

Solicitation Petitioned to the Prosecutor General

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Indictment against Mohamed Waheed Hassan Manik

Commission of National Inquiry (CoNI):

1. On 7 February 2012, The Vice President of the Maldives, Mohamed Waheed Hassan Manik, assumed the role of the President of the Republic of Maldives by taking the Presidential oath. A significant number of Maldivian citizens believe the transfer of power from the democratically elected President Mohamed Nasheed to Vice President Mohamed Waheed Hassan Manik was a *coup d'état* and challenge the legitimacy of Vice President Mohamed Waheed Hassan Manik's current position. As a result, Mohamed Waheed Hassan Manik established the Commission of National Inquiry (CoNI) on 21 February 2012.

The Mandate of the Commission of National Inquiry:

2. According to Mohamed Waheed Hassan Manik, when the Commission of National Inquiry was established, its mandate was to conduct an investigation into the events that occurred in Male' from 14th January to 8th February. The Commission's mandate was further specified by Mr. Manik to explore the facts, circumstances and the causes of the events on 7th February 2012, to determine if the transfer of power from the elected President Mohamed Nasheed to Mr. Manik was conducted within the bounds of the constitution. Mr. Manik appointed three members to the Commission of National Inquiry. They are Mr. Ismail Shafeeu, Dr. Abdulla Yasir and Dr. Fawaz Shareef. The website of the Commission of National Inquiry states that the Commission must conclude its inquiry on 31 May 2012.

'Timeline of Events' Released by the Commission of National Inquiry on June 4, 2012:

3. The Timeline of Events (Timeline) released on 4 June 2012, for public opinion by the Commission of National Inquiry (CoNI), was published on its website www.coni.org.mv. The CoNI timeline was compiled by the said Commission *before* it was duly constituted as advised by the Commonwealth. This open solicitation is based on the compilation of the said CoNI's Timeline. In addition, this petition will also address information, which has been made available on the public domain through the media and public forums. The fact the Commission of National Inquiry (CoNI)'s timeline was compiled by the said Commission *before* it was duly constituted as advised by the Commonwealth, shall not be regarded under any circumstances, as an indication that we accept the pre Commonwealth approved composition of CoNI, nor as a confession on our part suggesting that we accepted the findings of the timeline, despite the fact that this report is based on the said timeline.

Constitutional Standing of the Office of the Vice President

4. Given article 108 of the Constitution of the Republic of Maldives states, ‘the President shall be elected directly by the people by universal and secret suffrage’;
And that article 112 theretofore states:
 - (a) There shall be a Vice President of the Maldives who shall assist the President in the discharge of his duties and responsibilities.
 - (b) Every candidate for President shall publicly declare the name of the Vice President who will serve “along with” him.
 - (c) The qualifications of office for the Vice President shall be the same as those for the President.
 - (d) If the office of the President becomes vacant for any reason, the Vice President shall be assigned to the office of the President.

5. That article 114 of the Constitution refers to the oath of office of the President and Vice President. As such it refers to the individual ‘elected’ as President or the individual ‘assigned’ as Vice President shall assume office upon taking and subscribing, before the Chief Justice or his designate, at a sitting of the People’s Majlis, the relevant oath of office set out in Schedule 1 of this Constitution.

6. Now, having studied the aforementioned articles of the constitution, it can be understood that the President is directly elected by the people (Article 108); and in accordance with art. 112 (b), we understand manifestly that the Vice President is publicly declared by the President as the individual who will ‘serve with him’. And that in nowhere in the Constitution does it state that the Vice President is an elected position. Furthermore article 114 referring to the oath of office of the President and Vice President highlights that that the incoming President is ‘elected’ while the incoming Vice President is ‘assigned’. In addition, in accordance with art. 129 (a) of the constitution, we understand further that the Vice President is appointed by the President given that the Vice President is a member of the Cabinet of Ministers. With respect to the constitution, it can thereby be determined that the office of the Vice President is not an elected office.

7. Therefore, it can be deduced by the aforementioned articles of the constitution that the Vice President is an individual who has been ‘publicly declared’ by the President as the individual who will serve with him, and that this individual ‘so assigned’ must take the oath of the Vice President before he assumes responsibility for the position. It can also be understood that the Vice President is a member of the Cabinet of Ministers. Furthermore, we understand that prior to the Vice President taking on the responsibilities of the President under any circumstance; the Vice President must swear the oath of office for the President. Having taken this oath, and

thereby having assumed the office of the President and his responsibilities, nowhere in the Constitution does it state that the Vice President shall become the President.

8. The point hereby noted is that when the Vice President assumes the office of the President, he does not become the President. For instance, if a given minister of the government resigns from his office as head of a given ministry, the ministry's state minister or the deputy minister assuming the office as a substitute does not constitute that the said substitute shall become the minister.

Given that under article 108 of the constitution, the President is 'elected directly by the people by universal and secret suffrage'; and given also the fact that the Vice President is appointed to his office by the President; the Vice President having assumed the office of the President, the Constitution does not grant leave to deduce that he is, in fact, the President – unless he is 'elected directly by the people by universal and secret suffrage'.

9. Therefore, it cannot be found that the privilege of deferring criminal accountability, accorded by Majlis resolution to the President can be extended to the Vice President even if he assumes the office of the President. The constitution's article 127 states that "President and the Vice President shall be answerable in law for any alleged criminal offence, whether committed before or during his term of office. However, if any criminal proceedings are instituted against the President, the People's Majlis may if it so sees fit, by resolution provide that such proceedings shall not be continued until after the expiration of the term of office".

Therefore, given that it is understood that the constitution does not grant leave for the People's Majlis to provide, by resolution, that criminal proceedings against Mohamed Waheed Hassan Manik shall be deferred until after the expiration of his assumption of term of office of the President, the criminal proceedings for alleged charges against him shall be continued, even during his tenure of assuming the office of the President.

The Constitutional Responsibilities of the Vice President

10. That article 117 of the constitution states the responsibilities of the Vice President as follow:
 - (a) The Vice President shall exercise such responsibilities and powers of the President as are delegated to him by the President.
 - (b) The Vice President shall perform the responsibilities of the President if the President is absent or temporarily unable to perform the responsibilities of office.

Furthermore, given that article 112 (d) of the constitution states "if the office of the President becomes vacant for any reason, the Vice President shall be assigned to the office of the President"; and therefore the constitution manifestly acknowledges that the Vice President shall exercise only such responsibilities and powers of the President as are assigned to him by the President; and also the fact that the Vice President shall only be assigned to the office of the

President, should the President be excused from his office owing to a reasonable cause or should he leave office.

Allegations of Criminal Offences Against Dr. Mohamed Waheed Hassan Manik

11. The charge of the offence of carrying out a *rebellion* under section 33 of the Penal Code with reference to section 30 of the Code;
12. That section 30 of the Penal Code states ‘whoever conspires to unlawfully use weapons (that could cause grievous hurt to the body of a person) to remove the President from office or to overthrow the Government shall be punished with imprisonment for life or exile for life and the Judge shall have the discretion to direct a fraction of the term to include rigorous imprisonment.’

Whereas section 33 of the Penal code states ‘all forms of rebellion or insurrections shall be included within the provisions of section 29, 30, 31 and 32’; and section 28 (c) of the Penal Code goes onto state that “‘President” shall mean the person who is elected as permitted by the Constitution of the Maldives to the highest office of governance. In enforcing this Law it shall also include a reference to his spouse, children and property.’

Moreover section 28 (b) qualifies “Government” to mean “the agency entrusted in accordance with the Constitution with the function of administering the affairs of the Maldives.”

In accordance to article 106 (b) of the constitution, “the President shall be the Head of State, the Head of Government, and the Commander in Chief of the Armed Forces”.

13. As mentioned in paragraph 12, and with reference to section 30 of the Penal Code, the ‘President’ so stated is herein found to be Mr. Mohamed Nasheed of G. Kenereege, elected as President to hold office for a term of five years pursuant to the constitution; to serve from 11 November 2008 till the completion of the constitutionally mandated 5 year term. This individual is also as per article 106 (b) of the constitution, the head of state, the head of government and the commander in chief of the armed forces.
14. Now, in order to prove that an offence has been committed under Section 30 of the penal code, it has to be maintained that ‘a conspiracy to unlawfully use weapons (that could cause grievous hurt to the body of a person) to remove the President from office or to overthrow the Government’ has been committed *and* what amounts to a ‘rebellion or insurrection’ has been perpetrated as under section 33 of the Penal Code.

The first piece of evidence implicating Mohamed Waheed Hassan Manik conspiring to carry out these offences lies in point 14 of the CoNI Timeline. It states, “The Vice President met with some leaders of the [Opposition] Coalition on the night of 30 January 2012 at Hilaaleege, his residence. He was asked at the meeting whether he was prepared to carry out his constitutional responsibilities. He said he was ready to do so. Coalition leaders held a press conference after the meeting to announce their endorsement [Ar. *bai’ah*] of the Vice President [for President]” and encouraged security forces to pledge their allegiance to the Vice President.

15. Here it becomes necessary to inquire which ‘constitutional responsibilities’ Mohamed Waheed Hassan Manik assured the [Opposition] Coalition he was ready to carry out, as according to point 14 of the CoNI Timeline. Paragraph 10 has already noted the constitutional responsibilities of the Vice President. While referring to the constitutional articles noted in paragraph 10, we understand that Mohamed Nasheed held the office of President of the Republic of Maldives on 30 January 2012 and in that context the constitutional responsibility of Mohamed Waheed Hassan Manik is as stated in article 117 (a): to exercise such responsibilities and powers of the President as are delegated to him by the President, Mohamed Nasheed.

Therefore, it can be determined that Mohamed Waheed Hassan Manik did not have to assure the [Opposition] Coalition that he was ready to carry out his constitutional duties during a meeting in the early hours of 30 January 2012 at M. Hilaaleege.

In addition, on the next day, whereas Cabinet meetings are held every Tuesday afternoon, preceded by Cabinet working sessions in the mornings; on Tuesday, 31 January 2012, Vice President Mohamed Waheed Hassan Manik refused – when questioned by ministers Adil Saleem, Shifa Mohamed and Dr Mariyam Zulfa – to elaborate on his previous night’s meeting with leaders of the ‘opposition coalition’, citing it was a personal matter, which he did not have to disclose to the Cabinet.

Given that, by refusing to disclose the details of his meeting with the [Opposition] Coalition, Mohamed Waheed Hassan Manik was in violation of his constitutional duties as outlined in article 117 of the constitution – to exercise responsibilities and powers of the President as are delegated to him – by President Mohamed Nasheed.

It can also be determined that when the [Opposition] Coalition ‘inquired’ of Mohamed Waheed Hassan Manik whether he was ready to uphold his ‘constitutional responsibilities’ they were referring to article 117 (b) of the constitution – ‘the Vice President shall perform the responsibilities of the President if the President is absent or temporarily unable to perform the responsibilities of office’; and article 112 (d): “if the office of the President becomes vacant for any reason, the Vice President shall succeed to the office of the President’.

Accordingly, during Mohamed Waheed Hassan Manik’s late night meeting with the [opposition] coalition, when they ‘inquired’ of him if he was ready to uphold his ‘constitutional

responsibilities’, they were referring to the ‘constitutional responsibility’ that Mohamed Waheed Hassan Manik would have to uphold in a situation as outlined in article 112 (d) and article 117 (b).

However, having found what transpired on 7 February 2012, it is deduced that on the night of 30th January 2012, the members of the Opposition Coalition, having met Vice President Mr Manik, would have “*explained*” to the Vice President, their conspiracy that they planned to oust Mohamed Nasheed from office with the assistance of some among the army and the police. Furthermore, the fact that Vice President, on 7 February 2012, having taken the oath and assumed the office of the President, and having overthrown the Government, and having declared a so-called Government of National Unity with the said Coalition; it is found that Mr Manik conspired on 30 January 2012 to carry out a rebellion in the said meeting with the Opposition Coalition.

16. Point 17 of the CoNI Timeline states that following Coalition discussions, protests began at Artificial Beach on 2 February 2012. At the protest, Adhaalath Party leader Imran Abdulla calls for police to arrest President Nasheed within five days [by 7 February]. President Mohamed Nasheed resigned under duress on February 7 2012.

Adhaalath Party leader Imran Abdulla was present at the late night [Opposition] Coalition meeting with Mohamed Waheed Hassan Manik on 30 January 2012. This sequence of events demonstrates conspiracy to overthrow the democratically elected President and Government of the Maldives.

Now, point 28 of the CoNI Timeline goes on to state that between 2200-2300 on 6 February 2012, ‘It was said at the protest that as President Nasheed had admitted in the international media to have acted against the Constitution, it was the President, the Home Minister and the Defence Minister that the police should arrest.’

At this juncture, it should be noted that the President can only be removed from power under article 100 (a): “a motion expressing want of confidence in a member of the Cabinet may be moved in the People’s Majlis, under the hand of at least ten members, specifying the reasons”, and (b) “at least fourteen days notice of the debate in the People’s Majlis concerning a motion under article shall be given to the concerned member of the Cabinet, and he shall have the right to defend himself in the sittings of the People’s Majlis, both orally and in writing”;

Furthermore according to subsection (d) of the same article “a resolution to remove the President or Vice President from office as specified in article (a) shall only be passed if it receives a two-thirds majority of the total membership of the People’s Majlis, and in such event the President or Vice President shall cease to hold office”.

Article 127 of the constitution goes onto say “the President and the Vice President shall be answerable in law for any alleged criminal offence, whether committed before or during his term of office. However, if any criminal proceedings are instituted against the President, the People’s Majlis may if it so sees fit, by resolution provide that such proceedings shall not be continued until after the expiration of the term of office”. Given article 51 outlines the rights of accused and determine that the accused is innocent until proven guilty of all reasonable doubt, it can be stated that the calls to the armed forces to arrest the President as voiced in [Opposition] Coalition protests was part of a conspiracy in planning a rebellion and an attempt to mislead the public.

17. According to Point 90 of the CoNI Timeline – Vice President gave a statement to the media from Hilaaleege between 0200 and 0300 on 7 February 2012, in which he urged the Police and Army not to obey any unlawful orders.

“Yes! It is also my duty to say something at a time of such national crisis. I support the peaceful activities of the many to protect the country’s constitution and its faith. It is important at this time that all Maldivian institutions especially those of law enforcement to protect and maintain the Constitution and laws. I call upon everyone not to obey an illegal order. In this sorrowful time, I also call upon the Maldivian security services not to leave room for those seeking to dissolve our security and not to allow any harm to be caused to people and their property, especially the media. It saddens me very much that VTV and other places have been damaged tonight. I call upon those who cause such damage to refrain from doing so. I also assure you that I will do everything I can as the Vice President of this country to free us from this dangerous and tragic time. May Allah return our country to a peaceful and secure state. Amen.”

When we look at Mohamed Waheed Hassan Manik’s actions and compare it with the duties of the Vice President as enshrined in the constitution under article 114(a) it can be determined that while Mohamed Nasheed was President, it was not in accordance with Mohamed Waheed Hassan Manik’s duties as Vice President to give a statement to the media without President Nasheed’s consent.

It is assumed that Mohamed Waheed Hassan Manik was aware of the other events taking place that night, especially as it was being broadcast live on television. Within the timeframe of 0100 – 0200 on 7 February 2012, as outlined in point 58 of the CoNI Timeline:

‘Some Special Operation (SO) officers who went to the Artificial Beach went to the MDP Meeting Hall and caused severe harm to people and property in the area.’

This incident was also reported in the media. Given also that with reference to point 81 of the CoNI Timeline, stated:

The media reported that a large number of police officers had been arrested, numbering up to a 50 at the time. The media also reported that the MDP meeting had maintained it would not leave the Meeting Hall until justice had been established, and also that it had called for a state of emergency to be established

and point 83 of CoNI Timeline:

One of the three police officers highly active on the Republic Square began issuing orders to the police with a megaphone. He commanded all police officers at the Republic Square to remain united as one

Henceforth is noted that Mohamed Waheed Hassan Manik did not publicly advocate for above mentioned activities to be stopped. Furthermore, Mohamed Waheed Hassan Manik stated, 'I support the peaceful activities of the many to protect the country's constitution and its faith';

Now, given point 15 of the CoNI Timeline states:

'A policeman caught fire on 31 January 2012 when a fireball was thrown at the police during the [opposition coalition] protests near MMA.'

Given also that, when opposition protesters uprooted palm trees planted by the Male' City Council on Chaandhane Magu and attempted to vandalise the residence of Home Minister Hassan Afeef – Mohamed Waheed Hassan Manik's fellow Cabinet member (as shown live on TV); given also that the MDP's rally centre and its supporters were attacked (also noted in the CoNI Timeline); when Police officers, in violation of the Police Act became politically active and demanded President Nasheed's resignation at Republic Square, Mohamed Waheed Hassan Manik did not call upon the police to act within the permits of their legal authority. He instead called from police and army officers to not obey unlawful orders, while going onto state that the media should be protected, with specific emphasis on VTV.

Since Mohamed Waheed Hassan Manik gave this statement without being asked to by President Nasheed, it is deduced that he gave the public statement as a demonstration of his support to the participants of the rebellion. While he continued to call for illegal orders not to be followed, the Police and Army act state continuously that if an illegal order is given, that order must not be obeyed, and that such an order is in effect invalid, but under no circumstances does the constitution allow for a *coup d'état* in the event of an illegal order being issued. Mohamed Waheed Hassan Manik not calling President Nasheed or even fellow Cabinet members to try and discuss a solution to the ongoing unrest, while still managing to make a public statement, is indicative of Mohamed Waheed Hassan Manik's participation in the rebellion.

18. Given that 113 of the CoNI Timeline states:

'When President Nasheed entered the main gates of Bandaara Koshi, [between the hours of 0400-0500] he addressed some military officers gathered there and said police out there had mutinied and needed to be arrested';

President did so under the powers accorded to him by subsections 9 (a) and (b) of the Armed Forces Act which states:

(a) The President is the Commander-in-Chief of the Armed Forces.

(b) The Commander-in-Chief of the Armed Forces shall have the authority at any time to give direct orders to the entire Armed Forces, or a group of service-men or to an individual serviceman.

Now, point 119 of the Timeline then goes onto state, *'Police made it clear to the military they were ready for a confrontation.'* When as outlined in point 158 of the Timeline, conditions outside the gates of Bandaara Koshi were deteriorating, when civilians Abdulla Riyaz and Mohamed Nazim announced and gave President Nasheed a three hour deadline for his unconditional resignation, Mohamed Waheed Hassan Manik did not call to inquire what was happening, nor to find a way to resolve the situation.

19. Now, it has to be established whether there was an unlawful use of weapons in the overthrow of the Government or the removal of the President as according to section 30 of the Penal Code.

Point 166 of the Timeline talks of Police and civilians throwing bottles and other objects at the Bandaara Koshi gate, shields and other police equipment being distributed to civilians from the Maldives Police Service Head Quarters, media reports broadcasted images of weapons stored in Hulhule and the Coast Guard vessels being transferred to the Coast Guard building on 7 February 2012. Furthermore on 7 February 2012 between 1000-1100 Police and Army officers entered state broadcaster MNBC 1 after using a riot gun to forcefully enter the premises, as identified in point 261 of the Timeline, and while Mohamed Waheed Hassan Manik speaks of attacks on VTV in his statement to the media in the early hours of February 7th, it should be noted that it was Mohamed Waheed Hassan Manik's brother Ali Waheed that took control of MNBC 1 after police and military had forcefully entered the premises (Point 256). That MNBC 1's broadcast was then changed into the live feed from VTV further implicated Mohamed Waheed Hassan Manik's role in the rebellion.

20. Given that the Timeline's point 197 relates that on 7 February 2012 at 1000-1100, former Police officers Mohamed Fayaz and Abdulla Riyaz along with former Army officer, Mohamed Nazim stood outside the Bandaara Koshi gate;

Given also that point 205 goes on to say that as Riyaz and Nazim entered Bandaara Koshi, officers inside greeted them with celebration; and given the Timeline's point 206 states that Riyaz and Nazim met with the Minister of Defence, Chief of Defence Forces, Generals and other Senior

officers of the Army. At length, they came out of Bandaara Koshi and announced that they had presented an unconditional demand for President Nasheed to resign and for all powers to be handed over to the Vice President. If the President resigns, the transfer of powers to the Vice President is automatic as per the constitution, and yet even though these two individuals specifically called for the powers to be transferred to the Vice President, the fact that Mohamed Waheed Hassan Manik still did not call to inquire after President Mohamed Nasheed is further proof of Mohamed Waheed Hassan Manik's involvement in the rebellion. Given that when President Nasheed arrived at the President's Office, Mohamed Nazim, Abdulla Riyaz and Mohamed Fayaz were already in the premises, as is outlined in point 224 of the Timeline. Furthermore, that President Nasheed had met with members of the Cabinet and senior Government officials, and conveyed to them that he had no option but to resign (point 228);

Point 231 and 232 states while President Nasheed was at the *Ghazi Hall*, Nazim, Fayaz and Riyaz having entered the Hall, Nazim communicated that the Speaker of Parliament Abdulla Shahid was asking after the resignation letter President Nasheed was sending to the Majlis. Whereupon, the President having asked after the resignation letter and having been told by the cabinet secretary that it was not ready; the President requested for pen and paper to be brought to him. This having been brought, standing by the podium the President wrote the resignation letter under his hand (point 233).

That the aforementioned incidents, therefore, manifestly makes it clear that this resignation letter was compelled upon President Nasheed, and that it was not written under the President's hand as a resignation letter written by his own free will.

21. That 7 February 2012, at a time between the hours of 1300-1500, Abdulla Riyaz having asked the Cabinet Secretary whether the resignation letter has been dispatched, and the Cabinet Secretary having answered that the letter was '*in dispatch*', the Timeline attests that Riyaz and Fayaz removed the letter from the President's Office dispatch service. The dispatch service, whilst handing over the said letter to Riyaz, filled a '*slip*' and requested that he return the slip after dispatch (timeline 231).

At length, Riyaz and Nazim accompanied President Nasheed to Mule Aage. Riyaz had the President's resignation letter in his hand at the time (timeline 241). That when President Nasheed went into Mulee Aage, Riyaz went to the main police headquarters and handed over the resignation letter to a police officer to take it to the Majlis. He also asked him to fill out the receipt slip and return it to the President's Office once the letter had been collected at the Majlis (timeline 242). That the speaker of the Parliament received President Nasheed's resignation letter at 13:43 and the police officer who delivered the letter to the Majlis returned to the main police headquarters with the receipt of delivery, which was then sent to the President's Office (timeline 244).

At 1525 without consulting Mohamed Nasheed, Mohamed Waheed Hassan Manik took over the post of the President and was sworn into office (Point 247). The fact that the former CEO of MNBC 1 has stated that Ali Waheed entered MNBC 1, by declaring that it was upon the orders of his brother, the Vice President and that Mohamed Waheed Hassan Manik has not taken any legal action against officers who mutinied in Republic Square is further indication of his participation in the rebellion.

22. As mentioned above, Mohamed Waheed Hassan Manik as Vice President met with the [Opposition] coalition on 30 January 2012 and assured them that he would uphold his constitutional duty. He then refused to share the details of this meeting with the Cabinet and pledged his allegiance to the [Opposition] Coalition. On 7 February 2012 at 0200- 0300, Mohamed Waheed Hassan Manik gave a statement to the public without the consultation or consent of President Mohamed Nasheed, giving encouragement to the ongoing rebellion. In this statement, although he called for the protection of VTV, his brother Ali Waheed had gone into MNBC 1 after a weapon was used by mutinying MPS and MNDF officers to forcefully enter the premises, and where after a live feed from VTV was broadcast. While mutinying Police distributed shields and police equipment to civilians and attacked Bandaara Koshi while President Mohamed Nasheed was inside the building. When Abdulla Riyaz and Mohamed Nazim made an unconditional demand on President Nasheed to resign within a specific timeframe, but Mohamed Waheed Hassan Manik went onto appoint Abdulla Riyaz as his Commissioner of Police and Mohamed Nazim as his Minister of Defence; while he changed the sitting government and announced the establishment of a unity government without the mandate of an election; it is believed that the charges outlined in section 33 with reference to section 30 of the penal code can be applied against Mohamed Waheed Hassan Manik.
23. Given that this country belongs to the people of Maldives, that article 4 of the constitution states the powers of the State of the Maldives are derived from, and remain with, the citizens.

Now, given this almighty power afforded by the constitution to the people, having found that it is a responsibility upon the Maldivian people to protect it in its essence, and to transmit it to the generations to come with honest integrity; the Prosecutor General and judges are hereby solicited to promptly address the above issues now at large.

Mariya Ahmed Didi

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