

# Moving From Condemnation to Action

## *The Case for the United States to Impose Targeted Financial Sanctions and Travel Bans on Serious Human Rights Abusers in The Maldives*

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## I. EXECUTIVE SUMMARY

The Maldives, a nation that comprises nearly 2000 small islands in the middle of the Indian Ocean and that is known for its white sand beaches and beautiful blue seas, is in turmoil under President Abdulla Yameen and his repressive regime. The United States has publicly criticized Yameen's government and its widespread human rights abuses, but further action is required, as Yameen remains intransigent even in the face of global condemnation.

This report recommends that **President Barack Obama issue an Executive Order creating a human rights-based sanctions program in response to the crisis in the Maldives** and immediately update the Specially Designated Nationals (SDN) List of the US Department of the Treasury to include the senior Maldivian government officials implicated in major human rights abuses. (A confidential list of proposed designees has been provided to the US Government.) It also recommends the concurrent adoption of travel bans on these same individuals. In addition, the report urges **President Obama to support the adoption of the Global Magnitsky Human Rights Accountability Act**, which would create a uniform approach to imposing financial sanctions and travel bans on major human rights abusers around the world.

The Maldives has long been one of Asia's poorest nations, and was ranked 104th out of 188 countries on the Human Development Index, published by the United Nations Development Programme (UNDP).<sup>1</sup> But poverty is far from the only concern for the more than 390,000 people who reside in the Maldives. In 2008, the country held its first democratic elections, in which Mohamed Nasheed, a longtime champion of human rights, defeated former President Maumoon Gayoom, ending his 30-years of authoritarian rule. Unfortunately, the respite was short-lived, as President Nasheed was pushed out of office in a coup in 2012. In a subsequent election marred by numerous irregularities and interference by the Maldivian Supreme Court, former President Gayoom's half-brother Abdulla Yameen ultimately prevailed over President Nasheed. Yameen remains in power today.

The past two years under Yameen's rule have been marked by an increasingly broad range of human rights abuses, including arbitrary arrest and detention, torture, enforced disappearance, harassment, and intimidation of human rights defenders, dissidents, and others critical of the regime.<sup>2</sup> In more recent months, there has been a resurgence in unlawful executions and civil society and political opposition face a daily environment of perpetual fear.<sup>3</sup> Yameen and his allies are able to perpetuate their widespread assault on liberty and security, unfettered by domestic law in light of Yameen's interference in and control over the legislature and judiciary resulting in impunity for human rights abusers who align themselves with him.<sup>4</sup>

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<sup>1</sup> *Human Development Report 2015*, UN Development Programme.

<sup>2</sup> *Maldives: State of Emergency an Alarming Development in Continuing Crackdown on Human Rights*, Nov. 4, 2015, available at <http://www.amnestyusa.org/news/press-releases/maldives-state-of-emergency-an-alarming-development-in-continuing-crackdown-on-human-rights> [hereinafter *Alarming Development*].

<sup>3</sup> Amnesty says human rights in Maldives deteriorating, AL JAZEERA, Apr. 23, 2015, available at <http://www.aljazeera.com/news/2015/04/amnesty-human-rights-maldives-deteriorating-150423141730292.html>.

<sup>4</sup> Ahmed Naish, *President Warns Maldivians to Be Wary of 'Traitorous Plotters'*, MALDIVES INDEPENDENT, Nov. 3, 2015, available at <http://maldivesindependent.com/politics/president-warns-maldivians-to-be-wary-of-traitorous-plotters-119298> [hereinafter *Traitorous Plotters*].

The US has publicly voiced its concern regarding the human rights abuses carried out by the Maldivian government. In 2014, the US Department of State described “[t]he most significant human rights issues” in the Maldives as including “efforts by the courts to restrict free speech, restrictions on religious freedom, and reports of corruption of government officials,” and reported that “[o]ther human rights problems included the use of flogging as a punishment, arbitrary arrests, harassment of journalists, abuse and unequal treatment of women, and discrimination against foreign laborers.”<sup>5</sup> The US Department of State also emphasized that numerous judges in the Maldives “allegedly committed illegal acts with impunity.”<sup>6</sup>

In 2015, the UN Human Rights Council carried out its Universal Periodic Review (UPR) of the Maldives – a periodic assessment of the human rights situations of individual UN Member States. During the 2015 Maldives UPR, the US was among a significant number of governments expressing concern about the Maldivian government and recommending concrete steps that should be taken to fix the lack of judicial independence and the prevalence of politically-motivated arrests and detentions of opposition leaders.<sup>7</sup>

Not only is it dangerous to voice concern in the Maldives about Yameen’s abuses, but now such action also carries the threat of criminal sanctions.<sup>8</sup> In the wake of an explosion on his boat during a return trip from hajj, Yameen declared a state of emergency. A joint effort between Yameen and the representatives in parliament aligned with him succeeded in unconstitutionally impeaching Vice President Ahmed Adeeb, after accusing him of treason and naming him responsible for the boat blast. Adeeb was not given the chance to prepare a defense, his lawyer’s license was revoked hours before the hearing, and Yameen used the state of emergency to shorten the otherwise constitutionally-required minimum waiting period before the vote.<sup>9</sup> In addition to setting the stage for this flawed impeachment process, Yameen used the state of emergency to suspend fundamental constitutional rights and civil liberties, threatening the protection of human rights.<sup>10</sup> For example, on the eve of a peaceful march planned by the opposition Maldivian Democratic Party (MDP) in protest of former President Nasheed’s continuing incarceration, Yameen suspended the rights to freedom of assembly and freedom from unreasonable search and seizure.<sup>11</sup>

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<sup>5</sup> *The Maldives 2014 Human Rights Report*, US Department of State, 2014 available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236644> [hereinafter US Department of State].

<sup>6</sup> *Id.*

<sup>7</sup> Several countries raised similar concerns regarding the Maldives and submitted similar recommendations for addressing those concerns to what the US submitted, including Brazil, Canada, France, and Norway. See UPR Info, 2RP: Responses to Recommendations & Voluntary Pledges, Maldives Second Review Session 22, available at, [http://www.upr-info.org/sites/default/files/document/maldives/session\\_22\\_-\\_may\\_2015/recommendations\\_and\\_pledges\\_maldives\\_2015.pdf](http://www.upr-info.org/sites/default/files/document/maldives/session_22_-_may_2015/recommendations_and_pledges_maldives_2015.pdf) [hereinafter UPR Info 2RP].

<sup>8</sup> Ahmed Naish, *PPM MP Threatens to Jail All Opposition MPs with Bill on Sanctions*, MALDIVES INDEPENDENT, Oct. 13, 2015, available at <http://maldivesindependent.com/politics/ppm-mp-threatens-to-jail-all-opposition-mps-with-bill-on-sanctions-118270> [hereinafter Bill on Sanctions].

<sup>9</sup> Shafaa Hameed, *Supreme Court Suspends Vice President’s Lawyer*, MALDIVES INDEPENDENT, Nov. 4, 2015, available at <http://maldivesindependent.com/politics/supreme-court-summons-vice-presidents-lawyer-119388>.

<sup>10</sup> David Barstow, *Maldives State of Emergency Is Called ‘Precautionary’*, NEW YORK TIMES, Nov. 6, 2015, available at <http://www.nytimes.com/2015/11/07/world/asia/maldives-state-of-emergency-is-called-precautionary.html>.

<sup>11</sup> *Id.*

The US government's condemnation of Yameen and his regime's ongoing human rights abuses – while exceptionally valuable – will only bring about the necessary result if accompanied by concrete action that carries real consequences for the top perpetrators of human rights abuses. In this particular case, the imposition of targeted human rights-based sanctions and travel bans would have a significant, direct, and material impact on senior Maldivian government officials and their allies perpetrating human rights abuses and on the overall crisis.

In many other instances, the US has refused to tolerate a foreign government carrying out repression and human rights abuses in a manner similar to the actions of the current regime in the Maldives. In those similar situations, the US imposed targeted sanctions – action that unequivocally demonstrated that the US government would not stand idly by when liberty and democracy were threatened. Asset freezes and travel bans have proven to be effective in bringing about change in repressive governments as well as securing the human rights protection and long-term safety of those governed by such regimes.

Similar to the cases of when targeted sanctions were imposed on Belarus, Burma, and Zimbabwe, illustrated in-depth below, in the Maldives, people live in fear of their government, state security forces, and state intelligence agencies, all of which are under Yameen's direction. This repressive regime wreaks havoc on the human-rights situation and fragile state of democracy in the Maldives, resulting in the deterioration of domestic stability and safety. In addition, the Maldives sits at a critical geostrategic location between East-West trade routes and is now strongly aligned with China. And as noted by the European Parliament in December 2015, Yameen has failed to act to stop the spread of Islamic radicalization, with the result being that more than 200 Maldivians have traveled to Syria to fight for ISIS, the greatest per capita of any country outside the Middle East.

The overall crisis poses a grave threat to regional security and compels the US to take swift, concrete actions. Imposing sanctions would send an unmistakably clear message – it will embolden courageous human rights defenders, serve as an important warning and deterrent against human rights abuses to others not yet on the sanctions list, and encourage other governments to impose sanctions of their own.

## II. HUMAN RIGHTS ABUSES IN THE MALDIVES

During President Yameen's two years in office, the Maldives has gone backwards and now resembles the repressive, dictatorial regime of Yameen's half-brother Gayoom (1978-2008).<sup>12</sup> Enforced disappearances, arbitrary arrests and detentions, state-sanctioned torture, and widespread intimidation and censorship have significantly increased – in fact, some have become commonplace.<sup>13</sup> The following sections elaborate on significant human rights abuses and the standards of international law they violate.

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<sup>12</sup> Jake Flanagin, *The Maldives is A Tropical Human-Rights Hell*, QUARTZ, Apr. 2, 2015, available at <http://qz.com/374617/the-maldives-are-a-tropical-human-rights-hell/>.

<sup>13</sup> The State of the World's Human Rights, page 241, AMNESTY INTERNATIONAL, Feb. 25, 2015 [hereinafter *Amnesty Report*]

## A. Enforced Disappearances

Enforced disappearance occurs when a person is arrested, detained, abducted, or otherwise deprived of their liberty by agents of the State or other persons authorized by the State, and when such deprivation of liberty is followed by the State's refusal to acknowledge the deprivation occurred or by its concealment of the fate or whereabouts of the disappeared person, which places that person outside the protection of the law.<sup>14</sup> Such acts are prohibited by the International Convention for the Protection of All Persons from Enforced Disappearance,<sup>15</sup> which the Maldives signed but has not yet ratified, despite numerous governments calling upon the Maldivian government to do so during the 2015 Maldives UPR.<sup>16</sup>

Enforced disappearances, although less prevalent than the other forms of abuse discussed in this report, have been used to instil fear among critics of Yameen's administration.<sup>17</sup> In the Maldives, individuals are routinely arrested, detained, or abducted by state authorities or their agents and held unlawfully, while the government either officially denies or simply refuses to acknowledge the arrest and detention; communication with the outside world is often denied, leaving them without any legal protection.<sup>18</sup> In such instances, the family members of the disappeared person are officially recognized as victims under international law. Nevertheless, the Maldivian government rarely investigates or properly remedies this offense.<sup>19</sup>

One prominent example of enforced disappearance is that of Ahmed Rilwan Abdulla, a reporter known for his articles covering gang attacks on reporters and bloggers. He was disappeared by the Maldivian government in 2013, and he remains missing today.<sup>20</sup> Amnesty International has expressed fear that he may have been extra-judicially executed.<sup>21</sup> The US Department of State has spoken out about the suspicious circumstances of Ahmed Rilwan's disappearance, in particular its political and criminal aspect, and recognized the many death threats he received in response to his views on religion and freedom of expression as well as his advocacy against extremism.<sup>22</sup>

More recently, the former head of the Special Protection Group of the Maldives National Defence Force (MNDF) Colonel Ahmed Fayaz is supposedly detained in the army headquarters along with three other officers. Yameen, speaking at a public gathering, admitted that Fayaz is detained in the barracks. However, when the family filed a habeas corpus petition at the Criminal Court, the Government denied Fayaz's detention in any military facility and the petition

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<sup>14</sup> *International Convention for the Protection of All Persons from Enforced Disappearance*, G.A. Res. 61/77, UN GAOR 61<sup>st</sup> Sess., art. 2, U.N. Doc. A/Res/61/77 (2006), 2716 U.N.T.S. 3, entered into force 23 December 2010, [hereinafter ICPAPED].

<sup>15</sup> *Id.*

<sup>16</sup> UPR Info: 2RP, see *supra* note 7.

<sup>17</sup> Shafaa Hameed, *Raajje TV Journalist Alleges Attempted Assault by Government Officials*, MALDIVES INDEPENDENT, Sept. 30, 2015, available at <http://maldivesindependent.com/politics/raajje-tv-journalist-alleges-attempted-assault-by-government-officials-117793> [hereinafter *Assault by Government Officials*].

<sup>18</sup> *Id.*

<sup>19</sup> Amnesty Report, see *supra* note 13 at 242.

<sup>20</sup> *Assault by Government Officials*, see *supra* note 17.

<sup>21</sup> Amnesty Report, see *supra* note 13

<sup>22</sup> US Department of State, see *supra* note 5.

was rejected.<sup>23</sup> Despite the Government's official denial, Fayaz's family is able to contact him over the phone. It should be noted that more than two months have elapsed since Fayaz's detention and he has been denied access to family and lawyers and is deprived of his fundamental rights under both the Constitution of the Maldives and ICCPR.

## B. Arbitrary Arrest and Detention

International law prohibits the arbitrary arrest and detention of all persons.<sup>24</sup> The Maldives is a state party to the International Covenant on Civil and Political Rights (ICCPR), which prohibits the unlawful deprivation of an individual's liberty except "on such grounds and in accordance with such procedure as are established by law."<sup>25</sup> The ICCPR outlines additional rights related to freedom from arbitrary arrest and detention, including that an individual must be informed of the reasons for arrest when it occurs and of any charges; that the individual is entitled to challenge the deprivation of liberty in judicial proceedings; and that the individual is entitled to compensation where the deprivation of liberty was unlawful.<sup>26</sup>

The most notable case of arbitrary detention in the Maldives is that of Freedom Now pro bono client and former President Mohamed Nasheed, the country's first democratically-elected president. Amnesty International described the trial of former President Nasheed as a "politically-motivated sham and a travesty of justice from start to finish."<sup>27</sup> In 2015, the UN Working Group on Arbitrary Detention found Nasheed was being held in violation of international law, and emphasized that it was "clearly impossible to invoke any legal basis justifying the deprivation of liberty of [President] Nasheed."<sup>28</sup>

The Maldivian government engaged fully with the Working Group as it reviewed the case and responded on multiple occasions to the published opinion;<sup>29</sup> however, the government has not complied with the Working Group's findings and refuses to release former President Nasheed.<sup>30</sup> This is sadly consistent with the reality that there are an estimated 1,700 activists, politicians, and students facing arrest, detention, or charges based on politically-motivated grounds.<sup>31</sup>

Before recently impeaching former Vice President Adeeb, Yameen had also fired the prior Vice President Mohamed Jameel without due process of law, following a vote to lower the minimum age for president and vice president so as to enable Adeeb's appointment. But after the blast on

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<sup>23</sup> Hassan Mossa, *Colonel's Military Detention Amounts to "Enforced Disappearance,"* MALDIVES INDEPENDENT, Dec. 20, 2015.

<sup>24</sup> *International Covenant on Civil and Political Rights*, G.A. Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976, [hereinafter ICCPR].

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Alarming Development*, see *supra* note 2.

<sup>28</sup> United Nations Working Group on Arbitrary Detention, No. 33/2015, Sept. 17, 2015, pg. 17 at para 95, available at <http://www.freedom-now.org/wp-content/uploads/2015/10/UNWGAD-Opinion-33-2015.pdf>.

<sup>29</sup> *Id.*, at pg. 9.

<sup>30</sup> Amal Clooney, *Maldives Backslides Into Repression as the World Calls for President Nasheed's Release*, THE WORLD POST, Oct. 14, 2015.

[http://www.huffingtonpost.com/Amal-Clooney/maldives-president-nasheed-release\\_b\\_8297848.html](http://www.huffingtonpost.com/Amal-Clooney/maldives-president-nasheed-release_b_8297848.html)

<sup>31</sup> *Government Must Deliver On Its Side of Talks Bargain*, July 24, 2015, available at <http://mdp.org.mv/archives/70453>.

Yameen's boat, Adeeb was accused and detained on allegations that he planted an explosive device on Yameen's boat.<sup>32</sup> The US Federal Bureau of Investigation (FBI) indicated that it found no evidence of a bomb on the boat; the FBI report contradicted testimony from Saudi Arabian and Sri Lankan experts.<sup>33</sup> The evidence was irrelevant, however, and Yameen unconstitutionally rushed through Adeeb's impeachment process to ensure his removal.<sup>34</sup>

After Adeeb's impeachment, the Maldivian parliament voted to fire Prosecutor General Muhthaz Muhsin in light of his refusal to charge Adeeb with corruption prior to the explosion. Muhsin was similarly denied due process – his impeachment took less than a full day. In addition, the regime fired two Defense Ministers and the Police Commissioner.

As shown in the 20-day trial of former President Nasheed, Yameen does not need evidence to obtain a conviction in the courts or favorable action in the parliament. In addition to former President Nasheed and the 1,700 others facing charges, arrested, or detained for political reasons, high profile prisoners include former Defense Ministers Mohamed Nazim and Tholhath Ibrahim Kaleyfaan and former Deputy Speaker of the Parliament, Ahmed Nazim.<sup>35</sup> The trials and imprisonments of these high profile political leaders are indicative of the erosion of human rights and due process in the Maldives under Yameen's rule.

### C. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Maldives is a state party to the ICCPR, which prohibits torture and cruel, inhuman or degrading treatment or punishment,<sup>36</sup> and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>37</sup> The definition of "torture" includes any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>38</sup>

In 2013, the UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Juan Méndez, appealed to the Maldives, responding to a report of ill treatment of political activists. Based on the testimony received, it was alleged that the

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<sup>32</sup> Zaheena Rasheed, *PPM Confident of Impeaching Vice President Without MDP Support*, MALDIVES INDEPENDENT, Nov. 3, 2015, available at <http://maldivesindependent.com/politics/ppm-confident-of-impeaching-vice-president-without-mdp-support-119252>.

<sup>33</sup> *Traitorous Plotters*, see *supra* note 4.

<sup>34</sup> Mohamed Visham, *Maldives Looks to Fast-Track VP's Impeachment After Declaring Emergency*, HAVEERU, Nov. 4, 2015, available at <http://www.haveeru.com.mv/news/63652>.

<sup>35</sup> Hassan Mohamed, *Lawyers Repeat Plea for Medical Care to Jailed Politicians*, MALDIVES INDEPENDENT, Oct. 22, 2015, available at <http://maldivesindependent.com/politics/lawyers-repeat-plea-for-medical-care-to-jailed-politicians-118757>.

<sup>36</sup> ICCPR, *supra* note 24, at art. 7.

<sup>37</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, UN GAOR 39<sup>th</sup> Sess., 1465 U.N.T.S. 85 entered into force 10 December 1984 [hereinafter CAT].

<sup>38</sup> CAT, *supra* note 37, at art. 1 (1).

Maldivian security forces practiced continuous excessive use of force and that members of the MDP were arrested and subjected to “incommunicado detention.”<sup>39</sup> These testimonies of torture at the hands of Maldivian forces were deemed truthful and evidentially substantiated by the Special Rapporteur.<sup>40</sup>

The Maldives Police Service was accused of 54 cases of torture, submitted to the Human Rights Commission of the Maldives between July 2014 and June 2015.<sup>41</sup> This brought the total number of such allegations between 2010 and June 2015 to an estimated 358. In 2014, the Commission completed investigations into 37 such cases, bringing the five-year total of investigations to approximately 111. Despite these several hundred allegations and smaller number of investigations, there were only four cases referred for prosecution.<sup>42</sup>

The challenges facing the Commission include a legal mandate of only three-months investigation, making it difficult to gather conclusive evidence of torture allegations.<sup>43</sup> The US Department of State cited the same statistics provided by the Commission and added that, after Yameen ratified the Anti-Torture Bill in December 2013, 12 of the 19 cases filed with the Commission under that law were shut down for a “lack of evidence,” and only one case was prosecuted.<sup>44</sup>

Further failure to prosecute is evident with regard to vigilante groups and gangs of extremists employing tactics of abduction and torture against journalists and bloggers in order to prevent them from reporting on corruption and government violence.<sup>45</sup> The Maldivian authorities routinely fail to prosecute those responsible for the kidnapping and torturing of public figures.<sup>46</sup>

Flogging is a common punishment in the Maldives for crimes under sharia law, as opposed to under the civil criminal code,<sup>47</sup> and the Maldives also has a policy of sentencing people to flogging following convictions of extramarital sex.<sup>48</sup> Human rights defenders allege that in the

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<sup>39</sup> Juan Méndez, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, pg 50-51, Human Rights Council, Mar. 4, 2013, available at [http://antitorture.org/wp-content/uploads/2013/03/A.HRC\\_22.53.Add\\_4\\_Observations\\_Advance.pdf](http://antitorture.org/wp-content/uploads/2013/03/A.HRC_22.53.Add_4_Observations_Advance.pdf) pg 50-51

<sup>40</sup> *Id.*

<sup>41</sup> Ahmed Naish, *54 Cases of Torture Filed Against Police*, MALDIVES INDEPENDENT, Aug. 1, 2015, available at <http://maldivesindependent.com/crime-2/54-cases-of-torture-filed-against-police-115980> [herein after *54 Cases of Torture*].

<sup>42</sup> *Human Rights Commission of the Maldives Submission to the Universal Periodic Review of the Maldives*, April – May 2015 (22<sup>nd</sup> session), Sept. 2014, available at [http://www.hrcm.org.mv/Publications/otherdocuments/UPR\\_submission\\_Sept\\_2014.pdf](http://www.hrcm.org.mv/Publications/otherdocuments/UPR_submission_Sept_2014.pdf), at p. 2, para 4

<sup>43</sup> *54 Cases of Torture*, see *supra* note

<sup>44</sup> *US Department of State*, see *supra* note

<sup>45</sup> JJ Robinson, *Slashed Journalist Claims Attack Was Targeted Assassination by Islamic Radicals*, MINIVAN NEWS, July 2, 2012, available at <http://minivannewsarchive.com/society/slashed-journalist-claims-attack-was-targeted-assassination-by-islamic-radicals-40078>.

<sup>46</sup> *Amnesty Report*, see *supra* note 13 at 242.

<sup>47</sup> Alan Feuer, *1000 Islands, 2 Worlds*, THE NEW YORK TIMES, Aug. 29, 2014, available at <http://www.nytimes.com/2014/08/31/travel/1000-islands-2-worlds.html#>.

<sup>48</sup> Ahmed Naish, *HRCM Claims to Have Received 500 Complaints of Human Rights Violations*, MINIVAN NEWS, Nov. 21, 2011, available at <http://minivannewsarchive.com/society/hrcm-claims-to-have-received-500-complaints-of-human-rights-violations-28459> [hereinafter *500 Complaints*].

majority of these cases only the women were convicted and flogged,<sup>49</sup> and Amnesty International reports that these convictions were based on confessions, rather than on evidence.<sup>50</sup> In many instances, consensual sexual acts between young adults have been punished by flogging and prison time while sexual abuse of children by influential religious leaders has gone unpunished.<sup>51</sup>

#### D. Censorship and Intimidation: Denial of Freedom of Expression

As a state party to the ICCPR, the Maldives has committed itself to ensuring a minimum standard of fundamental rights for all people in the Maldives. This includes the right to freedom of expression, which encompasses the freedom “to seek, receive and impart information and ideas of all kinds” through any chosen medium, such as spoken, in writing, or in art).<sup>52</sup> Freedom of expression is accompanied by the rights to freedom of assembly and freedom of association, which are crucial elements of democracy.<sup>53</sup> Despite undertaking to protect these rights, in reality the Maldivian government suppresses freedom of expression and freedom to hold opinions without interference,<sup>54</sup> as it silences dissent from the majority opinion through censorship and intimidation. Violent acts committed against journalists and bloggers are left unpunished, and restrictive legislation has been adopted and used to stifle opposition.

In 2011 and 2012, journalist Ismail Rasheed was attacked for advocating for a freer Maldives. In February 2013, Ibrahim Waheed, who worked for independent television station Raajje TV, was severely beaten while arsonists destroyed the station. Raajje TV managers received threats to their studio but their requests for additional protections from local police were ignored.<sup>55</sup> In August 2014, Ahmed Rilwan Abdulla, a well-known journalist with *Minivan News*, disappeared. He was last seen in the early hours of August 8 on the Malé-Hulhumalé ferry.<sup>56</sup> Demonstrations calling for his release were met with police violence and excessive force.<sup>57</sup> As mentioned earlier, he remains missing. More recently, in the events surrounding Yameen’s declaration of a state of emergency, state police raided TV stations and assaulted and arrested journalists and peaceful protestors.

Amnesty International expressed concern at the threat posed by the state of emergency, saying “[t]he Maldivian authorities have a disturbing track-record of suppressing[sic] freedom of expression and any form of opposition, which has intensified over the last two years,” and reminding the Maldivian authorities of the importance of respecting their obligations under international law throughout the period of emergency.<sup>58</sup>

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<sup>49</sup> *Amnesty Report*, see *supra* note 13.

<sup>50</sup> *Id.*, at 242.

<sup>51</sup> 500 Complaints, see *supra* note 48.

<sup>52</sup> ICCPR, *supra* note 24, at art. 19(2).

<sup>53</sup> *Id.*, at arts. 21 and 22.

<sup>54</sup> ICCPR, *supra* note 24, at art. 19(1).

<sup>55</sup> *Assault by Government Officials*, see *supra* note 17.

<sup>56</sup> *Amnesty Report*, see *supra* note 13 at 241-242.

<sup>57</sup> Shafaa Hameed, *Complaint Filed Over Pepper Spray Use, Obstruction of Find Moyameehaa Walk*, MALDIVES INDEPENDENT, Aug. 19, 2015, available at <http://maldivesindependent.com/society/complaint-filed-over-pepper-spray-use-obstruction-of-find-moyameehaa-walk-116573>.

<sup>58</sup> *Maldives: State of emergency an alarming development in continuing crackdown on human rights*, Press Release, AMNESTY INTERNATIONAL, Nov. 4, 2015, available at <http://www.amnestyusa.org/news/press-releases/maldives-state-of-emergency-an-alarming-development-in-continuing-crackdown-on-human-rights>.

In November, in light of the state of emergency, the Maldives Broadcasting Commission issued a warning to media outlets that it had the authority to “revoke the license and permit issued to a broadcaster if it finds that channel infringing on national security”<sup>59</sup> – vague language allowing the authorities to use broad discretion. During the state of emergency, state police raided the studios of Sangu TV station in Male, allegedly searching for a threatening video. The raid “turned the whole office upside down,” including removing all hard drives, breaking into the office safe, and ultimately bringing Sangu TV to a temporary but unjustified standstill.<sup>60</sup> That same week, another station – Raajje TV – suspended its political coverage after four journalists were detained.<sup>61</sup> Reporters Without Borders has downgraded the Maldives on their press freedom index due to the incredibly repressive actions taken by Yameen’s administration and his failure to protect journalistic freedom.<sup>62</sup> Evidently, Yameen’s crackdown on freedoms of expression, the press, and association succeeded in chilling speech the regime found unfavorable.

Restrictive laws, discussed in more detail in the following section, are increasingly being used to silence and censor free expression. One such law makes it illegal to exhibit behavior that might damage the reputation of the Maldives or hurt the country’s economy,<sup>63</sup> and was used to justify the detention of tourists in the Maldives that had hired a fishing vessel to go whale watching.<sup>64</sup> Furthermore, the Maldivian parliament is currently working toward adopting a bill that would criminalize speech that criticizes the government.<sup>65</sup>

#### E. Repressive Legislation and a Culture of Impunity

The rights to freedom of expression and to hold an opinion without interference are rapidly eroding in the Maldives, in particular where the expression or opinion is critical of the government or disagrees with the majority party’s views. The Maldivian parliament is controlled by Yameen’s party, which continues to be headed by former President Gayoom. It is clearly under Yameen’s control.

The parliament is reviewing a bill that would criminalize any behavior that may hurt the economy of the Maldives, including criticizing the Maldivian government or calling for a travel

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<sup>59</sup> Asima Nizar, *Maldives Warns Against Anti-Nationalistic Broadcast After Emergency*, HAVEERU ONLINE, Nov. 4, 2015, available at [http://www.haveeru.com.mv/maldives\\_broadcasting\\_commissi/63666](http://www.haveeru.com.mv/maldives_broadcasting_commissi/63666).

<sup>60</sup> *Maldives Police Raid TV Station Over ‘Threatening Video,’* BBC NEWS, Nov. 6, 2015, available at <http://www.bbc.com/news/world-asia-34744831>.

<sup>61</sup> Zaheena Rasheed, *Popular TV Station Suspends Coverage After Journalists’ Arrest*, MALDIVES INDEPENDENT, Nov. 6, 2015, available at <http://maldivesindependent.com/politics/popular-tv-station-suspends-coverage-after-journalists-arrest-119497>.

<sup>62</sup> Reporters Without Borders, 2015 World Freedom Index, available at <http://index.rsf.org/#!/index-details/MDV>.

<sup>63</sup> Mohamed Saif Fathih, *Maldives Army Stops Tourists Out ‘Whale-Watching’*, MALDIVES INDEPENDENT, Aug. 11, 2015, available at <http://maldivesindependent.com/society/maldives-army-stops-tourists-out-whale-watching-116323> [hereinafter *Whale-Watching*].

<sup>64</sup> Mohamed Saif Fathih, *Maldives Army Stops Tourists Out ‘Whale-Watching’*, MALDIVES INDEPENDENT, Aug. 11, 2015, available at <http://maldivesindependent.com/society/maldives-army-stops-tourists-out-whale-watching-116323> [hereinafter *Whale-Watching*].

<sup>65</sup> *Bill on Sanctions*, see *supra* note 8.

ban for human rights abusers.<sup>66</sup> The bill will have a considerable chilling effect on freedom of speech in the Maldives because of the vague language, as it will give authorities broad discretion.

Proponents of this bill openly call for the arrest of all of the ministers from the minority party, the MDP, on the grounds that they have made statements criticizing the president,<sup>67</sup> and international human rights lawyers working on behalf of former President Nasheed have already been declared enemies of the state.<sup>68</sup> If adopted, this bill would further restrict expression and silence dissent, alongside an existing law that deems illegal any behavior that could be interpreted as damaging to the reputation or economy of the Maldives.<sup>69</sup> Such language is unconstitutionally restrictive on speech and unreasonably vague. This vagueness creates a concerning lack of foreseeability – those governed by the law are left in the dark about what action is permitted and what action would be a punishable offense.

The violent attacks of vigilante gangs and police officers against reporters, politicians, activists, and students are ongoing and without redress. No police or military officials were brought to justice for beating and injuring dozens of members and leaders of the MDP in February 2012.<sup>70</sup> The MDP planned to protest in support of former President Nasheed and in response, under Yameen's declaration of a state of emergency, the regime suspended critical human rights protections, including freedom of assembly, right to privacy, and freedom from unreasonable search and seizure.<sup>71</sup> The police can act with impunity. For example, they refused to answer claims that they beat three journalists for attempting to report on an improvised explosive device found near the presidential palace.<sup>72</sup> National leaders have made it clear that dissent from the government's position will not be tolerated.

The freedom of the Maldivian government and its security forces to act with impunity is largely unchecked by the judiciary, which is heavily politicized and largely immune to accountability.<sup>73</sup> Despite being mandated to protect the rights of all citizens, Maldivian courts are often subject to private interference and swayed by the personal and political interests of the judges and the executive branch, leaving citizens without safeguard against their abusers.<sup>74</sup>

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<sup>66</sup> Ahmed Naish, *PPM MP Proposes Criminalising Calls for Sanctions, Tourism Boycott*, MALDIVES INDEPENDENT, Oct. 10, 2015, available at <http://maldivesindependent.com/politics/ppm-mp-proposes-criminalising-calls-for-sanctions-tourism-boycott-118132> [hereinafter *Criminalising Calls for Sanctions*].

<sup>67</sup> *Bill on Sanctions*, see *supra* note 8.

<sup>68</sup> *Criminalising Calls for Sanctions*, see *supra* note 66.

<sup>69</sup> Mohamed Saif Fathih, *Maldives Army Stops Tourists Out 'Whale-Watching'*, MALDIVES INDEPENDENT, Aug. 11, 2015, available at <http://maldivesindependent.com/society/maldives-army-stops-tourists-out-whale-watching-116323> [hereinafter *Whale-Watching*].

<sup>70</sup> *Amnesty Report*, see *supra* note 13 at 241-242.

<sup>71</sup> Ali Naafiz, *Maldives Declares Month-Long Emergency After Boat Blast*, HAVEERU, Nov. 4, 2015, available at <http://www.haveeru.com.mv/news/63653>.

<sup>72</sup> Mohamed Saif Fathih, *Police Accused of Beating Three Raajje TV Journalists*, MALDIVES INDEPENDENT, Nov. 3, 2015, available at <http://maldivesindependent.com/politics/police-accused-of-beating-three-raajje-tv-journalists-119314>.

<sup>73</sup> Gabriela Knaul, *Report of the Special Rapporteur on the Independence of Judges and Lawyers; Mission to the Maldives*, Human Rights Council, May 21, 2013.

<sup>74</sup> *Id.*

### **III. POLICY BASIS FOR SANCTIONS**

Sanctions function as a means to change the behavior of the target state, and they are most effective when they garner multilateral support.<sup>75</sup> The use of sanctions to generate a change in objectionable behavior abroad, to punish those engaged in such behavior, and to deter its repetition is well established.<sup>76</sup> Sanctions are administered by the US government as a tool to deal with threats to the national security, foreign policy, or economy. The use of sanctions as a foreign policy tool dates as far back as the 1800s, continued through World War II, and remains a key instrument in US foreign policy. The reasons for applying sanctions can be grouped into broad foreign policy categories, which include the protection of human rights.<sup>77</sup> Currently, there are 20 country-specific sanctions programs in force through the Office of Foreign Assets Control (OFAC) in the US Department of the Treasury.<sup>78</sup> The goal behind these programs is to hold people around the world accountable for a broad variety of activities and abuse that run contrary to US foreign policy.

Targeted sanctions focus on certain individuals rather than sanctioning the entire country for the wrongs committed by the elite or ruling majority, and they often take the form of travel bans and asset freezes, as illustrated in the cases of Belarus, Zimbabwe, and Burma, all discussed below. In the Maldives, over one-third of the gross domestic product is derived from the tourism industry,<sup>79</sup> thus the first priority should be to impose sanctions targeted specifically at senior officials and their allies implicated in major human rights abuses.

### **IV. EXECUTIVE ORDERS FOR ASSETS FREEZES**

The US government has several non-military options for both addressing and dealing with an oppressive regime. The President of the United States may issue financial sanctions against individuals and entities of another state in a number of situations, including when democratic processes or institutions are being undermined and human rights abuses are being committed in a given state. This was the precise basis for the financial sanctions that blocked the US property and property interests of persons responsible for such abuses in Belarus, Zimbabwe, and Burma.

These three situations are analogous to the current state of affairs in the Maldives, as illustrated below. The Maldives is thus eligible and a prime candidate, based on these precedents, for an Executive Order that would implement targeted financial sanctions in the form of blocking the US property and property interests of those persons responsible for the ongoing attacks on

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<sup>75</sup> Raymond Tanter & Meghan O’Sullivan, *Sanctions and U.S. Foreign Policy*, The Washington Institute, Mar. 13, 2001 available at <http://www.washingtoninstitute.org/policy-analysis/view/sanctions-and-u.s.-foreign-policy>.

<sup>76</sup> Dianne E. Rennack & Robert D. Shuey, *Economic Sanctions to Achieve U.S. Foreign Policy Goals: Discussion and Guide to Current Law*, CRS Report for Congress, Oct. 20, 1997 available at <http://www.fas.org/man/crs/crs-sanction.htm>.

<sup>77</sup> *Id.*

<sup>78</sup> Balkans-Related, Belarus, Burma, Central African Republic, Cote d’Ivoire, Cuba, Democratic Republic of the Congo-Related, Iran, Iraq-Related, Lebanon-Related, Former Liberian Regime of Charles Taylor, Libya, North Korea, Somalia, Sudan, South Sudan-Related, Syria, Ukraine/Russia-Related, Yemen, and Zimbabwe.

<sup>79</sup> World Factbook, Maldives, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/mv.html>.

democracy and human rights in the Maldives, including government officials and those supporting their activities.

### A. Purpose and Implementation

The blocking of US-based property and property interests of persons from certain countries (commonly referred to as “asset freezes”) are conducted by means of an Executive Order of the President, through the authority granted to him by the International Emergency Economic Powers Act (IEEPA)<sup>80</sup> and the National Emergencies Act (NEA).<sup>81</sup> The intended effect of these asset freezes is to prevent the foreign nationals in question from being allowed to hold, transfer, withdraw, or in any other way deal with or enjoy any rights regarding their US-based property and interests in property.<sup>82</sup> This, in turn, applies pressure on the governments and individuals in question to discontinue their harmful acts and policies that have led to the sanctions, namely the undermining of democracy and continued violations of human rights.

Under IEEPA, the President of the United States has the authority to issue an Executive Order to impose sanctions against a country, and certain persons therein, if that government’s actions or policies constitute an “unusual and extraordinary threat . . . to the national security, foreign policy, or economy of the United States,” and that threat has its source in whole or substantial part outside the US.<sup>83</sup> Once the President has declared a national emergency regarding the unusual and extraordinary threat through an Executive Order, the President can then order certain sanctions, including the blocking of US-based property and interests in property of a country and its nationals.<sup>84</sup> This action is generally limited to nationals responsible for the commission of acts and abuses related to the grounds for the declaration of emergency, such as human rights abuses related to political repression, as detailed in the Executive Order.<sup>85</sup> Persons who will be subject to sanctions can be named in an annex or remain as yet unnamed persons who will be identified in the future and then subjected to sanctions under the Executive Order. The Secretary of the Treasury identifies such persons and, in consultation with the Secretary of State, determines if they are responsible for abuses detailed in the Order, and thus whether they are subject to the Order. This occurs in accordance with the President’s delegation of implementing authority to OFAC.<sup>86</sup>

The application of financial sanctions within the purview of IEEPA against the Maldives would require a declaration directly from President Obama by Executive Order. This declaration is appropriate given that the situation in the Maldives is similar to the situations in other countries where IEEPA has been invoked. The application of IEEPA financial sanctions against the

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<sup>80</sup> International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1707.

<sup>81</sup> National Emergencies Act, 50 U.S.C. §§ 1621, 1622.

<sup>82</sup> International Emergency Economic Powers Act, 50 U.S.C. § 1702 (a) (1) (B).

<sup>83</sup> *Id.*, at § 1701(a).

<sup>84</sup> *Id.*, at § 1702 (a) (1) (B).

<sup>85</sup> See e.g., Exec. Order 13,405, 31 C.F.R. § 548 (2007) at § 548.201 (2) (i) & (ii) (the Executive Order Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus, setting out the order’s applicability to both persons named in the annex and those determined to be responsible for, or otherwise related to, “actions or policies that undermine democratic processes or institutions,” or “human rights abuses related to political repression in Belarus.”).

<sup>86</sup> Delegation of authority is done via the Executive Order, pursuant to the Presidents powers under 50 U.S.C. §§ 1701-1707 and in conformity with 50 U.S.C. §1641.

Maldives would be based on the ongoing human rights violations and severe repression of the political opposition, which together constitute the undermining of democratic processes or institutions.

## B. Relevant Examples

### 1. *Executive Order 13405 – Blocking Property of Certain Persons Undermining Democratic Processes or institutions in Belarus*<sup>87</sup>

The 2006 elections in Belarus were reported as being neither free nor fair.<sup>88</sup> President Alexander Lukashenka had gained an increasingly authoritarian grip over the country since coming to power in 1994. In 1996, Lukashenka amended the constitution through non-democratic means to strengthen the presidency and further expand his power. Lukashenka implemented these unlawful changes despite intense democratic opposition,<sup>89</sup> and continued to rule over the country with little regard for the lawfulness of his actions. Arbitrary arrests, detentions, and violent attacks against those peacefully protesting Lukashenka’s rule became commonplace,<sup>90</sup> as Lukashenka’s government sought to intimidate the opposition and their supporters.<sup>91</sup>

In response, then-President George W. Bush issued Executive Order 13405 declaring a national emergency to deal with the extraordinary threat to US national security and foreign policy, created by:

“[T]he actions and policies of certain members of the government of Belarus and other persons to undermine Belarus’ democratic processes or institutions, manifested most recently in the fundamentally undemocratic March 2006 elections, to commit human rights abuses related to political repression, including detentions and disappearances, and to engage in public corruption, including by diverting or misusing Belarusian public assets or by misusing public authority.”

This Executive Order allowed the enactment of financial sanctions in the form of “freezing” the US property and property interests of any person listed in the annex to the Order, which included Lukashenka and other high level members of the administration. Additional persons could become subject to the sanctions if they were deemed responsible for, or had otherwise participated in “actions or policies to undermine democratic processes or institutions in Belarus,” or “human rights abuses related to political repression.” Persons listed in the annex included Alexander Lukashenka, the Deputy Head of the Presidential Administration, the Minister of Justice, the Chairman of the Belarusian KGB, and the President’s National Security Advisor.

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<sup>87</sup> 31 C.F.R. § 548 (2007).

<sup>88</sup> *Republic of Belarus Presidential Election 19 March 2006: OSCE/ODIHR Election Observation Mission Report* 1, 13, 15, OSCE & Office for Democratic Institutions and Human Rights, Jun. 7, 2006 available at <http://www.osce.org/odihr/elections/belarus/19395?download=true>.

<sup>89</sup> *Belarus 1996*, Constitution Writing & Conflict Resolution, available at <https://www.princeton.edu/~pcwcr/reports/belarus1996.html>.

<sup>90</sup> *Republic of Belarus (1999 Report)*, Human Rights Watch available at <http://www.hrw.org/reports/1999/belarus/Belrus99-04.htm> [hereinafter *Republic of Belarus*].

<sup>91</sup> *Id.*

2. *Executive Order 13448 – Blocking Property and Prohibiting Certain Transactions Related to Burma*<sup>92</sup>

Burma's already poor human rights record worsened amid the Saffron Revolution in 2007. The Burmese government oppressed its citizens, enforcing a crackdown on pro-democracy protests and further restricting rights to freedom of speech, freedom of the press, freedom of assembly, and freedom of association, as well by placing limitations on human rights groups.<sup>93</sup> In addition, the government arbitrarily detained individuals in “harsh and life-threatening conditions,” often *incommunicado*, and carried out enforced disappearances and extrajudicial killings, including custodial deaths and the killing of 30 pro-democracy protestors.<sup>94</sup>

Following the 2007 pro-democracy protests and the Burmese government’s repressive action, President Bush issued an Executive Order due to “the Government of Burma’s continued repression of the democratic opposition in Burma, manifested most recently in the violent response to peaceful demonstrations, [and] the commission of human rights abuses related to political repression . . . .” A national emergency had already been declared in previous Executive Orders relating to Burma<sup>95</sup> and it was not necessary to reiterate such a declaration. Therefore, President Bush only needed to modify the existing emergency before ordering the asset freezes.

Under the new Executive Order, any person responsible for, or having participated in “human rights abuses related to political repression in Burma” would be subject to asset freezes in the US. The mechanisms for identifying the subject of the freezes and implementing such measures were the same as those employed in the case of Belarus.<sup>96</sup>

3. *Executive Order 13288 – Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe*<sup>97</sup>

In Zimbabwe, President Robert Mugabe’s reelection in 2002 was neither free nor fair, and was secured by a campaign of political violence.<sup>98</sup> The Zimbabwean government used intimidation and violence to maintain political power, largely by attacking opposition supporters and civil society activists, and by having security forces carry out extrajudicial killings.<sup>99</sup> There were also

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<sup>92</sup> Exec. Order No. 13,448, 31 C.F.R. 537 (2008).

<sup>93</sup> *Burma 2007*, U.S. Department of State: Bureau of Democracy, Human Rights, and Labor, Mar. 11, 2008 available at <http://www.state.gov/j/drl/rls/hrpt/2007/100515.htm>.

<sup>94</sup> *Id.*

<sup>95</sup> Exec. Order No. 13,047, 3 C.F.R. 202 (1998).

<sup>96</sup> Exec. Order No. 13,405 Annex, Individuals to whom the Executive Order applied include The President of Belarus Alyaksandr Hryhoryavich Lukashenka, The Deputy Head of the Presidential Administration Natallia Uladzirirauna Piatkevich, The Minister of Justice Viktar Hryhoryavich Halavanau, The Head of the Belarusian State Television and Radio Company Aliaksandr Leanidovich Zimousky, Chairman of the Belarusian KGB Stiapan Mikalayevich Sheiman, State Secretary of the Security Council Viktar Uladzimiravich Paulichenka, Commander of the Special Response Group Dzmitry Valeryevich Paulichenka, Minister of Internal Affairs Uladzimir Ulanzimiravich Naumau, Head of the Central Commission for Elections and National Referendums (CEC) Lidziya Mihaulauna Yarmoshina and The President’s National Security Advisor Viktar Aliaksandravich Lukashenka

<sup>97</sup> Exec. Order No. 13,288, 31 C.F.R. 541 (2004).

<sup>98</sup> *Zimbabwe 2003*, U.S. Department of State: Bureau of Democracy, Human Rights, and Labor, Feb. 25, 2004 available at <http://www.state.gov/j/drl/rls/hrpt/2003/27760.htm> [hereinafter *Zimbabwe 2003*].

<sup>99</sup> *Id.*

reports of politically motivated disappearances, arbitrary arrests, life-threatening prison conditions, and restrictions on freedom of speech and freedom of the press.<sup>100</sup> The Zimbabwean government ensured its officials enjoyed domestic impunity for such abuses<sup>101</sup> while simultaneously using domestic legislation to stifle opposition voices.<sup>102</sup>

In 2003, the US responded by administering asset freezes against members of Mugabe's Zimbabwe African National Union – Patriotic Front (ZANU-PF). The basis for the declaration of a national emergency constituting an unusual and extraordinary threat to US foreign policy was, as in Belarus, the undermining of democratic processes or institutions. In the case of Zimbabwe, the actions and policies undermining democracy were linked to "the deliberate breakdown in the rule of law in Zimbabwe, to politically motivated violence and intimidation . . . and to political and economic instability in the southern African region." Just as in the cases of Belarus and Burma, these sanctions took the form of blocking the US-based property and property interests of certain nationals of the country in question.

More than 77 members of the Zimbabwean government were included in the list of individuals annexed to the Executive Order, with the possibility for others as yet unnamed to be added if they fit the specific criteria, at the determination of the Secretary of the Treasury in consultation with the Secretary of State.

### C. Analogizing of Examples to The Maldives

#### 1. *The Maldives and Belarus*

Yameen only came to power two years ago, but under his administration human rights and civil society in the Maldives have degraded significantly. Lukashenka came to power in 1994 and has remained there ever since, despite international condemnation of his wholly unfair elections.<sup>103</sup> The events in Belarus leading up to the imposition of Executive Order 13505 are almost identical to the Maldives, as illustrated in the table below, with the caveat that the Maldivian people have yet to be subjected to as long a rule of an autocratic despot as the people of Belarus.

<b>Analogizing the Maldives and Belarus</b>	
<b>Arbitrary Detention</b>	
<i>Belarus, circa 2006</i>	The government carried out arbitrary and violent arrests of demonstrators and opposition figures as a means of intimidation.
<i>Maldives, today</i>	Arbitrary arrests and detentions are routinely carried out by government agencies and affiliated forces; journalists, human rights defenders, and those voicing dissent particularly at risk.
<b>Enforced Disappearances</b>	
<i>Belarus, circa 2006</i>	Two politicians, a businessman, and a cameraman were disappeared in 1999-2000 with widespread suspicion that Lukashenka's security forces were

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> David Stout, *Bush Orders Sanctions Imposed Against Leaders of Zimbabwe*, INT'L NEW YORK TIMES, Mar. 8, 2003 available at <http://www.nytimes.com/2003/03/08/world/bush-orders-sanctions-imposed-against-leaders-of-zimbabwe.html>.

<sup>103</sup> 31 C.F.R. § 548 (US condemnation of the elections in Belarus in 2006).

	connected to the crimes. None of the men have been found.
<i>Maldives, today</i>	The reporter Ahmed Rilwan Abdulla was disappeared from outside his apartment on August 8, 2014. Rilwan received death threats in response to his writings on freedom of religion and freedom of expression, as well as his advocacy for religious tolerance. He has not been seen since.
<b><i>Legislative and Electoral Repression: Undermining Democracy</i></b>	
<i>Belarus, circa 2006</i>	The elections were neither free nor fair, and Lukashenka had previously undemocratically amended the constitution to strengthen the presidency and further expand his own power.
<i>Maldives, today</i>	A partisan Supreme Court nullified election results that disfavored Yameen, and called for another election, in which he won by a very narrow margin. Yameen then had former President Nasheed – the opposition candidate – tried based on politically-motivated and unsubstantiated terrorism charges. After a trial lasting under three weeks, former President Nasheed was sentenced to 13 years in prison. Yameen has sacked numerous government officials who have disagreed with him, and he has used his party’s control of the Maldivian parliament to introduce and adopt a series of repressive laws in violation of the constitution and international law.

## 2. *The Maldives and Burma*

The population of Burma is 135 times that of the Maldives. On a proportional basis, the abuses in the Maldives today are substantially worse than those committed in Burma in 2007 that were the basis of President Bush’s executive order.

<b>Analogizing the Maldives and Burma/Myanmar</b>	
<b><i>Arbitrary Detention and Enforced Disappearances</i></b>	
<i>Burma, circa 2007</i>	The government abused prisoners and detainees, held persons in harsh and life-threatening conditions, routinely used incommunicado detention, and imprisoned citizens arbitrarily for political motives.
<i>Maldives, today</i>	Yameen’s regime is characterized by arbitrary detention, prosecution, and arrest. There are 1,700 political prisoners, activists, politicians, and students in the country who have been facing charges, arrested, or detained for exercising the right to freedom of expression.
<b><i>Political Repression and Censorship</i></b>	
<i>Burma, circa 2007</i>	The government cracked down on pro-democracy protesters. Freedom of speech, freedom of the press, freedom of assembly, and freedom of association were all curtailed.
<i>Maldives, today</i>	Nationwide and local protests in the Maldives are routinely suppressed by police, who use excessive force and arbitrary arrests to stamp out assembly rights, human rights groups, and repress political opposition. Political repression in the Maldives is increasing, with a state of emergency declared by Yameen allowing him to restrict the press, human rights defenders, and curtail freedom of speech, assembly, and association. Laws adopted in 2015 impose severe criminal sanctions for voicing dissent or any criticism of Yameen’s administration.

### 3. *The Maldives and Zimbabwe*

As was the case in Zimbabwe in 2003, the Maldives today is controlled by politically-motivated detention and government-sponsored intimidation. And just as Mugabe ushered in legislation to stifle opposition, the Maldivian government under Yameen has amended existing laws and adopted new ones to silence its opposition. Although Mugabe has ruled Zimbabwe continuously for more than 30 years and Yameen was elected in 2013, the Maldives has been ruled by one family for 32 out of the past 37 years. Yameen's half-brother Gayoom was in power for 30 years and he remains the leader of the ruling political party, while his daughter, Yameen's niece, is the Foreign Minister. Thus, the longstanding rule of Yameen's family in the Maldives is similar to that of Mugabe in Zimbabwe.

<b>Analogizing the Maldives and Zimbabwe</b>	
<b>Arbitrary Detention and Enforced Disappearances</b>	
<i>Zimbabwe, circa 2003</i>	At the government's orders, Zimbabwean security forces carried out politically-motivated disappearances, arbitrary arrests, and arbitrary detentions in poor prison conditions. And they committed extrajudicial killings.
<i>Maldives, today</i>	Yameen's regime is characterized by arbitrary detention, prosecution, and arrest. There are 1,700 political prisoners, activists, politicians, and students in the country who have been facing charges, arrested, or detained for exercising their freedom of expression, but the numbers may in fact be much higher due to harsh penalties for reporting negatively on government activity in the country and suppression of independent media and the attacks on investigative journalists. While the Government has not carried out widespread extrajudicial killings, the culture of fear and impunity is very similar to situation in Zimbabwe back in 2003.
<b>Political Repression</b>	
<i>Zimbabwe, circa 2003</i>	The Government restricted freedom of speech and the press, and used domestic legislation to stifle opposition voices, all while ensuring its own domestic impunity for its abuses, which included politically motivated violence.
<i>Maldives, today</i>	Nationwide and local protests in the Maldives are routinely suppressed by police who use excessive force and arbitrary arrests to stamp out of assembly rights, human rights groups, and repress political opposition. Political repression in the Maldives is increasing, with a state of emergency declared by Yameen allowing him to restrict the press, human rights defenders, and curtail freedom of speech, assembly, and association.
<b>Censorship</b>	
<i>Zimbabwe, circa 2003</i>	Legislation was passed to silence the opposition and their supporters.
<i>Maldives, today</i>	Laws being adopted in 2015-2016 will impose severe criminal sanctions for voicing dissent or criticism of Yameen's administration and for urging any kind of sanction be imposed against anyone in the country.

### 4. *Summary of Analogies*

While there are differences in the specific details of the situation facing Maldivians as compared with the context of the people in Burma, Belarus, and Zimbabwe where Executive Orders were issued, the severity of the repression in the Maldives, given its small population, is of great concern. The human rights abuses committed in the Maldives are sufficiently severe and the resulting US condemnations have been correspondingly strong that the next natural step is to impose sanctions.

The situation in the Maldives is only getting worse. There is no indication that Yameen's administration will cease or in any way scale back its aggravated and systematic use of intimidation, harassment, arbitrary detention, and political repression. The current abuses carried out in the Maldives under Yameen's repressive regime require urgent international intervention and the people of the Maldives need international support. Imposing targeted sanctions on senior Maldivian government officials and their allies responsible for the conduct during the prior election, gross human rights violations, and the deterioration of democratic institutions would have a dramatic impact. This is because sanctions would in their own right penalize serious abusers, encourage lower-level government officials to rethink their approach, and would encourage other governments to follow suit.

#### **D. Blueprint of Executive Order for the Maldives**

President Yameen and the Maldivian government constitute an extraordinary threat to US national security and foreign policy for three reasons. First, Yameen's increasingly repressive rule, his decision to turn a blind eye to extremist groups, and his lack of respect for the rule of law, combined with the pervasive human rights abuses inflicted on ordinary Maldivians, compel the US to act. Second, the actions of senior Maldivian government officials and their allies and policies of the Yameen administration severely undermine the Maldives' democratic processes and institutions and include massive human rights abuses such as torture, cruel and inhumane treatment, arbitrary detention, enforced disappearances and politically-motivated violence and intimidation. These abuses have grown dramatically in the last year. And finally, the Maldives is located in a highly strategic location in the middle of the East-West trade route and has a strong relationship with China, whose investment has replaced that of India and ensures that the Maldives will be indebted to China for the foreseeable future. Coupled with the increasing instability in the country, as exemplified by the recent state of emergency, these factors constitute a threat to critical US interests in the Indian Ocean and those of its strong ally India.

See *Appendix I* for a model Executive Order for the Maldives.

### **V. PRESIDENTIAL PROCLAMATIONS RESTRICTING ENTRY INTO THE UNITED STATES**

Any Maldivian officials or their allies who are the subject of financial sanctions due to their involvement in human rights abuses and political repression should also be subject to travel sanctions that restrict their entry into the US. The combination of both these types of sanctions will increase pressure on the Maldivian government and its officials to reform their practices and correct their human rights record, as well as enhance the efficacy of the financial measures taken to prevent the US from being a safe haven for, or in otherwise reward, individuals who violate

human rights. In two of the illustrative cases of Belarus and Zimbabwe, travel bans and financial sanctions were imposed in combination. In the case of Burma, visa bans had already been imposed back in 1996 and they were removed in 2013.

### A. Purpose and Implementation

Under Section 212 (f) of the Immigration and Nationality Act, the President may proclaim the suspension of entry of an alien or class of aliens as immigrants or nonimmigrants or impose upon them any restrictions he deems appropriate if their entry into the US would be detrimental to US interests.<sup>104</sup> The President can bar entry on these grounds through issuance of a Presidential Proclamation. These are often country-specific and issued at the same time as an Executive Order imposing asset freezes; it is done this way so as to levy the maximum amount of pressure on a country and certain persons therein to change their policies and actions.

### B. Relevant Examples

Belarus and Zimbabwe are also subject to active Presidential Proclamations that prevent certain government officials and others affiliated with their abuses from obtaining a US visa, thus denying them entry to the US:

#### a. Belarus

Presidential Proclamation 8015, *Suspension of Entry as Immigrants and Nonimmigrants of Persons Responsible for Policies or Actions That Threaten the Transition to Democracy in Belarus*,<sup>105</sup> issued on May 12, 2006, suspended the entry of Lukashenka and other persons on a number of grounds related to the political repression and undermining of democracy in Belarus, such as suppressing human rights and democracy, and detaining peaceful protestors. This included persons participating in or benefiting from human rights abuses “that undermine[d] or injure[d] democratic institutions.”<sup>106</sup> It also suspended the entry of the spouses of such persons, as well as the entry of anyone who benefited from such abuses via their business dealings with Belarusian government officials.<sup>107</sup>

#### b. Zimbabwe

Presidential Proclamation 7524, *Suspension of Entry as Immigrants and Nonimmigrants of Persons Responsible for Actions That Threaten Zimbabwe’s Democratic Institutions and Transition to a Multi-Party Democracy*,<sup>108</sup> issued on February 26, 2002, suspended the entry of Mugabe and senior members of the ZANU-PF government into the US. The suspension was motivated by “the political and humanitarian crisis in Zimbabwe and the continued failure of President Robert Mugabe, Zimbabwean government officials, and others to support the rule of

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<sup>104</sup> 8 U.S.C. § 1182 (f).

<sup>105</sup> Proclamation No. 8015, 71 Fed. Reg. 28,541 (May 16, 2006).

<sup>106</sup> *Id.*, at § 1 (a).

<sup>107</sup> *Id.*, at § 1 (b).

<sup>108</sup> Proclamation No. 7524, 67 Fed. Reg. 8,857 (Feb. 26, 2002).

law.”<sup>109</sup> The suspension of entry, like in the case of Belarus, also extended to the spouses of the individuals listed above, and to those persons who benefited from such abuses via their business.

### C. Based on the General Human Rights Proclamation

Outside the possibility of a country-specific Presidential Proclamation, there is also an existing proclamation that would allow for the targeting of certain Maldivian officials, without a new proclamation being issued. In 2011, President Obama issued Presidential Proclamation 8697,<sup>110</sup> also referred to as the “Human Rights Proclamation,”<sup>111</sup> suspending the entry of serious human rights violators into the US as both immigrants and non-immigrants. The express aim of this proclamation was to:

- (1) Close the gaps created because of the fact that only those who committed acts falling within the purview of the Immigration and Nationality Act were deemed inadmissible, but other serious human rights abusers by bringing participants in previously excluded human rights violations, such as prolonged arbitrary detention and forced disappearances, within the remit of this proclamation and thus making them susceptible to travel restrictions on the basis of such abuses.
- (2) Deter potential serious human rights violations and shame those who have already committed such abuses.<sup>112</sup>

Under this proclamation, the President designates authority to the Secretary of State, who may also designate this authority, to determine which persons should be denied entry to the US pursuant to the proclamation.<sup>113</sup> For a designated person to then be allowed into the country, the Secretary of State would have to decide that their particular entry would be beneficial to the US, and must consult the Secretary of Homeland Security:<sup>114</sup>

The United States’ enduring commitment to respect for human rights and humanitarian law requires that its Government be able to *ensure that the United States does not become a safe haven for serious violators of human rights* and humanitarian law and those who engage in other related abuses. Universal respect for human rights and humanitarian law and the prevention of atrocities internationally promotes U.S. values and fundamental U.S. interests in helping secure peace, deter aggression, promote the rule of law, combat crime and corruption, strengthen democracies, and prevent humanitarian crises around the globe. I therefore have determined that *it is in the interests of the United States to take action to restrict the*

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<sup>109</sup> *Id.*

<sup>110</sup> Proclamation No. 8697, 76 Fed. Reg. 49,275 (Aug. 9, 2011) (Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Participate in Serious Human Rights Humanitarian Law Violations and Other Abuses).

<sup>111</sup> *Presidential Proclamations*, U.S. Department of State, Bureau of Consular Affairs, available at <http://travel.state.gov/content/visas/english/fees/presidential-proclamations.html>.

<sup>112</sup> *Fact Sheet: President Obama Directs New Steps to Prevent Mass Atrocities and Impose Consequences on Serious Human Rights Violators*, The White House, Aug. 4, 2011 available at <http://www.whitehouse.gov/the-press-office/2011/08/04/fact-sheet-president-obama-directs-new-steps-prevent-mass-atrocities-and>.

<sup>113</sup> 76 Fed. Reg. 49,275 at § 3.

<sup>114</sup> *Id.*, at § 5.

*international travel and to suspend the entry into the United States, as immigrants or nonimmigrants, of certain persons [who have engaged in the acts listed herein].*<sup>115</sup>

Persons whose entry is suspended via the above proclamation include “any alien who planned, ordered, assisted, aided and abetted, committed or otherwise participated in, including through command responsibility, widespread or systematic violence against any civilian population based in whole or in part on . . . political opinion,” and “any alien who planned, ordered, assisted, aided and abetted, committed or otherwise participated in, including through command responsibility . . . serious violations of human rights.”<sup>116</sup>

#### **D. Analogizing of Examples to The Maldives**

The Presidential Proclamations issued for Belarus and Zimbabwe highlights the need for both assets freezes and travel restrictions on senior Maldivian government officials and their allies who are committing serious human rights abuses and repressing democracy. Simultaneously enforcing these two types of sanctions will put greater pressure on Yameen and his associates both as a punitive measure and as a deterrent from further action.

As demonstrated in the above Executive Orders, the current situation in the Maldives is comparable to those in existence in Belarus and Zimbabwe when the two nations were subjected to US financial and travel sanctions. It is worth recalling that the travel restrictions placed on Zimbabwean officials in 2002 came prior to the much-criticized elections of that year. This lends support to the call for travel restrictions to be placed on Maldivian officials immediately, as a deterrent, rather than waiting for the already critical situation in the Maldives to further deteriorate before taking action. Moreover, given the recent efforts under Proclamation 8697 to catch all serious human rights violators within US travel restrictions, it would be a direct contradiction of US policy to continue to allow senior Maldivian government officials implicated in serious human rights abuses unfettered entry into the US. The specific mention of “prolonged arbitrary detention and forced disappearances” as a serious human rights violation that the proclamation intends to target only further necessitates the suspension of the entry of Maldivian officials if US policy is to be coherently upheld and enforced.

#### **E. Blueprint for Presidential Proclamation for The Maldives**

In light of the clear analogies between the current situation in the Maldives and those that existed in Belarus and Zimbabwe, allowing senior Maldivian officials to enter the US would be detrimental to our national interests and our mission to promote and protect human rights around the world.

See *Appendix II* for a model Presidential Proclamation for the Maldives. It would be ideal to have a specific Proclamation focused on the Maldives, but invoking the Human Rights Proclamation would allow for the same travel bans to be imposed.

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<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

## VI. US POLICY ON HUMAN RIGHTS-BASED FINANCIAL SANCTIONS

In his 2015 National Security Strategy, President Obama said that the US would “advance respect for universal values at home and around the world by: . . . [l]eading the international community to prevent and respond to human rights abuses and mass atrocities . . .”<sup>117</sup> Targeted US sanctions focused on major human rights abusers are one of the few serious tools available to punish perpetrators and deter them and others similarly situated from engaging in such detrimental conduct. Even when used exclusively as a name-and-shame tool, where an individual doesn't have assets in the US or US dollars, targeted sanctions remain a very powerful weapon and provides a measure of redress to the victims who would otherwise suffer in silence, without protection of law or recognition of their suffering.

US sanctions programs are in place for the most well-known authoritarian and human rights abusing governments in the world today, including Iran,<sup>118</sup> North Korea,<sup>119</sup> the Russian Federation,<sup>120</sup> Syria,<sup>121</sup> Sudan,<sup>122</sup> and Zimbabwe,<sup>123</sup> among others. That said, only a smaller number of those programs focus explicitly on listing perpetrators of human rights abuses and naming individuals interfering with the advancement of democracy.

There are 29 current OFAC sanctions programs<sup>124</sup> comprised of over 90 Executive Orders. Yet just 13 of those Executive Orders allow for freezing the assets of individuals based on the role they played in perpetrating human rights abuses.<sup>125</sup> Belarus, Burma, Central African Republic, Iran, Libya, Syria, South Sudan, Sudan, Venezuela, and Zimbabwe each had sanctions imposed by means of an Executive Order issued by the President, which targeted individuals responsible for human rights abuses.<sup>126</sup> Despite these efforts, there remains a large gap between the aspirations articulated in the 2015 National Security Strategy<sup>127</sup> and the reality around the world where perpetrators are mostly oblivious to the very existence of US sanctions. Financial sanctions are merely one of the many tools that the US has at its disposal, but the tools employed thus far in response to the crisis in the Maldives have been ignored by Yameen and his regime.

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<sup>117</sup> *Fact Sheet: The 2015 National Security Strategy*, The White House, Feb. 6, 2015 [hereinafter *The White House*].

<sup>118</sup> E.g., Exec. Order No. 12,170, 44 Fed. Reg. 65729 (1979); Exec. Order No. 13,553, 75 Fed. Reg. 60567 (2010); Exec. Order No. 13,606, 77 Fed. Reg. 24571 (2012).

<sup>119</sup> E.g., Exec. Order No. 13,551, 75 Fed. Reg. 53837 (2010).

<sup>120</sup> E.g., Exec. Order No. 13,685, 79 Fed. Reg. 77357 (2014).

<sup>121</sup> E.g., Exec. Order No. 13,338, 69 Fed. Reg. 26,751 (2004); Exec. Order No. 13,572, 76 Fed. Reg. 24787 (2011); Exec. Order No. 13,606, 77 Fed. Reg. 24571 (2012).

<sup>122</sup> E.g., Exec. Order. 13,067, 62 Fed. Reg. 59989 (1997).

<sup>123</sup> E.g., 31 C.F.R. 541.

<sup>124</sup> *Sanctions Programs and Country Information*, U.S. Department of the Treasury, Feb. 24, 2015, available at <http://www.treasury.gov/resource-center/sanctions/Programs/Programs.aspx>.

<sup>125</sup> 77 Fed. Reg. 24571 (pertaining to Iran and Syria); 76 Fed. Reg. 24787 (pertaining to Syria); Exec. Order No. 13,664 79 Fed. Reg. 19283 (2014) (pertaining to South Sudan); Exec. Order No. 13,469, 73 Fed. Reg. 43841 (2008) (pertaining to Zimbabwe); 62 Fed. Reg. 59989 (pertaining to Sudan); Exec. Order No. 13,412, 71 Fed. Reg. 61369 (2006) (pertaining to Sudan); Exec. Order No. 13,566, 76 Fed. Reg. 11315 (2011) (pertaining to Libya); Exec. Order No. 13,553, 75 Fed. Reg. 60567 (2010) (pertaining to Iran); Exec. Order No. 13,667, 79 Fed. Reg. 28387 (2014) (pertaining to Central African Republic); Exec. Order No. 13,619, 77 Fed. Reg. 41243 (2012) (pertaining to Burma); Exec. Order No. 13,448, 72 Fed. Reg. 60223 (2007) (pertaining to Burma); 31 C.F.R. § 548 (pertaining to Belarus); Exec. Order No. 13, 692, 80 Fed Reg. 12747 (2015) (pertaining to Venezuela).

<sup>126</sup> *Id.*

<sup>127</sup> *The White House*, *supra* note 117.

If the US backs its rhetoric with action by imposing targeted sanctions and asset freezes, it will send a strong and enduring signal to the rest of the world, especially to would-be human rights abusers.

Although the US government advocates for freedom, democracy, and human rights globally, in practice there is a much narrower number of countries in which the broadest range of tools, including sanctions, are deployed. In the same way that the US government engages with foreign governments and intergovernmental bodies on a wide range of issues, it needs to find a clear, coherent, and consistent way to engage with all governments on human rights concerns.

There are many states with poor track records on human rights where targeted financial sanctions and travel bans are not a regular part of U.S. policy. These include such countries as Azerbaijan,<sup>128</sup> Bahrain,<sup>129</sup> China,<sup>130</sup> Equatorial Guinea,<sup>131</sup> Kazakhstan,<sup>132</sup> Saudi Arabia,<sup>133</sup> Turkmenistan,<sup>134</sup> Uzbekistan,<sup>135</sup> and Vietnam,<sup>136</sup> among others. These are countries where there appears to be a conflict between concerns of the United States about human rights and other competing interests. The Maldives does not appear to present competing interests that should limit engaged of the United States on human-rights grounds.

More recently, in a desire to create a more unified policy framework to advance human rights, a bipartisan group led by Senators John McCain (R-AZ) and Ben Cardin (D-MD) and Representatives Christopher Smith (R-NJ) and Jim McGovern (D-MA) have advanced the Global Magnitsky Human Rights Accountability Act. This proposed legislation would provide the President with authority to impose asset freezes and visa bans on foreign nationals responsible for extrajudicial killings, torture, or other human rights violations committed against those promoting human rights or exposing illegal activity by governments. It would also provide broad statutory authority for actions that are currently cobbled together country by country and piece by piece. On December 17, 2015, the Senate adopted the legislation by unanimous consent – now, the focus turns to the House of Representatives.<sup>137</sup>

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<sup>128</sup> *Azerbaijan 2014 Human Rights Report*, US Department of State, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236500>.

<sup>129</sup> *Bahrain 2014 Human Rights Report*, US Department of State, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236594>.

<sup>130</sup> *China 2014 Human Rights Report*, US Department of State, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236432>.

<sup>131</sup> *Equatorial Guinea 2014 Human Rights Report*, US Department of State, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236354>.

<sup>132</sup> *Kazakhstan 2014 Human Rights Report*, US Department of State, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236640>.

<sup>133</sup> *Saudi Arabia 2014 Human Rights Report*, US Department of State, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236620>.

<sup>134</sup> *Turkmenistan 2014 Human Rights Report*, US Department of State, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236654>.

<sup>135</sup> *Uzbekistan 2014 Human Rights Report*, US Department of State, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236656>.

<sup>136</sup> *Vietnam 2014 Human Rights Report*, US Department of State, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dlid=236490>.

<sup>137</sup> S.284: Global Magnitsky Human Rights Accountability Act, available at <https://www.govtrack.us/congress/bills/114/s284>.

The Global Magnitsky Act is built on the Sergei Magnitsky Rule of Law Accountability Act,<sup>138</sup> which focused on imposing sanctions on Russian officials who were believed to be involved in his death, and on other major human rights violators. Magnitsky was a Russian lawyer who died in prison after investigating fraud involving Russian tax officials.<sup>139</sup> There are 34 Russians currently on the SDN List under the Magnitsky Act.<sup>140</sup>

## **CONCLUSION: CALL FOR ACTION**

After being subjected to three decades of widespread human rights abuses under the repressive regime of Maumoon Gayoom, the Maldivian people elected Mohamed Nasheed as their first democratically-elected president. President Nasheed worked tirelessly to promote human rights and combat government corruption to transform his country into a vibrant and stable democracy. Yet the forces of the prior government proved too powerful and facilitated his being deposed in a coup. Since taking power, Yameen has returned the Maldives firmly to authoritarian rule.

Democracy and human rights in the Maldives are at great risk – Yameen has made this clear through his drastic and anti-democratic actions in the past few months alone. The severity and breadth of the abuses committed by top government officials in Yameen’s administration coupled with their interference in democratic institutions reaffirm the need for the United States to take swift, concrete action. Furthermore, the resulting instability generated by Yameen’s actions and his failure to address the threat of Islamic radicalism make the need for action more urgent.

First, President Obama should promulgate an Executive Order creating a human rights-based sanctions program on the Maldives and immediately add senior Maldivian officials and their allies to the US Department of the Treasury’s SDN List. In addition, through either a Presidential Proclamation or the general Human Rights Proclamation, President Obama should simultaneously impose travel bans on the same individuals.

Second, President Obama should support the Global Magnitsky Human Rights Accountability Act by expressing his intention to sign it into law and encouraging its swift adoption in the House of Representatives so that he may do so, and thereby provide the US government the tools to effectively fight human rights abuse through sanctions targeted at specific perpetrators worldwide.

As repression and instability in the Maldives accelerating, the state of democracy and human rights is deteriorating rapidly. The time to act is now.

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<sup>138</sup> Public Law 112-208, Dec. 14, 2012.

<sup>139</sup> Miriam Elder, *Sergei Magnitsky Verdict 'Most Shameful Moment Since Stalin'*, Jul. 11, 2013 available at <http://www.theguardian.com/world/2013/jul/11/sergei-magnitsky-russia-trial-verdict-tax-fraud>.

<sup>140</sup> *Magnitsky Sanctions Listing*, available at <https://sdnsearch.ofac.treas.gov>.

## **APPENDIX I: [MODEL] EXECUTIVE ORDER 13XXX – BLOCKING PROPERTY OF CERTAIN PERSONS UNDERMINING DEMOCRATIC PROCESSES OR INSTITUTIONS IN THE MALDIVES**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), and section 301 of title 3, United States Code,

I, [name], President of the United States of America, determine that the actions and policies of certain members of the Government of the Maldives and other persons to undermine the Maldives' democratic processes or institutions, to commit human rights abuses related to political repression, including arbitrary detentions, enforced disappearances and politically motivated violence and intimidation, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, hereby declare a national emergency to deal with that threat, and hereby order:

**Section 1.** All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

- (a) the persons listed in the Annex to this order; and
- (b) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:
  - (i) to be responsible for, or to have participated in, actions or policies that undermine democratic processes or institutions in the Maldives;
  - (ii) to be responsible for, or to have participated in, human rights abuses related to political repression in the Maldives;
  - (iii) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities described in paragraphs (b)(i) through (ii) of this section or any person listed in or designated pursuant to this order;
  - (iv) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person listed in or designated pursuant to this order; or
  - (v) to be a spouse or dependent child of any person whose property and interests in property are blocked pursuant to this order.

**Sec. 2.** (a) Any transaction or dealing by a United States person or within the United States in property or interests in property blocked pursuant to this order is prohibited, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of any person listed in the Annex to this order or who is the subject of a determination under subsection 1(b) of this order.  
(b) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(c) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

**Sec. 3.** For the purposes of this order:

- (a) the term "person" means an individual or entity;
- (b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and
- (c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

**Sec. 4.** For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

**Sec. 5.** The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate

any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

**Sec. 6.** This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

[Signed]

**Annex**

**Individuals**

- 1. NAME 1
- 2. NAME 2, etc.

**Entities**

- 1. NAME 1
- 2. NAME 2, etc.

**APPENDIX II: [MODEL] PRESIDENTIAL PROCLAMATION XXXX – SUSPENSION OF ENTRY AS IMMIGRANTS AND NONIMMIGRANTS OF PERSONS RESPONSIBLE FOR ACTIONS AND POLICIES THAT THREATEN DEMOCRACY AND HUMAN RIGHTS IN THE MALDIVES**

**By the President of the United States of America**

**A Proclamation**

In light of the United States' enduring commitment to respect for human rights and the importance to the United States of fostering democratic institutions in the Maldives, and given the suppression of human rights and democracy in the Maldives, the arbitrary arrests and detentions of peaceful supporters of political opposition and human rights in the Maldives, and the continued failure of Abdulla Yameen, Maldivian government officials, and others to support the rule of law, human rights commitments, and other principles of high priority to the United States, I have determined that it is in the interest of the United States to take all available measures to restrict the international travel and to suspend the entry into the United States, as immigrants or nonimmigrants, of senior members of the government of Abdulla Yameen and others detailed below who formulate, implement, participate in, or benefit from policies or actions, including human rights abuses and political repression, that undermine or injure democratic institutions in the Maldives.

NOW, THEREFORE, I, [name], by the authority vested in me as President of the United States of America, by the Constitution and laws of the United States, including section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would be detrimental to the interests of the United States. I therefore hereby proclaim that:

**Section 1.** The entry into the United States, as immigrants or nonimmigrants, of the following persons is hereby suspended:

- (a) Senior members of the government of Abdulla Yameen and other persons who formulate, implement, participate in, or benefit from policies or actions, including human rights abuses, or political repression, that undermine or injure democratic institutions and processes in the Maldives;
- (b) Persons who through their business dealings with Maldivian government officials derive significant financial benefit from policies or actions, including human rights abuses, or political repression, that undermine or injure democratic institutions and processes in the Maldives; and
- (c) The spouses of persons described in paragraphs (a) and (b) above.

**Sec. 2.** Section 1 of this proclamation shall not apply with respect to any person otherwise covered by section 1 where entry of such person would not be contrary to the interest of the United States.

**Sec. 3.** Persons covered by sections 1 and 2 of this proclamation shall be identified by the Secretary of State or the Secretary's designee, in his or her sole discretion, pursuant to such procedures as the Secretary may establish under section 5 of this proclamation.

**Sec. 4.** Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

**Sec. 5.** The Secretary of State shall have responsibility for implementing this proclamation pursuant to such procedures as the Secretary may establish.

**Sec. 6.** This proclamation is effective immediately and shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated, either in whole or in part. Any such termination shall become effective upon publication in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this [number] day of [month], in the year of our Lord two thousand [year], and of the Independence of the United States of America the two hundred and [year].

[Signed]