



Position Paper

Good Practice Procedures on the Appointment and Dismissal of members of independent institutions

1. Introduction

As independent oversight bodies are tasked with monitoring government activities, it is crucial for these institutions to be fully independent to ensure that government functions are delivered to the public in a non-partisan manner. In this regard, these oversight institutions need to have independent processes through which their members are appointed and dismissed to ensure that they are not subject to undue government influence.

For the purposes of this report 'Independent Institutions' shall mean any institution that falls under any of the following categories:

- Independent Institutions and positions mandated by the Constitution
- Independent Institutions and positions created by law after 2008 where the appointment and dismissal of members are carried out through a Parliamentary vote
- Any other institution or position that is mandated by Parliament Standing Orders to review

In 2017, Transparency Maldives published the first ever review of independent institutions in the Maldives, that has examined the official legal framework regulating appointment and dismissal procedures as well the general practice and convention regarding the appointments and dismissal of members from independent institutions. The period under review was from 2008 to 2016. The review highlighted the existence of significant differences in appointment and removal processes of members of 12 independent institutions, with varying levels of transparency and space for political maneuvering. The 12 institutions analyzed were;

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)

There have been significant updates to the appointment and dismissal procedures of the aforementioned institutions since 2017. This report will highlight such updates from January 2017 to 15 November 2020, along with the strengths and eventual shortcomings in existing rules and processes, and present a good practice procedure on the appointment and dismissal of members of independent institutions.

2. Updates to the appointment and removal processes

2.1 The role of the Parliament

The parliament plays a crucial role in the appointment and dismissal of members of the independent institutions. Formulation of the Standing Orders of the 19th Parliament on August 2019 has brought significant changes to the appointment and removal processes. One major change was the specification of the Parliament Committees responsible for the appointment and dismissal processes. These specifications are as follows;

Institution	Parliamentary Committee responsible for evaluation
Judicial Service Commission (JSC) Prosecutor General's Office (PGO)	Judiciary Committee
Elections Commission (EC) Civil Service Commission (CSC) National Integrity Commission (NIC) Maldives Broadcasting Commission (MBC) Information Commissioner's Office (ICOM) Maldives Media Council (MMC) Anti-Corruption Commission (ACC)	Committee on Independent Institutions
Human Rights Commission of the Maldives (HRCM)	Committee on Human Rights and Gender
Auditor General's Office (AUGO)	Public Accounts Committee
Maldives Inland Revenue Authority (MIRA)	Committee on Economic Affairs

Until the formulation of the 19th Parliament Standing Orders, all committees have maintained 75% as the minimum score a candidate should receive to be considered for recommendation to the Parliament floor, except for the Commissioner General and Deputy Commissioner General of Taxation posts at MIRA, for which the committee deemed 85% as the passing score. The 19th Parliament Standing Orders however entails committees to send the names of candidates to the Parliament floor who win two-third of committee's votes.

With the formulation of the 19th Parliament Standing Orders, the process has become more stringent and, in some instances, more transparent. The current process entails candidates to nominate a referee who they have to bring with them to the interview. The Parliament also publicly announces any public complaints against any candidate and allows for these complaints to be raised during the interview process. In addition, all committee meetings on appointment of members are conducted live.

The current process also makes the vetting process thorough and in principle encourages the most able candidates to finally secure a place in independent institutions. On the other hand, the political and personal bias can still overrule qualification, proficiency and experience of members.

In addition, the current process of appointment is also arbitrarily decided by the Parliament. It can be changed anytime there is a shift in the current political makeup of seats. And while the present process is seen to be more transparent, there is adequate room for it to be manipulated as has been seen in several instances. There have been accusations that the current government is using their super majority to secure positions for individuals who are loyal to the party.

The dismissal process is still a concern, similar to the previous Standing Orders, which only states that 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 still no specific provisions mandating that members of independent institutions be given the right of defense before dismissal. While the Standing Orders entails the committees to live their meetings on appointments, there is no provision that specifies that the committee meetings on dismissal of members should be conducted live.

2.2 Updates to Institutional Acts

The legislations on independent institutions entails specific provisions for appointment and dismissal of their prospective members. Since 2017, there have been amendments on the appointment and dismissal processes of members of MIRA and JSC. In addition, there have been stringent provisions in the Acts of HRCM, EC, ACC, CSC and PG on the dismissal process with regard to conflict of interest and code of conduct.

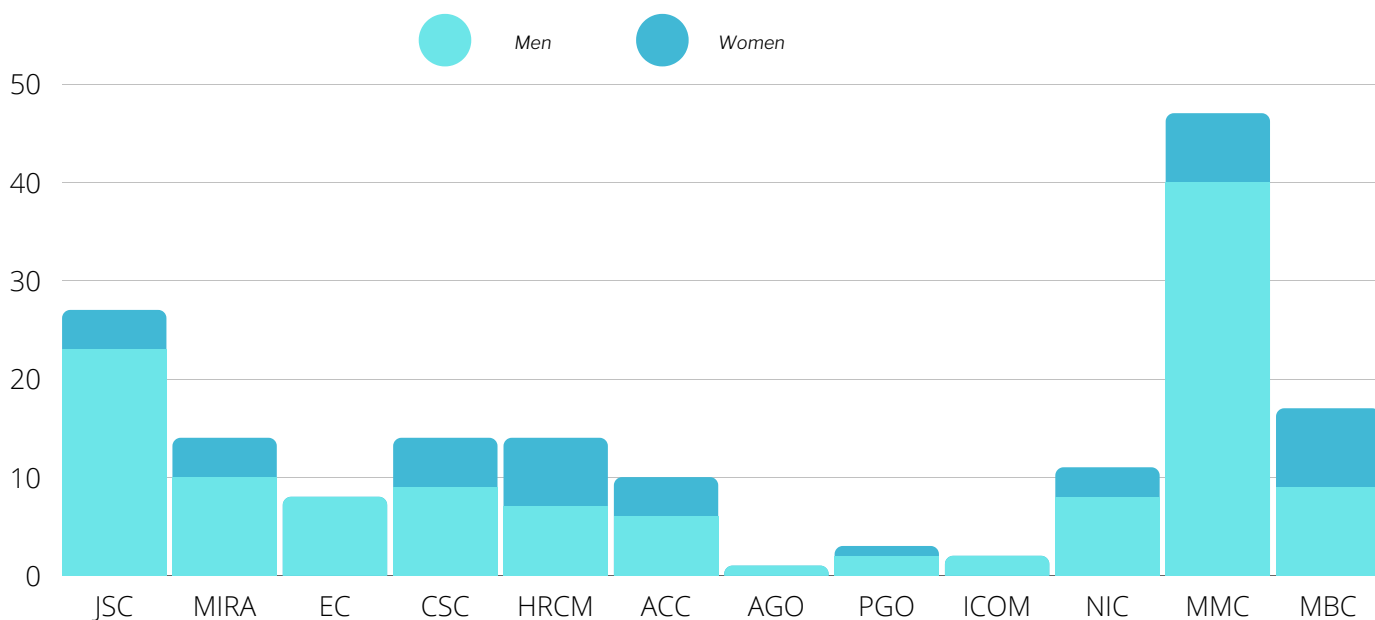
Institution	Composition of members by Law	Act of Establishment	Amendment to appointment and removal clauses
Judicial Service Commission (JSC)	10	10/2008	11/2019
Maldives Inland Revenue Authority (MIRA)	7	3/2010	13/2019
Elections Commission (EC)	5	8/2008	17/2020
Civil Service Commission (CSC)	5	5/2007	9/2010 and 15/2020
Human Rights Commission of the Maldives (HRCM)	5	6/2006	36/2014 and 19/2020
Anti-Corruption Commission (ACC)	5	13/2008	16/2020
Auditor General's Office (AGO)	1	4/2007	30/2014
Prosecutor General's Office (PGO)	1	9/2008	14/2020
Information Commissioner's Office (ICOM)	1	1/2014	-
National Integrity Commission (NIC)	5	27/2015	-
Maldives Media Council (MMC)	15	15/2008	-
Maldives Broadcasting Commission (MBC)	7	16/2010	-

The second amendment to the Tax Administration Act (13/2019) has presented clear provisions with regard to MIRA’s 7 board members. The review published by Transparency Maldives on 2017 highlighted that the law of MIRA is vague on whether the board of MIRA includes the Commissioner General of Taxation (CGT) and Deputy Commissioner General of Taxation (DCGT). The amended Act has specified that the 7 board members include CGT and DCGT. Although the previous Act did not specifically mention that CGT and DCGT had fixed terms, the amended Act mentioned that they have a fixed term of 5 years. In addition, it has also specified the circumstances in which CGT and DCGT can be removed, which is by simple majority vote of the Parliament’s Committee.

Moreover, the second amendment to the Tax Administration Act also specifies prerequisites for all board members of MIRA. In addition to the relevant fields of experience, academic qualifications are also mentioned in the amended Act. The inclusion of such thorough prerequisites would prevent room for initial stage of selection to be significantly influenced by personal interest or political benefits.

On the other hand, there has been no significant change in the overall appointment process of the members of JSC. However, the second amendment to the JSC Act (11/2019) has included additional criteria for the Public Member, President’s Appointee and Lawyer’s Appointee, which entails the members to be a Maldivian, and not a national of another country and of 30 years of age. The amended Act also subject a provision to dismiss these 3 members if contested for a political position elected under the Constitution or a Law.

The 12 institutions covered in this report have a total of 67 positions to be filled, as required by law. The figure below shows the total number of members who served in these institutions during the period between 1 January 2015 to 15 November 2020.



Total number of males and females served over the period 1 January 2015 to 15 November 2020

A total of 168 individuals have served as members or in member-level positions in the 12 institutions reviewed. A total of 125 (74%) of these individuals were male, while 43 (26%) were female.

Among the 168 individuals who served as members or in member-level positions during this period, a total of 11 have been dismissed from their positions. This includes 10 males and 1 female. In addition, a total of 25 members resigned from their positions.

3. Good Practice Procedure

In understanding best practice for the appointment and dismissal of members to independent institutions, it is important to review similar legislation in other countries.

India;

The 1993 Protection of Human Rights Act (PHRA) of India acts as the primary statute governing the appointment and dismissal of members to the Human Rights Commission of India. Unlike the HRCM Act in Maldives, the PHRA has more specificity in relation to the appointments. For example, in Chapter II, Article 3, subsection 2 (a),(b),(c) and (d) the composition of the Commission is clearly laid down including the fact that the Chairperson has to be someone who has served as a Chief Justice of the Indian Supreme Court, a Member who has been a Judge of the Supreme Court, a Member who has served as the Chief Justice of the High Court and two members who have knowledge and practical experience in the field of human rights. The specificity of members can be both a strength and weakness. While this ensures some level of proficiency in the member appointed, the practical application of this Act has only allowed former judges and law enforcement officials to populate the Indian Human Rights Commission. But the more important aspect of the Act relates not to the actual qualification of members but the process by which the appointment and dismissals take place.

This is covered under Articles 4 and 5 of the PHRA. According to Article 4, while the appointment is a power afforded to the President, the appointment should be made after obtaining the recommendation of a committee consisting of the Prime Minister, Speaker of the House of People, the Minister of Home Affairs, Leader of the Opposition in the House of People, Leader of the Opposition in the Council of States, and Deputy Chairperson of the Council of States. The vetting process is not just a prerogative of the Parliament in India. The present process ensures that there is a representative body that can actually minimize the appointment of a politically compromised individual. It also combines the voice of the people and the government in vetting members. And since India has a parliamentary governance process, the President and the Prime Minister do not represent equal points of view. Thus, the fact that the Prime Minister acting as the Chair of the vetting Committee does not create a conflict of interest with the President making the appointments.

Similarly, the dismissal of members is also different from the process in Maldives. Under Article 4 of PHRA, the dismissal can only come into effect upon a Presidential order on the 'ground of proved misbehavior or incapacity'. However, this order can only be issued on the basis of a Supreme Court inquiry into the matter. This process allows both the state and the defendant an opportunity to present their case in response to the matter. It also makes the removal process more than just political will.

Most independent institutions in other countries use a similar model to that used in the Maldives where the objective is to ensure a check and balance between the President's power to appoint members and the Parliament's authority to vet the nominations. The difference probably lies in the levels and hierarchies of the appointments based on whether the country is unitary or federal.

Based on the review of the process of other countries, listed below is a good practice procedure for the appointment and dismissal of members of independent institutions in Maldives.

- **Acknowledge that past mistakes have mostly stemmed from the lack of political will to appoint apolitical members to independent institutions.** The main problem in the past has been the need for authoritarianism of governance seeping into the domain of independent institutions whereby the very purpose of these institutions became obsolete. This however should not daunt the efforts to strengthen independent institutions but rather be seen as a reminder of the importance of independent institutions serving their purpose. The appointment and dismissal process plays a key role in ensuring the integrity of Independent Institutions.
- **The appointment process should be simple yet effective.** In some countries the complexity of the process leads to covert influences from the public to manipulate the process. The current process of the Parliament using stringent measures to ensure the people appointed are the most capable and integrous should be codified and passed as either a parliamentary regulation or an overarching legislation governing the appointment of members to independent institutions.
- **Ensure consistency of process of appointment of members to independent institutions.** At present different regulations governing independent institutions allow for different processes of appointment. Consistency ensures the efficacy of the process.
- **The process of appointment and dismissal of members to independent institutions should not be based on the current political makeup and realities.** All processes relating to the appointment and dismissal should be transparent and effective in any given political reality. Therefore, the parliamentary vetting process and the presidential appointment process should find a delicate balance in ensuring the integrity of these institutions. While the President should have no say in the vetting process, the Parliament should also not have disproportionate authority to meddle in the presidential nominations. The system should be just as effective in a situation where the ruling party has no majority in the Parliament as well as disallow the abuse of power when both the government and the parliament are controlled by a single party.
- **The dismissal procedure requires the presence of due process.** It is important to refer to the practice of dismissal of members in the PHRA India. The dismissal of the Prosecutor General of Maldives in 2016 by the then parliament is a classic example of misuse of parliamentary majority in the absence of proper guidelines for the dismissal of members from independent institutions. The case was taken up in the morning and the dismissal occurred that very same night. There were allegations of abuse of parliamentary majority and that the former PG was never given an opportunity to respond to the allegations against him. Changing the dismissal procedure to allow a more judicious process whereby members are given a chance to defend themselves will mitigate politically motivated dismissals. Over the last 5 years several politically motivated dismissals have allowed for the then government to appoint politically compromised individuals into independent institutions.