

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

MALDIVIAN
DEMOCRACY
NETWORK

President Abdulla Yameen Abdul Gayoom
The President's Office
Male', Republic of Maldives

8 February 2018

Dear President Abdulla Yameen Abdul Gayoom,

We write to you in relation to the statements you made with regard to the Supreme Court judgment (No. 01/SJ-SC/2018) releasing all political prisoners, while addressing the Maldivian people on Tuesday, 6 February 2018. We express serious concerns over your comments, which were made during the presidential address. The most significant of our concerns are as follows:

1. Based on many of Your Excellency's own comments—while the system of democratic governance enshrined in the Constitution has set clear boundaries to ensure separation of powers between the legislature, the executive, and the judiciary—it appears that the executive has attempted to exert undue influence over the judiciary, and encroached into judicial matters.

Your Excellency detailed some of the deliberations the Supreme Court justices had made following the said court order. Failed attempts you made to meet a Supreme Court justice was also mentioned during the speech. We must reflect on how the person mandated to head the government had obtained information, of that nature, into discussions between judges.

It is worth noting that your speech criticising the Supreme Court indicated that you encouraged state authorities to refrain from obeying the abovementioned order, made by the highest court in the country and ultimate authority on administering justice. As per Article 141(c) of the Constitution: "no officials performing public functions, or any other persons, shall interfere with and influence the function of the courts."

Your statements suggest that, the actions of certain individuals, including yourself, have wholly impeded judicial processes. We strongly believe that, given that you mentioned having written to the Supreme Court citing difficulties in enforcing the order; and in response when the Supreme Court stated that there existed no legal impediments to enforcement — your own comments suggest that you assisted the authorities in further violation of the Supreme Court order. When the appeals process is completed, the only avenue left is to raise concerns over the decision with the Supreme Court, in writing, as per Article 20(c) of the Judicature Act and asking for a remedy. Non-compliance of the top court’s verdict is not a solution. The role and responsibilities of the Attorney General, as prescribed under Article 133 of the Constitution, does not extend to ascertaining the legal validity of court orders, or providing legal opinion regarding actions ordered to the Prosecutor General by the Supreme Court. Unconstitutional actions such as these can pave the way to set precedents for state institutions’ refusal to adhere to an order from any court until the Attorney General confirms the court order’s legitimacy.

“A president can contact judges via phone, requesting specific cases to be expedited”, Your Excellency stated. Such a request concerning a particular case would be in contravention of Article 17 and 20, which specifies non-discrimination and equality before the law, respectively. If Your Excellency may call a judge to expedite a case in the interest of the public, we believe that you must then call each judge sitting in each court to expedite every single case undertaken by the judge. Furthermore, there exists a policy on how expedition of cases can be requested at the courts. The general procedure allows a party to the case to make a request in writing, urging expedition. In that regard, if the State is to make such a request, we believe, the Attorney General—and not the President—should make it.

While you addressed the nation, Your Excellency repeatedly alluded to how the judiciary should act pursuant to certain on-going criminal cases. In many instances of your speech, when speaking on behalf of your government or the executive, you chose to use the word “the State” instead. The State includes its three separated powers. It impedes the principles of good governance when the highest authority in charge of the government speaks in such a conflated and obfuscated manner.

Your Excellency has in your comments spoken on behalf of the Prosecutor General, or spoken of matters that the Prosecutor General needs to speak of regarding her mandate. The Prosecutor General is a completely independent Constitutional institution. It is not your place to speak of difficulties that the person in charge of that institution faces in carrying out the mandate or to defend the failure of the Prosecutor General to carry out the mandate. We have no doubt that the Prosecutor General is well aware of what needs to be done in such a situation, and that the Prosecutor General is fully able to do so.

2. When Your Excellency stated that the Prosecutor General had difficulties in implementing the Supreme Court order, it was based on a pre-empted scenario that had not come into existence at the time of the claim for the difficulty. For example, in the said Supreme Court Order, an action falls on the Prosecutor General only if and when any other relevant parties stated in the Order fail to carry out the orders. While the Chief Justice had decided that there is no obstruction to the implementation of the Supreme Court order, there is no room for the

Prosecutor General to excuse herself from exercising her duties simply due to a speculation of unenforceability by another party, before this happened. If any individual in charge of a state institution has difficulty carrying out their mandate, the best course of action would be to resign from their post. This option is also available for the Prosecutor General.

What your Excellency said regarding the legal authority of the Judicial Service Commission is correct. The powers afforded to the JSC by the Constitution, empowered by law, to investigate matters of conduct of judges and take appropriate disciplinary action, cannot be restricted through any court order.

3. Your Excellency declared that the 9 names stated in the Supreme Court order are “titled as political prisoners”. Perhaps you said that mistakenly. There is no such statement mentioned in the court order. The Supreme Court order actually stated: ***“in clear violation of the Constitution of the Republic of Maldives as well as international treaties on human rights that Maldives is party to, for various political reasons, criminal investigations were carried out after politically influencing the prosecution and the judiciary, resulting in convictions that violated procedural propriety...”*** and so forth. Therefore, in this case it is not necessary to take on the burden of determining whether the Penal Code of the Maldives recognises the concept of “political prisoners”.

Your Excellency has admitted in your comments that you interfered with the duties of an independent judiciary and an independent Prosecutor General. Furthermore, deploying the police and military to enter the Supreme Court to arrest and detain Supreme Court justices, is a crime that every person actively involved, including the Home Minister and the Defence Minister must be made answerable to.

For the reasons mentioned above, we inform Your Excellency that our organisation is extremely dismayed over the unacceptable comments made during your address to the nation, and we call upon you to keep all your actions within the boundaries of the law.

Sincerely,

Maldivian Democracy Network

