

REVIEW OF APPOINTMENT AND DISMISSAL OF MEMBERS OF SELECTED INDEPENDENT INSTITUTIONS OF MALDIVES

2008-2016



TRANSPARENCY MALDIVES

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CONTENTS

ABBREVIATIONS		06
INTRODUCTION		08
METHODOLOGY		10
SECTION 1	OVERVIEW OF APPOINTMENT AND REMOVAL OF MEMBERS TO INDEPENDENT INSTITUTIONS and THE ROLE OF THE PARLIAMENT	
	1.1 Overview of the Appointment and Removal processes.	12
	1.2 People’s Majlis (Parliament)	18
SECTION 2	DETAILED ANALYSIS OF APPOINTMENT AND REMOVAL OF MEMBERS TO THE SELECTED INSTITUTIONS	
	2.1 Human Rights Commission Of The Maldives	21
	2.2 Auditor General’s Office	23
	2.3 Civil Service Commission	25
	2.4 Elections Commission Of The Maldives	27
	2.5 Prosecutor General’s Office	29
	2.6 Judicial Service Commission	31
	2.7 Anti-Corruption Commission	33
	2.8 Maldives Media Council	35
	2.9 Maldives Inland Revenue Authority	37
	2.10 Maldives Broadcasting Commission	40
	2.11 Information Commissioner’s Office	42
	2.12 National Integrity Commission	43
SECTION 3	KEY FINDINGS, CONCLUSIONS AND RECOMMENDATIONS	
	Conclusion.	47
	Key findings.	48
	Recommendations	52
SECTION 4	CASE STUDIES	
	References	60
	Annex 1: List of persons interviewed	61

ABBREVIATIONS

ACC

Anti-Corruption Commission

AuGo

Auditor General's Office

CGT

Commissioner General of Taxation

CIC

Customs Integrity Commission

CSC

Civil Service Commission

DCGT

Deputy Commissioner General of Taxation

DRP

Dhivehi Rayyithunge Party

EC

Elections Commission

HRCM

Human Rights Commission of the Maldives

IC

Information Commissioner

ICOM

Information Commissioner's Office of the Maldives

JP

Junhooree Party

JSC

Judicial Service Commission

MBC

Maldives Broadcasting Commission

MDP

Maldivian Democratic Party

MIRA

Maldives Inland Revenue Authority

MMC

Maldives Media Council

MOHA

Ministry of Home Affairs

NIC

National Integrity Commission

PGO

Prosecutor General's Office

PIC

Police Integrity Commission

PO

Office of the President

PPM

Progressive Party of the Maldives

PA

People's Alliance

INTRODUCTION

There exists a wide consensus in the need for accountability mechanisms to ensure that governments act in the interest of the public, as opposed to the individual prerogatives of those in charge. Several governments seek to offer evidence of their accountability to the public through the creation of independent institutions tasked with overseeing and monitoring government activities to ensure that government functions are delivered to the public in a non-partisan manner, with minimum political influence.

Following the promulgation of the new constitution on 7th October 2008, the Maldives underwent significant changes to its system of governance. In addition to separation of powers of the Judicial, Legislative and Executive branches of the State, seven independent oversight bodies were mandated by the constitution to maintain checks and balances. In the years that followed, further independent institutions were established through additional legislation.

When independent oversight bodies are truly independent, they can serve as effective tools to strengthen the checks and balances crucial to a democracy and increase public trust in the legitimacy and intentions of the Government. Absent of such independence, however, their purpose is merely nominal, and thus, void.

A crucial test of any institution's independence examines the integrity of the process through which members are appointed to oversee these bodies, as it is essential that the appointed persons are not subject to undue government influence. Also important is the removal process, prior to completion of lawful tenure of these members.

Thus, Transparency Maldives undertook this first-ever review of independent institutions in the Maldives, with the intention to examine the official legal framework regulating appointments and dismissal procedures as well

the general practice and convention regarding the appointments and dismissal of members from independent institutions. The period under review is from 2008 to 2016.

As of mid-November 2016, there were at least 21 independent institutions in the Maldives^[1]. This review covers 12 of the existing institutions and two institutions that have been dissolved.

THE 12 INSTITUTIONS ANALYZED IN THIS REPORT ARE:

1. JUDICIAL SERVICE COMMISSION (JSC)

2. ELECTIONS COMMISSION (EC)

3. CIVIL SERVICE COMMISSION (CSC)

4. HUMAN RIGHTS COMMISSION OF THE MALDIVES (HRCM)

5. ANTI-CORRUPTION COMMISSION (ACC)

6. AUDITOR GENERAL'S OFFICE (AUGO)

7. PROSECUTOR GENERAL'S OFFICE (PGO)

8. INFORMATION COMMISSIONER'S OFFICE (ICOM)

9. NATIONAL INTEGRITY COMMISSION (NIC)

10. MALDIVES MEDIA COUNCIL (MMC)

11. MALDIVES INLAND REVENUE AUTHORITY (MIRA)

12. MALDIVES BROADCASTING COMMISSION (MBC)

The first seven of these institutions are constitutional bodies, with their existence and independence enshrined in the 2008 Constitution. These institutions cannot be dissolved without a change to the Constitution, which can only be amended with the consent of a three quarters majority of the total membership

of the Parliament^[2]. The process of appointment and removal of members to these constitutional bodies are described in the Constitution and further detailed in the laws respective to the institution. The remaining seven institutions were created through additional legislation which came into effect between 2008 and 2015. These legislations delineate their mandate and powers.

The Police Integrity Commission and the Customs Integrity Commission have been dissolved and their functions have been transferred to the National Integrity Commission, which was formed in 2015.

The seven constitutional bodies underwent an interim period of appointments for one to two years. During this period, members were appointed by procedures described in the Transitional Matters chapter of the Constitution. This interim period of appointment and removal is not considered in this report as the period required exception to normal practice and procedures.

The table below gives the list of institutions in order of conception as considered by the date on which the relevant law was enacted.

Amendments were made during the review period to the laws of three institutions to revise their appointment and removal procedures. Amendments to laws that did not involve a change to the appointment and dismissal have not been considered in this report.

TABLE 1: LIST OF INSTITUTIONS BY ORDER OF ESTABLISHMENT, WITH RELEVANT LAWS

	CONSTITUTIONAL BODIES?	OFFICE ESTABLISHED DATE	ACT OF ESTABLISHMENT	AMENDMENT TO APPOINTMENT AND REMOVAL CLAUSES
HRCM	Yes	10-Dec-03	6/2006	36/2014
AGO	Yes	Made independent in 2007	4/2007	30/2014
CSC	Yes	23-Oct-07	5/2007	9/2010
EC	Yes	7-Aug-08	8/2008	
PGO	Yes	7-Aug-08	9/2008	
JSC	Yes	4-Sep-08	10/2008	
ACC	Yes	16-Oct-08	13/2008	
MMC	No	28-Apr-10	15/2008	
MIRA	No	2-Aug-10	3/2010	
MBC	No	4-Apr-11	16/2010	
ICOM	No	13-Jul-14	1/2014	
NIC	No	6-Oct-15	27/2015	

The 12 institutions covered in this report have a total of 67 positions to be filled, as required by law. Figure 1 shows the number of appointees per institution. Figure 2 shows the total number of

members who served in these institutions during the period between 2008 to 2014. Appointments during the interim period have been excluded in these figures.

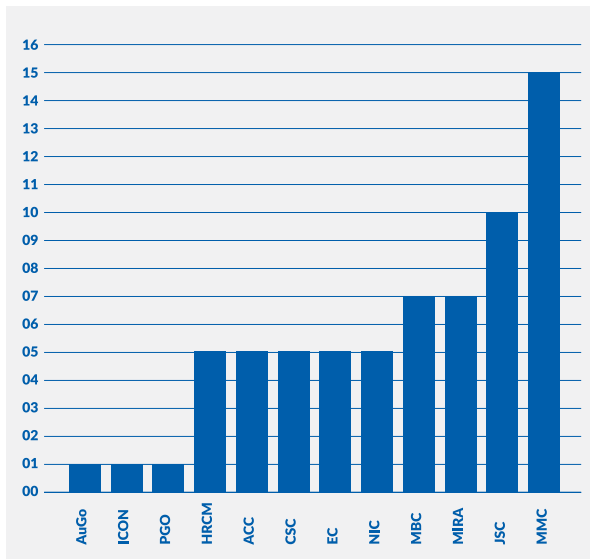


FIGURE 1 MAXIMUM NUMBER OF MEMBERS THAT WERE APPOINTED BY LAW PER INSTITUTION, AT ANY TIME.

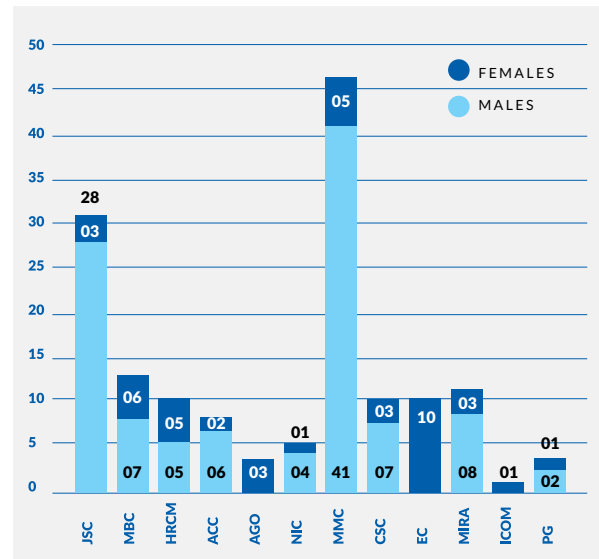


FIGURE 2- TOTAL NUMBER OF MALES AND FEMALES APPOINTED OVER THE PERIOD 2008-2014

A total of 150 individuals have served as members or in member-level positions in the 12 institutions reviewed in this report. A total 29 (19%) of these individuals were female, while 120 (81%) of these individuals were male (this includes two individuals who served in two separate institutions).

METHODOLOGY

This review is based on the analysis of official press releases from the President's Office and the Parliament, as well as a review of the Maldives 2008 Constitution and the relevant laws and regulations.

Parliament committee reports, available to the public through the Parliament's website, and the minutes of relevant committee meetings, made available for this review by the Secretariat of the Parliament, were analyzed for this review. News articles from credible media outlets were referred in this review to complement official press releases and findings from committee reports.

This review also includes conclusions from interviews with current members of independent institutions, former members of independent institutions, rejected applicants for the position of member in independent institutions, current and former members of Parliament who have participated in committee meetings which oversaw the appointment and removal of members of independent institutions. A list of individuals interviewed for this review has been included in Annex 1.

An online questionnaire was developed and sent to members of selected independent institutions with a request for their response. However, due to the low number of responses to the questionnaire, the results of the questionnaire have not been included in this review.

A validation workshop was held on 24th November 2016 with a total of 5 participants from 5 institutions and a draft of the report was shared with 14 offices.



SECTION 2

OVERVIEW OF APPOINTMENT AND REMOVAL OF MEMBERS TO INDEPENDENT INSTITUTIONS AND THE ROLE

OF THE PARLIAMENT

1.1 OVERVIEW OF THE APPOINTMENT AND REMOVAL PROCESSES

1.1.1 APPOINTMENT PROCESS

The members to the independent institutions included in this review, with the exception of the Maldives Media Council (MMC) and the Judicial Service Commission (JSC), are selected from a pool of individuals who apply for a public call for show of interest and are appointed to the institutions by the President, in consultation with the Parliament.

A government ministry is mandated to oversee the selection process of members to the MMC. Media organizations registered in the Maldives vote for members to be appointed to the council. A member of the council may be removed through the consensus of fellow council members, demonstrated through a vote.

The composition of the JSC is specified in the 2008 Constitution. The JSC consists of two types of members: members appointed to the Commission, and members who sit on the commission by virtue of an office they hold. The commission has seven appointed members and three members who sit on the commission by virtue of office. The members appointed to the JSC are: a judge of the Supreme Court, a judge of the High Court, a judge of the Trial Courts, a Member of Parliament, a representative from the general public appointed by the Parliament, a person appointed by the President, and a lawyer licensed to practice in the Maldives.

The members who sit on the JSC by virtue of their office are: the Speaker of the Parliament, the Chair of the Civil Service Commission, and the Attorney General. The three members of the JSC who sit on the commission by virtue of an

office they hold are automatically removed from the commission when they vacate their offices. The members appointed to JSC may be removed from the commission by the office or institution they were appointed.

The process of appointment of members, except for MMC and JSC, are similar. A public announcement is made for interested candidates to apply for the vacant post. The interested candidates would have to submit an application form, along with their curriculum vitae, a statement of declaration of interest and a form, stamped by the Maldives Police Service (MPS) and the courts, indicating (or the lack of) the applicant's criminal record.

Except for the Civil Service Commission (CSC) for which the call for candidates is carried out by the parliament, the announcement and the accepting of applications for the membership of independent institutions is done by the President's Office. The President has the prerogative to reject applicants and if the President chooses, he or she may reject all applications and re-announce for new candidates. The candidates who responded to the announcement are shortlisted and prioritized by President and forwarded to the parliament for consideration.

Candidates to be appointed to independent institutions inscribed in the Constitution need to be approved by the Parliament. The appointment of Prosecutor General (PG) and Auditor General (AuGO) require a vote of the total membership of the Parliament (a majority vote), whereas the appointment of members to the CSC, Elections Commission (EC), Human Rights Commission of the Maldives (HRCM) and Anti-Corruption Commission (ACC) require a majority of the members present and voting in that sitting – i.e. a simple majority of the Parliament.

The Parliament Secretariat verifies the records of the candidates with the courts, the Maldives Police Service, the Election Commission and political parties and the nominations are forwarded to the Parliamentary Committee on Independent Institutions for evaluation. The committee members assigned scores to the candidates on a weighted criterion in the areas of education, experience, integrity and leadership. The President is required to appoint the candidates approved by the Parliament.^[3]

Several other parliamentary committees have evaluated candidates to independent institutions in the past, although the current practice of the Committee on Independent Institutions to evaluate the nominations has been consistent. The evaluating committees in the past have given priority to specific areas of the criteria, depending on the position the candidate was nominated. However, the recent practice has been consistent in allotting the same level of consideration to all areas in the evaluation. The committees have conducted phone interviews for candidates who were unable to attend the committee evaluation meetings.^[4]

An analysis of the general process of appointing member to independent institutions is included in Section 3.1.

Table 2 provides a comparison of the approval processes for the institutions and Table 3 details the prerequisites for appointment of members to independent institutions.

TABLE 2 : COMPARISON OF APPOINTMENT PROCESS IN LAWS (EXCLUDING JSC AND MMC)

	HRCM	AuGO	CSC	EC	PGO	ACC	MBC	ICOM	NIC	MIRA
Appointed by President?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Parliament vote required?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Which office makes the public announcement	PO	PO	Parliament	PO	PO	PO	PO	PO	PO	PO
Can nominees outside of applicants be nominated?	No	No	No	No	No	Yes	No	No	No	No
Can the President prioritise the recommendations?	Not stated	Not stated	Not applicable	Not stated	Not stated	Not stated	Yes	Not stated	Not stated	Yes
Must the President send the full list of applicants to the Parliament for information?	No	No	Not applicable	Yes	Yes	Yes	Yes	Yes	Only if the number of applicants is less than vacancies	No
What is the minimum number of names to be sent by the President	At least the number of vacant slots	1	Not applicable	At least the number of vacant slots	1	At least the number of vacant slots	All names must be forwarded	1	At least the number of vacant slots	More than required number of names shall be sent
Is the procedure to be followed by the Parliament explained in the Law?	Simple majority vote by parliament	Absolute majority vote	Committee on independent institutions will review the applications and present to parliament	Simple majority vote	Absolute majority vote	Simple majority vote	Not stated	Simple majority vote	Not stated	Not stated

TABLE 3 : COMPARISON OF APPOINTMENT PROCESS IN LAWS

	HRCM	AuGO	CSC	EC	PGO	ACC	MMC	MBC	ICOM	NIC	MIRA	JSC
Must be a Muslim	Yes	Yes	Yes	Yes	Yes	Yes	Not stated	Yes	Not stated	Yes	Yes	Yes
Must be a citizen of the Maldives.	Yes	Yes (and only maldhivian)	Yes	Yes	Yes	Yes	Yes	Yes	Not stated	Yes	Yes	Yes
Be of sound mind	Not stated	Yes	Yes	Not stated	Yes	Not stated	Not stated	Not stated	Not stated	Yes	Yes	Yes
Minimum age requirement	26	35-65	30	25	25	25	18	18	35	30	18	25
Must not have convicted of an offence of personal gain or fraud or corruption.	Only bribery	Not stated	Not stated	Not stated	Not stated	Yes	Yes	Not stated	Only bribery	Yes	Only bribery	Yes
Must not have been convicted of an offence for which a hadd is prescribed in Islam (during the past 5 years or otherwise)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Must not be a person holding an elected position under the Constitution or any Law	Yes	Yes	Yes	Yes	Yes	Yes	Not stated	Yes	Yes	Yes	Yes	Yes
Must not be employed by government or in any other employment.	Yes	Yes	Yes	Yes	Yes	Yes	Not stated	Yes	Yes	Yes	Not stated	Not stated
Must not have convicted of a criminal offence and sentenced to a term of more than 12 months	Not stated	Not stated	Not stated	A period of 5 years has been elapsed since his release, or pardon for the offence	Not stated	A period of 5 years has been elapsed since his release, or pardon	A period of 2 years has been elapsed since his release, or pardon	Not stated	Not stated	Not stated	Not stated	Not stated
Must not be a member of a political party or an activist of a political party.	Yes	Yes	Not stated	Yes	Yes	Yes	Not stated	Not stated	Yes	Yes	Yes	Yes

	HRCM	AuGO	CSC	EC	PGO	ACC	MMC	MBC	ICOM	NIC	MIRA	JSC
Level of academic qualifications	Must be capable of assuming responsibilities	A member of any association that is accepted by international federation of accountants and 7 years in maldives accounting field	First degree and 10 years in govt. Or management	Relevant	Law degree	Relevant	Not stated	Not stated	First degree	First degree	Not stated	Not stated
Level of experience	Must be capable of assuming responsibilities			Not stated	4 Relevant years	Relevant	Not stated	Not stated	Minimum 7 years	7 Years	Experience in the financial, tax, business,	Not stated
Must be a person of integrity in public opinion	Not stated	Not stated	Not stated	Not stated	Not stated	Not stated	Integrity only	Not stated	Not stated	Not stated	Economic or legal field 1/	Not stated
Conflict of interest	Not stated	Not a shareholder of state company or private company	Not stated	Must not be a member of a political party or an activist of a political party.	Must not hold a post or share of a law firm, partnership or other similar entity	Not stated	No pending court case regarding any published material in last 12 months	No financial stake in a media outlet		Not a direct family member of a staff in a law enforcement agency	Not stated	Not stated
Other							Must not have been convicted of an offense in relation to a publication or news, child abuse or drug trafficking,				Shall not hold an executive position or be on the board of a govt or a private company Shall not be declared bankrupt	

1.1.2 REMOVAL PROCESS

The Constitution requires a simple majority vote of the Parliament to remove a member of the seven independent institutions (HRCM, JSC, EC, PG, AuGO, CSC and ACC) inscribed in the Constitution. Section 40, Article 178 of the Parliament Regulation also states this requirement. Some of the specific laws for the relevant independent institutions have further requirements on the removal process. For example, some laws require a parliamentary committee to evaluate the grounds of dismissal before it is forwarded for vote on the parliament floor.

The MMC may remove a member of the council by a two-third majority vote of all members of the council.

The three members of the JSC who sit on the commission by virtue of the office they hold are automatically removed from the commission when they vacate their offices. The remaining seven members may be removed from the commission by the office or institution that appointed the person.

The relevant laws for the intendant institutions examined in this review are inconsistent on the process and circumstances of removal of members from the institutions. Laws of most institutions state negligence and incompetence as grounds for members to be removed from office. However, the laws do not state

that a criminal conviction or declaration of bankruptcy as grounds for dismissal.

The laws for EC and the ACC list the most number of reasons for dismissal. They also list a standard of ethics the members must hold, a breach of which may warrant grounds for dismissal. Some of the ethical standards, as listed in the EC Act and ACC Act, are:

1. Members shall not discriminate any citizen based on race or national origin or colour or sex or age or mental or physical disability, political or other opinion or property or family or native island or language birth or status.
2. Members shall not commit an act that might put to question his independence or independence and fairness of the Commission.
3. Members shall not use information obtained in his capacity as a member or his post for personal gain.
4. Members shall not provide information obtained in his capacity as a member to a third party for a purpose unrelated to discharging his duties and responsibilities.
5. Members shall not actively engage in a business or in a practice of any profession or any other income generating employment, or be employed by any other person.

TABLE 4: REASONS FOR REMOVAL AS STATED IN LAW

* This is included in MMC regulations only

ACT OR RELEVANT AMENDMENT / STATED REASONS FOR DISMISSAL	EC	PGO	JSC	ACC	MMC	MIRA	CSC	MBC	ICOM	AuGO	HRCM	NIC
	8/2008	9/2008	10/2008	13/2008	15/2008	3/2010	9/2010	16/2010	1/2014	30/2014	36/2014	27/2015
On grounds of misconduct that does not befit a person in that position		✓					✓		✓	✓	✓	✓
Incompetence / unable to perform duties	✓	✓			✓		✓		✓	✓	✓	
Incapacity	✓	✓					✓		✓	✓	✓	
Bankruptcy in a court of law					✓	✓		✓				
No longer meets the prerequisites of a member anymore	✓		✓		✓	✓						✓
Convicted of a criminal offense						✓						✓
Goes against the ethical standards for members	✓			✓								
Unable to perform duties				✓				✓				
Being confronted with a situation whereby conflicts arise between undertaking the responsibilities of the Commission as a member and self-interest or personal gain.					✓							
Found negligent in performance of official duties					✓	✓		✓				
Goes against institution's policy								✓				
Does not attend 3 consecutive meetings								✓*				

TABLE 5: MANDATED PROCEDURE FOR REMOVAL AS STATED IN LAW

	HRCM	AuGO	CSC	EC	PGO	ACC	MMC	MBC	ICOM	NIC	MIRA	JSC
Findings by any Parliament committee	✓	✓			✓			✓	✓		✓	
Committee on independent commission's findings			✓	✓		✓						
Simple majority vote in Parliament	✓	✓	✓	✓	✓	✓		✓	✓			
President must inform the person												
President removes the person										✓	✓	
Two third majority vote of the council							✓					
Parliament must give person time to speak in defense								✓				
Must inform person in writing of reason of dismissal								✓				
By fellow board/commission members AND Parliament committee findings.											✓	
By the person/institution that appointed them												✓

1.2 INDEPENDENT INSTITUTIONS AND THE PEOPLE'S MAJLIS (PARLIAMENT)

In addition to making independent institutions accountable, the parliament plays a crucial role in the appointment and dismissal of members to these institutions. On 17 March 2010, the Parliament passed a motion to create a permanent Committee on Independent Institutions, to oversee the functioning of these institutions. The work of the committee is guided by the Standing Orders of the Parliament and the regulations for that particular committee.

Article 69 of the Standing Orders of the Parliament gives the committee the power to summon and question members and staff of independent institutions. Article 40 is concerned with the dismissal of members of independent institutions, but does not give sufficient detail of the process to be followed. The Article only states that the Parliament can debate on such an issue for a maximum of two hours, and that members are dismissed once a vote of no-confidence is taken. There are no specific provisions, either in the Standing Orders of the Parliament or the Independent Institutions committee, mandating that members of independent institutions be given the right of defense before dismissal.

As described previously in Section 1.1.1, the evaluation of candidates for an independent institution, if submitted to the Parliament, is carried out by a parliamentary committee. Analysis of the committee reports from 2008-2016 reveals that the evaluation of candidates for independent institutions has been conducted by the following committees:

1. Temporary committees formed just for the purpose of evaluation of candidates:

such committees were convened during 2009 and 2010 for EC, HRCM, PIC and PG. These committees usually consisted of 7 or 8 members. In case of HRCM and CSC, the law initially specified that such a committee must be formed for this purpose. These clauses were later amended.

2. Economic Committee: this committee interviewed the applicants for CIC in 2012, candidates for MBC in 2010, and applicants for MIRA board in 2010 and 2012.
3. Public Accounts Committee interviewed the candidate for the Auditor General in 2011.
4. Committee on Independent Institutions reviewed all other candidates during this period (about 18 rounds of appointments). This includes all appointments after 2013 and some appointments between 2009 and 2012.
5. All removals of candidates were reviewed by Committee on Independent Institutions. In one case, a sub-committee was formed within this committee for this issue.

All committees use weighted criteria to evaluate candidates. The criteria evolved slightly during the years but remain focused on the same common themes of education, experience, integrity and leadership. Minutes from the early years of committee meetings show that discussions took place in deciding components and weightage when scoring candidates. For instance, one such debate was that different positions warrant different responsibilities hence, the criteria should be adjusted accordingly for each position.^[6] But in recent years, the criteria have evolved to a standard one, which is now used to evaluate all candidates for independent positions and institutions. The table below shows the criteria now used by the Committee on Independent Institutions.

TABLE 6: CRITERIA USED BY COMMITTEE ON INDEPENDENT INSTITUTIONS TO EVALUATE CANDIDATES (CURRENT CRITERIA)

AREA OF EVALUATION	MARKS
1. Education and Training	
1.1 Education standard	30
1.2 Work related training	20
2. Work Experience	
2.1 Experience in senior management position	10
2.2 Achievements	10
3. Skills and Capacity	
3.1 Leadership	10
3.2 Interview and Presentation	10
4. Integrity	10
TOTAL	100

Scores are given by the members present at the meeting. There is, however, no standard guideline on scoring. For instance, MPs have individual discretion in deciding how much to give for a candidate who has a first degree or a master's degree. The criteria itself is not in any regulation or written policy, and is purely the current practice.^[5] Committee reports and minutes indicate that all committees have maintained 75% as the minimum score a candidate should receive to be considered for recommendation to the Parliament floor. The only exception to this was for the Commissioner General and Deputy Commissioner General of Taxation posts at MIRA, for which the committee deemed 85% as the passing score. No applicant is rejected at the committee stage. Instead all applicants are scored and the committee report is submitted to the Parliament and published online.^[6]

Scoring of individuals by members can be highly subjective and with clear intent to select or fail a particular candidate. For example, during some evaluations, party aligned members may give full or close to full marks to their favored candidates and zero or very low marks to others, in all or

most of the evaluation categories. The marks that are publicly disclosed is the average of the committee members' marks. Detailed marks sheets are usually destroyed immediately but have sometimes been irregularly leaked to the parliament floor, and comments on such marking patterns have been raised on the Parliament floor as well.^[7]

Apart from playing a key role in appointment and removal of members, the Committee on Independent Institutions also has a role in scrutinizing the decisions, actions or even inactions of institutions.^[8] The committee has the power to summon members and staff for questioning and have exercised this right in the past. For instance in June 2012, all employees of the Elections Commission were summoned to the Independent Institutions Committee.^[9] The Committee convened under the current Parliament has demonstrated weaker oversight than in previous Parliaments in terms of making independent institutions accountable.^[10]



SECTION 2

DETAILED ANALYSIS OF APPOINTMENT AND REMOVAL OF MEMBERS TO THE SELECTED INSTITUTIONS



2.1 HUMAN RIGHTS COMMISSION OF THE MALDIVES

The Human Rights Commission of the Maldives (HRCM) was established in 2003 by a Presidential decree. The HRCM Act was ratified in 2006 and amended in 2014. The 2008 Constitution established the HRCM as an independent and impartial institution and gave the commission investigative powers and mandated the Commission to promote the respect for human rights and report on the compliance of human rights standards in the country.

The Human Rights Commission of the Maldives has five members. Each member is appointed for a five-year term and may serve a maximum of two consecutive terms. Ten members have served on HRCM from 2008 to 2016. No member was removed during this period.

APPOINTMENT OF MEMBERS

LEGAL FRAMEWORK

Prior to 2014, the President could nominate candidates from outside the pool of candidates who apply for the position of Commissioner of HRCM. This practice was discontinued following an amendment to the HRCM Act which restricted the President's nomination to only the candidates who apply for the position.

The announcement and the accepting of applications for Commissioners of HRCM are carried out by the President's Office. The President has absolute discretion in selecting candidates he wishes to forward for parliament approval. Although the candidates must represent diverse fields of interest, the President is not required to forward the full list of applicants to the Parliament. However, the number of names forwarded to Parliament must not be less than the number of the vacancies

which require appointment. The candidates nominated for HRCM need a simple majority approval from the Parliament.

Table 3 details the prerequisites for appointment of members to HRCM and other independent institutions.

Sources: Articles 5 HRCM Act amendment 36-2014 and Article 6 of HRCM Act 6-2006

PRACTICE

Appointment of members to HRCM took place twice during the review period, first in 2010. The announcement for five vacancies were made on 3 June 2010, with a two-week period for interested candidates to submit applications. The President's Office received a total of 57 applications at the end of the deadline and the President convened a seven-member committee to shortlist candidates to send for parliament approval. The committee's report states that 8 candidates were selected and forwarded to the Parliament for approval.

The former Vice President of HRCM, said in an interview that the reviewing of candidates took a few months and that candidates were not informed of the progress of the review process during this time. He also said that he was not aware of any grievance mechanism for candidates to file complaints about the process and that he was given only a day's notice before his official interview.

The second announcement for candidates within the period of review was made on 4 June 2015. The interested candidates were given a five-day deadline to submit their applications. The government did not reveal the number of applicants who responded to the announcement. The President forwarded to the Parliament the exact number of nominations to

fill the vacancies, which delimited the number of candidates the parliament could review.

The Parliament sent requests for verification of records of the nominated candidates to the Elections Commission and the courts to confirm that the nominations met the criteria to be a candidate for the post. The parliament committee used the standard criteria to evaluate the candidates and recommended that candidates who scored higher than 75 percent in the committee evaluation be approved as members of the HRCM.

The President's nominations were evaluated by the committee during two separate meeting. The meeting to evaluate the first three candidates was held on 17 June 2015. They scored above 75% and were forwarded for vote. Parliament voted and approved the candidates on 11 August 2015. The President appointed the candidates to the commission on the same day.

The committee's meeting to evaluate the remaining two candidates took place on 19 August 2015. During this meeting, one candidate was given an 83% score, while the other candidate was given 72%. Despite the committee's standing recommendation that only candidates who score higher than 75% be approved for HRCM, the parliament voted to approve both candidates. The President appointed candidates to the commission in August and December 2015.

Amongst the members appointed to the Commission in 2015 was a former Member of Parliament for the ruling Progressive Party of Maldives (PPM) and another person who had been accused of defrauding the State of US\$ 1.55 million. The corruption case was forwarded to the Prosecutor General's office in 2013 but charges have not been raised.

ANALYSIS

A total of 8 nominations, from the 57 applications received by the President's Office for the announcement for candidates for HRCM, were forwarded to Parliament for approval, in 2010. However, the criteria used to select the 8 nominees was not disclosed by the President's Office. Practice seems to have gotten worse in 2015, as the President's Office did not disclose the total number of applicants who responded to the 2015 announcement for commission member vacancies. This made the process in 2015 less transparent compared to the process in 2010. The duration for interested candidates to submit their applications was also considerably shortened in 2015 to just five days while in 2010 interested candidates were given a two week period to apply. Following the same downward trend, in 2015, the President forwarded to the Parliament the exact number of nominations to fill the vacancies in 2015, which limited the number of candidates the parliament could review.

A person accused of a massive corruption case should not have been sent for parliamentary consideration by the PO in the first place nor should the person have received parliamentary approval. Similarly, the parliamentary approval of a former MP, belonging to the President's party, as a Commissioner is evidence that the main consideration for parliament was political loyalty as opposed to any real merit. (source: committee reports, press releases, Interview with MP Imthiyaz Fahmy, 'Official accused of corruption appointed to human rights watchdog', August 24 2015 Maldives Independent)

REMOVAL OF MEMEBERS**LEGAL FRAMEWORK**

The HRCM Act of 2006 mentioned more detailed provisions for dismissal and also

included the option of suspending a member instead of outright dismissal. These provisions included bankruptcy, loss of integrity and failure to perform duties, among others. The changes made to the HRCM Act in 2014 reduced the number of conditions for dismissal. The most significant change, however, was the amendments made it easier to dismiss a Commissioner. Where in the 2006 Act a two-third majority was required for the dismissal of a Commissioner, with the changes, only a simple majority is required to dismiss a member.

Sources: (Article 15, Amendment to HRCM Act 36-2014)

PRACTICE

A member of the HRCM has not been removed from the commission since its inception in 2003.

ANALYSIS

Though a Commissioner has not been formally dismissed, there have been instances where the HRCM has been subjected to undue interference and intimidation by both the Parliament and the Supreme Court. In September 2014, the Supreme Court initiated a suo motu case against the HRCM, alleging that the commission provided false information regarding the conduct of the Maldives judiciary to the second Universal Periodic Review to the United Nations Human Rights Council. The Supreme Court declared the commission's report unlawful and charged the commissioners with "undermining the Constitution" and "high treason". The Court also issued a 11-point guideline that, among others, barred the HRCM from directly communicating with foreign organisations without government oversight. While the Court did not convict the individual commissioners of any criminal charges, the Supreme Court's actions towards the HRCM prevented the constitutional body from fulfilling their mandated functions

without undue interference or intimidation.

Furthermore, on 14 March 2015 the HRCM issued a press release raising due process and fair trial concerns in the conduct of former President Nasheed's trial. On 16 March 2015, contrary to usual practice, the HRCM Commissioners were individually summoned by the Parliament and interrogated at length about their press statement during a closed-door session that ran late into the night. According to a former Commissioner, the questions put forth to the HRCM by the Parliament were meant to intimidate the commissioners and prevent them from carrying out their mandated duties.

**THOUGH A
COMMISSIONER HAS
NOT BEEN FORMALLY
DISMISSED, THERE HAVE
BEEN INSTANCES WHERE
THE HRCM HAS BEEN
SUBJECTED TO UNDUE
INTERFERENCE AND
INTIMIDATION BY BOTH
THE PARLIAMENT AND
THE SUPREME COURT.**

2.2 AUDITOR GENERAL'S OFFICE

The Auditor General's Office (AuGO) was established following the ratification of the Audit Act (Law number 4/2007) in 2007 and the office was declared an independent institution in the 2008 Constitution.

The Auditor General's Office has a mandate to audit the accounts, financial statements and financial management of government institutions, offices and organizations operating under legislative authority, commissions and independent offices and organizations operating under the judicial authority.

The Auditor General's term of office is 7 years with the possibility of a second, 5-year term. A total of three persons served as Auditor General during from 2008 to 2016, out of which two were dismissed from office, before the completion of their term.

APPOINTMENT OF MEMBERS

LEGAL FRAMEWORK

The Constitution requires a candidate for the Auditor General position to be approved by a majority of the total membership of the Parliament.

The Audit Act was amended in 2014 to require the President's Office to make a public announcement for interested candidates to apply for the position of Auditor General. The eligibility criteria was also amended in 2014 to exclude candidates who either hold political party membership or are active in political parties. The amendment also requires a candidate to have a minimum of 7 years of experience in the field of accounting and to hold membership in an association recognised by the International Federation of Accountants.

Sources: Article 7210 Constitution 2008, Article 2 and 4 of Amendment to AG Act 30/2014, , Article 2 and 4 of AG Act 4/2007²⁸

PRACTICE

Ibrahim Naeem was appointed Auditor General on 16 January 2008 and continued his tenure following the ratification of the new Constitution in August 2008. Naeem was dismissed in March 2010 following allegations of corruption. Due to conflicts between the opposition-majority Parliament and the Executive, the next Auditor General was appointed after more than a year.

In 2010, the President's Office did not make a public announcement for interested candidates to apply for the position of Auditor General, nor did the Audit Act of 2007 require the President to make such an announcement. Instead, the President nominated Ali Rasheed Umar as a candidate and forwarded the nomination to parliament in June 2010. However, Umar scored 62% in the committee evaluation and failed to meet the minimum score of 75% required by the committee and the Parliament voted to reject the nomination in December 2010.

On 6 April 2011, the President forwarded his second nomination, Niyaz Ibrahim, for approval of the Parliament. Ibrahim was evaluated by the Public Finance Committee of the Parliament and approved by a vote on the Parliament floor on 3 May 2011. He was appointed to the post of Auditor General on 4 May 2011.

Like Naeem, Niyaz was also prematurely removed from his position. In October 2014, he released a special audit report implicating the then Tourism Minister Ahmed Adeeb and Abdulla Ziyath, the Managing Director of Maldives Marketing and Public Relations Company (MMPRC), of corruption. Following

the publication of the report, a Parliament with a majority of the ruling party moved to amend the Audit Act to introduce a new appointment and removal process for the Auditor General. The amendment also required that a new Auditor General be appointed within 30 days of its ratification, effectively removing Ibrahim and making way for the government to propose a new candidate for the position.

Following the changes to the Audit Act, the President's Office called for interested candidates to apply for the position of Auditor General on 4 November 2014, with an application period of 6 days. As with the case of HRCM in 2015, the President's Office did not disclose the number of applications the office received. On 24 November 2014, the President nominated Hassan Ziyath, the brother of Abdulla Ziyath (implicated in the MMPRC corruption scandal), for the position of Auditor General.

The Parliament Committee on Independent Institutions evaluated Ziyath's application and gave him a score of 93%. He was approved by the Parliament on 24 November 2014 and appointed as the Auditor General by the President on the same day. The whole process, from the changing of the Audit Act to the removal of Ibrahim and the appointment of Ziyath as the new Auditor General, took only a few weeks.

Sources: Audit Office website, Parliament Committee report, Presidents office press releases, Parliament news updates, various news articles

ANALYSIS

The appointment process of the Auditor General, from the announcement for candidates to appointment by the President, took a total of 9 days in 2014. In contrast, the appointment process of an Auditor General in 2010 took a total of 11 months. This is indicative of the

highly polarised, politicised and sometimes obstructionist attitude adopted by political parties for short term political gain, all at the cost of undermining the independence of crucial watchdog institutions.

Ali Rasheed Umar was nominated for Auditor General but failed to get Parliament approval after he scored 62% in the committee evaluation in 2010. Concerns of Umar's integrity were also raised in the Parliament debate over his nomination. However, these standards are not applied uniformly and is often used just as a facade to usher in or disqualify candidates solely based on their political leanings.. For example, a candidate for the Maldives Inland Revenue Authority (MIRA) who scored 47% in the committee evaluation was approved by the Parliament in 2015. Similarly, a candidate nominated to HRCM who had corruption allegations forwarded to the Prosecutor General's Office was approved by the Parliament in 2015.

The appointment of Hassan Ziyath as the new Auditor General after summarily removing Niyaz Ibrahim from the position seriously undermines the independence of the Auditor General's Office and calls to question the integrity of the parliamentary approval process. The fact that Ziyath the sibling of one of the key suspects of the MMPRC corruption scandal is a serious conflict of interest issue that has compromised the integrity of subsequent audit reports prepared by the Auditor General's Office on the MMPRC issue.

REMOVAL OF MEMBERS

LEGAL FRAMEWORK

Prior to the amendment of the Audit Act in 2014, the only reason, by law, that warranted the removal of the Auditor General, was him failing to satisfactorily perform the duties of office. However, following the amendments, additional

conditions for dismissal were added.

THEY ARE

1. Actions of the Auditor General being deemed unacceptable of a person who holds the position.
2. Circumstances arise which prevent the Auditor General from performing expected duties.
3. A parliamentary committee ascertains that the Auditor General is no longer capable of performing his duties.
4. The final say lies with the floor of the parliament and the dismissal of the Auditor General must be approved by a majority vote of parliamentarians present.

Source: Article 13 7-2007, Article 13 30-2014, 7218 Constitution

PRACTICE

A total of three persons were appointed as Auditor Generals from 2008 to 2016. Out of these, two persons, Ibrahim Naeem and Niyaz Ibrahim, were prematurely removed from office.

Ibrahim Naeem was removed from office on 29 March 2010, following accusations by the Anti-Corruption Commission that he had used State funds on a personal trip to a local island and to buy a necktie. In response, Naeem said that the accusations were an attempt to prevent him from recovering State assets stolen by government officials. Speaking at a press conference two weeks prior to his dismissal, Naeem had claimed that government funds taken through corrupt means were stashed overseas, implicating senior officials in the former government, who at this point in time controlled the majority in the parliament.

Ibrahim, who succeeded Naeem as the Auditor General, was also removed before the end of his

tenure. On 29 October 2014, Ibrahim released a Special Audit Report of the government's tourism promotion company, the MMPRC. The incriminating report contained allegations of a large corruption scandal involving the then Tourism Minister, Ahmed Adeeb, and the Managing Director of MMPRC, Abdulla Ziyath.

On the day the Audit Report was published, the Parliament passed an amendment to the Audit Act that called for the immediate removal of the Auditor General before the expiration of his constitutionally mandated term of office. This also bypassed the constitutionally prescribed removal process. The Constitutional requirements for a Parliament committee investigation followed by a vote of no confidence were blatantly ignored in the removal of Ibrahim Niyaz from the position.

Sources: various news articles, Interview with PG Aishath Bisham

ANALYSIS

The Constitution requires a majority of the total membership of Parliament to appoint an Auditor General. However, the Constitution only requires a majority of those present and voting to remove the Auditor General.

What is obvious is that in both instances where the Auditor General was dismissed, they were dismissed purely for retribution. The removal of Naeem coincided with him implicating senior officials in the previous government of corruption. Similarly, the hastily passed amendment to the Audit Act facilitated the removal of the then Auditor General, Niyaz Ibrahim, with no regard to the constitutionally prescribed removal process. This undermines rule of law and raises serious concerns with respect to transparency and accountability of the parliament.

2.3 CIVIL SERVICE COMMISSION

The Civil Service Commission (CSC) was established by the Civil Service Commission Act (Law No. 5/2007) on 23 October 2007 and became an independent constitutional body following the ratification of the new Constitution in August 2008. The CSC is responsible for the recruitment, appointment, promotion, transfer and dismissal of civil servants. The CSC consists of 5 members who may serve a maximum of two 5-year terms. A total of 10 persons served as members of the CSC from 2008 to 2016. One member of the CSC was removed from the commission by the Parliament and two members of the commission resigned to take up political appointments.

APPOINTMENT OF MEMBERS

LEGAL FRAMEWORK

The Constitution requires the Parliament to approve a nomination to the Civil Service Commission, by a simple majority.

Although the CSC Act of 2007 requires the President's candidates to the CSC to be selected from a pool of respondents to a public announcement to fill the vacancy, it also allows the President to nominate a candidate who had not applied for the position. The President also has the discretion to shortlist the candidates he wishes to forward for Parliament approval.

In 2010, the CSC Act of 2007 was amended to transfer from the President to the Parliament, the responsibility of making a public announcement to seek candidates for CSC. The Parliament is now required to shortlist the interested candidates and forward their names to the Parliament Committee on Independent Institutions for evaluation. However, responsibility to appoint members to the CSC still lies with the President, following

parliamentary approval.

The required qualifications for potential members of the CSC are similar to that of other independent institutions. In addition to these, candidates are required to have a minimum of 10 years of management experience.

A Sources: Article 180 Constitution 2008, Article 12 and 13 of CSC Act 5-2007

PRACTICE

The President's Office made a public announcement on 3 June 2010 for interested candidates to apply for the vacancies of the Civil Service Commission. The office allowed a duration of 13 days for interested candidates to submit their applications and later revealed that the office received a total of 21 applications for the call.

On 21 July 2010, the CSC Act was amended to transfer the responsibility of CSC seeking candidates from the President to the Parliament. This sudden amendment to the Civil Service Commission Act, is a manifestation of the political tensions that existed between the government and the opposition controlled parliament at the time.^[11] The then opposition changed a host of legislation, which they claimed, was a move to keep in check an overzealous government. Subsequently, on 25 July 2010, the Parliament announced for interested candidates to the CSC to submit applications within a 4-day period.

The candidates who applied for the announcement were sent to the Parliament Committee on Independent Institutions for review. The committee minutes reveal that a total of 26 candidates responded to the announcement and that 21 candidates who met the criteria of eligibility were interviewed by

the committee. The committee further reduced the number of names to 5 candidates and forwarded them to the parliament floor. These 5 candidates, however, did not score the highest in the committee evaluation.

Following the resignation of a member of the CSC to accept the position of Minister of Finance in February 2012, the Parliament made an announcement on 15 March 2015 to fill the vacancy. Interested candidates were given a duration of 10 days to submit applications. The parliament committee minutes show that the committee evaluated 9 candidates for the vacancy. It also shows that the criteria for evaluation of candidates was revised prior to

**THIS SUDDEN
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THE CIVIL SERVICE
COMMISSION ACT, IS A
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THE GOVERNMENT
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CONTROLLED
PARLIAMENT AT THE
TIME.**

the evaluation to include a written examination. The candidate approved by the Parliament, Jameela Ali, was appointed to the CSC on 7 May 2012.

Although the CSC Act states that the members of the commission must represent diverse professions, four of the five members who sat on the commission were professionals from the education sector.

In November 2012, the parliament dismissed the President of the Commission, Mohamed Fahmy Hassan, following allegations of sexual assault. A replacement was appointed a year later, in November 2013. The Parliament committee evaluated three candidates to fill the vacancy. Although none of the candidates achieved the minimum recommended score, the committee decided to forward the candidates to the floor for approval. Despite the committee emphasizing in its report that none of the candidates received the recommended score, one candidate was approved by the Parliament and appointed to CSC on 28 November 2013.

As the tenure of two other member of the commission were coming to an end, the Parliament made a public announcement on 16 July 2015 for interested candidates to apply for vacancies. Parliament allowed 20 days for the candidates to respond to the announcement. Committee minutes show that the committee evaluated 7 candidates, although 8 applicants had met the required criteria for eligibility. Out of the 2 candidates who were approved by the Parliament, one scored less than the other candidates in the committee evaluation.

Following the resignation of a member of the CSC in early 2015, the Parliament made a public announcement for interested applicants on 24 August 2015, with an application period of five days. The deadline was then extended to

expire on 15 November 2015. One candidate was evaluated for the position. The candidate scored 88% in the evaluation and was appointed to the CSC on 29 November 2015.

Source: Parliament news updates, announcements and Independent Commission Committee minutes.

ANALYSIS

Unlike most other state institutions, there is no formal requirement for candidates to be non-partisan in order to qualify for the position of CSC Commissioner. However, it must be noted that comparatively more experience and a higher level of formal education is required to become a member of the CSC.

CSC is the only independent institution analyzed in this review which requires the parliament to seek candidates for the commission. For all other institutions, the first round of public announcements and shortlisting of candidates are carried out by the President's Office, after which the shortlisted candidates are sent for parliamentary vetting.

The appointments to the commission in 2010 and 2013 indicate that the scores assigned by the committee in its evaluation of the candidates were given little consideration in the Parliament's final approval of candidates. This indicates that the main consideration in the appointment of candidates seems to be political loyalty as opposed to their actual qualifications or ability to fulfill the role.

The Parliament adheres to the CSC Act in approving members to the CSC but at the same time has also brought changes to some of the procedures not stated in law. Some of these changes include the modification of the scoring criteria and the introduction of a written examination in the evaluation of candidates

for CSC. This could be read as a positive step, whereby the the parliament was attempting to improve the existing procedure.

Sources: (Interview with CSC Member Jameela Ali and Director General, Abdullah Saeed)

REMOVAL OF MEMEBERS

LEGAL FRAMEWORK

The Constitution states that a member of the Civil Service Commission may be removed from office by the by a simple majority vote in the Parliament, on the ground of misconduct, incapacity or incompetence. These conditions for removal are iterated in the CSC Act of 2007, without further elaboration.

Source: Article 15 (Law 5/2007), Article 228

PRACTICE

The Parliament removed Hassan, the President of the CSC, in November 2012 on the grounds of misconduct following allegations that he had sexually assaulted a female employee. Following his removal, Hassan filed a case with the Supreme Court, which ruled in March 2013 that his dismissal by the Parliament was unconstitutional. Meanwhile, the Parliament moved to fill CSC vacancy and the Supreme Court did not issue any subsequent orders on the issue.

ANALYSIS

Unlike laws of other independent institutions, the CSC Act does not provide details of conditions that warrant dismissal of members. Furthermore, the drawn-out impasses between the legislature and the judiciary following the removal of the CSC President in 2012-2013 is a clear example of the conflict in interpretation of laws between institutions.

2.4 ELECTIONS COMMISSION OF THE MALDIVES

The Elections Commission of the Maldives (EC) was established on 7 August 2008. The EC has the mandate to conduct and supervise all elections and public referendums, as well as the responsibility to regulate political parties.

The EC consists of 5 members, each serving up to two 5-year terms. An Interim Elections Commission was appointed, as specified in the Constitution under the transitional matters chapter, to oversee the country's first multi-party presidential election of 2008 and parliamentary election of 2009. Between 2008-2016, ten persons have served as members of the Elections Commission, and two members have been removed.

APPOINTMENT OF MEMBERS

LEGAL FRAMEWORK

The Constitution states that members of EC must be selected by a simple majority of the Parliament. According to the Elections Commissions Act, a public announcement must be made by the PO for interested candidates to apply. The President then has the discretion to select applicants and submit their names, along with the names of unsuccessful applicants, to the Parliament. The number of candidates submitted to the Parliament by the President must not be less than the number of vacancies.

While the Elections Commissions Act states that commissioners must have the necessary qualifications and capacity to fulfil duties of a member, these requirements are not specified further in the EC Act or in any supporting regulation. The Act also gives a list of prerequisites which must be met by appointed members. See Table 3 for list of criteria

Sources: Article 4 and 5, EC Act 8-2008, 7:168 Constitution 2008

PRACTICE

There have been three rounds of evaluation and appointment for EC members.

The first time was in 2009 for the newly established commission. The second time was in 2014, to replace 2 members, who were unfairly dismissed by the Supreme Court, and the third time was in 2015, with the completion of terms of three members.

The first round of appointments was a long process with many rejections by the Parliament of the President's nominees. The announcement for applications was first made on 3 June 2009, with a deadline of 7 days for interested candidates to submit applications. It was reported by the PO that 56 persons applied. These 56 persons were evaluated by the PO within 4 days, and 5 names were selected and sent for parliamentary vetting. However, one candidate recalled their application, and another name was proposed by the President. The Parliament voted in favour of only two of the five candidates. In July 2009, the President submitted two candidates for reconsideration who were rejected along with a new name. Following repeated rejection by the Parliament, the President submitted three new names again, from whom one person was approved.

On 1 September 2009, the PO reopened applications for the EC, with a deadline of 10 days. Two new nominees were proposed by 21 October, who were then approved by the Parliament. The 5 approved members were appointed together on 24 November 2009.

One of the first candidates who was approved was Fuwad Thowfeek. According to Thowfeek, the process of evaluation and selection was in

line with procedures, but candidates were not informed of progress of the application at any point and they had to rely on media reports and press releases to track progress of their applications..

In October 2013, one member resigned and a public announcement for applications was made the same month, with a deadline of seven days. Three new names were proposed to the Parliament, however one of the applicants recalled their name. Of the remaining two, one candidate got a score of 81% during the committee evaluation and was approved by the Parliament. The entire process was completed by March 2014.

In 2014, new appointments were needed to replace two members whose terms were expiring in November and two members who were unfairly removed from the commission by the Supreme Court. Applications were called for in August and from the three names the President proposed, two were rejected. The next day, PO renewed the call for applications, with a deadline of six days. The President sent two names, who were then approved by the Parliament. Three new members were appointed before the end of the year. The fourth member was appointed in March 2015.

An applicant for the 2009 Elections Commission, who also served on the Interim Elections Commission from 2008 to 2009, noted that there is a lack of transparency and meritocracy in the entire process. The criteria by which the President selects members is not revealed. In his experience, the committee has been biased in scoring. For instance, when he applied for Elections Commission member in mid-2009 he did not score enough marks and was informed informally that he received low marks for integrity. However, when he applied for MIRA board membership in early 2010, he

got high marks overall, including for integrity, by the same committee. He also noted that the Parliament vote also does not have to be based on committee evaluations. Any party can issue a three-line whip to control the vote.

Sources: Interview with Uz.Hussein Siraj Previous Vice President of Elections Commission, Parliament Independent Institutions committee reports, Presidents Office press releases, Parliament news updates, Interview with Fuwad Thowfeek, previous President of Elections Commission

ANALYSIS

The law includes provisions to exclude registered members of political parties and frontline activists of political parties from becoming a member of EC. While it is commendable that there is such a provision, there is no ‘grace period’ for being politically inactive and a candidate can resign from a party shortly before application.

For the 2009 commission, the President had proposed a total of eleven candidates, of which the Parliament rejected six. Names of two rejected candidates were forwarded to the Parliament for a second time as well, which is not a common practice.

The entire process took five months, from the initial announcement to appointment.

REMOVAL OF MEMBERS

LEGAL FRAMEWORK

According to the EC Act, the conditions for dismissal of a member are:

1. Failure to meet the prerequisites for an EC member.
2. Circumstances arise which obstruct that member from carrying out duties.

3. Member does not have the capacity to perform the duties of an EC member.
4. Failure to meet the code of conduct required of EC members as stated in Clause 17 (this includes abiding by law and Constitution, promote rule of law, protect rights and freedom of citizens without any discrimination).

The procedure for removal as stated in the law is that a commissioner can be dismissed by the simple majority vote of the Parliament, based on the findings by the Parliamentary Committee on Independent Institutions.

Sources: (Article 5, 10, 14, 17 of EC Act 8-2008)

PRACTICE

Two members of the Elections Commission were dismissed from their posts while one member resigned from his post during the period under review.

In March 2014, the Election Commission’s President, Fuwad Thowfeek, and Vice President, Ahmed Fayaz, were dismissed by the Supreme Court of the Maldives, just 12 days prior to the Parliamentary elections. The Supreme Court initiated a suo moto contempt of court case against all four members for criticising the Court’s 16-point electoral guidelines instructing the EC on how it should carry out its mandate and conduct elections. The Court also dismissed both Thowfeek and Fayaz from their posts. Thowfeek was sentenced to six months in prison sentence, suspended for three years.

This decision was heavily criticized by the Parliament, local and international organisations as well as foreign governments. This move by the SC is politically motivated and is an overreach of SC powers, which has undermined

the independence of Elections Commission (see Case Study 2). The Parliament issued a letter to the Supreme Court, President and the Attorney General’s Office expressing the view of the Speaker of the Parliament that the SC ruling against EC was against the Constitution. The ousted members, however, were not reinstated.

Sources: President’s Office press releases, various news articles, Interview with Parliament member Mt.Imthiyaz Fahmy, Interview with EC member, Fuwad Thowfeek

ANALYSIS

The Supreme Court’s order for removal from office of the Election Commission members has consequences for all members of all independent institutions. It sets a precedent where any member of an independent institution can be removed by Supreme Court in this manner, irrespective of the procedures in laws. The European Union Election Observer Mission (EUEOM) noted that the ruling was “clearly an intrusion by the judiciary on the role of the parliament, and a violation of separation of powers.” The EUEOM further stated that “the fact that this case against the EC was taking place for the duration of the elections had an intimidating impact on the commissioners, created pressure on them, and undermined their freedom of action.”^[12]

**IT SETS A PRECEDENT
WHERE ANY MEMBER
OF AN INDEPENDENT
INSTITUTION CAN BE
REMOVED BY SUPREME
COURT IN THIS MANNER,
IRRESPECTIVE OF THE
PROCEDURES IN LAWS**

2.5 PROSECUTOR GENERAL'S OFFICE

The Prosecutor General's Office (PGO) is a constitutional body established under the PG Act (9/2008) on 7 August 2008. Article 220 (c) of the Constitution states that the PG shall be an impartial and independent position and that he shall not be under the direction or control of any person or authority in carrying out his responsibilities and the exercise of his powers. The Attorney General can issue policy directives to the PG in guiding prosecutorial decisions. The PG also has the authority to appoint a Deputy Prosecutor General. If the position of the PG becomes vacant or the PG is unable to carry out his duties, the Deputy PG can take over the duties of the PG.

The PG can serve up to two five-year terms. Out of the three Prosecutor Generals who have served between 2008 and 2016, one was removed from office. Uza. Aishath Bisham, the first female PG, was appointed on 24 November 2015 and is currently serving.

APPOINTMENT OF MEMBERS

LEGAL FRAMEWORK

The President's Office is required to issue a public announcement for interested candidates to apply for the position of Prosecutor General. The President has the discretion to select persons from the applicants and submit their names to the Parliament. The names of everyone who submitted applications must also be sent to Parliament for information.

The Constitution states that the PG must be approved by majority of total membership of the Parliament. The prerequisite for PG are similar to other institutions, but education and experience is specified in the relevant law. A minimum of a first degree in law and four years

of work experience is required. PG cannot be a member of or be active in any political party and also must not hold a post or share of a law firm or other similar entity.

Sources: Article 7:221, Constitution 2008, Article 3 and 4 of PG Act 9/2008

PRACTICE

The announcement for the first independent PG was made on 3 June 2009 with a deadline of seven days. The PO announced that there were two applicants. On 14 June, the President sent only the name of Uz. Ahmed Muizzu to the Parliament. He was interviewed by a temporary committee formed for the purpose of this task. He was appointed on 26 July 2009.

When PG Muizzu resigned on 25 November 2013, the PO made the public announcement for PG on 26 November. A total of five candidates applied, and out of these, only one candidate, Uz. Maumoon Hameed, was proposed for evaluation by the Parliament on 10 December 2013. In the Parliament Committee's evaluation on 31 March 2014, Uz. Hameed attained an overall score of 67%. He was rejected by the Parliament vote on 14 April 2014, by three votes.

The next public announcement by the PO for the position of the PG was on 22 April 2014. This time, the application was open for only two days. Two names were sent by the President to the Parliament. This included the previously rejected candidate Uz. Maumoon Hameed and also Uz. Muhuthaz Muhusin. When the committee evaluated these candidates on 14 July, Uz. Hameed and Uz. Muhusin scored 33% and 67% respectively. In the committee report, the standard recommendation to select candidates who scored above 75% was reiterated. On 21 July the Parliament voted to appoint Uz. Muhusin. He was appointed the next day.

On 10 November 2015 when PG Muhusin was dismissed, the PO made the announcement for the position of the PG on Thursday 12 November. This time, interested applicants were given only six days to submit applications. Uza. Aishath Bisham was nominated by the President for evaluation by the Parliament. On 22 November the Parliament met and decided to forward the application to the Committee for evaluation, where she scored 87%. The next day, the Parliament voted in the proposed candidate and she was appointed the next day. Unlike previous times, the whole parliamentary process was completed within two days.

Sources: Parliament news updates, President's Office press releases, Committee reports

ANALYSIS

Like many other institutions, the overall appointment and dismissal process (see below) for the Prosecutor General's Office has deteriorated since 2016. Strictly from a procedural point of view, the number of days given for interested candidates to submit their applications is not sufficient. In 2014, candidates were given only two days, and in 2015, candidates were given four days, which is a slight increase but still not sufficient.

The more concerning point is the lack of consistency in assigning scores for candidates from the parliamentary committee. The fact that the same candidate, Uz. Maumoon Hameed, received a score of 67% in March 2014 and received a score of 33% in June 2014, by the same committee for the same criteria, is concerning. When this is corroborated with the political developments at the time, what is evident is that, once again, the overall consideration in the appointment of a PG in 2014 is purely political opportunism as opposed to any real merit of

the candidates. Hameed was largely seen as the favoured candidate of Maumoon Abdul Gayoom, former President and leader of his political party Progressive Party of Maldives (PPM). Muhusin on the other hand was the candidate of the current President Yameen Abdul Gayoom, who was trying to takeover control of the PPM.

REMOVAL OF MEMBERS

LEGAL FRAMEWORK

The conditions for removal of the PG, described in Article 9 of the PG Act, include:

1. Any action by the PG which violates the expected behaviour of PG.
2. Changes in circumstances which impedes the PG from carrying out the required duties.
3. PG is no longer capable of carrying out required duties.

The process of removal, as described by law, is through evaluation by Parliament committee and a vote on the issue by the Parliament. The Constitution states that this vote is by simple majority.

Source: Article 9, 9/2008, 7:228 Constitution

PRACTICE

In 2013, the Parliament was in active debate about the removal of PG Muizzu, when he resigned moments before the vote. The Parliament committee had evaluated his case over three meetings, and allowed him time to prepare and submit his defence against the raised issues. The committee meetings were open and attended by media, with video recordings available online. Four members of the committee voted to remove the PG while the remaining three members did not recommend removal. The issue was submitted to the Parliament, and debate on this commenced before the PG submitted his resignation.

In stark contrast, in 2015, the process of removing PG Muhusin was very rushed, although an attempt was made to pay lip-service to due process. Muhusin's committee hearing was held late in the night, at a closed door session and opposition MPs were not given sufficient notice of the hearing. According to one MP, the entire process took about ten hours within the Parliament. Muhusin and opposition members of parliament contended that Muhusin had not been given sufficient time to defend himself in the committee.^[13]

Sources: *Prosecutor General's removal draws criticism over 'due process violations', Maldives Independent, Nov 13 2015, Parliament sitting to be held tonight to dismiss PG Vnews, 10th November 2015, 'former PG Muhuthaz Muhusin arrested, vnews, 8th February 2016 PG Muhuthaz Muhusin dismissed from his position, Sun.mv, November 10 2015, Interview with MP Imthiyaz Fahmy on November 5th 2016, Parliament committee reports*

ANALYSIS

As per the Constitution, appointment of PG is by absolute majority but removal is by simple majority.

In comparison to the time given for PG Muizzu to prepare and submit his defence over the course of three meetings, the removal of PG Muhusin within 11 hours, when he was not aware of the charges against him before being summoned to the commission highlights how political motivations of the ruling party and Executive can violate the independence and impartiality of the PGO. International and local NGOs alleged foul play and claimed that and claimed that Muhusin was the victim of an increasingly authoritarian government going on a witchhunt, following a blast on the presidential speedboat in September 2014." to "International and local NGOs alleged foul play and claimed that Muhusin was the victim of an increasingly authoritarian government going on a witchhunt, following a blast on the presidential speedboat in September 2014

2.6 JUDICIAL SERVICE COMMISSION

The JSC, established as an independent and impartial institution, is entrusted with the powers, among others, to appoint, promote and transfer judges other than Supreme Court Judges, to make recommendations to the president on the appointment of the Chief Justice and Judges of the Supreme Court and to investigate complaints and take disciplinary action against the judiciary, including recommendations for removal.

The composition of the 10-member JSC is set forth in Article 158 of the Constitution. Appointed members include a judge of the Supreme Court, a judge of the High Court, a judge of the Trial Court, a member of parliament, a representative from general public, an appointee by the president, and a licensed lawyer. These members can serve only a term of 5 years.

The remaining three members – the Attorney General, the Chair of the Civil Service Commission, and the Speaker of the Parliament – are appointed to the JSC by virtue of an office they hold. These members will remain on the JSC for as long as they remain in their posts.

APPOINTMENT OF MEMBERS

LEGAL FRAMEWORK

The representative judges from the courts are selected by a vote amongst all judges of that particular tier of court. The Chief Justice cannot serve on the JSC.

The member from the general public is selected by the Parliament after a public announcement for interested candidates to apply.

There is also a post for a lawyer, who is selected by a vote amongst all the lawyers who have received the legal practice license. The law does not specify how this vote is to be conducted or which institution is to oversee this. Prior to November 2015, the permit to practice law was issued by the Attorney General's Office under a regulation. In November 2015, the Supreme Court issued a ruling to abolish this practice and declared that the Supreme Court will issue permits for lawyers to practice in Maldives.

All of the above members have a term of five years, and can only serve one full term in JSC (Clause 6). The JSC Act does not give any guidance beyond this on how these persons are to be selected. Prerequisites for the general member, lawyer and presidential appointee are given in Article 5 of the Act, but do not include any educational qualifications or experience.

Sources: Articles 3,4,5 10-2008, 'Supreme Court alone with issue permits to practice law in Maldives' 5th November 2015 vnews.mv/53351,*

PRACTICE

APPOINTMENT OF REGISTERED LAWYER

The lawyer sitting on the JSC is selected by a vote organised by the Department of Judicial Administration (DJA), which is now under the Supreme Court. The DJA also maintains the registry of lawyers. Prior to 4 November 2015 this was done by the Attorney General's Office.

According to private lawyers, the Attorney General's Office made a public announcement for this vote. The names of candidates and resumes are not officially announced beforehand. Vote is by secret ballot and there are no minimum number of votes or turnout required. Selection is based on the maximum number of votes received per candidate. The Elections Commission provides administrative

assistance. No issues were noted with the process of voting, but it should be highlighted that the Supreme Court decided that judges were also considered as lawyers and hence included them in the voting list. Interlocutors noted that there was considerable level of informal campaigning at the time between competing candidates.

Source: Interview with Uz. Hussain Siraj, private lawyer, former member of JSC sub-committee

SELECTION OF COURT REPRESENTATIVES

Each of the courts have always been represented in the JSC. The members are selected by a vote.

SELECTION OF MEMBER FROM GENERAL PUBLIC

According to the relevant parliamentary committee report, the member from the general public is selected by a vote, following a committee evaluation of the candidates who applied to a public announcement. Although the law does not specify which office should make this announcement, in practice this is done by the President's Office and shortlisted candidates are sent to the Parliament.

APPOINTEE BY THE PRESIDENT

The appointee by the President is a direct nominee, without any public announcement or application process.

ANALYSIS

The independence and impartiality of the JSC has been under scrutiny since its inception, particularly due to its appointment procedure and composition. The UN Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, also observed the politicised composition of the JSC in her 2013 report on the Maldives and stated that the constitutional body has been subjected to "all sorts of external influence and has consequently been unable

to function properly.”⁸ For instance, the Department of Judicial Services Administration (DJA), which oversees the vote taken among lawyers, is now under the direct control of the Supreme Court. Supreme Court also allows sitting judges to vote as lawyers. This is in conflict with best practices as the spirit of including a seat on the JSC for a representative from lawyers is to give practicing lawyers a say in matters of the Judiciary. All these combined together allows sitting judges to unduly influence the composition of the Judicial Services Commission, the regulatory body of judges.

Furthermore, the PO makes the announcement for, and shortlists candidates for the seat reserved for the representative of the general public – which is a process not required by law. Since candidates are shortlisted by the PO, the current lack of transparency at this stage means that there is room for political manoeuvring in selection.

It should also be noted that the sitting judge representing the Supreme Court on the JSC was implicated in a sex scandal and accused of several counts of corruption ^{[15],[16]} Despite this, he did not lose his position as a sitting judge.

For these reasons, among other things, the UN Special Rapporteur recommended that the composition of the JSC should be free from political representation and should instead be composed entirely of either retired or sitting judges, lawyers and academics.

Source: Interview with Mr.Imthiyaz Fahmy, Member of Parliament, Parliamentary committee report

REMOVAL

LEGAL FRAMEWORK

The JSC Act states that the members who

represent the Courts, the Speaker of the Parliament, member representing the general public, the President's appointee and the member representing registered lawyers can be removed by the person or institution who selected that person.

THE CONDITIONS FOR REMOVAL ARE STATED IN ARTICLE 10 AND 14 OF THE JSC ACT

1. Failure to meet the prerequisites for a JSC member
2. Removal by the person/people who appointed that person

The second condition stated above does not detail any specific circumstance under which the JSC member can be removed.

The three persons who are appointed by virtue of the office they hold (AG, CSC President and Speaker of Parliament) will lose their seat in JSC, if they lose their respective positions.

Reasons for dismissal by President or Parliament or Courts do not require disclosure to the public. The law does not state the process of removing the lawyer selected by the registered lawyers.

Source: Article 10,14 10-2008

PRACTICE

JSC members are removed frequently with the most number of changes being seen in the Attorney General and the appointee by President. From 2008 to 2014, a total of 31 persons served on the JSC. Of these, only two members served for a full term of five years. While some members resigned from JSC, others were removed by the person who appointed them.

In 2010, three High Court judges issued a resolution to remove their representative, Justice Abdul Ghani Mohamed, from the JSC, based on allegations of misconduct. The three judges party to the resolution had never raised an issue against Mohamed prior to this event. The seat was once again returned to Mohamed months later, when Justice Abdullah moved up to Supreme Court, vacating the High Court seat in the JSC. Allegation of his misconduct was not brought up during his reappointment.

Source: JSC Annual Reports, Information provided by private lawyers Mohamed Iyas and Husnu Suood

ANALYSIS

Of the ten members serving on the JSC, the CSC President, Speaker of the Parliament, and Attorney General will lose their JSC membership if they vacate their posts in their respective offices. The process of removal for the remaining seven members needs to be amended to include circumstances for removal and a process which includes a fair evaluation and more transparency. The reasons by which the member can be removed by the person or people who appointed them are not clearly defined. While there is a list of ten factors relating to conduct, fair and ethical practices, the law does not explicitly state that the person must be removed if any of these are breached.

There is no mechanism in place to remove the representative of registered lawyers.

2.7 ANTI-CORRUPTION COMMISSION

The Anti-Corruption Commission was established on 16 October 2008, under the 2008 Constitution with its legal powers further defined in the Anti-Corruption Commission Act (13/2008). The Commission was preceded by an Anti-Corruption Board, which was a government agency established under a Presidential Decree on 21 April 1991, reporting directly to the President. The ACC has powers to investigate all allegations and suspicions of corruption, and submit cases for prosecution through the PGO. In addition, the ACC is mandated to issue recommendations to state institutions and increase awareness with the aim of preventing corruption.

The ACC consists of five members, serving up to two five-year terms each. Between 2008 and 2016, eight persons served as members of the Commission.

APPOINTMENT OF MEMBERS

LEGAL FRAMEWORK

The Constitution states that ACC members must be approved by a simple majority of the Parliament.

As per the ACC Act 2008, a public announcement is issued by the President's Office for interested candidates to apply for membership of the ACC. However, the President can also submit names outside of these applications and has absolute discretion to choose the applicants and nominees to be sent for parliamentary approval. The prerequisites for ACC membership are similar to other institutions. Political party membership or activism is not allowed. The law states that the person should possess "the necessary education qualifications, experience and competence", but does not elaborate further.

A Sources: Article 7:199 Constitution 2008, Article 4 and 5 of ACC Act 13/2008

PRACTICE

In 2009, applications for ACC membership was opened on 3 June for seven days. PO reported that a total of 72 persons applied for the five-member commission. A temporary committee was formed within the Parliament to evaluate the candidates. The process of clearing the records of candidates with other offices took place, following which the interviews commenced. A total of six committee meetings were held from 17 June onwards.

According to the chair of the temporary committee, after it had summoned and interviewed one candidate, Hassan Luthfi, the committee was informed to stop proceedings, as the President had recalled his name. However as the task was assigned to the committee by the Parliament, the committee decided to go ahead with the evaluation and present the findings to the Parliament for them to decide on the issue. The Parliament voted to appoint Luthfi and four others. While the four remaining candidates were appointed by the President on 9 September 2009, Luthfi's appointment was delayed till 13 October 2010.

In 2014, the announcement was made on 5 August with an application deadline of six days. The President sent five names to the Parliament. The committee met twice on 20 August and concluded their evaluation. All five candidates scored above 85% and were voted in unanimously on 27 August.

ANALYSIS

The minutes of the first meeting in 2009 include discussions on how the selection criteria differed for different appointments, especially when

different committees carry out this function. Eventually, yet another criterion was set for the evaluation of the ACC candidates, compared to the ones already used by other temporary committees. Sample questions were also given to MPs to conduct interviews, based on previous interviews conducted by other committees.

In 2014, a standard criteria was used for evaluation.

The ACC is the only independent institution for which the President can directly nominate candidates in addition to the applicants who respond to the public announcement. Given the lack of transparency in this stage of selection, it is not known whether the names proposed by the President are direct nominees or applicants.

There was significant delay in appointing one member in 2009/2010. The President submitted Hassan Luthfi as a candidate on 13 June 2009. Within two weeks, the President recalled the name and submitted a replacement. However, Luthfi was approved by the Parliament on 6 July 2009. The Attorney General questioned the legality of this action by the Parliament, given that the President had recalled the name before the vote. The government submitted this issue to the Supreme Court on 14 September 2009, but it was rejected by the court on 3 March 2010. The candidate filed a case with the Civil Court, which ruled, on 20 September 2010, that Luthfi must be appointed within 30 days of the ruling. This case is a clear indication of the inherent tension between Nasheed's Government and an opposition controlled Parliament and judiciary.

Source: "Hassan Luthfi appointed as a member of ACC mnb-910", MNBC news clip, www.youtube.com/bmOMIXsYMO, 13 October 2010

REMOVAL OF MEMBERS

LEGAL FRAMEWORK

The removal of an ACC member is described in Articles 10, 14 and 17 of the ACC Act, and cite the following reasons as conditions that warrant dismissal

1. Member is unable to perform duties.
2. Member no longer meets the prerequisites for an ACC member.
3. Member contravenes any of the eleven responsibilities listed in Article 17. This includes delivery of functions as an ACC member, upholding integrity and ethical standards of the institution.

Removal of ACC members is by simple majority of the Parliament as stipulated by the Constitution. The ACC Act further states that the case must be evaluated by the relevant Parliamentary committee first.

Source: Article 10,14,17 13/2008, 7:207 Constitution

PRACTICE

No member of the ACC has been dismissed yet.

ANALYSIS

The circumstances for removal of ACC members include a more thorough list of circumstances than other independent institutions, including the failure to uphold the integrity of institution. The process of removal is also detailed in the ACC Act and includes an evaluation by a committee prior to the vote on Parliament floor.

2.9 MALDIVES MEDIA COUNCIL

The MMC was formed with the mandate to protect the freedom of the media, oversee the actions of persons in media and enforce codes of conduct, and uphold the values and discipline of all persons in media. The MMC was established as an independent institution through the MMC Act (15/2008).

The MMC consists of total 15 members: eight media representatives and seven representatives from the general public. Members serve a term of two years, and cannot serve two consecutive terms.

APPOINTMENT OF MEMBERS

LEGAL FRAMEWORK

According to the MMC Act, the MMC consists of fifteen members, elected by a vote amongst the media organizations that are registered at the relevant government ministry. Eight positions on the council are reserved for persons who are employed or represent a media organization and the remaining seven positions are for members of the general public. The seven members from the general public must be selected amongst fourteen candidates proposed by the Minister, chosen after a public announcement.

One representative from each registered media outlet can attend the forum and each media outlet is given one vote.

The prerequisites for all members are listed in table 3.

Source: Article 5 MMC Act 15-2008

PRACTICE

The government department that is in charge of conducting the election of MMC members

has changed over the years, from Ministry of Tourism, Arts and Culture to Ministry of Youth and Sports, to the Ministry of Home Affairs in 2014.

Prior to conducting the vote, the relevant government department announces for media organizations to register, in order to be able to put forward candidates and take part in voting. The first round of appointments to the MMC was in 2010. The then Department of Information, housed under the Ministry of Tourism, Arts and Culture, first issued the announcement for registration. However, the deadline was later extended. However, the deadline was later extended. The list of official representatives from each media organization who was authorized to vote was posted online before the election.

Thirty-five persons submitted interest from the public, and the department selected fourteen from this. Eleven candidates submitted an interest from the nineteen media organizations present at the meeting. Each candidate was given three minutes to introduce themselves following which the vote was conducted. The first MMC was elected on 28 May 2010. The full results for all candidates were posted on the Department's website on 20 June 2010.

Sources: Department of Information press releases

In 2014, the Ministry of Home Affairs (MOHA) was tasked with the mandate of maintaining the registry of media organizations. On 21 July 2014, the ministry published a policy on selection of members for MMC. According to the policy, the application deadline for membership to the council from the general public must be at least seven days from the date of announcement. The policy also sets out the conditions for eligibility to the council for the general public. It states that council members should have higher

education in either law, Dhivehi language, human rights, Islamic studies or social sciences and have experience in social work, especially with children, women or disabled. The vote was also declared a secret vote. Any issues with the procedure or the elections will be considered by a temporary committee within the MOHA.

List of authorized persons to vote from the registered organizations is also posted online. A total of 62 persons were approved for voting. The list of candidates is also posted on the MOHA website before the vote takes place.

In 2014, a total of 24 persons contested for the fifteen council posts – twelve from media and twelve from general public.

Elections were held twice in 2016 to select a replacement for two vacant positions in the MMC.

Source: Maldives Media Council elections to be held today evening, 20 November 2014, <http://vaguthu.mv/en/6023>

ANALYSIS

There is opportunity for political bias to exist in the selection of the seven members from general public since the Ministry selects 14 candidates from all applicants. This was also noted by the Freedom House in 2015 on their review of the Maldives media

Source: <https://freedomhouse.org/report/freedom-press/2015/maldives>

The MMC Act does not specify whether the members from public would lose their membership if they are employed by media after appointment.

The selection criteria makes no mention of political affiliation or involvement by the candidates, allowing for political influence

within the Council. In 2013, the MMC prohibited frontline participation by its members in political party campaigns. This decision, however, does not prohibit council members from being members of political parties.

All candidates from the media are put forward for vote, while candidates from the general public are vetted by MOHA and shortlisted. There is a criteria given for this practice. However, this decision is completely internal and not transparent – for instance, reasons for rejection are not disclosed. For increased transparency, external persons could be included by MOHA, with more details of the evaluation and its outcome made public.

Similarly, the committee which addresses grievances regarding the election is ad-hoc and its composition is decided by MOHA. There is no external body to which a candidate can submit a grievance regarding the administration of these elections.

Some aspects of the candidate evaluation process followed currently by the Maldives Pension Board can be applied here for further transparency. The Maldives Pension Board is a legal independent entity, established under the Pension Act (8/2009). According to the Act, board members are selected by a committee formed jointly by CSC, MOFT and the ministry responsible for social security. A direct family member of a candidate cannot sit on this committee.

Source: Policy on conducting Maldives Media Council Elections, Ministry of Home affairs website

REMOVAL OF MEMBERS

LEGAL FRAMEWORK

A member of the MMC can be removed by the

council itself, by a two thirds absolute majority vote if the following conditions, as described by the Law are met:

1. Bankruptcy
2. Incompetency
3. Change in personal circumstances which leads to a conflict of interest
4. Member is found guilty of an offense that questions their integrity as a MMC member
5. Not giving due attention and responsibility to undertaking duties as a MMC member
6. MMC regulations adds one more condition that warrants dismissal
7. Failure to attend three consecutive council meetings without reason

Source: Article 34 MMC regulations, MMC Act 15-2008

PRACTICE

Only one member has been removed from the MMC to date. Miusam Abbas was removed on January 2016. According to the President of MMC, he was removed for being negligent in his duties to the MMC, and not attending council meetings. The council proceeded to give him a verbal notice first and then a letter stating that he may be removed if he does not make more effort to increase his contribution to the work of MMC. The MMC then issued him a letter of removal and also informed the MOHA. These procedures are not written in any regulation.

Source: Information provided by Mohamed Asif, President of MMC

ANALYSIS

While the actions taken in the process of the removal of Abbas is deemed adequate and fair, detailed procedures for removal need to be included in the MMC regulations.

Concerns have been raised regarding the overlap of mandates between the MMC and Maldives Broadcasting Commission (MBC). In 2012, the Finance Committee of the Parliament submitted a report to the Parliament to dissolve the MMC, stating that the MMC had not fulfilled their responsibilities and tasks in the best possible manner and recommended transferring the duties of MMC to MBC^[17]. The Parliament, however, voted not to dissolve the MMC^[18]. A report by Transparency Maldives in 2014 noted the continued challenges due to overlap of mandates of these two organisations and recommended merging the two^[19].

**IN 2012, THE FINANCE
COMMITTEE OF
THE PARLIAMENT
SUBMITTED A REPORT
TO THE PARLIAMENT
TO DISSOLVE THE MMC,
STATING THAT THE MMC
HAD NOT FULFILLED
THEIR RESPONSIBILITIES
AND TASKS IN THE BEST
POSSIBLE MANNER
AND RECOMMENDED
TRANSFERRING THE
DUTIES OF MMC TO MBC**

2.9 MALDIVES INLAND REVENUE AUTHORITY

The Maldives Inland Revenue Authority (MIRA) was established on 2 August 2010 under the Tax Administration Act (3/2010). The main function of MIRA is the execution of tax laws and tax policies.

The governance structure of MIRA is similar to that of a public or private company. According to Tax Administration Act (14/2011), MIRA must be governed by a board that consists of five members and a Commissioner General of Taxation (CGT) and a Deputy Commissioner General of Taxation (DCGT). CGT and DCGT are full-time positions and the remaining five members serve part-time. A chairperson and deputy chairperson is appointed from amongst these five members. All seven positions have a term of five years, which may be renewed once.

As per the Act, the functioning of MIRA is to be overseen by a board. The board consists of seven members including a Commissioner General of Taxation (CGT) and Deputy Commissioner General of Taxation (DCGT). All seven positions have a term of five years, which may be renewed once.

APPOINTMENT OF MEMBERS

LEGAL FRAMEWORK

The President's Office is required to issue a public announcement for candidates interested in becoming board members of MIRA. Announcements are issued separately for the posts of CGT and DCGT.

The procedure for the President to submit names to the Parliament is different for MIRA compared to most other institutions. For all position in MIRA (and MBC), the President must send all the names of applicants, in order of

preference, to the Parliament for evaluation. The number of names forwarded to the Parliament must exceed the number of vacancies.

The procedure by which the Parliament must decide on the candidates, as described in the Tax Administration Act, does not specifically include an evaluation by a committee.

The prerequisite for board members are similar to other institutions. However, unlike other institutions, the minimum age requirement is only 18 years in the case of board members and 19 years for CGT and DCGT. Academic qualifications are specified only for the CGT and DCGT and not for other board members. Relevant fields of experience are however listed and apply to all members.

A significant difference between MIRA and other institutions is that when a position is vacant, the new member is appointed for only the remaining period of the original term.

Sources: (Articles 4 and 5, 14/2011)

PRACTICE

APPOINTMENT OF CGT AND DCGT

Between 2008 and 2016, an announcement for CGT and DCGT was made only once in 2010. A public announcement was made by PO on 23 March 2010 with a deadline of 13 days. The number of applications received were also announced by PO: three applicants for CGT and seven applicants for DCGT positions. President's Office forwarded two candidates each for CGT and DCGT positions to the Parliament. The Committee decided that candidates who scored higher than 80% would be recommended to the Parliament for approval. For both the CGT and DCGT, the highest scoring candidate was selected by Parliament vote. They were

appointed on 2 August 2010.

APPOINTMENT OF OTHER BOARD MEMBERS

In 2010, applications were opened on 23 March 2010 with a deadline after 13 days. The PO announced that 32 persons had applied for the five positions. Seven candidates were selected by PO and submitted to Parliament. The Committee decided that candidates who scored higher than 75% would be recommended to the Parliament for approval. Apart from the candidate who scored the second highest, the remaining five candidates who scored the highest were approved. They were appointed on 2 August 2010.

A former MIRA board member noted that there is a lack of meritocracy and transparency in the entire process. The criteria by which the President selects members is not revealed. He also alleged that the committee has been biased in scoring. For instance, when he applied for the position of commissioner of Elections Commission mid-2009, he did not score enough marks and was informed that he received low marks for integrity. However, when he applied for the position of commissioner on MIRA in early 2010, the same committee gave him a high score, including for the integrity component.

On 22 January 2012, one member resigned when he was granted a political post as government spokesperson. Announcement for reappointment was issued on 29 March 2012 with an application deadline of ten days. The total number of candidates who applied was not disclosed by the PO but the five names that were sent to Parliament were listed on the PO website. These names were reviewed by the Economic Affairs Committee of the Parliament. The highest scoring candidate was eventually selected by the Parliament and appointed by the President on 15 July 2012. A candidate who

got rejected reported that she was informed by an MP, before her interviews took place, that the person who would be selected was already decided.

Before the terms of all five members expired on 2 August 2015, announcement for candidates was made on 16 July with a deadline of only six days. Following this announcement, six names, including names of two existing members, were sent by PO to Parliament on 22 July. The Committee evaluated the list on 4 August and sent its findings to the Parliament for voting on the same day. Three new members and two existing members were appointed on 5 August. During this round, a candidate who scored only 47% was also appointed.

Source: 2012 and 2015 Annual reports of MIRA, press releases from Parliament, press releases from President's Office, Interview with Uz. Hussein Siraj, Previous Board member of MIRA, Interview with Sujatha Haleem, applicant for MIRA who got rejected

ANALYSIS

Members who are appointed for vacant positions only serve until the original term is completed. Thus, board members are always renewed together. However, the law is silent on whether this constitutes as a full term for the member filling the vacant position, and how many terms they can serve after the initial replacement term.

The 2010 and 2012 evaluations of candidates for MIRA board were carried out by the Economic Affairs Committee of the Parliament. Evaluations for MIRA in 2015 and evaluations for other independent institution in 2012 were done by the Independent Institutions Oversight Committee. The categories used by the two committees are similar but the weights assigned to categories differ. According to a former MP, different committees may be selected based on

the function of the institution in question and relevancy to different committees.

Number of days given by President's Office for candidates to respond to an announcement has decreased gradually from 13 days in 2010 to 10 days in 2012 to 6 days in 2015. The process of application is time-consuming as the applicant has to clear their records at various institutions. This can take more than one working day and persons with contacts in the courts are more likely to get this done quickly. Hence, shortening the duration of applications can give an unfair advantage to any persons who were expecting the announcement or who has contacts in these institutions.

The committee report for 2010 noted that one candidate did not respond to phone calls from the Parliament and as a result the committee evaluated based only on her CV. This could perhaps have been avoided if candidates are kept informed of the status of their application and given advance notice. The committee report also revealed that the committee conducted eight meetings (totalling 12 hours and 45 minutes) to evaluate 11 candidates for all seven positions of the board.

Replacement of the member who resigned in 2012 took 176 days, much longer than the 60 days mandated by law should a position become vacant.

The current requirements for eligibility for MIRA board membership specifies minimum age of 18 years with no specific education attainment. This criterion needs to be revised to ensure only educated and experienced persons are eligible (stringent criteria is already set for CGT and DCGT)

Furthermore, when five members were reappointed to the board of MIRA in 2015,

the CGT was elected as chairperson of the board while the DCGT was elected as deputy chairperson. This goes against international best practice, which, along with the Governance Code of the Maldives applicable to all listed companies, recommend the separation of chairperson and the person fulfilling the duties of the CEO. The need for separation of chairperson and the role of CGT of MIRA is evident when the duties of the chair are considered. As explained in Article 4 of Tax Administration Act, duties of the board (headed by the chair) include advising the CGT on administration of MIRA. It is also the specific duty of the chairperson to review the assets of CGT and MIRA employees for prevention of fraud and corruption. Therefore, if the CGT is also elected as the chair of the board, there is a significant conflict of interest in fulfilling the duties of a chairperson.

REMOVAL OF MEMBERS

LEGAL FRAMEWORK

The power to remove a MIRA board member is granted to the President, if any of the conditions for removal listed in Article 5 of the Tax Administration Act are met:

1. Bankruptcy
2. Member is convicted on indictment for a criminal offence
3. Member no longer meets the criteria of membership prescribed in the Act
4. Member is found negligent in the performance of the official responsibilities of a member of the board or where the board is of the opinion that there has been a lack of care and the relevant parliamentary committee is of the same opinion.

It can hence be interpreted that the President directly removes the member in cases described in (1) to (3) while in case described in (4), the Parliament needs to be consulted.

There is a separate clause in Article 8 of the Tax Administration Act, which concerns the appointment and removal of CGT and DCGT:

“With the consent of the People’s Majlis, the President, if he sees fit and by writing under his hand, may relieve the Commissioner General of Taxation or the Deputy Commissioner General of Taxation of their official duties.”

Source: Clauses 4,5 8, Tax Administration Act

PRACTICE

To date, no MIRA board member has been removed.

The current CGT and DCGT remain in position even after five years without being formally reappointed. According to a former board member, there was discussion within the MIRA board that the clause regarding the five-year tenure in the Tax Administration Law does not apply to CGT or DCGT. The Law is interpreted in such a way that the CGT or DCGT has no fixed term and only becomes vacant by resignation or by removal by President.

The annual report of MIRA noted that the CGT and DCGT were ‘appointed’ on 9 August 2015 along with other board members, although there were no public announcements by the PO for applications for the post of CGT and DCGT, nor were there any committees or Parliament discussions regarding these two reappointments.

The PO did make an announcement on 16

July 2015 but it was regarding the five board members only. Similarly, the Parliament news update regarding the Parliament vote on 9 August only mentions the vote on the 5 board members.

Sources: 2015 MIRA Annual report page 14, Presidents office press releases, Parliament news updates, interview with Uz. Hussein Siraj, previous board member of MIRA

ANALYSIS

The law is vague on whether the board of MIRA includes the CGT and DCGT. For example the Article 4(d) of Tax Administration Act 14/2011 states that the board consists of seven members including CGT and DCGT. However, there are separate clauses on appointment for the board and for CGT and DCGT. Hence, the law needs amendment to clarify whether the board includes the CGT and DCGT. While the law specifies a five-year term for board members, the law is being interpreted in such a way that the CGT and DCGT does not have fixed terms. This is evident in the fact that the current CGT and DCGT were appointed in 2010, with no renewal or reappointment since then.

In addition, the circumstances under which the CGT and DCGT can be removed is not listed in the law. Removal can be initiated by the President, with consent of Parliament, at any given time. This can lead to a situation where CGT and DCGT act in favour of President and Parliament to retain position. Combined with the unspecified tenure of the CGT and DCGT, this can lead to strong influence of the executive or legislative bodies over this particular independent institution.

THIS CAN LEAD TO A SITUATION WHERE CGT AND DCGT ACT IN FAVOUR OF THE PRESIDENT AND PARLIAMENT TO RETAIN POSITION. COMBINED WITH THE UNSPECIFIED TENURE OF THE CGT AND DCGT, THIS CAN LEAD TO STRONG INFLUENCE OF THE EXECUTIVE OR LEGISLATIVE BODIES OVER THIS PARTICULAR INDEPENDENT INSTITUTION

2.10 MALDIVES BROADCASTING COMMISSION

The Maldives Broadcasting Commission was formed under the Broadcasting Act (16/2010). The mandate of MBC is to formulate and implement broadcasting policies, license broadcasters and regulate the broadcasting media in the country. There is some overlap of mandate with the Maldives Media Council (also established in 2010), since the MMC oversees all media organisations which includes broadcasting companies^[20].

The Maldives Broadcasting Commission has seven members. Each member is appointed for a five year term and may serve a maximum of two consecutive terms. From 2008 till 2016, 13 members have served on MBC. No member was removed during this period.

APPOINTMENT OF MEMBERS

LEGAL FRAMEWORK

A public announcement is made by the President's Office for interested candidates to apply for the seven member positions of the MBC. The President then submits the entire list of selected candidates to the Parliament in order of priority. This is one of the few institutions in which the President can submit names in order of priority.

The Parliament then votes on the candidates. The procedure by which the Parliament analyses and votes is not explained in the MBC Act (for instance whether it's a simple majority or an absolute majority vote, or whether candidates are to be interviewed).

Source: Article 6, MBC Act

PRACTICE

Public announcements have been made for MBC members three times during the period of 2008-2016. The first time was in 2010 for all seven members, while the second time in 2012 was for one vacant position. The final call for applications was made in 2016 before the completion of term of the remaining six initial members. In all these cases, the PO made the announcement and sent a selected list to the Parliament. In 2010, it was reported that the list was sent in the order that the PO received the applications. In 2016, the President submitted the list in order of preference.

In 2010, the interview of 42 candidates were carried out by the Economic Affairs Committee of the parliament. In 2012, a sub-committee of the Committee on Independent Institutions interviewed 7 out of 14 names proposed by the President. In addition to the review of documentation, the committee submits requests to the Courts and Elections Commission to clarify if the candidates meet the criteria specified. According to the set practice, the committee submitted only those who scored higher than 75% for vote of Parliament. During this round of appointments, the person who scored highest in the interview process, also got the highest number of votes. This particular candidate was ranked 10th in preference in the priority list of the President.

In 2016, the PO submitted 23 names in priority order, for six slots. After the committee evaluation, the candidate who was last in the President's list, scored the highest at committee stage. However, when the Parliament voted, the top six scoring candidates were selected with the exception of the candidate who scored the highest. In the end, the Parliament's selection mirrored the priority list sent by the President. This includes two persons who scored lower

than 75%.

One candidate noted that they received phone calls from MPs after the interview which focused more on assessing political affiliation of the candidate. She was also encouraged to call other influential persons to campaign on her behalf, before the parliament vote.

There was also a difference in the time taken for the process. In 2012, the entire process from vacancy of post to appointment took 7 months, while in 2016, it was completed within 15 days. In 2012, 13 days was given for interested persons to apply, whereas in 2016 only 4 days were given. In addition, the progress of applications is not communicated directly to the applicants. For instance, there is no communication with candidates when the PO forwards names to the Parliament, or when the committee sends their evaluation to the floor. Applicants are updated via media reports or press releases from the institutions.

Sources; Interview with Mariyam Waheeda, Various press releases from President's Office, Parliament Committee reports. Minutes of committee meetings

ANALYSIS

The selection criteria makes no mention of political affiliation or involvement of the candidates, allowing for political influence within the MBC. Some degree of control by law in this regard may be needed to ensure media freedom in the country.

The parliamentary committee has followed legally required procedures in appointment. The same criteria was used for evaluation in both 2012 and 2016. Some inconveniences are borne by the applicants in this process. For instance, they are not informed in advance of when they will be called for interview and very short notice

is given. One applicant noted that she was only informed about six hours prior to the committee interview, which means the applicants have to remain in Male' and always be available. More advanced notice can be given for interviews to ensure that all applicants are able to come for interviews and are better prepared, consequently ensuring that appropriate selections are made.

The approval of applicants by the Parliament is indicative of how the seats are distributed in the parliament, rather than the committee evaluation. In 2010, when the parliament was controlled by the opposition, the candidates preferred by the President came last. However, in 2016, when the government controlled the parliament majority, candidates who were favoured by the President were eventually appointed, despite receiving a low score at committee stage. This shows that regardless of how they score during the committee stage, their approval by the Parliament depended on political loyalty.

REMOVAL OF MEMBERS

LEGAL FRAMEWORK

Article 9 and 12 of the MBC Act states that members of the MBC can be removed if any of the following circumstances arise:

1. If members fail to fulfil the prerequisite criteria for a MBC member
2. If a member gets appointed to a political position
3. If a member is convicted of an offence for which a hadd is prescribed in Islam

4. If a member is declared bankrupt
5. If a member fails to perform to his/her duties and responsibilities effectively.
6. If they are negligent when executing their duties
7. If they commit an act that contradicts broadcasting policies
8. Failure to attend 03 (three) consecutive Commission meetings without a valid reason

Before a Commissioner can be dismissed, his dismissal must be substantiated by the findings of the relevant parliamentary committee, following which the person can be dismissed by a simple majority. The president can also initiate the dismissal process by sending a request to the parliament. Any member who is removed must also be provided with written reasons for his/her removal.

PRACTICE

No member of MBC has been removed to date.

ANALYSIS

This is the only institution where the reasons for removal has to be informed in writing to the person being dismissed. However, it is not clear who provides the dismissed candidate with reasons for dismissal.

2.11 INFORMATION COMMISSIONER'S OFFICE

The Information Commissioner's Office of the Maldives (ICOM) was established on 13 July 2014 under the Right to Information Act (1/2014). The responsibilities of the Information Commissioner (IC) include enforcing the Right to Information (RTI) Act and working with State institutions on developing capacity and understanding of RTI.

The Information Commissioner can serve up to two five-year terms. The first IC was appointed on 22 July 2014, and has remained in that position to date.

APPOINTMENT OF COMMISSIONER

LEGAL FRAMEWORK

A public announcement is issued by the President's Office for interested candidates to apply for the position of the IC. The President has absolute discretion to select persons from the applicants and submit them to the Parliament. The Parliament decides on the selection by a simple majority vote.

The prerequisite for board members are similar to other institutions but education and experience is specified in this Act. A minimum of first degree and seven years work experience is required. Articles 44, 45 RTI Act 1-2014

PRACTICE

On 21 May 2014 a public announcement for the post of IC was made with 1 June 2014 as the deadline. A second announcement was made on 10 June 2014 with a deadline of 12 days. While the PO announced the name of the candidate selected by the President and sent for parliamentary evaluation, the names of the other candidates who applied were not made public by either the PO or the Parliament.

After receiving a score of 88.1% in the evaluation conducted by the Committee on Independent Institutions, the candidate was approved by the Parliament on 21 July 2014 and appointed the next day. According to the committee report, the usual process of vetting records by sending to other institutions, interview and evaluation against the set criteria was followed.

Source: President's Office press releases, Parliament news updates, Committee report.

ANALYSIS

While committee evaluation is not mentioned in the law for the appointment process, this was conducted in practice.

It is not clear how many or who else applied for the position. The candidate selected by the President was a former MP of People's Alliance (PA - President Yameen's former party, now defunct) who during his term as MP voted against the Right to Information bill. His subsequent appointment to head an office with a mandate to implement a bill he voted against raises questions on his suitability for the role and the influence of political loyalty in appointing members to independent institutions.

REMOVAL OF MEMBERS

LEGAL FRAMEWORK

The circumstances for removal of the IC described in Article 48 of the RTI Act include:

1. Any action that violates the expected behaviour of an IC
2. Change in circumstances which impedes the IC from carrying out the required duties
3. IC is no longer capable of carrying out required duties

For removals, the issue is first taken to a Parliamentary committee for evaluation and then sent to the floor, where a simple majority vote is then required to dismiss an IC.

Source: Article 50, RTI Act 1-2014

PRACTICE

An IC has not been removed to date.

ANALYSIS

As far as the provisions for dismissal spelled out in legislation concerned, the process of parliamentary evaluation in appointments and dismissals is positive.

THE CANDIDATE SELECTED BY THE PRESIDENT WAS A FORMER MP OF PEOPLE'S ALLIANCE (PA - PRESIDENT YAMEEN'S FORMER PARTY, NOW DEFUNCT) WHO DURING HIS TERM AS MP VOTED AGAINST THE RIGHT TO INFORMATION BILL. HIS SUBSEQUENT APPOINTMENT TO HEAD AN OFFICE WITH A MANDATE TO IMPLEMENT A BILL HE VOTED AGAINST RAISES QUESTIONS ON HIS SUITABILITY FOR THE ROLE AND THE INFLUENCE OF POLITICAL LOYALTY IN APPOINTING MEMBERS TO INDEPENDENT INSTITUTIONS.

2.12 NATIONAL INTEGRITY COMMISSION

The National Integrity Commission of the Maldives (NIC), formed to replace the Police Integrity Commission (PIC) and the Customs Integrity Commission (CIC), is the most recent independent commission to be formed. Established on 6 October 2015, the NIC receives and investigates complaints concerning four institutions: Maldives Police Service, Department of Immigration and Emigration, Maldives Correctional Service, and Maldives Customs Service. The NIC was established with a wider mandate than the CIC or PIC, with more powers to investigate and take action. There is also the advantage of reduced State expenditure by merging the two similar institutions.

The NIC is comprised of five members, each serving five year terms that may be renewed once. The first commission members were appointed on 15 October 2015 and remain to date, with no dismissals, resignations or reappointments.

APPOINTMENT OF MEMBERS

LEGAL FRAMEWORK

A public announcement is issued by the President's Office for candidates interested in serving on the commission. The President has discretion to select persons from the pool of applicants and submit their names to the Parliament.

The number of candidates submitted to the Parliament by the President must not be less than the vacant slots. However, the President must send all the names to the Parliament if the number of applicants for the commission is less than the number of vacancies. The procedure by which the Parliament must decide on the candidates is not described in the NIC Act. The prerequisite for a NIC member includes a first

degree and seven years of experience.

Source: Article 10, 27-2015

PRACTICE

Two announcements were made by the President's Office in 2015 for candidates. The first announcement was on 15 September with a deadline of 15 days, and the second announcement on 7 October with a deadline of 12 days. The PO did not disclose the number of applications it received.

Four names were nominated by the President in October 2015. A fifth name was also sent but later withdrawn by the President's Office without providing any reason.

The parliamentary Committee on Independent Institutions convened on 12 October 2015 to evaluate the four names submitted by the President. All four scored higher than 75% and thus received the committee's recommendation to be nominated. The Parliament voted to approve the four candidates on 13 October 2015 and they were appointed on 15 October 2015.

The fifth member was appointed in 2016. It is not clear why there was a delay in the evaluation, but it could likely be due to the Parliament recess at the end of year. As there was no third public announcement from the President's Office, the fifth candidate could have been selected from either the first or second round of announcements. The evaluation of the fifth candidate by the Parliament committee took place in February 2016, in which he received a score higher than 75%. On 7 March 2016, the Parliament voted to appoint him. Sources: Committee reports, various press released by the President's Office, Parliament's press releases, Meeting with NIC President Mr. Mohamed Farhad and NIC member Mr. Hassaan Hameed.

ANALYSIS

The committee reports indicated that the procedures of verification of records with other offices, interviewing of candidates and scoring using the standard weighted criteria was applied in evaluations of all NIC appointments. Interviews with current NIC members also verified that due process as per legislation was followed and that the interview process was also thorough. However, one member noted that there was lack of transparency in the current process, specifically in the first screening of candidates by the President's Office.

Sources: Meeting with NIC member Mr. Hassaan Hameed.

REMOVAL OF MEMBERS**LEGAL FRAMEWORK:**

An NIC member can be dismissed by the President if the following grounds for dismissal listed in Article 12 of the NIC Act are met:

- Bankruptcy
- Failure to meet the prerequisites for NIC membership as specified in Law
- Convicted of a criminal offense

Source: Article 12, 27-2015

PRACTICE

A member of the NIC has not been dismissed to date.

ANALYSIS

The removal of an NIC member is entirely in the hands of the President. The removal can be as easy as dismissing an appointed cabinet minister, with no evaluation or investigation required by any institution. This effectively places a great deal of influence by the President over the NIC. Furthermore, the conditions of dismissal does not include any clause that sets out actions by members which damage the integrity or public faith in the institution.

Deal of influence by the President over the NIC. Furthermore, the conditions of dismissal does not include any clause that sets out actions by members which damage the integrity or public faith in the institution.

SELECTION OF PRESIDENTS AND VICE PRESIDENTS

Analysis of the selection of the President and Vice President of the independent institutions showed slight variations between institutions. For both HRCM and CSC, the President and Vice President are selected by a process where the President's office submits nominees to the Parliament for a simple majority vote. These are the only two independent commissions with this procedure, and this could be attributed to the fact that the HRCM and CSC Acts were passed before the 2008 Constitution.

For the PIC, the President and Vice President of PIC were appointed by the President. The practice of appointment by the President was carried forward to the newer NIC while the Vice President of the NIC is selected by a secret vote amongst NIC members.

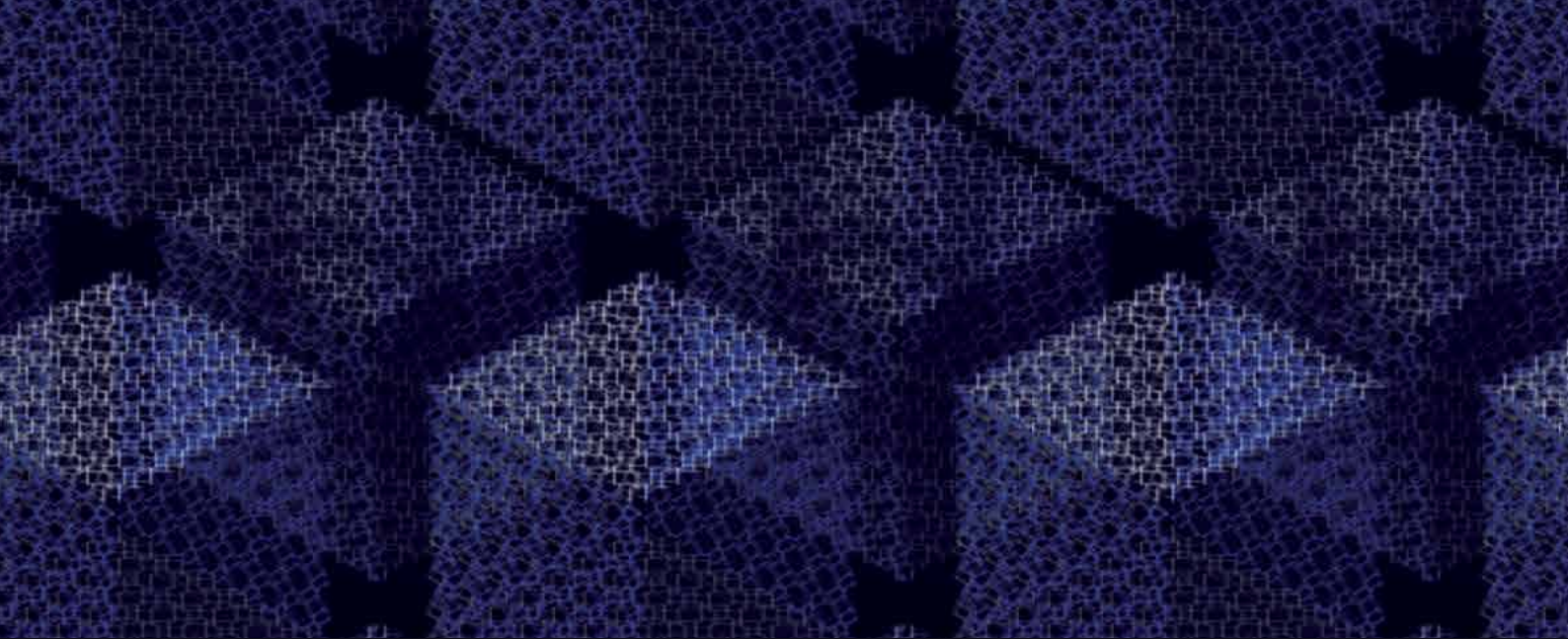
For the EC, JSC, ACC, MIRA, MBC and CIC, both the President and Vice President are selected by open vote amongst the members of that respective institution. In the case of MMC, this is a secret vote.

Four interviewees (two former members of EC, former member of NIC and a current member of NIC) were of the opinion that nomination of the President and Vice President by an external body is a better alternative to members selecting the President and Vice President

amongst themselves. It was noted that a vote by members created friction, competition and at times even resentment amongst members, and posed challenges in working as a team. Also, given that this decision is often taken at the very first meeting of the Commission, members may have to choose between persons that they have not been acquainted with, thus making it an uninformed decision.

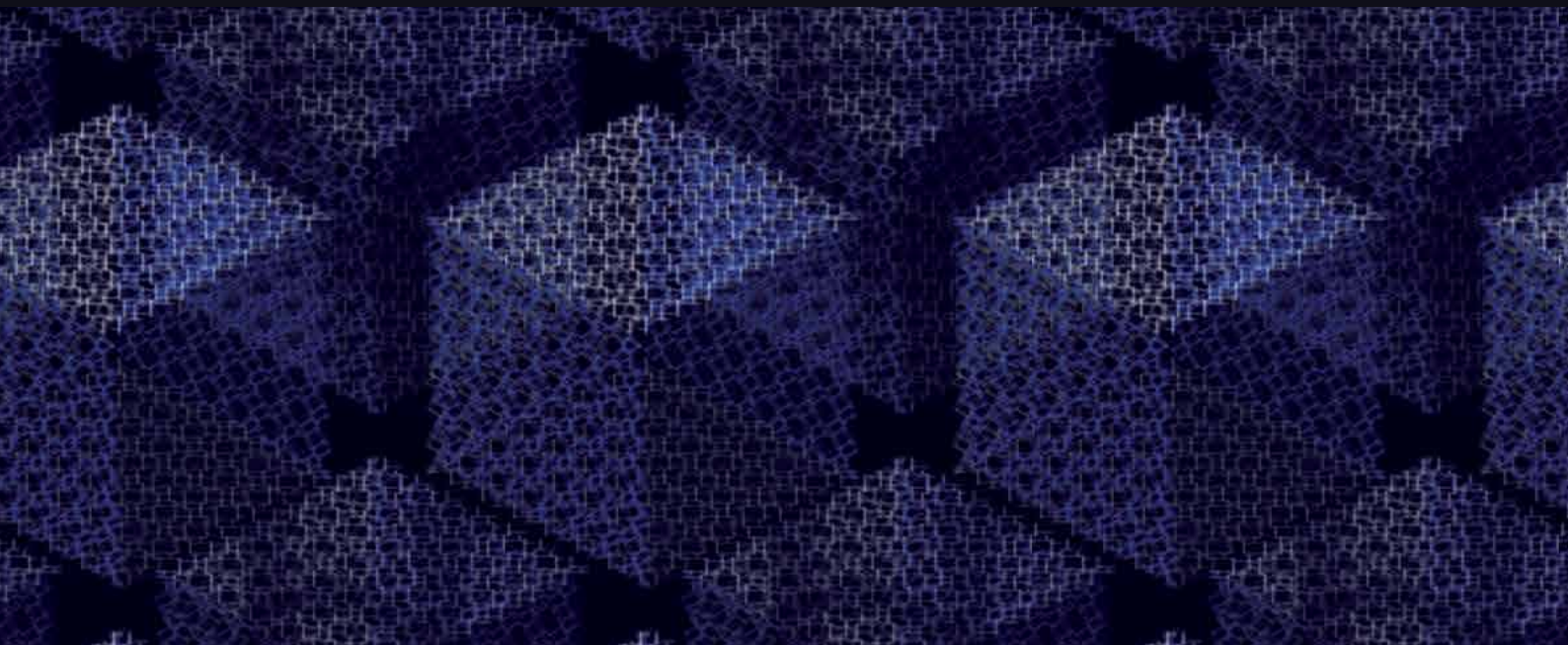
Women's role in leadership of independent institutions was also challenged at least once during the review period. In 2010 the first two names proposed by the President for the position of HRCM President and Vice President were two females. During the debate on the Parliament floor, it was discussed that two females were not acceptable and one candidate was rejected. Eventually a female President and a male Vice President was selected.

Sources: Article 8 of HRCM Act Amendment 36-2014, Article 26, 29 of Customs Act, 5/2008, Article 7 of EC Act, Article 7 of Judicial Service Commission Act 10/2008, Article 11 of MMC Act 15/2008, Interviews with former NIC President Mr. Mohamed Farhad, NIC member Mr. Hassaan Hameed, Ahmed Tholal, former Vice President of the HRCM, Uz. Hussein Siraj former Vice President of Elections Commission, and Mr. Fuwad Thowfeek, former President of Elections Commission, information also provided by Ms. Jeehan Mahmood, former member of HRCM



SECTION 3

KEY FINDINGS, CONCLUSIONS AND RECOMMENDATIONS



CONCLUSION

This study reviewed the legal framework and practice of appointment and removal of appointees to 12 independent institutions. Overall there are significant differences in appointment and removal processes, with varying levels of transparency and space for political maneuvering.

The 12 institutions studied in this report were established between 2003 and 2015. Process of evaluating candidates for these institutions have evolved slightly within the Parliament. The Committee on Independent Institutions now evaluate all candidates submitted to the Parliament, using a consistent criteria. However, the criteria used for scoring is not included in Parliament regulations yet, nor are there any guidelines in place for how scoring is to be done.

Two Auditor Generals, one Prosecutor General, one CSC member and two Elections Commission members were removed during the review period. All removals need to have two steps with more detailed evaluation and sufficient time given in defence. Reasons for

removal need to be defined in greater detail with a more vigorous removal procedure mandated. In addition, the parliamentary committee entrusted with the oversight of independent institutions need to be more proactive in its role to ensure that these institutions remain accountable to the public. Compensation for unfair dismissals, as proven by a court of law, is also necessary.

Laws have been amended to benefit or exclude particular persons. For example, the Audit Act was revised in a manner that resulted in the automatic removal of the incumbent Auditor General before the completion of his term. Commission members are not necessarily guaranteed the full term because the relevant law could be amended to allow for removal before the end of the term or to completely dissolve the institution.

The remainder of this section looks into the key findings, categorized by laws and practice with regard to appointments and removals, followed by recommendations.

**THE PARLIAMENTARY COMMITTEE
ENTRUSTED WITH THE OVERSIGHT OF
INDEPENDENT INSTITUTIONS NEED TO BE MORE
PROACTIVE IN ITS ROLE TO ENSURE THAT THESE
INSTITUTIONS REMAIN ACCOUNTABLE TO THE
PUBLIC.**

3.1 KEY FINDINGS

The review of the appointment and removal process of the 12 independent institutions over the period of 2008-2014 is given below, grouped by appointments and dismissals by law and practice.

3.1.2. ANALYSIS OF LAWS

There are some significant differences between the prerequisites for membership, appointment process, and clauses for removal. The differences in the process of removal are not as varied. These differences could be explained by the fact that different laws were drafted by different persons over the years. It is possible that legal frameworks of various countries were studied and used when drafting by different persons. There are even differences in salary scales amongst the independent institutions.^[21]

ANALYSIS OF LAWS REGARDING APPOINTMENT PROCESS (SEE TABLE 3)

1. For the 7 constitutional independent bodies, only a Parliament majority vote is needed for appointment. The laws of these institutions have added an additional layer of selection, i.e. via the President's Office. The laws and regulations regarding the decision making process by the Parliament results in a significantly more transparent process than the decision making by the President, where no information disclosure is required by law (such as number of persons who applied, the criteria used in shortlisting and how many candidates were shortlisted).
2. There are differences in the information that is to be sent by the President to

the Parliament from institution to institution. For most institutions, the President must send at least a coinciding number of applications to the number of vacant positions. Sometimes, the names of all other applicants (including those rejected by the President) are sent for the information of the Parliament, although this is not used in anyway. Exceptions to this include the case of MIRA board, for which the President must send more than the required number of names for evaluation. This results in more candidates undergoing a thorough evaluation and interview process by the Parliament. In the case of NIC, if the number of applicants is less than the number of vacancies, then the President must send all names to the Parliament, effectively removing the prerogative of the President in vetting applicants.

3. For the ACC, the President can submit his own nominees outside of the applicants who responded to the public announcement (this clause was included in the original HRCM and CSC Acts as well, but this was removed in subsequent amendments to Acts. The ACC Act has not been amended to remove this clause). For other institutions (where the President forwards names to the Parliament), the President can only select names from applicants who responded to the public announcement.
4. For MIRA and MBC, the President submits the full list of applicants (as applicants, not for information only) and submits the names in in order of preference. This is a more favourable process since the Parliament interviews and evaluates all applicants for MIRA and MBC.

5. The process by which evaluation and selection takes place within the Parliament is stated in some laws, but others are silent in this regard. Evaluation by a Parliamentary committee before voting is mandated only in three institutions.
6. For MIRA, more than the number of vacancies must be sent by the President.
7. For the CSC, applications are made directly to the Parliament. The President or President's Office plays no part in administering applications or shortlisting.

ANALYSIS OF LAWS REGARDING PREREQUISITES FOR QUALIFYING (SEE TABLE 4)

1. Nearly all institutions have common basic criteria such as being a Muslim, a Maldivian, and of sound mind. Exceptions include the Information Commissioner which does not have any of these three conditions listed, whereas for the Auditor General, only being a Maldivian national is specified.
2. The age limit varies significantly from 18 for MMC and MBC to 35 for Auditor General and Information Commissioner.
3. All institutions require persons holding office to have clean criminal records, but these are restricted to certain types of crimes. For instance, offences for which a hadd or punishment under shariah law is specified as a disqualifying factor in all institutions. Some have noted offences related to corruption while some note any criminal offence with a sentence of more than 12 months in the past five or two years. The MMC specifically lists drug abuse, child abuse and any offences related

- to a publication.
4. Conflict of interest clauses are generally included, such as not holding another government position or office, and in some cases no other employment. Some institution-specific clauses are also included, such as in the case of MIRA, where members cannot be a shareholder or executives of a government or private company.
 5. Level of political participation is restricted by some institutions and is strictly checked and abided by in appointment. Only the two media oversight institutions do not have political affiliations restricted, which is a concern as this may result in one party being in control of overseeing media organizations. MMC passed a decision stating that its members should not be in frontlines of a political party, but this decision is not reflected in law, regulation or any written policy.
 6. Level of academic qualifications is very poorly described in general. In some cases, it is merely listed as 'relevant education' while the level of education is not described. In other cases, the level of education is listed – such as a first degree – but relevance of the educational qualification to the institution's responsibilities is not mandated.
 7. Level or years of experience is also specified for some institutions but 'relevant' experience is not always mandatory. When drafting the laws took place in 2008, it was noted by the drafting team that mandating strict criteria may lead to no candidates being suitable for these positions, given the cadre of qualified persons at the time. Hence, for example, the PG Act was passed with the PG only requiring 4 years of

experience.^[22] However, this reasoning is invalid now and the clauses can be revised to ensure more vigorous criteria with relevant education and experience as necessary prerequisites. MIRA is noted to have thorough prerequisites for education and experience for the post of CGT and DCGT, but not for the remaining board members.

8. The prerequisites for JSC members do not include any specific educational qualifications or experience.

ANALYSIS OF LAWS REGARDING REMOVAL PROCESS AND CIRCUMSTANCES FOR REMOVAL

1. Most laws regarding the institutions have dismissal clauses along the lines of negligence, incompetence, incapacity or being unable to perform duties.
2. Laws of most institutions also include not meeting the minimum criteria necessary for being eligible for membership, as reason for dismissal.
3. Institutional Laws do state that their appointed heads can be dismissed on grounds of questionable behaviour that damages personal integrity or the dignity of the post and institution. This is mentioned either as 'grounds of misconduct that does not befit a person in that position' or 'going against ethical standards of members'. However, 'misconduct' is not defined. Even if the institution has a code of conduct which is applicable to its members, laws do not explicitly say that the member can be dismissed upon violating their internal codes of conduct. The Elections Commission and the Anti-Corruption Commission have the widest

range of reasons listed (noted as a list of ethical standards in the Acts), and there is a direct reference to dismissal if these ethical standards are breached.

4. Most institutions have a two-step process for removal, including an evaluation by a committee, sometimes explicitly mentioned as the Committee on Independent institutions. Dismissals with a single step are JSC, MMC, NIC and the now dissolved PIC and CIC.
5. Grounds for dismissal do not have to be informed to the person being dismissed in any institution, except for MBC.
6. Grounds for dismissal do not have to be disclosed to the public for any institution.
7. Removal of a member of NIC is a decision made solely by the President and thus results in the least evaluation and transparency. An NIC member can be dismissed in a manner similar to a Cabinet minister, especially since the reasons do not have to be disclosed (unlike removals with a committee evaluation where minutes of meetings are maintained and publicized, and ideally debated by different political parties).
8. Only the MBC Act states that the Parliament must give time to the person being evaluated for dismissal, to speak in defence. The Parliament regulations do not mandate the allowance of such time.
9. For MIRA and MMC, fellow board members have a role to play in removal. For MMC, the only way of removal is by a two thirds vote by the council, while for MIRA, the board can submit its findings for grounds for removal to the Parliament to take action on.

3.1.3. ANALYSIS OF PRACTICE

10. The removal of JSC members is in the hands of the person/persons who appointed them, with no evaluation required for any member. Furthermore, there is no removal procedure for the private lawyer on the JSC who is elected by a vote amongst lawyers licensed to practice, since the cohort responsible for appointing this member is not a body that meets regularly. A mechanism needs to be in place to remove a person from this post by those who made the appointment. This could for example be done through a petition submitted by a certain percent of registered lawyers, submitted to the Parliament or JSC.
1. In practice, the work of the Parliamentary committee is more rigorous than stated in laws. Interviews and evaluation is carried out every time by scoring against meritocratic criteria. The committee uses weighted criteria in evaluation which includes experience, education, leadership skills, integrity and marks for presentation during interview. In the case of JSC, the interview process takes place for only one candidate. No interview takes place for MMC candidates.
 2. All Parliamentary committee reports (related to appointments) state that the committee's recommendations is that 75% is the minimum score for a candidate to attain, in order to be considered for the post, with the exception of the Commissioner General of Taxation and the Deputy Commissioner General of Taxation who is recommended to score 80%. However, this minimum of 75% has not been a deciding factor in the Parliament vote with many appointees scoring between 60% and 75%. Similarly, the highest scoring candidate to MBC in 2016 was rejected by parliament vote.
 3. A candidate for the post of Auditor General in 2010 was refused by the Parliament on integrity grounds, with opposition MPs saying that 63% is too low to select someone and that there were concerns of his integrity from when he was a member of Anti-Corruption Board. Such reasoning is no longer considered, as is evidenced by the appointment of a person to the HRCM in 2015 who has a corruption issue pending with the PGO in a high profile corruption case and also considering an appointment to MIRA in 2015 of a candidate who scored 47%.
 4. There are significant variations in the number of days for applications to close after the mandatory public announcement is made by the PO. Application deadlines have ranged from up to two weeks to just two days (in the case of the PG appointment in 2014). Two or three days is not sufficient time for someone who was not expecting the announcement to prepare the application, especially considering that the mandatory record clearance from state institutions may take few days to complete.
 5. There is no transparency at all in the evaluation of applicants by the President to shortlist for Parliamentary evaluation.^[23] As some of the laws do not list a thorough or relevant list of prerequisites and also no requirement for transparency, there is much room at this initial stage for selection to be significantly influenced by personal interest or political benefits.
 6. While the final parliamentary vote may also be based on such political reasoning, all candidates are seemingly more thoroughly vetted, interviewed and scored against objective criteria. Furthermore, minutes of these discussions are available to the public and often, sessions are open and televised. However, committee evaluations can be, and has been, unduly manipulated to favour a particular person.
 7. The scoring by the Parliamentary committee is also subject to political bias. In March 2014, a candidate for the post of PG was given 67% by the committee. The parliament failed to select him by just 3 votes. Three months later, the same committee awarded this candidate 33% for the same criteria. According to a former MP, scoring of individuals by members can

be highly subjective and with clear intent to select or fail a particular candidate. For example, during some evaluations, party aligned members may give full or close to full marks to their favoured candidates and zero or very low marks to others, in all or most of the evaluation categories. The marks that are publicly disclosed is the average of the committee members' marks. Detailed marks sheets are usually destroyed immediately but sometimes have been irregularly leaked to the Parliament floor, and comments on such marking patterns have been raised on the floor as well. The possibility of this happening can be reduced by more transparency in voting details.

8. Currently, it is possible for a person who was heavily involved in a political party to resign from the party membership just to apply for the post. Perhaps, setting a grace period by law might reduce the number of instances where loyal party supporters are ushered into leadership positions of independent institutions. As there is no such provisions at the moment, party loyalists resign from party membership just before applying for top leadership positions at independent institutions. This makes it easy to appoint loyal active party supporters to independent institutions, without giving due consideration to merit. This leaves room to raise questions about the sincerity of such members and may run the risk of tarnishing the image of the institution in the eyes of the public. Having a grace period whereby no political activities are to be conducted before being eligible for appointment as a commission member is thus useful and necessary.
9. A request by the President to recall a candidate after sending that name to the

Parliament, was not processed by the Parliament in 2009. Instead, the candidate was voted in by the Parliament. There have been other times when names have been recalled .

10. The President and Vice President of Elections Commission were removed by Supreme Court in 2013. No Parliamentary evaluation or vote took place for this instance of removal. This case has consequences for all members of all independent institution as it sets a precedent where any member of an independent institution can be removed by Supreme Court, irrespective of the procedures in laws. In addition, there is no grievance procedure or appeal process that the ousted member can exercise in such a case.

THERE IS EVIDENCE WHICH SHOWS THAT APPOINTMENT AND DISMISSALS OF CANDIDATES IS INFLUENCED BY POLITICAL AFFILIATION AND LOYALTY. THIS IS EVIDENT FROM THE EVENTS BELOW

1. Between 2009 and 2014, the ruling party controlled less than 50% of seats in the Parliament. In 2009 six candidates proposed by the President were rejected – five for the EC and 1 for the post of Auditor General. In 2013-2014, 4 names were rejected. Since June 2015, after the ruling party gained a clear majority in the Parliament, there were no rejections, although there were at least 28 appointments during 2015/2016.
2. There have been instances where the entire process from announcement to appointment took place in just two weeks at times in 2014-2016, compared with months, prior to this period. For example,

the appointment of the Auditor General took 11 months in 2010-2011, while in 2014, it took just 9 days. The appointment of PG took 8 months in 2013/2014 while it took just two weeks in 2015. Similarly, for MBC the process took 7 months in 2012, whereas in 2016 it was completed within 15 days. This is attributed to both short application periods and expedited action by Parliament.

3. The Audit Act was amended in a way that necessitated the immediate replacement of the incumbent Auditor General halfway through his 7-year term. In this instance, the process for removal as specified in the relevant clauses of Constitution and laws were not followed.
4. The Prosecutor General was removed within 12 hours in November 2015. On that day there was a Parliament session in the morning where the issue was first tabled, followed by two committee meetings, two sub-committee meetings and a second session of the full Parliament commencing at 11:30pm.

RECOMMENDATIONS

GENERAL RECOMMENDATIONS

APPOINTMENTS

1. Amend the prerequisites for members (which are listed in laws) to specify that relevant education and experience is mandatory. The required educational qualifications, expertise and experience can be more detailed in a separate policy or regulation.
2. Reduce the political influence of the Executive by, instead of shortlisting candidates for parliamentary evaluation, submitting the names of all candidates in order of preference for parliamentary evaluation and consideration. The names of all applicants can also be disclosed to the public to increase transparency of the appointment process.
3. Increase transparency of the parliamentary committee evaluation process by publicising reasons for selecting and rejecting candidates for a position.
4. Set a reasonable and specific number of days as the deadline for applications, taking into consideration the time taken to generate various reports from state institutions that are required to be submitted with the application.
5. Include a grace period where the candidate does not take part in partisan political activities before appointment to a position that requires the person to be politically impartial.
6. Include in Parliament regulations the evaluation process and criteria used by Parliament for evaluating candidates.

7. Revise the criteria used by the Parliament to assign more weightage to experience than is currently given.
8. Develop guidelines on how the scoring is to be done by individual MPs in the committee evaluation stage. This can include requirements to hold open hearings while interviewing candidates and to hold mandatory public consultations where the public can put forth concerns, after being given a minimum of two weeks, regarding specific candidates.
9. Give more information on the scores given by committee members, to reduce the possibility of manipulating scores on purpose. Displaying the total marks for each candidate by category may make any unfair judgements more transparent.

REMOVALS

1. Ensure that the public is given detailed reasons and justifications for any dismissal of a member of an independent institution, in order to increase transparency and discourage the removal of members of independent institutions for political retribution without due process.
2. Give sufficient time for candidates who are being considered for dismissal to prepare and present their defence during evaluation stage.
3. Define clauses for removal more thoroughly and include grounds on which the member's integrity may be questioned or is deemed to have put the institution in disrepute.
4. Define ethical standards and codes of conduct to be followed by members

and specify in laws, that breach of such standards and codes are grounds for dismissal.

INSTITUTION SPECIFIC RECOMMENDATIONS

RECOMMENDATIONS FOR JSC

1. Include meritocratic and clear criteria for members of JSC including education and experience necessary, particularly for the public member and the member representing registered lawyers.
2. Specify in law or regulation the procedure for removal of the member representing registered lawyers. This can include a petition of a certain percentage of registered lawyers.
3. Assign the task of announcing for the representative from the general public and processing of applications to the Parliament.

RECOMMENDATIONS FOR ACC

1. Remove President's prerogative in submitting own nominees outside of applicants who respond to public announcements.

RECOMMENDATIONS FOR MMC:

1. Include in criteria that members should not be politically active, at least in front lines of a party
2. Increase transparency in the decision making by the MOHA to shortlist candidates from the general public. One way is to select a committee with external persons to evaluate candidates. This same committee can be the grievance committee for that election as well. Publish a detailed

report on the appointment process after each election. This could be done by the Ministry of Home Affairs

3. Include a detailed procedure for dismissal in the MMC regulations.

RECOMMENDATIONS FOR NIC

1. Amend the procedure for removal of NIC members such that removal is through a simple majority vote by the Parliament, based on the report of the Independent Institutions Oversight Committee.
2. Remove the clause which states that the President must send all names for approval, in instances where the number of applicants are less than the number of vacancies.

RECOMMENDATIONS SPECIFIC FOR MIRA

1. Specify in the Act how many full terms or

years can be served by someone who was appointed to replace a member halfway through the term.

2. Specify the exact tenure that can be served by the CGT and DCGT
3. Amend clause 5 of the Tax Administration Act to reflect that the process of dismissal should involve consent by Parliament, based on findings after evaluation by the relevant committee under all circumstances, and not just in the fourth circumstance as the article currently reads.
4. Specify the circumstances under which the Parliament and President can remove the CGT or DCGT.
5. Amend the law to specify that the CGT or DCGT cannot serve as Chair or Deputy Chair, in line with corporate governance best practices



SECTION 4

CASE STUDIES

CASE STUDY**1****TOP SCORING CANDIDATE
REJECTED**

In 2016, the PO submitted 23 names for six slots of the Maldives Broadcasting Commission (MBC). MBC is one of the two institutions for which the President can submit names in priority order. Mariyam Waheeda was one of the candidates who applied, and was listed last on the President's priority list.

The candidates were evaluated and interviewed by the Parliament Committee, where Waheeda attained the highest score of all 23 candidates. In the report, the committee reiterated their standard recommendation to select persons who achieve a score higher than 75% only. In this case, only five candidates scored higher than 75%.

Four days after the committee meeting, the Parliament voted on the nominations. The top six scoring candidates were selected with the exception of Waheeda, who scored the highest. The final selection included two persons who scored lower than 75%. The parliament's final selection thus eliminated the highest scoring candidate and mirrored the priority list sent by the President.

Sources: News articles , Parliament Committee Evaluation report. Meeting with Ms. Mariyam Waheeda

CASE STUDY**2****REMOVAL BY SUPREME
COURT**

On 10 March 2014, the then President of Elections Commission (EC) Fuwad Thowfeek and Vice President Ahmed Fayaz were dismissed from their posts by a Supreme Court (SC) ruling. The removal came after months of conflict between Elections Commission, political parties and the courts, related to the Presidential Elections of 2013, Local Council Elections in February 2014 and the Parliamentary elections in March 2014. The President and Vice President of the EC were removed just 12 days prior to the Parliamentary Elections in March.

Elections in the Maldives are guided by the Constitution, the relevant laws and regulations. On 7 September 2013, votes for the first round of the Presidential elections were cast. One political party filed a petition to the SC seeking annulment of the election. The Supreme Court first issued an injunction against holding the run-off scheduled for 28 September and on 7 October ruled to annul the 7 September elections. In addition, the SC issued a 16-point guideline to be followed in all future elections. The EC met with the SC and discussed the challenges in adhering to the SC guidelines. They also raised the issue that some of the points in the guideline were against the Constitution and related laws. One such conflict was that as per the Elections General Act (20/2008), the register of voters must be prepared and maintained by the EC. The SC guidelines maintained that the list issued by Department of National Registration (DNR) is to be used. In addition to the fact that this highly undermines the EC's independence, it also raised concerns

about errors in this list. EC maintained that they had started with the DNR list and then undertaken various checks to verify and correct the mistakes in the list. Issues of impracticality in the SC guidelines were also raised by EC, such as mandating all candidates to sign the voter list before elections. EC raised concerns that this meant that the elections could be postponed due to one or two candidates refusing to sign the list on time. Logistical issues were also highlighted, where there would be hundreds of candidates in parliamentary or local elections.

The EC was however informed by the Chief Justice, to adhere to the SC ruling even if in conflict with the Law or Constitution. [Office28]

On 12 February 2014, the Supreme Court commenced a trial against the EC on charges of contempt of court. The proceedings against EC were carried out according to new suo moto regulations, enabling the SC to initiate cases against any organization, prosecute and pass judgment. EC was also criticized by the SC in dissolving 8 political parties, which was initiated after an amendment to the Political Parties Act, but which the SC annulled. Charges against EC also included criticizing SC's decisions to annul the first round of elections.

On 10 March 2014, Thowfeek received a six-month prison sentence, suspended for three years. He was also removed from his post, as was the Vice President of the Commission, Ahmed Fayaz.

Delivering the verdict, the court contended that Thowfeek and his fellow EC members had "openly and systematically" brought the Supreme Court into disrepute, "deliberately challenged Supreme Court rulings" and "serially held [the court] in contempt" during EC press conferences.

ISSUES RAISED BY CRITIQUES OF THE SC RULING INCLUDE

1. The Constitution states that only Parliament can remove a member of independent institution or decide anything in determination of matters relating to independent Institutions and offices (3:70, 7:177)
2. Parliament was not consulted at all before removal of the EC President and Vice President by Supreme Court
3. There is no law that states that contempt of court outside of court is an offense.
4. Only the Parliament can make or amend or annul laws. (3:70)
5. The Constitution states that no member or other person can be held liable to any proceedings in any court and no person shall be subject to any inquiry, arrest, detention or prosecution with anything said in Parliament or any of its committees, if not contrary to a tenet of Islam (3:90)
6. A six-month sentence does not necessarily mean that the member of EC loses their post automatically, since the criteria for removal of a member does not include being convicted of an offense. Even if such a sentence was passed, removal still remains a separate issue resting with the Parliament.

In addition, there was also some confusion and conflicting reports regarding the exact verdict. All local media and CSO representatives present at the trial reported that all four members

were sentenced, while the written verdict that was released to the media hours later included only a sentence for Thowfeek and removal of Thowfeek and the Vice President of EC.

The removal of EC members was criticized by international observers (such as UN, US government, Commonwealth and EU). There were concerns that the move would create uncertainty on the election process and raise questions about the independence of EC.

The Speaker of Parliament subsequently issued a letter to the SC declaring the ruling against EC as unconstitutional. While Thowfeek appealed to the President, in his role as Head of State and Head of Government, he was informed that the Supreme Court ruling must be abided by.

It now remains a possibility that any member of any Independent Commission can be removed by the Supreme Court.

Sources: 'EC dismissal; translation of Supreme Court verdict', Minivan News, 10 March 2014, 'Report of the Commonwealth Observer Group, Maldives People's Majlis Election', 22 March 2014, Press Release by Parliament on 10 March 2014, 'Maldives must focus on fairer elections', Raajje MV, 15 April 2014, 'Preliminary statement by European Union Election Observation Mission', 22 March 2014, 'US Concerns on Dismissal of Maldivian Elections Commissioners', 10 March 2014, US Department of State, 'After Maldives High Court removes election officials, Ban urges respect for rule of law', 10 March 2014, UN News Centre, 'Supreme Court uses Majlis testimony in EC contempt trial', Minivan News 20 October 2013, Interview with Member of Parliament Mr. Imthiyaz Fahmy 5 November 2016, Interview with Mr. Fuwad Thowfeek 6 November 2016

CASE STUDY

3

DISMISSED IN A DAY

On 10 November 2015, the then Prosecutor General Muhthaz Muhsin was removed by the Parliament within hours, holding after-hours committee meetings and a Parliament session at midnight.

The process of removal of Muhsin was in vast contrast to the process carried out by the Parliament, when a no-confidence vote was scheduled against the former PG Ahmed Muizzu in 2013.

In October 2013, the request to remove Muizzu was submitted to the Parliament, signed by 28 MPs. The Parliament sent this issue for evaluation to the committee on independent institutions. The committee evaluated the case for his removal over the course of 4 meetings. The PG was given two days of notice to attend a committee meeting to defend his case. At the meeting, the PG informed the committee that this was not enough time for him to prepare for the discussion regarding the issues raised against him. The committee then decided to give an extension of four more days to the PG. At the third sitting, the committee was stopped due to actions of some MPs, and it was decided that the PG would be allowed to give his defense by writing. A fourth meeting was held to evaluate and discuss the statement given. Four members of the committee voted to remove the PG while the remaining three members did not recommend removal. The committee meetings were open and attended by media, with video recordings available online. The published committee report included the 16-page statement given by the PG. The no-

confidence vote against him was scheduled for 25 November. The Parliament was in active debate about the removal of PG Muizzu, when he resigned moments before the vote.

In 2015, although the required procedures were followed, the process of removing PG Muhthaz was extremely rushed. According to one MP, the entire process of removal took about 10 hours within the Parliament. This includes: Parliament sending issue to the independent Institutions committee; the committee forwarding the issues to a sub-committee; the sub-committee evaluating the issue and summoning the PG to the sub-committee; full committee evaluation of the issue; and the Parliament vote on the issue. A no-confidence motion was submitted by three MPs during the morning session on 10 November. In late afternoon, Muhthaz was informed to attend the sub-committee at 5pm of the same day. The committee meeting was a closed session and media or other observers were not allowed. According to media reports and a committee member, the Parliament reportedly refused to accept a letter submitted by Muhthaz, requesting for opportunity to defend himself at a committee meeting open to the public. The reason for the refusal to accept this letter was that it was only submitted after official office hours of the working day. The Parliament convened at 11:00pm that night to take the vote of no-confidence. Fifty-seven MPs voted for his removal.

Muhthaz and opposition MPs contended that Muhthaz had not been given sufficient time to defend himself in the committee. Committee minutes show that an MP in the sub-committee reported to the main committee that Muhthaz had requested for the committee meeting to be made public so that he can defend himself in front of the public as well.

Minutes of both the sub-committee meeting,

provided upon request by the Secretariat, did not include any statements made by Muhthaz at the meetings. As per Article 131 (b) of the Parliament regulations, 'if anyone is summoned to a Parliament committee, the full statement given by the person should be included verbatim in the minutes'.

Note: Three months later, on February 8th 2016, the PG was arrested on charges for forging a warrant to arrest the President. He was sentenced to 17 years in prison.

Sources: 'Prosecutor General's removal draws criticism over 'due process violations', *Maldives Independent*, 13 November 2015, 'Parliament sitting to be held tonight to dismiss PG' *Vnews*, 10 November 2015, 'former PG Muhthaz Muhsin arrested', *vnews*, 8 February 2016, 'PG Muhthaz Muhsin dismissed from his position', *sun.mv*, 10 November 2015, Interview with MP Imthiyaz Fahmy on 5 November 2016

CASE STUDY**4****TWO OUT OF THREE AUDITOR
GENERALS PREMATURELY
REMOVED**

The first independent Auditor General, Ibrahim Naeem, was dismissed on 29 March 2010. He was accused by the Anti-Corruption Commission of using government's money to purchase of tie and funding a personal trip to an island. The ACC forwarded these two issues to the Prosecutor General's Office. During the Parliament vote, the then ruling party, MDP voted to retain him. Opposition MPs and some independent MPs voted against him, with a final vote count of 43 votes to 28, in favour of dismissal. The President's Office also spoke out in defence of the AG. According to media reports, Naeem said that these were attempts made by the government in stopping the AG from working on recovering State assets stolen by government officials.

The Auditor General who replaced Naeem, Niyaz Ibrahim, was also dismissed halfway through his term, this time without the constitutionally required procedures being followed. On 29 October 2014, AG Niyaz released a special Audit Report of the government owned tourism promotion company, Maldives Marketing and Public Relations Corporation. According to the report, the company had borrowed

MVR 77.1 million and US1million from two government companies to provide illegal loans to private companies. The then Vice President Ahmed Adeeb was also implicated in the audit report. On the day of release of the report, the Parliament passed an amendment to the Audit Act, which required an AG to be appointed within 30 days of ratification of the amendment to Act. This effectively removed the incumbent AG halfway through his term. A public announcement was made for the post of Auditor General that same week. The process of evaluation by a Parliamentary committee and the constitutionally required Parliament motion of no confidence for dismissal never took place. "ACC charges an attempt to stop recovery of stolen millions, says Auditor General", Minivan News, March 21 2010, "Tourism minister implicated in US6million corruption scandal, Minivan News, 'Amendment to Audit Act conflicts with Constitution: Consul General Filza, 30th October 2014, Vnews.mv,

Sources: 'ACC charges an attempt to stop recovery of stolen millions, says Auditor General', Minivan News, 21 March 2010, 'Tourism minister implicated in US6 million corruption scandal', Minivan News, 'Amendment to Audit Act conflicts with Constitution: Consul General Filza', 30 October 2014, vnews.mv

CASE STUDY

5

REMOVAL OVERTURNED BY
THE COURTS

In November 2012, the former President of the Civil Service Commission, Mohamed Fahmy Hassan, was dismissed from his post by the Parliament, after a staff of the CSC reported that he had sexually harassed her. The matter was lodged with the Parliament in June 2012. During the course of inquiry, the parliamentary committee summoned both the alleged victim, Fahmy and other employees to the committee. The committee issued its report on the matter stating that ‘it was more likely than not’ that the incident had occurred. Subsequently a vote was taken on the Parliament floor and the President of the CSC was removed from his position on 20th November 2012. The Parliament then proceeded to announce for a replacement member for the vacant position at the CSC

After the Parliament vote, Fahmy lodged a case with the Supreme Court stating that his dismissal was unfair. On 12 December 2012, the supreme court issued an order to the Parliament to postpone the process of appointing a replacement for Fahmy, until the court makes a decision on the case. In response to this order, the chair of the independent Commissions committee, MP Mohamed Nasheed blogged that the ruling of the Supreme Court was unconstitutional since the decision of the Parliament cannot be overturned or even reviewed by any other institution, with the exception of specific situations, which did not apply in this particular case.

On 14 March 2013, the Supreme Court ruled 6-1 that the removal of Fahmy by the Parliament was unconstitutional and that Fahmy would

receive two punishments for the same crime if he was convicted in court following his dismissal by parliament (double jeopardy). The apex court contended that the parliamentary Committee on Independent Institutions had violated due process and principles of criminal justice procedure in dealing with the accused. Following the judgment, Fahmy was to be reinstated and compensated for lost wages since December 2012 (A civil court ruling in November 2015, ordered a compensation totalling USD 27,000 to be paid by the State – a figure which is currently being contested by the government)

One of the justices on the Supreme Court issued a dissenting opinion on the issue. He noted that the procedures following by the Parliament were in line with the Constitution and that the Supreme Court’s acceptance of the Parliament’s decision would not be considered double jeopardy

Nevertheless, Fahmy then proceeded to resume going to work at the CSC. He also continued to attend the meetings of the JSC, as the President of the CSC is required to. It was reported by the media that the Speaker of the Parliament had refused to attend JSC meetings where Fahmy was present, since he had been removed by the Parliament and therefore had no place on the JSC. According to media reports, Fahmy continued to go until the CSC office revoked his electronic access to the office premises.

Sources: ‘Parliament votes out CSC President Fahmy over sexual harassment allegation’ minivan news, November 20 2012, “CSC President Fahmy resumes office after annulment of Parliament decision;”, March 17 2013, <http://english.sun.mv/10644>, “Supreme court rules secret ballot, dismissal of CSC chair unconstitutional”, March 16 2013, Minivan News, Blog article by MP Mohamed Nasheed,

published on 12th December 2012 www.mnasheed.com, ‘Speaker Shahid to boycott JSC meetings should Fahmy participate’, June 10 2013, Minivan news, ‘Majlis removes President of CSC Mr.Mohamed Fahmy Hassan from office pursuant to Article 187(a) and (b) of the Constitution, 20th November 2012, Supreme Court orders to postpone appointing Fahmy’, 12 December 2012, sun.mv online, ‘ State challenges payout to official sacked over sexual harassment claim’, August 29 2016, Dr.Latheef requests President Waheed to settle Fahmy issue, August 21 2013, sun.mv online, “CSC cancels fahmy’s access to its offices’, September 16 2013, minivannews

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- [2] 12:261 Constitution 2008
- [3] Information provided by Fathmath Niusha, Deputy Secretary General of Secretariat of Parliament
- [4] Meeting with Fathmath Niusha, Deputy Secretary General of Parliament, 14th November 2016
- [5] Meeting with Fathmath Niusha, Deputy Secretary General of Parliament, 14th November 2016
- [6] Various committee reports and minutes.
- [7] Interview with Hamdun A. Hameed, previous Member of Parliament
- [8] Article 69 of Parliament Regulations
- [9] "All employees of Elections Commission summoned to the Independent Institutions Committee" June 27 2012, Sun.mv, <http://english.sun.mv/3960>
- [10] Information provided by MP Rozeyna Adam for the 'Review of Anti-Corruption Commission 2014-2016', Transparency Maldives, Interview with Ahmed Tholal previous HRCM Vice President, , and Interview with Member of Parliament Imthiyaz Fahmy
- [11] <http://minivannewsarchive.com/news-in-brief/majlis-amendments-against-constitution-and-convention-president-nash-eed-9189>
- [12] http://www.eods.eu/library/eu-eom-maldives2014-final-report_en.pdf
- [13] <http://minivannewsarchive.com/politics/ppm-mps-to-vote-muhthaz-for-pg-in-defiance-of-party-leaders-appeal-88587>
- [14] http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-43-Add3_en.pdf
- [15] <http://minivannewsarchive.com/politics/jsc-decision-on-judge-ali-hameeds-sex-tape-scandal-%E2%80%99Can-insult-to-islam%E2%80%9D-87722>
- [16] <http://minivannewsarchive.com/politics/acc-forwards-phone-bill-corruption-case-against-supreme-court-judge-61696>
- [17] 'Recommendation submitted to close down Maldives Media Council' January 23, 2012, Sun.mv, <http://english.sun.mv/1002>
- [18] 'Abdulla Muaz appointed President of media council', Minivan News, February 13 2014
- [19] National Integrity System Assessment of Maldives 2014, Transparency Maldives
- [20] Recommendations for combining MMC and MBC have been put forward by Transparency Maldives in 2014 (see National Integrity Systems Assessment),
- [21] Meeting with Hamdun Hameed, former Member of Parliament, 2009-2014, and Meeting with Ms. Aishath Bisham, current Prosecutor General. Ms. Bisham was involved in drafting of the laws for independent institutions that came into effect in 2008, when she worked in the Attorney General's Office.
- [22] Information provided by Ms. Aishath Bisham, Prosecutor General
- [23] Information according to Uz. Hussain Siraj, former MIRA and EC member, Ms. Shahindha Ismail, former member of Police Integrity Commission and Mr. Ahmed Tholal, former Vice President of HRCM. It was also noted by persons who applied for membership positions at independent institutions and were rejected: Ms. Shujatha Haleem applied for MIRA, and Ms. Mariyam Waheedha who applied for MBC.

ANNEX 1

LIST OF PERSONS INTERVIEWED

AHMED THOLAL

Former Vice President of HRCM

AISHATH BISHAM

Prosecutor General

FATHMATH NIUSHA

Deputy Secretary General of Secretariat of
Parliament

FUWAD THOWFEEK

Former President of Election Commission

HAMDUN A.HAMEED

Former MP, former member of various
committees tasked with appointment of
members to independent institutions

HASSAAN HAMEED

Member of National Integrity Commission

HUSNU AL-SUOOD

Former Attorney General, former member
of JSC, former Member of Special Majlis
(Constitutional Assembly)

HUSSEIN SIRAJ

Former Vice President of Elections Interim
Commission, former Member of MIRA

IMTHIYAZ FAHMY

Member of Parliament, current member of
Independent Institutions Committee

JAMEELA ALI

Former Member of Civil Service Commission
(Vice Chairperson of the Commission at the
time of interview in 2016)

MARIYAM WAHEEDHA

Applicant for MBC in 2016

MOHAMED FARHAD

Member of National Integrity Commission
(President of the Commission at the time of
interview in 2016)

SHAHINDHA ISMAIL

Former President of Police Integrity
Commission (2009 - 2012)

SHUJATHA HALEEM

Applicant for MIRA in 2016

**REVIEW OF APPOINTMENT AND DISMISSAL OF
MEMBERS OF SELECTED INDEPENDENT INSTITUTIONS
OF MALDIVES 2008-2016**



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