BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

REPORT ON BAR HUMAN RIGHTS COMMITTEE HEARING OBSERVATION:

THE MALDIVES

A report on hearing in the case of former President Mohamed Nasheed, and meetings with lawyers, politicians, and journalists.

3-6 November 2012

ACKNOWLEDGMENTS

The observation and reporting was undertaken by Stephen Cragg on behalf of the Bar Human Rights Committee of England and Wales. Responsibility for the content of this report, and the views expressed within, lies solely with the Bar Human Rights Committee.

I was enormously assisted during my visit by the Maldivian Democracy Network, who facilitated my meeting with a variety of people, provided me with a large amount of very useful background material, and ensured my access to the High Court to observe the hearing on 4 November, as well as providing me with translation of the main points of that hearing.

THE BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES

The Bar Human Rights Committee of England and Wales ("BHRC") is the international human rights arm of the Bar of England and Wales. It is an independent body concerned with protecting the rights of advocates, judges and human rights defenders around the world. The Committee is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial.

The remit of BHRC extends to all countries of the world, apart from its own jurisdiction of England & Wales. This reflects the Committee's need to maintain its role as an independent but legally qualified observer, critic and advisor, with internationally accepted rule of law principles at the heart of its agenda.

SUMMARY

This trial observation concerned the trial of the former President of the Maldives, Mr Mohamed Nasheed.

Mr Nasheed was charged with abusing his office while in power by ordering the arrest and detention of the head of the criminal court in Malé, the capital of the Maldives.

There were concerns as to whether Mr Nasheed would receive a fair trial, fuelled by the disputed circumstances whereby he lost power in February 2012, and the subsequent reported deterioration in the human rights situation in the Maldives.

There are also concerns that a major motivation for the charges brought against him is to prevent him running for president in the 2013 elections.
In fact, the trial did not commence as planned, because of a preliminary hearing in the Maldives High Court on 4 November 2012 (which I attended)

whereby Mr Nasheed's legal team challenged the jurisdiction of the criminal court due to try him. The High Court adjourned the criminal trial pending the outcome of its inquiry into this issue.

I was able to use my time in the Maldives to talk to politicians, journalists, lawyers, activisists, Mr Nasheed himself, and the prosecutor general. Requests to meet the Chief Justice of the Supreme Court and the Attorney-General were not responded to.

HISTORICAL CONTEXT – THE MALDIVES BEFORE 2008

Until 2008, and the introduction of a new constitution (see below) the Republic of Maldives was governed by Ibrahim Nasir, from 1968 to 1978, and then by President Maumoon Abdul Gayoom from 1978 to 2008. The regimes were both authoritarian and anti-democratic with reports of widespread human rights violations,[1] including arbitrary arrests, detention and torture of those who opposed the regime. Mr Nasheed himself was detained and tortured on a number of occasions and in 1991 was an Amnesty International Prisoner of Conscience.

A reform process of sorts was commenced by President Gayoom after a young prisoner Evan Naseem was beaten to death in prison in September 2003. The following riots and unrest led to the setting up of the Maldivian Democratic Party (MDP) in opposition to the regime.

In August 2004, following the arrest of 200 protestors attending a mass-rally in the capital, the Maldivian Detainee Network (MDN – later Maldivian Democracy Network) was set up to collect testimonies of prisoners and to inform them of their rights. It was the MDN which facilitated my trip in the capital of Male in November 2012.

[1] See for example: "This is what I wanted to tell you: Addressing the legacy of torture in the Maldives" June 2012

The recent report of the FIDH[2] summarises progress thereafter

> In 2004, a special assembly composed of the Majlis (Parliament) and cabinet ministers, was created to reform the 1998 constitution. In 2005, political parties were allowed; then in 2006, the Maldives ratified the two international human rights covenants. Independent institutions were also created in response to internal and external pressure. While some of these were created from 2003, they were further strengthened with the adoption of the 2008 Constitution, which included a chapter on transitional arrangements allowing for the creation of independent bodies.
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> However, President Gayoom appointed people perceived as loyal to him at their head. The citizens of Maldives decided to continue with the presidential system by public referendum in 2007, during the drafting of the new constitution. The President was to be constitutionally elected by universal suffrage for a 5-year mandate, only renewable once. With the adoption of a multi-party system in 2005, six political parties were able to contest in the 2008 presidential elections... The peaceful transition brought by transparent and fair elections was a key landmark of the reform process. MDP leader Mohamed Nasheed... became the first democratically elected president of the Maldives for a 5-year mandate, with the support of a coalition of political parties to oust former President Gayoom from power.

FROM 2008 TO FEBRUARY 2012 – PRESIDENT NASHEED IN POWER AND THE REFORM OF THE JUDICIARY

In power, Nasheed became globally recognised through his high profile climate change policy work on behalf of the Maldives. No part of the country is more than 2.4 metres above sea-level, and he declared an intention for it to be the first carbon neutral country in the world. Nasheed, educated in the UK, was described by David Cameron as "my new best friend" in an interview in November 2011.

The Maldives has now acceded to numerous human rights instruments. These include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the UN Convention against Torture, the Optional Protocol to the UN Convention against Torture, the Optional Protocol to the International Covenant on Civil

[2] FIDH "From sunrise to sunset- Maldives backtracking on democracy" - 2012

and Political Rights, and the Optional Protocol to the Convention on the Elimination of all forms of Discrimination Against Women. The Maldives has also acceded to the Convention on the Rights of the Child and the Convention on the Elimination of all forms of Discrimination Against Women.

But although popular abroad, in the Maldives things were more difficult for President Nasheed. A full range of fundamental rights was promoted, and human rights abuses reduced drastically. But as the FIDH says:-

> "... there was also a substantial lack of progress in some fields. Most importantly, Mohamed Nasheed did not take any steps to investigate human rights abuses that occurred prior to 2008, thereby creating a culture of impunity for perpetrators of past human rights violations.... A number of important legislations, including the Penal Code, the Criminal Procedure Code, the Civil Procedure Code, the Evidence Act, and the legislation on the right to peaceful assembly [also]... remained pending.

Although President Nasheed was able to bring in a number of social welfare reforms, one particularly intractable problem was that of judicial reform. Hundreds of judges hold jobs for life in the Maldives. Many have no legal training and many are badly educated. Many have little work to do. Reform of the judiciary was seen as such an important task that it was included in the new 2008 Constitution, which also established an independent judiciary for the first time in the Maldives.

Under the 1998 constitution, the President was the highest authority of the judiciary. In the 2008 constitution, the judiciary has been given a more significant role. Strengthening the judiciary was seen as one of the main planks of a successful reform agenda and for establishing a secure democracy. Thus under Article 141 (c) of the 2008 constitution it was stated that "No officials performing public functions, or any other persons, shall interfere with and influence the functions of the courts". Article 142 establishes the independence and impartiality of the judiciary and reads:

> "The Judges are independent, and subject only to the Constitution and the law. When deciding matters on which the Constitution or the law is silent, Judges must consider Islamic Sharia. In the performance of their judicial functions, Judges must apply the Constitution and the law impartially and without fear, favour or prejudice".

A Judicial Services Commission (JSC) was set up by the constitution with the aim of introducing new standards for the judiciary which each judge would have to meet before having his or her post renewed. Article 149 sets out the required qualifications for judges and reads as follows:-

> 149. (a) A person appointed as a Judge in accordance with law, must possess the educational qualifications, experience and recognized competence necessary to discharge the duties and responsibilities of a Judge, and must be of high moral character.
> (b) In addition to the qualifications specified in article (a), a Judge shall possess the following qualifications:-
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> 1. be a Muslim and a follower of a Sunni school of Islam; 2. be twenty-five years of age; 3. has not been convicted of an offence for which a hadd is prescribed in Islam, criminal breach of trust, or bribery; 4. be of sound mind.
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> (c) A person appointed to be a Judge of the Supreme Court, shall be at least thirty years of age; possess at least seven years experience as a Judge or practicing lawyer or both as a Judge and a practicing lawyer, and must be educated in Islamic Shari'ah or law.
> (d) The People's Majlis shall pass a statute relating to Judges

According to Article 285 of the constitution, the JSC was to appoint all judges before the end of the interim period on 7 August 2010, during which time a Judges Act reflecting the constitutional changes was to be enacted by the Majlis to allow for the appointment of judges. However, the JSC failed to bring in any standards in the two years allowed and in August 2010 almost all judges, good and bad, were re-instated in post at that point amidst much controversy. A report by the International Commission of Jurists (ICJ) in February 2011 expressed concern about the failure of the JSC "to fill its

constitutional mandate of proper vetting and reappointing the judges".[3] The report states that:-

> ...the ICJ was troubled to learn about apparent breaches of the separation of powers between the executive, legislative and judicial branches from May to August 2010, as the two-year constitutional period for transitional arrangements ended on 7 August 2010. There was grave concern about reported threats to the judiciary...
> The JSC...was unable to carry out its functions in a sufficiently transparent, timely, and impartial manner. To date, JSC decision-making has been perceived as being inappropriately influenced by a polarized political environment....
> In order to develop a strong and independent legal system, judges and magistrates must be provided with the institutional and individual support to build public confidence in the judiciary. ...Accountability must be manifest both at the institutional level, in terms of court administration and access to justice, and at the individual level. This enables judges to decide cases without fear or favour and that they strictly apply the law to the facts before them.

The JSC (made up of politicians, lawyers and judges) has also been criticised as ineffective in its other role of overseeing complaints about judges. Complaints about the worst judges built up and were not investigated. A large number of complaints were made about the head of the criminal court in Malé, Judge Abdulla Mohammed. A local newspaper quoted the then Home Minister as accusing the "judge of "deliberately" holding up cases involving opposition figures, barring media from corruption trials, ordering the release of suspects detained for serious crimes "without a single hearing", and maintaining "suspicious ties" with family members of convicts sentenced for dangerous crimes". A report in the local Minivan news on 19 January 2012 stated that it was alleged that:-

> Judge Mohamed has been implicated in 14 cases of obstruction of police duty... Actions include ordering unlawful investigations, withholding warrants for up to four days, limiting the issuance of warrants to himself exclusively at times, disregarding decisions of higher courts, strategically delaying cases involving opposition members, and barring media from corruption trials...

[3] "Maldives: Securing an Independent Judiciary in a time of transition- International Commission of Jurists", February 2011.

I was told that the JSC had upheld one complaint against the Judge Abdulla, but the judge responded by obtaining a civil court injunction against the JSC to prevent any action being taken.

Frustrated by an inability to remove allegedly bad judges, President Nasheed (or one of his ministers, it is still not entirely clear) ordered the detention of Judge Abdulla on 16 January 2012. He was taken to an island and kept there for almost three weeks, despite the protests of lawyers and judges. It does not seem that he was badly treated, and the government emphasised the lack of other effective powers to justify its actions. However, the Supreme Court issued an order for his release on 17 January 2012 and stated on its website that:-

> The court order called upon the Maldives National Defense Force for the immediate release of Criminal Court's Chief Judge Abdullah Mohamed as he was arrested not in conformity with the laws and regulations, and the acts of MNDF was outside its mandatory power.

The detention of the judge brought about protests and, in February 2012, President Nasheed lost power in controversial circumstances. During a particular period of civil unrest on 7 February 2012 President Nasheed signed a document resigning his office. He later claimed he had been forced to do so, and that he had been removed in what was effectively a coup. Within hours the vice-president Dr Waheed had been sworn in as the new president and many of the Gayoom regime supporters have returned as ministers. Mohamed Waheed, took on the responsibilities of President, which the MDP immediately labelled as a coup. President Waheed rejected international calls for early elections saying it was neither practical nor constitutional.

FEBRUARY 2012 UNTIL DATE OF THE TRIAL

Maldivians have been bitterly divided as to whether the transfer of power was legitimate or whether Mr Nasheed had been a victim of undemocratic

forces. Mr Nasheed's biographer, Mark Seddon described it as a "violent coup organised by the Gayoom clan in an unholy alliance of tourist resort owners and hard line Islamists". The new president established a Commonwealth-backed Commission of National Inquiry (CONI) to "explore the facts, circumstances and causes of the events of 7th February 2012 that resulted in the transfer of power in the Maldives".

The Commission's report was made public on 30 August, 2012 and concluded that Mr Nasheed had voluntarily ceded power. The CONI report, though, has itself been heavily criticised for accepting the present government's version of events without criticism, and not giving sufficient weight to the realities facing Mr Nasheed.[4]

The coalition government of Mohamed Waheed has been accused of a wide range of human rights violations, from violent repression of street protests, arbitrary arrests, sexual harassment of female protestors, torture and harassment of pro-opposition media, to legal and physical harassment of members of the opposition. In July this year, the UN Human Rights Committee held a review into the human rights situation in the Maldives and concluded that "Radical Changes Are Needed".

Three aspects particularly concerned the Committee. These were the precedence given Islam in the Maldives, the prevalence of torture and the state of the judiciary. The Committee commented that:-

> The State's firm and continued reservation to the Covenant's Article 18, the freedom of religion and belief, implicates a host of intertwining social, political, and cultural issues. The Committee made clear to the delegation that these issues will not be resolved until the State agrees to withdraw this reservation. The Committee also urged the delegation to understand that allowing the Islamic tenets of their Constitution to definitively supersede the human rights standards enshrined in the Covenant will mean a continued lack of protection for the human rights of the people of Maldives.

[4] See for example "A legal review of the Report of the Commission of National Inquiry [CONI] Maldives" produced in September 2012 by the former Attorney-General of Sri Lanka and others.

> The Committee stated that incidents of torture in the Maldives appear both systematic and systemic. At one point, it confronted the State delegation with documented, detailed testimonies of victims of torture in the Maldives. The Committee expressed grave concern about the low number of these cases that have undergone investigation, and urged the delegation to set up an independent Commission of Inquiry to conduct criminal investigations and ensure compensation for all victims of torture.
>
> The Committee is deeply concerned about the state of the judiciary in the Maldives. The State has admitted that this body's independence is seriously compromised. The Committee has said the judiciary is desperately in need of more serious training, and higher standards of qualification. As 6 of 7 Supreme Court judges are experts in Sharia law and nothing more, this court in particular is in need of radical readjustment. This must be done to guarantee just trials, and fair judgments for the people of Maldives.

The Committee concluded the session by stating that "the Maldives must be serious about bringing itself into compliance with all aspects of the Covenant. This is an absolutely critical step in evolving into a fully functioning society – one that not only respects, but protects, the human rights of all people in the Maldives".

In September 2012 Amnesty International produced a report on the human rights situation in the Maldives.[5] The report states that Mr Nasheed's supporters were subjected to "targeted attacks" and protests were "violently crushed" just hours after his resignation in February, and that this "campaign of violence effectively silenced government critics and any public debate about Nasheed's ouster". The report details further violence by the security forces and the detention without trial and mistreatment of hundreds of people following the transfer of power. Bias in the justice system is described. There is no investigation of human rights abuses. There is a "real danger that the human rights gains of the recent past have been lost; there are already signs that the country is slipping back into the old pattern of repression and injustice".

[5] "The Other Side of Paradise – a human rights crisis in the Maldives"

THE COURT HEARING AND THE TECHNICAL ASPECTS OF THE CASE

The court proceedings

I visited the Maldives on behalf of the Bar Human Rights Committee to observe at what would have been the first day of Nasheed's trial on 4 November this year. However, Nasheed's legal team raised a technical issue about jurisdiction of the magistrates court in which the case was due to heard. The essence of this argument was that the trial had been moved to a magistrates' court away from the island of Male. However, the island to which it had been moved (Hulhumale) is, under the constitution, part of the administrative district of Male, and therefore not entitled, under the constitution. A story repeated many times to me was that the Hulhumale magistrates' court was in fact established to provide a job for an MP's wife. Technically speaking, Mr Nasheed's legal team explained the argument in a press release dated 26 September 2012.[6]

Mr Nasheed also argued that the magistrates appointed to hear the case were not those who normally sat at the Hulhumale court, and the rules for appointing magistrates had not been complied with. It was alleged that one of the magistrates appointed was under investigation for corruption and sexual misconduct.

Mr Nasheed has been charged with an offence under Article 81 of the Penal Code which reads:-

> 81. It shall be an offence for any public servant to use the authority of his office to intentionally arrest or detain any innocent person in a manner contrary to Law. A person guilty of this offence shall be punished with exile or imprisonment for a period not exceeding 3 years or a fine not exceeding Mrf. 2,000.00

[6] http://mdp.org.mv/archives/35113

Mr Nasheed argues that no prosecution has ever been brought under Article 81 and the bringing of charges against him is, in effect, discriminatory for that reason (given the well known allegations of breaches of the principle enshrined in this Article by the previous regimes in the Maldives).

Thus, on the morning of 4 November 2012, the Maldivian High Court adjourned the criminal case to hear argument on the jurisdictional issue. A further hearing was set for 8 November, but by that time the Supreme Court had effectively taken over the issue (as it seems to have the power to do, and in any event it appears that the Supreme Court was already considering a further case raising the jurisdictional issues about the Hulhumale court), and the whole process ground to a halt.

DISCUSSIONS IN MALÉ

During my stay I was able to talk to a range of Maldivian lawyers (including the prosecutor general), politicians, and activists. Almost all criticised the failure of the JSC to bring about reform of the judiciary in the way expected by the new constitution. Opinion was split between those who thought there was no option but to prosecute Nasheed, and those who wanted the wider context to be taken into account by the prosecutor. There was a strong feeling amongst some that the politicians of the old regime had escaped prosecution for much worse abuses of power. The foreign government representatives I spoke to clearly see Nasheed as a force for good in the region and desperately want a solution to the current proceedings which will allow him to stand in the election next year.

I met with **Mr Shahan Hameed,** a lawyer of many years standing at Premier Chambers in Malé, who said that President Nasheed had at one point asked him to be the Chief Justice. However, he did not want to get involved with the politics of the Supreme Court whose judges are appointed by the political parties.

Mr Hameed was critical of President Nasheed's actions in arresting Judge Abdulla. He led a group of lawyers attempting to release him from custody. He thought that the Prosecutor General had no choice but to charge President Nasheed in relation to the detention of the judge, especially as a writ of habeas corpus had been ignored.

However, he was also of the view that the JSC had not been able to function properly.

I then met with the independent MP, lawyer and Chair of the Independent Institutions Oversight Committee, **Mr Mohammed Nasheed** (no relation of the ex-President). The Committee is set up under the Constitution and has oversight responsibilities for other constitutional committees such as the Anti-Corruption Committee and the JSC. He explained to me that although his Committee had the power to replace members of the other constitutional committees, no such power existed in relation to the JSC, unless they acted unlawfully. This severely restricted the powers of the Oversight Committee to ensure that the JSC worked effectively. He suggested that there was now legislation in place under the Judges Act to ensure that judges had the appropriate training and qualifications in the next few years, albeit that systems should have been put in place by the JSC in August 2010 (see above). He criticised the approach of the Supreme Court to the effect that anything to do with the administration of justice was a matter for the Court, to the extent that the Court would overrule any Acts of Parliament that purported to legislate for the justice system.

I met with **Mr Ibrahim Ismail** who had been the chair of the Constitutional Drafting Committee which led to the 2008 constitution. His overall view was that President Nasheed had no choice but to arrest Judge Abdulla. This was the only way to remove what was a rogue judge from the criminal justice system.

He was critical of the ineffectiveness of the JSC. He said their job should be to "keep wayward judges in check". It was not envisaged that the JSC would mete out punishments to judges. If a judge had acted in a way that was not acceptable, then Parliament should decide whether the judge should be removed. In the case of Judge Abdulla the JSC had had sixteen cases, and pressure was put on them to decide them, including from President Nasheed. However, when the JSC did adjudicate against Judge Abdulla in one case, the Judge went to the civil court and obtained an injunction against the JSC to stop them taking action against the judge. Essentially the system had ground to a halt. That was the backdrop to President Nasheed taking or authorising the action her did against the Judge. Ibrahim Ismail cited Art 115 as justifying the action taken by the president.

I was also told about the problem of the Supreme Court deciding on cases of its own motion. This could be by proclaiming the law on an issue without there being a case before the court. It could also be by effectively freezing a case by ordering that a lower court stops dealing with a case. The Supreme Court has also decided that it is the final arbiter with all matters relating to the administration of justice and has struck down laws passed by Parliament as unconstitutional if the laws purport to impact on the system of administration of justice. However, as it was pointed out there is still no civil or criminal law procedures in place, leading to a feeling that the Judges are above the law.

Ibrahim Ismail was of the view that the Prosecutor General should have exercised his discretion not to prosecute the former President. It has made a tense situation in the country worse. He thought that it was the first time that anyone had been prosecuted under Article 81. He accepted that Judge Abdulla should be compensated.

I met with the **Prosecutor-General, Mr Ahmed Muizza** and asked him about the progress of the trial. He was clearly frustrated by the technical arguments about the jurisdiction of the Hulhumale court and how these were

causing delay. He said that the decision to move the hearing from Male was to increase the fairness of the hearing for Mr Nasheed. He said that it was right that Mr Nasheed should face trial and that even before Mr Nasheed had lost power it was considered the right thing to do. He denied that wrong-doers from the government of Mr Gayoom had had charges against them dropped following the change of government. He claimed that Article 81 had been used in the past as a basis for prosecutions.

I asked him whether there was a code of practice which governed prosecution decisions. He said that there was but that it was not in the public domain. He said that it was possible for prosecution decisions to take into account the public interest, but was a little vague as to how this was actually done. He mentioned that when Mr Nasheed had been president there had been a decision in the public interest not to pursue him in relation to fairly minor electoral offences. He did say that it was possible for the prosecutors to reconsider, following charge, whether a prosecution should continue.

I also met with **Mr Nasheed's legal team,** who explained that, as well as the submissions on jurisdictional matters. Nasheed's legal team is petitioning the prosecutor general to consider again whether the case against Nasheed is in the public interest. A range of defences will be advanced when the trial proceeds next year. It is clear that Article 81 (as set out above) leaves room for a number of arguments. For example, is the President a public servant to whom the Article applies? Does the Article relate only to the person who, in fact, takes a person into custody or directly orders an arrest? What effect does the term "innocent" have in the Article? The team is to request that the Prosecutor General reconsiders whether the prosecution against Mr Nasheed should proceed, arguing that it is not in the public interest that it should do so. It was explained that if Mr Nasheed is sentenced to more than a year in custody then (even if he is immediately pardoned) he will be excluded from running in the 2013 elections.

I met briefly with **ex-President Nasheed,** who expressed concern that the prosecution against him was proceeding when politicians of the previous regime were not being pursued.

I met finally with **Aishath Velezinee** who served as an member of the JSC from April 2009 to May 2011 (she was President Nasheed's appointee for almost two years of that time). She is a tireless campaigner for reform of the judiciary and a critic of the JSC for its failures especially in the two years up to August 2010. She is also an outspoken critic of Judge Abdulla Mohammed believing that "it is the State's duty to remove him from the judiciary". She has written a remarkable memoir of her time on the JSC, describing the machinations and tribulations of the Committee, and its failure to establish ethical or moral standards for judges.[7] Her view is that even at this stage, and in agreement with the ICJ, that wholesale reform of the judiciary is important and necessary for democracy in the Maldives.

POSTSCRIPT

Following the Court hearings, the Independent Institutions Oversight Committee issued a decision that the Hulhumale Court was illegitimate for the reasons essentially put forward by Mr Nasheed in the Court hearing on 4 November 2012. However, the Supreme Court on 28 November 2012 quashed this decision on the basis that no institution other than the Supreme Court had jurisdiction to make such a decision.[8] This was an example, it seems to me, of the Supreme Court's approach to administration of justice issues which had been criticised by the chair of the Oversight Committee when we had met a few days earlier.

[7] The Failed Silent Coup: Aishath Velezinee, 10 September 2012
[8] **"**Supreme Court overrules Parliament's decision to invalidate Hulhumale Magistrate Court": Minivan News 29 November 2012.

Further, the Supreme Court a week later on 5 December 2012 declared that the Hulhumale Magistrates Court was legitimate and could operate as a court of law.[9] Minivan News reported that:-

> Out of the seven member Supreme Court bench, four judges ruled in favour of the court's legitimacy while three judges including the Chief Justice had opposed it....
>
> The Supreme Court majority ruling stated that despite Hulhumale being mentioned as part of capital Malé City in the Decentralisation Act, Hulhumale was an "island" with a large population and therefore, having no division of a superior court on that island and if not for the presence of Hulhumale Magistrate Court, its inhabitants would have to travel to another island in order to get justice. Therefore it declared Hulhumale Magistrate Court as legitimate.
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> All three [dissenting] judges agreed that courts should be established through legislation and that the Hulhumale Magistrate Court was not established in accordance with the Judicature Act.

CONCLUSIONS

The first instinct of lawyers, rightly, is to be alarmed when judges are arrested and detained without charge. It may be that in deciding that Judge Abdulla Mohammed should be arrested at the start of this year, Mr Nasheed's actions (or those of his ministers) were badly thought through, and certainly unlikely to elicit support from foreign governments and the Commonwealth.

But what was clear to me during my visit is that this is not a simple case of abuse of power. Rather, the underlying narrative of the situation is that of a president desperate to bring change to a new democracy after decades of oppression, and finding himself thwarted by the inability of the organs of state set up by the constitution to deliver much needed reform.

[9] "Supreme Court declares Hulhumale Magistrate Court legitimate": Minivan News 5 December 2012

BHRC notes with concern the large number of international reports, some referred to above, that have expressed the view that the Maldives has not created an independent and impartial judiciary. There also seems to be a widespread view in the Maldives itself that the JSC has failed in its twin tasks of ensuring that the judiciary has the appropriate experience and qualifications, and in bringing to book those judges who fail to fully and fairly implement the rule of law. Implicit in these criticisms is that Mr Nasheed cannot be guaranteed a fair trial.

It now seems that the trial of Mr Nasheed will proceed in the Hulhumale magistrates' court in the near future. BHRC notes that Mr Nasheed's lawyers have petitioned the Prosecutor-General to review whether the prosecution of Mr Nasheed is in the public interest, and it seems to BHRC that this is an application worthy of very serious consideration. BHRC is concerned that a primary motivation behind the present trial is a desire by those in power to exclude Mr Nasheed from standing in the 2013 elections, and notes international opinion that this would not be a positive outcome for the Maldives.

The BHRC also joins the UN Human Rights Committee and the International Commission of Jurists, amongst others, who have called for fundamental reform of the judiciary and its administration in the Maldives. This is essential if the democratic gains made over the last few years are not to be further diluted.

Furthermore, the BHRC shares the concerns expressed by international bodies about the deterioration of human rights protection in the Maldives since the transfer of power in February 2012. Again, a failure to comply with human rights standards by the Maldivian authorities is a grave threat to the democracy so recently achieved.

How the Maldives deals with this prosecution and trial (if it goes ahead) may well decide the course of its government for years to come.