

Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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19 May 2020

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 34/18.

Your Excellency's Government has made several important and encouraging commitments to restore and protect freedom of expression in the Maldives, including by inviting me and other mandate holders to conduct official visits to the country. In light of these commitments, and my present inability to visit the Maldives in person as a result of the COVID-19 pandemic, I am writing to share some observations concerning proposed and adopted legislation in the areas of press freedom, defamation, censorship, blasphemy, freedom of association and peaceful assembly, and protection of journalists and human rights defenders.

Upon election of the Maldivian Democratic Party in 2018, your Excellency's Government committed to reforming key areas of legislation. Among the steps taken to carry out this commitment, in November 2018, your Excellency's Government repealed the Protection of Reputation and Freedom of Expression Act, which criminalized certain kinds of speech, including speech deemed to be defamatory.

My predecessor and I have maintained an active engagement with your Excellency's Government on issues related to the freedom of opinion and expression. Specifically, we have raised concerns relating to implementation of the **Religious Unity Act** (ref.no AL MDV 1/2019); the **Associations Act** (ref.no UA MDV 4/2013); the **Freedom of Peaceful Assembly Act** (ref.no UA MDV 4/2017); the **Judicature Act** (ref.no AL MDV 2/2013); and **Section 617 of the Penal Code** (ref.no AL MDV 3/2018, UA MDV 1/2018). In addition, we have raised concerns about **violence against journalists and human rights defenders** (ref.no AL MDV 1/2019, AL MDV 3/2018, UA MDV 1/2018, AL MDV 1/2017, JUA MDV 1/2014, UA MDV 4/2013, AL MDV 3/2013).

I would like to bring to the attention of your Excellency's Government concerns regarding the **Broadcasting Act**, the **Parliamentary Privileges Act**, and the 2014 **Regulations on Censorship**, which also implicate the right to freedom of opinion and expression in the Maldives.

Information I have received suggests that some of these laws continue to be enforced by law enforcement and other government agencies, highlighting the urgency of rights-oriented reforms. Even if the Government rarely utilizes some of these laws, their

very existence would continue to exert a significant chilling effect on freedom of expression in the country.

Before addressing my specific concerns with the aforementioned laws, I wish to remind your Excellency's Government of its obligations under the International Covenant on Civil and Political Rights (ICCPR), which the Maldives acceded to on 19 September 2006.

Article 19(1) of the ICCPR protects the right to "hold opinions without interference." This right is non-derogable under any circumstance. Article 19(2), which protects the right to freedom of expression, states that this right shall include 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 his [or her] choice." Under Article 19(3), any restrictions on freedom of expression must be "provided by law", proportionate, and necessary for the respect of the rights and reputations of others", "for the protection of national security or of public order, or of public health and morals". The General Assembly, the Human Rights Council and the Human Rights Committee have concluded that permissible restrictions on the Internet are the same as those offline.¹

Article 19(3) establishes a three-part test for permissible restrictions on freedom of expression:

- a. *Restrictions must be provided by law.* Any restriction "must be made accessible to the public" and "formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly."² Moreover, it "must not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution."³
- b. *Restrictions must only be imposed to protect legitimate aims, which are limited to those specified under article 19(3).* The term "rights...of others" under article 19(3)(a) includes "human rights as recognized in the Covenant and more generally in international human rights law."⁴
- c. *Restrictions must be necessary to protect legitimate aims.* The requirement of necessity implies an assessment of the proportionality of restrictions, with the aim of ensuring that restrictions "target a specific objective and do not unduly intrude upon the rights of targeted persons."⁵ The ensuing interference with third parties' rights must also be limited and justified in the interest supported by the intrusion. Finally, the restriction must be "the

¹ See General Assembly resolution 68/167; Human Rights Council resolution 26/13; U.N. Human Rights Committee, General Comment No. 34.

² General Comment 34 (CCPR/C/GC/34).

³ *Id.*

⁴ *Id.*

⁵ A/HRC/29/32; see also U.N. Human Rights Committee, General Comment No. 34 (CCPR/C/GC/34).

least intrusive instrument among those which might achieve the desired result.”⁶

In light of these standards, I would like to bring to your Excellency’s Government’s attention the following concerns:

A. Protection of Religious Unity Act of 1994 and Regulations

The Protection of Religious Unity Act (PRUA) requires authorization before disseminating information about Islam (Article 2) and criminalizes the dissemination of certain types of information including disseminating information that contradicts consensus of Muslim scholars and Islamic texts (Article 4); preaching about religions other than Islam (Article 4); and distributing media about religions other than Islam (Article 10). The Act further prohibits displaying religious symbols other than Islamic symbols (Article 6) and possessing or translating books about religions other than Islam (Article 7). The Act prohibits non-Muslims from carrying out religious activities in public (Article 9). Violation of any of the Act’s provisions results in a penalty of two to five years of imprisonment or a fine of 20,000 rufiyaa (\$1,322) for Maldivians or deportation for non-Maldivians.

The 2010 Regulations on Protecting Religious Unity further restricts freedom of expression in regards to religious beliefs or information about religions other than Islam. Article 5 of the Regulations declares the Ministry of Islamic Affairs to be “the ultimate authority to propagate Islam and dictate its principles.” The Regulations prohibit translations of certain texts into Dhivehi, including translations of foreign sermons without prior government approval (Article 18) and translations of texts about other religions (Article 31). The Regulations restrict religious education, including by requiring institutions providing religious education to get “express permission from the relevant government authority” (Articles 25 and 26), prohibiting foreign and non-Muslim teachers from talking about any religion other than Islam, both “in schools and outside of schools” (Article 34), and prohibiting education on any religion other than Islam (Article 36). The Regulations further prohibit insulting Islam. Finally, Article 37 makes it illegal “to be of the opinion that the official congregations in Maldives are not lawful and therefore deliberately staying away from main congregations.”

Article 37 of the 2010 Regulations, criminalizing the act of holding an opinion, is a violation of the Article 19(1) right to freedom of opinion, which is a non-derogable right under international human rights law. Furthermore, the criminalization of dissemination of information, translations of texts, and the utterance of words that contradict Islam appear to be disproportionate restrictions on freedom of expression. It is particularly concerning that these restrictions carry severe penalties, including fines and imprisonment as well as deportation for non-citizens.

⁶ General Comment 34 (CCPR/C/GC/34).

As it currently stands, numerous provisions of the Protection of Religious Unity Act may be used against members of the media and human rights defenders who hold dissenting views.

B. Associations Act of 2003 and Regulation on Associations

The Associations Act of 2003 requires all associations to register with the Government and criminalizes failure to register an association. The Act also prohibits forming an association for any purpose that conflicts with the tenets of Islam or the religious harmony of the country, or for the purpose of propagating any religion other than Islam. The Regulation on Associations requires all associations to submit intrusive information to the Registrar of Associations under certain situations. All associations are required to maintain a register of all members, and associations operating at a national level are required to submit the register of members to the Registrar annually. Associations are required to inform the Registrar of all projects that cost over MVR 25,000, and the Registrar can request an association to submit information about the association at any time, including administrative documents and financial records.

I am concerned that the absolute discretion of the Registrar of Associations to register or refuse to register an association may leave organizations vulnerable to deregistration that might be politically-motivated.

The Regulation on Associations further restricts freedom of association through excessive Government oversight. For example, associations are required to inform the Registrar of all projects that cost over MVR 25,000, which is the equivalent of USD \$1,620. The Registrar can request an association to submit information about the association at any time, including administrative documents and financial records. I am concerned that these provisions requiring NGOs to provide the Government with detailed information about their members and activities may have a chilling effect on the ability of members of these associations to exercise freedom of expression.

C. Broadcasting Act of 2010 and Code of Practice

Despite the commendable stated purposes of the Broadcasting Act, I am concerned that many of the provisions of the Act and Code of Practice are overbroad in their content restrictions.

For example, the Code of Practice prohibits content showing “actions and activities beyond accepted social norms” and content that promotes any religion other than Islam. Rule 1 of the Code of Practice requires broadcast content to respect Islam, the Constitution and the Laws of the Maldives. Rule 1 provides that “[c]ontent must be broadcast in a manner which is not irreverent to the tenets of Islam or create religious discord amongst the people.” Rule 2 of the Code of Practice requires broadcast content to “conform to the generally accepted norms and values of the society.”

I am concerned that these restrictions are overbroad and vague, which can lead to arbitrary enforcement. In particular, I am concerned about the prohibition on expression

that creates “religious discord amongst the people.” While prohibitions on incitement to violence may be justified under Article 19(3) and Article 20(2) of the Covenant, I am concerned that this restriction is overbroad and too vague to give sufficient notice as to what conduct is prohibited.

D. Freedom of Peaceful Assembly Act of 2013

The declared purpose of the Freedom of Peaceful Assembly Act is to establish “guidelines” on the right to assembly guaranteed by Article 32 of the Constitution, and contains several provisions that protect the right to peaceful assembly. However, I am concerned that some provisions may unduly limit that right. Article 4 defines “peaceful assembly” restrictively, requiring that the organizers give prior notice to law enforcement; that the purpose of the assembly is for “a peaceful objective;” and that no items are used in the assembly that “could be used for an assault.” Article 23 imposes duties on organizers of assemblies to inform police of the location and plan for an assembly or march, and to limit noise levels as agreed upon by the police. Moreover, Article 52 imposes individual liability on organizers for harm to property or individuals during the assembly. Police are also authorized to disperse assemblies.

I express concern that the Freedom of Peaceful Assembly Act is insufficiently specific to meet the Article 19(3) requirement that restrictions on freedom of expression be provided by law. For instance, I am concerned that the imposition of individual liability on assembly organizers for harm caused by participants is a disproportionate restriction that may have a chilling effect on freedom of expression and the willingness of Maldivians to assemble.

E. Parliamentary Privileges Act of 2013

Section 17(a) of the Act states: “[Parliament or a Parliamentary Committee has the power to] summon anyone to parliament or one of its committees to give witness or to hand over any information which the parliament wish to seek.” This section seems to go against Article 28 of the Constitution, which provides “No person shall be compelled to disclose the source of any information that is espoused, disseminated or published by that person.” In my 2015 report to the UN General Assembly, I argued that any restrictions on journalistic source confidentiality “must be genuinely exceptional and subject to the highest standards” and “should be limited to investigations of the most serious crimes or the protection of the life of other individuals.”⁷ Accordingly, I am seriously concerned about Parliament’s discretionary power to force journalists to reveal their sources, thus creating disincentives for disclosure.

F. Contempt of Court Act of 2014 and Judicature Act of 2010

Under the Contempt of Court Act, courts have the discretion to take action against any person who disobeys a court order or takes any action which might harm the dignity of the courts. A court can issue an instant sentence, including imprisonment, if any such

⁷ A/70/361.

action takes place in an on-going trial. The Act authorizes courts to punish individuals for any expression, action, gesture, or piece of writing “inside or outside a courtroom” that could be considered contempt of court. Conduct that could be considered contempt of court includes criticizing the judiciary or portraying it in a negative light; demeaning a court, judge, or court officer; or any act that causes loss of respect of a court or a judge. Moreover, the Judicature Act punishes similar behavior, but does not define contempt of court.

I am concerned that such broad authority implicates issues of arbitrary detention and denial of due process. The right to freedom of expression, as set forth in Article 19 of the ICCPR, protects all forms of expression, including dissenting and critical expression on political and public affairs. Any limitation to the right must meet the strict criteria set forth under Article 19(3). In its General Comment No. 34, the Human Rights Committee highlighted: “The imposition of a draconian penalty for contempt of court without adequate explanation and without independent procedural safeguards is arbitrary.”

G. Penal Code (Law No. 6/2014)

Three provisions of the Penal Code raise potential issues of freedom of expression. Section 610 criminalizes rioting and “overthrow of the government.” The offense includes anyone who “incites, aides, or engages in rioting or a violent attempt to overthrow the government.” No definition is provided for what conduct constitutes a “riot,” but the section does state that the offense does not criminalize participation in a peaceful assembly. While not criminalizing peaceful assembly is a step in the right direction, section 610’s broad criminalization of “rioting” is a disproportionate restriction on freedom of expression. The use of words such as “incites”, “aides”, or “engages” gives the Government largely unfettered discretion to target government criticism or unpopular or controversial opinions.

Section 617 criminalizes criticizing Islam. The section covers the following conduct: (1) engaging in religious oration and criticism of Islam in public or in a public medium with the intention to cause disregard for Islam; (2) producing, selling, distributing, or offering material criticizing Islam with the intention to cause disregard to Islam; (3) producing, possessing, selling, distributing, or disseminating of pornography; (4) producing, possessing, selling, distributing, disseminating or importation of idols of worship in the Maldives or importation thereof; or (5) attempting to disrupt the religious unity of the citizens of Maldives, and conversing and acting in a manner likely to cause religious segregation amongst people.

I am concerned about the vagueness in using religion as grounds for punishing expression. Limiting speech merely because of its criticism of religious doctrine is worrying and inconsistent with international human rights law. Moreover, the use of religious criticism 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. The protection of religion as such cannot serve as a basis to limit the right to freedom of expression consistent with Article 19.

International human rights law protects individuals from intolerance and violence based on their religion or belief, but it does not protect against criticism of religion or belief.

H. Regulations on Censorship 2014

I am concerned that the Regulations on Censorship may disproportionately restrict artistic expression and the right to seek, receive and impart information. The Regulations on Censorship require all literary works, including poetry, to be submitted to the Government for approval prior to publication, and a failure to comply can result in fines. The reported purpose of the Regulations is to standardize all literature in the Maldives in accordance with the law, regulations, and societal etiquette of the Maldives, with particular emphasis on preventing publication of works that contravene the tenets of Islam. The broad authority under the Regulations on Censorship, along with the threat of fines, provides the Government with a powerful tool to censor and suppress artists, activists, and critics.

The changes already underway in the Maldives and the human rights commitments that your Excellency's Government have expressed are encouraging. I urge the Government to seize this momentum to reconsider other outdated or abusive laws that unduly restrict freedom of expression, and to adopt legislation and take other affirmative measures that protect this fundamental right.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I close by expressing my gratitude for the invitation to visit the Maldives and my regret that it was not possible to carry out the mission.

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression