

**Acting President**

Prof. Robert Goldman, United States

**Vice-President**

Justice Michèle Rivet, Canada

**Executive Committee**

Prof. Carlos Ayala, Venezuela  
Justice Azhar Cachalia, South Africa  
Prof. Andrew Clapham, United Kingdom  
Justice Radmila Dacic, Serbia  
Ms Imrana Jalal, Fiji  
Ms Hina Jilani, Pakistan  
Mr Belisario dos Santos Junior, Brazil

**Executive Committee Alternates**

Prof. Marco Sassoli, Switzerland  
Justice Stefan Trechsel, Switzerland

**Other Commission Members**

Prof. Kyong-Wahn Ahn, Republic of Korea  
Justice Adolfo Azcuna, Philippines  
Mr Muhannad Al-Hassani, Syria  
Mr Abdelaziz Benzakour, Morocco  
Justice Ian Binnie, Canada  
Justice Sir Nicolas Bratza, UK  
Mr Reed Brody, United States  
Prof. Miguel Carbonell, Mexico  
Ms Roberta Clarke, Barbados/Canada  
Justice Moses Chinhengo, Zimbabwe  
Justice Elizabeth Evatt, Australia  
Mr Roberto Garretón, Chile  
Prof. Jenny E. Goldschmidt, Netherlands  
Prof. Michelo Hansungule, Zambia  
Ms Gulnora Ishankhanova, Uzbekistan  
Mr. Shawan Jabarin, Palestine  
Justice Kalthoum Kennou, Tunisia  
Prof. David Kretzmer, Israel  
Prof. César Landa, Peru  
Justice Ketil Lund, Norway  
Justice Qinisile Mabuza, Swaziland  
Justice José Antonio Martín Pallín, Spain  
Prof. Juan Méndez, Argentina  
Justice Charles Mkandawire, Malawi  
Mr Kathurima M'Inoti, Kenya  
Justice Yvonne Mokgoro, South Africa  
Justice Sanji Monageng, Botswana  
Justice Tamara Morschakova, Russia  
Ms Karinna Moskalenko, Russia  
Justice Egbert Myjer, Netherlands  
Justice John Lawrence O'Meally, Australia  
Justice Fatsah Ouguergouz, Algeria  
Dr Jarna Petman, Finland  
Prof. Mónica Pinto, Argentina  
Prof. Victor Rodriguez Rescia, Costa Rica  
Mr Alejandro Salinas Rivera, Chile  
Justice Ajit Prakash Shah, India  
Justice Kalyan Shrestha, Nepal  
Mr Raji Sourani, Palestine  
Justice Philippe Texier, France  
Prof. Rodrigo Uprimny Yepes, Colombia

**Supreme Court of the Maldives  
Theemuge, Orchid Magu  
Malé, Republic of the Maldives**

**Department of Judicial Administration  
Aaburuzu Higun  
Malé, Republic of the Maldives**

**27 September 2017**

**Concerning the summary suspension of 54 Maldivian lawyers for urging judicial reform**

The International Commission of Jurists, comprising of 60 leading jurists from around the world, condemns the summary suspension of 54 lawyers on 10 September 2017 by the Department of Judicial Administration (DJA), the administrative arm of the Maldivian judiciary supervised directly by the Supreme Court. The 54 lawyers constitute around one-third of all lawyers in private practice in the country.

Their suspension follows a petition by 56 lawyers (two of whom were already under suspension) that called for reforms to ensure independence of the judiciary. On 18 September, the suspension of 13 out of the 56 lawyers was lifted after they reportedly submitted statements to the DJA "apologizing" to the Supreme Court for signing the petition and causing offence to the Court. We have been informed that other lawyers are also submitting statements of apology to the DJA. Some consider that in the absence of a redress mechanism to challenge their suspensions, they are left with little choice but to apologize.

According to the DJA, however, the suspensions of 13 lawyers were lifted on the completion of investigations against them.

The lawyers' suspension, procedurally and substantively, is incompatible with international law and standards and must be revoked unconditionally.

**Freedom of Expression**

The lawyers were suspended after they signed a petition calling for judicial reform, which they submitted to the Supreme Court for consideration on 30 August 2017. The Supreme Court dismissed the petition, and a few days later, the DJA suspended the lawyers for "obstructing the independence of the judiciary and the independence of the judges by forming a group and illegally assembling outside the Supreme Court, remarking on the duties of the judiciary and attempting to influence the courts by preparing and signing an illegal document against the jurisdiction, procedures and decisions of the courts..."

Under international human rights law, including the International Covenant on Civil and Political Rights (ICCPR) to which the Maldives is a party, lawyers, like other persons, must be guaranteed the right to exercise fundamental freedoms, including freedom of expression, association and assembly. The UN Basic Principles on the Role of Lawyers similarly affirm that lawyers are entitled to freedom of expression, which includes, among other things, “the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights.”

The State therefore has an obligation to respect and protect the right to freedom of expression and other fundamental freedoms, including when exercised by lawyers, and not to sanction such expression. Disciplinary action based solely on critiquing the Supreme Court or calling for judicial reform is a violation of the freedom of expression of lawyers. Indeed, it is squarely within the role of lawyers to comment on matters relating to their profession, particularly questions concerning the administration of justice.

We are also concerned that the suspension could have a chilling effect on others in the legal profession, deterring them from commenting on matters concerning the Supreme Court or the administration of justice for fear of professional repercussions. This concern is particularly acute given the absence of a professional bar associations or other independent organizations in the country to advocate for the collective interests of lawyers.

### **Fair Proceedings and Due Process**

Consistent with rule of law precepts, it is essential that public officials and professions, such as lawyers, whose conduct is regulated by the State, be entitled to a fair hearing and due process when they are subject to disciplinary proceedings. In that connection, the UN Basic Principles on the Role of Lawyers contain certain basic requirements to be followed in disciplinary proceedings against lawyers so that they conform to international law and the independence of the legal profession. These requirements of due process establish that lawyers can only be sanctioned pursuant to a procedure that respects a number of guarantees: complaints against lawyers in their professional capacity must be processed fairly and in an impartial manner; lawyers must have the right to a fair hearing, including the right to be assisted by a lawyer of their choice; and they must be allowed an independent judicial review to challenge any disciplinary action against them.

The suspension of the lawyers was undertaken in clear violation of these principles. The lawyers were given no prior notice that they were under any investigation or disciplinary proceedings, and they were not given an opportunity to defend themselves or be heard at all. They were penalized before any apparent investigation was conducted over the allegations made against them. And, presently, they do not have a redress mechanism to challenge their suspension.

### **Background and Context**

The Supreme Court of the Maldives has come under criticism in recent years for its lack of independence and overreach.

In 2014, the Human Rights Commission of the Maldives (HRCM) in its Universal Periodic Review (UPR) submission noted that the Maldivian judicial system was controlled and influenced by the Supreme Court, which

had weakened the lower judiciary. In response, the Supreme Court initiated *suo motu* proceedings and charged members of the constitutional body with "undermining the Constitution" and "high treason." On 16 June 2015, the Maldivian Supreme Court ruled that the Commission's UPR submission was unlawful, biased and undermined judicial independence in the country. The submission included criticism of the judiciary and the Supreme Court, with reference to a report presented by the UN Special Rapporteur on the Independence of Judges and Lawyers following her 2013 visit to the Maldives.

There are no bar councils or similar associations of lawyers, nor are there regulatory bodies comprised of lawyers in the Maldives. In 2012, the Supreme Court, at its own initiative, assumed the role of governing lawyers, including the power to take disciplinary action against them.

In her 2013 report following a country visit to the Maldives, the Special Rapporteur on the Independence of Judges and Lawyers noted that the threat of contempt of court to muzzle the freedom of expression of lawyers; Supreme Court regulations restricting the ability of lawyers to express their opinions; and the restrictive and punitive direct regulation of the legal profession by the executive, judiciary or legislative branch of government - rather than through independent self-governing professional bodies - contradict the principle of independence of the legal profession.

Lawyers are one of the pillars upon which human rights and the rule of law rest. Lawyers play an essential role in protecting human rights and in guaranteeing that the right to a fair trial is respected by providing accused persons with a proper defense in court. It is therefore essential that other institutions of the State, including the judiciary, recognize the independence of the legal profession.

The International Commission of Jurists calls on the Supreme Court and the DJA to revoke the suspension of all lawyers and ensure any disciplinary proceedings against lawyers comply with the Maldives' obligations under international standards and respect the independence of the legal profession. We also urge the Supreme Court to desist from assuming authority to discipline lawyers and support efforts to establish an independent, self-governing regulatory body of lawyers. Finally, we urge the Supreme Court to respect the freedom of expression and association of all persons, including lawyers.

Yours sincerely,



Sam Zarifi

Secretary General  
International Commission of Jurists