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By email: SRIndependenceJL@ohchr.org

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Excellency,

We are an NGO, working to promote open democratic values in the Republic of Maldives, through respect for human rights, judicial independence and the rule of law. We write to you at a time where alarming actions against judicial independence taken by judicial and political actors continue with impunity. It is noteworthy that threats to judicial independence in the Maldives have been left unchecked since adoption of new democratic Constitution in August 2008.

The Judicature Act 2010 was amended in December 2014; the amendment reduced the Supreme Court bench from 7 to 5 judges and aims to establish two new geographical branches of the High Court in the north and south of the country.

Three judges were transferred to the Southern Branch of the High Court. Justice Azmiralda Zahir is one of the three judges, and also the only female judge sitting in the appellate court bench. Along with Justice Zahir, recently appointed Chief Justice Abdul Ghaneer Mohamed and Justice Shuhaib Hussein Zakariya were appointed to the Southern Branch. Justice Mohamed was appointed to the Southern Branch of the High Court after former sitting Justice Abbas Shareef retired.

Justice Zahir has raised concerns about the controversial transfer as it has affected her fundamental rights and liberties. We believe the amendments were designed to exclude the views of certain judges from the high profile appeals submitted to the High Court.

To date, the Supreme Court has not specified the terms and conditions of employment for the justices transferred to the north and south.

Since the Southern Branch of the High Court began functioning on 16 December 2015, very few appeals have been submitted. On the other hand the Northern Branch has not been established with the same vigour. Due to this fact, the rights of those who reside in the north of the country have been neglected. According to the 2015 statistics published by the Department of Judicial Administration, as many as 30 appeals remain pending.

Despite being legally required to hear appeals at the High Court branch in Malé until 1 December 2015, the three judges assigned to the Southern Branch were prohibited from hearing any appeals. It is additionally extraordinary that while the said judges were not allowed to hear cases, the judges based at the existing High Court branch in Malé were sitting in appeals submitted to the southern branch in Addu.

It is with concern that we note the three judges' right to work has been unduly impeded, and their judicial scope extremely restricted. The right to work found under Article 23 of the Universal Declaration of Human Rights and Article 37 of the Maldivian Constitution has been unduly abrogated for the High Court justices.

The new changes effectively limit the scope of cases that the three judges would be able to hear and adjudicate. The judges sitting in the High Court in the capital are allowed to hear appeals decided by magistrate courts, superior courts and tribunals. Furthermore, the High Court has jurisdiction over constitutional motions such as elections' complaints. The judges who have been transferred to this region can only sit in appeals of magistrate court decisions, excluding cases heard by superior courts in Malé, which has jurisdiction over all serious criminal offences.

Justice Zahir notes in her letter, "If the Supreme Court had acted in good faith, it would have had the opportunity to work with the Judicial Service Commission to recruit judges who were willing to permanently relocate to Addu Atoll."

There has been a trend of excluding judges with Common law background, especially female members of the judiciary. Such actions hinder the realisation of Article 17 of the Maldivian Constitution, which calls for gender equality and equal opportunity. In many cases these judicial actors tend to resign after facing pressures from the judiciary and the executive. The only Western educated justice at the Supreme Court – Justice Muthasim Adnan – was removed through the amendment mentioned above. The only four female judges, working in the Maldivian criminal justice system have faced immense political pressure. Justice Zahir is one of two highly qualified female judges remaining in the Maldivian judiciary.

We urge your offices to highlight this issue and take timely action, as judicial independence in the Maldives has not been realized in accordance with the Constitution.

At this time we note that public confidence in the judiciary has been deteriorating, and several independent surveys conducted support the same conclusion.

Yours Sincerely,

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Executive Director

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