









have been instructed to perform which in just a few words is to look what is wrong, why is it wrong and how should it be repaired. In that context therefore it is absolutely essential to meet with you to establish with you a report and to indicate if there is anything that the committee or any of its members wishes to convey to me or to ask of me, I will be in Maldives in Male' for the next two weeks until the end of next week and I would welcome any input. I have met some of you before. It's not my first visit to Maldives. I have been here for some ten months with back, sitting at the back there at the time of the elections of 2013 we came to love the place. It is not therefore a privilege to be back but a pleasure to be back. Thankyou.

UNDP policy specialist Jason Galac speaking:

Thank you very much honorable chairman and members of the judiciary committee of the Majilis, I just want to act to judge Cregler thanks and appreciation and humility, we come to you desiring to help you to fulfill your own mandates and your aspirations. We are here with the invitation of the government as UNDP we take very seriously our mandate to support the government to support the people of the Maldives and to support their elected representatives. And so, to have this audience this time with you today to be able to hear from you about some of the most pressing issues on the agenda of the parliament and indeed the people of Maldives is a distinct pleasure. I'll just say personally it's my first trip to the Maldives. I arrived yesterday. And so we come eager to hear from you about what you perceive some of the challenges and we would love to take that along with everything else that we are learning in our meetings over the next two weeks and come up with a strategy to support your work as you see fit. Thank You very much.

Chairman Speaking:

Thank you very much and we hope, we wish you have very good stay in the Maldives. We would like to thank that UNDP and the international community for the assistance throughout in reforming the Maldives judiciary, and it's not an easy thing to fully describe what the Maldives judiciary is like. I must say the judiciary has been acting like some freak of nature. I'm not exaggerating but I must say so. The Maldives judiciary by all accounts has been acting more as an instrumental part in revenge than a forum for justice. Its corrupt, incompetent and so and so. I would like now to open the floor to the members of the committee. Yes Please.

Thulhaadhoo constituency member Hisan Hussain speaking:

Thank you. You mentioned what like our input into the challenges on what we think would be the challenges in carrying out the judicial reform process in Maldives. Like

the chair pointed out and I think by now you would be aware of, it is a tricky situation we are in. The judiciary is highly compromised, and we need to implement serious reform programs in order to clean the judiciary, if I put it correctly. Some, recently the parliament has passed two resolutions. One resolution was on the encroachment of the powers of state institutions by the Supreme Court. We had, over the years we had many instances in which the supreme court has encroached on state independent intuitions and functions of these institutions. Recently when the judicial service commission which is mandated with the discipline of judges took action against a supreme court justice and suspended him, there was a court order from the other four colleges of his, suspending the suspension order of the judicial service commissions. And then it brought out subsequently another court order instructing the parliament not to pass any motions or the judiciary committee to take any actions or look into the matter of the judicial service commissions actions regarding this judge. So, the parliament pass the resolution asking the judicial service commission to study on the instances of encroachment of other constitutional powers of other institutions by the supreme court. The other resolution was that the parliament ask the judicial service commission to conduct an appraisal of the sitting judges. Actually, the law, the judicial service commission law mandates the judicial service commission to conduct such an appraisal every 2 years. But since 2008 this has never been done. And this would be the first time the judicial service commission would be conducting and appraisal of the judges. According to the law promotion of the judges and promoting judges to senior courts is supposed to be based on these appraisals. But since these appraisals has never been done it's not followed in practice. So, this would be something the judicial service commission will not have the technical expertise on how to go about doing, in carrying out such a huge appraisal mandate and something that they would need assistance in. And it has been resolve by the parliament that the judicial service commission should comment this appraisals. So, I think those two arears would be challenging area once we come to a conclusion on the instances of encroachment of supreme court on other institutional powers I think it would give us a very clear which year of exactly how the judiciary has been behaving over the past years.

Chairman speaking:

Thank you honorable Hisan.

Justice honorable Johan Cregler speaking:

Question here please. I was looking is the committee instructed to look at the judiciary from top to bottom of the nearly the supreme court, high court or we are looking at the judiciary as a whole. In other words, some two hundred judges.

Chairman speaking:

Thank you. The committee's mandate is to conduct oversight of the judicial service commission, the body which is mandated to look into ethics and conduct cases of judges on appointment and appraisal cases so and so. The committee's mandate, this committee's mandate is to oversee the judicial service commission and some other government authorities such as the prosecutor general, employment tribunal and more. And also once the judicial service commission decides on a case of dismissal of a judge the constitution says that it should be sent to the parliament. Be it a magistrate of a court or a supreme court justice. So, the committee looks into such matters as well and we send the case to the floor for the majlis to decide on it. Yes, please Hisan

Thulhaadhoo constituency member Hisan Hussain speaking:

With regard to your question the judicial service commission is mandated to look into the appraisal of all the judges across the prospective from top to bottom.

Chairman speaking:

Mr. Ali Hussain.

Kendhoo constituency member Ali Hussain speaking:

Nice to see you again. Like we met and talk for more than one hour like may be one and half hours. I don't know. Anyway, good to see you again. Then welcome to Maldives. Actually, I think that's way the judiciary like I mean all the judicial service commission like fail to do is the starting point or it could go even before. That's why we are talking about article 285, articles 285 of the constitution. Since the 2008 with the new constitution came into existence, we have started to see this phenomenon from the supreme court. They started to encroach upon certain powers of the judicial service commission and then they basically enalified an article section of the judicial service commission which gave power over judicial administrative authority. And basically, later on it was brought under the control, direct control of the supreme court and so the administrative function of the whole judiciary is taken by the supreme court. And by then the parliament couldn't do anything and then came the after the 2 years of the interim period and they came the judges had to be basically permanent and 285 was I mean they basically said it's just a symbolic article. What they said was 285 was a symbolic article and if no judges been convicted of a criminal offence than there is no ethical issue to be taken into account. That's what they did exactly in 2010. And so, all the judges there were there before 2008 they all got permanent. I mean so. Then they continued. And then supreme court started acting as if it is above the law. And above

the constitution itself. And we have seen that clearly in 2008 if I am not wrong the civil service commission the members case he was, there was a misconduct from him and then he was basically expelled, he was basically no confidence motion was taken against him. And then file a petition before the supreme court. And then this was taken up. And supreme court could not distinguish between political decision and administrative decisions. The supreme court fail to understand that whatever the parliament decides is a political decision. So, they can't have a judicial review over a decision of the parliament which was purely of a political nature. So, the supreme court fail to understand that. And then they have basically talked about some procedural issues and some procedural fairness and all that. And basically, they nullified the decision of the parliament. That's what they did. And then like even the lawyers all the lawyer's community and you started like thinking like what's happening. Like what is happening. And then of course it came 2013 the infamous judgement came up and then it, I mean everything got actually what can I say. There was no like law and order situation. So, who has in power it could control supreme court and whatever judgement they want they could get from the supreme court? So that is what we have seen throughout I mean all these years. So, what went wrong. I think one of course I think, I always say this no like it's also matter of fact that we have taken into consideration from way of the legal education. It was important. So, when you get legal education the country where there is an authority ruler I am taking about Egypt. Where an authority but not all like lawyers who train there, I mean just; but when there is authority in regime and there is an institution which basically try to help the auto cretic regime for 30 years and even before that. And this was study from there and then what they understand, how they understand a democracy, democratical institution, how law should be govern in a democratic country. I really don't think they fully understand what it is. That is one idea. And maybe some of the lawyers and some of my colleagues are they say no Ali you are naïve. They do know it. But they just don't want to do the things right. But I think there is some problem with understanding of the law itself and of course, the interpretation of law is a very much of something that we have to consider. And then of course they made the JSC totally in active like, I mean the composition is as such you know, a currently I took up this issue even 2009. Early 2009 also I took up this issue when I was just a fresh graduate, I took up this issue. In various forums, the composition itself of course, there is way that the ruling party could control the judiciary, I mean judicial service commission as such. But more than that the supreme court took over the control of the judicial service commission. See if in the judicial service commission, we have layer I mean who is going represent the lawyer community. But the judges, they started voting. I mean they also voted the lawyers election. And they also vote on judges, I mean there 3 judges also they also vote. The



lawyers vote they also vote. So, they basically they control the whole judicial service commission. So, there is a commission which was there to constituted to, I mean to make the judiciary accountable has become part of the judiciary. So, I think that is I mean like where everything went wrong. I think it's time that we have to really think about. I mean whether we are going to go after like one judge one judge, I mean on individual case by case basis or we are going to re-visit article 285 and see what can be done. Or I mean can't be do it or again I mean we can have an assessment over the judges their conduct or their educational qualification and we know like how I mean they met up with the educational qualifications. Those people who have got, who has studied only up to grade 7, they became judges and then they got their I mean law degree within matter of one and half years. I don't know how? That's how? That's the reality. And these are all the things that I think we have to consider when we talk about judiciary reform and making things or bringing things in order.

Chairman speaking:

Thank you. Mr. Jeehan please.

Hinnavaru constituency member Jeehan Mahmoodh speaking:

Thank you chair. Your honorable justice, it's wonderful to meet you again. I do not know if you re-call, but we met long back 6 years ago in 2013, the human right commission doing a very difficult time for the country during the 2013. Very controversial presidential elections. There is definitely this very concerning sumoto regulation adopted by the supreme court drafted adopted and acted upon by the supreme court themselves. And they have been using this to threaten independent institutions of the two times that they have threaten to begin with as you are aware of the elections commission in 2013 and the human rights commission in 2015. They have charged the individual commissioners with a criminal offense. The elections commission members were removed from office by the supreme court which is a power wasted in the obviously in the parliament. And a power wasted with the parliament and they sentenced the president and the wise president of the elections commission to 6 months in prison. In the case of the human rights commission they did not remove the commissioners because there were only 21 days left in that annual. But issued a 11 point guide line for human rights commission it was 11 point guide line. Clearly striping of its legislative it's constitutional powers and also restricting it from sending any reports to international human rights bodies and mechanisms without the approval of the government. And therefore, encroaching upon the independence of the institutions. And in clear acts of appraisal again appraisals against both the independent institutions in both the instances. And I think as we move ahead and look in to how we

can change this situation and change this really wrong and threatening and scary provision that they taken upon themselves. I think it's important that there will be legal remedies to this issue and I just wanted to fly back. Thank you.

Thulhaadhoo constituency member Hisan Hussain speaking:

I also wanted to add to what honorable member Ali Hussain had said regarding the article 258 screening procedures that was originally mandated during the interim period of the constitution between 2008 and 2010. The screening procedure was not followed through at all. Like he said only all the judges were made permanent. Except for six judges in the entire country. No appraisal whatsoever was done. They took it as more as a symbolic gesture than a real constitutional mandate the than judicial service commission. I think what needs to happen now is that we need to revisit the appraisal and screening process that we did not go through back in 2008 to 2010. I don't know whether the correct terminology now would be to call it revisiting 258. Because that itself is very controversial. But whatever name we called it, that is a process we need to follow to in order to get a judiciary that the 2008 constitution envisages. We also see that the whole recruitment process of judges is rid to facilitate only local graduates and sitting magistrates to come in two superior courts, high courts and the judiciary. I will just give you an example. According to the recruitment guidelines or the criteria's that is followed currently by the judicial service commission. The law says that minimum qualification is for you to be a per person to be a judge in a superior court, the minimum qualification is that you must either have a degree in law, a degree in sharia' or degree in sharia' and law. So, if you have a degree in sharia' you get 20 marks. If you have degree in law, you get 20 marks. The only two places in the world they give sharia' and the law degrees are as far as we know from Azhar university in Egypt and Maldives Islamic university and Maldives national university. Three places, local universities and Azhar university. So, anyone with this sharia' and law starts with than extra 5 point lead. So, if you have a degree in the so-called sharia' and law you start with 25 marks. But if you are graduate from Oxford or Cambridge or anywhere, any well recognized university in the world or even in the Islamic university of Malaysia you start with 20 marks. And then end of the day when you come to the interview criteria you are not able to catch up with the local graduates or the existing magistrates. Because the existing magistrates all of them were made qualified like MP Ali Hussain said. They did this crash one and half year degree course which no one knows how they were able to do. But they all graduated with this one year or one year plus sharia' and law degree programs. So, all these existing magistrates they have a degree in sharia' and law and they have experience in the judicial sector. So, nobody else there is able to take a lead over these peoples. And the interview section carries only 15 marks. So, by the time

you are shortlisted to the interview already you are like way ahead of all other graduates. So, that is how the system has been rid by the judicial services commission to keep these existing people or unqualified judicial re crowd in the system and a blocking fresh graduated and fresh blood from entering into the system. So, I think it's a very critical that we review the recruitment criteria's the judicial services commission is currently in the process of doing that. So, that would be something that again challenging for us. Because this would be important when we go for judicial reform.

Chairman speaking:

Mrs. Jeehan again.

Hinnavaru constituency member Jeehan Mahmoodh speaking:

Thank you chair. With the establishment of a judicial trainings institute the academy as we know as now, they have been attempts with a assistance of U.N.D.P to conduct a monitoring program. Specially from the perspective of human rights and also vulnerable groups. And I just also wanted to highlight this fact that the two times the court monitoring program was intended to be conducted the supreme court obstructed it. And have stopped any sort of monitoring oversight or even for educational purposes from taking place. So, I wanted to highlight that as well. Thank you chair.

Chairman speaking:

Thank you. Mr.Saudh.

Villingilli constituency member Saudh Hussain speaking:

Thank you chair and welcome Mr. judge Johan Cregler and Jason Galac. So, I also would like to mention some few points in I have being experienced. And also, a very vital points to be already noted my colleagues and MP's. So, in my experience Maldives have been transformed for the democratic system in 2018 after than the new constitution. During that time the judiciary we couldn't reform. The total judiciary has transfer with the same judges we have been continued. And after that the parliament elections as mention in constitution every time the majority party have been controlled the judiciary. It's because of the judicial service commission formation the president and the, he has his representative on the judicial service commission and the parliament speaker and from the parliament one member, independent member also sitting in the judicial services commission. Also, the Attorney general himself to be representing the judiciary. So, in the balance of power the elected parliament majority party is connected with the ruling party in the government. The opportunity is open to control the judiciary. So, past ten or twelve years we have been experience that judiciary was total controlled.

And the judicial system is not open for the public. Now the scenario was the reform for the judiciary the voice is very much highly important for the people of the Maldives is first agenda. In this time the agenda 19 has been success because of the judicial reform. The majority party and the ruling party is having the total supreme power in the parliament. But this time the majority party has couldn't dominate the judiciary. Because they them self-rejecting the reform in the judiciary. So, the system is already as mention the chair, that judiciary we need to reform and open, the transparent and what is the happening. Because they are, also Mrs. Hisan has just now mentioned how the low-level court at beginning recruitment procedures. This is same thing happen because of that island, judicial island administrative courts the condition is very poor because of that. Evert judge or they are recruiting by the politically they are appointing. They are not recruiting by their qualifications, their performance. This is the situation. So, I would like to mention in this is my experience. I was the last parliament member. I was the one of the members who was deviated by the supreme court verdict within 12 members was deviated in last parliament. Because of supreme court. Suspended for one and half years. We couldn't even enter from, enter to the parliament. So, the whole nation in crisis. The balance of powering in the constitution we lost. The government dominated whole the institutions. And another case the prosecutor general. The prosecutor general the name is coming from the president office and adopting by parliament. The prosecutor general is defending the government. And all the cases in the court prosecutor general and the judge and court fight against the individual. So, it means the prosecutor general formation also we have to be review. It is not Independent. So, these are our experience. And I have been already found all these issues. So, I would like to mention in here, we need independent, transparent judiciary we need. This is our first priority. The all Maldivian's they need it. And also, there are corrupt judges. Whole Maldivian they can mention in one paper these are the judges who are mostly highlighted. They will tell the names if you go for the islands and others. They will mention. But the thing is how we could remove these judges and we can give the total independent fair and free judiciary for the Maldives. Thank you.

Chairman speaking:

Thank you Mr.Saudh and now again to Mr. Ali Hussain.

Kendhoo constituency member Ali Hussain speaking:

I just forgot to mention about when they started controlling the whole judicial system one more thing there it was in 2012. The supreme court started regulating the lawyers. I think this is the only country where the supreme court will be regulating the functions and ethics or whatever like in, whatever manner about the conduct of the lawyers.

Before the that prior to that it was done by the attorney general's office. But maybe last week only like we are able to come up with the law which is actually going to create a bar council. And so, we are basically I mean getting free or emancipate... we are like moving towards emancipation of the judges and also the system from these corrupt judges. I think to do so would be, I mean we have to do something on when you even drafting. I just have this feeling. Because it says supreme court you know like they really feel they are really supreme. You know maybe for that reason south Africa you have high court, right? Not supreme court. Is it? Is there supreme court? There is. And but Australia they have high court only, right? They don't have a supreme court. May be...

Justice honorable Johan Cregler speaking:

The Australian high court is the supreme court.

Kendhoo constituency member Ali Hussain speaking:

That's why. But when they name supreme court comes, they feel they are supreme. And also, you know they are residing in the presidential palace. So, they feel really superior like, I mean they don't think that they are part and partial of the whole democratic setup. And they don't feel that they have to work for basically the maintenance of rule, rule of law and order. They don't realize that they also have to work for democratization of the country. And one more thing that I have noticed is none of this courts they follow basically open court hearings. What they do is there will be like room for two, three people to get into the court room and then it will be locked. And then once you are in you can't go out. They called it open hearing. And many of the, I mean if it is something in controversial case or controversial decisions, they always have it they conduct the hearing in close doors. Expert a hearing close door sumoto and then we know there will be a judgment on order midnight and then we will be surprised or supreme court has passed an order judgment we have to follow. And then I just want to highlight that expect as well.

Chairman speaking:

Thank you, Ali.

Henveyru hulhangu constituency member Hassan Latheef speaking:

Thank you chair. Thank you and welcome honorable judge and Mr. Jason Gluck. Well I would like to get a view from you as parliamentarians as parliament members. I think we are in the process in the reform of the judiciary. And I think It will be very helpful if I could get your view on the composition of the judicial service commission. And I

know I can understand it may not be healthy for us to change the composition right now. While they work done in the judicial service commission is so rapid and so good. And it may not be healthy to change the composition right now. But I think in the 2008 when the constitution was drafted there was research done in various countries of various countries and then the parliamentarians then thought it would be the best to have the present composition of the judicial service commission. And it was if I am not wrong it was based on the south African system they say. Well as for Maldives I don't think it's working as the parliamentarians for. So, I just want to get a view if it all is possible what would be the best, a good composition of the judicial service commission for us. And thank you.

Chairman speaking:

Thank you Honorable judge Johan Cregler, Jason. If you would like to comment on that please.

Jason Gluck speaking:

So, I would leave to judge Cregler to draw the parallels between your JSC and south Africa for first starters. I think my answer may not be fully satisfactory to you. But these considerations in my view are part and partial to the overall objective of constitutions in separating powers and creating checks and balances. So, in any giving country giving the political and other dynamics that play you may have different considerations about which forces should have voice in something like appointing judges. Some countries might feel completely confident leaving that to the political process allowing parliament to confirm judges on the appointment of more and more different individuals. And we see a modern trend in constitution where we are taking that away from the political actors and we are giving it to you more independent actors in the form of some sort of commission. But then they act nearly raises the question of how do you protect the independence of this commission. And so, we see thing like having political actors appoint a certain number of members under the theory that you then get buy from the different forces that all need to work together in order for the system to work for the different stake holders to feel like that body, the judiciary reflex them and they have confidence in it. Some countries decided that the politician should have some say but a lesser say in that. Some extract from the politicians completely and some leave it to you know the bar or other the judges or you know the nonpolitical actors to way in. And I can't say what is the equation or the right balance for the Maldives judge Cregler have more discussion on that or even to share his experience with south Africa. But I think you are asking the right questions. I think the question is

how you created judiciary that enjoys integrity and independence and also legitimacy from all of the different societal stake holders and the JSC that you came up with is one answer to that question. It may not be the right answer for the Maldives in a long-term basis. But that's the question you should be asking. Thank you.

Justice honorable Johan Cregler speaking:

That's the brief to add to that. I am the chair of an NGO in south Africa that has been litigated without judicial service commission for 10 years. Because they don't do their work. As Jason's said there are various patterns. Having only lawyers that doesn't work either because then it becomes a lawyers keep protecting themselves. Having only administrators there were appointed by the executive is also not desirable having only lawyers there even might be a pack of lawyer who don't want run a committee entirely on their own either. The idea of having a multi-disciplinary body and multi interest body checks and balances on one and other as you have as we have in theory is good. In practice it can be brilliant. But it depends upon the quality and the people in that committee. Systems very seldom failed. People failed. Our judicial service commission has failed. I think your judicial service commission failed for a long time not because the system was bad or the composition was bad. But because the people on did not honor themselves office. That's the real problem. And that your job is the legislation is to supervise them to watch them. Nobody will be honest always if he or she is not watched. The best guard of an honest and competitive judicial service commission is a legislature that watches it closely and keep up to the mark. And then goes to the public and demonstrate to the people that this representative body of yours is not acting in terms of its mandate. It is acting forcibly and it is not worthy of your further support. And that's all I can offer you. I would be writing something along the same lines I think probably with a little more worthy lawyer reason in it. But it seems it goes down to it. You've got to watch them so that they do their job.

Chairman speaking:

Thank you very much. Like judge Cregler just said I think the idea when the judicial service commission was constituted was that leaving all these responsibilities in the hands of judges may not be very good. People don't have confidence and trust in judges in the Maldives. For that very reason perhaps judicial service commission is comprised of a many actors from various fields and anyone would like add anything. Thank you very much justice honorable Johann Cregler and specialist Jason Gluck for meeting with us today. That's very helpful to the committee the information that you have shared with us and we look forward to your assistance in judiciary form in the Maldives and we hope we will have a better judiciary where people have more trust and

confidence in and that's exactly what the sentiments of the population the entire country when we travel across the country for political campaigns on political campaigns what we heard most was the judiciary reform they, the people need judiciary reform very urgently. In fact, radical transformation in the judicial system in the country we will put our at most sincerity in work towards reform in the judiciary and we are glad that the new parliament have this judiciary committee for the first time. So, we would like now to thank you, one more thing Miss Hisaan.

Thulhaadhoo constituency memeber Hisaan Hussain speaking:

Just Quickly before the chair ups the meeting, we would like to know we will get to read your report.

Justice honorable Johan Cregler speaking:

Am I obliged to answer? As, soon as possible. I am aware of the urgency, as soon as possible I promise.

Chairman speaking:

Thank you once again and this concludes today's meeting. Thank you very much.

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