

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the rights to freedom of peaceful assembly and of association pursuant to Human Rights Council resolutions 25/2, 25/18 and 24/5.

First of all, we would like to refer to and welcome your Excellency's Government's commitment expressed during the second cycle of the Universal Periodic Review in 2015, in which it highlighted the centrality of freedom of expression and freedom of the media. In particular, your Excellency's Government accepted to continue strengthening the legislative framework for the promotion and protection of human rights for all people in the country in accordance with international human rights obligations (141.1); ensure respect for freedom of opinion and expression (141.82); take concrete measures to guarantee freedom of expression and the media and to address limitations in the existing law governing the operation of civil society organizations (141.84); increase measures to protect freedom of expression, including the safety of journalists (141.87); guarantee freedom of expression in all its forms and ensure investigations into attacks against journalists and the media and bring those responsible to justice (141.88) (see A/HRC/30/8).

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **draft legislation on the "Protection of Reputation and Good Name & Freedom of Expression Bill"**, submitted to parliament on 21 March 2016.

The draft legislation aims to define the limits of speech that is protected under Article 27 of the Maldivian constitution, and to define the limits placed on the right to freedom of expression by article 67 on rights and responsibilities, and article 33 on the right to protect reputation and good name. The legislation expressly states in article 2(b) and (c) that it seeks to define a functional framework that complies with article 19 of the UDHR and ICCPR. We welcome

the expressed intention to promote freedom of expression in compliance with the relevant international treaties and agreements to which the Maldives is party. Nonetheless, we are very seriously concerned that the legal framework of the draft legislation re-defines the limits of protected speech in a way that places the right itself in jeopardy and therefore is incompatible with the right to freedom of expression as guaranteed under international human rights law.

In a spirit of co-operation and dialogue, and in line with the mandates entrusted to us by the Human Rights Council, we wish to submit the following comments on some of the provisions of the draft legislation and respectfully share these concerns with your Excellency's Government.

The draft legislation is general in that it applies to everyone, including publishers, media, courts and government bodies in addition to individuals, civil society and human rights defenders. It consists of 33 paragraphs divided into the following six chapters: (1) general provisions; (2) situations where right to freedom of expression can be limited to protect against defamation; (3) right to recompense; (4) defences, (5) investigation and the punishment for non-compliance; and (6) miscellaneous.

While the draft legislation's aim, expressed in articles 1 and 2, as well as in the title of the legislation, is the protection of reputation and good name, it contains a number of provisions that deal with national security, religion and social norms. The draft legislation establishes national security, religion, defamation and social norms as grounds upon which the right to freedom of expression can be limited. It also creates a legal basis for criminal sanctions against the breach of some of its provisions.

1. The definition of the right to freedom of expression

Article 3 defines and qualifies freedom of expression as speech that does not denigrate a person's reputation or name and is expressed in accordance to social norms, national security and Islam.

2. Grounds for limitations

The draft limitation establishes four grounds upon which freedom of religion may be limited: (i) Islam, (ii) national security, (iii) social norms, and (iv) defamation.

2.1 Limitations based on Islam

In addition to Islam as an element of the definition of the right to freedom of expression under article 3, the draft legislation also establishes Islam as an independent ground for limitation. The draft legislation contains no further precision on the content of Islam. Under article 7 (a) and 8, speech that contradicts any tenet of Islam can be limited and is considered an offense, punishable under the Penal Code of the Maldives. This type of speech consists of three categories, set out in article 8: (i) speech with the intent of ridiculing and mocking Islam; (ii) speech questioning the validity of Islam or any of its tenets; and (iii) speech that

disrupts religious homogeneity of the citizen of Maldives and causes disunity and religious polarization.

In addition, article 16 establishes that speech that contradicts, demeans or makes a mockery of Islam is in contradiction with social norms and therefore considered as unprotected speech. Article 26 limits the right to preach Islam without the authorization of the Ministry of Islamic Affairs. The same applies to the teaching of Islam in schools or universities. Such speech is punishable under Law of religious unity and protection.

2.2 Limitations based on national security

Under article 7, speech that threatens national security is considered speech unprotected by the right to freedom of expression. Such speech consists of four categories set out in article 10: (i) speech that threatens the independence and sovereignty of the Maldives; (ii) speech that supports terrorism and encourages armed activities or guerrilla warfare; (iii) speech that encourages or calls for damage to life and limb of persons; (iv) speech that encourages or calls for damage to a person or his property.

Speech that is considered a threat to national security under article 10 is considered an offense, sanctioned with a fine of between 100,000 and 5,000,000 Maldivian Rufiyaa (between 6500 and 326,000 USD).

2.3 Limitations based on social norms

Article 7(d) would establish that speech that contradicts general social norms is not protected under the right to freedom of expression. Article 15 defines such speech as speech that “contradict general norms and disciplinary standards in society as well as norms and disciplinary standards that people adhere to in public spaces and in places where people gather. This also includes speech that does not comply with norms, standards, practices and general regulations governing speech of the members of the media and speech of persons entrusted with duties and responsibilities for the citizens of Maldives”. Article 16 includes 6 categories of speech deemed to contradict social norms and therefore unprotected: (i) speech that contradicts, demeans, or makes a mockery of Islam; (ii) speech that encourages (premarital) sexual intercourse or sexual contact or innuendos thereof; (iii) speech that advertises alcohol and narcotics; (iv) speech within the zone of access to minors that can have a negative impact on their psyche; (v) state secrets that are to remain confidential by law; (vi) speech that can lead to negative stereotypes of women, disabled persons and children.

Speech that fall under any of these categories is punished with a fine between 100,000 and 5,000,000 Maldivian Rufiyaa (between 6500 and 326,000 USD (article 29).

2.4 Limitations based on defamation

Speech that encroaches upon another person's right or is damaging to their reputation and good name is under article 7 (c) considered unprotected by the right to freedom of expression. The meaning of defamation, slander and libel is set out in articles 11-14. Such speech is considered an offense, and the burden of proof rests with the persons charged to prove the validity of the content in their speech.

3. *Liability of publishers, media and broadcasting units*

Under articles 5 and 6, a publisher, media or broadcasting unit will be held liable if they publish speech that is in breach of the provisions of the draft legislation. In addition, all persons reporting on Maldivian court proceedings and judiciary opinions are obliged to comply with the draft legislation.

4. *Sanctions*

Articles 25-30 establishes criminal and civil sanctions for breach of the draft legislation's provisions. Criminal prosecution under the penal code is mandatory for breach of article 8(a) of the draft legislation, which thereby criminalizes speech against the principles of Islam.

We express serious concern that the draft legislation defines and limits the right to freedom of expression in a way that puts the right itself in definite jeopardy. We are particularly concerned at the use of religion, social norms and defamation as grounds for limitation. We are equally concerned at the draft legislation's definition of speech that falls under national security and is therefore considered unprotected. The definition and interpretation of all of the four grounds for limitation lack sufficient clarity and precision to avoid undue interference and overly broad discretion from the authorities to restrict the exercise of the right to freedom of expression.

We express similar concern at the broader effects that these undue limitations to freedom of expression could have on the Maldivian society as a whole, in particular on the media, civil society organizations, human rights defenders, and in general those voicing dissent.

In light of the above-mentioned concerns, we would like to recall the definition of the right to freedom of expression as set forth in article 19 of the ICCPR, which Maldives ratified on 19 September 2006. This right includes the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of this choice". The right to freedom of expression cannot be restricted unless the high threshold of article 19(3) of the ICCPR is met. That is, be provided by law, serve a legitimate government interest, and meet the strict tests of necessity and proportionality. Limitations under article 19(3), may never, as the Human Rights Committee has stated, be invoked as a justification for the muzzling of human rights (see CCPR/C/GC/34)

In relation to the use of social norms and religion as grounds for limitation, we would like to stress that, as stated by the Human Rights Committee, a norm "must be

formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly”. Moreover, a law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must themselves be compatible with the ICCPR (CCPR/C/GC/34). The uses of religion and social norms as grounds for limitation, particularly as defined in the legislation, do not meet these criteria. Moreover, the use of religion as a ground for limitation does not make a distinction between protecting the right of an individual’s freedom of religion, belief and conscience as opposed to the protection of religion itself. While the first may under some circumstances fall under article 19(3) and the respect for the rights or reputations of others as one permissible ground for restriction, the protection of religion itself does not and therefore cannot be used to limit the right to freedom of expression. International human rights law protects individuals from intolerance and violence based on their religion or belief, but it does not protect the religion or belief itself. The provisions in the draft legislation in this regard amount to the criminalization of blasphemy, which is incompatible with the ICCPR. Moreover, limitations on expression based on morals cannot be derived exclusively from a single tradition or religion, and they cannot discriminate in favour of, or against, one or certain religions. Nor is it compatible with article 19 to prevent or punish commentary on religious doctrine or tenets of faith. Any such limitation must be understood in the light of universality of human rights and the principle of non-discrimination.

In relation to the provisions relating to defamation, the Human Rights Committee has interpreted “respect for the rights or reputations of other” as a ground for restriction that must be constructed with care and must not impede political debate. This is particularly important regarding public persons, who are legitimately subject to criticism and political opposition. The Human Rights Committee has expressed concern at the use of defamation laws in this regard. The inclusion of truth as a defence should not be applied to forms of expression that are not, of their nature, subject to verification. The Committee has recommended states to decriminalize defamation.

In relation to national security limitations, the Human Rights Committee has underlined that extreme care must be taken by states to ensure that national security provisions are crafted and applied in a manner that conform to the strict requirements of necessity and proportionality of paragraph 3 of article 19.

The provisions on the liability of the media and publishers raise concerns that they amount to censorship which is incompatible with article 19 of the ICCPR. Such liability may moreover lead to self-censorship on issues perceived to be sensitive. Consequently, society as a whole may not be able to access important information and issues of public interest. We would like to reiterate that the right to freedom of opinion and expression, as well as to access information, including through the media, is of central importance in the effective functioning of a democracy.

As it is our responsibility under the mandates of the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide information on measures taken, or to be taken, to ensure the compliance of the draft legislation with Maldives' obligations under international human rights law, particularly with regard to the right to freedom of expression.

2. Please explain how the draft legislation will be in line with the accepted recommendations by Maldives during the second cycle of the universal periodic review.

3. Please provide information about the justification for the draft legislation's criminalization of speech.

We would appreciate receiving a response within 60 days. Should the legislation move forward, we are likely to issue a public comment discouraging its adoption and would advise your Excellency's Government in advance of that occurrence.

While awaiting a reply, we urge all relevant authorities in Maldives to take all necessary measures to ensure the full compliance of domestic legislation with international human rights norms and standards, in particular reversing or revoking the legislative provisions, regulations, administrative, criminal and other measures that impose undue limitations to the right to freedom of expression. We would like to take this opportunity to express our interest and availability to discuss the draft legislation in more detail with your Excellency's Government at your convenience and provide further assessment towards its revision.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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