and religious scholars to the mutinying police officers. At around 2:30 am a local channel broadcasted a message from then Vice President, later new President, Dr. Waheed, encouraging the activities that were going on at Republican Square.

At around dawn on July 7<sup>th</sup>, 2012, President Nasheed left his official residence and arrived at the military headquarters. Shortly after, troops were sent out to arrest the mutinying police officers.

The troops left their headquarters and assembled in front of the Police Headquarters. The mutinying police were ordered to turn themselves in, to hand in their weapons and the rest of the police officers present at Republican Square to vacate the area, but to no avail. Within minutes, the mutinying police started putting on their riot gear in preparation for a confrontation with the military.

The military officers never confronted the mutinying police in any manner.

Although the Commissioner of Police had initially refused to meet with the mutinying police officers, he later, at the very early hours of February 7<sup>th</sup>, 2012, accepted to meet them. Consequently, discussions with senior officials took place at the Police Headquarters. While this meeting was still going on, President Nasheed stepped out to Republican Square to talk with the mutinying police officers.

When the President first stepped out to meet the police, he told them that their actions were demeaning and that they should hand themselves over to the military immediately. He also guaranteed the mutinying police officers that he would not allow anything bad to happen to them. The mutinying police officers immediately started yelling and screaming and refused to follow the instructions of the President. At that point, the President went back inside the military headquarters.

From the top of the Military headquarters President Nasheed could now see the police attacking MDP supporters who had come to Republican Square. After witnessing this, he commanded those who had sworn to 'protect and serve' the nation to do so. Some military officers grabbed their riot guns and shields, and gas masks, while others just grabbed a baton, and walked out, in an ad hoc manner in no file or formation. The military personnel stepped out of the military headquarters and a few officers faced the mutinying police officers. The military officers brought tear gas canisters and riot guns.

The military troops prevented the mutinying police officers and the opposition demonstrators from getting any further into Republican Square with the use of riot guns and tear gas, but at this time some military personnel seemingly decided to join the mutinying police officers.

While only few military personnel joined the mutinying police officers, it proved of great encouragement to the police officers and as fights broke out between the two parties, more and more military troops joined the mutiny. Unable to hold their line and strength anymore, the military retreated back into the headquarters, and closed the main gate. During their retreat, mutinous police and military as well as civilians threw rocks and other objects at them and surrounded the main gate of the military headquarters.

By this time more military officers indicated a desire to join the mutinying police, and the military commander of the Male' area told the President that he had failed his mission and the situation had now come to a point where he had exhausted all options but to use live ammunition to control the mutiny. The President made it clear that no arms could be used and he ordered the armoury secured. Likewise, the President ordered high-ranking officer to lock up all weapons, making it clear that he would under no circumstances use live ammunition.

Around 7.45 am opposition demonstrators took over the Maldivian state television. They were assisted by the brother of the Vice-President who entered the TV-headquarters and informed the managing director that he was there to take over. According to a statement by the managing director, the Vice-President's brother informed the director that his commander-in-chief now was the Vice-President and that he should accordingly hand over the station. While the managing director refused to hand over the station he subsequently lost control of the station when it was overrun by mutinying police forces later in the morning.<sup>5</sup>

While the Republican square and the area surrounding the military headquarters subsequently fell into chaos, more military officers joined the mutinous forces.

Around this time, two civilians, retired Colonel Mohamed Nazim and former Assistant Commissioner of Police Abdulla Riyaz, appeared in front of the military headquarters and requested to meet with the Defence Minister and senior military officers. During a meeting held between Mohamed Nazim and Abdulla Riyaz with Defense Minister and senior military officers, the two individuals stated that their demand was for the immediate resignation of the President. If

the demand was not met, they said, it would be impossible to control the crowd gathered outside. The Defense Minister stated that the demand was impossible to meet and that the ousting of a Government from the streets was unacceptable. He also stated that the President wanted to consult the Speaker of the Parliament and the Chief Justice on how to proceed with the ongoing issues and that the President needed more time to consider the demands. At this point the two civilians were escorted out of the Military Headquarters.

Outside the gate of the military headquarters Mohamed Nazim and Abdulla Riyaz announced that they were representing the mutinous forces. Video footage shows Nazim and Riyaz emerging from the headquarters, and that one of them address the applauding crowd while stating that they had presented their demand for the President to resign without any condition and to hand over all his powers to the Vice President. In addition, they had demanded that the Commissioner of Police also resigned along with his two Deputies. The demands were non-negotiable. Nazim and Riyaz continued on to say that they received a warm welcome by the military when they entered the Headquarters and was met with their full support. A while later Mohamed Nazim also announced that he would be in charge of the Military from then on.

Inside the military headquarters the military officers and the Defense Minister conveyed the demands to the President and informed him that the only solution left was to use 'lethal weapons'. Again, however, the President refused.

The President then asked senior military officers for an assessment of how many military officers would be willing to follow his orders. The reply was that there would probably only be very few. Uncertain of his level of command and control of the military, the President met personally with the military personnel present and at a gathering of around 80 officers he asked how they would like him to proceed. When the President did not receive a response, he then asked how many of them thought he should resign. In response to this question more than 4 out of 5 of the personnel present, allegedly raised their hands.

At this point it seems that the President realized that he had no other option but to resign and he pleaded for his safety and for the safety of his family.

After announcing his decision to resign, the President asked for the gathering of the media and walked over to the Office of the Minister of Defense who escorted him to the President's office.

At the President's Office, he met with the Members of his Cabinet as well as advisory-level staff of the President's Office and told them that he had no other choice but to resign, and that he did not want to employ the use of firearms and risk shedding blood. When members of the Cabinet asked him for alternative solutions, the President replied that his life and the lives of a lot of other people were at stake if he did not hand in his resignation.

After the meeting the President went downstairs and entered a room where he wrote a short letter of resignation. Following is the speech given by the President while rendering his resignation in front of the media.

As it is clear to me today, if I continue on as the President of the Maldives, tragedy and devastation may befall the people of this nation, and I am therefore resigning as the President of Maldives. Ruling by force has never been my intention. I came to this decision, because I believed that if I were to continue this government, it would have to be with extreme force, and it would be at the risk of the lives of my citizens. I believe this

from the bottom of my heart, and have thus come to this decision. I also believe that if I were to carry on, it is very likely that there would be foreign influence in internal affairs, and as I have always wished nothing but the best for my nation and my people, and will continue to do so in the future. Thus I have decided today, sincerely and respectfully, with the tremendous support I have received from the people in my heart, to resign as President of Maldives.

President Nasheed officially resigned at around 1 pm. Within a few hours Vice-President Waheed was sworn in as the new President of the Maldives.

Shortly after his resignation, now former President Nasheed publicly stated that his resignation had been under duress and the opposition have therefore called for early elections to settle the constitutional situation in the Maldives.

So far the new government of President Waheed, however, has refused the call for early elections stating that new elections will be held in July 2013 at the earliest.<sup>6</sup>

## **2. International reactions**

The international reaction to the murky circumstances surrounding the resignation of President Nasheed was mixed. The first official reactions came from India and the United States who both recognised President Waheed's new government.

India did stress, however, that they would like to see a new round of elections being held in the Maldives to clarify the constitutional situation in the country.<sup>7</sup>

The United States Department of State likewise issued the following statement:

... through dialogue, capacity-building measures can be developed to create the conditions conducive to early elections. We continue to believe that this constitutes the best way forward.<sup>8</sup>

The Commonwealth Ministerial Action Group (CMAG) reacted to the events on February 7<sup>th</sup>, 2012, more strongly suspending the Maldives from CMAG and asking for a new round of elections 'by the end of 2012'.<sup>9</sup> On March 15<sup>th</sup>, 2012, CMAG stated the following:

CMAG continued to be strongly of the view that the earliest possible expression of the will of the people was required to establish universal faith in the legitimacy of those who govern the country. The Group therefore expressed disappointment and deep concern at the lack of progress achieved so far through the All-Party Talks process to arrive at a political settlement in Maldives that would enable the holding of early elections in the current calendar year, as expected by the Group. It urged all parties to engage in dialogue without delay, in earnest and in good faith with a view to achieving agreement on the date of early elections, and the processes required to do so, including any necessary constitutional amendments and supporting legislation.<sup>10</sup>

The statement must be read in light of a Commonwealth declaration issued in Milbrook, New Zealand, on November 2<sup>nd</sup>, 1995, where the heads of Government agreed to certain measures that could be employed in 'response to violations' of certain core principles of the commonwealth. Among other things, the heads of government agreed to take 'appropriate steps' to 'express the collective concern of Commonwealth countries and to encourage the restoration of democracy within a reasonable timeframe' in the event of an 'unconstitutional overthrow of a democratically elected government.'<sup>11</sup>

The European Union was also critical of the circumstances surrounding the resignation of President Nasheed, and on February 22<sup>nd</sup>, 2012, it called on all parties to ‘immediately engage in dialogue’ and to commit to ‘early presidential elections and to determine the legislative and constitutional measures required to ensure that these are free and fair.’ The EU also expressed the view that the circumstances surrounding the transfer of power ‘should be determined by an impartial, independent investigation as agreed by all parties in the Maldives.’<sup>12</sup>

## **II. International law**

### **1. The right to democratic governance**

#### 1.1. The right to democratic governance in international law

While international law and its notion of ‘state sovereignty’ has traditionally given States a free hand with regard to establishing their own form of governance<sup>13</sup>, there appears to be an emerging overall consensus within the international community that an international right to democratic rule has gradually come into existence. Or, as a prominent writer has put it, the right to democratic governance is becoming ‘a requirement of international law’.<sup>14</sup>

The neutral position of international law towards domestic governance began to change in the early 1990’s following the end of the Cold War, and democracy has since become the yardstick on which the legitimacy of new governments are often measured. Today, only few oppose democracy as a principle of universal validity and even non-democratic states frequently claim that they themselves are in a progress towards the establishment of democracy.<sup>15</sup>

In his 1996 *Agenda for Democratization* then Secretary-General of the United Nations Boutros Boutros-Ghali referred repeatedly to a right to democracy, and he also emphasized how the purposes and principles of the United Nations were the basis for the promotion of democracy and that the non-intervention principle in Article 2 (7) of the Charter did not contradict the emergence of such a right.<sup>16</sup>

The emergence of a right to democracy in international law is also reflected in the evolution and character of international election monitoring. Since the decision in 1989 by the UN Secretary General to agree to oversee elections in Nicaragua, the UN has overseen and assisted in the election processes in an increasing number of independent states. And while no formal link exists between the norms on political participation found in the various human rights conventions (see below) and those found in the criteria of fairness developed by the UN election monitors, the standards are very similar.

In light of these developments it can come as no surprise that coups leading to the overthrow of democratically elected governments are routinely the subject of international condemnation and that their authors are increasingly being denied international recognition until pledges are made to re-establish democracy by organizing new rounds of free and fair elections. As the Secretary General of the United Nations noted back in 1997, there is now an ‘established norm’ that considers coups against ‘democratically elected governments’ unacceptable.<sup>17</sup>

The increasing willingness of states to withhold recognition to governments who have come to power through illegitimate means is significant because the international law of recognition has traditionally been unconcerned with the manner in which governments came to power.<sup>18</sup> Until

recently, the refusal to recognize an incoming government due to its undemocratic ascent to power would have been considered an unacceptable intervention into the domestic affairs of the state. But as a known scholar of international law has stated: 'In international law, the sovereign has finally been dethroned.'<sup>19</sup>

In 1991, the Human Rights Commission unanimously condemned the military government of Myanmar for having failed to carry out its promise to return that country to democratic rule<sup>20</sup>, and in response to the 1991 *coup d'état* in Haiti, the United Nations organs adopted a number of very principled resolutions and declarations on the need for restoring the legitimate democratic government in that country.<sup>21</sup> During the Haitian-crisis, the UN Security Council for the first time even found that the overthrow of a democratically elected government constituted a threat to international peace and security thereby opening up for the imposition of sanctions and potentially the use of force under Chapter 7 of the UN Charter.<sup>22</sup> By reaffirming their goal of restoring democracy in Haiti and securing the reinstatement of the legitimately elected President, the Council thereby implicitly recognized democracy as an entitlement.<sup>23</sup>

The emergence of the right to democratic governance and the post-Cold War hostility to the overthrow of democratically elected governments helps explain why some states and international organizations have reacted critically to the events that led to the transfer of power in the Maldives on February 7<sup>th</sup>, 2012, and called for new elections.

#### 1.2. Democratic governance and human rights law

The most authoritative legal references to a right to democratic governance are found in international human rights conventions where the notion of an international right to democracy first surfaced. Parties to the major human rights conventions have created an international law of participatory rights and it is through these rights that the previously domestic questions of regime legitimacy have been internationalized.

The most relevant article with regard to democratic governance is Article 25 of the legally binding 1966 United Nations Covenant on Civil and Political Rights that contains a number of political participatory rights. The article guarantees to every citizen 'the right and the opportunity, without any of the distinctions mentioned in Article 2 and without reasonable restrictions':

- a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- c) To have access, on general terms of equality, to public service in his country.

The article in effect guarantees a right for all people to be governed democratically by an accountable government.<sup>24</sup>

The wording of Article 25 is almost identical to the wording of Article 21 of the non-binding 1948 *Universal Declaration of Human Rights*, according to which:

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

The core of the human right to political participation is an election process and in resolution 43/157 on *Enhancing the effectiveness of the principle of periodic and genuine elections*, the General Assembly emphasized:

1. ... the significance of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which establish that the authority to govern shall be based on the will of the people, as expressed in periodic and genuine elections;

It also declared that:

3. ... determining the will of the people requires an electoral process which accommodates distinct alternatives, and that this process should provide an equal opportunity for all citizens to become candidates and put forward their political views, individually and in co-operation with others;<sup>25</sup>

The Maldives is a party to the 1966 *United Nations Covenant on Civil and Political Rights* and by signing up to the convention the Maldives have granted other States the capacity to judge the adequacy of popular participation in its democratic processes.<sup>26</sup>

The right to democratic participation is also contained in various regional human rights conventions, such as in Article 3 of the *First Protocol to the European Convention on Human Rights*, Article 23 of the *American Convention on Human Rights*, and Article 13 of the *African Covenant on Human Rights and Peoples' Rights*.

The Maldives is not a party to any of these regional conventions but it is party to the *Commonwealth of Independent States* who have made numerous references to the right to democracy and political participation. Its 1971 *Declaration of Commonwealth Principles* include the following:

We believe in the liberty of the individual, in equal rights for all citizens ... and in their inalienable right to participate by means of free and democratic political processes in framing the society in which they live.<sup>27</sup>

While not a legally binding document under international law, the declaration illustrates the priority given to political participation in the Commonwealth.

Democratic governance cannot, however, be limited to a right to political participation in general elections. The procedures and processes for conducting fair elections are important, but a well-functioning democratic system requires more than just the casting of ballots. A healthy democracy demands respect for all those political rights whose enjoyment is vital for an open and free democratic discourse. Primary among those rights are the right to freedom of expression and the right to freedom of assembly.

The Human Rights Committee, the United Nations body empowered to interpret the Covenant, has on numerous occasions stressed the link between political participation in Article 25 of the Covenant and other vital political rights. For instance, in its *General Comment 25 on the Right to participate in public affairs*, the Committee emphasized how:

... the right to freedom of association, including the right to form and join organizations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25.<sup>28</sup>

In its resolution on the *Promotion of the right to democracy*, the committee similarly recognized that democracy and respect for fundamental freedoms are:

... interdependent and mutually reinforcing and that democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives ...

It also affirmed that:

2. ...the rights of democratic governance include, *inter alia*, the following:

(a) The right to freedom of opinion and expression ... and of peaceful association and assembly;<sup>29</sup>

The General Assembly has made similar statements. In its resolution 55/96 on *Promoting and consolidating democracy* it recognized the 'indissoluble link between human rights ... and the foundation of any democratic society', and reaffirmed 'that democracy ... and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing'.<sup>30</sup>

The Assembly also called upon states to 'promote and consolidate democracy' by 'promoting, protecting and respecting all human rights ... in particular':

(i) Freedom of thought, conscience ... peaceful assembly and association, as well as freedom of expression, freedom of opinion ...

Indeed, while the core of democracy is the election process and the additional political rights that make democratic governance possible, such as freedom of expression and assembly, respect for those rights in turn helps achieve other human rights. As the General Assembly stated in resolution 43/157:

... periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms.<sup>31</sup>

### 1.3. Democratic governance and the right to self-determination

International legal support for a right to democratic governance can also be found under notions of *the right to self-determination* for peoples. The right to self-determination is a well-established principle of customary international law and 'may well be a rule of *jus cogens*'.<sup>32</sup>

References to the right to self-determination are plentiful in international law and it is mentioned in Article 1 of the *United Nations Charter*.<sup>33</sup> It also figures prominently in other United Nations resolutions and declarations, such as in the General Assembly's *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*.<sup>34</sup>

The right is listed in Article 1 (1) in the UN Covenant on Civil and Political Rights where it states that:

... peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The notion of (internal) self-determination postulates the right of a people organized in an established territory to determine its collective political destiny in a democratic fashion and it is therefore at the core of democratic entitlement.<sup>35</sup>

The right overlaps to a considerable extent with the fundamental political rights mentioned throughout the Covenant on Civil and Political Rights<sup>36</sup> in the sense that it entitles peoples in all states to free, fair and open participation in the democratic process of governance freely chosen by each state.<sup>37</sup> The right to self-determination can even be considered a ‘manifestation of the totality of the rights embodied in the Covenant’<sup>38</sup>, or, as a prominent writer puts it, the ‘grandfather’ of democracy.<sup>39</sup>

Clearly then, the right to self-determination is also linked with other political rights, such as the right to political participation and the right to freedom of expression and assembly. As a prominent writer has stated with regard to the concept of ‘democratic entitlement’:

A bright line links the three components of the democratic entitlement. The rules, and the processes for realising self determination, freedom of expression and electoral rights have much in common and evidently aim at achieving a coherent purposes: creating the opportunity for all persons to assume responsibility for shaping the kind of civil society in which they live and work.<sup>40</sup>

In light of the interdependence of the rights to self-determination and other political rights it follows that a violation of the right to political participation in Article 25 of the UN Covenant will similarly violate the more general right to self-determination.

## **2. Findings and conclusion**

As already mentioned, the Maldives is a party to the United Nations Covenant on Civil and Political Rights, and the 2008 democratic election for the first time ensured the rights of the Maldivian people to political participation under Article 25 of the Covenant.

The right to democracy and the right to political participation in Article 25 clearly presuppose that ‘candidates who are elected and installed into office is permitted to remain in office until their term expires or is otherwise terminated in accordance with law’.<sup>41</sup>

The revolt of the Maldivian Police Service and the seemingly unwillingness or inability of the Maldivian Defence Forces to restore law and order and protect President Nasheed and his political allies left the President with no choice but to accept the demand for his resignation that was put before him in the early afternoon on February 7<sup>th</sup>, 2012.

The factual overview of the events therefore supports the conclusion that President Nasheed resigned as President of the Maldives under duress, and his resignation cannot be considered voluntary or otherwise ‘in accordance with law’.

To the extent that a ‘*coup d’etat*’ can be defined as the ‘illegitimate overthrow of a government’, we must therefore also consider the events on February 7<sup>th</sup>, as a *coup d’etat*.

The coerced resignation of President Nasheed and the refusal by the new Maldivian government to hold new elections therefore also constitute a violation of the right for the Maldivian people to democratic governance as manifested in Article 25 of the United Nations Covenant on Civil and Political Rights and in the right to self-determination.

Since the resignation of President Nasheed there has been widespread speculation that the events that led to his involuntary resignation had in fact been *pre-planned* and coordinated in advance by a group of opposition politicians colluding with former officers in the Maldivian military and police. The speculation is, in other words, that the events on February 7<sup>th</sup>, 2012, should be considered as *a well-orchestrated coup d'état*.<sup>42</sup>

Initially it must be emphasized that the Maldives has an unfortunate track record of coups and counter-coups.

It must also be noted that a number of rather extraordinary events *did* occur in the Maldives not just on the eve of the transfer of power itself but both in the weeks and days prior and subsequent to the President's coerced resignation. And interestingly, most of these events involve, among others, the former Vice-President, Dr. Waheed, who is now the President of the Maldives, the new Defence Minister, Mohamed Nazim, and the new Commissioner of the Police, Abdulla Riyaz.

First of all, a highly unorthodox meeting occurred on January 31<sup>st</sup>, 2012, at Vice-President Waheed's residence when the Vice-President met with leading opposition figures.<sup>43</sup> Following the meeting, the opposition members pledged their allegiance to the Vice-President and stated that President Nasheed was no longer considered 'the legal ruler of Maldives'. In a quite extraordinary move one of the leading opposition figures even called on the police and the army to also pledge their allegiance to the Vice-President 'and not to implement any order given by' the President.<sup>44</sup>

Remarkably, the Vice-President did not express himself about the meeting or on the statements made by the members of the opposition. Furthermore, the Vice-President also refused to reveal the content of the meeting when asked by Cabinet members during a Cabinet meeting.

Secondly, a number of former government officials, who now all hold very senior positions in the new government, appear to have played an extremely influential and highly unusual role in the course of the events that led to the resignation of President Nasheed on February 7<sup>th</sup>, 2012.

As already mentioned, the two civilians inside the military headquarters acting as 'mutiny spokespersons', Mohamed Nazim and Abdulla Riyaz, were respectively a former colonel in the Maldivian Military and a former Assistant Commissioner of the Maldivian Police. Not only did these individuals present the demands for the resignation of the President on behalf of the mutinying security forces; with a third individual in civilian clothing, a former Deputy Commissioner of Police, they also followed the President very closely *en route* from the military headquarters to his Office in preparation of his official resignation. They were present in the room where the President signed his letter of resignation and they even gave him directions. Apart from these individuals, the President's legal counsel, his Chief of Staff and the President himself, no other individuals were present when the letter was written.

The presence of these former government officials in the President's chambers on his day of resignation is quite unusual, and one cannot but notice the positions these individuals now hold in the Maldivian administration. Mohamed Nazim is Defense Minister, Abdulla Riyaz is the Commissioner of Police and the former Deputy Commissioner of Police has been sworn in as the Minister of State for Home Affairs.

Finally, we are also struck by the speed with which Vice-President Waheed changed his entire cabinet and other senior positions in his administration after he was sworn in as the new President. Within hours, all ministers were told to hand in their resignation by noon the following day<sup>45</sup> and all ministers were replaced. And despite the new President's official claims that his 'government is a continuation of the previous one under President Nasheed and there should be no doubt about this'<sup>46</sup>, not a single minister in the new cabinet hail from the former President Nasheed's MDP.

Although we cannot conclude with absolute certainty that the forced resignation of President Nasheed was a pre-planned *coup d'état*, we *do* find that the factual circumstances are highly damaging to the credibility of the new government and its claim that it did not instigate the transfer of power in the Maldives. Moreover, in the light of the overwhelming circumstantial evidence, it should hardly be for the opposition to prove that the current government perpetrated a *coup d'état* but rather for the latter to prove that it did *not*.

## Part II. The legality of alleged human rights violations by the Maldivian security forces since the transfer of power

### I. Factual background

#### 1. Confrontations between anti-government protesters and Maldivian security forces

##### 1.1. Introduction

The circumstances surrounding the transfer of power led to widespread protests and numerous demonstrations in the Maldives organized by anti-government supporters. MDP and its supporters have been especially active since the events on February 7<sup>th</sup>, 2012, and anti-government protesters continue to arrange rallies and demonstrations on a weekly basis.

The response of the security forces under the new Maldivian government to these protests has been harsh and according to the MDP and its supporters they are frequently met with excessive police brutality and arbitrary arrests. MDP supporters also allege that the police are cooperating with rogue elements that infiltrate the peaceful demonstrations in order to incite a violent response from the police.<sup>47</sup>

Furthermore, according to the MDP and its supporters, high-ranking members of their party, including former ministers, have been the subject of occasional acts of violence and intimidation since the transfer of power. These acts of violence include random attacks on the streets of Malé perpetrated by various gangs allegedly operating under the orders or at least with the acquiescence of the new government.

Former President Nasheed is currently under investigation in two separate criminal cases, one related to the arrest of Chief Justice Abdullah Mohamed and one to the alleged discovery of alcohol at his residence.

The following section lists a number of the major confrontations between anti-government protestors and the Maldivian security forces up until mid-July 2012.

##### 1.2. The MDP march on February 8<sup>th</sup>, 2012, in Malé

Numerous sources, including international reports and publicly available TV footage, indicate that Maldivian security forces deliberately attacked peaceful protesters during a MDP march in Malé headed by former President Mohamed Nasheed on February 8<sup>th</sup>, 2012.<sup>48</sup> The police first attacked protestors using batons and pepper-spray before employing tear gas. Later, the security forces failed to protect MDP supporters when a violent counter demonstration appeared.

An international journalist witnessing the events described how soldiers in riot gear and police with batons 'charged the crowd' firing tear gas. The journalist also witnessed a baton charge by police on peaceful crowds gathered outside one of the main hospitals where wounded MDP supporters were being treated.<sup>49</sup>

Reports on the number of protestors arrested on February 8<sup>th</sup>, 2012, in Malé vary from 40 to around 100. According to the Maldivian Democracy Network more than 100 cases of police brutality were reported.<sup>50</sup>

Several incidents of ‘targeted arrests’ where security forces have entered the crowd in order to arrest specific individuals, typically leading MDP members, were reported. Imthiyaz Fahmy, MP, describes his arrest in the following way:

The security forces seemed as if they targeting specific people, especially Members of Parliament and other leaders of the Party. For each of us that were targeted and caught, there were many members of the security forces surrounding us. They were shouting obscenities and insults which indicated personal attacks towards us specifically. They shouted “\*\*\* this guy is too vocal, KILL HIM”. They grabbed me and beat me, and when I fell down they kicked me with their shoes. They hit my shoulder with their batons and put my hand on the metal railing and tried to squash my fingers with their baton. One of them tried to tear my ear off, but I was lucky to get away when stopped beating me when a cameraman came up to me and focused on what they were doing. They then took me a few steps away to the Republic Square and handcuffed me and others from behind using cable ties. They were shouting obscenities the entire time. Every policeman that went by was shouting obscenities, calling me names, and telling their colleagues to make sure I get put in a jail cell, and to destroy me.

Interim MDP chairperson, MP, Moosa Manik (Reeko), was also attacked and beaten by the police.<sup>51</sup> Moosa, who sustained serious injuries, had initially fled into a shop with former President Nasheed and MP Mariya Ahmed Didi when security forces attacked. Publicly available video footage shows the three of them being forced out of the shop by riot police. Mariya Ahmed Didi was later also beaten by security forces before being arrested and detained along with other MDP supporters at Dhoonidhoo Island Detention Centre.<sup>52</sup>

The protests continued into the February 9<sup>th</sup>, 2012, where more clashes between protestors and police occurred throughout the country. According to the Maldivian Democracy Network, by the February 10<sup>th</sup>, 2012, a further 130 people had been arrested, mostly from the southern atolls.<sup>53</sup>

### 1.3. MDP protests in Addu City on February 26<sup>th</sup>, 2012

On February 26<sup>th</sup>, 2012, a large number of MDP supporters convened in Addu City in the Southern Atolls to demonstrate against a visit by President Waheed and other cabinet members. The crowd was largely made up of women carrying banners calling for immediate elections.

According to reports by Amnesty International, 20 female MDP supporters were ahead of a crowd of about 70 MDP anti-government demonstrators when the police stopped them, saying they had been ordered not to allow MDP supporters to convene at the location. The demonstrators halted their march and began to chant slogans against President Waheed, who was making his speech a couple of hundred meters away. This led the security forces, who were armed with batons and pepper-spray, to charge the women. Several of the female protestors were injured.<sup>54</sup>

### 1.4. MDP protest in Malé on March 9<sup>th</sup>, 2012

According to Amnesty International at least six protestors were injured, some seriously, on March 9<sup>th</sup>, 2012, when security forces attacked around 300 MDP protestors in Malé.<sup>55</sup> Amnesty International’s researcher Abbas Faiz described the incident in the following way:

People who were peacefully exercising their right to protest were beaten on the head with batons, kicked and sprayed with pepper-spray. This use of excessive force violates human rights standards.

Allegations have been made that the attack by the security forces was retaliation for earlier clashes in the city, where windows in a police station had allegedly been smashed.

### 1.5 MDP Protest on March 19<sup>th</sup>, 2012

On March 19<sup>th</sup>, 2012, security forces used batons and tear gas against anti-government protesters who tried to disrupt the opening of Parliament by President Waheed.<sup>56</sup>

Later in the day, security forces dismantled MDP's rally site in Malé while claiming the land belonged to the military. Up until then MDP had held rallies at the site since the middle of February.

According to evidence gathered by Amnesty International, several women were arrested and some beaten by security forces. Pepper-spray also appears to have been sprayed at the women at close range. Neither of the women appears to have been involved in any acts of violence. While in detention, the women were forced to undergo naked body checks on the spurious suspicion of concealing drugs in their genitals. They were also forced to strip and squat several times while being imprisoned.

### 1.6. MDP protest on May 29<sup>th</sup>, 2012, in Malé

On May 29<sup>th</sup>, police raided yet another MDP protest camp set up on in a public space initially allotted to the party for hosting rallies. The camp was raided on allegations that it was used for advancing witchcraft and other forms of superstition. During the incident, the police used batons and pepper-spray against protesters and representatives of the media. According to the police 56 people were arrested during the confrontation.<sup>57</sup>

According to reports by Amnesty International, which partly is supported by photo documentation and publicly available video footage, demonstrators and bystanders were kicked, beaten with batons and riot shields, and pepper-sprayed in their faces.<sup>58</sup>

A MDP Member of Parliament, who had also been arrested during the February 8<sup>th</sup>, 2012, protests in Malé, describes that he was standing peacefully at the rally site on May 29<sup>th</sup>, when police grabbed him in the crowd. Although he did not resist, he was manhandled and verbally abused by the security forces. He was handcuffed, detained and taken to Dhoonidhoo Island Detention Centre.

The Maldivian Police has publically stated that it arrested more than 50 protestors during the protests on May 29<sup>th</sup>, 2012, but it has denied the use of excessive force. According to a police statement, it was the protesters themselves who had instigated the violence.<sup>59</sup> In a June 11<sup>th</sup> counter statement, Amnesty International noted:

Some media reported that at one point during the protest, objects were thrown at the police. However, it is clear that by far the majority of demonstrators were not using violence, and any such incidents cannot be used by police as an attempt to justify the ill-treatment of bystanders and those rallying peacefully. Amnesty International believes that the police response to the demonstrations on 29 May was a clear example of excessive use of force.

### 1.7. MDP protests in July, 2012, in Malé

Throughout July 2012 there have been widespread demonstrations in Malé where security forces used batons and pepper spray against anti-government protesters. According to media reports, more than 65 protesters were arrested during demonstrations on July 12<sup>th</sup> – July 14<sup>th</sup>.

Among those arrested were the MDP Youth Wing President, Aminath Shauna, former President Nasheed's legal advisor, Hisaan Hussein, and the former human rights ambassador, Mohamed Latheef, who all appear to have been arrested in targeted operations.

During the course of the weekend on July 12<sup>th</sup> - July 14<sup>th</sup>, reporters of a private television station stated that they had stopped their live coverage of the events due to death threats.<sup>60</sup> Similar threats have been made against a number of high-ranking members of the MDP.<sup>61</sup>

### 1.8 Treatment in police custody

The total number of protesters being arrested and detained by the Maldivian security forces since the transfer of power on February 7<sup>th</sup>, 2012, is unknown. The number may, however, very well exceed 600. Most of those arrested have been released within 24 hours. Some, however, have been detained for longer periods.<sup>62</sup>

The security forces seem to have carried out many arrests in a very brutal manner. The use of handcuffs seems to have been the rule rather than the exception, and there are many reports of arrestees who have been handcuffed for extended periods of time, including during transport from Malé by speedboat.<sup>63</sup> Repeated reports on death threats made by security force officials against those arrested seem particularly disturbing.

There are frequent reports of detainees being mistreated in custody.<sup>64</sup> Some reports indicate the use of torture.<sup>65</sup> Female detainees have reported being submitted to unnecessary body searches and forced to give urine samples. The official explanation given by the security forces for taking such measures have typically been 'suspicion of narcotic crime' despite the lack of any basis for such suspicion.<sup>66</sup>

## **2. International reactions**

The United Nation Human Rights Committee has reacted to the ongoing confrontations by expressing concern and criticizing the new government.<sup>67</sup>

On July 14<sup>th</sup>, 2012, the Committee noted that it was deeply concerned that

... torture in the Maldives is not only systematic but systemic ... We have heard the Government's argument that there is no torture now and that mechanisms exists to deal with this but the Committee is not convinced by these arguments.

The Committee also criticized the new government with regard to the use of force since the overthrow of the Nasheed government by stating that:

Allegations of the systematic targeting of journalists covering anti government protests as well as the targeting of people participating in the protests continue.<sup>68</sup>

And on the day after – on July 15<sup>th</sup> – the Committee expressed:

... deep concern at the growing instances of reprisals against human rights defenders who seek to cooperate with and provide information to the human rights system.<sup>69</sup>

## II. International law

### 1. International human rights law

#### 1.1. The rights to free speech, assembly and association

The rights to freedom of expression, assembly and association are enshrined in numerous treaties including the 1966 UN Covenant on Civil and Political Rights. Article 19 in the latter holds:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 21 of the Covenant states:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22 of the Covenant holds:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. [...]

The Human Rights Committee has noted that these rights are ‘the foundation for every free and democratic society,’ providing ‘a basis for the full enjoyment of a wide range of other human rights’.<sup>70</sup>

It follows *inter alia* from the Covenant and the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), to which Maldives likewise is party, that these freedoms apply to *all persons* regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other such characteristics.

These human rights are so fundamental that they can only be curtailed in a strictly limited set of circumstances. Under the Covenant on Civil and Political Right, any restrictions must be in accordance with the law and strictly necessary to preserve national security or public safety, public order, public health or morals or protect the rights and freedoms of others.

Furthermore, restrictions must be proportionate to a legitimate purpose and non-discriminatory, including on the basis of political opinion.<sup>71</sup>

In its General Comment 34, the Human Rights Committee stated that laws limiting free expression and assembly must be ‘formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly’ and ‘accessible to the public.’ Further, ‘A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.’ In addition, laws restricting these fundamental freedoms must be compatible with the provisions, aims and objectives of the Covenant and may not violate the prohibition against discrimination.<sup>72</sup>

Regardless of the interest at stake, limitations cannot be invoked to justify ‘the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights’, as restrictions on free expression may not jeopardize the enjoyment of the right itself.

In General Comment 34, the Human Rights Committee also held that any restriction on freedom of expression and assembly must be ‘proportional to the interest to be protected.’ And that applies not only with regard to the law that contains the restriction, but also to the application of the law.

Restrictions must furthermore be narrowly tailored and serve as the least intrusive instrument amongst those who can achieve their protective purpose. Indeed, when invoking a ground for restricting free expression, a state party must:

... demonstrate in a specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.<sup>73</sup>

Regardless of any restrictions on the right to assembly, the policing of demonstrations must be conducted in accordance with international standards.

To that end, the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that everyone is allowed to participate in lawful and peaceful gatherings.<sup>74</sup> According to principle 14, force is only permitted in the dispersal of *unlawful* and *violent* assemblies ‘when less dangerous means are not practicable and only to the minimum extent necessary’. During unlawful but non-violent gatherings ‘law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary’.<sup>75</sup>

### 1.2. The right to security of the person

The international human rights standards on the use of force by law enforcement officers are grounded in notions of the ‘inherent dignity of the human person’, ‘the inherent right to life’ and the ‘right to liberty and security of person’.<sup>76</sup>

The UN Covenant on Civil and Political Rights and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), to which the Maldives is also a party, prohibits the use of torture, cruel, inhuman or degrading treatment under all circumstances.<sup>77</sup>

State authorities, including law enforcement forces, are also obliged to ensure that all persons are afforded equal protection under the law as well as protection from discrimination. Article 26 of the Covenant on Civil and Political Rights states that all:

... persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

A number of resolutions and declarations have elaborated on the content of these principles with regard to the use of force by law enforcement officials. Most important are the 1999 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>78</sup> and the 1979 UN Code of Conduct for Law Enforcement Officials.<sup>79</sup>

The standards state that law enforcement officers are only allowed to use force in certain limited circumstances. Thus, Article 3 of the UN Code of Conduct for Law Enforcement Officials provides that enforcement officers may only use force when 'strictly necessary and to the extent required for the performance of their duty.' The Code of Conduct also states that use of force is only allowed if no other means are effective in order to achieve the desired result. Law enforcement officers must always:

exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved.<sup>80</sup>

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials elaborates on the minimum standards for the use of force by the police.<sup>81</sup>

It follows from these standards that the use of force to disperse non-violent unlawful assemblies should be avoided and if unavoidable, minimum force must be applied. In violent unlawful assemblies use of force may only be applied if unavoidable and even then only the absolute minimum amount of force should be used.

Restrictions on the use of force remain in effect with regard to *individuals in custody*. Under the UN Covenant on Civil and Political Rights and Detention Principles<sup>82</sup>, individuals in detention 'shall be treated with humanity and with respect for the inherent dignity of the human person.'<sup>83</sup>

Moreover, under Article 3 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment:

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom.<sup>84</sup>

Similarly, according to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, when persons are in custody or detention, law enforcement officials 'shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened'.<sup>85</sup>

According to international standards, victims of excessive or lethal force by law enforcement officials are entitled to *redress*. Under the UN Convention against Torture, governments must promptly and impartially investigate situations where torture, cruel, inhuman or degrading treatment may have occurred, and ensure that victims have access to redress through its legal system.<sup>86</sup>

A key principle of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials is the obligation for Governments and law enforcement agencies to ensure that 'superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use'.<sup>87</sup>

Superior police officers therefore have a significant responsibility with regard to overseeing the actions and decisions of officers under their command, and this in turn requires an elaborated system for managerial accountability in police establishments.<sup>88</sup>

Where injury has been caused, the UN Basic Principles also provide for accountability for courts, as well as for internal disciplinary mechanisms.<sup>89</sup>

### 1.3. The right to personal liberty

Article 9 of the UN Covenant on Civil and Political Rights provides:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.<sup>90</sup>

The right to personal liberty requires that no one are subjected to arrest and detention unless provided for by law. It also requires that the law and the administration of the law are not arbitrary.

The Human Rights Committee has stressed that while an arrest or detention may very well be in accordance with domestic law, it may nevertheless still be arbitrary. 'Arbitrariness' is not the same as 'against the law', but must be interpreted more broadly so as to include elements of inappropriateness, injustice and lack of predictability.<sup>91</sup>

The right to personal liberty is of relevance in all forms of detention.

Under Article 9 of the Covenant, national law must prescribe the grounds and procedures for arrest and detention. An arrest or detention may nevertheless still be contrary to the right to personal liberty if it is considered arbitrary. This may be the case if the arrest or detention is not reasonable and necessary to fulfill its states purpose.

According to the Human Rights Committee, detention may become arbitrary if it lasts longer than necessary. And when an individual has been detained for a specific purpose, prolonged detention must be justified if the original purpose no longer applies.<sup>92</sup>

The Committee has also stated that, when possible, less intrusive measures than detention, such as the imposition of reporting obligations, sureties or other conditions, must be used.<sup>93</sup>

Anyone deprived of their liberty must be able to challenge the lawfulness of the detention and if detention is prolonged, those in detention must be able to challenge the lawfulness of the detention at regular intervals.<sup>94</sup>

Finally, the right to security requires the state to provide reasonable measures to protect a person's physical security.

## **2. Findings and conclusions**

### 2.1. Violations of the right to freedom of speech, association and assembly – the 'Chilling Effect'

The reported conduct of the security forces does not correspond with their obligation to allow protests to take place unless compelling information offers a legitimate reason for restriction. Indeed, when judged by the information available, it seems as if the security forces have been more focused on repressing demonstrations rather than ensuring the safety of the participating individuals.

Documentation also suggests that the security forces have violated international human rights standards in discriminating against protesters based on their viewpoints and by failing to distinguish between protesters that cause trouble and those that are peaceful.

Obviously controlling large demonstrations may sometimes place security forces in stressful situations. This, however, does not legitimize the application of a generally repressive attitude towards demonstrators. Under international law, individuals who wish to protest peacefully have a right to do so.

It is fair to assume that the conduct of the security forces against anti-government supporters has had a 'chilling effect' on protestors thereby causing them to hesitate to exercise their legitimate rights to freedom of speech, association and assembly. Almost all MDP supporters interviewed have thus been of the view that they have been the deliberate targets of the Maldivian security forces, and that the purpose of this targeting is to make it harder for them to express their anti-government views. This perception seems *inter alia* supported the widespread reports of verbal insults, chants and even death threats by security forces against MDP supporters during demonstrations.

### 2.2 Violations of the right to security of the person

#### *Excessive and indiscriminate use of batons and sticks*

Evidence suggests that security forces have repeatedly struck protesters with wooden sticks and batons. There are also examples of security forces chasing fleeing protesters and striking them from behind. Innocent bystanders also appear to have been hit. The strikes with batons and sticks appear to have caused several serious injuries, including head injuries, protesters many of whom had clear marks of the size and shape of batons.<sup>95</sup>

Repeated punching and striking with batons and riot shields at peaceful, or at least mainly, peaceful protesters clearly falls outside any definition of ‘reasonable’ use of force. It also violates the international standards as established by the United Nations on use of force by law enforcement officers.

#### *Excessive and indiscriminate use of pepper-spray*

Evidence also suggests that the Maldivian security forces routinely and indiscriminately has used pepper-spray against peaceful demonstrators, sometimes even at point-blank.<sup>96</sup> Pepper-spray has been sprayed directly into the eyes, noses, and mouths of protesters, sometimes blinding them and causing excruciating pain occasionally lasting for days.

Pepper-spray is a potent inflammatory agent that causes a temporary blindness and an excruciating burning sensation in the eyes, face, and skin that can last for days. Studies show that pepper-spray can be highly dangerous and in some instances even lethal.

The indiscriminate use of pepper-spray by the Maldivian security forces clearly violates international standards on the use of force by law enforcement officers.

Indeed, if it is true, as a number of reports indicate, that security forces have resorted to the use of pepper-spray for no apparent reason, the security forces may very well have violated the prohibition against inhuman and degrading treatment under the UN Covenant on Civil and Political Rights and the UN Convention against Torture.<sup>97</sup>

#### *Excessive and indiscriminate use of tear gas*

Evidence likewise suggests the excessive and indiscriminate use of tear gas against demonstrators, e.g. by firing aluminum tear gas canisters into groups protesters using so-called riot guns.<sup>98</sup> In at least one incident, a demonstrator appears to have been hit in the head by a tear gas canister allegedly fired at him by security forces at close range.<sup>99</sup>

Such use of tear gas clearly does not meet international standards for the use of force by law enforcement officials.

#### *Lack of protection against violent civilians*

On several occasions armed civilians supporting the new government have assisted the security forces in attacking peaceful protesters. Teaming up with such rogue elements clearly violates basic international standards for law enforcement. In addition to reinforcing the perception that the Maldivian security forces do not operate in a neutral manner, such actions demonstrates the lengths to which security forces apparently have been willing to go in order to suppress anti-government protests. It leaves a daunting impression of a security force that is more focused on clamping down in democratic protests than ensuring the safety of the Maldivian population.<sup>100</sup>

#### *Arrests and ill-treatment in custody*

Many arrests of anti-government protesters appear to have been carried out very aggressively and in violation of the basic principle of proportionality. Unnecessary and excessive use of handcuffs also violates international standards.<sup>101</sup>

If reports about severe beatings by security forces of individuals in handcuffs are correct, this constitutes a clear violation of the prohibition against torture and cruel, inhuman or degrading

treatment in the UN Covenant on Civil and Political Rights and the UN Convention against Torture.

The sexual harassment of female detainees not only violates the standards for proper treatment of detainees but also potentially constitutes degrading treatment.

### 2.3. Violations of the right to personal liberty

It seems to be a general problem that security forces have not fulfilled their obligation under Article 9 (2) of the UN Covenant on Civil and Political Rights to inform arrestees about the reasons for the arrest and the charges against them.

Furthermore, the instances of frequent body searches and urine tests of detainees – apparently looking for traces of narcotics - suggests that the security forces – contrary to basic procedural principles – have been trying to create criminal cases against detainees retrospectively thus targeting citizens based on their political allegiance in contravention with International Law.<sup>102</sup>

### 2.4. The overall picture

Since the transfer of power the Maldivian security forces seem to have acted more like a militia for the new government than as a neutral police service for all Maldivians. This seems to have eroded the respect for the rule of law and made many Maldivians doubt their impartiality as officers of justice. The targeting of certain political groups remains wholly unacceptable and contrary to basic democratic principles. It is therefore highly unfortunate that the targeting of anti-government protesters appears to be systematic and not just the result of sporadic acts of ill-disciplined officers.

Some responsibility for the worsening human rights record among the security forces must rest with the leadership of these forces who have clearly failed to make sure that their personnel have discharge their duties in compliance with applicable democratic and human rights standards. The security forces do not appear to operate under a coherent and well-principled policy for the use of force policy and there also seems to be lack of comprehensive protocol governing the treatment of protesters and the handling of public demonstrations.

Overall responsibility for the numerous human rights violations in the Maldives over the course of the last six months must however, rest with the new Maldivian government who are ultimately responsible for the acts perpetrated by its security agencies. The government appears to have taken no concrete actions in order to stop the violence against the anti-government protesters nor has it distanced it from it. In a controversial move, the government has actually just recently allowed for the introduction of new types of non-lethal weapons, including the use of electroshock taser-guns and mace spray, for use by the Maldivian security forces.<sup>103</sup>

As already mentioned, the Maldivian government is obliged to criminalize and prevent the commission of human rights violations committed by its law enforcement officials, such as the use of excessive force, the resort to arbitrary arrests and ill-treatment of detainees. Such violations must be promptly, thoroughly, impartially, and independently investigated, so perpetrators can be held accountable for their acts, and victims can be compensated.

No security force officials so far have been held accountable for any of the incidents listed in this report.<sup>104</sup>

While the Maldivian Human Rights Commission is competent to look into complaints of human rights violations in the Maldives, we are not entirely persuaded by their willingness and ability to conduct sufficiently thorough investigations of the events that have occurred in the Maldives since the transfer of power.

## Conclusion

The factual overview in this report strongly supports the conclusion that President Nasheed resigned as President of the Maldives under duress, and we therefore conclude that his resignation cannot be considered voluntary or otherwise ‘in accordance with law’.

The revolt of the Maldivian Police and the seemingly unwillingness or inability of the Maldivian Military to restore law and order left the President with no choice but to accept the demand for his resignation that was put before him in mid-morning on February 7<sup>th</sup>, 2012. To the extent that a ‘*coup d’etat*’ can be defined as the ‘illegitimate overthrow of a government’, we must therefore also consider the events on February 7<sup>th</sup>, as a *coup d’etat*.

We conclude that the coerced resignation of President Nasheed and the refusal by the new Maldivian government to hold new elections violate the right of the Maldivian people to democratic governance as manifested in Article 25 of the United Nations Covenant on Civil and Political Rights and in the right to self-determination.

We cannot conclude with absolute certainty that the forced resignation of President Nasheed was a *pre-planned coup d’etat*, but we nevertheless find the factual circumstances surrounding the resignation of President Nasheed extremely damaging to the credibility of the new government and its claim that it did not instigate the transfer of power in the Maldives.

In light of the existing circumstantial evidence, it should not be for the opposition to prove that the new government under the presidency of Dr. Waheed orchestrated the forced resignation by President Nasheed, but rather for Dr. Waheed and his new government to prove that they did not.

We also conclude that the Maldivian security forces have committed a number of serious human rights violations in the months that have passed since the transfer of power.

First of all, we conclude that the Maldivian security forces have violated the rights to freedom of speech, association and assembly by resorting to excessive use of force; discriminating against protesters based on their viewpoints; restricting demonstrations without a legitimate reason and for failing to distinguish between those protesters that cause trouble and those that are peaceful.

We consider it fair to assume that the actions of the security forces against anti-government protesters has made these reluctant to exercise their legitimate rights to freedom of speech, association and assembly. We find, in other words, that the acts of the security forces has had a ‘chilling effect’ on the enjoyment of fundamental freedoms in the Maldives.

In addition, we also find that the Maldivian security forces have violated the right to personal security by resorting to excessive and indiscriminate use of batons, pepper-spray and tear gas in violation of international standards; by failing to protect peaceful demonstrators from rogue elements, and by occasionally mistreating individuals, including a number of female demonstrators, in governmental custody.

Furthermore, we conclude that the Maldivian security forces have not always fulfilled their obligations under international law to inform arrestees about the reasons for the arrest and the charges against them.

Responsibility for the worsening human rights record among the security forces must rest with the leadership of the forces who have clearly failed to discharge their duties in compliance with applicable democratic and human rights standards.

Overall responsibility for the numerous human rights violations in the Maldives over the course of the last six months must, however, rest with the new Maldivian government who are ultimately responsible for the acts perpetrated by its security agencies. The government appears to have taken no concrete actions in order to stop the violence against the anti-government protesters nor has it distanced itself from it.

So far, no security force officials have been held accountable for any of the incidents listed in this report.

## Perspectives on Maldivian democracy

There are several lessons to be drawn from the saddening events that have taken place in the Maldives in the course of 2012.

Perhaps the most important is that formal democracy in the shape of regular elections and competing political parties does not guarantee a healthy democratic society. To survive in the long run, a well-functioning democracy requires that key actors and institutions have a profound respect for democracy and democratic processes. What is required for democracy to work, in other words, is democratic culture.

In 1996, then Secretary-General Boutros Boutros-Ghali stated the following on this point:

... democratization must begin with an effort to create a *culture of democracy* (emphasis added) – a political culture, which is fundamentally non-violent and in which no one party or group expects to win or lose all the time. Such a culture is built upon a societal consensus not about policy, but about the process and framework of democratic political life; that the will of the people is the basis for governmental authority; that all individuals have a right to take part in government; that there shall be periodic and genuine elections; that power changes hands through popular suffrage rather than intimidation or force; that political opponents and minorities have a right to express their views; and that there can be loyal and legal opposition to the Government in power.<sup>105</sup>

The events surrounding the coerced resignation of President Nasheed and the actions by the security forces in the subsequent months clearly demonstrate the lack of a healthy democratic culture among certain key institutions in the Maldives.

In particular, the events in the last six months have revealed that neither the Maldivian Police nor the Maldivian Military are immune from manipulation and exploitation by influential political actors in Maldivian society. Both institutions clearly suffers from a lack of basic understanding of their proper role in a modern democracy, and the creation of a more healthy democratic culture in the Maldives would therefore seem to require fundamental democratic reform of the two institutions.

At the moment, the most pressing issue in the Maldives relates to the fallout from the coerced resignation by President Nasheed and the refusal by the new government under President Waheed to hold new elections.

In that regard we find it imperative to remind the new Maldivian government of one of the trademarks of a healthy democratic culture: The common acceptance among elected politicians that their constituents should be consulted in times of extraordinary political crisis. When the elected politicians have a valid disagreement on the political legitimacy of the democratic process and when that disagreement threatens to jeopardize the entire constitutional system, it should be for the people – and not simply the ruling politicians themselves – to decide on the direction society should take.

All Maldivian politicians should try to remember why they decided to settle for a democratic system in 2008 in the first place. And they must remind themselves that one of the many virtues of the democratic system is its ability to provide a process for resolving difficult political disputes.

While democracy is no guarantee against uncertainty and constitutional crisis it is the only known model whereby a genuine social discourse can proceed among those citizens who legitimately represent the spectrum of opinion and interest in the community. So although decisions can be taken, negotiations be made, and discourse can occur in a society without democracy and democratic process, there cannot be a genuine social convergence.<sup>106</sup>

Democracy and democratic process always tests the fabric of society but it is exactly in times of political difficulties and crisis that the virtues of democracy are most obvious. It is when the stakes and emotions run highest and the political differences are gravest, that society needs democracy – and the processes it provides – the most. The more democrats disagree on substance, the more they most agree – and respect – process.

In the 21<sup>st</sup> century, there can be no doubts about the proper democratic process in times of extraordinary political crisis: It should be a matter for the Maldivian people – and not powerful individuals on either side of the political spectrum in the Maldives – to decide on what the future should hold for the Maldives. Since it is the political future of all Maldivians that is at stake in the current political crisis, all Maldivians should be consulted in the efforts to move society in the right direction.

So if the new Maldivian government is to be trusted when it says it respects democracy and democratic process it must live up to its democratic duty and consult the Maldivian people. The democratic answer to the questions raised by the current crisis in the Maldives is straightforward: The new government must call for new elections and it must do so rather sooner than later. The longer it waits, the longer it prevents the Maldivian people from determining their own future.

Another of democracy's virtues is the legitimacy that flows from its processes. As then Secretary-General Kofi Annan once stated:

... in the absence of genuinely democratic institutions, contending interests are likely to seek to settle their differences through conflict rather than through accommodation ... Democratization gives people a stake in society. Its importance cannot be overstated, for unless people feel that they have a true stake in society lasting peace will not be possible.<sup>107</sup>

While a lack of political participation amongst the people can lead to desperation and social disorder, the democratic process is a social stabilizer. As a form of government, democracy is unique in its ability to involve and engage those in society with competing interests, and by creating ownership for the solution of the problems in society, democracies are less prone to internal disorder and collapse than their non-democratic counter-parts.

Finally, just like the Maldivian politicians must remember why they chose democracy in the first place, the international community must also remember why it endorsed that choice. The international community should remind itself that it is not only in the interest of the Maldivian people that the island state emerge from the current crisis as a stronger and more healthy democratic state but indeed in the long term interest of the entire region.

As the United Nations High Commissioner for Human Rights stated on 24 November 2011:

Maldives will increasingly have a special role to play in the region and the Muslim world as it has pioneered a democratisation process that is both modern and Islamic... This opportunity cannot be missed...<sup>108</sup>

The events in the Maldives this year demonstrate how crucially important it is that the international community continue to engage with the Maldivians, and in particular with the new government under Dr. Waheed, in order to assist them in finding the right democratic solution to the ongoing political crisis.

But a word a caution is needed. Whatever the logistical merits of the new government's claim that 'now is not the time' for new elections, no one should be blind as to what is actually at stake in the Maldives. Democracy in the islands is young and extremely fragile and those familiar with Maldivian political history should be very concerned with the course of events over the last six months. This year may very well be decisive for the future of democracy in the country, and it is crucial that efforts to consult the Maldivian people after the events in February are made now.

If the Maldivians are to trust the international community when it proclaims to be supportive of the Maldivians' right to democratic entitlement, the international community *must* continue to pressure the new Maldivian government into holding new elections as soon as possible.

Anyone familiar with the history and the forces currently at play in Maldivian society knows that it may otherwise last a generation before the people of the Maldives get the chance again.

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- <sup>1</sup> Ameen Faisal & Mohamed Aslam, *A Police & Military Backed Coup d'état*, 9 June 2012, available at [http://mvdemocracy.com/u/coupdetat\\_en\\_small.pdf](http://mvdemocracy.com/u/coupdetat_en_small.pdf) (last visited 27 June 2012)
- <sup>2</sup> CoNI 'Timeline': *For your Opinion Only*, 8 June 2012, <http://www.dhivehisitee.com/executive/coni-timeline-for-your-opinion-only/> (last visited 27 June 2012)
- <sup>3</sup> The overall timeline of the events have been gathered from the Faisal & Aslam report, see note 1. It must be noted, however, that most of the events does not appear to be contested by the new Maldivian government as illustrated by the CoNI timeline, see note 2.
- <sup>4</sup> "A legacy of Authoritarianism: A dossier on the Maldivian judiciary", p.13-14. Available at [http://mvdemocracy.com/u/dossier\\_on\\_the\\_maldivian\\_judiciary.pdf](http://mvdemocracy.com/u/dossier_on_the_maldivian_judiciary.pdf) (last visited 30 June 2012)
- <sup>5</sup> Statement by Managing director Adam Shareef. On file with authors.
- <sup>6</sup> 'Maldives President Waheed Hassan sets elections for 2013', BBC News Asia, 18 April 2012, available at <http://www.bbc.co.uk/news/world-asia-17762963> (last visited 30 June 2012)
- <sup>7</sup> Daniel Bosley, 'New Government a continuation of Nasheed's: President Waheed', Minivan News, available at: <http://minivannews.com/politics/new-government-a-continuation-of-nasheeds-waheed-37294> (last visited 28 June 2012).
- <sup>8</sup> US State Department, 'Remarks by Chargé d'Affaires Valerie Fowler', April 5 2012, available at <http://srilanka.usembassy.gov/sp-5april2012.html> (last visited 1 July 2012).
- <sup>9</sup> CMAG deals with serious or persistent violations of the Harare Declaration, which lays down the Commonwealth's fundamental political values.
- <sup>10</sup> The Commonwealth Secretariat, 'Teleconference of the Commonwealth Ministerial Action Group (CMAG): Statement by the Chair', 20 June 2012, available at [http://www.thecommonwealth.org/document/181889/34293/35144/248019/200612cmagch\\_airstatement.htm](http://www.thecommonwealth.org/document/181889/34293/35144/248019/200612cmagch_airstatement.htm)
- <sup>11</sup> Milbrook Commonwealth Action Programme on the Harare Declaration 1995, available at [http://www.thecommonwealth.org/shared\\_asp\\_files/GFSR.asp?NodeID=141096](http://www.thecommonwealth.org/shared_asp_files/GFSR.asp?NodeID=141096) (last visited 28 June 2012).
- <sup>12</sup> Declaration on behalf of the EU by High Representative Catherine Ashton on the situation in Maldives, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=PESC/12/61&format=HTML&aged=0&language=EN&guiLanguage=en> (last visited on 1 July 2012)
- <sup>13</sup> International has historically solely been concerned with relations *between* States and not relations *within* States and international law has therefore barely paid attention to the democratic orders of its primary subjects. The manner in which States chose their leaders has formed a central feature of the protected 'domestic sphere' into which the international community could not intervene, see the *Tinoco* Case (Great Brit. V. Costa Rica), 1 R. Int'l Arb. Awards 369 (1923), and the classic formulations by Lasa Oppenheim in *International Law*, vol. 1 (1905), p. 403.
- <sup>14</sup> Thomas M. Franck, 'The Emerging Right to Democratic Governance', *American Journal of International Law*, Vol. 86, No. 1 (1992), p. 47.
- <sup>15</sup> See Jean d. Aspremont, 'The Rise and Fall of Democracy Governance in International Law: A Reply to Susan Marks', *The European Journal of International Law* (2011), Vol. 22, no. 2, 556.
- <sup>16</sup> *Agenda for Democratization*, Supplement to the Reports A/50/322 and A/51/512 on Democratization, 17 December 1996, para. 8 and 28.
- <sup>17</sup> *Annual Report of the Secretary-General on the Work of the Organization*, UN Doc A/52/1 (1997), para. 37
- <sup>18</sup> See here also Sean D. Murphy, 'Democratic Legitimacy and the Recognition of States and Governments', in G.H. Fox and B.R. Roth (eds.) 125-128.
- <sup>19</sup> W. Michael Reisman, 'Sovereignty and Human Rights in Contemporary International Law', *American Journal of International Law*, Vol. 84, No. 4 (1990), p. 868.
- <sup>20</sup> See reference in Franck, note 14, p. 83.
- <sup>21</sup> See for example, GA Res/A/46/L.8/Rev.1, 11 October 1991.
- <sup>22</sup> UNSCR 917, 6 May 1994.
- <sup>23</sup> See also Lois E. Fielding, 'Taking the Next Step in the Developing of New Human Rights: The Emerging Right of Humanitarian Assistance to Restore Democracy', *Duke Journal of Comparative & International Law*, Vol 5, (1994-1995), p. 338

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- <sup>24</sup> Sarah Joseph, Jenny Schultz and Melissa Castan, *The International Covenant on Civil and Political Rights*, (2nd ed.), Oxford University Press (2004), p. 666.
- <sup>25</sup> A/Res/43/157, 8 December 1988
- <sup>26</sup> The Maldives acceded to the Covenant on 19 September 2006, see: [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) (last visited 27 June 2012).
- <sup>27</sup> *The Declaration of Commonwealth Principles, 1971, Issued at the Heads of Government Meeting in Singapore*. See also the 1991 *Harare Commonwealth Declaration, issued by Heads of Government in Harare, Zimbabwe*, 20 October 1991, sec. 4.
- <sup>28</sup> Human Rights Committee, General Comment 25, December 7, 1996, para. 26.
- <sup>29</sup> Commission on Human Rights resolution 1999/57 of 27 April 1999.
- <sup>30</sup> A/Res/55/96, 28 February 2001.
- <sup>31</sup> A/Res/43/157, 8 December 1988.
- <sup>32</sup> Martin Dixon, Textbook on International Law, 6<sup>th</sup> ed., Oxford University Press (2007), p. 164. See also *Case Concerning East Timor (Portugal v Australia)* 1995, ICJ Rep 90, and *Advisory Opinion on the Construction of a Wall in Palestine* 2004, ICJ Rep, para. 88.
- <sup>33</sup> According to Article 1 (2), one of the purposes of the Charter is to 'develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples'.
- <sup>34</sup> UN Doc A/25/2625
- <sup>35</sup> Thomas M. Franck, 'The Emerging Right to Democratic Governance', *American Journal of International Law*, Vol. 86, No. 1 (1992), p. 52.
- <sup>36</sup> See also Sarah Joseph, Jenny Schultz and Melissa Castan, *The International Covenant on Civil and Political Rights*, (2nd ed.), Oxford University Press (2004), p. 148.
- <sup>37</sup> Franck, see note 14, p. 59.
- <sup>38</sup> Antonio Cassee, *Self-Determination of People*, Cambridge University Press (1995), p. 53.
- <sup>39</sup> Thomas M. Franck, The Democratic Entitlement, *University of Richmond Law Review*, 29 (1994-1995), p. 34.
- <sup>40</sup> Franck, see note 14, p. 79.
- <sup>41</sup> See Conference on Security and Co-operation in Europe, *Document of the Copenhagen meeting of the Conference on the Human Dimension*, June 29, 1990, para. 7.9.
- <sup>42</sup> See for instance, Faisal & Aslam, see note 1.
- <sup>43</sup> JJ Robinson, 'We call on the police and the army to pledge allegiance to the Vice President', Minivan News, available at: <http://minivannews.com/politics/we-call-on-the-police-and-the-army-to-pledge-allegiance-to-the-vice-president-umar-naseer-jan-31-31948> (last visited 27 June 2012)
- <sup>44</sup> Ibid, see *statement by Umar Naseer, Vice President of the Progressive Party of the Maldives*.
- <sup>45</sup> Statement given by former Minister of Housing and Environment.
- <sup>46</sup> Daniel Bosley, 'New Government a continuation of Nasheed's: President Waheed', Minivan News, available at: <http://minivannews.com/politics/new-government-a-continuation-of-nasheeds-waheed-37294> (last visited 27 June 2012).
- <sup>47</sup> Naahil Naseem, 'Fresh protests erupt after police dismantle MDP camp at Usfasgandu', Minivan News, May 30, 2012, available at <http://minivannews.com/politics/fresh-protests-erupt-after-police-dismantle-mdp-camp-at-usfasgandu-38270> (last visited 27 June 2012)
- <sup>48</sup> See Amnesty International Statement: 'Maldives: End use of excessive force against protestors', February 8, 2012, available at: <http://www.amnesty.org/en/news/maldives-end-use-excessive-force-against-protestors-2012-02-08> (last visited 27 June 2012).
- <sup>49</sup> See report by BBC journalist Andrew North, available at: <http://www.bbc.co.uk/news/world-asia-16945764> (last visited 27 June 2012).
- <sup>50</sup> Obtained from Maldivian Democracy Network. On file with author.
- <sup>51</sup> Human Rights Report compiled by Dr. Farah Faizal, the former High Commissioner of the Maldives to the UK, and Mariya Ali, former Deputy Minister of Health and Family (hereafter 'Faizal and Ali report'). Some of the findings of the report were presented at a seminar on 5 June 2012 at Asian Studies Centre, St. Antony's College, University of Oxford. Statement by Moosa Manik is found on p. 6.
- <sup>52</sup> Ibid.

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<sup>53</sup> Ibid.

<sup>54</sup> See <http://minivannews.com/politics/police-use-teargas-batons-to-subdue-demonstrators-in-addu-32614> (last visited 27 June 2012)

<sup>55</sup> See statement by Amnesty International, available at: <http://www.amnesty.org/en/for-media/press-releases/maldives-security-forces-use-violence-against-peaceful-protesters-2012-03-0>

<sup>57</sup> Naseem, 'Fresh protests erupt after police dismantle MDP camp at Usfasgandu', *Minivan News*, May 30, 2012, available at <http://minivannews.com/politics/fresh-protests-erupt-after-police-dismantle-mdp-camp-at-usfasgandu-38270> (last visited 27 June 2012).

<sup>58</sup> Among bystanders attacked was Mana Haleem, the wife a former minister in Mohamed Nasheed's cabinet. She was walking home with her female friend in Majeedee Magu Street when police stopped them and began beating them repeatedly with their batons on their arms, back and hips before taking them in a van to the police station. In a testimony to Amnesty International Mana Haleem explained: 'I asked why we were being held, but received no answer. Later, they [police] told us it was because we had not obeyed their orders. We asked them how we could have disobeyed their orders if they had not given any, but they were not interested. I have bruises on my shoulder, my back and my hip.'

<sup>59</sup> <http://minivannews.com/politics/police-deny-amnesty-international-reports-of-excessive-force-against-demonstrators-39518>.

<sup>60</sup> Zaheena Rasheed, 'Violence escalates in Malé as police clash with MDP', *Minivan News*, July 14<sup>th</sup>, 2012, available at: <http://minivannews.com/politics/violence-escalates-in-male-during-mdp-protests-over-the-weekend-40671> (last visited July 15<sup>th</sup>, 2012)

<sup>61</sup> On file with author

<sup>62</sup> One activist, who was detained for 15 days, described the judicial hearing prolonging his detention the following way: '[We] were ... taken inside the court room, 4 people at a time and made to sit in front of a plastic chair that had a telephone on it. There was no judge present. The phone was put on loud speaker where an unknown person extended [my] detention', written statement by Mohamed Saeed, Faizal and Ali report, p. 63, see note 51.

<sup>63</sup> See *inter alia* statements by MP Imthiyaz Fahmy in Faizal and Ali report, pp. 15 and 21, see note 51.

<sup>64</sup> See in general Faizal and Ali report, see note 51.

<sup>65</sup> Mohamed Saeed further reported: 'I was taken into custody and kept at Gan Police Station. The police beat me up in custody. They beat me up with their batons and their boots. They forced me to take my clothes off. I was handcuffed behind all this time. Then they dragged me outside and kept me handcuffed on the tarmac outside. It was very hot in the afternoon. They made me lie there for a long time. They poured something over me which felt as if my whole skin was burning and I was in a lot of pain. They kept me like that for over 5 hours. After that they locked me in a cell of 5 people but we only had 2 toothbrushes to share among us. The cell was in a very bad condition and it was extremely unhygienic. The police also came into my cell and dragged me out and beat me up again. They verbally abused me with very degrading language. I was very poorly by then because of the beatings I had suffered and I was in great pain. I had a splitting headache and also found it very difficult to breathe but the police refused to give me any medical treatment. I was kept in this condition for four days before I was released by the court. At no time I had been given access to my lawyer'.

<sup>66</sup> A female MDP activist has described the following episode at Dhoonidhoo Detention Center: 'They told me to remove my clothes and go into the toilet and brought me a container and told me to give urine sample. Then when I gave the sample back to them they checked it with something and told me "it is positive" [for drugs]. So I said that cannot be. I do not use drugs. So I insisted that they check it again in front of me the second time. Which they did and told me that it was negative.' Recorded statement by Yusra Hussain, Faizal and Ali, p. 37, see note 51.

<sup>67</sup> See JJ Robinson, 'UNHRC panel grills Maldives delegation on human rights commitments', *Minivan News*, July 14<sup>th</sup>, 2012, available at:

<http://minivannews.com/politics/unhrc-panel-grills-maldives-delegation-on-human-rights-commitments-40663> (last visited July 15<sup>th</sup>, 2012).

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<sup>68</sup> See reference at <http://mdp.org.mv/archives/33423> (last visited July 15th, 2012)

<sup>69</sup> See Human Rights Commission resolution 12/2, 15 July 2012, see reference at <http://mdp.org.mv/archives/33409> (last visited 15 July 2012).

<sup>70</sup> UNHRC General Comment 34, 12 September 2011, para. 2.

<sup>71</sup> See Article 19 (3) in the UN Conventional on Civil and Political Rights.

<sup>72</sup> General Comment 34, para. 25, see note 70.

<sup>73</sup> *Ibid.*, para. 35.

<sup>74</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials Adopted adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. In accordance with the UN Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly resolution 34/169 of 17 December 1979, the term 'law enforcement officials' includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

<sup>75</sup> *Ibid.*, principle 13.

<sup>76</sup> These standards are found *inter alia* in the preamble and in articles 6, 9 and 10 of the International Covenant on Civil and Political Rights and in the Universal Declaration of Human Rights

<sup>77</sup> The UN Body of Principles for the Protection of All Persons under Any Form of Detention adopted by General Assembly resolution 43/173 of 9 December 1988, explicitly state that 'no circumstance whatever may be invoked as a justification' for such acts.

<sup>78</sup> See note 74.

<sup>79</sup> Code of Conduct for Law Enforcement Officials, see note 72. According to the commentary to Article 1, the term 'law enforcement officials' includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services

<sup>80</sup> *Ibid.*, principle 5 (a)

<sup>81</sup> See note 74. Principles 4-8 state: "(4) Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result. (5) Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment. (6) Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22. (7) Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law. (8) Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

<sup>82</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by General Assembly resolution 43/173 of 9 December 1988

<sup>83</sup> Article 10 (1).

<sup>84</sup> See note 82, principle 3.

<sup>85</sup> *Ibid.*, principle 15.

<sup>86</sup> *Ibid.*, article 12.

<sup>87</sup> See note 74, principle 24.

<sup>88</sup> In 2003 the Commonwealth Expert Group on Development and Democracy stated that Commonwealth governments should commit themselves to ensuring a 'police force that responds to the law for its operations and the government for its administration' and that

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this should be ‘fully held to account.’

<sup>89</sup> See note 74, principle 25.

<sup>90</sup> Other relevant applicable treaty provisions regarding arbitrary arrest include United Nations Convention on the Elimination of All Forms of Racial Discrimination (CERD) article 5 and the United Nations Convention on the Rights of the Child article 37.

<sup>91</sup> Human Rights Committee, Communication No. 560/1993, *A. v. Australia*, Views adopted on 3 April 1997, para. 9.

<sup>92</sup> See in particular Human Rights Committee, Communication No. 305/1988, *Van Alphen v. the Netherlands*, Views adopted on 23 July 1990, para. 5: ‘The drafting history of Article 9, paragraph 1, confirms that ‘arbitrariness’ is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances.’

<sup>93</sup> Human Rights Committee, Communication No. 900/1999, *C. v. Australia*, views adopted on 28 October 2002, para. 8.

<sup>94</sup> The right to challenge the lawfulness of one’s deprivation of liberty must be effectively available, and the Committee held that there had been a violation of article 9(4) where the person deprived of liberty has been ‘effectively barred from challenging his arrest and detention’, see *inter alia* Human Rights Committee Communication No. 84/1981, *H. G. Dermit*, Views adopted on 21 October 1982, para. 10.

<sup>95</sup> See medical records and photos included in Faizal and Ali, see note 51.

<sup>96</sup> *Ibid.*

<sup>97</sup> See *inter alia* statement by Mariyam Waheedha: ‘While they dragged me, they kept pinching my upper arms and hitting my calves on both legs and sprayed pepper spray through my scarf and into my arm pits inside my dress on to the body’. Faizal and Ali, p. 41, see note 53.

<sup>98</sup> Tear gas causes severe pain, burning and irritation to the eyes, mouth, throat, lungs and skin and exposure to large quantities can cause blindness, long-term breathing problems and respiratory failure. Individuals with asthma or various types of lung conditions are especially at risk from suffering serious injuries when exposed to tear gas. A number of European countries have stopped using tear gas in riot-control situations due to these risks.

<sup>99</sup> See statement by Ahmed Waseem in Faizal and Ali, p. 61, see note 51.

<sup>100</sup> Reports also indicate that violent gangs with ties to the government have assaulted several MDP supporters. A particular serious incident took place on June 2<sup>nd</sup>, 2012, when a human rights activist critical of the growing religious extremism in the Maldives had his throat slit in an attack outside his home.

<sup>101</sup> In its General Comment no. 20 on Article 7 of the ICCPR, the Human Rights Committee has stated that ‘[t]he prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim.’ Those being arrested or detained by the authorities are often frightened, confused and vulnerable. The use of handcuffs, especially in public, can be humiliating and intimidating and may exacerbate their already fragile mental state. It is likely that this will frequently result in mental suffering, in violation of Article 7 of the ICCPR as defined by the HRC. Also the Standard Minimum Rules for the Treatment of Prisoners, adopted by the United Nations in 1955, addresses restraints. According to the Rules, instruments of restraints can never be used for punitive purposes, or for longer than is strictly necessary. Although the Rules do allow the use of restraints during transfer to prevent escape, it is clear that the use of handcuffs to humiliate, intimidate and punish is unacceptable and contrary to international law.

<sup>102</sup> A female MDP activist has described the following episode at Dhoonidhoo Detention Center: ‘They told me to remove my clothes and go into the toilet and brought me a container and told me to give urine sample. Then when I gave the sample back to them they checked it with something and told me ‘it is positive’ [for drugs]. So I said that cannot be. I do not use drugs. So I insisted that they check it again in front of me the second time. Which they did and told me that it was negative”, recorded statement by Yusra Hussain, Faizal and Ali, p. 37, see note 53.

<sup>103</sup> See <http://minivannews.com/society/cabinet-decision-will-increase-police-use-of-non-lethal-weapons-including-tasers-18037> (last visited 27 June 2012).

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<sup>104</sup> The Maldivian Police has publically stated that it has received very few complaints about alleged misconduct and brutality by police officers, See <http://minivannews.com/politics/police-deny-amnesty-international-reports-of-excessive-force-against-demonstrators-39518> (last visited 27 June 2012). The statement is somewhat surprising given the large number of people arrested and allegedly ill-treated. If true, a low number of complaints may be explained by the lack of faith among the Maldivian people in the investigatory and disciplinary system in the Maldives and the alleged reluctance by the relevant authorities in the security forces to initiate and process complaints filed by anti-government protesters.

<sup>105</sup> Agenda for Democratization, para. 21, see note 16.

<sup>106</sup> See also Thomas M. Franck, 'Legitimacy and the democratic entitlement', in Gregory H. Fox & Brad R. Roth (eds.), *Democratic Governance and International Law*, Cambridge University Press (2000), p. 25,

<sup>107</sup> Report of the Secretary-General: *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa*, (1998), para. 77-78.

<sup>108</sup> Navi Pillay, United Nations High Commissioner for Human Rights, November 24<sup>th</sup>, 2011.