



LAWASIA FACT-FINDING MISSION TO MALDIVES

24 Feb – 1 March 2018

TERMS OF REFERENCE

RECITALS

- A. On 12 September 2017, a petition signed by 56 lawyers of the Maldives and dated 27 August 2017 was brought to the attention of LAWASIA ;
- B. The petition, which is appended ("Attachment A"), expressed with concern that "judicial courts have hesitated to defend the Constitution, have imposed sanctions beyond the mandate granted to the Courts under the Constitution, have taken a step away from justice by succumbing to political interest in place of the law thereby acting in a manner which contradicts the Constitution";
- C. Specific examples cited in the petition include baseless remand trials, procedural irregularities in political trials, the delivery of criminal judgements in absentia, reliance on anonymous witnesses, and disrespectful behaviour by judicial members;
- D. The petition argues that the Supreme Court has assumed control over the legal profession from the Attorney General's Office;
- E. The petition further protests the spread of political influence within the Judicial Services Commission, the agency responsible for the appointment of judges and the investigation of complaints about judicial conduct;
- F. Immediately following the presentation of the petition to the Supreme Court, all 56 signatory lawyers were suspended from practice, accused of interfering with the independence of the judiciary. The 56 lawyers represent approximately one-third of the Maldives' practising profession;
- G. On 17 September 2017, the LAWASIA Executive Committee in Tokyo was briefed on the petition and on issues relevant to the independence of the judiciary, the independence of the legal profession, the rule of law, and related human rights matters in the Maldives;
- H. On 18 September 2017, the LAWASIA Council in Tokyo was briefed on the petition and on issues relevant to the independence of the judiciary, the independence of the legal profession, the rule of law, and related human rights matters in the Maldives. On that date, the LAWASIA Council passed a resolution in support of a LAWASIA fact-finding mission to the Maldives;

- I. On 27 September 2017, the International Commission of Jurists sent an open letter to the Government of the Maldives, urging the Supreme Court and the Department of Judicial Administration to "revoke the suspension of all [56] lawyers and ensure any disciplinary proceedings against [the] lawyers comply with the Maldives' obligations under international standards and respect [for] the independence of the legal profession";
- J. The International Commission of Jurists also urged the Supreme Court to "desist from assuming authority to discipline lawyers and support efforts to establish an independent, self-governing regulatory body of lawyers", adding that the Supreme Court should "respect the freedom of expression and association of all persons, including lawyers";
- K. On 5 October 2017, the European Parliament passed Resolution 2017/2870 on the Situation in the Maldives, calling (inter alia) for the immediate revocation of the suspension of the 56 lawyers and urging the government of the Maldives to ensure the independence and impartiality of the judiciary to guarantee each citizen the right of fair trial without political influence;
- L. On 9 October 2017, UN Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, urged the Maldives to introduce urgent reforms and rectifications following the suspension of the 54 lawyers, including the establishment of an independent bar association to oversee lawyers' affairs;
- M. LAWASIA attaches great importance to the independence of the judiciary, as emphasised in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region (Beijing, 19 August 1995);
- N. Further, LAWASIA attaches great importance to the independence of the legal profession, as demonstrated by its consistent reaffirmation of support for the United Nations' Basic Principles on the Role of Lawyers.

Objectives

The mission seeks to:

1. Independently form an opinion as to the status of:
 - (a) the independence of the judiciary of the Maldives;
 - (b) due process in the administration of justice when conducting trials involving political figures or involving political issues;
 - (c) whether legal practitioners are accorded due respect and regard as officers of the court and defenders of the rule of law when appearing before the courts of the Maldives;
 - (d) the independence of the Judicial Services Commission and the transparency of its appointment of judges and its investigation of complaints regarding judicial conduct;
 - (e) the independence of the legal profession and whether there are grounds for members of the legal profession to hold any concerns that, in the absence of self-regulation, they are in any way subject to judicial or political intimidation;

- (f) the suspension of the 56 lawyers and whether their suspension was justifiable; and
 - (g) public confidence in the rule of law in Maldives.
2. Seek to arrange meetings and interviews with a range of individuals, including representatives of Government and the Opposition, members of the judiciary, practising lawyers, the suspended lawyers and the media.
 3. In formulating its opinion, focus on matters relevant to the rule of law, independence of the judiciary and independence of the legal profession, and to avoid commentary on (other than by way of background or context) or interference with other domestic political issues.
 4. Make such recommendations as may be appropriate, based on its findings.
 5. Seek endorsement from the LAWASIA Council for such recommendations; and
 6. Publicise its findings and recommendations in the manner considered most appropriate in the circumstances.

A handwritten signature in black ink, consisting of a long horizontal stroke with a small loop and a downward-pointing arrow-like shape at the end.

Christopher Leong
President, LAWASIA

10 January 2018

Petition expressing concerns of the lawyers in the Maldives

We, the lawyers who are signing this petition are concerned about the situation of justice in the Maldives. We therefore call upon the relevant state authorities to come up with immediate solutions for the concerns outlined herein.

A majority of the Maldivian citizens are of the belief that since the time the Constitution of the 2008 had been implemented, judicial courts have hesitated to defend the Constitution, have imposed sanctions beyond the mandate granted to the courts under the Constitution, taken a step away from justice by succumbing to political interest in place of the law thereby acting in a manner that contradicts with the Constitution. These are matters that cannot be accepted under any grounds. The Courts and the Judicial Service Commission have taken no initiative to recuse the Judges of the allegations of corruption against them by the public. There has been no internal change within the judiciary to build up the confidence of the public in the Judiciary. Nothing has been done about the undesired procedures imposed by certain Judges in conducting trials. Everything is entirely to the contrary, in a manner that will encourage such doings. The dignity of the courts cannot be protected by issuing threatening press releases against those who criticize the functioning of the courts. The dignity of the courts will be protected, and the public will start believing and respecting the courts when there is a change in the discipline of the Judges and the manner in which trials are conducted. By showing it to the public from their conduct that they have refrained themselves from the political influences and the social evil of corruption. The Judges must show it from both their words and actions that more than the need to remain in their posts, the priority is given to stick by the rules and adhere to them.

Conducting trials

1. The main condition for a decision by the judges to be just and impartial is for it to have been arrived at with a proper application of procedures as found in the black letter law. Accordingly, for the procedures of the trial to be applied in an equal and transparent manner in an open trial as provided for in the Constitution. And to grant the defendant the adequate opportunity and the facilities to defend and recuse himself of the charges against him. Equally important is for trials that are for like people to be conducted in the same manner without any exceptions, by applying the same rules and regulation, without any discrimination or special treatment for certain people.

The closed trial proceedings in some cases in the past 4 years were not backed by lawful or constitutional grounds. They were however merely based on the grounds that the defendant in the cases were a political figure or of a high-profile nature.

By conducting the trials in the prosecution against political figures expeditiously by withholding the applicable procedures, and by conducting trials day in and night for the verdict to be granted at midnight clearly contradicts Articles 43, 51, 17 and 21 of the Constitution. The trials of political figures shall be conducted by applying the same rules

and procedures and in the same speed as that in the case of the common man. Expediting the trials of political figures at the expense of the common man's trial that prolongs is a violation of the Constitution. Hence, the cases of President Nasheed, Colonel Nazim, Shaikh Imran, Ahmed Adeeb, Muhtaz Mushin, Gasim Ibrahim, and of the various parliamentarians where the trials were conducted in a fast pace with the courts being at work day in and night, for verdicts to be granted at midnight cannot be accepted by any means.

Charges of Terrorism

2. It is suspected that the charges of terrorism proven on political figures in the past year despite being clearly beyond the ambit of the Law on Terrorism Act are influenced with political thought and pressure. This is supported by the deliberation that were rushed through on the cases with misapplication/ denial of procedures, where the hearings were conducted day in and night for the verdict to be granted at midnight. Nothing was done at the initiative of the judiciary to rectify such procedurally undesirable result. The result of this was to lead the public to view the judiciary and their trials as equivalent to a circus.

Baseless remand trials

3. The remand trials of the detainees are being conducted as closed hearings contrary to Article 42 of the Constitution. The remanding of political figures is mostly based on the reliance on an intel report. Acceptance of the Police intel report as evidence has resulted in it being treated as a weapon to detain political figures. While it is contrary to Article 49 of the Constitution and thereby a violation of the Constitution to remand a person in the absence of any of the 4 instances stipulated in Article 49 of the Constitution or any supporting evidence, merely for purposes of obtaining evidence, the judiciary has refrained from taking any action to rectify and prevent this.

Judgements in absentia

4. Despite the protection guaranteed for all citizens in Article 51 of the Constitution, from the fear of being subjected to a judgment passed in absentia in criminal trials, a judgement was granted in the past week against a political figure at midnight while he was bedridden at the hospital after passing out inside the court room earlier in the day. The Judge simply could not resist till sunrise the next morning.

Entertaining anonymous witnesses

5. It is believed that the trials of the political figures that are conducted with a reliance on the witness accounts of the anonymous witnesses contradicts the law. The judiciary has not taken any action to rectify this so as to ensure the proper application of the procedures stipulated in Article 42 of the Constitution in a transparent manner.

Discipline of the Judges

6. Some of the Judges are viewed as lacking the discipline to serve in the post. Some of them are neither punctual nor are respectful towards the parties to the case. In this regard, both the judiciary and the JSC has failed to take any action to ensure the maintenance of discipline of the judges in a manner to leave no room for complaints arising out of the allegations of succumbing to political pressure. The judiciary has taken no action to change the perception of the prevailing corruption amongst the judges despite countless rumors of the practice of accepting bribery by the Judges. The only action they appear to be taking is against the lawyers.

Undeserved penalizing of the Judges and security of the post

7. The Judges are being subjected to various pressure with the aim of threatening and influencing their work. Among these include the transfer of Judges from one court to another without their consent and without an opportunity for justification, indefinite suspension, removal of well educated and competent persons from the post, and replacement or appointment of persons whose discipline and characteristics are questionable for the post of a Judge. There have been instances where members of the Judicial Service Commission have directly contacted certain judges and lead them to have uncertainties and fear about the permanency of their post.

Governance of the lawyers by the Supreme Court

8. The Attorney General Office had been the governing body for the affairs of the lawyers as the guardian of the lawyers. But the Supreme Court at its own initiative took over the responsibility to govern the affairs of the lawyers. It is noted that as a result, there has been a prolonged delay for recent graduates without getting their practicing licenses and there has been a direct influence and uncertainty created by the Supreme Court to the works of the lawyer. This is something that is very concerning for the lawyers. It is also noted that the lawyers who are worthy of disciplinary action are not being subjected to any. Instead we witness action being taken against those lawyers who speak of injustice after failing to obtain justice. There is no institution who represents the lawyers and work for the rights of the lawyers. Nor is there an entity that works towards the professional developments of the lawyers.

The Supreme Court overriding their jurisdiction pursuant to the Constitution

9. Article 145 (c) of the Constitution proscribed the decision of the Supreme Court as the highest authority in the interpretation of the Constitution the laws and in cases heard by the judiciary. The authority granted to the Supreme Court under this provision is not a limitless power to govern every single affair in the Maldives. Judges are supposed to be independent and act neutral. And it is clear from Article 142 of the Constitution that Judges are required to act in accordance with the Constitution and all other laws. Thus,

while the Constitution also stipulates that the Maldivian State is based on 3 separate powers, it is the People's Majlis who has the authority to enact legislation. However, the Supreme Court has penetrated the authority of the People's Majlis in relation to various issues and have been enacting laws in the name of policies, rules, circulars and declarations.

One Judge influencing the works of another

10. Each and every Judge is a free and independent person. Individual Judges should not influence the works of another. And in the same manner, one Court should not influence the work of the other. Nevertheless, the reality is rather different from this. Some higher courts have access to files of certain cases that are being heard in another court. And it is noted that the freedom of the Judges in lower courts have been constrained.

Rights of the detained accused

11. Article 51 (a) of the Constitution stipulates that a person has the right to be deemed innocent until proven guilty of an offence beyond reasonable doubt in a court of law. Regardless of this, Court have refrained from taking any action to rectify the cases of various detained accused being denied of the basic rights guaranteed under the Constitution and the laws.

Penalizing lawyers without notifying the cause for action

12. The right to be subjected to administrative action in a fair and just manner is a basis right guaranteed under Article 43 of the Constitution. The Constitution also guarantees the right to submit a case where it is believed that one's rights have been affected due to the administrative action so taken. In spite of this, when the Supreme Court suspends or terminates the lawyers license, the lawyers are not given an opportunity to provide any justification. On top of this, they are deprived of the opportunity to appeal against the administrative action to a court.

Unmethodical functioning of JSC

13. It is believed that the functioning of JSC has been organized in a manner that will enable or encourage the spread of political influence. The Supreme Court should not be tolerated in barging into the business of penalizing Judges in overriding the existing procedures established for this within the JSC. The issue of limited number of Judges in the High Court has prolonged without a solution. The High Court branch in the North of Maldives has not entertained any cases due to one of their Judges being in Male' for the past 6 months. There is no guarantee as to the Courts in which the Judges work. Thus, while there are Judges to fill in the Drug Court and the Juvenile Court, there are only few matters that are entertained in these courts. The transfer of Judges between Courts is done regardless of any vacancy or need and without the consent of the Judges. Infact, majority

of the magistrates in the islands are not acquainted with the Penal Code and the Criminal Procedure Code.

The role and responsibilities of the Attorney General and the Prosecutor General

14. It is believed that the roles of the Attorney General and the Prosecutor General to uphold the governance of the law and to guarantee the basic rights of the people thereby enabling public freedom, is not being carried out as required under the Constitution and the laws in place. Neither of these entities have taken any action in defending the Constitution. The Prosecutor General does not appear to have any order or criteria in prosecuting people. It is believed that instead of looking at the existence of evidence in the prosecution, the Prosecutor General prosecutes people under political influence or pressure.

As such, we call upon the respective state authorities to provide solutions for the above outlined concerns.

27 August 2017