



**ARTICLE 19**

**GLOBAL CAMPAIGN FOR FREE EXPRESSION**

Memorandum  
on the  
Maldives Bill on Freedom of the Press

London  
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## 1. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS<sup>1</sup>

The government of the Maldives has announced that it intends to “usher in a modern democracy”, and reform Maldivian law and practices to bring them in line with international human rights standards. In a “Roadmap for the Reform agenda”, published on the Presidency’s website,<sup>2</sup> the President of the Maldives announces action on three fronts: constitutional reform, enacting relevant legislation and establishing the necessary institutions. The President has also announced that the Maldives government would be ratifying the main UN human rights conventions, including the International Covenant on Civil and Political Rights.

As part of this push for democratic reform, the Maldives government has published a Bill on Freedom of Press, which it intends to enact in 2006. This Memorandum analyses the Bill on Freedom of Press against international standards on freedom of expression.

While we welcome the Maldives government’s intention to reform its media laws, we are concerned that the Bill on Freedom of Press falls far short of international standards and best practice. The Bill fails to provide sufficient positive support and protection for the right to freedom of expression to be regarded as a ‘freedom of the press’ Bill. Although it provides some protection, for example stating that administrative censorship shall be prohibited, the many restrictions proposed under the Bill far outweigh the few protective measures it introduces. The Bill proposes the creation of a number of new ‘media crimes’, as well as a long list of ‘banned matter’. For example, Article 11 of the Bill would make it a crime to publish anything that can be interpreted as an “act against the State”; or anything that is “deemed to be” a secret State document. Under Article 10, the media would also be barred from publishing anything that would “serve to detract from ... social standards”; information on personal finances or debt; material that “might detract” from the “mental well-being and personality traits” of children; and “material promoting negative visions of women and children”. Article 12 would give the government the power to confiscate a newspaper that publishes anything that contravenes the Law. Article 4 of the Bill also places various matters outside the scope of ‘freedom of the press’ altogether, prohibiting the publication of anything that is inconsistent with “basic tenets of Islam”; anything that would threaten the sovereignty of the nation; and anything that would impinge on the maintenance of “public peace”.

We do not believe that any of these restrictions are compatible with international human rights standards. Many of the restrictions are extremely vaguely worded and open to wide interpretation. This means that they are easily abused for political purposes. For example, a publication that is harshly critical of government policies or that exposes a government minister as corrupt can easily be deemed to have committed a criminal “act against the State” and have all its copies confiscated; and the ban on the publication of matter “deemed to be a State secret” can be interpreted to extend to any government document, including those that are of significant public interest. Even the restrictions that aim to protect the welfare of children are incompatible with international standards. While they pursue a legitimate aim,

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<sup>1</sup> ARTICLE 19 is an international human rights organisation which defends and promotes freedom of expression and freedom of information around the world. We believe that freedom of expression and access to information is not a luxury but a fundamental human right. The full enjoyment of this right is central to achieving the full enjoyment of individual freedoms and to the healthy functioning of democracy; and it is a potent force to pre-empt repression, war and conflict.

<sup>2</sup> [http://www.presidencymaldives.gov.mv/publications/Roadmap for the Democratic Reform Agenda.pdf](http://www.presidencymaldives.gov.mv/publications/Roadmap%20for%20the%20Democratic%20Reform%20Agenda.pdf).

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they are vaguely worded and are aimed at all media, leaving no scope whatsoever for publications aimed at an adult audience. Although Article 16 aims to protect freedom of expression by requiring the authorities to take the importance of this right into account when taking action under the law, this alone does not suffice to remedy any of these harsh restrictions.

If the government of the Maldives truly intends to bring its laws in line with universally accepted human rights standards and international best practice, we recommend that it studies the experience of other countries who have recently introduced legal reforms. In particular, we refer it to Georgia's 2004 Law on Freedom of Speech and Expression, which elaborates in detail on the constitutional guarantee of freedom of expression; establishes a high burden of proof for any authority that wishes to restrict freedom of expression; protects the confidentiality of journalists' sources and enacts a high standard of protection for journalists against abusive defamation suits.<sup>3</sup> Unlike the Maldives' Bill, which imposes harsh restrictions on the media, Georgia's freedom of expression law truly protects the media.

We recommend that, at a minimum, the following amendments be introduced to bring the draft Maldives Law on Freedom of the Press in line with international standards:

#### **On the scope and purpose of the Bill:**

- The Bill should provide a far more expansive interpretation of the right to freedom of expression, and the various circumstances in which it applies.
- The Bill should provide specific protection to political speech.
- The right to freedom of expression should belong to everyone, not just citizens.
- The Bill should not place any categories of expression outside the scope of the right to freedom of expression.

#### **On restrictions on freedom of expression:**

- The Bill should include clear guidance on the narrow conditions under which restrictions may be imposed on the right to freedom of expression, including the requirement that restrictions be provided by law, clearly stated, narrowly tailored and strictly "necessary" to achieve a legitimate purpose.
- All restrictions on what may be published should be reviewed against international law standards. To the extent that a restriction serves a legitimate purpose, it should be reworded in appropriately precise language and inserted in laws of general application, such as the civil code.
- The criminal law should be used to restrict freedom of expression only when this is truly necessary, and never to protect the reputation or privacy of private persons or other private interests.
- Secrecy laws should restrict only the publication of such material the disclosure of which would cause demonstrable and serious harm to the national security or defence of the Maldives. Journalists should be liable for the publication of legitimately restricted material only if they committed fraud or another crime to obtain the information.
- The sanction of confiscation of copies, or signal blocking, proposed in Article 12, should be abandoned in favour of more proportionate responses.

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<sup>3</sup> Georgia's Law on Freedom of Speech and Expression can be found at [http://www.liberty.ge/eng/categories.php?genre\\_id=79&section\\_id=2&from=categories](http://www.liberty.ge/eng/categories.php?genre_id=79&section_id=2&from=categories).

**On protective measures:**

- The Bill should provide protection against unnecessary searches of media outlet's offices, as well as protection of anonymity and protection of sources.
- The requirement that an editor should know the identity of all sources used for reports should be dropped.
- A search, an order to reveal a source or an order to reveal the identity may be issued only in accordance with the following principles:
  - the identity of the source is necessary for the investigation or prosecution of a serious crime, or the defence of a person accused of a criminal offence;
  - the information or similar information leading to the same result cannot be obtained elsewhere;
  - the public interest in disclosure outweighs the harm to freedom of expression; and
  - disclosure has been ordered by a court, after a full hearing.

This Memorandum provides in-depth elaboration of these concerns. It analyses the Bill against the standards set under the International Covenant on Civil and Political Rights and international best practice. While we realise that the Maldives is not a party to the ICCPR, the Maldives government has expressed the intent to bring its laws in line with international best practice, and it has also announced that it will ratify the ICCPR by December 2006.<sup>4</sup>

Section 2 of this Memorandum will briefly outline international standards on the right to freedom of expression; Section 3 analyses the Bill against these standards.

## **2. THE RIGHT TO FREEDOM OF EXPRESSION UNDER INTERNATIONAL HUMAN RIGHTS LAW**

### **2.1. The Importance of Freedom of Expression**

Article 19 of the *Universal Declaration on Human Rights* (UDHR)<sup>5</sup> guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.<sup>6</sup>

The *International Covenant on Civil and Political Rights* (ICCPR),<sup>7</sup> a treaty ratified by 156 States, imposes formal legal obligations on State Parties to respect its provisions and

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<sup>4</sup> See page 4 of the Maldives' *Roadmap for the Democratic Reform Agenda*, n. 2.

<sup>5</sup> UN General Assembly Resolution 217A(III), adopted 10 December 1948.

<sup>6</sup> See, for example, *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2<sup>nd</sup> Circuit).

<sup>7</sup> UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

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elaborates on many of the rights included in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found at Article 19 of the UDHR:

1. Everyone shall have the right to freedom of opinion.
2. Everyone shall have the right to freedom of expression; this right shall include 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 choice.

Freedom of expression is also protected in all three regional human rights instruments, at Article 9 of the *African Charter on Human and Peoples' Rights*,<sup>8</sup> Article 10 of the *European Convention on Human Rights*<sup>9</sup> and Article 13 of the *American Convention on Human Rights*.<sup>10</sup> The right to freedom of expression enjoys a prominent status in each of these regional conventions and, although these are not directly binding on the Maldives, judgments and decisions issued by courts under these regional mechanisms offer an authoritative interpretation of freedom of expression principles in various different contexts.

Freedom of expression is a key human right, in particular because of its fundamental role in underpinning democracy. At its very first session, in 1946, the UN General Assembly adopted Resolution 59(I) which states: "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated."<sup>11</sup> As the UN Human Rights Committee has said:

The right to freedom of expression is of paramount importance in any democratic society.<sup>12</sup>

## 2.2. Freedom of Expression and the Media

The guarantee of freedom of expression applies with particular force to the media, including the broadcast media and public service broadcasters. As the UN Human Rights Committee has stressed, a free media is essential in the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.<sup>13</sup>

Other human rights courts have also stressed the central role of the right to freedom of expression. For example, the European Court of Human Rights, which has dealt with hundreds of freedom of expression cases, has consistently emphasised the "pre-eminent role of the press in a State governed by the rule of law."<sup>14</sup> It frequently includes the following wording in its judgments:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives

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<sup>8</sup> Adopted 26 June 1981, in force 21 October 1986.

<sup>9</sup> Adopted 4 November 1950, in force 3 September 1953.

<sup>10</sup> Adopted 22 November 1969, in force 18 July 1978.

<sup>11</sup> 14 December 1946.

<sup>12</sup> *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.

<sup>13</sup> UN Human Rights Committee General Comment 25, issued 12 July 1996.

<sup>14</sup> *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.

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politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.<sup>15</sup>

The European Court of Human Rights has also stated that it is incumbent on the media to impart information and ideas in all areas of public interest:

Whilst the press must not overstep the bounds set [for the protection of the interests set forth in Article 10(2)] ... it is nevertheless incumbent upon it to impart information and ideas of public interest. Not only does it have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of “public watchdog”.<sup>16</sup>

Similarly, the Inter-American Court of Human Rights has stated: “It is the mass media that make the exercise of freedom of expression a reality.”<sup>17</sup> The media as a whole merit special protection, in part because of their role in making public “information and ideas on matters of public interest. Not only does [the press] have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of ‘public watchdog’.”<sup>18</sup>

### 2.3. Restrictions on Freedom of Expression

The right to freedom of expression is among the rights that, under certain limited conditions, may be restricted. However, any limitations must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the conditions which any restriction on freedom of expression must meet:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

A similar formulation can be found in the European and American regional human rights treaties.<sup>19</sup> This translates to a three-part test, according to which interferences with freedom of expression are legitimate only if they (a) are prescribed by law; (b) pursue a legitimate aim; and (c) are “necessary in a democratic society”.

Each of these elements has specific legal meaning. The first requirement will be fulfilled only where the restriction is ‘provided by law’. This implies not only that the restriction is based in law, but also that the relevant law meets certain standards of clarity and accessibility. The European Court of Human Rights has elaborated on the similar requirement under the European Convention on Human rights that restrictions should be “prescribed by law”:

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<sup>15</sup> *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.

<sup>16</sup> See *Castells v. Spain*, note 15, para. 43; *The Observer and Guardian v. UK*, 26 November 1991, Application No. 13585/88, para. 59; and *The Sunday Times v. UK (II)*, 26 November 1991, Application No. 13166/87, para. 65.

<sup>17</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

<sup>18</sup> *Thorgeirson v. Iceland*, note 14, para. 63.

<sup>19</sup> The African Charter has a different, rather weaker, formulation.

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[A] norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given situation may entail.<sup>20</sup>

This is akin to the “void for vagueness” doctrine established by the US Supreme Court and which is also found in constitutional doctrine in other countries.<sup>21</sup> The US Supreme Court has explained that loosely worded or vague laws may not be used to restrict freedom of expression:

Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute “abut[s] upon sensitive areas of basic First Amendment freedoms,” it “operates to inhibit the exercise of [those] freedoms.” Uncertain meanings inevitably lead citizens to “steer far wider of the unlawful zone” . . . than if the boundaries of the forbidden areas were clearly marked.” (references omitted)<sup>22</sup>

Laws that grant authorities excessively broad discretionary powers to limit expression also fail the requirement of “prescribed by law”. The European Court of Human Rights has stated that when a grant of discretion is made to a media regulatory body, “the scope of the discretion and the manner of its exercise [must be] indicated with sufficient clarity, having regard to the legitimate aim in question, to give the individual adequate protection against arbitrary interference.”<sup>23</sup> The UN Human Rights Committee, the body of independent experts appointed under the ICCPR to monitor compliance with that treaty, has repeatedly expressed concern about excessive ministerial discretion.<sup>24</sup> National courts have expressed the same concern. For example, the South African Constitutional Court has warned in relation to the regulation of obscenity that:

It is incumbent upon the legislature to devise precise guidelines if it wishes to regulate sexually explicit material. Especially in light of the painfully fresh memory of the executive branch of government ruthlessly wielding its ill-checked powers to suppress political, cultural, and, indeed, sexual expression, there is a need to jealously guard the values of free expression embodied in the Constitution of our fledgling democracy.<sup>25</sup>

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<sup>20</sup> *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para.49.

<sup>21</sup> See, for example, the Canadian Charter of Rights and Freedoms, Section 1; Dutch Constitution, Article 13.

<sup>22</sup> *Grayned v. City of Rockford*, 408 U.S. 104, 108-9.

<sup>23</sup> *Wingrove v. United Kingdom*, 25 November 1996, Application No. 17419/90 (European Court of Human Rights), para. 40.

<sup>24</sup> Particularly in the context of media regulation: see, for example, its Concluding Observations on Kyrgyzstan, 24 July 2000, UN Doc. CCPR/CO/69/KGZ, para. 21; and its Concluding Observations on Lesotho, 8 April 1999, UN Doc. CCPR/C/79/Add.106, para. 23.

<sup>25</sup> *Case & Anor, v. Minister of Safety and Security & Ors*, 1996 (5) BCLR 609 (Constitutional Court of South Africa), para. 63 (per Mokgoro).



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The second requirement relates to the legitimate aims listed in Article 19(3). To satisfy this part of the test, a restriction must truly pursue one of the legitimate aims; it is illegitimate to invoke a legitimate aim as an excuse to pursue a political or other illegitimate agenda.<sup>26</sup>

The third requirement, that any restrictions should be “necessary”, is often key to the assessment of alleged violations. The word “necessary” means that there must be a “pressing social need” for the limitation.<sup>27</sup> The reasons given by the State to justify the limitation must be “relevant and sufficient”; the State should use the least restrictive means available and the limitation must be proportionate to the aim pursued.<sup>28</sup> The European Court of Human Rights has warned that one of the implications of this is that States should not use the criminal law to restrict freedom of expression unless this is truly necessary. In *Sener v. Turkey*, the Court stated that this principle applies even in situations involving armed conflict:

[T]he dominant position which a government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries ... Contracting States cannot, with reference to the protection of territorial integrity or national security or the prevention of crime or disorder, restrict the right of the public to be informed of them by bringing the weight of the criminal law to bear on the media.<sup>29</sup>

While States must act to protect their citizens from public order threats, their actions must be appropriate and without excess.<sup>30</sup> This implies that the relevant criminal offences should be narrowly defined and applied with due restraint; and that the criminal law should not be used if a civil law action suffices.<sup>31</sup>

### 3. ANALYSIS OF THE DRAFT MALDIVES LAW ON FREEDOM OF THE PRESS

This Section elaborates our concerns regarding the draft Maldives Law on Freedom of the Press (the Bill). It first discusses the scope of the Bill and the protection of the right to freedom of expression. Then, it analyses the various restrictions on freedom of expression proposed by the Bill. Finally, it discusses the protection offered by the Bill for freedom of expression, including the protection of journalists sources and the protection of anonymity.

#### 3.1. The scope and purpose of the Bill

The stated purpose of the Bill is to “stipulate the principles and standards governing the perseverance and promotion of freedom of press in the Maldives”.<sup>32</sup> “Freedom of 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

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<sup>26</sup> Article 18, ECHR. See also *Benjamin and Others v. Minister of Information and Broadcasting*, 14 February 2(1), Privy Council Appeal No. 2 of 1999, (Judicial Committee of the Privy Council).

<sup>27</sup> See, for example, *Handyside v. the United Kingdom*, 7 December 1976, Application no. 5493/72, para. 48.

<sup>28</sup> See, for example, *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, paras. 39-40 (European Court of Human Rights).

<sup>29</sup> *Sener v. Turkey*, Application no. 26680/95, 18 July 2000, paras. 40, 42.

<sup>30</sup> See, for example, *Incal v. Turkey*, application no. 22678/93, 18 May 1998, para. 54.

<sup>31</sup> See, for example, the European Court of Human Rights judgment in *Raichinov v. Bulgaria*, 20 April 2006, application no. 47579/99, para. 50.

<sup>32</sup> Article 1(a).

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the government”.<sup>33</sup> 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 withdraws a number of activities from the sphere of protection of the Bill, stating that press freedom protects only those activities that “are not inconsistent with the basic tenets of Islam; that [do] not infringe upon matters that must be protected in order to maintain the sovereignty of the nation; and that [do] not infringe upon matters that must be retained for the maintenance of public peace”. Article 11 elaborates on this, listing specific publications that fall outside the scope of the Bill.

#### Analysis

We welcome the stated purpose of the Bill: the “perseverance and promotion of freedom of press in the Maldives”. However, we do not believe that, as currently drafted, the Bill will promote press freedom. Our overriding concern is that the Bill does little to elaborate on the right to freedom of expression; and that it fails to provide sufficient protection to truly enable the Maldives media to report without restriction on matters of public interest. The right to “freedom of press” stated in the Bill is a very limited one, with large categories of expression outside its protective scope, and is available only to citizens of the Maldives.

In order for the Bill truly to fulfil its stated purpose, it ought clearly to elaborate the beneficiaries of the right to freedom of expression and provide an expansive interpretation of its content. The Bill fails to do any of this. Article 3 provides only very limited elaboration of the content of the right but does so in language that is unclear; and the statement in Article 16 that requires authorities to “remember that press freedom is fundamental to a free society” is similarly unclear. It would be far preferable if the Bill contained a clear statement elaborating on the different forms of expression and the protection granted; as well as a statement requiring the law to be interpreted in line with international human rights law. For example, the Georgian Law on Free Speech provides specific protection to political debate, in recognition of the fact that free political debate is at the heart of democracy, and it also elaborates on protection granted to different forms of expression.<sup>34</sup> The Georgian Law also distinguishes between the right to freedom of through of opinion, which is absolute, and the right to freedom of expression; and it makes it clear that a person may be liable for incitement only when there is a clear nexus between a statement and subsequent acts. It may be instructive to quote the relevant provisions of the Georgian Law in full:

#### **Article 3. Freedom of speech and expression**

1. The State recognizes and protects the freedom of expression as an inherent and supreme human value. In the course of discharge of the authority, people and the State are bound by these rights and freedoms as by directly applicable law.

2. Everyone except for administrative agencies enjoy the right to freedom of expression that implies the following: a) Absolute freedom of opinion; b) Freedom of political speech and debates; c) Obtaining, receipt, creation, keeping, processing and dissemination of any kind of information and ideas; d) Prohibition of censorship, editorial independence and pluralism of the media, the right of a journalist to keep confidential the source of information and make editorial decisions based on his own conscience; e) Academic freedom of learning, teaching and research; f) Freedom of art, mastery and inventions; g) The right to speak any language, use any alphabet; h) The right to charity; i) The right to whistleblow and protection of the whistleblowers; j) freedom from coercion, freedom to express opinions on religion, belief,

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<sup>33</sup> Article 2.

<sup>34</sup> Article 5, note 3.

conscience, ethnical, cultural and social belonging, origin, family, property and social position as well as all the facts that may become a ground for restriction of his rights and freedoms.

3. This Law does not disregard other rights, freedoms and guarantees provided for by the Constitution of Georgia and other universally recognized rights freedoms and guarantees related to the freedom of expression, which are not reflected herein but naturally derive from the universally recognized rights and freedoms.

**Article 4. Freedom of thought and appeal**

1. The freedom of thought shall be protected as an absolute privilege.
2. Advocacy shall be protected by a qualified privilege. An incitement shall cause liability envisaged by law only when a person commits an intentional action that creates direct and substantial danger of an illegal consequence.

**Article 5. Freedom of political and court speech**

1. A statement shall not cause liability for defamation if it is made: a) during political debates as well as with respect to performance of the official duties by a member of the Parliament or an local assembly; b) at a pre-trial or court hearing, before a public defender, at a meeting of the Parliament or an local assembly as well as their committees within official authority of a person; c) upon the request of an authorized body.

It is clear, even from a brief perusal of these provisions that their intent is to provide elaborate protection for the right to freedom of expression. The draft Maldives Law fails to provide any such detailed protection.

The Georgian law also includes a requirement that it should be interpreted “in accordance with the Constitution of Georgia, the international commitments undertaken by Georgia, including the European Convention on Human Rights and Freedoms and case law of the European Court of Human Rights.” Given the Maldives President’s stated intention to ratify the ICCPR by December 2006, an analogous requirement ought to be included in the Maldives Bill. The limited protection that the Bill does provide – for example, through the prohibition on censorship, in Article 5; and the protection of journalists’ sources, in Article 9 – is both insufficient and outweighed by the onerous restrictions imposed by the Bill.

We are also concerned that the Bill envisages that the right to freedom of expression will belong only to *citizens*. Under international human rights law, the right to freedom of expression belongs to *everyone* and consists of the right to express oneself freely, through the media of one’s choice, subject only to such restrictions as are provided by law, pursue a legitimate aim and are “necessary”.<sup>35</sup> The Bill’s limitation to citizens will have an important impact on the rights of non-citizens to express themselves. This should be remedied; there is no legitimate reason why a non-national should not be allowed to establish a newspaper, magazine, websites or other form of publication.<sup>36</sup>

Third, we are concerned at the broad categories of publications proposed to remain outside the Bill’s ‘sphere of protection’, in Article 4. This provides that information falling in one of three, large and poorly described categories will not benefit from legal protection. These categories are further elaborated in Article 11, and designated as “crimes”. We will comment

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<sup>35</sup> See the text of Article 19 ICCPR, and Article 19 UDHR quoted in Section 2.1 of this Memorandum.

<sup>36</sup> We note that limited foreign ownership restrictions can be legitimate in the broadcasting sector. We will not discuss this as it is outside the scope of this Memorandum.

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on the detail of these exceptions in the following Section of this Memorandum; here, we want to signal that this is not the correct way to approach restrictions on the right to freedom of expression. Under international law, the right to freedom of expression covers all forms of expression, and all content. While certain content may be restricted, that content still falls within the realm of the international guarantee of freedom of expression, and restrictions may be imposed only under the conditions set out in Section 2.3 of this Memorandum.

#### **Recommendations:**

- The Bill should provide a far more expansive interpretation of the right to freedom of expression, and the various circumstances in which it applies.
- The Bill should provide specific protection to political speech.
- The right to freedom of expression should belong to everyone, not just citizens.
- The Bill should not place any categories of expression outside the scope of the right to freedom of expression.

### **3.2. Banned publications and other restrictions**

The Bill places a range of restrictions on the exercise of the right to freedom of expression. Under Article 4, three categories of expression are to fall outside the protective sphere of the law altogether: publications that are inconsistent with the basic tenets of Islam; publications that infringe upon the sovereignty of the nation; and publications that infringe upon the maintenance of public peace. These restrictions are further elaborated in Article 11, which brands publication of the following as “crimes perpetrated in violation of this Law”:

- (a) Acts against the State;
- (b) Espionage, and the revelation of such military and domestic secrets that if revealed might be deemed to compromise the security of the Maldives.
- (c) Trading in or exchange of such material that is deemed to be State secrets by a law.
- (d) Action perpetrated to deprive a person’s freedom.
- (e) Defamation.
- (f) Action perpetrated to obstruct the achievement of objectives of orders brought out by legal authorities of the Maldives.
- (g) Publication of a documents deemed to be a secret State document.

“Acts against the State” are defined in Article 17 as including various forms of expression that might advocate for secession of part(s) of the Maldives, that would threaten the Maldives’ sovereignty or its jurisdiction over the territory, or that would encourage civil disobedience.

Under Article 12, the authorities may confiscate all copies of a newspaper that commits a “crime” under Article 10 or, if the publication is electronic, take measures to ensure that the electronic signal does not reach the public.

Separate from these restrictions, Article 10 provides that “legal authorities shall have the power to take measures, under the relevant law,” if any of the following is published:

- (a) Material that include images, photographs, and documents that that serve to detract from the Islamic character, or social standards of the Maldives.
- (b) Material that might act to detract from the mental well being and personality traits of children.

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- (c) Material protected as secrets under a provision of a law.
- (d) Material that might pave the way for the abuse of alcohol, drugs, and products of tobacco, and inappropriate sexual relations.
- (e) Material promoting negative visions of women and children, and such advertisements that are banned for the purpose of preserving physical health and environmental safety.
- (f) Information on personal finances and debt, or personal information that is included inside the sphere of a person's self-respect, fabricated material that might detract from a person's self-respect or integrity, that might mislead the public.

#### Analysis

The restrictions imposed under Articles 4, 10 and 11 cannot be described other than as sweeping. The majority fail the three-part test for restrictions on freedom of expression elaborated in Section 2.3 of this Memorandum: that restrictions should be provided by a law and be stated in clear and unequivocal terms; and that they should be truly "necessary" for the protection of a legitimate interest.

First, many of the restrictions are stated in terms that are insufficiently precise to qualify as "law" in the meaning of Article 19(3) ICCPR. This is particularly the case with the restriction, in Article 4, that publications must not be "inconsistent with the basic tenets of Islam"; and the restrictions in Article 10 on publications that "detract from the Islamic character, or social standards of the Maldives"; that "detract from the mental well being and personality traits of children"; and that "might pave the way for the abuse of alcohol, drugs, and products of tobacco, and inappropriate sexual relations". These restrictions all use terms that are excessively vague, undefined and open to wide interpretation; and they are therefore easily abused for political or other ends. For example, criticism of government policy that is couched in harsh or even offensive terms might be deemed to 'detract from the social standards of the Maldives' and be banned on that ground, even if it raises issues of public importance. Similarly, terms and phrases such as "the Islamic character of the Maldives" and the "mental well-being of children" can be extremely widely interpreted and are easily abused to stifle government critics or adherent of religions other than Islam. Use of the words "may"; "might" or "can cause" is also insufficiently precise and should be abandoned in favour of words such as "does"; "will"; "incites" or other terms that establish a clear and direct link between a statement and subsequent action.

Second, we do not believe that the majority of the restrictions are truly "necessary" for the protection of a legitimate interest. For example, while it is legitimate to protect children from material that is harmful to their mental and emotional development, it is not legitimate to restrict access to such material for everyone – that would be to treat everyone as a child. Yet this is exactly what Article 10(b) of the Bill does. The same criticism applies to many of the other restrictions: Article 10(d) would ban all alcohol and tobacco advertising, as well as the discussion of any sexual practices; and Article 10(f) would be an end to most financial journalism.

Third, some of the restrictions do not pursue a legitimate aim. For example, Article 17 makes it a criminal offence to advocate secession, or even to express support for advocates of secession. Yet to call for secession is a legitimate exercise of the right to freedom of expression, and has been exercised by the people of Quebec and Scotland, to name but a few. The only legitimate limit that may be placed on such forms of expression is when

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secessionists incite violence in support of their cause. Similarly, the wide definition of “Acts against the State”, in Article 17, would prevent any political party from campaigning since this might “create divisions amongst the general public”; and it would also prevent NGOs from calling for civil disobedience. The definition of “public peace”, finally, is simply puzzling as it would appear to have the effect of restricting publication of “information that a large section of the society might want to know, information that causes anxiety, and information that a large section of the society might consider important to know the details of how it transpires”. All these categories would appear to concern material of high public interest and their publication would be legitimate; yet under the Bill their publication would be prohibited.<sup>37</sup>

We are also concerned at the various restrictions on the publication of material that is, or may be deemed to be, a State secret. It is a well-known practice in many countries to restrict public access to documents that might be embarrassing or damaging to the current government by classifying them as “secret”. Secrecy laws are also easily abused to hide corruption, or human rights abuses. While we acknowledge the need for the State to restrict access to some documents, we believe that, as currently drafted, the secrecy provisions in the Bill will be easily abused to suppress investigative journalism. We recommend that the Bill should only restrict the publication of material that causes serious harm to national security or the defence of the State, and that it uses wording along those, strict, lines. Criminal liability should lie only with those persons who ‘leaked’ the information, and never with journalists who republish it; unless they committed a fraud to obtain it.<sup>38</sup>

To the extent that some of the restrictions pursue a legitimate purpose, are sufficiently narrowly circumscribed and can be justified as “necessary”, we do not believe that these should be included in a Bill that is aimed specifically at the media. For example, the prohibition in Article 17 on calling for the violent overthrow of the state is, in itself, legitimate, and, if rewritten in appropriately narrow language, may be included in legislation. There is no reason, however, for such a prohibition to be aimed solely at the media: it should be included in the criminal code and apply to all. We are also concerned that all restrictions appear to be classified as “crimes”. It is a general principle of international human rights law that the criminal law should be used to restrict freedom of expression only when this is truly necessary, and not when appropriate civil law measures suffice.<sup>39</sup> The Maldives Bill fails to adhere to this fundamental principle. To name but one example, it includes “defamation” as a “crime”, in contravention of the principle that defamation should be treated as a civil matter.<sup>40</sup> It follows that the criminal sanction of confiscation of copies, proposed in Article 12, should also be abandoned in favour of more proportionate responses. To confiscate all copies of a newspaper for a single defamatory report can never be a proportionate response.

Finally, we believe that it would be appropriate to include in the Bill a provision that establishes the general procedure for establishing restrictions on the right to freedom of expression. Such a provision should make it clear that the burden of proof for justifying the

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<sup>37</sup> Under Article 4 – although we note that there is no mention of this prohibition in Article 11, which is intended to elaborate on Article 4.

<sup>38</sup> See the Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 6 December 2004: <http://www.cidh.org/relatoria/showarticle.asp?artID=319&IID=1>.

<sup>39</sup> See Section 2.3 of this Memorandum.

<sup>40</sup> See the Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 10 December 2002: <http://www.cidh.org/relatoria/showarticle.asp?artID=87&IID=1>.

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restriction is with the authority that wishes to impose it; and that any doubt shall be resolved in favour of the right to freedom of expression. Such a provision should also clearly import the international law standards on restrictions. We would, again, draw the Maldives' government's attention to a similar provision in the Georgian Freedom of Speech Law:

#### **Article 7. Standard and Burden of proof**

1. Any restrictions of the rights guaranteed and protected by this law shall be based on incontrovertible evidence.
2. In case of restriction of the rights guaranteed and protected by this law, any doubt, which is not proved according to the rule prescribed by law, shall be decided against the restriction of these rights.
3. Any reasonable doubt which is not proved according the rule prescribed by law during dispute about assignment of status of private or public person should be interpreted in favor of assignment of a status of the public figure.
4. Any reasonable doubt which is not proved according the rule prescribed by law during dispute about assignment of status of public interest or curiosity, shall be decided in favor of assignment of a status of the public interest.
5. Any reasonable doubt which is not proved according the rule prescribed by law during dispute about assignment of status opinion or fact to a statement should be interpreted in favor of assignment of status of opinion.
6. The burden of proof of restriction of the freedom of expression lies upon the initiator of the restriction. Any doubt, which is not proved according the rule prescribed by law, shall be decided against the restriction of the freedom of expression.
7. The refusal of the respondent on the case of restriction of the freedom of expression to disclose a professional secret or the source cannot be the only ground for making a decision against the respondent.

#### **Article 8. Grounds for restriction of the freedom of speech and expression**

1. Any restriction of the rights recognized and protected by this Law can be established only if it is introduced by a clear and foreseeable, narrowly tailored law, and good protected by the restriction exceeds the damage caused by the restriction.
2. Restrictions recognized and protected by this Law shall be: a) directly intended at fulfilment of a legitimate aim; b) Critically necessary in a democratic society; c) Non-discriminative; d) Proportionally restricted.

#### **Recommendations:**

- The Bill should include clear guidance on the narrow conditions under which restrictions may be imposed on the right to freedom of expression, including the requirement that restrictions be provided by law, clearly stated, narrowly tailored and strictly "necessary" to achieve a legitimate purpose.
- All restrictions on what may be published should be reviewed against international law standards. To the extent that a restriction serves a legitimate purpose, it should be reworded in appropriately precise language and inserted in laws of general application, such as the civil code.
- The criminal law should be used to restrict freedom of expression only when this is truly necessary, and never to protect the reputation or privacy of private persons or other private interests.
- Secrecy laws should restrict only the publication of such material the disclosure of which would cause demonstrable and serious harm to the national security or defence of the Maldives. Journalists should be liable for the publication of legitimately restricted material only if they committed fraud or another crime to obtain the information.

- The sanction of confiscation of copies, or signal blocking, proposed in Article 12, should be abandoned in favour of more proportionate responses.

### **3.3. Protective measures: journalists sources and anonymity**

The Maldives Bill on Freedom of Press provides some broad and general statements in support of the right to freedom of expression, as well as two specific protective measures. The broad statements are found in Articles 3, 5 and 16; as discussed in Section 3.1 of this Memorandum, we believe that they should be elaborated in far greater depth and detail. The two specific protective measures that the Bill provides are the protection of journalists' sources, and protection of the right to publish anonymously, in Articles 7-9.

Article 7 provides that journalists have the right not to reveal their sources of information and that everyone has a right to publish anonymously. Article 8 provides that a court may require the identification of a writer "in connection with a crime under law or shari'ah"; or if identification "is crucial to a civil case or a case between two public personalities". Article 9 provides that the confidentiality of sources may similarly be overcome if "a governmental authority entrusted with the task of bringing charges in connection with a case that is deemed to be a crime under this Law, questions the editor of a newspaper."

#### Analysis

We welcome the principle of protecting anonymous speech, as well as the protection of confidentiality of sources. Both are important elements of the right to freedom of expression. The European Court of Human Rights has stated, with regard to the right to keep sources of information confidential:

Protection of journalistic sources is one of the basic conditions for press freedom as is reflected in the laws and professional codes of conduct in a number of Contracting States and is affirmed in several international instruments on journalistic freedoms. Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result, the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected.<sup>41</sup>

The principle of anonymity has similarly been recognized as integral to the right to freedom of expression. The US Supreme Court has explained the justification for the principle as follows:

Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. Great works of literature have frequently been produced by authors writing under assumed names. Despite readers' curiosity and the public's interest in identifying the creator of a work of art, an author generally is free to decide whether or not to disclose her true identity. The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible. Whatever the motivation may be, at least in the field of literary endeavor, the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry. Accordingly, an author's decision to remain anonymous, like other decisions

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<sup>41</sup> *Goodwin v. United Kingdom*, 27 March 1996, Application No. 17488/90, para. 39.



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concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.<sup>42</sup>

International human rights law recognizes that neither principle is wholly absolute. However, like the right to freedom of expression it derives from, the principle may be interfered with only under certain narrowly circumscribed conditions. The European Court of Human Rights has stated that the principle of confidentiality may be overcome if “it is justified by an overriding requirement in the public interest”.<sup>43</sup> Subsequent recommendations issued by bodies such as the Council of Europe and the African Commission on Human and Peoples’ Rights have further elaborated on this, stating that the principle of confidentiality of sources may be overcome in accordance with the following principles:

- the identity of the source is necessary for the investigation or prosecution of a serious crime, or the defence of a person accused of a criminal offence;
- the information or similar information leading to the same result cannot be obtained elsewhere;
- the public interest in disclosure outweighs the harm to freedom of expression; and
- disclosure has been ordered by a court, after a full hearing.<sup>44</sup>

In contrast, the standard envisaged under the Bill is much lower. The principle of confidentiality may be overcome whenever the authorities deem the information relevant in the investigation of a crime under the Bill; while the principle of anonymity may be overcome in connection with a crime under law or under shari’ah, or if identification is necessary to settle a dispute between two public personalities. We recommend that the standard for identification of sources as well as for revealing the identity of a writer be brought in line with the international law standards outlined above.

We also note that the Bill requires any publisher to know the identity of all sources used in the writing of stories. Such a requirement is both impractical and out of step with usual practice in media outlets in democratic countries. In investigative journalism, the relationship between a journalist and his or her source is often highly personal; sources would be unwilling to step forward if they knew that their identity would be revealed to the editors, subeditors and owners of a newspaper. It is established practice that an editor trusts the journalists working for him or her; particularly if the journalist is experienced.

Finally, while the Bill protects the principles of anonymity and confidentiality, it fails to provide enhanced protection against search and seizure of journalistic premises. A search of a journalists offices or a raid on a newspaper can be far more intrusive on the right to freedom of expression than a request to reveal sources, and it follows that a form of enhanced protection to protect against searches unless their necessity has been convincingly established is justified. The European Court of Human Rights has stated:

[E]ven if unproductive, a search conducted with a view to uncover a journalist’s source is a more drastic measure than an order to divulge the source’s identity. This is because investigators who raid a journalist’s workplace unannounced and armed with search warrants

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<sup>42</sup> *McIntyre v. Ohio* (1995) 115 S. Ct. 1511.

<sup>43</sup> Note 41.

<sup>44</sup> See the *Declaration of Principles on Freedom of Expression in Africa*, adopted by the African Commission on Human and Peoples’ Rights, October 2002. See also Council of Europe Recommendation 2000(7) on the right of journalists not to disclose their sources of information; and the International Criminal Tribunal for the Former Yugoslavia’s judgment in *Prosecutor v. Brdjanin (Decision on Interlocutory Appeal)*, Case No. IT-99-36-AR73.9 (December 11, 2002).

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have very wide investigative powers, as, by definition, they have access to all the documentation held by the journalist.<sup>45</sup>

This principle has been enacted in the domestic laws of various countries, including France<sup>46</sup> and the United Kingdom,<sup>47</sup> and we recommend that it should be included in the Maldives Bill also.

#### **Recommendations:**

- The Bill should provide protection against unnecessary searches of media outlet's offices, as well as protection of anonymity and protection of sources.
- The requirement that an editor should know the identity of all sources used for reports should be dropped.
- A search, an order to reveal a source or an order to reveal the identity may be issued only in accordance with the following principles:
  - the identity of the source is necessary for the investigation or prosecution of a serious crime, or the defence of a person accused of a criminal offence;
  - the information or similar information leading to the same result cannot be obtained elsewhere;
  - the public interest in disclosure outweighs the harm to freedom of expression; and
  - disclosure has been ordered by a court, after a full hearing.

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<sup>45</sup> *Roemen Schmit v. Luxembourg*, 25 February 2003, Application No. 51772/99, para. 57

<sup>46</sup> Article 56-2, Criminal Procedure Code.

<sup>47</sup> Article 13, Police and Criminal Evidence Act 1984.

## **MALDIVES BILL ON FREEDOM OF PRESS**

### **Introduction and Title:**

1. (a) This law shall stipulate the principles and standards governing the perseverance and promotion of freedom of press in the Maldives.
- (b) This law shall be entitled the “Law on Freedom of Press”.

### **Definition of Press Freedom**

2. In this law “Freedom of Press” shall mean 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.

### **Rights of the Press**

3. To preserve the principles of freedom of press as stipulated in Article 2 herein; and to provide such rights to all citizens of the Maldives in its entirety; and to safeguard the exchange and expression of information and opinion freely; every citizen of the Maldives is entitled to the rights stipulated within the precincts of the principles stipulated herein.
  - (a) To publish in writing, orally or otherwise using media resources.
  - (b) Not to incriminate anyone, except in a court of law, in accordance with the law, owing to a thing published by someone.
  - (c) Not to punish anyone, except under a verdict by a court of law, owing to a thing published by someone.
  - (d) To publish, reveal, write and disseminate a person’s views, suggestions, and required information.
  - (e) To provide journalists with freedom to provide information.
  - (f) To provide journalists with information, on a commercial basis.

### **Sphere of Protection**

4. (a) Within press freedom the rights protected under the principles stipulated herein shall be all rights provided to the general public that are not inconsistent with the basic tenets of Islam; that does not infringe upon matters that must be protected in order to maintain the sovereignty of the nation; and that does not infringe upon matters that must be retained for the maintenance of public peace.

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- (b) Based on the principles stipulated in (a) of this Article, those matters which does not feature inside the purview of press freedom is stipulated in Article 11 herein.

#### **Censorship**

5. Before any information is published in a newspaper governmental bureaus shall not have powers to check the validity of facts; or to determine the nature of the information. Governmental bureaus shall not have the power to ban such information. This law does not permit any governmental bureau to take any steps regarding such matters that is not permitted herein.

#### **Powers**

6. None shall have the power to charge, or punish, or hold responsible for compensation for damages a person on account of a publication; or confiscate or withhold such a publication, except in the manner and under the circumstances prescribed herein.

#### **Preserving anonymity**

7. (a) This Law shall not deprive a writer of the right to publish information in newspapers under anonymity. A newspaper shall not be obligated to reveal names or sources of information published in the newspaper. Nevertheless, editors of newspapers must know the identity of such sources.
- (b) This Law shall not obligate those who collect news and information for the purpose of trading them with newspapers on a commercial basis, to reveal the originating source of such information.
- (c) Although (a) of this article stipulates regarding anonymity, if a writer or an informant by his/her own will claims or accepts it as his/her own work, a court of law shall have the power to determine whether or not he/she is responsible with regard to it.

#### **Principles of Anonymity No Applicable**

8. The perseverance of anonymity stipulated in Article 7 herein, shall not apply in the following circumstances.
- (a) If the person who provided such information agrees to reveal his/her identity.
- (b) If the circumstances arise whereby such an identity must be revealed in connection with a crime under law or shari'ah.
- (c) If a court of law so decides that the revealing of such an identity is crucial to a civil case or a case between two public personalities.

#### **Preserving Details of the Writer**

9. Under general principles governmental authorities shall not have the power to question any newspaper regarding details of the owner of an article; or details of the

person who provided the information on which an article is based. Such instance shall not be included under the purview of this principle whereby a governmental authority entrusted with the task of bringing charges in connection with a case that is deemed to be a crime under this Law, questions the editor of a newspaper.

**Banned Matter**

10. Legal authorities shall have the power to take measures, under the relevant law, if the following matter is published in a newspaper.

- (a) Material that include images, photographs, and documents that that serve to detract from the Islamic character, or social standards of the Maldives.
- (b) Material that might act to detract from the mental well being and personality traits of children.
- (c) Material protected as secrets under a provision of a law.
- (d) Material that might pave the way for the abuse of alcohol, drugs, and products of tobacco, and inappropriate sexual relations.
- (e) Material promoting negative visions of women and children, and such advertisements that are banned for the purpose of preserving physical health and environmental safety.
- (f) Information on personal finances and debt, or personal information that is included inside the sphere of a person's self-respect, fabricated material that might detract from a person's self-respect or integrity, that might mislead the public.

**Matters that do not come under the Purview of Press Freedom**

11. Even though this Law aims to protect press freedom, actions intended to achieve the following objectives shall be deemed crimes perpetrated in violation of this Law.

- (a) Acts against the State.
- (b) Espionage, and the revelation of such military and domestic secrets that if revealed might be deemed to compromise the security of the Maldives.
- (c) Trading in or exchange of such material that is deemed to be State secrets by a law.
- (d) Action perpetrated to deprive a person's freedom.
- (e) Defamation.
- (f) Action perpetrated to obstruct the achievement of objectives of orders brought out by legal authorities of the Maldives.

(g) Publication of a documents deemed to be a secret State document.

### **Powers of Confiscation**

12. (a) The Maldivian government shall have the power to confiscate a newspaper containing matters deemed a crime under this Law.
- (b) Confiscation, for the purpose included in (a) of this Article shall mean the confiscation and obliteration of all copies of such a newspaper by relevant governmental authorities. And if it involves electronic means, to guarantee that such a signal does not reach the general public.
- (c) A newspaper has the right to sue such a confiscation as stipulated in (a) of this Article. And if a court of law rules that the government did not have valid grounds to confiscate the newspaper, the government shall compensate for damages incurred by the confiscation.

### **Responsibility**

13. (a) The editor of a newspaper shall assume responsibility for that which is published in a newspaper; or those editors who are entrusted with the responsibility by the editor in his/her place.
- (b) In such circumstances that the newspaper is an unregistered publication; or if the editor of a newspaper does not meet the qualification requirements of an editor, responsibility must be assumed by the owner of the newspaper.
- (d) At the publication of a newspaper if the status of the trustee and the editor is doubtful, the publisher must assume responsibility for the newspaper.
- (e) In such circumstances where the status of the trustee and the editor and the publisher is doubtful, those who possess or distribute or sell the newspaper shall assume responsibility for the newspaper.

### **Penalisation and Incrimination**

14. The only authorities empowered with penalising or issuing a penalty on newspapers violating this Law shall be Maldivian courts of law and the Attorney General of the Maldivian State. The decisions of the courts and the Attorney General must not obstruct the freedoms provided to the press by this Law.

### **Investigation**

15. (a) Only the Attorney General shall have powers to order any official authority or party to conduct investigations of the press.
- (b) In spite of the provisions stipulated in (a) of this Article, relevant authorities shall have the right to inform and bring to the attention of the Attorney General regarding acts that violate this Law.

### **Reference**

16. Authorities vested with powers to monitor whether this Law is being followed; or to pass verdict on journalists in connection with a violation of this Law must at all junctures remember that press freedom is fundamental to a free society. And such authorities of power shall pay more attention to whether the disclosure of a piece of information is permissible or not rather than its permissibility. And more on the purpose behind disclosing such information rather than the manner in which it was revealed. And more on releasing the journalist if any reasonable doubt arises. And if such circumstances arise where a statement of amendment or apology is necessitated authorities shall make sure such a statement has been published and disseminated amongst the general public.

### **Meanings**

17. Unless provided otherwise in this Law:

"Newspaper" shall mean registered or unregistered daily newspapers, weekly newspapers, magazines, trade publications, and all other publications in various names that are published or accessible via internet or other resources to publicly spread information, news, views, and advertisements and that are available in the Maldives for purchase or for free.

"Public peace" shall mean information that might affect a large section of the society, and information that a large section of the society might want to know, information that causes anxiety, and information that a large section of the society might consider important to know the details of how it transpires.

"Sovereignty" shall mean the autonomy and independence of the Maldivian State.

"Islamic character" shall mean the religion of the Maldivian State, the basic tenets of that religion and the Maldivian Islamic order and principles.

"Social standards" shall mean the generally accepted order of living amongst Maldivians.

"Person" shall include people, legal authorities, organizations and associations.

"Ministry" shall mean the Ministry of Information and Arts or the authority invested with the responsibility of managing media related matters at any given time.

"Media" shall mean registered or unregistered television, radio, interactive CDs, websites, daily newspapers, weekly newspapers, magazines, trade publications, and all other publications in various names that are published or accessible via internet or other resources to publicly spread information, news, views, and advertisements and that are available in the Maldives for purchase or for free.

"Media resource" shall mean those resources included as a part and parcel of media.

"Act against the State" shall mean the following:

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1. An act that can cause the Maldives, its independence or sovereignty or cause a part of the Maldives in terms of territory or population to be divested from the jurisdiction of the Government of the Maldives.
2. An act that can cause the Maldives, its existence to be dependent on a foreign power in a manner that is not prescribed by Law.
3. An act or support of such an act that can cause a part of the Maldives to secede.
4. An act or support of such an act that can cause the obstruction of the Head of State, Maldives Government, People's Majlis and Courts of Law from exercising duties, in accordance with the Law, entrusted upon them.
5. An act that serves to create war or divisions amongst the general public.
6. An act that can cause the overthrow of the lawfully established government by use of force or in a manner that is not permissible under Law.
7. To speak in a manner that and to speak in a manner that is un-provable and that can cause the obliteration of the Maldivian State, or the lawful government of the Maldives, or the obstruction of the judiciary and legislative authorities from performing their work.
8. An act that can encourage disobedience of legal orders by legal authorities of the Maldives, disobedience of legitimate orders issued in order to carry out the formal duties of the government, and negligence in doing one's duty as citizens of the Maldives.
9. An act that can cause the creation of prejudice against a section of Maldivian society on the basis of the difference in the way of living, or in the difference in the schools of Islamic thought followed, or belonging to a particular political party, or differences in the expression of opinion.

“Obliteration of the powers of the Constitution” shall mean the violation of the Constitution.

“Publishing” shall mean the provision and disclosure of information to a person using any resource in order to sell or provide people with such information.

21 September 2005