



HELIOS LIFE ASSOCIATION

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Maldives: Sudden Reversals in the Implementation of ICCPR Commitments

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The International Covenant on Civil and Political Rights (ICCPR) entered into force in the Maldives on 18th December 2006. The new Constitution adopted on 8 August 2008, paved the way for the implementation of most of the rights guaranteed in the Covenant. The major exception was the reinforcement of the rejection of Article 18, and the impact of that rejection on the implementation of other articles such as 2, 3, 24, 25 and 26. The fall of the old autocratic regime following the first free and fair elections in the Maldives in October 2008, provided a further boost in the observation of the rights protected under the Covenant. An example of this was the agreement during the Maldives' Universal Periodic Review (UPR) to address a number of concerns relating to non-compliance with Article 18. The UPR also highlighted the urgency of addressing the deficits under articles 7, 14, 24, 25, 26. A particular priority was addressing a number of concerns relating to the competence, independence and impartiality of the judiciary.

Growing radicalization and rejection of international human rights standards

The growing political and institutional influence of radical Islamic groups has undermined the Maldives' progress towards the realization of the rights guaranteed under the Covenant. This resulted, in September 2011, in the promulgation of secondary legislation under the Law on Religious Unity, which seriously eroded the rights protected under Article 19. This growing radicalization resulted in the creation of a coalition of political parties in December, called the 23rd December Coalition for the Defence of Islam¹. As well as extremist religious elements, the 23rd December Coalition comprised of a range of political groups and individuals linked to the country's former autocratic leader, Mr. Maumoon Abdul Gayoom. The Coalition had been formed in direct opposition to the observance of international human rights law, particularly to the undertaking given at the UPR process that a national debate will be held on ending forms of punishment not consistent with Article 7². When the UN High Commissioner for Human Rights visited the Maldives in late 2011 and called on the Maldives to look at the issues of public flogging, especially of women, and freedom of religion, she was publicly denounced by the Coalition.

The Coalition proceeded to carry out a coup d'etat on 7th February, which was executed by elements of the army and police loyal to Mr. Gayoom, his close allies and former members of his government, and other parts of the 23rd December Coalition, following a call by the then Vice-President, Dr. Mohamed Waheed, to "defend Islam and the Constitution". The coup saw elements of the police and army threaten the Maldives' first democratically-elected President, Mr. Mohamed Nasheed, his family and colleagues from the ruling Maldives Democratic Party (MDP), with physical harm or worse unless he resign by a certain time.

After President Nasheed was forced to write his resignation letter with rogue army and police leaders standing over him, and after the letter was then hand-delivered by those same rogue leaders to the Speaker of the Parliament, the Vice-President, Dr. Waheed was sworn-in as President. Shortly before 7th February, Dr. Waheed had met representatives of the Coalition at his

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▫ <http://minivannews.com/politics/religious-ngos-to-hold-protest-to-protect-islam-on-december-23-28946>

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▫ <http://www.miadhu.com/2011/11/local-news/6-political-parties-130-ngos-will-participate-in-dec-23-mass-demonstrations-civil-society-coalition/>

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residence and promised that he would assume the presidency should anything happen to cause the Office to be vacated. After the meeting, the Coalition swore allegiance to him.³ The coup, which has handed over effective control of the State to elements loyal to the deposed 30-year dictatorship, has abruptly stopped and reversed progress towards strengthening human rights safeguards in the Maldives.⁴

This document highlights the alarming increase in the violation of rights protected in the Covenant since the change of power and responds, primarily, to the list of issues identified by the HRC at its 102nd session in July 20 11(CCPR/C/MDV/Q/1).

Article 2

The December Coalition has formed a government of unity and only one major political party, the MDP, which was displaced from Office, is in opposition. The Coalition exercises undue control over the judiciary, controls the parliament and occupies the executive. It also asserts undue influence over over-sight bodies such as the Human Rights Commission, Police Integrity Commission and the Anti-Corruption Commission. Consequently, the opposition and its supporters find themselves victimized without proper recourse to redress.

This problem is exacerbated by the fact that the *coup d'etat* is being opposed by peaceful protests throughout the country - which the police are seeking to suppress through a disproportionate use of force.

There has been a significant rise in political violence since the *coup d'etat*. Law enforcement agencies stand accused of encouraging and turning a blind-eye to alleged crimes by certain gangs associated with elements within the Coalition. The perpetrators of these violent crimes remain at large whilst the courts are filled with political protestors who face criminal charges.⁵

On June 4th 2012, at the All Party Talks demanded by the international community to resolve the political crisis, the December Coalition (now Governing Coalition) formally proposed a set of thirty points as preconditions for any further dialogue – including on the holding of early elections (as requested by the EU and the Commonwealth) and on the restoration of democracy. While some of the points refer to legitimate public order concerns, there were also a number of issues in which the coalition were seeking to negate fundamental rights of the people. In

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▫ <http://minivannews.com/politics/comment-operation-haram-to-halal-the-islamist-role-in-replacing-nasheed-with-waheed-32294>

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▫ <http://www.nytimes.com/2012/02/08/opinion/in-the-maldives-strangled-democracy.html>

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▫ <http://www.ifes.org/Content/Publications/Articles/2012/Maldives-Political-Violence-Watch.aspx>

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particular Government demands sought to strictly curtail the rights to freedom of assembly, to freedom of association and to freedom of expression. If a political compromise is reached on these terms, there would be a serious erosion of fundamental human rights.⁶

Article 6

The unofficial moratorium can no longer be regarded as a security against the enforcement of capital punishment. In recent cases the judiciary has recognized the right of the next of kin to demand enforcement of capital punishment as retribution for varying degrees of murder and manslaughter. This has been so even when the alleged offenders were minors.⁷ The Penal Code continues to recognize capital punishment as a legitimate punitive measure for certain crimes of general and specific intent.

Right to life is further endangered by increasing demands for the enforcement of capital punishment and calls for jihad against “enemies of Islam and the State” by the public, political figures and members in the Executive, including President Waheed himself, such as on 24 February.⁸ It has become routine, once again, for the President and senior members of the Government to equate dissent with terrorism, as in numerous public speeches made by the president.⁹

There has also been a spike in the number of violent crimes endangering life, including several deaths, since February 2012.

Article 7 and 10

Allegations of torture and cruel, inhuman or degrading treatment have drastically increased since February. These include but are not limited to:-

- i. Mistreatment of female protestors. Police used high power water cannon and disproportionate force in dispersing and arresting protestors in March 2012 when they attempted to deliver a petition to the President calling for the restoration of democracy. Many who were arrested subsequently reported being sexually molested and being subjected to other cruel and degrading punishment. They include Ms. Yasra

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▫ <http://minivannews.com/politics/ruling-coalition-demand-mdp-stop-use-of-black-magic-sexual-and-erotic-tools-not-walk-in-groups-of-more-than-10-38514>

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▫ <http://www.haveeru.com.mv/news/42477>

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▫ <http://minivannews.com/society/be-courageous-today-you-are-all-mujaheddin-president-dr-waheed-32597>

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▫ [http://minivannews.com/politics/mdp-terrorists-says-president-waheed-we-will-not-step-back-in-giving-them-their-rightful-punishment"-36855](http://minivannews.com/politics/mdp-terrorists-says-president-waheed-we-will-not-step-back-in-giving-them-their-rightful-punishment)

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Hussein (age 22), who, on 19 March 2012, was stripped naked, forced to do squats on the floor and had her breasts groped by the police. In addition, Ms. Aishath Aniya (age 47), Ms. Mariyam Waheeda (age 44) and Ms. Aishath Muna (age 48) are three among several other political detainees who alleged in testimonies to Amnesty International being stripped naked and subjected to various forms of sexual molestation and torture under police custody.¹⁰

- ii. Torture of peaceful protestors in police custody. Several hundred protestors have been arrested since February and many of them report torture, cruel and degrading punishment during the time of arrest and subsequent time in detention. They include, *inter alia*, Mohamed Saeed who was detained on 9th March 2012. He was pepper-sprayed directly into his eyes from close range, repeatedly beaten on the back with a baton, and electrocuted with a taser gun on numerous occasions. He was then made to stand on a burnt safe and say: "I am the biggest thief in Addu City". Many detainees report similar inhumane and degrading treatment while in custody. Others include Moosa Maniku and Ibrahim Rasheed, both of who are MDP Members of Parliament (MPs) and who were beaten so severely that they had to be hospitalized following extreme police brutality on 8th February.

There have been strong assertions by the judiciary, MPs and NGOs that any discussion of removal of flogging as a penalty will be unconstitutional. These include statements made by Cabinet Ministers, political parties and NGOs that there cannot be even a discussion on the removal of flogging as a form of punishment. On 25 November 2011 the Chief Justice himself publicly rejected a call to implement the commitment given during UPR with regard to ending flogging as a form of punishment.¹¹

Article 9

On 16th January the Maldives National Defense Force detained the Chief Judge of the Criminal Court, Mr. Abdullah Mohamed. He was detained without a warrant and was kept in detention without charge. He was kept in detention for 22 days. HRCM and the police have investigated this detention and the case files are with the Prosecutor-General.

Over 400 peaceful protestors have been arbitrarily detained since February 2012. There is serious concern that nearly everyone who has been charged is facing fabricated charges. A pattern has developed whereby people are arrested without any explanation being given as to the grounds of their detention. They are then asked to provide a urine sample and accused of having taken drugs or drunk alcohol. They are also often presented with a pre-prepared confession and asked to sign it. All of this takes place while the detainees are denied access to a lawyer. Then,

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▫ <http://www.amnesty.org/en/news/maldives-must-investigate-sexual-harassment-detained-women-protesters-2012-03-28>

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▫ <http://minivannews.com/society/islamic-minister-mps-ppm-and-religious-groups-condemn-human-rights-commissioner-28687>

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after being kept in overcrowded and dirty cells, and (in the case of women) repeatedly asked to strip and undergo degraded body searches in the presence of male officers, they are brought before the courts where previously unheard allegations are raised. Or they are released shortly before the 24-hour deadline before which they must be brought before a court.

The lack of independence and professionalism of judges continues to be a serious obstacle to the implementation of the national obligations under the Covenant. This has been documented in:-

- i. A report by the UN Special Rapporteur on Independence of Judges and Lawyers, Leandro Despouy.
- ii. A study on the Maldivian Judiciary by the International Commission of Jurists.

The Judicial Service Commission (JSC) has not been effective in ensuring either that the judges meet the professional requirement for their appointment or that judicial misconduct is properly investigated. In July 2010, the JSC overlooked allegations of misconduct, including accusations of pedophilia and misogyny, before they appointed a number of judges for permanent tenure. In addition, in the case of Judge Abdullah Mohamed, who was found to have breached the code of conduct for judges, the commission failed to take any disciplinary action. Allegations of perversion of justice through bribery, corruption and partisanship continue to undermine public trust in the judiciary.¹²

The Supreme Court of Maldives consists of seven judges. Six of whom, including the chief justice, are only trained in sharia law. They do not have a well-grounded understanding of international human rights law. They have articulated positions that are contrary to the fundamental rights guaranteed under the ICCPR.¹³

Article 18, 25 and 26

In June 2010, the entire Cabinet resigned over allegations that Members of Parliament were being bribed by opposition parties to impeach Ministers who were advocating giving a choice to students at higher secondary-level to opt-out of the study of Islam and Divehi language. The Parliament subsequently refused to endorse those ministers who had advocated these positions. Consequently, Islam remains an obligatory subject for all students throughout the school career.

There is strong opposition throughout the State to the provision contained in article 18.¹⁴ Increasingly strident positions taken by political parties and state actors demonstrate a high-

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▫ <http://minivannews.com/politics/allegations-against-chief-judge-first-sent-to-gayoom-in-2005-31241>

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▫ <http://minivannews.com/society/islamic-minister-mps-ppm-and-religious-groups-condemn-human-rights-commissioner-28687>

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▫ <http://minivannews.com/society/calls-for-religious-tolerance-shocked-the-nation-chief-justice-faiz-30174>

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degree of opposition towards freedom of conscience and religion. Moreover, the State has failed to provide protection to those who express views different to mainstream religious views. Furthermore, there has been an increase in incitement of religious hatred including anti-Semitism.

The Law of Religious Unity 1993 has been further reinforced by subsequent secondary legislation, promulgated in September 2011, that further limits freedom of expression in relation to religious matters.¹⁵

In December 2011, following a peaceful, silent protest calling for religious freedom in which the leading protestor, Hilath Rasheed, was attacked and injured, the police arrested him. Nobody was charged for the assault on the protestors¹⁶. In June 2012, he was brutally stabbed outside his home. Most onlookers were hesitant to help him¹⁷ and the police have made no arrests regarding this incident.¹⁸

In January 2012 one of the political parties in the December Coalition published a pamphlet inciting religious hatred towards the incumbent president and his advisors, accusing them of carrying out “a devious plot to introduce Christianity and Judaism” to the Maldives.¹⁹ The authors of this pamphlet today occupy senior positions in the government including Special Advisor to the President (Dr. Hassan Saeed), Minister of Home Affairs (Dr. Mohamed Jameel) and, ironically, Ambassador for Human Rights (Ahmed Ibrahim Didi).

On 7th February 2012, a group of masked men broke into the National Museum and destroyed the entire collection of the artifacts from the pre-Islamic period exhibiting the alarming increase in religious intolerance and incitement of religious hatred towards those individuals and institutions which advocate religious tolerance in society.

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▫ <http://minivannews.com/society/new-religious-unity-regulations-crack-down-on-extremist-preaching-in-maldives-25734>

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▫ <http://minivannews.com/society/protesters-calling-for-religious-tolerance-attacked-with-stones-threatened-with-death-29260>

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▫ <http://minivannews.com/society/prominent-blogger-hilath-rasheed-in-critical-condition-after-stabbing-38564>

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▫ <http://minivannews.com/society/two-arrested-in-connection-with-the-stabbing-of-bangladeshi-man-38858>

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▫ <http://www.jihadwatch.org/2012/02/maldives-pro-sharia-islamic-supremacist-party-topples-govt-with-pamphlet-accusing-it-of-teaching-goo.html>

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Gender and religious restrictions limit access to participation in public affairs. There is not a single female judge in the higher appellate courts and eligibility to public Office continues to be limited only to those who profess a particular sect of Islam. There is absolutely no space for any public discussion on changing these provisions.

In January 2012, efforts by the police to investigate incitement to religious hatred were blocked by the Chief Judge of the Criminal Court Abdulla Mohamed, triggering a sequence of events that resulted in the displacement of the elected government by the members of the December Coalition in a *coup d'etat*.

The *coup* has reversed the electoral outcome of the Maldives' first-ever free and fair elections in November 2008 in which voters chose to cast aside a 30 year-old dictatorship, and elected a new Government committed to a specific election manifesto. The dismantling of this Government by non-democratic means has undermined the rights guaranteed under Article 25 ICCPR for citizens to freely participate in public affairs through their chosen representatives. Furthermore, in the name of a so-called 'Government of Unity,' the new President has restored elements of the former dictatorship, who have brutally suppressed and tortured peaceful protesters and who continue to violate numerous rights guaranteed under the Covenant.

Articles 19 and 21, and 20, para 2.

After a period of relative improvement in the right to freedom of expression, there has been serious retraction in this regard in recent months. Subsequent to the coup, there has been harassment of journalists and media outlets that criticize the new Government. This has led the UN Special Rapporteur on the right to freedom of expression to place the Maldives on his watch-list of countries where there has been a rise in harassment and attacks against journalists.

For example, RaajjeTV, which is the only TV station today that criticizes Government policies, has faced numerous forms of harassment that has reduced citizens' accessibility to this service. The Minister of Defense and the Chief of Defense Force, had summoned executives of RaajjeTV in March and expressed concern to them about their coverage of civil disturbances.

On 7th February 2012, the day of the *coup d'etat*, the police and the army seized the state radio and television broadcasting station, MNBC. They arrested and dismissed employees of the station, and took over control of broadcasting. There had been no judicial warrants for such actions and no one has been charged.

Since February, the police have assaulted journalists covering anti-government protests on numerous occasions. Artists and musicians who expressed opposition to the *coup d'etat* have been threatened by law enforcement authorities and told not to produce material that criticizes the Government.

The police have declared that they will prosecute those who use social media websites to express dissent to the current regime.

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The President, speaking on 24 February 2012, branded those who “defame the Government” as “traitors”. His Press Secretary, Mr. Abbas Adil Riza, has condemned on several occasions those who have called for international sanctions on regime leaders. The Political Advisor to the President has accused critics of the Government of being terrorists.

On 10 June 2012, the Press Secretary described the publication of a report by two former ministers of their investigative findings into the *coup d'etat* as an “act of terrorism”.

In May 2012, family members of the editor of the internet news magazine, *New Dhivehi Observer*, were arrested and tortured in order to force the closure of the website.

Government sponsored cyber-attacks on critics have increased since February 2012. These include *inter alia* an attack on the main frame of the *New Dhivehi Observer* website.

In March, the Ministry of Education issued a compulsory directive to all the schools to arbitrarily change the textbooks in schools to teach students that the transfer of power in February was legitimate, while the government itself had conceded to international pressure and formed a Commission of Inquiry to determine the legality of the events that caused the transfer of power. The Commission is yet to complete its work. The directive undermines the right to information and challenges freedom of opinion.

The right to freedom of assembly has deteriorated sharply since February 2012. On three occasions from 6th to 7th February, the police attacked and ransacked “Haruge” - the main protest camp of MDP, causing personal injury and extensive damage to property. No one in the police have faced any censure for having violated the constitutional rights to freedom of association and assembly.

In March 2012, the police and the army attacked and dismantled a public rallying compound, “Raalhugandu Area”, where anti-government protestors had been gathering for peaceful protests for several nights. This action was carried out without proper judicial warrant and the courts have refused to entertain complaints with regard to this action.

In May 2012, the police, acting on the orders of the Home Minister, dismantled another compound, “Usfasgandu Area”, used as a public rallying point for peaceful assembly. The initial search of the premises was carried with a search warrant justified on spurious allegations of individual misconduct by persons attending rallies and on the grounds that a red rooster with sorcery markings was thrown over a police checkpoint in another part of town. The allegation was that acts of sorcery were being conducted in the premises.²⁰ Despite explicit court orders to desist from dismantling the compound, the Police proceeded to destroy the compound. No one has been held accountable for this flagrant violation of constitutionally guaranteed rights of freedom of association and assembly.

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²⁰ <http://minivannews.com/politics/condoms-and-black-magic-police-raid-usfasgandu-38178>

There is systemic targeting of persons who join peaceful protests and this has included the detention of over 400 persons protesting against police brutality and the *coup d'etat*. Scores of detainees have been charged and many have been sentenced hastily in a concerted attempt by the Government to suppress public assemblies.

Incitement of religious hatred has increased since November 2011, starting with the public protests over the erection of cultural monuments from South Asian countries during the SAARC Summit. On 12 June 2012, a pro-government television station, DhiTV alleged to have received documentary evidence that MDP had conspired with a British national to blow up the main Islamic Centre in the country and replace it with a cathedral. Despite a refutation of this allegation when it first surfaced three years ago, the DhiTV story was relayed by other pro-government media outlets. It has become frequent for police to find cases of beer, packets of condoms or leaflets on sorcery in sites associated with MDP, while parties in the governing coalition incite the hatred of the Muslim population by vilifying the opposition as un-Islamic or anti-Islamic.

There is no protection in law against incitement of religious hatred or hatred towards other religions. Nor is there any remedy in law and practice against victimization for advocacy of rights under Article 18.

Just after the coup, two MDP (the party of the ousted President) MPs, Ismail Hameed²¹ and Mohamed Musthafa²², had court cases expedited against them, were found guilty and forfeited their seats in Parliament. At the same time, the case against the deputy speaker of parliament, Ahmed Nazim²³, and Ahmed Saleem MP²⁴, who are from parties in the December Coalition, had cases against them dismissed. The facts in these cases were of a similar nature and the legal reasoning behind the differing outcomes is not clear. This gave rise to serious public concern about the impartiality of the judiciary and suggests that elements of the executive and judiciary are colluding to alter the composition of the parliament in favour of the new Government.

The courts have renewed their obstruction of public redress against alleged offences committed by persons closely associated with the former dictator, Mr. Gayoom. These include *inter alia*, Abdullah Algeen Abdul Gayoom's case, in which the completion of the case has been unduly delayed by restarting hearings through the allocation of a new judge to the case.

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▫ <http://minivannews.com/politics/independent-mp-ismail-abdul-hameed-found-guilty-of-corruption-banished-24852>

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▫ http://www.haveeru.com.mv/umar_naseer/40382

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▫ <http://minivannews.com/politics/criminal-court-dismisses-corruption-case-against-deputy-speaker-nazim-32370>

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▫ <http://minivannews.com/politics/criminal-court-acquits-mp-%E2%80%98red-wave%E2%80%99-saleem-32637>

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