

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the independence of judges and lawyers.**

REFERENCE: AL G/SO 214 (67-17) G/SO 214 (3-3-16)  
MDV 2/2013

11 September 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolution 16/4 and 17/2.

In this connection we would like to bring to the attention of your Excellency's Government information we have received concerning the detention of and imposition of a fine on **Mr. Mohamed Shafaz Wajeesh**, lawyer, for contempt of the court in Malé.

According to the information received:

On 29 August 2013, Mr. Mohamed Shafaz Wajeesh was seated in the front row of the public gallery of the Maldives Supreme Court, attending the first hearing of the case Ahmed Zaneen Adam v. the Elections Commission. During the hearing, Mr. Wajeesh drew sketches of the courtroom, using stationary made freely available to attendees.

During a break in proceedings, a court officer asked to inspect Mr. Wajeesh's notepad and then informed him that his pad would be confiscated. Mr. Wajeesh was allegedly escorted to an adjacent room, where he was held until after the hearing was concluded. He was not permitted to leave the room, nor informed of the reason for his detention.

It is reported that Mr. Wajeesh was sketching in plain view of other attendees and court officers, none of the sketches were caricatures or depicted anything that could be deemed offensive, nor was the hearing adjourned because of any disruptions caused by the sketching.

After Mr. Wajeeh had been held for almost two hours, the acting Registrar of the Supreme Court allegedly entered the room and served him with a document, informing him that he was guilty of contempt of court, under section 76(a) of the 2010 Judicature Act.

Section 76(a) of the Judicature Act, concerning contempt of court, provides that: “During the court proceedings if a party leaves the court without the consent of the court, or if a person conducts themselves in the court in a manner which contravenes the order of the court, or if a party disobeys the orders of a court, in taking into consideration the graveness of the matter the Judge has the discretion to issue an instant sentence as follows.

(a) Levy a fine which does not exceed 10,000 (ten thousand) Rufiyaa.

(b) Imprisonment of not more than 15 (fifteen) days or house arrest of not more than 1 (one) month.”

Contempt of court is not defined in the Judicature Act. The 2008 Regulations on Contempt of Court define contempt as, among other things: disrupting or attempting to disrupt a court proceeding; not obeying a judge’s order in a court proceeding; acting or speaking in a manner, which may harm a judge or a court official; use of inappropriate language, or attending the court dressed in an appropriate manner; or causing any damage to belongings of a person present in the courtroom. Sketching is not proscribed. Moreover, pads and pencils are freely provided in the court room to attendees without express restrictions on sketching.

It is reported that Mr. Wajeeh was fined 5,000 Maldivian Rufiyaa (approximately 325 USD) by the acting Registrar and not by judicial decision, in contradiction with the Judicature Act, the 2008 Contempt of the Court Regulations, and the relevant provisions of the Penal Code. Mr. Wajeeh’s short detention is also said to have been carried out in contradiction with the Judicature Act and the Contempt of the Court Regulations.

While we do not wish to prejudge the accuracy of the information provided to us, we would like express our concern regarding the unlawful use of contempt of the court to curtail the rights to freedom of opinion and expression of lawyers.

In this context, we would like to refer your Excellency’s Government to the International Covenant on Civil and Political Rights (ICCPR), to which Maldives acceded on 19 September 2006, and in particular to article 9 which States: “(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. (2) “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”

Article 14(1) of the International Covenant on Civil and Political Rights also states that: “In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” In its General Comment No. 32, the Human Rights Committee explained that: “The notion of a “tribunal” in article 14, paragraph 1 designates a body, regardless of its denomination, that is established by law, is independent of the executive and legislative branches of government or enjoys in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature. Article 14, paragraph 1, second sentence, guarantees access to such tribunals to all who have criminal charges brought against them. This right cannot be limited, and any criminal conviction by a body not constituting a tribunal is incompatible with this provision.” (paragraph 18). Moreover, in its General Comment No. 35, the Human Rights Committee highlighted: “The imposition of a draconian penalty for contempt of court without adequate explanation and without independent procedural safeguards is arbitrary.”

Furthermore, we would like to refer your Excellency’s Government to article 15 (1) of the ICCPR which states: “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.”

We would also like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

We would further like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 23, which states: “Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.”

It is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on this case to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the description of the case accurate?
2. Please provide detailed information on the legal basis for Mr. Wajeeh's detention and his fine on contempt of court. Please explain how such detention and fine complied with domestic legislation, as well as international human rights standards.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Mohamed Shafaz Wajeeh are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Frank La Rue  
Special Rapporteur on the promotion and protection of the right to  
freedom of opinion and expression

Gabriela Knaul  
Special Rapporteur on the independence of judges and lawyers