



مجلس حقوق الإنسان

الدورة الحادية عشرة

البند 3 من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير المقرر الخاص المعني بالحق في حرية الرأي والتعبير، السيد فرانك لا رو*

إضافة

البعثة المضطلع بها إلى ملديف**

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** يعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير المرفق بالموجز، فيعمم كما ورد باللغة التي قُدم بها فقط.

موجز

قام المقرر الخاص المعني بالحق في حرية الرأي والتعبير، فرانك لا رو، بزيارة قطرية رسمية إلى جمهورية ملديف في الفترة من 1 إلى 5 آذار/مارس 2009، بدعوة من الحكومة. ويود المقرر الخاص أن يعرب عن امتنانه لحكومة ملديف على كامل تعاونها وانفتاحها طيلة زيارته. ويود أيضاً أن يعرب عن خالص شكره لجميع منظمات المجتمع المدني التي كانت فعالة في مشاركتها وإسهامها في نجاح هذه البعثة.

في هذا التقرير، يقدم المقرر الخاص في البداية عرضاً عاماً موجزاً للسياق الجغرافي والسياسي والتاريخي المتعلق بملديف. ثم يحدد بعد ذلك المعايير الدولية لحرية التعبير، التي اعتمد عليها عند قيامه بالزيارات القطرية بغرض تقييم حالة حرية الرأي والتعبير. وفي الجزء الرئيسي من التقرير، يحلل المقرر الخاص حالة حرية الرأي والتعبير في ملديف والإصلاحات التي أجريت في البلد مؤخراً، إلى جانب بعض التحديات التي تلاحقها الحكومة الجديدة في مجال الإصلاح الديمقراطي.

ويثني المقرر الخاص على الحكومة لما اتخذته من خطوات حتى الآن في مجال تنفيذ عملية الإصلاح الديمقراطي ويبرز أهمية عملية الانتقال إلى الديمقراطية الجارية في ملديف. وفي الختام، يقدم المقرر الخاص توصيات بشأن كيفية تعزيز العملية. ويحث المجتمع الدولي أيضاً على دعم ملديف في عملية انتقالها إلى الديمقراطية.

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I. Introduction

1. The Special Rapporteur on the right to freedom of opinion and expression, Frank La Rue, undertook an official country visit to the Maldives from 1 to 5 March 2009 at the invitation of the Government. The visit was carried out pursuant to his mandate to assess compliance with international standards on the right to freedom of opinion and expression. During the visit the Special Rapporteur visited the capital Malé and the islands of Hitaddu and Gan in the southernmost province of Addu Atoll.

2. In Malé, the Special Rapporteur had the honour of meeting with the President of the Republic, H.E. Mohammed Nasheed. He also met with Government officials, including the State Minister of Foreign Affairs, the Attorney General, the Prosecutor General, as well as with officials from the Human Rights Commission of the Maldives, the National Broadcasting Corporation, the Chief Executive of the Telecommunications Authority of the Maldives and with members of the People's Majlis (the Parliament).

3. In addition, the Special Rapporteur met with representatives from civil society, and print and television media along with individual journalists. He also held meetings with representatives from the different political parties including the Adhaalath Party (AP), the Dhivehi Raiyyithunge Party (DRP), the Islamic Democratic Party (IDP), the Maldives Democratic Party (MDP) and the Social Liberal Party (SLP).

4. A visit was also conducted to Addu Atoll in the southern most region of the country, where the Special Rapporteur met with the Deputy State Minister for the South Province, and other provincial authorities, with the Island Development Committees and with civil society group representatives in the Atoll.

5. The Special Rapporteur would like to express his sincere gratitude to the Government of the Maldives for its invitation to visit the country at such an important time in its history. His appreciation is extended to the authorities in Malé and the islands which he visited, for their willingness to engage in open and constructive dialogue. In particular he is grateful to those interlocutors, including members of civil society, journalists and media representatives for their invaluable contribution to the mission. The Special Rapporteur

would also like to thank the United Nations Country Team in Malé for the logistical support provided both before and during the mission.

II. POLITICAL AND HISTORICAL CONTEXT

6. The Maldives is made up of a chain of 1,190 coral islands situated off the coast of South Asia in the Indian Ocean. The islands are grouped into 26 natural atolls. It has a population which totals more than 300,000 inhabitants with approximately 31,000 migrant workers, primarily from the South Asia region, living in the Maldives. The population mainly concentrates in Malé Island which is also the capital, and accounts for one-third of the total population. Around 80 per cent of the other islands have less than 1,000 inhabitants. For administrative purposes the islands have been divided into 21 administrative districts. The main industry in the country is tourism and of the 200 inhabited islands, 44 have been designated as tourist islands. Tourists visiting the Maldives generally stay at the resorts, and although they may visit Malé, they have minimum contact with the local population of other islands. The main language in the Maldives is Divehi and English is also widely spoken.

7. The Maldives was long a sultanate, first under Dutch and then under British protection. It became a republic in 1968 under the presidency of Ibrahim Nasir, three years after gaining independence. President Maumoon Abdul Gayoom first came to office in 1978 and dominated the political scene until October 2008 following the first ever presidential elections under a multi-candidate, multiparty system. In a run-off vote, President Gayoom conceded defeat to former Member of Parliament (MP) and political prisoner Mohammed Nasheed. President Mohammed Nasheed officially assumed office on 11 November 2008. In accordance with the Constitution of the Maldives the President is the Head of State, Head of Government and Commander-in-Chief of the Armed Forces.

8. In September 2003, violence erupted in Malé following the death of a young prisoner, allegedly as a result of torture. Following internal and international pressure, President Maumoon Abdul Gayoom pledged to embark upon democratic reforms and the development of a new Constitution and a Human Rights Commission. In February 2004, a People's Special Majlis (a constituent assembly) was convened to consider and pass constitutional reforms with a view to strengthening democracy. The People's Special Majlis, for which elections were held in May 2004, was made up of directly elected members, the members of the People's Majlis, the Cabinet and eight members appointed by the President.

9. In June 2004, the former President Maumoon Abdul Gayoom announced plans to make sweeping changes to the Constitution of the Maldives in order to bring it into line with modern democratic and human rights norms. Included in the proposals was the right to establish political parties, greater separation of powers, establishing the office of the Prime Minister, limiting the tenure of the President to two terms of five years and qualifying women to hold the post of President.

10. In August 2004, the Maldivian authorities declared a state of emergency when pro-reform demonstrations ended in violence and a number of political activists were arrested. The state of emergency was lifted on 10 October 2004 and on 22 January 2005 general elections were held. In June 2005 the Parliament passed legislation allowing political parties to register and contest elections for the first time. Despite this decision, leaders of the Maldivian Democratic Party of the Maldives (MDP), including President Mohammed Nasheed, continued to face arrests, beatings, and prosecutions. When the MDP planned nationwide demonstrations in November 2006, the Government arrested more than 100 people in a pre-emptive crackdown, restricting media freedom and movement into the capital. Though most detainees were released, the Attorney General announced in May 2007 that 17 men, including senior MDP members, would face trial for joining the protests.

11. In March 2006, the Government published a "Roadmap for the Reform Agenda" aimed at fostering democracy. The document contains a timetable of legislative, executive and communicative measures for implementing a reform process. The reforms are divided into eight broad categories including (a) strengthening the system of governance; (b) promoting and strengthening the protection of human rights; (c) enhancing the independence of the judiciary; (d) developing the multiparty political system; (e) strengthening the civil service; (f) modernizing the electoral system; (g) enhancing the role of the media; and (h) strengthening key institutions and civil society.

12. The Government and lawmakers in 2007 focused on completing constitutional amendments by a November deadline. Though the changes remained incomplete at year's end, the Special Majlis approved several chapters that appeared to improve on existing rights guarantees. Politics remained polarized, though members of the president's Dhivehi Raiyyithunge Party (DRP) voted sporadically with the opposition in the Special Majlis. In a major shake-up over the summer, the Minister of Justice, Attorney General, and Foreign Minister resigned over what they said were government obstructions to reform. Close analysis of the pace revealed a gradual slowing of the implementation of the Roadmap and while much talk surrounded the process, few concrete achievements were noticeable until 2008 when the first multiparty elections were held resulting in the change of Government in more than 30 years.

III. INTERNATIONAL STANDARDS ON THE RIGHT TO FREEDOM OF EXPRESSION

13. This section provides an overview of the main international legal standards relied upon by the Special Rapporteur in carrying out his assessment of the situation regarding the right to freedom of expression in the Maldives.

14. Article 19 of the Universal Declaration of Human Rights (UDHR) and of the International Covenant on Civil and Political Rights (ICCPR) establish the basic elements of the right to freedom of expression.

15. In addition to article 19, there are a number of other articles of the ICCPR and UDHR, which are relevant to freedom of expression. These include articles 18, 19 and 20 of the UDHR. Relevant articles of the ICCPR include article 20, which obliges States to prohibit advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence, and articles 21 and 22 which guarantee the right to freedom of peaceful assembly and association respectively. The Special Rapporteur is also guided by general comments No. 10 (1989) and 11 (1989) of the Human Rights Committee, which interpret the contents of

articles 19 and 20 of the ICCPR.

16. The Special Rapporteur further takes into account other human rights treaties containing provisions relevant to freedom of expression, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Rights of the Child (CRC), and the Declaration on Fundamental Principles concerning the Contribution to the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War.

IV. LEGAL FRAMEWORK

A. Relevant international standards

17. The Maldives has ratified or acceded to a number of international human rights treaties. It has ratified the Convention on the Rights of the Child (CRC), along with its two Optional Protocols and acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol, to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol and to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). In October 2006, the Government took the important step, in accordance with the Roadmap for the Reform Agenda, of acceding to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol.

18. The Maldives has entered reservations relevant to freedom of religion or belief to a number of international treaties, including articles 14, 20 and 21 of the CRC, article 16 of CEDAW and article 18 of the ICCPR.

B. Relevant constitutional provisions

19. The Maldives adopted and ratified a new Constitution in 2008, as part of the Roadmap to Reform process. The Constitution was adopted by the People's Majlis on 26 June and it was ratified by former President Maumoon AbdulGayoom on 7 August 2008 in order to pave the way for the country's first multiparty presidential elections in October 2008. The new Constitution introduces considerable changes to the governance and legal infrastructure of the Maldives, and many of the laws and regulations created under the previous Constitution became obsolete upon ratification. Most of the civil and political rights and freedoms have been incorporated in the 2008 Constitution while the 1998 Constitution included only a few. Article 2 of the Constitution however remains the same and provides that "The Maldives is a sovereign, independent, democratic republic based on the principles of Islam". A clause, outlined in article 9 of the Constitution grants Maldivian citizenship only to Muslims and stipulates that "despite the provisions of article 9 (a) a non-Muslim may not become a citizen of the Maldives".

20. The new Constitution explicitly states that all rights and freedoms in the statute apply to "everyone" without any forms of discrimination, including migrant workers whereas the 1997 Constitution focused only on the fundamental rights of "citizens". The non-discrimination clause also covers persons living with disabilities.

1. Freedom of expression

21. Article 27 of the Constitution provides that "Everyone has the right to freedom of thought and the freedom to communicate opinions and expression in a manner that is not contrary to any tenet of Islam".

2. Press freedom

22. In terms of press freedom article 28 stipulates that "Everyone has the right to freedom of the press, and other means of communication, including the right to spouse, disseminate and publish news, information, views and ideas. No person shall be compelled to disclose the source of any information that is espoused, disseminated or published by that person."

3. Freedom of association

23. Freedom of association is guaranteed in article 30 which stipulates that "(a) Every citizen has the right to establish and to participate in the activities of political parties. (b) Everyone has the freedom to form associations and societies, including the following: 1. the right to establish and participate in any association or society for economic, social, educational or cultural purposes; 2. the right to form trade unions, to participate or not participate in their activities."

4. Freedom of assembly

24. Article 32 states that "everyone has the right to freedom of peaceful assembly without prior permission of the State".

V. RESPECT FOR FREEDOM OF EXPRESSION

25. Freedom of expression, in particular freedom of the press, was very much restricted in the Maldives under the previous administration, until a process of gradual opening was put in place under the reform measures announced in 2006, with the introduction of specific proposals on freedom of expression legislation, and leading up to the multiparty elections in 2008. The country's press laws permitted criminal rather than civil prosecution of writers or editors accused of irresponsible journalism until 2006, when the Attorney General announced his decision to "park" the relevant provisions in the Penal Code that carried criminal prosecution and submitted a Defamation Bill to Parliament. Censorship was applied to journalists and media outlets which criticized the Government and there were numerous examples of harassment, intimidation, death threats and attacks against members of independent and State media and writers, with the resulting chilling effect on freedom of expression. President Mohammed Nasheed, who was a former writer and journalist and in the 1990s established a reputation for his political commentaries when vocal criticism of

the Government was almost non-existent, was among many journalists imprisoned and allegedly tortured under the previous administration. Journalists covering political and social events and demonstrations, as well as the participants in those demonstrations, were also the victims of excessive use of force by the security forces. In all such cases, the security forces acted with impunity for their actions.

26. The license to print media was restricted to only three daily newspapers until July 2005. Of the three papers, *Haveeru* (evening) and *Aafathis* (new morning) were owned by a cabinet member while *Miadu* (today) was directly controlled by President Gayoom. Following international pressure the Government issued a license to *Minivan Daily* (freedom) to be published as a local language newspaper. The paper ran for less than two months before it came under pressure from the ruling regime for printing articles critical of the Government and in January 2007, a foreign reporter for the English-language online publication of *Minivan News* was expelled and banned from the country for two years. Since 2005, when the Media Package was introduced in Parliament, the registration of media outlets was eased up, allowing for the registration of 6 daily newspapers, 15 magazines, and 70 other publications. In 2007, the country's first private broadcasters, *Capital FM* radio, *DhiFM* radio, and *Atoll TV*, were launched through individual agreements with the Government as opposed to new broadcasting legislation, limiting their independence. The more overtly anti-government *Minivan Radio* was unable to obtain a frequency due to prohibitive registration costs. Internet access was less restricted than in past years, but the pro-opposition *Dhivehi Observer* website remained blocked. Steps taken by the previous Government under the reform process to relax restrictions, such as procedures for licensing and registration of private publications, did contribute to the creation of a more liberal environment however numerous challenges remained for those working in the media sector.

27. A press card system did not exist under the previous Government and as a result journalists risked arrest in covering demonstrations or other disturbances. There was also limited press access to the courts, and journalists were technically only permitted to report the judgements in public cases. Access to Government information was also severely restricted.

28. The Special Rapporteur learned through his meetings with individual journalists and media representatives that thanks to recent developments in the country and with the appointment of the new Government, the media landscape in the Maldives has changed considerably, with opposition supporters expressing themselves freely, and independent newspapers, magazines and websites printing critical and investigative stories that would have been unprintable before the liberalization process. The climate of fear which forced many journalists to practise self-censorship no longer exists and those working within the media sector feel they work within an environment which will not stifle their freedom to openly criticize the Government. The current challenge however is to change the mindset of media and communication workers and to ensure that they are aware of their rights and responsibilities in relation to freedom of expression.

A. Main recent reforms and developments affecting the right to freedom of expression

1. Electoral process and media freedom

29. In line with the democratic reform initiative announced in 2004 and the legalization of political parties in 2005, the country's presidential election in October 2008 for the first time presented the public with a choice of candidates. Previously, a single presidential candidate was nominated by the People's Majlis and then confirmed by a public referendum. The election was significant because of the high proportion of new voters. In 2007, the voting age was lowered from 21 to 18 years and more than a quarter of the country's eligible electorate voted for the first or second time.

30. Prior to the multiparty elections steps were taken to ensure that the election process conformed to international standards. A special Media Agreement furnishing equal rights, and equal access to the State media was signed between the Ministry of Legal Reform, Information and Arts and all the political parties in the Maldives in July 2008. Under the Agreement, all political parties were entitled to equal media coverage ahead of the presidential elections, and press conferences, rallies and any other event organized by the political parties were to be covered equally by Television Maldives (TVM) and the Voice of the Maldives (VoM), the main public broadcasters for television and radio respectively. Seven human rights NGOs also launched a mass media campaign on civic awareness, featuring a weekly radio programme on State broadcaster Voice of Maldives, and developed the "Go Vote" campaign to boost public participation in the elections.

31. The Special Rapporteur noted through meetings with various interlocutors that while the Government's initiative was received positively there was a general lack of media independence and unbalanced news coverage during the elections. The absence of legislation to support media independence was noted as was the equal use of the media by political parties and candidates. It was also felt that in some cases the media was not properly utilized to spread election related information to voters, and it was suggested that this was due in part to a general lack of training within the media sector. This new found freedom of speech was reportedly abused by all sides of the political struggle with the media being used as a tool by political parties to discredit each other, and gain political standing. A plethora of articles and reports issued by the media which were deemed as defamatory opened the flood gates for a number of criminal defamation cases.

2. Decentralization

32. Under the previous Government the organization of the State was highly centralized with the majority of services based in Malé and considerable control was maintained over society. Dependence on appointed island chiefs and atoll (administrative unit) chiefs for licenses, employment health and other services, created a firm patronage structure in the atolls. Indeed, atoll chiefs and island chiefs were controlled by the central Government and were used to limit dissent at the island level.

33. Chapter eight of the new Constitution authorizes the decentralization of administrative powers, and devolved decision-making powers through elected councils while the President is given powers "to create constituencies, posts, island councils, atoll councils and city councils". The Constitution leaves the jurisdiction and characteristics of the councils to be specified in legislation to be passed by Parliament. The aim is to divide the country's 21 administrative areas into 7 provinces each of which would be

composed of atoll councils. State Ministers would hold the highest authority in each province and would essentially only act in an advisory capacity, but would be responsible for coordinating with councils on development projects. A Council would also be established to assist the State Ministers. The Council would consist of elected members from the Island Development Committees. The appointed atoll chiefs, currently administrative heads of the atolls, will also work under the State Minister. There is currently draft legislation on decentralization which will be adopted fully after the Parliamentary elections in July.

34. The Special Rapporteur welcomes the decision by the Government to decentralize administrative powers and noted through discussions with various representatives from society that the decentralization process, if managed successfully, could prove to be beneficial, particularly for those living on the more remote or smaller islands. It would provide those living outside the capital with the opportunity to participate more fully in the decision-making process. Some concerns were raised by opposition parties that decentralization may also be used as a tool by the Government to garner support from island voters through its power to elect provincially based State Ministers and therefore be used to influence decisions during elections.

3. Media reform package

35. The reform of media law is one of eight components in the Roadmap for the Reform Agenda laid out by the former President and Government which identifies three main actions pertaining to the implementation of reforms in the media field: the introduction of new laws to protect media freedom; the introduction of a new Defamation Bill to make defamation a civil rather than a criminal offence and the strengthening of private media. Four key Bills are identified in the Reform Agenda including a Freedom of Press Bill, a Freedom of Information Bill, a Maldives Media Council Bill and a Bill on the Registration and Publication of Newspapers and Magazines. The media reform package also includes a related Code of Conduct for journalists. The reform package is designed to define the rights and responsibilities of the free media and enshrine these rights and responsibilities in legislation that is fully compliant with international norms and standards. In addition to the Media Reform Package, two other important media-related reform Bills are the Broadcasting Bill which establishes an independent corporation and the Bill on the Operation of Cable Television. All three were tabled before the People's Majlis during 2006.

36. During meetings with Government representatives the Special Rapporteur was informed that the Defamation Bill aims to make defamation a civil rather than a criminal offence, in accordance with international norms. Pending enactment of the Bill a Regulation on Defamation was introduced and entered into force in January 2007 by Executive Decree. As yet the proposed Defamation Bill has not been enforced and defamation still exists as a criminal offence within the law. The Defamation Bill and the Broadcasting Bills are currently under review and it is hoped that they will be adopted following the Parliamentary elections which took place in May 2009.

37. The Draft Press Freedom Bill was tabled in 2006. Freedom of the press is defined as "the rights provided to every citizen of the Maldives to publish by means of media resources; in writing, orally or otherwise; without obstruction by official bureaus of the government". Article 3 of the Bill elaborates on these rights, listing six specific protected activities including the right to publish in writing, orally or otherwise; the right of journalists to provide information; and the right to provide journalists with information, including on a "commercial basis". Article 4 outlines the responsibilities of the free media, including that published material must be consistent with the basic tenets of Islam, that it must not infringe upon matters crucial to the maintenance of national sovereignty or public peace.

38. In May 2006, the Government invited the International Press Freedom Mission (IPFM),^[1] to the country to review its progress in relation to freedom of expression. Following its visit to the Maldives, the IPFM acknowledged the steps already taken by the Government to improve the press freedom environment in the country however it also criticized certain key aspects of the Draft Press Freedom Bill which fall short of international standards and best practice. For example, the IPFM argued that "restrictions on freedom of expression are too broadly and vaguely worded". The draft Law also places various types of statements outside the scope of "freedom of the press" altogether - including statements that are inconsistent with "basic tenets of Islam"; that would threaten the sovereignty of the nation and that would impinge on the maintenance of "public peace". Furthermore, article 12 of the draft allows the Government to confiscate publications which breach the law, prior to a court ruling to this effect, a form of administrative censorship. The Government subsequently welcomed the IPFM's input and promised to take the report's criticisms into consideration in order to ensure that the media reform package meets international standards. The Special Rapporteur was informed that a new draft Bill will be presented before Parliament before July 2009.

39. A regulation on Freedom of Information was introduced by Executive Decree on World Press Freedom Day on 3 May 2008. The decision to introduce the principle followed the Majlis' rejection of the Freedom of Information Bill on 14 November 2007. The Bill has now been revised taking into account Parliament's concerns and input, and was retabled in June 2008. It was pointed out by some of the interlocutors that met with the Special Rapporteur that the Freedom of Information Bill could be used to control the media, since it would invest power to oversee the media in a government body, rather than an independent authority. The Bill was ultimately defeated in Parliament by one vote.

40. On 4 November 2008, President Gayoom ratified the Bill on the Maldives Media Council, passed by the People's Majlis on 27 October. The Media Council consists of eight members from the media and seven members from the general public. The Maldives Media Council is an independent, self-regulatory body having powers to prosecute on its own behalf, to engage and conduct its own business as well as having powers to make out of court settlements in relation to complaints against media. According to the draft of the Bill, the main objectives of the Council are to establish and preserve the freedom of media in the Maldives; to keep under review matters contravening this freedom and taking remedial measures; to build up a code of practice and a code of conduct for the people working in the media; to ensure people working in the media behave responsibly and ethically; and to conduct inquiries into complaints filed with the Council concerning abuse of rights. It also states that "the Council shall be an independent legal entity having the power to sue and be sued in its own name; the capacity to conduct transactions in its own name; and a separate seal". Concerns have been expressed that as regulatory body, the Media Council is set to regulate and monitor the press. It has the power to investigate complaints, oversee the behaviour of the news media, and where the council finds appropriate

send cases to the courts for trial.

41. The Maldives Media Association's executive committee was elected on 18 October 2007 for a year long term. The association's regulations stipulate that a new board should have been re-elected before 18 October 2008. After failing to submit its annual report to the home ministry and re-elect members to its executive committee six months after the deadline passed it was given a two-month grace period in April 2009 in order to adhere to the regulations. If it fails to comply with the regulations after this period it may be abolished.

4. Public broadcasting

42. As part of the Reform Agenda plans were made to transform the State TV Maldives and radio broadcasting, Voice of the Maldives, into a Public Service Broadcasting (PSB). The drafting process included consultation with media professionals in the Maldives, representing 16 media establishments across the country through several days of review and revision of the draft legislation.

43. The Maldives National Broadcasting Corporation (MNBC) was established by Presidential Decree on 22 December 2008 and its eight Board members were appointed by the President. It has a short-term mandate with a view to merging TV Maldives and the Voice of the Maldives into a single corporation. Following positive discussions with the MNBC Board the Special Rapporteur noted that the overall feeling is that since the election of the new Government the media is now able to operate in a free environment and from a programming point of view this will create a number of opportunities. It was also noted that although the corporation is State-owned the long-term aim is to float it as a public company and there were suggestions that the corporation should perform as an independent body and its members should be elected by Parliament.

5. Freedom of expression and religion

44. Although traditionally accepted as one of the most moderate Islamic countries, emphasis on religious identity is central to the political and legal framework of the Maldives. Under the previous Government religious homogeneity was considered as essential for guaranteeing national unity in the country and President Gayoom repeatedly stated that no other religion should be permitted in the country. The practice of any religion other than Islam was prohibited by law. Foreign residents were permitted to practise their religion only if they did so privately and did not encourage citizens to participate. There are no places of worship for adherents of other religions. The import of icons and religious symbols was prohibited but the import of religious literature, such as Bibles for personal use, was generally permitted. Conversion of a Muslim to another faith was a violation of the Government's interpretation of sharia law and on occasions resulted in the loss of the convert's citizenship.

45. Despite the recent reforms in the country the revised Constitution of 2008 continues to state that "Islam shall be one of the bases of all the laws of the Maldives". The rights and freedoms set out in the Constitution are only available to citizens when they are "not contrary to any tenet of Islam", and Parliament can pass legislation which limits these rights and freedoms "in order to protect the tenet of Islam". The Constitution allows citizens no religious freedom and may permit further infringements on their right to freedom of expression should they be found to be acting "contrary to any tenet of Islam".

46. In his discussions with various representatives from the media sector the Special Rapporteur noted that reporting on religious matters is a contentious issue in the Maldives and while there has been progress in many areas in relation to freedom of expression under the new Government, journalists still do not feel confident about broaching the subject of religion. He further observed that people are prevented both by legislative provisions and through social pressure from expressing their views about issues relevant to religion or belief and as a result exercise self-censorship. The Special Rapporteur was informed of a recent case in which a journalist had been threatened due to comments made about religious beliefs in the country.

6. Freedom of assembly

47. The Maldives does not have a culture of peaceful street protests or of political rallies. Under the political parties regulation of 2005, parties were granted a protected right to hold public assemblies indoors without need for permission but with due notice. Over 200 rallies and meetings were held by the political parties in 2007. The right to protest in the street was not covered in the political party regulation and until mid-May 2006, there were no guidelines that the police could refer to in an effort to maintain general law and order when street protests or marches were organized. As stated in the Roadmap for the Reform Agenda, on 15 May 2006, the previous Government introduced provisionally by a decree, a framework to protect the right to protest in streets and public places, with requirement for due notice, reasonable hours and routes. On 15 June 2006, the period for notification was reduced from 14 days to 7 days. Article 32 of the revised Constitution of 2008 guarantees the right to assembly without prior permission of the State.

7. Telecommunications

48. Despite economic, demographic and geographic challenges, the Maldives was able to provide access to telephone service to all of its inhabitants by the year 1999 and it has the highest telephone subscribers per capita in South Asia. This was accomplished through a pact between the Government and the private telecommunication operator *Dhiraagu*.

49. In terms of Internet access the Special Rapporteur noted through discussions with those living outside of Malé that there is concern that the Maldives is not fully exploiting its potential to deliver services to remote, dispersed locations. This is in part due to the geographical challenges facing the country but it is also partly as a result of the high cost of obtaining Internet access. Until 2003 the Maldives was served by one Internet provider however with the introduction of another service provider prices were lowered somewhat. It was noted that there is a need to ensure that suitable infrastructure is in place before other service providers are introduced.

50. The Telecommunications Authority of the Maldives informed the Special Rapporteur of plans to introduce a basic

telecommunication package which would include national voice calls, and Internet access to be available to any household who requests the package. The basic telecommunication package could be offered by any telecommunication operator. The Maldives Telecommunications Policy (2006-2010) states that the package would be available to all inhabited islands before the end of 2008. To date the package has not been implemented however the Special Rapporteur was assured that measures are being taken to guarantee that everyone will have Internet access within the near future. It is hoped that a five-year policy will secure funding to ensure that such services will be provided to all.

51. The Special Rapporteur was also informed that services shall be opened for competition in a bid to further strengthen competition in the Internet market. There are also plans to introduce and promote retail opportunities for Internet, and introduce further competition in the Internet market with obligations for national coverage.

8. Radio

52. There are three main radio broadcasters in the Maldives including State-run Voice of the Maldives, Capital Radio and DhiFM. There are currently no local radio broadcasters based on the islands outside of Malé.

Vi. Conclusions and Recommendations

53. The Special Rapporteur commends the steps taken by President Nasheed and the new Government of the Maldives in implementing a series of reforms in the context of democratic change with a view to fully assuming human rights considerations on public policies in the country. He welcomes the process of constitutional and legislative reform initiated in 2005, which he considers an essential opportunity for the country to adhere to democratic principles and good governance. The Special Rapporteur was also impressed by the forward looking plans that were presented to him by the different authorities that he met with during his visit in relation to enhancing freedom of expression.

54. Recognizing the positive steps taken by the Government, and in the spirit of strengthening the transition effort, the Special Rapporteur proposes the following recommendations:

A. Public consultation

55. It is clear that all sectors of the Maldivian population recognize the importance of the transition period and value the efforts made by the Government, however it was also noted through discussions with various interlocutors that the population deems it necessary for the authorities to establish a mechanism of public communication and consultation with regard to the measures that are being taken. It is recommended that such a mechanism of communication be established which would generate active participation of citizens in the reforms being implemented. The Special Rapporteur recommends that the Government implement its plans to establish a permanent mechanism within the administration, in the form of a political communications officer, to ensure that the different sectors of society are consulted about the ongoing reform efforts.

B. Decentralization

56. The Special Rapporteur welcomes the process of decentralization initiated by the Government with the aim of bringing State public services to the seven different provinces. Decentralization should be about empowering people in islands and atolls to make certain decisions for themselves, through their elected functionaries, who come from those regions or are resident there. In order to ensure that all members of society are afforded the same opportunities in terms of access to information the Special Rapporteur encourages the Government to consolidate the process by establishing public broadcasting links in each province, taking into consideration the promotion and protection of island dialects.

C. Media reform package

57. The Special Rapporteur commends the steps being taken by the Government to ensure that the media reform package initiated in 2004 is fully implemented in order to guarantee freedom of expression in the country. In this context the Special Rapporteur urges the Government to consider concerns raised about the draft media Bills, including the Bill on Freedom of Information, Bill on Registration of Newspapers and Magazines, Media Council Bill and the new Defamation Bill, and to ensure that they are revised accordingly to meet international standards.

58. The Special Rapporteur recommends that the Parliament accelerate the process of approval of the laws that would establish a Broadcasting Corporation and the Telecommunications Authority as fully independent public bodies.

D. Defamation

59. The Special Rapporteur encourages the Government to ensure that cases of defamation be established by law as a civil and not a criminal offence and be totally eliminated with regards to State officials in reference to their actions in public office. The Bill should be revised to reflect an absolute defence of truth and, in cases involving statements on matters of public concern, the plaintiff should bear the burden of proving fallacy; statements of opinion and value judgements should either be absolutely protected or benefit from a very high degree of protection. A broad "reasonable publication" defence should apply to statements relating to matters of public interest; a wide range of statements of particular importance, such as those delivered in the Peoples' Majlis, should receive absolute protection and consideration should be given to adding a new category of statements which receive protection where made in good faith, such as reports of crime.

E. Public broadcasting

60. While public broadcasting enterprises TV Maldives and Voice of the Maldives reach out to over 90 per cent of the population and satisfy a needed public service, given its importance and in order to maintain objectivity, it is essential that the public broadcasting corporation be established by law as an independent State body whose members should be elected by the Parliament. The Special Rapporteur was informed that such legislation is pending in Parliament and he would urge the Government to ensure it is adopted swiftly.

F. Access to information

61. Access to Government-held information is central to the media law reform programme, and lack of access denies all people's access to information they could otherwise read in their newspaper, while creating serious obstacles to professional reporting. The development of a draft Bill on Freedom of Information constitutes a major step forward in addressing the issue and will strengthen democracy and good governance. Freedom of information legislation should be public and guided by the principle of maximum disclosure: it establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances. The Special Rapporteur welcomes plans by the Government to implement legislation in freedom of information. He further encourages the establishment of an office within the administration which would be responsible for access to information. Similar offices could also be established in each of the provinces. The Special Rapporteur welcomes the President's decision to establish a Decree on access to information as a guarantee to transparency and would encourage the Government to establish the appropriate mechanisms and bodies in order to guarantee that this right is implemented swiftly.

G. Private media and community broadcasting

62. The Special Rapporteur commends the Government's decision to develop private media and encourages it to maintain plurality and diversity to guarantee freedom of expression and specifically suggests the possibility of establishing community radio in individual islands or provinces when created. Community-based broadcasting provides an alternative social and economic model for media development that can broaden access to information, voice and opinion. Such programmes should encourage active participation of the community in their initiation, production and presentation.

63. In the process of privatization of media enterprises a special effort should be made to ensure that the diversity and plurality of views and opinions are maintained; in this regard the Special Rapporteur would encourage the Parliament to introduce anti-monopoly legislation particularly with reference to communication.

H. Telecommunications

64. The Special Rapporteur welcomes the working plans and regulations established by the telecommunications authority in promoting diversity in terms of the media concessions, in preserving a segment of frequencies for non-profit public use and communities with limited financial means; in particular he welcomes the proposal to implement a plan to make Internet accessible to all communities in the country including the establishment of a fund to subsidize this service in communities that are unable to afford it. The Special Rapporteur emphasizes that access to communication is essential not only for freedom of expression but also to participate in the national development plan and exercise the right to development.

65. The mandate of the information ministry needs to be clearly defined in law and the Special Rapporteur recommends that the Government take measures to ensure that the Telecommunications Act is passed to ensure independence of the Telecommunications Authority.

I. Internet

66. While the Special Rapporteur was impressed by the high-level of access of all the population to mobile phone use he would suggest that there is a need to ensure that Internet access is available for all members of the society given that access to information is important for economic development.

J. Professional training for journalists

67. Since open media diversity is a new phenomenon in the country the Special Rapporteur suggests that the Government develop professional training courses and capacity-building for journalists with the priority of addressing the younger generation.

K. Civil service

68. Civil servants are defined by being part of the State and must respect their work accordingly. They should however also have the right to have an opinion on public issues and should be allowed to enjoy political participation. The Special Rapporteur recommends to the Majlis that the legislation on civil service should not in any way limit the right to freedom of expression and political participation of civil servants. He would further encourage the Government to consult with civil servants to ensure that they are fully aware of their rights and responsibilities in relation to public participation and freedom of expression. Information seminars could be developed for this purpose in each of the provinces.

L. Freedom of expression and religion

69. The Special Rapporteur reiterates the recommendations made by the Special Rapporteur on freedom of religion and belief, Asma Jahangir, following her official visit to the Maldives in 2006. In her recommendations she encouraged

the Government “to give serious consideration to including the right to freedom of religion or belief in the new draft of the Constitution. This right should not be limited to citizens of the Maldives, but should be extended to all persons in the Maldives.”

70. The Special Rapporteur hopes that the international community will appreciate, at this key moment in the history of the country, the urgency of providing the Government of Maldives with the kind and level of sustainable assistance that is indispensable for reaching the described goals and allowing the country to succeed in its transition towards democracy, and urges it to do so.

[1]The International Press Freedom Mission included representatives from the non-governmental organizations, ARTICLE 19, the International Federation of Journalists, International Media Support, Reporters without Borders, and the South Asia Media Commission.