

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

REFERENCE: OL G/SO 214 (3-3-16)
MDV 5/2013

11 October 2013

Dear Justice Faiz Hussain,

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.

I am writing to bring to your attention information I have received concerning alleged interferences with, and improper pressures on, the independence of lower courts and tribunals in the Maldives.

As you will recall, I conducted an official visit to the Republic of Maldives at the Government's invitation from 17 to 24 February 2013. The aim of my mission was to examine, inter alia, the challenges and obstacles that impede justice from being adequately and efficiently administered, and actors of the judicial system from discharging their functions independently, impartially and effectively. The main findings and recommendations are included in my country mission report, which was presented to the Human Rights Council in June 2013 (A/HRC/23/43/Add.3, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/43/Add.3).

The report contains specific recommendations on education and training for all judicial actors. These recommendations are copied below for ease of reference:

Education, training and capacity-building

130. Judges, magistrates, prosecutors and lawyers should have access to quality education, including continuing education and specialized training on international human rights law and mechanisms, constitutional law, comparative law, women's rights and gender equality, among others.

131. Training opportunities must be equally accessible to all judicial actors, regardless of the instance at which they operate and how far from the capital they sit.

132. Basic human rights law training should be made compulsory for all judges, prosecutors and lawyers.

(...)

134. United Nations specialized agencies and programmes and the donor community should provide financial assistance and technical support to national training institutions for developing quality education curricula and professional training designed for the actors of the justice system.

According to information received:

Pursuant to the recommendations contained in my report to the Human Rights Council, the Human Rights Commission of the Maldives has developed, with the financial support of the United Nations Development Programme, a court/trial monitoring programme for judges and magistrates. The aim of the two-day training programme is to make participants familiar with human rights norms and standards relating to access to justice and fair trial, with a view to assessing the extent to which the court system in the Maldives comply with these standards. The ultimate goal of this training is to ensure that everyone within the territory and subject to the jurisdiction of the State has the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Reportedly, the organisers held a number of meetings with relevant institutions of the justice system, including the Attorney-General, the Prosecutor-General, the Chief Justice of the Juvenile Court and justices of the High Court, to explain the concept and the objectives of the programme. On a number of occasions, members of the Human Rights Commission have also requested meetings with the Supreme Court. However, these requests were, allegedly, declined.

A stakeholder working session was scheduled for 26 August 2013 to identify and discuss with the main actors of the judicial system the challenges and obstacles that impede justice from being adequately and efficiently administered. Confirmations were received from, among others, the chief judges of the juvenile and family courts. However, on 25 August, the chairperson of the Human Rights Commission, Ms. Mariyam Azra Ahmed, was allegedly requested by the Chief Justice to postpone the working session that was scheduled for the following day until the Supreme Court's Judges Council adopted a decision on whether to support the court monitoring programme.

On 3 September, it is reported that the Human Rights Commission received a letter signed by Ms. Fathimath Yumna, Legal Officer at the Supreme Court, informing that justices of the Court would not participate in the court monitoring programme. Furthermore, on 12 September, the Supreme Court's Judges Council decided that the Human Rights Commission of the Maldives could not organize such training programme, since monitoring the administration of justice by national courts and tribunals would fall beyond the mandate of the Commission.

Reportedly, a number of judges and magistrates of lower courts and tribunals, which had confirmed their attendance, informed the Human Rights Commission of the Maldives that they were asked by the Supreme Court not to attend the training programme.

Without prejudging the accuracy of the information made available to me, I would like to express my concern that these facts would, if confirmed, constitute a serious interference with the independence of the judiciary in the Maldives. I consider that such interference would be particularly worrying due to the fact that it would originate from the highest judicial authority in the country.

The Human Rights Commission of the Maldives is an independent national human rights institution. Pursuant to the 2006 Human Rights Commission Act, the mandate of the Commission is to protect, promote and sustain human rights in the Maldives in accordance with Islamic Shari'ah, the Constitution of the Republic of Maldives and the regional and international conventions and declarations to which the Maldives is a party (article 2). The responsibilities of the Commission include increasing awareness on human rights "by conducting seminars, workshops and other programmes" and "disseminate general information on human rights to the public" (article 21).

In the light of the broad mandate entrusted to the Human Rights Commission of the Maldives, I find it difficult to understand why the proposed court monitoring programme was considered to be an initiative that could not be undertaken by the Commission pursuant to the 2006 Human Rights Commission Act.

In my country mission report to the Human Rights Council, I noted that "all stakeholders met during the visit agreed that quality education, in-profession training, and capacity-building programmes for all actors of the judicial system are essential to ensure the independence and impartiality of the judiciary and the smooth administration of justice", and expressed concerns at the lack or inadequacy of education available to the actors of the justice system in the Maldives (A/HRC/23/43/Add.3, para. 90).

I have also stressed that "professional and vocational training possibilities are also lacking, in particular trainings on international principles and human rights law, the Constitution, new legislation, and specific deontological principles such as judicial independence, integrity and accountability", and noted that "many judges and magistrates who met with the Special Rapporteur expressed the will to pursue training and capacity-building and to engage in academic activities" (Ibid., para. 91).

The training programme organized by the Human Rights Commission represents a valuable opportunity to address some of the problems currently affecting the judiciary in the Maldives. I would therefore encourage the Supreme Court to facilitate organization of this training programme and the participation of judges and magistrates of the Maldives. I believe that such training will contribute to strengthening the independence and impartiality of the judiciary and, ultimately, the proper administration of justice.

In view of the urgency of the matter, I would appreciate receiving information, at your earliest convenience, possibly by Thursday 17 October 2013, on the measures that the Supreme Court has adopted, or intends to adopt, to facilitate the delivery of the training programme organized by the Human Rights Commission and the participation of the judges and magistrates of the country. Given the importance of this issue, I would like to inform you that I am considering issuing a press release on this issue.

Please accept, Justice Faiz Hussain, the assurances of my highest consideration.

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers