

Asian Centre for Human Rights

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Dear Dr Ahmed,

Our attention has been drawn to your comments as the Chief Spokesperson of the government of Maldives as reported in the Haveeru online (<http://www.haveeru.com.mv/?page=engdetails&id=4651>) to our report titled *Maldives: The Dark Side of Life* of 30 March 2005

Asian Center for Human Rights welcomes the offer of dialogue. In the spirit of constructive dialogue, kindly allow us to provide our replies to your reported statement:

1. The call for withdrawal of the proposals

Asian Centre for Human Rights (ACHR) has taken note of your statement that our call for the withdrawal of the President's reform “does not make any sense.”

The recommendation was made based on the constitutional reforms undertaken by all democratic countries in the world. It is a standard practice that when a country undertakes reform processes to draft a new constitution, the responsibility is given to the Constituent Assembly to draft a new constitution. Advisory services are also sought from countries having democratic practices as well as the UN bodies, especially the Office of the United Nations High Commissioner for Human Rights.

ACHR called upon the government of Maldives for withdrawal of the proposals made by the President for the following reasons:

First, since the Peoples' Special Majlis has been entrusted with the responsibility to draft a new constitution, it must be given the freedom to fulfil its responsibility. The President's 31-point reform proposals constitute interference into the mandate of the Peoples' Special Majlis. They are prescriptive and do not provide the opportunity to the Peoples' Special Majlis to address the shortcomings of the 1998 constitution.

Second, there are inherent problems with the existing system for election of the candidates for the Majlis and Peoples' Special Majlis as cited in our report. The Human Rights Commission of Maldives stated that the elections held in January 2005 were not "in general free, fair or without undue influence". Repudiating the assertion of the HRC by the government of Maldives does not make the elections credible.

Third, there is continued harassment and intimidation of the political activists which does not provide the atmosphere for participation in the process of drafting a constitution without any fear.

ACHR welcomes the assistance sought by the government of Maldives from the Commonwealth to formulate a Political Parties Bill and an Electoral Reform Bill and from the United Nations Development Programme for reform of the criminal justice system. However, we equally regret that no such assistance has so far been sought with regard to the drafting of the constitution which will prevail over all other laws in any country.

The reform processes undertaken by the President will suffer from crisis of credibility unless the independent candidates who have won the elections held in January 2005 are allowed to exercise the right to freedom of association and assembly by forming political party or parties, the proposals comply with basic human rights standards and the government of Maldives takes verifiable measures to end intimidation and harassment of the political activists.

2. Fundamental rights

Asian Centre for Human Rights disagrees with your reported assertion that "The proposals provide for strengthening of fundamental rights".

As you are aware, in his proposal 1.6, the President proposes, "While providing guarantees of freedom of expression, the Constitution should also stipulate that the following does not constitute as freedom of expression.

- a. Inciting or promoting war;
- b. Calling for or supporting murder, violence, vandalism, and other similar militant acts;
- c. Inciting or promoting hatred and enmity among the people on the basis of gender, race, residency or on other basis."

While many elements of this proposal such as inciting war are defined as criminal offences, Asian Centre for Human Rights is perplexed with terms as such as "inciting or promoting vandalism, and other similar militant acts." Is vandalism a "militant act"? Which acts constitute "other similar militant acts"? Such loosely defined constitutional provisions will provide the opportunity to the authorities to silence any form of dissent.

In our view, the present proposal further weakens the right to freedom of expression guaranteed under the Constitution of Maldives of 1998.

The United Nations Human Rights Committee in its General Comment No 10 on Article 19 of the International Covenant on Civil and Political Rights stated that “when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Paragraph 3 lays down conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be “provided by law”; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of paragraph 3; and they must be justified as being “necessary” for that State party for one of those purposes.”

3. Human Rights Commission of Maldives:

Asian Centre for Human Rights welcomes many institutional reforms undertaken by the government of Maldives. Yet, most of these measures are too little, too late and inadequate.

Kindly allow us to draw your kind attention to the fact that Human Rights Commission of Maldives has not been granted membership to the Asia-Pacific Forum of National Human Rights Institutions because of its failure to comply with Paris Principles of National Human Rights Institutions.

What is most disconcerting is the fact at about 9.30 pm on 19 March 2005, Ahmed Nazim Sattar, chief organizer of the “Reporting Network for the Relatives of the Persons in Judicial Care” was summoned to the Police Station for unspecified charges referred to as “regarding a matter”. He was accused of advising Mrs Sakeena, mother of Ahmed Zuhoor who was arrested on 5 March 2005 and ill-treated in custody, to approach Human Rights Commission of Maldives.

Asian Centre for Human Rights hopes that advising to approach a body such as the Human Rights Commission set up by the government is not a crime in Maldives. Therefore, such illegal summons by the police can only be addressed by giving fundamental rights to the citizens and incorporating measures for accountability against misuse of power by law enforcement personnel.

It is essential that the government of Maldives seek assistance of the Office of the High Commissioner for Human Rights and Secretariat of the Asia-Pacific Forum of National Human Rights Institutions to seek necessary assistance for ensuring that Human Rights Commission of Maldives should comply with the Paris Principles on National Human Rights Institutions.

As a part of the constructive dialogue, Asian Centre for Human Rights would like to submit the following recommendations for consideration by the government of Maldives:

- Allow the registration of political party, in particular, Maldivian Democratic Party which had submitted its application in 2001 and specifically provide for multi-party democracy;

- Ensure that notice pertaining to the withdrawal of all charges against those who participated in the demonstrations on 12-13 August 2004 are given to the individual concerned and be published in newspapers;
- Allow registration of all NGOs, in particular consider the registration of the “Reporting Network for the Relatives of the Persons in Judicial Care” whose application is presently pending and the NGOs proposed by recognized human rights defenders;
- Release all the political detainees including Ahmed Falah, Mohamed Fauzi, Fathimath Nisreen, Mohamed Zaki, Ahmed Ibrahim Didi and Naushad Waheed; and
- Consider signing of a Memorandum of Understanding with the Office of the United Nations High Commissioner for Human Rights to provide technical cooperation assistance for the drafting of the new constitution as well as strengthening the Human Rights Commission of Maldives.

Looking forward to hearing from you pertaining to the above recommendations.

With kind regards,

Yours sincerely

Suhas Chakma
Director

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