

The Maldives: Free Speech is not Defamation

(Bangkok/Kathmandu, 5 September 2016) – The Asian Forum for Human Rights and Development (FORUM-ASIA) condemns the systemic onslaught of the freedoms of expression, assembly and association in the Maldives through tacit legal and administrative methods. FORUM-ASIA urges immediate corrective and affirmative measures to protect, respect and promote the culture of free expression as a democratic value in the country.

The Maldives is party to the International Covenant on Civil and Political Rights (ICCPR) and the Optional Protocols. Additionally, most of the provisions of the covenant have been incorporated into the Chapter of Rights of the Constitution. Despite these, freedom of expression remains critical. Repressive laws, administration policies and efforts by the courts restrict free speech in the country, adversely, affecting lawful opinion of public affairs, freedom of the press and online expression by journalists and political opponents.

The recent enactment of the Protection of Reputation and Good Name and Freedom of Expression Act in August 2016 is another addition to efforts that contravene the international and constitutional guarantees of free speech provisions. The Act criminalises speech deemed 'defamatory'.

The Act imposes exorbitant pecuniary penalties, imprisonment, or both. Monetary fines between Maldivian Rufiyaa (MVR) 25,000 (US\$ 1,621) and MVR 2million (US\$ 130,000) or up to six months of imprisonment can be imposed for expressing opinion against 'any tenet of Islam', 'threatening national security' or 'contradicting general social norms'. Media professionals, if found guilty, may face fines between MVR 50, 000 (US\$ 3,242) and MVR 150, 000 (US\$ 9,727) for defamation.

The fines as set forth severely exceed the average income of citizens, and hence the law can be easily used as a tool to imprison dissidents and political opponents. Such provisions also have a tendency to reinforce self-censorship by media professionals, who might refrain from reporting sensitive issues fearing that they could be forced to reveal sources of information.

Coercive measures like these directly contravene Article 27 of the Maldivian Constitution and Article 19 of the ICCPR. Furthermore, the law has severely curtailed the right to appeal by obstructing applications to appeal until the penalty of fine is fulfilled. Vaguely defined legal definitions are prone to potential misinterpretation and are a direct threat to the media, political opposition and civil society for critiquing the Government and political leaders.

Another addition to the repressive legal regime is the latest amendment to the Freedom of Peaceful Assembly Act that imposes prior permission mandatory for peaceful assembly contravening constitutional guarantees. Article 32 of the Maldivian Constitution states that no permission shall be required for peaceful assembly, while Article 21 of the ICCPR also protects the right to peaceful assembly. Instead of bringing the Act in conformity with the Constitution and international obligations, Parliament has placed ultra vires control on the right to freedom of assembly.

Another legislation, the Associations Act (2003) has seriously restricted activities of civil society by prescribing rigorous rules for incorporation, registration and operations of associations, parties and clubs in the Maldives.

This Act predates the Constitution. There is, hence, an urgent need to amend it to bring conformity with the Constitution and International Covenants ratified by the Maldives. The Act imposes severe controls over civil society through the procedure of 'Regulation on Associations' and subsequent amendments. It has created obstructions on civil society for accessing financial support through arbitrary powers given to the Registrar of Associations, a political appointee, to annul decisions of association. The Government has so far failed to pay attention to efforts by civil society advocating for a new law to remove these controls and to empower civil society through state resources.

The enactment of the Protection of Reputation and Good Name and Freedom of Expression Act has been condemned by civil society members and the international community alike. David Kaye, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression¹, said in a statement² issued on 10 August 2016 that: 'Criminalizing speech on such vague and broad grounds as set out in the Bill is a direct attack on the exercise of the right to freedom of expression in the Maldives', he continued that 'freedom of expression is a fundamental right and any restrictions on it must be narrowly and objectively defined, not a matter of common routine'.

The European Union External Action Service (EEAS) echoed similar concerns and said³ 'the penalisation of such acts, in a country where the independence and functioning of the judiciary is not in compliance with international standards, is aggravating the situation further.'

'The Parliament of the Maldives is working against the very spirit of the Constitution and of international obligations to protect fundamental human rights,' says Mukunda Kattel, Director of FORUM-ASIA, 'It is setting a dangerous trend for freedom of expression in the region.'

FORUM-ASIA urges the Government of the Maldives to immediately revoke legislation passed unconstitutionally, and amend the existing laws to conform to international human rights standards that it is obliged to. Further, FORUM-ASIA calls on the Parliament of the Maldives not to act against the spirit of fundamental freedoms and rights.

About FORUM-ASIA:

FORUM-ASIA is a regional human rights group with 58 member organisations in 19 countries across Asia. FORUM-ASIA has offices in Bangkok, Jakarta, Geneva and Kathmandu. FORUM-ASIA addresses key areas of human rights violations in the region, including freedoms of expression, assembly and association, human rights defenders, and democratization.

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¹ <http://www.ohchr.org/EN/ISSUES/FREEDOMOPINION/Pages/OpinionIndex.aspx>

² <http://www.un.org/apps/news/story.asp?NewsID=54659>

³ http://eeas.europa.eu/statements-eeas/2016/180811_01_en.htm

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