

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

REFERENCE:
AL MDV 2/2018

9 February 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers and Working Group on Arbitrary Detention, pursuant to Human Rights Council resolutions 35/11 and 33/30.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **an alleged inappropriate interference with the judicial process by the Government, which led the Supreme Court to declare null and void its previous decision of 1 February 2018 (case number 2018/SC-SJ/01).**

A related communication was transmitted to your Excellency's Government by 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 on 8 August 2017 (case no. UA MDV 4/2017) raising concerns over the retaliation against members of parliament who exercised their right to freedom of expression by signing a petition on 3 July 2017 calling for the impeachment of the Speaker of Parliament. To date, we regret not having received any response to that communication.

According to the new information received:

On 3 July 2017, the four-party opposition alliance submitted a non-confidence motion against the Speaker of Parliament. The motion had 45 signatures. Impeachment requires 43 votes. 14 Members of Parliament (MPs) have since left the ruling party (the Progressive Party of Maldives, the PPM). After their defection, the PPM has lost the majority in Parliament. Following the defection of the ruling party MPs, the Attorney General sought an anti-defection ruling from the Supreme Court.

In a decision of 13 July 2017 (case number 17/SC-A/2017), the Supreme Court of the Maldives ruled on the issue of 'floor-crossing', i.e. the change of party membership by MPs after they have been elected. The Court proposed a temporary solution, and directed the Government and the People's Majlis (Parliament) to enact a law to regulate this situation.

On 1 February 2018, the Supreme Court issued a new decision on this issue (case number 2018/SC-SJ/01).

In this decision, the Court noted that by failing to enact legislation to regulate the act of ‘floor crossing’, the Government and the Parliament did not abide by its previous ruling. The Court also observed that in the absence of such legislation, the Elections Commission decided to suspend twelve opposition members of the Parliament, despite the fact that the Supreme Court decision of 13 July 2017 had not ruled that the seats of concerned MPs be vacated. The Court further noted that the State prosecuted the MPs that attempted to enter the premises of the People’s Majlis to fulfil their constitutional duties, in breach of the fundamental rights and freedoms enshrined in the Constitution and in a number of international human rights treaties acceded by the Maldives.

In light of the above, the Supreme Court ruled that its previous order of 13 July 2017 be nullified effective as of 1 February 2018.

The Supreme Court noted that criminal proceedings against twelve opposition MPs were politically motivated, and that their convictions constituted an interference with the independence of the judiciary and a violation of the due process guarantees. The Court thus ordered that the twelve MPs be reinstated in their functions and allowed to participate in the sessions of the People’s Majlis. The Court also ordered that the Parliament, which has been unable to exercise its functions for a long time, resume its functions.

On 29 January 2018, the opposition had filed a petition to the Supreme Court to temporarily remove the President of the Maldives, H.E. Abdulla Yameen, and investigate allegations of corruption and theft against him. It is alleged that the reinstatement of the twelve opposition MPs pursuant to the Court’s decision of 1 February 2018 would allow the opposition to regain its majority in the Parliament, and provide the opposition with the necessary support to impeach the President. So far, the Supreme Court has not examined this petition.

The Supreme Court also ruled that the detention of nine political leaders and businessmen who had been convicted for, or charged with, a wide range of offences, including terrorism and bribery, was politically motivated and carried out in violation of the Constitution and international human rights treaties acceded by the Maldives.¹ Consequently, the Court ordered their immediate release, and their re-trial in accordance with fair trial and due process guarantees.

Five out of these nine individuals are leaders of major opposition parties. If released, they would allegedly be the main competitors for the Maldivian Presidential election in 2018.

¹ The Working Group on Arbitrary Detention has issued opinions on three of the cases, finding that the arrest and detention was arbitrary (Opinions Nos. 91/2017; 59/2016; 33/2015).

On 5 February 2018, the Government declared a 15-day state of emergency, suspending a wide range of constitutional rights, including articles 113 and 145 (c) of the Constitution. Article 113 recognises the exclusive and final jurisdiction of the Supreme Court on disputes concerning the qualification or disqualification, election, status, of a presidential candidate or removal of the President by the People's Majlis. Article 145 (c) of the Constitution recognises the role of the Supreme Court as "the final authority on the interpretation of the Constitution, the law, or any other matter dealt with by a court of law". It is alleged that the state of emergency was declared in response to the Supreme Court decision to reinstate the twelve opposition MPs in their functions and to release and retrial the nine political leaders.

On the same day, the President of the Maldives, H.E. Abdulla Yameen Abdul Gayoom allegedly submitted three letters to the Supreme Court. In these letters, he argued inter alia that the order to release the nine political leaders had encroached on other powers of the State and constituted an "infringement of national security and public interest". The Government also raised concerns about releasing individuals who had been convicted for "terrorism, graft, embezzlement and treason", and informed the top court through the Attorney General about the legal challenges in the implementation of the ruling. Later in the day, the Supreme Court issued a brief statement to clarify that there were no legal obstacle for the Attorney General's office to begin proceedings for retrials.

On 6 February 2018, hours after the state of emergency was declared, the national defense forces and the police allegedly forced their way into the Supreme Court building, and arrested the Chief Justice, H.E. Abdulla Saeed, and another judge, Supreme Court Justice Mr. Ali Hameed Mohamed. At the moment of their arrest, the two judges were allegedly not informed about the reasons for their arrest and the charges pressed against them.

On 6 February, following the arrest of two Supreme Court judges, the remaining three judges issued a Supreme Court new order (2018/SC-SJ/03). The new ruling was issued "[p]ursuant to the concerns communicated by the President of the Maldives to the Supreme Court of the Maldives on 5 February 2018 in relation to the Supreme Court order no. 2018/SC-SJ/01". The ruling revised the Court's ruling, and overturned its previous unanimous ruling ordering the release and retrial of the nine political leaders listed in point 5 of the order of 1 February 2018.

On 7 February, the Maldives Police Service held a press conference detailing the charges against the two Supreme Court Justices. The two judges were charged with (1) accepting bribes and delivering verdicts in special interest; (2) using the influence of the office to attempt the overthrow of a legal, constitutional, administration; and (3) attempting to influence the administration and wilful, and unlawful, interference of the criminal justice system.

On 7 February, President Yameen amended the declaration of the state of emergency, and lifted the restrictions placed on the Supreme Court. Consequently,

article 145 (c) of the Constitution is again in force. Restrictions to article 113 of the Constitution, reportedly aimed at preventing the Supreme Court to decide on disputes related to removal of the President, remain in place.

Reportedly, one of the arrested judges, Mr. Ali Hameed, has been taken to a government hospital in the capital Malé on the night of 6 February. He appears to be in critical condition. Three members of his family, including his wife, are believed to have been arrested, and have been apparently denied access to a lawyer of their choice.

Without prejudging the accuracy of the information received, concern is expressed at the above allegations, particularly the alleged inappropriate interference with the judicial process by the Government, which led the Supreme Court to declare null and void its previous decision of 1 February 2018 following the arrest of the Chief Justice and another judge of the Supreme Court.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As 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, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and comments which you may have on the above mentioned allegations.
2. Please provide detailed information concerning the legal grounds for the arrest, and detention of the Chief Justice, H.E. Abdulla Saeed, and judge Ali Hameed Mohamed, and explain how these measures are compatible with international human rights norms and standards.
3. Please provide information concerning the arrest, detention and conviction of the nine political leaders and explain how these measures are compatible with international human rights norms and standards. In addition, please provide information concerning the implementation of the recommendations of the Working Group on Arbitrary Detention with regard to some of these individuals.
4. Please provide detailed information on the declaration of the state of emergency, and explain how this measure is compatible with article 4 of the International Covenant on Civil and Political Rights.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Annex

Reference to international human rights law

The independence of the judiciary is prescribed, *inter alia*, in the International Covenant on Civil and Political Rights (ICCPR), acceded to by your Excellency's Government on 19 September 2006, and the United Nations Basic Principles on the Independence of the Judiciary.

Articles 9 and 14 of the ICCPR establish the rights to liberty and security as well as the right to fair proceedings before a competent, independent and impartial tribunal. In this regard, General Comment No. 32 of the Human Rights Committee notes that the element of independence requires the judiciary to be free from political interference by the executive branch, as well as the legislature. The Committee notes in particular that a situation where the executive is able to control or direct the judiciary is incompatible with the notion of an independent tribunal (General Comment No. 32, para. 19, CCPR/C/GC/32).

Additionally, the UN Basic Principles on the Independence of the Judiciary state, *inter alia*, that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1); that the judiciary shall decide matters before them impartially (...) without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason (principle 2); and that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision (principle 4).