

United Nations Special Rapporteur on the independence of judges and lawyers

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**Preliminary observations on the official visit to the Republic of Maldives
(17-24 February 2013)**

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Members of the press, ladies and gentlemen,

I am very happy to be here with you today and share my preliminary observations at the end of my 8-day official mission to the Republic of Maldives.

I should underline from the outset that today I will confine myself to a few remarks. These issues, along with others, will be explored in a more detailed manner in the written report that I will prepare and in which I will also formulate recommendations. I will present this report at the 23rd session of the United Nations Human Rights Council at the end of May in Geneva.

I wish to stress that I am an independent expert who reports to, and advises, the UN Human Rights Council and the UN General Assembly. Although appointed by the Human Rights Council, I am not employed by the United Nations and the position I hold is *pro bono*. As an independent expert, I exercise my professional assessment and expertise and report directly to the Member States of the United Nations.

Let me begin by warmly thanking the Government of the Maldives for inviting me to conduct this official mission and for facilitating a rich and interesting programme of meetings and visits in Malé and Addu city while respecting the independence of my mandate. I also wish to note that the previous administration and President had also extended an invitation for me to conduct an official visit in 2012, which could not be realized for a combination of factors, including my own availability.

The purpose of this mission was to understand, in the spirit of co-operation and constructive dialogue, the situation regarding different aspects related to my mandate, and in particular how the Maldives endeavours to ensure the independence of the judiciary, prosecutors and lawyers, their protection, as well as their accountability, and the obstacles encountered which may impede actors of the judicial system to discharge their functions effectively, adequately and appropriately and deliver justice.

During my visit, I had the privilege to meet the President, His Excellency Dr. Mohamed Waheed, the Minister of Foreign Affairs, His Excellency Dr. Abdul Samad Abdullah, as well as other Government officials, including the Attorney General. I also held meetings with the Chief Justice, the Supreme Court, a number of judges from superior and magistrates' courts, the Prosecutor General, members of the legal profession, members of the People's Majlis, as well as representatives from various political parties, non-governmental organizations and

United Nations agencies. I would like to take this opportunity to thank all those who have dedicated some of their time to present their informed opinions and perspectives to me.

I would like to commend the Maldives' efforts in establishing a democracy based on the rule of law and the principle of separation of powers. The principle of separation of powers, which is enshrined in the Constitution of 2008, is the bedrock upon which the requirements of judicial independence and impartiality are founded and represents an essential requirement of the proper administration of justice. Understanding of, and respect for, this principle is a *sine qua non* for a democratic State.

I have heard of positive changes carried out in the last years, which have improved the independence of the judiciary. Transitions, however, always come with challenges, and very often more challenges are encountered along the way. There is always room for improvement. In the Maldives, many challenges to the independence of judges, prosecutors, court officials and lawyers remain, and these directly affect the delivery of justice. Those challenges should be assessed and addressed as a matter of urgency within the parameters laid down by the Constitution and international human rights standards. In the longer-term, the Maldivian people should consider reforms to the Constitution, with the view to improving the tools and measures at the disposal of the State to ensure the independence of the judiciary and the delivery of fair and impartial justice.

Measures to address challenges will only be effective and bring consolidated changes if depoliticized dialogue is prioritized in the Maldives. Measures will have to be inclusive of different views and opinions and be generated through broad consensus. Otherwise, implementation will not be possible. Both short-term and long-term measures have to be combined in order to consolidate the democratic transition and strengthen all the institutions of the State. The Maldives have to continue in its efforts to move forward.

All branches of the State are equally important and none should be above the other. All institutions have a role to play and responsibilities regarding the consolidation of democracy. I am under the impression that the Parliament, the Government and the judiciary, created in the Constitution of 2008, have been testing the limits of their competences, sometimes encroaching on principles established in the Constitution. The lack of understanding in the delimitation of the respective competences and the ensuing power struggle that I have witnessed during my mission have serious implications on the effective realization of the rule of law in the Maldives.

Positive as well as negative recent developments should be recognized and everyone should take its responsibilities and avoid blaming the other branch, the other institution or the other political party for the difficulties faced by the Maldives. Dialogue, respect for the Constitution, transparency and access to information, and accountability are key to a better and more coherent functioning of the institutions of the State, which will serve the people of the Maldives.

I further believe that the concept of independence of the judiciary has been misconstrued and misinterpreted in the Maldives, including among judicial actors. The requirement of independence and impartiality does not aim at benefitting the judges themselves, but rather the court users, as part of their inalienable right to a fair trial. Integrity and accountability are

therefore essential elements of judicial independence and are intrinsically linked to the implementation of the rule of law.

In this context the establishment of mechanisms of accountability for judges, prosecutors and court staff is imperative. Such mechanisms must guarantee that the investigation of any actor in the judicial system safeguards the person's right to a fair hearing. Investigations should be based on objective criteria, the process should respect the basic principles of a fair trial and an independent review of all decisions should be available.

Serious concerns were expressed to me regarding the system of appointment of judges. I believe that an appointment body acting independently from both the executive and legislative branches of Government should be established with the view to countering any politicization in the appointment of judges and their potential improper allegiance to interests other than those of fair and impartial justice. When selection criteria used by such a body are objective, clear, based on merit, transparent and well-publicized, public understanding of the process and the basis for the appointment of judges increases, and the perception of unfair selection or appointments can be avoided.

I have heard from numerous sources that the current composition of the Judicial Services Commission, the body in charge of the appointment, transfer, and removal of judges, is inadequate and politicized. Because of this politicization the Commission has been subjected to all sorts of external influence and consequently has been unable to function properly. While I believe that usually such a body should preferably be composed entirely of judges, retired or sitting, some representation of the legal profession or academics could be advisable. No political representation should be permitted.

I have heard concerns about the apparent lack of transparency in the assignment of cases, as well as in the constitution of benches, within all courts, including the Supreme Court. When cases are assigned in a subjective manner, the system becomes much more vulnerable to manipulation, corruption and external pressure. Information on the assignment of cases should be clearly available to the public in order to counter suspicions of malpractice and corruption.

I further believe that transparency in public administration is not an option, but a statutory and obligatory requirement that is fundamental to a democracy. Yet, transparency remains a challenge for the judiciary in the Maldives, like in many other parts of the world.

One major challenge for the fair, impartial and consistent delivery of justice is the lack of some basic pieces of legislation, such as the Penal Code, the Criminal Procedure Code, the Civil Procedure Code, or the Evidence Act. As a result, judges have had to rely on laws and acts that were passed before the Constitution of 2008 and may contradict it, as well as on principles of Islamic Shari'ah, which is not codified and may be subject to different interpretations. This lack of legislation creates ambiguity and represents a real challenge for enforcing the rule of law and respecting the principle of legality.

I believe that a uniform legal system respecting the principles enshrined in the Constitution is necessary to create consistency in the administration of justice, avoiding difficulties for litigators to seek justice and judges to render decisions that are impartial and fair. When essential legislation is lacking it is also almost impossible to monitor the quality and

consistency of justice delivery. Passing laws is imperative to implement the Constitution and the People's Majlis should bear in mind how their actions or inaction affects the establishment of the rule of law. The Government too should show strong leadership to move the development and adoption of essential legislation forward and ensure that their contents are in line with the promotion and protection of human rights.

Coming to the legal profession, I would like to note that while lawyers are not expected to be impartial in the same way as judges, they must be as free from external pressures and interferences as judges are. When guarantees are not in place to enable lawyers to discharge their duties in an independent manner, the door is open to all sorts of pressure and interference, whether from public or private actors, including judges, who seek to have an impact on or control judicial proceedings.

I have serious concerns about the absence of an independent self-regulating Bar association or council that oversees the process of admitting candidates to the legal profession, provides for a uniform code of ethics and conduct, and enforces disciplinary measures, including disbarment. Such an organization would not only provide an umbrella of protection for its members against undue interference in their legal work, but also monitor and report on their members' conduct and apply disciplinary measures in a fair and consistent manner.

It is contrary to the basic principles of the independence of lawyers that licences to practice law, as well as disciplinary measures, lay in the hands of the executive, in the case of the Maldives, the Attorney General. I further deem that the enforcement of compulsory registration of lawyers to appear before the courts by the courts themselves is unacceptable. Further, the regulation of disciplinary measures against lawyers falls outside of the prerogative of the judiciary and contradicts the principle of independence of the legal profession. I am also concerned about reports regarding threats of contempt of court used to muzzle the freedom of expression of lawyers. Lawyers like other citizens are entitled to freedom of expression, and in particular they shall have the right to take part in public discussion of matter concerning the law, the administration of justice and the protection and promotion of human rights, without suffering professional restrictions.

I always pay particular attention to the integration of a gender perspective and women's rights in the justice system, and I have done so during my mission in the Maldives. I am concerned that there are currently no women sitting on the Supreme Court and only eight women sitting in the High Court, the Superior Courts and the Magistrate Courts. It seems to me that these women reached their positions through sheer determination and dedication since there is no policy or strategy to increase women's representation on the bench.

In addition, all members of the justice system should be sensitized to gender equality and women's rights to make access to justice a reality for women in the Maldives. Similarly, access to justice for other members of society who are particularly vulnerable to discrimination, such as children, migrant workers, or persons with disabilities, should be enhanced, and the judiciary should take into account the specific challenges and obstacles they face.

I was struck to hear how little trust the public has in the justice system in the Maldives. Justice must not merely be done but must also be seen to be done and judges must not only be actually impartial they have to appear impartial to the public. The mind-sets of the public and

the authorities, including judicial authorities, have not evolved as quickly as the changes were made to the Constitution and the laws of the Maldives. This created a disconnection between the promises of the 2008 Constitution and people's expectations, and the reality of how justice is delivered and the separation of powers implemented.

Finally, I am seriously concerned about the lack or inadequacy of education and training possibilities for all actors of the justice system in the Maldives, especially lack of training on international principles, the nature of judicial independence, responsibility and integrity, international human rights law, the Constitution and new legislation passed. Professional trainings also seem to be lacking. Judges, prosecutors and lawyers should have access to a wide-range of legal literature in the official language, Dhivehi, and quality continuing education, including specialized training on gender equality and women's rights, international human rights law, and the human rights mechanism. Such trainings must be accessible to all judicial actors, regardless of the level at which they operate.

In addition, all actors in the justice system, in particular judges, prosecutors and lawyers must be properly educated and trained with regard to their respective codes of ethics and standards of conduct. Available, accessible, appropriate and quality education and training can over the longer-term significantly change attitudes that would otherwise be susceptible to corrupt conduct, unfair trial and the improper application of the law, and pave the way for strengthening both the integrity of the justice system and its independence.

Let me conclude by calling upon the international community, including foreign partners, United Nations agencies and other international and non-governmental organizations, to strengthen their engagement in the Maldives and continue contributing to the consolidation of the justice sector and the independence of the judiciary and the legal profession with concrete and sustainable programmes, whose implementation can be monitored and assessed.

Thank you for your attention.