

Mandate of the Special Rapporteur on the independence of judges and lawyers.

REFERENCE: UA G/SO 214 (3-3-16)
MDV 6/2013

7 November 2013

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolution 17/2.

In this connection, I would like to bring to your Excellency's Government's attention information I have received concerning the **alleged interference by the Supreme Court in the presidential election process of the Maldives**.

According to the information received:

The second multi-party presidential election of the Maldives was held on 7 September 2013. As none of the candidates gained the required absolute majority of votes (50 percent plus one vote), a second round of the election, between the first and second placed candidates, was initially scheduled for 28 September 2013, in accordance with the constitutional provision that stipulates that a run-off election must be held within 21 days of the first election if no candidate obtains a majority of over 50 percent in the first round.

After the announcement of the results of the first round of election, which was deemed free and fair by international observers, one of the parties that contested in the first round, the Jumhooree Party, claimed fraud in the polling and filed a complaint with the High Court on 10 September 2013, seeking release of the voters' registry.

On 19 September 2013, the High Court ruled that there was no evidence of fraudulent activity, but allowed the supervised viewing of the voters' registry by the representatives of all parties.

In the meantime, the Jumhooree Party had filed a second complaint directly with the Supreme Court on 14 September 2013, seeking the annulment of the first round of voting on the basis that there were significant irregularities in the voting process. Allegedly, the arguments of the Jumhooree Party were based on the purported discrepancy of 40,000 voters between the voter list that was sent to the candidates as the final list and the list that was used at the voting stations on the day of the election. The Jumhooree Party reportedly requested the Supreme Court to nullify the first round of the election.

According to the information received, two other political parties that contested the elections, the Maldivian Democratic Party and the Progressive Party of Maldives, intervened as third parties in the case before the Supreme Court. In addition, the State, represented by the Attorney General, also decided to intervene in the case, allegedly stating that there were major concerns in the first round of voting.

On 23 September 2013, after hearing the case, the Supreme Court issued an injunction determining that the scheduled second round of election be delayed until a final decision was made. The Maldivian Democratic Party reportedly withdrew its intervention in the case after the Court's injunction.

According to the sources, on 24 September 2013, lawyers representing the Elections Commission and the Maldivian Democratic Party were barred from representing their clients for having criticized the Supreme Court's order to postpone the presidential run-off.

On 26 September 2013, the Elections Commission reportedly declared that it would go ahead with the elections as required by the Constitution, despite the Supreme Court's order. As a result, the Supreme Court reportedly issued an injunction calling on all State authorities, including the security forces, to enforce its order for the postponement of the second round until the Court declared its decision. It is reported that the Elections Commission later announced that the environment was not conducive to the holding of a free and fair election on the initially scheduled date and cancelled the second round.

On 7 October 2013, the Supreme Court issued a decision ordering the Elections Commission to nullify the first round of the presidential election held on 7 September 2013 and to hold new election before 20 October 2013. Sources reported that the decision of the Supreme Court lacked transparency regarding both evidence used and procedure. The Elections Commission was required to re-start the entire re-registration process for the electoral roll. In the same decision, the Supreme Court issued a number of guidelines, which reportedly consist of mandatory orders directing the Elections Commission on how to conduct the rerun election. These guidelines were allegedly formulated

without consulting the Elections Commission and they reportedly present obstacles for elections management.

The Elections Commission later announced that the first round would be held on 19 October 2013. However, on the morning of 19 October 2013, the Maldives Police Service allegedly sieged the Elections Commission and physically prevented the Commission's officials from moving the ballot boxes and related material to the polling stations, hence preventing the holding of the elections on 19 October 2013.

The Elections Commission purportedly held consultations with the political parties and the Government and announced, on 22 October 2013, that the first round of the presidential election will be held on 9 November 2013. The Commission further announced that, if necessary, a run-off round will be held on 16 November 2013. Nevertheless, the current Presidential term will expire on 11 November 2013 and the run-off round will be held after the present term of the Presidency has ended, thus leading to a constitutional void.

Without prejudging the accuracy of the information made available to me, I would like to express my concern with regard to the possibility that the Supreme Court has been overstepping its constitutional competence in a manner that has allegedly been interfering with the independent exercise of the responsibilities and powers of the Elections Commission, which are prescribed by the Constitution. I would also like to express my concern in relation to the consequences that this possible undue interference may have on the election process in the country.

In order to act with independence, the judiciary must function in a system of checks and balances with the other powers of the State, acting in conformity with the principles of impartiality, integrity, propriety, equality, and competence and due diligence, as stated in the Bangalore Principles of Judicial Conduct. It is only with respect for these principles that the Supreme Court and the judiciary as a whole can become an important force for the fair, equal and impartial implementation of the rule of law.

In my report on the country visit to the Maldives (A/HRC/23/43/Add.3), I expressed concern that: "the Supreme Court is perceived as not following due process in many of its decisions" and that "some of the Supreme Court's interventions are perceived as arbitrary and as serving the judges' own personal interests" (para. 39). I also observed that: "all institutions have responsibilities regarding the consolidation of democracy. The lack of understanding in the delimitation of the respective competences, and the ensuing power struggle [...] have serious implications on the effective realization of the rule of law in the Maldives" (para. 95).

According to the Maldivian Constitution, the Supreme Court has the final authority on the interpretation of the Constitution, the law, or any other legal matter

dealt with by the courts. Among the responsibilities of the Supreme Court is the one related to the “sole and final jurisdiction to determine all disputes concerning the qualification or disqualification, election, status, of a presidential candidate or running mate or removal of the President by the People’s Majlis” (article 113).

The Maldivian Constitution also determines that “A person may challenge a decision of the Elections Commission concerning an election or a public referendum, or may challenge the results of an election, or contest the legality of any other matter related to an election, by means of an election petition presented to the High Court” (article 172 (a)).

Regarding the jurisdiction on election matters, it seems that articles 113 and 172 (a) of the Constitution create space for ambiguity and might culminate in conflicts in relation to the competence of the High Court and the Supreme Court to decide on such matters.

Concerning the election process, the Constitution also establishes that the Elections Commission has, among others, the responsibilities and powers: “(a) to conduct, manage, supervise, and facilitate all elections and public referendums, to ensure the proper exercise of the right to vote, and to ensure that all elections and public referendums are conducted freely and fairly, without intimidation, aggression, undue influence or corruption; (b) to prepare, maintain, and update electoral rolls, and to make all arrangements for holding elections and public referendums; (c) to hold and declare the results of those elections and public referendums within periods prescribed by law (...)” (article 170).

As an independent body, the Elections Commission should be able to perform its functions without undue interference from any of the branches of powers. To this end, the Commission should be allowed to fulfill its responsibilities under the Constitution and ensure the smooth development of the democratic process.

In this sense, I would like to underline that the Supreme Court has already undertaken its analysis and made its decision regarding the elections in the country. Therefore, the Elections Commission should forthwith be able to freely exercise its responsibilities in accordance with the Constitution and without external interferences or pressures.

In this context, I would like once again to refer your Excellency’s Government to the Bangalore Principles of Judicial Conduct, adopted in The Hague in 2002 (E/CN.4/2003/65), and in particular to the following principles regarding the impartiality and integrity of judges:

- Principle 2.1, which states: “A judge shall perform his or her judicial duties without favour, bias or prejudice.”

- Principle 2.2, which states: “A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.”

- Principle 3.1, which states: “A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.”

I also wish to call the attention of your Excellency’s Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular principle 2, which states: “The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason”; and principle 6, which states: “The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected”.

Taking these observations into account and in light of recent events in the Maldives, I urge your Excellency's Government to ensure that the democratic process runs without undue interference guaranteeing that elections can take place as established by the Elections Commission, so that Maldivian citizens can freely exercise their right to vote and to choose their representative.

I would further like to call on all State institutions to respect the constitutionally guaranteed independent status of the Elections Commission in order to enforce the rule of law in the country.

It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I 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 measures taken by your Government to ensure that the Elections Commission can organize the presidential elections as stipulated in the Constitution of the Maldives.
3. Please provide detailed information on the decision of the Supreme Court to nullify the first round of the elections, in particular information on the legal basis

used to reach such a decision and how the equal rights of the parties were respected during the legal proceedings.

4. Please provide detailed information on the measures taken by your Government to ensure the independence of the judiciary and of the Elections Commission in the exercise of their functions and responsibilities.

In view of the urgency of the matter, I would appreciate to receive information, at your earliest convenience, on the measures that the Government has adopted, or intends to adopt, to prevent improper interference in the election process while ensuring the enforcement of the rule of law.

Given the importance of the situation, I would like to inform you that I am considering expressing my concerns publicly.

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

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers