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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 Chair-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur on the independence of judges and lawyers

REFERENCE: UA G/SO 218/2 G/SO 214 (3-3-16)
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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur on the independence of judges and lawyers pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18 and 17/2.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the increased tension in the country between the Government and the judiciary, which culminated on 16 January 2012 in the arrest and detention of Mr. **Abdulla Mohamed**, Chief Judge of the Criminal Court.

According to the information received:

In the evening of 16 January 2012, Mr. Mohamed was reportedly summoned to the police station. He reportedly appealed the summons before the High Court, which suspended the execution of the order until its final decision and informed the police accordingly.

Around 21:30 on 16 January 2012, individuals from the Maldives National Defence Force (MNDF) reportedly forced their way into Mr. Mohamed's house while he was with his wife and children. It is reported that Mr. Mohamed was able to communicate his arrest to his lawyer, but that was the last time the lawyer heard from him despite several attempts made with the MNDF to find out his whereabouts.

On 17 January 2012, the Prosecutor General reportedly declared that he had not requested the arrest and that he had initiated an investigation through the Human Rights Commission of the Maldives (HRCM) with a view to prosecuting those responsible of these allegedly unlawful acts. On the same day, the Supreme Court reportedly ordered the immediate release of Mr. Mohamed, an order that was

allegedly accepted by the MNDF, though no communication was received concerning his release. It is reported that petitions of habeas corpus have been filed in the High Court and the Supreme Court on behalf of Mr. Mohamed but are yet to be heard due to the alleged refusal of the MNDF to bring him to the Courts.

On the same day, 17 January 2012, the Foreign Ministry issued a statement explaining that Mr. Mohamed was arrested for corruption and total disregard for the Constitution. It was also stated that, despite the fact that the 2008 Constitution empowers the Judicial Service Commission (JSC) as the independent guardian of the values of competence and integrity - and thus of individual accountability of judges - the JSC has not reportedly been able to fulfill its constitutional task of holding judges like Mr. Mohamed to account. It was also stated that in 2010 the JSC sought to take action against Mr. Mohamed over allegations of political bias after he appeared on television reportedly saying “this Government is a dying Government”, but that the JSC’s decision to take disciplinary action against him was overturned by the Civil Court. This alleged systemic failure of the judicial checks and balances foreseen in the Constitution reportedly led directly to the President’s decision, as the ultimate guarantor of the Constitution, to detain Mr. Mohamed.

We are informed that Mr. Mohamed was held incommunicado until 20 January 2012, with no access to legal counsel. On that day, the HRCM was able to meet with him. He is still deprived of liberty and reportedly held under good conditions. On 22 January 2012, the Vice-President of the Republic of the Maldives reportedly called on the JSC to prevent Mr. Mohamed sitting on the bench until all complaints against him would be resolved. The Independent Institutions Committee of the People’s Majlis has reportedly already formed a sub-committee to investigate the failings of the JSC.

In my capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention, and without prejudging the arbitrary character of Mr. Mohamed’s arrest and detention, I would like to appeal to your Excellency’s Government to take all necessary measures to guarantee Mr. Mohamed’s right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

As the Special Rapporteur on the independence of judges and lawyers, I have underlined several times that human rights principles and standards relating to judges, prosecutors and lawyers recognize that they have to be accountable in the discharge of their functions¹. Accountability is thus a fundamental element of judicial independence. All proceedings against judges, however, should follow the procedures established by the law and be in accordance with international standards. In disciplinary proceedings a judge shall have the right to a fair hearing and all decisions taken should be subject to an

¹ See A/65/274, para.60.

independent review². If - as alleged – the JSC, as the body mandated to be the guardian of the integrity of the judiciary, is not able or willing to function properly, this should be a matter of consultation among all stakeholders to discuss needed reforms of the judicial oversight mechanism and of the judicial sector as a whole. In July 2010, I already had the opportunity to comment on the criteria that were developed by the JSC for the re-appointment of sitting judges in accordance with Article 285(b) of the Constitution (A/HRC/17/30/Add.1, paras. 816-821). I am aware of the difficulties, challenges and concerns related the judiciary in the Maldives and its effective functioning and I am ready to offer my services to assist in this regard.

Having said that, however legitimate may be the concerns over the effective functioning of the JSC, the behaviour of some judges and the situation of the judiciary as a whole, this does not authorize in any way resorting to unlawful arrests and extra-legal detentions, as in the case of Mr. Mohamed. We are concerned that his arrest and detention have been in violation of basic rights enshrined in the Constitution of Maldives, other domestic laws (including the Judges Act of 2010) and international human rights instruments. Procedural safeguards also have to be respected in all situations, including the right to defence³. The lack of compliance with the Supreme Court ruling ordering the release of Mr. Mohamed also creates a dangerous precedent. In addition, the facts mentioned above have obvious implications on the issues of the independence of judiciary and separation of powers⁴.

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 these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. What is the current situation of Mr. Mohamed? Has he been formally charged? If so, under what charge?
3. Please provide information concerning the legal grounds for the arrest and detention of Mr. Mohamed. Could you please clarify who ordered his arrest?
4. What are the powers of arrest of the Maldives National Defence Force?
5. Could you please elaborate on how the facts illustrated in this case are compatible with the Constitution of the Maldives, the 2010 Judges Act and

² Basic Principles on the Independence of the Judiciary, principles 17 and 20. See also A/HRC/11/41, para. 61.

³ Article 9 of the International Covenant on Civil and Political Rights. See also Basic Principles on the Role of Lawyers, in particular principles 1, 5, 7 and 8.

⁴ Basic Principles on the Independence of the Judiciary. Principles 1,2,4,5 and 6.

the principles of independence of the judiciary and separation of powers as prescribed by the international human rights law?

6. After the first communication with his lawyer dated 16 January 2012, did Mr. Mohamed have any further access to legal counsel?
7. Please kindly inform us on the findings of the Independent Institutions Committee of the People's Majlis investigating the alleged failings of the JSC.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers