

**REPORT OF THE COMMISSION OF NATIONAL
INQUIRY, MALDIVES**

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I. EXECUTIVE SUMMARY

The Commission of National Inquiry (the “Commission”) was established pursuant to Presidential Decrees Nos. 2012/2 and 2012/3 and reconstituted pursuant to Presidential Decree No. 2012/4 under Article 115(o) of the Constitution of the Republic of Maldives (the “Constitution”) to conduct “independent and impartial investigations of the following issues; the events that transpired in the Maldives from the 14th of January 2012 to the 8th of February 2012, the change of government on the 7th February of 2012, whether the resignation of the then President Nasheed was illegally coerced, and whether the government changed legally on 7th February 2012.” In doing so, the Commission was mandated 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 worked over a period of six months. It sat in Malé and visited all principal sites. A total of 293 witnesses were interviewed by the Commission over the course of 224 hours. Fifteen witnesses were interviewed more than once.

Among other things, the following documents were comprehensively reviewed by the Commission:

- The Constitution of the Republic of the Maldives
- The Maldives Penal Code 2004
- The Armed Forces Act 2008
- The Police Act 2008
- Presidential Decree Nos. 2012/2, 2012/3, 2012/4, 2012/5
- Commitment to Strengthen the Commission of National Inquiry in the Maldives signed by the Government of Maldives and the Commonwealth Special Envoy
- Commitment to Strengthen the Commission of National Inquiry in the Maldives signed by President Nasheed and the Commonwealth Special Envoy
- The Commission of National Inquiry – Rules of Procedure
- The Timeline of Events published on 6 June 2012 by the Commission prior to its reconstitution

- *“A Coup D’état backed by Police and Military,”* by Ameen Faisal and Mohamed Aslam
- *“The Central Role of Mohamed Waheed in the Maldives Coup D’état,”* a note by the Maldives Democratic Party
- Press Reports in the international media, in particular, Reuters and Agence France-Presse
- Written Statement of President Nasheed dated 8 August 2012
- Report of the Human Rights Commission of the Maldives on human rights abuses in the Maldives on 6 and 7 February 2012
- *“Resignation Under Duress,”* by Hassan Latheef
- *“Arrested Democracy,”* by Anders Henriksen, Rasmus Kiefer-Kristensen and Jonas Parello-Plesner

In summary, the Commission’s findings are as follows:

- The change of President in the Republic of Maldives on 7 February 2012 was legal and constitutional.
- The events that occurred on 6 and 7 February 2012 were, in large measure, reactions to the actions of President Nasheed.
- The resignation of President Nasheed was voluntary and of his own free will. It was not caused by any illegal coercion or intimidation.
- There were acts of police brutality on 6, 7 and 8 February 2012 that must be investigated and pursued further by the relevant authorities.

With regard to the idea that there was a 'coup d'état', nothing in the Maldives changed in constitutional terms – indeed, the Constitution was precisely followed as prescribed. Moreover, in terms of the democratic intent and legitimacy of the authority of the Presidency, as foreseen in the Constitution, President Waheed properly succeeded President Nasheed. This coheres with the electoral prescription insofar as President Nasheed and his then-Vice President were on the same ballot and so the electorate was fully informed of the persons and exact role of the candidates for whom they voted and who ultimately took the oaths of office to serve under the Constitution.

Accordingly, there appears nothing contestable in constitutional terms under the generic notion of a 'coup d'état' that is alleged to have occurred – quite to the contrary, in fact.

The Commission gathered and received a considerable body of material which offered evidence of “the facts, circumstances and causes of the events of 7th February 2012 that resulted in the transfer of power in the Maldives”. It was soon apparent to the Commission from all it received and increasingly experienced that the context of the unforeseen transfer of power owed much to the challenges for governance of a young democracy which is deeply divided. Especially relevant are problems with basic institutions of democratic governance, notably the rule of law and administration of justice, the effective functioning of Parliament, and the politicization of the media.

Justice may take time, but needs to be speedy and needs to be seen to be done in order to reassure the public and inspire their confidence. This is unlikely to materialise in the absence of the rule of law which depends on effective institutions and the scrupulous conduct of responsible authorities over time. Above all, the Heads of the branches of government must by their own actions conform to the rule of law notwithstanding the political and practical challenges.

With a view to strengthening the rule of law and generating confidence, the Commission recommends that some immediate steps be taken. There appears some urgency in this regard to enable the country to pursue its social, economic and political development to the benefit of the people of Maldives.

II. THE MANDATE

The Commission of National Inquiry (the “Commission”) was established pursuant to Article 115(o) of the Constitution of the Republic of Maldives (the “Constitution”). The Commission received its mandate under Presidential Decree No. 2012/2 issued on 21 February 2012 and Presidential Decree No. 2012/3 issued on 23 February 2012 (the “Initial Decrees”) (Appendices I & II). The purpose of the Commission was to conduct an independent and impartial investigation into the events in the Maldives from 14 January 2012 to 8 February 2012. By letter dated 29 February 2012 (reference No. 1–(A) CBO/PRV/2012/133), President Mohamed Waheed Hassan Manik (“President Waheed”), clarified that, in fulfilling its mandate, the Commission should “explore the facts and circumstances surrounding the transfer of power in the Maldives on 7th February 2012” and that, in this regard, “acquire any information needed from all state institutions, concerned officials of the Government and other people by questioning them” (see Appendix III).

The Commission commenced its work on 25 February 2012 and suspended its operations on 16 May 2012 following the signing of the Agreement of Commitment to Strengthen the Commission (the “Commonwealth Agreement”) between the Government of the Maldives and the Commonwealth of Nations (the “Commonwealth”) on 15 May 2012. Separately, President Mohamed Nasheed (“President Nasheed”) agreed to join the Commonwealth Agreement.

Consequently, President Waheed issued on 17 June 2012 Presidential Decree No. 2012/4 (the “Decree”) (Appendix IV) “entrusting the Commission of National Inquiry with the independent and impartial investigations of the following issues; the events that transpired in the Maldives from the 14th of January 2012 to the 8th of February 2012, the change of government on the 7th February of 2012, whether the resignation of the then President Nasheed was illegally coerced, and whether the government changed legally on 7th February 2012.”

The Commission was guided in the performance of its functions by the Rules of Procedure (“RoP”) that were annexed to Presidential Decree No. 2012/4. Rule 1(1) of the RoP stipulated that the Commission was “to conduct an independent and impartial investigation into the events

in Maldives from 14th January 2012 to 8th February 2012.” In doing so, the Commission was to “explore the facts, circumstances and causes of the events of 7th February 2012 that resulted in the transfer of power in the Maldives.” Rule 1(2) of the RoP empowered the Commission to alter, amend and update the RoP “as needed by a majority vote of the Commission.” The Commission did not require such a vote. By Presidential Decree 2012/9 issued 27 August 2012 (see Appendix V), the RoP were amended to strengthen the immunities of Commission members and staff (new Rule 13(2)). A copy of the amended RoP is attached herewith as Appendix VI.

III. THE PROCESS

A. Composition

Three Maldivian citizens constituted the Commission established pursuant to the Initial Decrees:

Mr. Ismail Shafeeu – Chairman

Dr. Ibrahim Yasir – Member

Dr. Ali Fawaz Shareef – Member

Pursuant to the Commonwealth Agreement and the Decree, the Commission was expanded and strengthened to include a Maldivian citizen nominated by President Nasheed and a senior judge from Singapore who would co-chair the Commission with Mr. Shafeeu so as to “build on the work of the Commission and to enable an independent and impartial investigation to be conducted.”

In addition, two Independent Advisers were obtained from the Commonwealth and the United Nations (the “Advisers”) to support the Commission. The function of the Advisers would be to observe the conduct of the Commission and advise on the issues as may be required.

Thereafter, the Commission was, in accordance with the Decree:

- Mr. Ismail Shafeeu – Chairman
- Justice G.P. Selvam – Chairman
- Dr. Ibrahim Yasir – Member
- Dr. Ali Fawaz Shareef – Member
- Mr. Ahmed Saeed – Member

Justice G.P. Selvam is a retired judge of the Supreme Court of Singapore. Sir Bruce Robertson, a retired Court of Appeal judge from New Zealand, and Professor John Packer from Canada, a legal adviser nominated by the United Nations, were appointed as International Advisers on behalf of the Commonwealth and United Nations respectively.

At 18:05 on Wednesday, 29 August 2012, Mr. Saeed tendered his resignation from the Commission.

B. Facilities and Resources

The Commission conducted its proceedings from 25 February 2012 to 16 May 2012 and from 17 June 2012 to 30 August 2012. The Commission conducted its work from a wing of the Official Residence of the President of the Maldives (“Muleeaage”), while President Waheed has remained in the Vice Presidential residence. The Commission was very ably supported by a Commission Secretariat (the “Secretariat”) comprised of 18 staff who are independent civil servants recommended by the Civil Service Commission of the Maldives. The Secretariat was headed by Mr. Ahmed Ali Maniku and Mr. Mohamed Vajeeh, both of whom are retired senior civil servants with impeccable professional records. Translators were hired following an open call and comprehensive interview.

The Secretariat performed a range of comprehensive secretarial and administrative functions. These involved the arranging, recording, transcribing and translating of witness interviews, maintaining and safe-keeping a repository of documentary and multimedia evidence received by the Commission, facilitating exchange of correspondence between the Commission and third parties and provision of day-to-day secretarial support for the functioning of the Commission.

The Commission also enjoyed the benefit and use of other necessary facilities that enabled it to perform its functions without hindrance. Such facilities included computers, printers, stationary, electronic support, wireless internet, telephone and projection equipment and similar office equipment. All possible resources were made available to the Commission and every request for assistance was duly met.

Justice G.P. Selvam was assisted by Mr. Urvaksh Doctor pursuant to Rule 6 of the RoP. Furthermore, prior to its reconstitution, the Commission was initially assisted for some days in matters of legal technicality and framework by a Singaporean lawyer and a retired Indian judge (recommended by the Government of India). They had no access to evidence and did not participate in further activities of the Commission.

It is to be noted that when the Commission felt the need to prolong its term in order to deal with the number of witnesses who had come forward and evaluate other material before it, the Government of Maldives did not hesitate to extend all necessary resources.

C. Principles

The Commission, together with its Advisers, operated on the following basic principles:

- **Integrity and Independence**

The Commissioners were, at all times, to act with independence and integrity in carrying out the tasks and functions of the Commission. The Commission's proceedings and deliberations were to remain confidential at all times and no Commissioner or Adviser was to communicate with or disseminate confidential information to third parties outside of the Commission. The Commissioners were to behave and perform their duties independent of external influences.

- **Participation**

The Commissioners were to jointly and actively participate in the discussions and deliberations of the Commission. Their objective was to work together and use their best efforts to reach a conclusion by consensus as provided under Rule 15(5) of the RoP. By consensus of the members of the Commission, the International Advisers were encouraged to make recommendations during Commission deliberations and also assist in the questioning of the witnesses. The Secretariat only provided support for the Commission in response to its express requests, and did not participate in any fact-finding, discussions or deliberations of the Commission.

- **Good Faith**

The Commissioners were to act in good faith, at all times, in the best interests of the Commission. They were to be motivated in their conduct by a bona fide regard for the interests of the Commission and to function with a degree of objective and independent professionalism. Every Commissioner was bound to exercise independent judgement and act in his duty towards

the Commission with honesty and sincerity with regard to the truth or falsity of a proposition and without regard to the outcome of an action.

- **No Shutting-up and No Shutting-out**

The Commission was guided by the principle that no witness was to be shut up and no evidence was to be shut out. Witnesses were allowed to speak at length and express their views and grievances openly before the Commission. The Commission would request witnesses to structure their testimonies around events relating to the resignation of President Nasheed, but were not constrained from speaking if they described other events. Witnesses were also given the freedom to request breaks and speak in Dhivehi or English. Finally, the Commission provided an opportunity for every individual in the Maldives to come forward and submit information and views that could assist in satisfying its mandate.

- **Common Good and Public Interest**

The Commission understands its mandate as derived from the general framework of the Constitution of Maldives as a democratic State serving the common good in the sense of the combined interests of the whole citizenry in whom the sovereignty of Maldives resides. Thus it is the aim of the Constitution of Maldives, and therefore the aim of the Commission, to contribute to the freedom of the people of Maldives to control and enjoy their sovereignty as the sum of their free wills expressed through democratic means and institutions including the rule of law. The Commission further understands that there exists a compelling public interest, essential for common well-being, that the Commission completes its work in a timely fashion so the Maldives may pursue its political, economic and social development with general confidence.

D. Evidence

The Commission collected and received considerable testimonial and documentary evidence. It made site-visits to and within the Maldives National Defence Force Headquarters at Bandara Koshi (“MNDF HQ”), the Maldives Police Service Headquarters in the Hussain Adam Building (“Police HQ”), Republican Square and surrounding areas, the Maldivian Democratic Party

facility at “Haruge”, the television station known as Television Maldives (“TVM”, formerly MNBC1) and the President’s Office. The Commission also walked relevant streets and passages and visited other relevant locations. The Commission interviewed 293 witnesses over the course of 224 hours. This included all the living Presidents of the Republic, Members of the People’s Majlis (the “Parliament”), political party leaders and members, former and serving high officials of the civil service and security services as well as concerned citizens. 15 witnesses were interviewed more than once. Documentary evidence included written statements, bank statements, telephone logs, lists of SMS, video and audio recordings, photographs, letters, reports, textual analyses and publications. The Commission also received various documentary materials from the media including logs and records.

The Commission issued two notices on 18 March 2012 and 20 June 2012 respectively (see Appendix VII and VIII), requesting the general public to come forward and provide any information that could be useful in fulfilling the Commission’s mandate. Additionally, the Commission wrote individual letters to such persons who it felt were in possession of important information, requesting them to appear before it. It is noteworthy that the number of witnesses who volunteered to come forward and provide evidence significantly outnumbered the witnesses who were requested by the Commission to appear before it. In spite of the Commission’s lack of power to subpoena witnesses (typical in court proceedings), only one witness declined an invitation to re-appear before the re-constituted Commission. That witness did, however, appear on record before the earlier constituted Commission. One other witness agreed to appear before the Commission on grounds of anonymity, and was allowed to do so; his testimony proved to be non-material to this Report. A list of all witnesses who appeared before the Commission is attached herewith as Appendix IX.

Prior to every witness interview, the witness was informed that the Commission was not undertaking a criminal investigation but that it would not have any control over the testimony and evidence provided to the Commission once the inquiry was concluded and the Report was submitted to the government. Further, each interview was conducted solely in the presence of the Commissioners and Advisers. The Secretariat staff charged with operating the video and audio equipment left the room while the interview was taking place.

Witnesses were given the freedom to be accompanied by their lawyers, secretaries or person of confidence if they so wished. In some interviews prior to its reconstitution, the Commission was assisted by a Maldivian lawyer.

E. Documentation and Records

The Secretariat maintained all documents and materials that were always available to the Commissioners. Multimedia recordings of witness interviews, translated copies of witness testimonies and other evidence submitted by witnesses were professionally arranged and maintained for use upon request. The Secretariat also maintained records of the witnesses or others who came forward to provide information to the Commission. All witness recordings and submissions, together with media submissions, have been logged and kept under lock and key. The facilities of the Commission (i.e. Muleeaage) have also been always secured by locks and guards. A list of documentary evidence received by the Commission is attached herewith as Appendix X.

F. Communications

The Commission agreed that it would only communicate with the press and the general public by means of bi-weekly press conferences, occasional press statements and through its website (<http://www.coni.org.mv>). The Commission treated the press conferences as a forum to answer any pressing issues and matters. The Commission did not appoint a spokesperson to speak on its behalf and all communications were made collectively. The Commission made use of its official letterhead to communicate with relevant agencies and institutions such as the Human Rights Commission of the Maldives (“HRCM”), the President’s Office, the Maldives Police Service (“MPS” or the “police”), the Maldives National Defence Force (“MNDF” or the “military”) and the Police Integrity Commission (“PIC”) as well as individual members of the public. The Commission held nine press conferences and six press statements.

G. Work

The Commission followed the directions laid down under the RoP in the performance of its day-to-day functions. The Commission worked as one team in a professional and collegial manner. The Commission's working language was English and it was decided by consensus that its Report would be published in English as the original and authentic text.

The Commission worked through the holy month of Ramadan as well as on certain Saturdays. Witnesses were heard as per their convenience and requests for change in date and timings of interviews were granted. The Commission met on a number of evenings to satisfy witness requests and in order to complete its work. The Secretariat was always in support.

H. Deliberations and Decision-making

The deliberations of the Commission were open and free. Any Commissioner or Adviser was at liberty to advance views without restriction. The Co-chairmen expressly invited the Commissioners and Advisers to propose alternative propositions or explanations of events and to indicate such evidence as would support these. At the request of one Commissioner, further evidence was sought and scrutinized even in the last days of the Commission's work. The Commission deliberated in a closed room; the Secretariat was not involved in any way in the deliberations of the Commission.

All evidence received was reviewed and assessed by the Commission prior to the drafting of this Report. Everything was available to all Commissioners and the Advisers as they required.

The Commission notes that in many disputes, there can be difficulty in getting to what actually historically occurred as opposed to what an individual now honestly and sincerely believes to have happened. This phenomenon has been very acute in the Commission's inquiry. Many people have heavy commitments to certain positions and on occasion their recollections were simply wrong. They had a recall that could not be correct when viewed alongside videos, photographs and other evidence. It is unhelpful to call this "lying" but it must be allowed for as conclusions are sought.

A serious problem has been trying to restrict testimony to what witnesses actually knew from what they had seen or heard. The Commission was not assisted by what witnesses claim to have been told by others (often as hearsay several times removed) or what they picked up on social media (where there often seems to be scant regard for objective truth) or mere conjecture, supposition or a thesis to suit a desired conclusion.

A significant problem in getting to the truth has been the level of rumour, suspicion and idle gossip lacking any serious evidential foundation. This has been disseminated and repeated irresponsibly. Women and men have believed and relied on this material to the very great disadvantage of the nation. It has fuelled the division and discord which has sapped the country for six months. Repeating an error does not give it any substance nor does the volume or emotional content of the expression.

Sadly there has been an epidemic of baseless allegations against individuals. They seem to be the imaginings of people struggling to understand what happened and why. Just as a question has no evidential value unless the person answering accepts or adopts the fact contained in the question, allegations have no evidential value just because someone has articulated them repeatedly. Many people seem to think that because an allegation has been made, someone is under an obligation to counter or undermine it. When the allegation lacks substance or reality, nothing is required in response.

Irrespective of the drawbacks mentioned above, the Commission reached all its decisions by subjecting the evidence to the principles of consensus, logic, probability and consistency. The Commission stresses that there was no interference either in its daily functioning or its deliberations and decision-making.

I. Reporting

Pursuant to Rules 14(1) and 15(1) of the RoP, the Commission was to “report on its findings to the President, Speaker of the Majlis, Prosecutor-General, Attorney-General and on a read only basis to former President Nasheed” by 31 July 2012. This presupposed that the reconstituted

Commission would begin functioning from the beginning of June 2012. However, the Commission did not begin functioning until 17 June 2012. In addition, a large number of witnesses responded to the Commission's open call of 20 June 2012 (see Appendix VIII) wishing to be heard and, as a result, an extension of one month was requested and duly received pursuant to Presidential Decree No. 2012/7 issued on 30 July 2012 (see Appendix XI). Accordingly, the Report was due for submission on 30 August 2012.

The Commission was of the opinion that the Report should not be drafted "by committee" because of the inherent drawbacks of such method and the limits of time. The Commissioners agreed that a first basic draft would be prepared by Co-Chairman Justice Selvam. This draft was scrutinized individually by each Commissioner and the two Advisers who then met together to share reactions, views and suggestions which led the process of comprehensive modification through discussion, examination of evidence, deliberation, and agreement. The final Report, which was adopted unanimously, was signed by each Commissioner and the two Advisers prior to submission and publication.

The Commission decided that it would be in the best interests of the Maldivian public for the Report to be published immediately on its website after the submission of the Report to the stipulated recipients. The Executive Summary in this Report shall be translated into Dhivehi and published on the Commission's website. A full translation of the Report will be provided by the relevant Maldivian authorities. The Commission wishes to emphasize that in the event of any conflict between the English version of this Report and its translation into Dhivehi, the former shall prevail.

J. Conclusion on Process

The process followed by the Commission and described above greatly assisted the Commission in fulfilling its mandate in the most complete, fair, and responsible manner. This process not only provided the Commission with a robust foundation on which to prepare this Report, but also demonstrates the considerations, efforts and care by which the work of the Commission was undertaken during the period of inquiry in fulfillment of its mandate for the benefit of the nation.

IV. THE LAW

A. *The General Constitutional Framework*

The Maldives is a sovereign, independent, democratic Republic. It is a creation of the Constitution of the Maldives promulgated in 2008 by a Constitutional assembly known as the Special Majlis. It provides for the separation of powers comprising a legislature (the People's Majlis), an executive headed by a President, and an independent judiciary.

Article 4 of the Constitution declares that:

“All the powers of the State of the Maldives are derived from, and remain with, the citizens.”

The Maldives takes pride in having constructed a national constitution that succinctly and comprehensively states and supports modern principles of liberty, citizenship and statehood.

The principle of the rule of law is fundamental under the Constitution.

The laws are made by the People's Majlis (Article 5) which has several other powers and functions.

All executive powers are vested in the President (Article 6).

The judicial power is vested in the courts of the Maldives (Article 7).

All powers of the State of the Maldives must be exercised in accordance with the Constitution (Article 8).

The President must exercise executive authority as prescribed by the Constitution and law (Article 106(d)), including to “uphold, defend and respect the Constitution” (Article 106(c)).

Lastly, the President is obliged “to promote the rule of law, and to protect the rights and freedoms of all people” (Article 115(c)).

In the result, the President must govern and execute his function according to the doctrine of rule of law. That is to say, the President must exercise executive authority as provided for in the Constitution and the law.

The President may only do things that are authorized or permitted by the Constitution and the laws. He must accept and respect the authorities and institutions of the State and enforce and execute their decision. Article 268 of the Constitution declares that:

“the obligations imposed by the Constitution must be fulfilled. Any conduct contrary to this Constitution shall be invalid.”

In short, the President of the Maldives possesses no autocratic, dictatorial or authoritarian powers. His powers are limited.

B. Fundamental Rights and Freedoms

The Constitution guarantees the following three indispensable freedoms to the citizens of the Maldives:

“Art. 27

The Freedom of Expression

Everyone has the right to freedom of thought and the freedom to communicate opinions and expression in a manner that is not contrary to any tenet of Islam.

Art. 28

Freedom of the media

Everyone has the right to freedom of the press and other means of communication, including the right to espouse, disseminate and publish news, information, views and

ideas. No person shall be compelled to disclose the source of any information that is espoused, disseminated or published by that person.

Art 29

Freedom of acquiring and imparting knowledge

Everyone has the freedom to acquire and impart knowledge, information and learning.”

Further, Article 19 of the Constitution provides that:

“No control or restraint may be exercised against any person unless it is expressly authorised by law.”

The fundamental right enshrined in Article 19 is reinforced by Article 45 which provides that:

“Everyone has the right not to be arbitrarily detained, arrested or imprisoned except as provided by law enacted by the People’s Majlis in accordance with Article 16 of this Constitution.”

The fundamental freedom from unlawful arrest is further expanded and explained by Article 46 of the Constitution which states that,

“No person shall be arrested or detained for an offence unless the arresting officer observes the offence being committed, or has reasonable and probable grounds or evidence to believe that the person has committed an offence or is about to commit an offence or under the authority of an arrest warrant issued by the court.”

These provisions embody the doctrine of rule of law as conceived by the English constitutional case *Entick v Carrington* [1765] 19 ST. TR. 1030. In that case, an action of trespass was brought by the plaintiff against the defendants (who were King’s Messengers) for entering his house and seizing his papers. The defendants pleaded a warrant of the Secretary of State which ordered them to search for the plaintiff and bring him together with his books and papers in safe custody

before the Secretary of State. Lord Camden C.J. held that the Secretary of State did not have any authority under statute or precedent to issue such a warrant. In a most famous passage, he held:

“If it is law, it will be found in our books. If it is not to be found there, it is not law.”

Further,

“Every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my license, but he is liable to an action, though the damage be nothing; which is proved by every declaration in trespass, where the defendant is called upon to answer for bruising the grass and even treading upon the soil. If he admits the fact, he is bound to show by way of justification, that some positive law has empowered or excused him. The justification is submitted to the judges, who are to look into the books; and if such a justification can be maintained by the text of the statute law, or by the principles of common law. If no excuse can be found or produced, the silence of the books is an authority against the defendant, and the plaintiff must have judgment.”

The combined effect of Article 19 and Article 45 is that a Maldivian may not be arrested except in relation to an offence that has been committed or is about to be committed, or under an arrest warrant issued by a Court of law.

There is one exception to this fundamental constitutional right. That is where a state of emergency has been declared pursuant to Article 253 and 254 of the Constitution, the President may suspend certain fundamental rights, including the freedom from arrest and detention. These Articles read as follows:

“Article 253

Declaration of a state of emergency

In the event of natural disaster, dangerous epidemic disease, war, threat to national security, or threatened foreign aggression, the President may declare a state of emergency in all or part of the country for a period not exceeding thirty days.

Article 254

Content of the declaration

The declaration of a state of emergency shall specify the reasons for the declaration of an emergency, and include measures to deal with the emergency, which may include the temporary suspension of the operation of laws and infringement of certain fundamental rights and freedoms guaranteed by this Constitution in Chapter 2.”

Article 274 of the Constitution defines the term “threat to national security” as:

“a threat to the independence and sovereignty of the Maldives, or a threat of major damage to people’s lives, limbs or property. This includes terrorist attacks and acts of aggression committed using weapons. This, however, does not include the exercise by citizens of their legal rights to conduct peaceful activities in support of, or against various matters without contravening the law.”

The President who declares a state of emergency is subject to the requirements of bona fides and objectivity as directed by Articles 254, 255, 256 and 257.

Even when a state of emergency validly declared is in force, certain fundamental rights of a citizen are expressly preserved. These include the right to life (Article 21), freedom of the media (Article 28) and right to retain and instruct legal counsel and assistance of legal counsel (Article 53). More significantly, the right and obligation to disobey unlawful orders is also expressly retained even during a state of emergency (Article 255(b)(16)).

In other words, the Maldives being a sovereign, independent and democratic State, even when a validly declared state of emergency is in force, does not become a totalitarian state and the rule of law remains.

C. Disobeying Unlawful Orders

Article 64 of the Constitution provides:

“No employee of the State shall impose any orders on a person except under authority of a law. Everyone has the right not to obey an unlawful order.”

The Constitution is significant in expressly enshrining this freedom.

The fundamental freedom not to obey unlawful orders is reiterated and applied to the security services (military and police services) in Article 245:

“No person shall give an illegal order to a member of the security services. Members of the security services shall not obey a manifestly illegal order.”

While the Constitution affords civil remedies for the breach of its provisions, it is not a penal code. However, Section 74 of the Police Act 2008 criminalizes such unlawful orders and executing such unlawful orders:

“Null and void orders

- (a) Any order or part of an order that is contrary to this Act or the regulations made under this Act, to the extent of inconsistency, shall be null and void.*
- (b) It is an offence for any employee of the Maldives Police Service to knowingly and with intent, issue an order that is null and void.*
- (c) It is an offence for any employee of the Maldives Police Service to knowingly and with intent, obey an order that is null and void.”*

A similar provision is found under Section 18 of the Armed Forces Act. However, it stops short of criminalizing such unlawful orders. The provisions relating to unlawful orders, as will be stated later in this Report, were invoked and mentioned many times in January and February 2012 and also before this Commission.

The predominant purpose of this freedom and obligation is to give effect to the doctrine of the rule of law and to prevent and proscribe autocratic orders and unaccountable conduct on part of superior officers in the civil service and the Defense Forces, namely the Military and the Police Force.

D. Presidential Succession

A President having been elected by universal and secret suffrage (Article 108) can have his term come to an end by resignation (Article 121), subsequent election, permanent incapacity or death (Article 123(b)) or removal (Article 100). In the event of a vacancy for any reason other than an election, the Vice President shall “succeed to the office of the President” (Article 112(d)).

E. Resignation and Succession

Article 121(a) of the Constitution prescribes that:

“The President may resign from office by writing under his hand submitted to the Speaker of the People’s Majlis, and the office shall become vacant when the resignation is received by the Speaker.”

Article 114 of the Constitution, in relevant part, prescribes that:

“An incoming President.....shall assume office upon taking and subscribing, before the Chief Justice or his designate, at a sitting of the People’s Majlis, the relevant oath of office set out in Schedule 1 of this Constitution.”

Further, Article 112(b) provides that:

“Every candidate for President shall publicly declare the name of the Vice President who will serve with him.”

F. Coercion in law

Coercion, as used in the Decree, refers to the American legal concept of illegal duress or the English legal concept of intimidation. This is a real threat delivered by one or more wrongdoers to another to harm and injure the latter or his family if the victim does not do something as demanded.

The first dominant element of the wrongdoing is the threat of an unlawful act, that is, to hurt and harm the victim or his family. A threat to do a lawful act is outside the definition of illegal coercion or intimidation. Anything that a person may lawfully do, the person may also threaten to do lawfully, whatever the motive or purpose of the threat.

The second dominant element of the wrongdoing is that fear or compulsion in the victim must arise in response to a real unlawful threat emanating from a wrongdoer and not because of a cause within himself. In the absence of an illegal threat from an intimidator, there can be no illegal duress or intimidation. This threat from an external source is an indispensable element of illegal duress or intimidation. In other words, there can be no illegal duress without an intimidation by an intimidator.

Because of the seriousness of the charge, person who alleges illegal duress or intimidation carries the legal burden as well as the evidentiary burden of proof. The standard of proof is that of moral certainty, that is, proof beyond reasonable doubt.

G. Coup D'état

The World Book Encyclopedia (1992) Vol. 4 at page 399 gives a non-technical explanation of the expression "coup d'état" as follows:

"Coup d'état is a sudden take-over of a country's government by a group of conspirators. Usually, the conspirators are public officials who infiltrate and then use their country's armed forces, police, and communications to seize power. A coup d'état may lead to few or many changes in the government. Famous coups in history include those carried out by

Napoleon Bonaparte in France in 1799, by the Bolsheviks in Russia in 1917, and by the Communists in Czechoslovakia in 1948. During the 1900's, most coups have occurred in politically unstable countries in Africa, Asia, Latin America, and the Middle East. Coup d'état is a French term meaning stroke of state."

The Commission has found a more definite and useful technical definition of the expression coup d'état by Hans Kelsen. This is at once a cerebral and practical definition. Professor Kelsen's definition was cited in *Makenete v Lekhanya*, International Law Reports Vol. 115 at page 27. The definition was also considered in *Bhutto v The Chief of the Army and Federation of Pakistan* PLD 1977 SC 657.

According to Kelsen, a coup d'état occurs:

"whenever the legal order of a community is nullified and replaced by a new order in an illegitimate way, that is in a way not prescribed by the first order itself. It is in this context irrelevant whether or not this replacement is effected through a violent uprising against those individuals who so far have been the "legitimate" organs competent to create and amend the legal order. It is equally irrelevant whether the replacement is effected through a movement emanating from the mass of the people or through action from those in government positions. From a juristic point of view, the decisive criterion is that the order in force is overthrown and replaced by a new order in a way which the former had not itself anticipated."

The contents of section 6 of the Offences Against the State Act, 1939 (U.S.A.) are also helpful:

"Usurpation of functions of government.

6.—(1) Every person who usurps or unlawfully exercises any function of government, whether by setting up, maintaining, or taking part in any way in a body of persons purporting to be a government or a legislature but not authorised in that behalf by or under the Constitution, or by setting up, maintaining, or taking part in any way in a purported court or other tribunal not lawfully established, or by forming, maintaining, or

being a member of an armed force or a purported police force not so authorised, or by any other action or conduct whatsoever, shall be guilty of felony and shall be liable on conviction thereof to suffer penal servitude for a term not exceeding ten years or to imprisonment for a term not exceeding two years.

(2) Every person who shall attempt to do any thing the doing of which is a felony under the foregoing sub-section of this section or who aids or abets or conspires with another person to do or attempt to do any such thing or advocates or encourages the doing of any such thing shall be guilty of a misdemeanour and shall be liable on conviction thereof to imprisonment for a term not exceeding two years.

The Commission shall now consider Maldivian law. Section 29 of the Maldives Penal Code (the “Penal Code”) under the Chapter “Acts against the State and Disharmony” provides that:

“Whoever attempts to commit or participates in or facilitates the commission of an act against the State shall be punished with imprisonment for life or exile for life or imprisonment or exile for a period between 10 years and 15 years.”

There is no definition of the expression “coup d’état”. However, Section 33 explains that:

“All forms of rebellion or insurrections shall be included within the provisions of Sections 29, 30, 31 and 32.”

Sections 29, 30, 31 and 32 of the Penal Code all deal with situations before the execution of a coup d’état, treason or assassination.

Having considered the authorities, the Commission shall be guided by Professor Hans Kelsen’s definition of coup d’état.

The word “mutiny” under the law of the Maldives is an internal matter within the military. Its aim is not to remove the President from office or to overthrow the government. That much is

clear from the contents of Section 33 and the definition of the expression “mutiny” under Section 48 of the Armed Forces Act 2008, which read thus:

“Section 33

Mutiny within the Armed forces

It is an offense for any serviceman under this Act to create a mutiny within the Armed forces, or to create discord, or to conspire to commit such an act, or to incite the commission of such an act, or to have knowledge of other persons committing such an act, or conspiring to commit such an act and fails to inform a superior of the same or delays in conveying such information.”

Section 48

Interpretation

(f) “Mutiny in the Armed forces” refers to a person who on being a serviceman of the Armed forces participates with another serviceman or a party of the Armed forces and showing force or threatening show of force or with the same intention in relation to the serviceman’s duties and assigned tasks and in times of war in a situation where you have to face enemies and insurgents, showing disobedience to assigned work and orders and motivating others to commit such acts. Further if shall be considered as “Mutiny in the Armed forces” under this Act for a serviceman or a large section of servicemen to attempt to commit any of the following acts:

- (1) To violate a right given by the Armed forces to your superior or senior most people.*
- (2) In times of war involving facing enemies, disobeying orders issued by your superiors and not attending assigned task and duties.*
- (3) Obstructing the allocated duties and assigned task of the Armed forces.*
- (4) Disobeying and showing of force to a serviceman of the Armed forces on duty.*
- (5) To forcefully try to enter or to show force, threat and try to enter by oneself or to let someone else enter into a place that a serviceman of the Armed forces is stationed for duty.”*

The Maldives Police Act 2008 does not contain the offence of mutiny by police. So the offence of mutiny is confined to the Military. Any illegal subordination by a policeman would be an internal matter subject to disciplinary proceedings.

V. THE CRITICAL EVENTS OF 7 & 8 FEBRUARY 2012

There is no dispute that before 11 am, while at the Military Headquarters at Bandara Koshi (the “MNDF HQ”), President Nasheed told others around him that he was going to resign. He instructed his Special Protection Group (“SPG”) to arrange for a press conference at the President’s Office. Pursuant to that event, he declared his intention to go to the President’s Office so that he could formally resign. While there, he repeated his intention to his Cabinet colleagues and to others with whom he spoke. He handwrote a letter of resignation and went in to a media conference held at 12:57 pm, where he confirmed this decision and gave reasons for the same.

His letter was received by the Speaker of the Majlis at 1:43 pm. In accordance with the terms of the Constitution, his presidency came to an end.

Later on the same day, Dr. Waheed was sworn-in at the Parliament before the Chief Justice of the Supreme Court and the Speaker of Parliament as President of the Maldives.

The next day, 8 February 2012, the domestic and international media reported that President Nasheed claimed that he was forced to step down at gunpoint and that he urged his successor to step down so that he could continue in office. His direct speech to the press was reported as follows:

"Yes, I was forced to resign at gunpoint. There were guns all around me and they told me they wouldn't hesitate to use them if I did not resign. I call on the chief justice, to look into the matter of who was behind this coup. We will try our best to bring back the lawful government."

Reuters reported that it was not immediately clear as to who was holding the guns.

President Nasheed and his party, the Maldivian Democratic Party (“MDP”) also publicly proclaimed that there was a coup d’état fomented by the police, the military and the politicians.

Agence France-Presse (“AFP”) reported President Nasheed as having said that he had gone into the military headquarters on Tuesday, 7 February 2012, where he found about 18 "middle-ranking" police and military officers in control.

“They told me if I did not resign, they will resort to arms. I took it as a threat. I wanted to negotiate the lives of the people who had served in my government.”

Referring to the then-Vice President Dr. Waheed, President Nasheed said:

“I am afraid he's always entertained an idea to become the president. He's never been able to do that. When the opportunity was available to him, he took it.”

President Waheed vehemently denied that there was a coup and vowed to form a power-sharing unity government. AFP quoted him on 9 February 2012 saying that:

“It is wrong to describe the events as a coup. We did not know this was going to happen. I was not prepared at all.”

As a result of the resignation and the subsequent challenge to it, there was immediate uncertainty about the legitimacy of the change of government.

This Commission is entrusted with determining whether President Nasheed was illegally coerced and whether the change of government was illegal and unconstitutional. This involves a consideration of surrounding circumstances, particularly what transpired in the Maldives from 14 January 2012 to 8 February 2012.

As President Nasheed clearly resigned and now challenges the voluntariness and legitimacy of his action, the onus is on him to establish illegal coercion or unlawful intimidation.

VI. THE FACTS

A. *The Timeline of Events*

On 6 June 2012, the Commission published a Timeline of Events (the “Timeline”), which was a statement without comment on the facts and events relating to the change of government based on the evidence which had been heard until the suspension of the Commission on 16 May 2012 (Appendix XII). It can also be found at <http://www.coni.org.mv>.

The Timeline expressly said it was constructed on the basis of the evidence which had been heard up to that stage. It was issued to stimulate further comment and reaction. It achieved this end and was a potent force in the further evidence which was received. It must be noted also that despite the many alternative scenarios which have been produced internally and internationally, there has been virtually no challenge of any substance to what was recorded in the Timeline. Indeed it has been specifically relied upon often. As such, the Commission affirms its own reliance on the Timeline, and does not herein now repeat its content.

B. *The General Political Context*

President Nasheed assumed power and responsibility following an historical democratic election held in the Maldives on 28 October 2008.

President Nasheed and his then Vice-President Dr. Waheed ran on a coalition platform of disparate political parties. Individually, they belonged to different political parties.

In the first round of elections, no one received over fifty percent of the votes cast. The number of votes received by the presidential candidates and their running mates were as follows:

<u>Name</u>	<u>No. of votes</u>	<u>Percentage</u>	<u>Political Party</u>
Maumoon Gayoom	71731	40.63	DRP ¹
Mohamed Nasheed	44293	25.09	MDP ²
Hassan Saeed	29633	16.78	IND ³
Gasim Ibrahim	27056	15.32	JP ⁴
Umar Naseer	2472	1.40	ID ⁵
Ibrahim Ismail	1382	0.78	SLP ⁶

Consequently, there was a run-off election on 28 October 2008. Mohamed Nasheed contested with the support of other political parties under expressly negotiated agreements which were signed by the Parites. The coalition supporting him consisted of the Quamee Ittihaad Party, Adaalath Party and Jumhooree Party.

The result of the run-off elections was as follows:

<u>Name</u>	<u>No. of votes</u>	<u>Percentage</u>	<u>Political Party</u>
Mohamed Nasheed	97,222	54.21	MDP-Alliance
Maumoon Gayoom	82,121	45.79	DRP

After he assumed office, President Nasheed formed a Cabinet of 14 Ministers. They were from the MDP and other coalition parties.

Three years after his assumption of office, President Nasheed found himself at loggerheads with major political parties, including his principal coalition partners. A number of serious problems had developed, including the alleged failure to abide by the coalition agreements. The then-Vice President Dr. Waheed remained in office but he was marginalised on essential policy matters.

¹ Dhivehi Rayyithunge Party (“DRP”)

² Maldivian Democractic Party (“MDP”)

³ Independent

⁴ Jumhoory Party (“JP”)

⁵ Islamic Democratic Party (“ID”)

⁶ Social Liberal Party (“SLP”)

There was no consensus before the Commission as to the extent to which President Nasheed enjoyed the confidence of ordinary citizens and only a general election can answer that. However, as well as his political problems, there were on-going difficulties with Parliament and many institutions and groupings within the society. Among the matters of serious controversy were the lease of the Ibrahim Nasir International Airport, the operations of the Courts and the judiciary as an institution, and the erosion of his support-base within the religious community and eventual open confrontation with it. There was serious tension with large parts of the business establishment because of the changes in taxation policy and the provision of social services in respect of which there was an argument as to whether they could be afforded. There were also on-going problems between the Executive and the Parliament where President Nasheed's party never had a majority. A low-point was reached on 29 June 2010 when the entire Cabinet of Ministers resigned and substantial problems arose when efforts were made to receive Parliament's approval for the subsequently appointed Cabinet. In the event, most of the appointees of President Nasheed failed to receive parliamentary approval.

The 2008 Constitution provided for an array of institutions and offices important for a democratic society. They are only of value when they can operate in a robust, effective and constructive manner. This depends, above all, on them being independent, impartial, competent and responsible. They must, of course, be respected and accorded proper status within the community. That was not occurring with consequent frustration and disillusionment and to the detriment of the country.

The Commission makes no comment on the rights or wrongs of the various areas of conflict in Maldives but simply notes them as a matter of on-going fact in the community and persistent source of tensions.

Two other events deserve mention. On 23 December 2011, the opposition coalition organized a very large rally known as "Mahasinthaa" in which all the large political parties of the Maldives other than the MDP participated. Its objective was to protest against the alleged anti-Islamic policies of President Nasheed. On 30 January 2012, the then-Vice President Dr. Waheed met

with some leaders of the opposition political parties at his residence. He was asked if he “was prepared to carry out [his] legal responsibilities.” He is known to have replied in the affirmative. On the same day, the leaders of the opposition political parties held a press conference to announce their endorsement of the Vice President.

C. Conflict with the Judiciary

One of the election promises of the MDP and President Nasheed related to the judiciary. Their campaign manifesto promised:

“[To] ensure the full independence for the judiciary through a policy of non-interference. The executive’s role will be solely in the implementation of court verdicts.”

Apart from that, President Nasheed had an agenda that had been openly declared – judicial reform. The attempt to implement the policy evolved into a confrontation with the judiciary in general, and the Chief Judge of the Criminal Court, Judge Abdulla Mohamed (“Judge Abdulla”), became the focus of their antipathy and antagonism.

An example of the conflict with the judiciary is found in a violent demonstration on 20 October 2011 by MDP activists against the release of a judgment of the Supreme Court which was unable to deliver its judgment.

Several MDP members gave evidence about the unconventional behavior of Judge Abdulla. His conduct is not part of the remit of this Commission and is considered only as it is relevant to the mandate of the Commission.

In mid-January, Judge Abdulla made a decision which deeply displeased President Nasheed and the MDP stalwarts. On 13 January 2012, the Government arrested Dr. Mohamed Jameel Ahmed of the Dhivehi Qaumei Party in connection with a virulently anti-government publication he had made which was felt to offend and incite. On 15 January 2012, Judge Abdulla ordered the release of Dr. Jameel Ahmed after the MPS failed to show any legitimate reason for his arrest. The next day, the MPS summoned Judge Abdulla for questioning. The same day, Judge Abdulla lodged an application to quash the MPS summons and obtained an interim injunction against the MPS. Armed with the interim injunction, Judge Abdulla refused to attend before the MPS.

The Government then decided to use the military to detain and incarcerate Judge Abdulla.

In the Maldives, no citizen can be arrested and detained except in relation to an offence suspected or committed or under an order of the Court. That is a fundamental right enshrined in the Constitution. That right, however, may be laid aside temporarily in case of a state of emergency based on a threat to national security or natural calamity. The Government invoked national security for the arrest and detention of Judge Abdulla.

The necessary papers were prepared and signed by the Police Commissioner and Home Minister, respectively, asking the military to arrest Judge Abdulla (see Appendix XIII). The military entered Judge Abdulla's home late in the night on 16 January 2012 and took him into detention – or 'brought him under their protection'. A speedboat transported him to the military training island of Girifushi ("Girifushi") and kept him there in detention for 22 days. He was not allowed to consult or instruct his legal counsel as entitled under the Constitution.

The next day, 17 January 2012, several groups protested against the unconstitutional act of the Government. That same day, ten police officers met with the Commissioner of Police, complaining that they were unhappy with "unlawful orders" being given to them by the Government and senior officers, making it difficult for them to act fairly towards political figures.

President Nasheed remained adamant in his resolve to keep Judge Abdulla in isolation in Girifushi. An order of *habeas corpus* to the military to produce Judge Abdulla before the court was ignored. On 18 January 2012, President Nasheed met with the police officers and insisted that the arrest and detention was lawful. Malé is a place where nothing is secret. An audio recording of President Nasheed's talk was leaked to the public by policemen.

Under the Constitution, fundamental rights are suspended only when a state of emergency is formally declared and published by the President in accordance with the relevant Articles of the Constitution. There must arise, as a matter of fact, a threat to national security. On the evidence that the Commission received, there was, on 16 January 2012, no threat to national security in Malé or the Maldives. Additionally, no declaration of a state of emergency had been made as

required by the applicable Articles of the Constitution. As such, the arrest and detention of Judge Abdulla was an unconstitutional and unlawful act.

Many prominent Maldivian lawyers objected to the detention of Judge Abdulla. President Nasheed ignored them. The HRCM also condemned the unlawful arrest of Judge Abdulla and asked for his release. It described the arrest and detention as a violation of the basic rights and freedoms guaranteed by the Constitution and International Human Rights Law binding on the Maldives. Similar calls were made by many domestic and international institutions including the Judicial Services Commission of the Maldives, the Chief Justice of the Supreme Court, the High Court of the Maldives, the Prosecutor General and the International Commission of Jurists.

On 26 January 2012, President Nasheed once again met and addressed the police. His speech was leaked to the public. On the same day, President Nasheed addressed a gathering of the military at the MNDF HQ. As reported in the local media, his address was, in part, as follows:

“According to the legal advice and consultation that I have got, about judges who have not been appointed legally, I have decided that their verdicts shall not be executed. It is I, who is here to execute their sentences when they reach their verdict. As I have taken a lawful oath in the name of Almighty God, it is my duty to effectuate justice and work towards improvement. It is also my duty to maintain and uphold the Constitution. I have come to a decision not to execute the verdicts of these judges and withhold their salary given by Finance, until judges can be appointed according to the law. With the blessing of god I will do everything I can in this, as the leader of the nation from the government. I greatly request your cooperation in this. Work with me to attain the kind of courthouse the Maldivian populace wants. As it is completely necessary of the person in a courthouse to be there in accordance with the law and as I had decided to proceed in that way, I felt that it would be smart to continue after I inform you of this and had discussed it with you. I want to give you an opportunity to express your opinions on this, and to speak up if you have anything to say. Before that I just want to mention that the perfection at which you carry out your demanding responsibilities and your dedication to it is greatly appreciated by all of the citizens. The opposing people will always claim that the government institutions are operated unlawfully and not according to the regulations. However, it has

been always clear to us, that they are not decisive, but the opinion of someone or some people about a particular matter. It will be extremely clear to you; how you must act. You have your line of command, I am sure that everything of yours will be fulfilled when you keep following it.”

This was regrettable. First, it was the paramount duty of the Head of State and Government of the Maldives to implement and enforce orders and decrees of the courts. President Nasheed promised this in his election campaign. To say that he would not execute court orders was a deliberate and public breach of the Constitution. Adding to this conflict with the judiciary, President Nasheed declared he would not pay the judges their salaries and allowances in direct contravention of the Constitution.

D. Specialist Operations at Artificial Beach

From the date of the detention of Judge Abdulla, the opposition political parties combined and staged political protest rallies calling for his release. The protests were a nightly event. In the beginning, these rallies were held at the north-western corner of Republican Square near the Maldives Monetary Authority (“MMA”). The protestors derived the power to assemble and protest from Article 32 of the Constitution. Commercial television stations were telecasting the rallies live, exercising their constitutional rights.

The anti-government protestors did not consider that they were contravening any law. If anyone was contravening the law, they asserted, it was President Nasheed. On the basis of this argument, they called for him to act within the bounds of the Constitution or to resign.

Calling for the resignation of a President, Prime Minister or national leader is commonplace in a democracy. There is often a call to accept moral or legal responsibility when something has gone amiss in a drastic way. Recently, there was a call for the Prime Minister in India to be accountable for the corrupt acts of other elements within the ruling government and resign. Also in Norway, there was a call for the Prime Minister to resign on the grounds of moral responsibility following a damning report reprimanding the Norwegian public authorities for failing to prevent or interrupt bomb and gun attacks by a right-wing extremist who killed 77 people last year.

While the protests were held first at Republican Square and later at Artificial Beach, the Specialist Operations division (“Specialist Operations”) of the MPS were always there on duty.

The Specialist Operations was formed in 2006. They were taught and trained in crowd and riot control. In addition, it is their sworn duty to maintain the peace including to protect peaceful and lawful assemblies from the attacks of antagonistic crowds.

According to President Nasheed, the Specialist Operations were established during President Gayoom’s presidency specifically to disrupt the activities of the MDP as a result of which he did not trust them fully. He was dissatisfied with their conduct at the opposition protest rallies. The Commissioner of Police and his Deputy Commissioners were also unhappy with them.

The problems with the Specialist Operations worsened when the MDP protestors pitched themselves in the vicinity of the opposition protest rallies from 4 February 2012. The next evening, the opposition protest was being telecast by commercial television channels. The Deputy Commissioner of Police ordered the Specialist Operations Commander to remove the live-feed cable of two commercial telecasters – VTV and DhiTV. The purpose was to interrupt the telecast. The Commander declined on the ground that it was an “unlawful order” because it would result in the invasion and destruction of private property of the media. Additionally, it would be an illegal interference with the freedom of speech and the freedom of the press to inform the public of the lawful activities of political parties. The Commander asked for a court order, but none was provided.

On the evening of 6 February 2012, President Nasheed and the Commissioner of Police asked Assistant Commissioner of Police Hussein Waheed to resign on the ground of no-confidence. The Assistant Commissioner went home saying he would give his answer within three days.

That same evening, President Nasheed attended a function to mark the National Day of Sri Lanka. He left the function early and went to Muleeage, concerned about the conduct of the Specialist Operations at the Artificial Beach.

By then, the pro-government and anti-government protestors were facing each other. Both sides carried offensive objects like sticks, rods and bottles. Among the protestors were criminal elements. It was likely that there would be a violent clash. This was around 10 pm.

Nevertheless, President Nasheed gave orders for the withdrawal of the Specialist Operations from the area, but they refused to depart claiming it was an “unlawful order”. They further claimed it was their sworn duty to remain there to prevent a breach of peace and violence. They stayed put.

For the second consecutive night, the Specialist Operations refused to obey the Deputy Commissioner’s order to remove the broadcast cables being used by VTV and DhiTV to cover the protests saying it was an “unlawful order” and could not be executed without a court order.

President Nasheed then contacted the head of Marine Police who was off-duty and other MPS personnel who he believed were dependable. They were instructed to withdraw the Specialist Operations from the scene. The head of the Marine Police expected some Specialist Operations Commanders to be arrested and transported to the island of Dhoonidhoo (“Dhoonidhoo”).

The Specialist Operations refused to budge. They said that if the military were sent there as a peace-keeping force, they would withdraw. At the request of the Commissioner of Police, the MNDF Malé Area Commander dispatched a military command to Artificial Beach. The Specialist Operations withdrew from the scene and headed for Republican Square.

When President Nasheed learnt that the military was there, he was displeased. Immediately, he ordered the military to withdraw. The military withdrew to a nearby spot known as the ‘Saw Mill area’. A clash then ensued between the opposing groups.

On receiving news of the clash and acting on the orders of the Malé Area Commander, the military returned to the Artificial Beach. They placed themselves between the protestors and brought the situation under control. The Specialist Operations also learnt of the clash and, in spite of the Deputy Commissioner’s orders, rushed to Artificial Beach.

Some witnesses claimed that about this time, while they were retreating from Artificial Beach, Specialist Operations personnel attacked them at a restaurant known as Tuscalusa. It is not disputed that Specialist Operations pursued and attacked them. They also vandalized the MDP meeting place called Haruge and battered some MDP members including senior members of the Government. Thereafter, they returned to the Republican Square and joined the rest of the police.

E. Attempt To Arrest and Punish the Specialist Operations

Some witnesses were of the view that President Nasheed was himself shaping the events of the night with a view to declare a state of emergency. A valid declaration of emergency would suspend several vital fundamental freedoms under the Constitution. The tense situation at Artificial Beach, however, fizzled out by midnight.

The Specialist Operations were by now alive to President Nasheed's intention to arrest, incarcerate and punish them. On his order, the military approached them to make the arrests; the Specialist Operations, backed by the 'Blues' (i.e. the non-specialized police), objected and refused. The Specialist Operations stated their demands in plain and simple words. First, the Commissioner of Police must give the assurance that there would be no "unlawful orders". Next, the Commissioner of Police must give his assurance not to arrest, incarcerate or punish them for their actions on the night. Some policemen were heard to call for the resignation of President Nasheed.

Elsewhere at about the same time, MDP activists attacked the VTV building smashing doors and windows and setting fire to parts of the building. As a result, the VTV live-feed was interrupted for a brief time.

Also about the time, the MNDF HQ was put on Red Alert under directions of the MNDF Malé Area Commander, signifying preparations for war. This is the highest level of readiness in the MNDF HQ, reserved for external threats to national security or a natural calamity, and is accompanied by the sound of a siren which can be heard across the whole of Malé.

President Nasheed in his written statement dated 8 August 2012 to the Commission said that:

"... the MNDF headquarters was supposed to be on red alert (state of emergency)."

The announcement of Red Alert presupposed a prior declaration of a state of emergency by the President. The acts of the President on the night of 6 February 2012 and morning of 7 February 2012 were all based on the presupposition that a valid state of emergency had been declared.

No state of emergency was declared and proclaimed by the President on 6 or 7 February 2012. His evidence before the Commission was that he wanted to confer with the Chief Justice of the Supreme Court and the Speaker of the Parliament to discuss the question of declaration of a state of emergency. This was well after sunrise on 7 February 2012. It never happened. In any event, the Constitution does not require the Chief Justice and the Speaker to be consulted or for them to attend before the President before the President makes a declaration of emergency.

On the basis of the evidence heard by the Commission, there appeared no basis for a declaration of a state of emergency.

While the Specialist Operations stood firm at Republican Square, President Nasheed was at Muleeage, the Presidential Palace.

Inside MNDF HQ that night, as on most of the previous 22 nights, was President Nasheed's Minister of Defence, Tholath Ibrahim ("Tholath"), who at one time was part of the military. With him were all the MNDF Generals in Malé. Top among them was Malé Area Commander of the MNDF, Brigadier General Ibrahim Didi ("Gen. Didi") together with Brigadier General Ahmed Shiyam ("Shiyam") and Major General Moosa Ali Jaleel ("Jaleel"). Tholath was in consultation with President Nasheed. They coordinated their attention and operations against the Specialist Operations at Republican Square.

A team was sent from MNDF HQ to negotiate a peaceful settlement with the Specialist Operations at Republican Square. Nothing materialized. This time, the Specialist Operations asked for the Commissioner of Police to meet them personally and give the assurance they sought. The Specialist Operations remained in riot gear.

As time wore on, more policemen joined the Specialist Operations at Republican Square. On 7 February 2012, some of the new arrivals were off-duty. Some had been transferred away. They all rallied to the cause of the Specialist Operations at the Republican Square. The swell of support continued to grow.

The Commissioner of Police, however, refused to have anything to do with the Specialist Operations men at Republican Square. He took the view that their refusal to obey orders signified they were no longer members of the police.

While still at Muleeaage, President Nasheed decided to arrest the policemen at the Republican Square and incarcerate them in Dhoonidhoo.

On the ground at Republican Square, there was an impasse. Both sides wanted to avoid an armed or unarmed combat as it would irreparably divide the nation and their own families; the military had family connections with the police and vice versa.

There were other reasons for the reluctance of the military to engage the police in a hand-to-hand combat. Chief among these was the superiority and skill of the Specialist Operations in dealing with internal disorder and riots as opposed to the MNDF that is trained to deal with external aggression.

Then, there was a second effort was made at conducting negotiations. It appeared as though a settlement of sorts was reached. The Specialist Operations, together with the 'Blues', agreed to go to Iskandhar Koshi (their barracks) to meet with the Commissioner of Police. However, they stopped in their tracks when they were told that they could not take their riot gear with them. Once again, battle lines were drawn between the military and the police at the Republican Square. The impasse was prolonged.

It was in this state of affairs that President Nasheed chose to walk to the MNDF HQ to assess the situation and give orders. He arrived there at 4.37 am, just before the morning prayer call. Soon after, he ordered MNDF soldiers to enter Republican Square and deal with the situation. They were not successful, just like the previous two attempts earlier that morning.

While at the MNDF HQ, President Nasheed conferred with his Defence Minister, Home Minister, the Foreign Minister, a member of Parliament and high ranking military officers.

By this time, some politicians had called for the public to rally support for the police at the Republican Square. The then Vice-President, Dr. Waheed, had earlier that morning, issued a statement calling upon the security forces to uphold the Constitution and to refrain from unconstitutional and illegal instructions.

At about 7 am, President Nasheed walked out of MNDF HQ to deal with the situation personally and stood face-to-face with the police at the Republican Square. He was protected by his bodyguards who were armed as well as by other MNDF personnel. There is no evidence that either the Cabinet colleagues or military officers present advised him to enter Republican Square. President Nasheed failed to achieve his objective. He was heckled. The crowd comprising both police and civilians hurled abuse at him including clear calls for his resignation. President Nasheed returned to the MNDF HQ.

Back inside the MNDF HQ, the problem continued to be discussed. His advisers told him that there was no military solution to the problem without the use of lethal firearms. The President made it clear to all the military Generals and commanders that the use of lethal firearms was unthinkable. There was an order to lock up the firearms which was immediately executed. Even the bullets in the guns of the gate guards were retrieved and sent to the armory. In the event that anyone was tempted to get hold of the AK-47 rifles in the Coast Guard vessels, they were retrieved, transported to and secured in the Coast Guard armory on instructions of Gen. Shiyam. The police did not possess any lethal firearms. In addition, a group of Coast Guard personnel were sent to Dhoonidhoo to secure the armory there since the island was under the control of the police and the MNDF did not want the police to access lethal firearms. As the use of firearms was ruled out, a negotiated solution was the only way forward. But President Nasheed thought otherwise. He insisted on confronting and combating the policemen at Republican Square.

About then, MDP supporters who had gathered near the Reef Side junction walked towards the centre of the Republican Square calling for the arrest of the “mutinying” police. Once they were within close proximity, the police turned on them and a skirmish ensued in which MDP

supporters were subjected to violence causing injury to a number of senior MDP members, including Members of Parliament.

Around this time, roused to action by President Nasheed, the Defence Minister and the Chief of Defence Forces, MNDF soldiers came out of the MNDF HQ. Tear gas canisters were initially thrown by them and were subsequently hurled each way with devastating effect. At this time, the wind favoured the policemen. So, the MNDF soldiers were more affected by the gas. Republican Square descended into chaos. Command and control was completely lost for both the military and the police.

In Malé, on that day, there were some 300 active MNDF personnel which compared with about 1,000 police. Amid the chaos, some soldiers crossed over to join the police, giving them moral and material support. This was an unfathomable situation since the military and police were taught and trained to work together and not against each other.

Following the tear gas attack, the police and the anti-government protesters hurled stones and whatever else they found at the MNDF HQ. The policemen destroyed many things at the Police HQ. They also hurled chairs and other things through the windows at the MNDF HQ. The military returned to the MNDF HQ and closed the main gate.

Inside the MNDF HQ, President Nasheed took some rest and had a cup of tea. He had discussions with those present with him as well as some of his Cabinet and Government colleagues by way of a conference call. He also had telephone discussions with his close aides.

Around this time, a group of soldiers from Kalhuthukala Koshi marched down the streets and joined the protestors at the Republican Square. There is some discrepancy as to how they left Kalhuthukala Koshi, but the fact that they came and joined the protestors is undisputed.

At this time, Dr. Ibrahim Didi, the then President of the MDP (“Dr. Didi”), contacted President Nasheed and proposed that a peaceful solution to the problem be worked out. President Nasheed agreed. Dr. Didi attempted to contact MP Mariya Didi but was unsuccessful. He then contacted

MP Ibrahim Mohamed Solih, the MDP Parliamentary Group Leader, and communicated his idea to release an all-party joint statement. He also called the leader of the PPM, Abdulla Yamin, and the leader of the DRP, Ahmed Thasmeen Ali. They told him that they wanted to speak to President Nasheed directly. When Dr. Didi communicated the same to President Nasheed, the latter informed him to go to the office of the Indian High Commissioner, D.M. Mullay, who was arranging a similar dialogue. There was consensus that there should be a peaceful settlement, the idea being to give their support to President Nasheed for three days during which he should find a solution. This, however, did not materialize because other developments overtook these efforts.

F. Three Critical Participants

Shortly after the military retreat, three men arrived at the Republican Square:

- Retired Colonel Mohamed Nazim (“Nazim”). He had retired from the Defence Force after what, according to him, was unfair and unjust action against him by the MDP government. He won his case against the State. He is now the Minister of Defence.
- Retired Deputy Commissioner of Police Abdullah Riyaz (“Riyaz”). He was dismissed from the police force after what he too claims, was unfair and unjust treatment by the MDP government. A Court upheld him and ordered he should be reinstated. He is, at present, the Commissioner of Police.
- Mohamed Fayaz (“Fayaz”). He was an ex-policeman who was promoted to the post of Deputy Commissioner of Police by President Nasheed. He was later appointed as the Deputy Minister of Transport and Communication. He is, at present, the State Minister of Home Affairs.

They had been watching what was going on at Republican Square and felt it was their moral obligation and public duty to intervene. These three men, when they arrived at Republican Square, appeared to enjoy positive rapport with the opposition groups outside the MNDF HQ,

and quickly assumed leadership roles, particularly with the police. There is no suggestion that they were appointed or given specific authority.

They then extracted an assurance from the military officers that no lethal firearms would be used. As a result, they persuaded the crowd to move away from the main gate of the MNDF and generally calmed them down.

In these circumstances, Fayaz received a telephone call from the Defence Minister Tholath suggesting a meeting. Somehow, it was the other two who in fact went to the meeting after they received an assurance that they would not be detained inside the MNDF HQ. While inside, Nazim was warmly welcomed by some soldiers.

Nazim and Riyaz met Tholath in the presence of high-ranking military officers. Nazim conveyed to Tholath the crowd's demands for the resignation of President Nasheed and the resignation of the Commissioner of Police, Ahmed Faseeh, and both his deputies. It was agreed between Nazim and Tholath that President Nasheed would give a response by 1.30 pm on 7 February 2012. Tholath immediately indicated that President Nasheed's resignation was out of the question, but agreed to convey the message to him. Immediately thereupon, Nazim and Riyaz came out and met the crowd at Republican Square.

By then, it became public knowledge that India would not send her troops to intervene in the domestic conflict in Maldives.

At the Republican Square, Nazim addressed the crowd in these words:

“Assalaam alaikum. I hope everybody is okay. Yes, I have just met with the Defence Minister and all high-ranking military personnel and made a proposal of ours. The proposal was that the President should resign without condition. And, after that, to transfer all powers to the Vice President. Our second condition was that the Commissioner of Police Ahmed Faseeh and both his deputies resign at one. We told them these are non-negotiable conditions. These are not things up for further discussion. We assure the

beloved Maldivians, military and police who are with us that, God willing, these things will happen this way by the deadline we have set for 1:30 today. When I entered the military headquarters I was given a very happy scene. Everyone within the military lifted me up and very completely revealed their support for me. God willing, things will happen today as we want. I ask the military, police and people to patiently remain with us.”

G. Critical Events within the MNDF HQ

Inside the MNDF HQ, President Nasheed sought the rank and file to assemble before him. The officers stood beside him. He asked the rank and file:

“What do you think I should do?”

They were quiet. Then he addressed one soldier and asked him for his views. The soldier remained silent. The President then asked another soldier for his views. His response was that President Nasheed should resign.

The President then said that was the view of only 2 men. He wanted to know the view of the other soldiers. They were silent. President Nasheed then asked those who wanted him to resign to raise their hands. A very large majority of soldiers raised their hands in unison. The officers watched in silence.

Then one soldier asked the President, “What is the guarantee you will resign?” The President responded, “you wouldn’t see me on the streets any longer”. Evidence was heard that one soldier specifically asked the President to resign within three hours. President Nasheed then went on to say:

“As stated in the Constitution the Vice President will takeover. That is how it is stated in the Constitution. So, I don’t believe anyone should be angry. We can end this in a good manner. So please give the opportunity. I will talk to the people outside as well. I will tell them to give the route to go to the President’s Office. After going to the President’s Office I

will submit my resignation. I will ask of you - you should protect my family as well. You should facilitate that for me. I should talk about this with you. Right here, first right? When I go to President's Office, I will publicly say that, in my perception the best option for the country right now is my resignation. That's what I'm saying. Please keep monitoring; please keep an eye on things. Nothing should go out of control. Then another group should not go and arrest other people. Such a thing should not happen. You should be responsible. You are what remain. I am doing this to be sincere to you in my opinion. In my opinion I always tell you that the most important in the Maldives is you. No one else, I know that even a public vote won't say otherwise. But you should give me my half a cent. Look I also have many deliberations and many tasks."

President Nasheed's declaration of his decision that he agreed to resign spread like wild fire.

H. Other relevant events

After President Nasheed's intended resignation was publicly known there was a spontaneous "invasion" of MNBC1. Members of the public with the assistance of the military and police threw teargas inside the main compound and forcibly entered the premises. They burnt the MNBC flag and hoisted the national flag to signify that it was the national broadcasting station. MNBC's logo was changed to the logo of TVM, as it was known under President Gayoom's time. Some witnesses also saw Ali Waheed, the brother of President Waheed, at two separate events, both prior to the actual resignation of President Nasheed, and heard him claim that he was there "on the authority of his brother, the Commander-in-Chief."

This was about the same time that there was a second attack on Haruge property by some parts of the police and military together with members of the public.

I. Steps Leading to President Nasheed's Resignation

President Nasheed said he wanted to go to the President's office to resign. He also wanted to go to Muleeage to change his clothes. His SPG said it would be unwise to do so and his jacket and tie were brought to him. He was keen to walk to the President's office, but he was again advised

against this. Eventually, about an hour after his announced intention to go to the President's Office, he went there in a car belonging to the military driven by his SPG driver. A bodyguard and the Defence Minister accompanied him in the car. A number of his SPG and other military walked beside the car. They drove into the President's Office from the south side. Riyaz, Fayaz and Nazim accompanied the President to the President's Office. They walked in front of the car.

Once there, President Nasheed alighted from the vehicle, walked directly to the lift across the courtyard and went to his room on the second floor. There, he met his secretary who was already packing his personal effects at his request. From there, he went to the meeting room on the same floor where he met with some Cabinet Ministers and senior officials. Although it was not the normal Cabinet meeting room, the Chief of Staff of the President's Office explained that this was because they had not had the time to prepare it for a meeting. Upon meeting with him, some Cabinet Ministers questioned the President's decision to resign and asked if there were any alternatives. He responded by saying that he saw no alternatives and the Home Minister and Defence Minister concurred with him.

From there, he went to a room adjacent to where the press had gathered. Nazim told him that the Speaker was asking about the letter of resignation. President Nasheed inquired of his legal secretary and she replied that it was not yet ready. President Nasheed then asked for a pen and a piece of paper and, in his own hand, wrote:

“Considering the situation in the country today, I believe great damage might be caused to the people and the country if I remain President. I therefore submit my resignation as President of Maldives”

Immediately thereupon, President Nasheed handed his resignation letter to his acting Cabinet Secretary, Hisaan Hussain (“Ms. Hussain”), who passed it to Abdul Hameed to take it to the dispatch section of the Cabinet Secretary's office.

From there, President Nasheed went to meet the media and said:

“Beloved citizens of the Maldives. I see that if I were to continue as President of the Maldives a lot of harm may befall Maldivians and the Maldives. Therefore, as of today, I am resigning from the post of the President of the Maldives. I have never wanted to rule by force. I came to this decision because, in my opinion, I sincerely believe, that if this government is to be maintained, it would require the use of extreme force and cause harm to a lot of citizens. Also, in my opinion, if attempts are to be made to maintain this government, it is very likely that the Maldives will become susceptible to foreign influences. I have always wished the best for Maldivians and will continue to do so in the future. I have made the decision today to resign for the benefit of Maldivians, with sincere respect and keeping in mind the high levels of support Maldivians have shown me. I hope that Maldivians will see a more prosperous tomorrow and I pray our lives will be good now and in the hereafter.”

This was an impromptu speech without notes or a draft.

While the resignation letter was at the Cabinet Office, Riyaz and Fayaz inquired if there was someone to deliver it to the Speaker and offered to facilitate its delivery.

Before leaving the President’s Office and walking as he wished to Muleeaage, President Nasheed went to the fifth floor and addressed his staff.

About the same time, Riyaz retrieved the resignation letter and accompanied President Nasheed to Muleeaage on his departure from the President’s Office. Riyaz then took the resignation letter to the Police HQ and an officer went to the home of the Speaker who signed the receipt at 1.47 pm. A copy of the resignation letter and the receipt is attached herewith as Appendix XIV.

Having received the letter of resignation, the Speaker facilitated the swearing-in of the new President in the presence of the Chief Justice at the Parliament at 3.36 pm.

President Nasheed remained at Muleeaage from about 2.00 pm until about 6.30 pm. Although he requested to leave earlier, he was advised by SPG to remain at Muleeaage until security clearance was received whereupon he was transported by car to his personal home accompanied by SPG.

As described above under section V, the next day it was reported by the International press that President Nasheed was claiming to have been forced to resign.

As per the testimony of Ms. Hussain, two days after the resignation, she asserted internally within the MDP that protocol had been violated in the transfer of power. Specifically, the assertion was that the resignation letter was not delivered to the Parliament by the official dispatch and that the delivery was made by private individuals. This claim received the support of Mr. Ahmed Mausoon, the Chief of Staff of the President's Office. Although it was apparently accepted within the Party, it was not pursued until President Nasheed and the MDP decided to appear before the Commission where he claimed the following:

"It [the resignation letter] didn't go to the Speaker... I didn't give them a letter. The President's office didn't give them the letter... I had no intention of sending this letter...According to the Constitution, Shahid [the Speaker] would have received my letter. But as soon as Hissan had [the] letter and she left it somewhere these three gentlemen [Riyaz, Fayaz and Nazim] went and grab[bed] the letter. They took the letter with them, and now I knew that they took the letter to Shahid's [the Speaker's] home. And there is no receipt. So I didn't send a letter. I was trying to get out of the resignation, I have never resigned. I was trying to get out of the situation... There is no receipt of the letter. Please find if there is? So, I would maintain, there was no resignation made in that letter. The only reason why it becomes a letter is simply because, there is an emblem but this is the President's Note Pad's... It has to have a number, it has to be a proper letter "Official Kanthah thah". This [is] official business. There is a law on official business and this says how, letters are supposed to be dealt, and they had also given me a time that I should resign before such a time, and I was convinced that he would shoot me at that time. Because in my mind this fellow has reached the depths and there is no way he could not get

this thing done. And the time that he gave the ultimatum that he gave was running out. And then there is another bigger protocol that we finally brought in .. all letters have to go through electronic mail. This is again to track letters to see that there are no rogue letters. This is the biggest rogue letter. Finally the biggest rogue letter was written by me.”

VII. OBSERVATIONS & CONCLUSIONS

In accordance with the order of issues specified in the third paragraph of the Decree, analysis of the applicable law and facts leads the Commission to the following observations and conclusions.

A. Context

With the adoption of the Constitution in 2008, the Maldives embarked upon a new era as a democratic State. It is evident that Maldives is experiencing the challenges of its transition. It is a young democracy with many new and fragile institutions and bodies which are contending with persistent elements and tendencies of a former political culture. The type of political traditions and culture which is required for these institutions and bodies to function effectively and mature needs to be fostered.

Perhaps the most fundamental requirement for a vibrant democracy is the rule of law which appears weak in the Maldives. Notably, the Commission was confronted regularly by allegations of the breach of the rule of law and clear absence of confidence in the institutions which are entrusted with upholding it. Indeed, this appeared central to the frustrations of government under President Nasheed and his own lack of recourse to the judiciary to redress grievances and settle disputes. He did not appear alone.

Similarly, a central requirement for democratic society is the independent and impartial administration of justice, especially the police and security services which are to serve and protect the citizenry without fear or favour. The Commission observes that there is a substantial lack of trust and confidence of at least a part of the population in these services. Far too many people appeared to have been persuaded that their interests would not be protected or served by the current system of administration of justice. Moreover, the system does not appear capable to reassure segments of the public and engage their confidence. It was remarkable for the Commission to learn, in the course of its inquiry, that self-evident use of force and out of control behavior by the police has not, to this date, appeared to have been addressed by the responsible

authorities or relevant institutions. In the absence of the effective and timely functioning of these bodies, the human rights and fundamental freedoms specified in the Constitution remain theoretical.

Democratic governance is epitomized by the existence and functioning of a representative, participatory and deliberative parliament where the will of the people is reflected in the law-making process. The practices and spirit of parliamentary bodies and procedures are crucial in this regard. This needs to be learned, lived and promoted. It is especially important that parliament is effective in the face of deep social divisions, and it is vital that such differences of political views and interests are respected and can be negotiated through peaceful deliberations. The Commission observed that the clear difficulties in the Parliament and amongst political parties have the effect, in part, that the politics of protest are conducted through the streets. This needs to change.

Finally, a cornerstone of democratic society is the freedom of expression including for the media such that genuinely held views may be shared and interests advanced. However, the freedoms of expression and the media are not unlimited and are, in fact, qualified by respect for the equal rights and freedoms of others and their reputations, as well as by public interests such as public order. In particular, the freedoms of expression and the media do not entitle to incite discrimination, hatred or violence. The State is also under a duty to promote tolerance and to protect individuals and communities from attacks upon their reputations. The Commission observes that the climate prevailing in Maldives is one rife with uncontrolled slander, libel, and defamations, as well as incitements to hatred and violence. The heavily politicized media also does not appear to distinguish itself by due restraint or journalistic ethics. This has contributed to a climate of fear, cynicism, and mistrust which is a major part of the context in which the events of 6 and 7 February 2012 unfolded.

B. Transfer of Power

All relevant constitutional provisions are in Section IV. Only a resignation in terms of Article 121(a) and a succession in terms of Article 114 are under consideration.

First, the vacation of the office of the President and the assumption of office by an incoming President are exclusively governed by the Constitution. Therefore, as long as the two processes are in accordance with the provisions of the Constitution, nothing can alter or annul a resignation and assumption of office so performed.

There is no question but that each step prescribed by the Constitution regarding resignation of the President and assumption of office by an incoming President was fulfilled. This is subject only to the caveat about the possible non-compliance of protocols.

The fact that there were protocols which had been created for general office management could never vary or amend the relevant Constitutional provisions. Perhaps correspondence was recorded or noted in a particular way, and there were usual procedures about delivery, but they are not matters of substance and do not supersede Constitutional stipulations.

The Commission does not overlook the fact that it heard evidence that from time to time, President Nasheed would announce appointments, sign formal letters confirming them, but that his staff would hold back delivery for a period in case he changed his mind as he did, even when there had been publicity of the appointment. The wisdom of such a practice is not for the Commission to comment upon, but such practice can have no influence on what the Constitution required in respect of a Presidential resignation.

Consequently, subject only to the issue of the resignation not being voluntary as a result of illegal coercion, the assumption of office of the President by Dr. Waheed on the afternoon of 7 February 2012 was in accordance with the Constitution.

C. Illegal Coercion

As stated earlier, the onus is on President Nasheed to demonstrate how his clear resignation was not valid or effective because it was not a voluntary act and was a reaction to illegal coercion.

A variety of matters were raised in support of this contention and we turn our attention to those of substance. When this was first raised on 8 February 2012, it was said that a gun had been held to his head. This was then refined to suggest that it was a metaphor and that there was no weapon. What President Nasheed told the press is noted in Section V of this Report.

As noted in Section IV, President Nasheed at an early stage made clear that lethal firearms were not to be used. This was a theme he continued with up until the time of his resignation and referred to it in his impromptu speech to the media (see Section VI(B) of this Report).

It is an inevitable conclusion of the totality of the credible evidence that the only available firearms which were anywhere near the President between 4.37 am and 1:30 pm on 7 February 2012 were those which were carried by his SPG. There is no evidence to suggest that the arms in possession of the SPG were a threat to him.

The next level of contention is encapsulated in the publication by two leading members of the MDP, Ameen Faisal and Mohamed Aslam (“Aslam”), entitled “*A Coup D’état backed by Police and Military*” (the “MDP Paper”). The MDP Paper uses the words “coup” and “mutiny” tautologically as though they mean one and the same thing. The MDP Paper also uses the expression “rebellion” to describe the transfer of power on 7 February 2012.

As to resignation by coercion, the MDP Paper contains only two sentences:

“Also, the fact that the President went to the President’s Office under dangerous conditions and three civilians and select Military Personnel were closely monitoring the President’s movement inside and issuing orders to the staff inside, signifies that the President’s resignation took place under duress.”

“The Report asserts that the President’s resignation had been tendered under duress as he faced a situation where he was certain his own life and the safety of his people was compromised.”

It is clear that on the journey from the MNDF HQ to the President's Office, the car transporting President Nasheed travelled through an abusive mob and many insults were hurled at him. But, he was protected by his SPG and there is no credible evidence that the other military personnel were antagonistic towards him. Rather, they were there to ensure his safety during the journey. As to the position within the Presidential Office building, the Commission does not accept that his activities were closely monitored or that the military or the three civilians were issuing orders. Even if they had been, that does not signify coercion.

President Nasheed initially said that it was Nazim who delivered the threat to kill him and his family and sack the whole of Malé. The Commission pointed out to him that Nazim never met him before he announced his decision to resign. President Nasheed clarified that the threat had been issued when Nazim met Tholath and the Generals and that it was conveyed to him by Home Minister Hassan Afeef ("Afeef"). Afeef claimed to have heard it from Tholath. Tholath denied communicating any threat to Afeef. All those present in the initial meeting between Nazim and Tholath testified that no threat was conveyed.

President Nasheed added that he heard Nazim issue the threat when Nazim addressed the public at Republican Square. President Nasheed further referred to a video footage, which, according to him, showed Nazim carrying a pistol. The Foreign Minister in President Nasheed's government, Ahmed Naseem ("Naseem") said that Shiyam, who was with President Nasheed in the MNDF HQ, had a gun that he could take out anytime and shoot President Nasheed. Yet another witness, the Minister of Tourism in President Nasheed's government, Ms. Mariam Zulfa, said that it was Riyaz who had a gun. This was because according to her there was a bulge in the pant pocket of Riyaz. The Commission is forced to conclude that this is evidence which although it may be the presently-held view of those people, is so inconsistent with the totality of the material that it cannot be relied upon. Finally, all the credible evidence showed that neither Nazim, nor anyone else, delivered the threat alleged by President Nasheed. The Commission has read the entire speech Nazim made to the public and police at Republican Square. It does not contain a threat as alleged by President Nasheed or otherwise.

There was also very clear and conclusive evidence to justify the Commission to conclude that President Nasheed was safe and free within the MNDF HQ. First Lieutenant Ali Ihusan (“Ihusan”) was an eyewitness to the main events at the MNDF HQ and at Republican Square. He stated before the Commission that President Nasheed was walking freely within the MNDF HQ and that if there was any hostility towards him, he would have been enclosed in a room and not allowed to go outside. Further, Tholath testified that people working for President Nasheed inside the MNDF HQ including himself, were working freely and none of them felt threatened at that time. The Commission also heard from Shiyam who testified that he was with the President all the time and that there was no threat nor any word of anger against him. He added that there was nothing stopping President Nasheed from leaving the MNDF HQ just like Naseem who left from the back gate on a motorbike. Many other witnesses said that President Nasheed was safe and free when he was at the MNDF HQ. Further, Gen. Didi, in his testimony before the Commission, also rejected the notion that firearms could have been used to threaten President Nasheed.

Coercion as a result of unlawful activities by other people was a constant theme from many witnesses. Because illegal or unlawful acts or omissions were going on in the community, it seemed to be the view of a number of witnesses that this had the effect of coercing the President to resign. The Commission does not comment on the allegations of such activities because they are not within our mandate but there is clear and unequivocal evidence before us that there are serious allegations of wrongdoing by the military, the police and private citizens. For the Maldives to move forward, these matters must be addressed. However, the Commission is unable to see how it can be contended that such wrongdoings perpetrated upon others can be said to have any coercive effect upon the President. Indeed, until the time of his resignation, President Nasheed possessed of many powers under the Constitution that he could have utilized including the lawful use of force. He chose not to. That decision may be classified as praiseworthy, but he cannot now contend that because he made those choices, that he was “forced” into resigning because of what others were doing around him.

There were a multitude of allegations that there was some plot to force President Nasheed to resign. It was impossible to find any clear or consistent theory as to who, when or how these

things might have occurred. A great many names were bandied about, but with no evidential basis for the allegation. Chief among those named were the present President Dr. Waheed, former President Gayoom, present Minister of Defence Retired Colonel Mohamed Nazim, present Chief of Armed Forces General Ahmed Shiyam, leader of Jumhooree Party Qasim Ibrahim, ex-Minister of Defence Tholath Ibrahim, present State Minister of Home Affairs Mohamed Fayaz, present Commissioner of Police Abdulla Riyaz and Interim Deputy Leader of PPM Umar Naseer, and leader of the Adaalath Party Sheikh Imran Abdulla. President Gayoom was accused of planning and financing the coup d'état. Belatedly, President Nasheed provided the Commission with a list of some 67 names, whose bank accounts and telephone logs he requested be scrutinized. These allegations were unsupported by any evidence.

All sorts of allegations were made against Retired Colonel Nazim on how he purportedly stalked President Nasheed, controlled his movements and dictated what he should say. Nazim, it was said, even wanted the pen used by President Nasheed to write his resignation. There was ample credible evidence rebutting these false allegations. Such allegations are very easy to make and some naively suggested that if the Commission trolled through scores of bank accounts, telephone records, SMS logs and intelligence reports, all would be revealed. The Commission lacks the ability to do so comprehensively, although when it made specific requests in individual cases, information was provided and revealed nothing of consequence.

The Commission summoned all the personalities named above. General Shiyam, Retired Colonel Nazim, State Minister Fayaz, the then-Defence Minister Tholath Ibrahim and Commissioner Riyaz consented to the Commission's scrutinizing their bank accounts. The Commission found nothing untoward or incriminating.

Aslam, while appearing before the Commission, read about an SMS attributed to Mr. Saleem, the Permanent Secretary of the Ministry of Environment. The SMS spoke of a distribution of 2.4 million Rufia to the "mutinying" policemen. The Commission summoned Mr. Saleem. He debunked the message effortlessly, claiming that he did not recall sending such a message. After hearing him, the Commission would not invade and investigate the privacy and personal affairs

of all and sundry as desired by President Nasheed and his aides in the absence of minimally credible supporting evidence.

Although no part of the Commission's mandate, there have been frequent references to a coup d'état. The notion that there might be a coup d'état was first postulated by President Nasheed's Youth and Labour Minister, Hassan Lateef, who in the presence of the Minister of Transport, Adil Saleem, asked President Nasheed whether what they were witnessing was a coup. The President replied:

"This is nothing but a coup."

After the MDP Paper, several witnesses have asserted before the Commission that there was a coup d'état on 7 February 2012. So the Commission has decided that it would, in the interest of the Maldives and the international community, nevertheless exceed its remit under the Presidential Decree and make its findings and declare its conclusion on this issue.

The best expression of the allegation of the coup d'état is in the MDP Paper and another note published by the MDP on 21 June 2012 entitled "The Central Role of Mr. Mohamed Waheed in the Maldives Coup d'état" (the "MDP Note"). The basic proposition of President Nasheed is that there was a coup d'état and that it was perpetrated by those politicians who suffered a major electoral defeat in the presidential election in 2008.

This Commission does not accept that there was a coup d'état.

To begin with, the proposition that there was a major political defeat inflicted by the MDP on its political opponents is unconvincing, as demonstrated by the electoral results in Section VI of this Report. To the contrary, there remained a robust opposition. Rather, it is evident that President Nasheed lost the support of the coalition supporting the MDP which had brought him to power and it is an irrefutable fact that MDP never enjoyed a clear majority in the Parliament.

By the end of 2011, President Nasheed was seriously alienated. It might be that various quarters wanted to bring down President Nasheed. It is possible that some politicians had bizarre and fanciful ideas of bringing him down. One of them dreamt of a “ladder revolution”. None of these dreams materialized.

President Nasheed and his supporters say that the military and others did not support him. They abandoned him. They were disloyal to him. They did not have proper plans to protect him in the situation he found himself on 7 February 2012. The Commission finds that these accusations are without foundation. A coup d'état required positive action against President Nasheed. Non-action and inaction cannot constitute a coup d'état. Moreover, the Constitution does not call for loyalty of anyone to the President. It calls for the loyalty to the Constitution.

On 6 and 7 February 2012, President Nasheed did not consult or inform the military about his plans and intentions. He did not seek their advice. Accordingly, there was nothing about which the senior officials could plan or advise.

Reliance was placed on the fact that some senior officials were in plain clothes during an emergency. This cannot be evidence of a coup d'état.

Whether there could have been any form of ‘planning’ of a coup d'état against the President leading up to the day of 7 February 2012 was convincingly discussed in evidence by an MNDF officer when he said:

“If it was a plan, President Nasheed was involved in the planning. Because his decisions were the things which lead to these events. His decision to pull out MNDF and police from Artificial Beach is the starting or ignition of this whole thing. His decision to remove the cordon to do whatever he wanted [led to] MDP people [coming] in through the cordon area and I think they were trying to solve the issue but police attacked them. But that decision to move the cordon, the decision to not have any other course of action [and] then just attacking the police... the decision of pulling in all MNDF personnel into the

headquarters at a time when it was pretty critical outside.. so all these decisions if this was a plan, the person who made decisions could be, I mean, involved in the planning. See, most of the events that day [were] spontaneous. There is no question about it. But I wouldn't say there [were] no plans to overthrow the government. Every day we have plans to overthrow government all year [round] since 2003...and through 2008 we saw people doing it."

In sum, the Commission concludes that there was no illegal coercion or intimidation nor any coup d'état. The Commission has received no evidence supporting or to substantiate these allegations. This disposes the main mandate of the Commission.

VIII. RECOMMENDATIONS

As there was no illegally coerced resignation of the President on 7 February 2012, and as the subsequent transfer of power followed precisely the prescriptions of the Constitution, the Commission has no recommendations on these matters.

With regard to the facts, circumstances and causes of the events of 7 February 2012 that resulted in the transfer of power in the Maldives, the Commission makes the following general recommendations:

1. Immediate steps be taken to provide assistance and encouragement to the following State institutions with a view to their increased effectiveness and general performance in the service of the common good and public interest:
 - a. The Maldives Police Service and the Police Integrity Commission
 - b. The Judiciary and the Judicial Services Commission
 - c. The People's Majlis
 - d. The Human Rights Commission of Maldives
2. With respect to the administration of justice, in particular concerning allegations of police brutality and acts of intimidation, there is an urgent need for investigations to proceed and to be brought to public knowledge with perpetrators held to account and appropriately sanctioned.
3. The judiciary must enjoy public confidence and where there are allegations about judges' conduct, the Judicial Services Commission must act in a timely and definitive way and report.
4. The operation of a Parliament requires particular practices which have been cultivated in similar institutions over centuries, and the People's Majlis would be assisted in understanding these so that they can better carry out their constitutionally mandated functions.

5. There is also an urgent need to address an apparent climate of popular discontent and division engendering hatred between individuals and communities, propelled by the politicization of the media. To counter this trend, attention needs to be directed towards the promotion of journalistic ethics, tolerance and public reconciliation.

Overall, the Maldives needs to be assisted in strengthening the rule of law such that the institutions of the State may enjoy the public confidence necessary for a democratic society.

Dated in Malé, Maldives, this 30th day of August 2012

SIGNED

(Mr. Ismail Shafeeu)
Chairman

SIGNED

Justice G.P. Selvam
Chairman

SIGNED

Dr. Ibrahim Yasir
Member

SIGNED

Dr. Ali Fawaz Shareef
Member

SIGNED

Sir Bruce Robertson
International Judicial Adviser

SIGNED

Professor John Packer
International Legal Adviser