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Written statement* submitted by the International Commission of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 August 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).



Maldives should accept and implement UPR recommendations on judicial independence and the rule of law to restore democratic transition

In the May 2015 Universal Periodic Review (UPR) of Maldives, member states issued recommendations for strengthening judicial independence, strengthening the national human rights commission (NHRC) and other constitutional institutions, protection of human rights, including religious freedoms, media freedoms, freedom of association, assembly and expression, and the rule of law, among others (Doc. A/HRC/WG.6/22/L.6). The Maldivian government agreed to examine and respond to several recommendations before the 30th session of the Human Rights Council, and outright rejected others.

The International Commission of Jurists (ICJ) believes that the deteriorating human rights and rule of law situation in the country will only be rectified if the Maldives government accepts and immediately implements these recommendations, including those which it initially rejected, and that to date it has not demonstrated any concrete steps in this regard.

The ICJ is concerned about the ongoing politicization of the judiciary, which has seriously compromised its independence and impartiality (relevant UPR recommendations, 143.45-57).

The Judicial Services Commission (JSC) fell short of its constitutional responsibility to properly vet and reinstate a professional judiciary during the transition period of the country, and has remained deeply politicized itself and incapable of carrying out its mandate free of undue political interference. The Maldivian authorities have thus far failed to implement any legal or institutional reforms to strengthen the independence and impartiality of the JSC (recommendations 143.48-50 and 143.54).

As a result, the pre-transition judiciary that operated as an administrative tool of the authoritarian regime remains largely intact and has displayed a lack of independence, impartiality and accountability in the conduct of its business, inconsistent with international human rights standards (recommendations 143.46, 143.47, 143.51-53, 143.55 and 143.57).

Maldives has thus far failed to take necessary measures to strengthen the capacity of judges by ensuring adequate training, especially on human rights, and ensuring a consistent educational qualification standard for candidates entering the judicial profession, as required by international standards (recommendations 143.50 and 143.54).

Since 2013, when the current government came to power, the crisis in the judiciary has worsened. The Supreme Court in particular has not adhered to internationally and domestically recognized principles of judicial independence, impartiality and accountability, and operates without sufficient respect for fairness and procedural safeguards. In 2013, the Supreme Court granted itself the power to initiate *suo motu* criminal investigations against any individual or institution, without clearly defining its jurisdictional authority or procedural guidelines for exercising this authority.

The Court exercised this *suo motu* power on two occasions, by invoking criminal proceedings against the Election Commission and the National Human Rights Commission. In the case against the Election Commission, the Court found the Commission's president and vice-president in contempt of court for alleged statements made commenting on election regulations the Court itself issued in a prior case. The Court removed them from their posts, even though the Constitution clearly defines the removal procedure for election commission members as applicable only in extraordinary cases of misconduct or incapacity and only through a parliamentary process. The Court's actions in this case infringed on the constitutional prerogative of the independent institution and the rights of the individual members (recommendations 143.45, 143.51 and 143.56).

In the case against the NHRC, the Court charged the NHRC with “treason” for its criticisms of the judiciary’s record in its 2014 submission to the Human Rights Council in advance of the Maldives 2015 Universal Periodic Review (UPR). The Court’s actions in this case flagrantly violate international standards, including as adopted by the General Assembly and the Human Rights Council, on: the independence of national human rights institutions (NHRIs), in particular the UN Paris Principles; the Declaration on human rights defenders; and reprisals against those who cooperate with the United Nations (recommendations 143.27-29).

The Court has also abused its authority in a manner that infringes on the principles of separation of powers and judicial accountability (recommendations 143.51 and 143.56). In early 2015, the Court unilaterally amended the Judicature Act by reducing the statutory appeal period from 90 days to 10 days, doing so via a sudden and unanticipated circular, severely curtailing the rights of criminal defendants to appeal.

The arbitrary removal of two Supreme Court judges in 2014 for “incompetence” transpired under highly controversial circumstances. The Parliament amended the Judicature Act, which organizes the judiciary, reducing the Supreme Court bench from 7 to 5, and instructing the JSC to identify two judges who could be removed for “incompetence” within 24 hours. The JSC did so, and the Parliament approved this removal within the next 24 hours. The judges in question were never notified of the proceedings to remove them, given an opportunity to defend themselves or otherwise respond. The proceedings violate international principles of judicial independence, the Maldives’ Constitution’s own procedures for removal of sitting Supreme Court judges (recommendations 143.46-47, and 143.50-56).

Politically motivated criminal proceedings, most notably the arrest, detention, trial and appeal of former President Mohamed Nasheed in March 2015, have involved arbitrary detention and violations of the right to fair trial (recommendations 144.40-42). Mr. Nasheed was denied his rights to an adequate opportunity to prepare a defense, to access counsel and to challenge the grounds for his detention throughout his trial. The Maldives authorities arbitrarily amended the statutory appeal period from 90 days to 10 days, and failed to provide an accurate trial record to the defense team until after the appeal period had lapsed, as would be required in order to prepare an effective appeal, thereby violating Mr. Nasheed’s right to appeal. Following his conviction, Mr. Nasheed’s sentence was commuted to house arrest in June 2015. On 23 August 2015, however, Mr. Nasheed was unexpectedly and without clear legal basis returned to prison.

Maldives has failed to take steps to safeguard, let alone strengthen, the independence of the National Human Rights Commission. The Human Rights Commission Act has not been amended to date to ensure its compliance with Paris Principles (recommendations 143.27-29).

The NHRC has faced unlawful interference from both the Supreme Court and the Parliament, in the treason charges invoked against it by the Court for its UPR submission, and by the Parliament’s irregular summoning of the NHRC to question them about public statements about the fair trial concerns in Mr. Nasheed’s case during an extraordinary nighttime closed door session which suggested undue interference and possible intimidation (recommendations 143.27-29).

The deterioration of the rule of law and human rights create an environment conducive to attacks against journalists, including the enforced disappearance of the journalist Ahmed Rilwan in 2014, threats of dissolution against civil society organizations and violence against media outlets and human rights defenders. The Maldives has thus far failed to conduct prompt, effective investigations into any of these instances, and has failed to bring to justice the perpetrators of these crimes. In the case of journalist Rilwan, Maldives has failed to make substantial progress (?) in the investigation after more than a year, and has not provided any information as to the status of the investigation to his family. These human rights abuses against civil society and media, and the failure of the state to address the culture of impunity are inconsistent with international human rights standards (recommendations 143.57 and 143.61).

Recommendation 143.67 calls for implementation of laws tackling increased women’s participation in public office. Maldives has still failed to undertake any systematic policy or legal initiatives to boost women’s representation in the judicial profession. To date, there are only 3 female judges among the 197 judges in the Maldivian judiciary, and none on the Supreme Court.

Strengthening independence, impartiality and accountability of the judiciary and independent constitutional institutions is crucial for getting the country back on track towards democratic consolidation. In particular, the ICJ urges Maldives to accept and implement all of the above-cited UPR recommendations on:

- Strengthening the independence and impartiality of the judiciary,
- Strengthening the independence and impartiality of the JSC,
- Strengthening the independence of the NHRC, in accordance with the Paris Principles,
- Strengthening women's representation in the judicial profession,
- Immediately releasing Mr. Nasheed and other political prisoners and ensuring the fairness of any further legal proceedings in such cases,
- Safeguarding freedom of expression and media, association and peaceful assembly by investigating cases of human rights abuse and violations against journalists, civil society and human rights defenders, and taking effective measures to prevent further abuses.

For more detailed analysis, see International Commission of Jurists, *Justice Adrift: Rule of Law and Political Crisis in the Maldives A Fact-Finding Mission Report*, 25 August 2015, <http://www.icj.org/maldives-political-crisis-erodes-rule-of-law-and-human-rights/>
