



CENTRE FOR LAW  
AND DEMOCRACY

# Maldives

## Overview of the Environment for Media

August 2021

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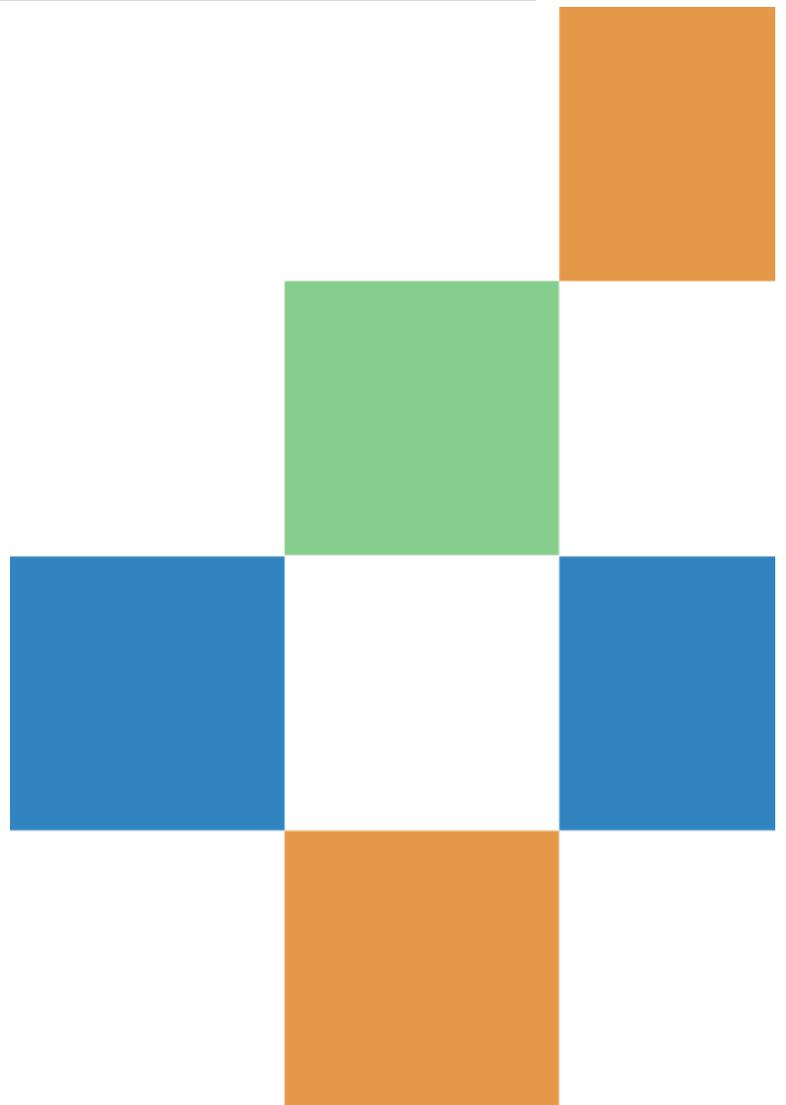
[info@law-democracy.org](mailto:info@law-democracy.org)

+1 902 431-3688

[www.law-democracy.org](http://www.law-democracy.org)

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Halifax, Nova Scotia, Canada

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**Email:** [info@law-democracy.org](mailto:info@law-democracy.org)

**Phone:** +1 902 431-3688

**Website:** [www.law-democracy.org](http://www.law-democracy.org)

**Facebook:** [fb.com/CentreForLawAndDemocracy](https://www.facebook.com/CentreForLawAndDemocracy)

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## Executive Summary

Respect for freedom of expression has fluctuated quite markedly in the Maldives over the years and, in particular, with changes of government. While successive governments have tweaked the legal framework for freedom of expression, most notably going back and forth on the issue of criminal defamation, the larger problem has been political will. The root cause of this is that the legal framework affords governments' broad scope to interfere with media freedom. This, in turn, is derived in large part from the lack of independence of regulatory and oversight bodies for the media, leaving space for government to control them, as well as a number of legal rules that are either overbroad or insufficiently clear and precise (i.e. unduly vague). These problems are further exacerbated by a lack of independence in the judiciary, resulting in an absence of strict judicial control over the application of laws restricting freedom of expression, as well as laws governing other rights.

One exception here is the Maldives Media Council or MMC, which is responsible for regulating the print media, and which has proven to be fairly robustly independent. A key reason for that is the degree of control that media actors have over appointing MMC members. Based on the lack of independence of other regulatory and oversight bodies, a key set of recommendations in this report is therefore aimed at reforming the legislation that establishes those bodies, with a focus on the manner in which their members or governing boards are appointed. These recommendations apply to the judiciary, the Maldives Broadcasting Commission, the Public Service Media and the Communications Authority of Maldives, all of which need more effective protection against government and other forms of political interference.

Another key problem is the ongoing impunity for murders of and attacks on journalists. No one has yet been brought to justice in the cases of two very high profile murders of journalists, namely those of Ahmed Rilwan Abdulla in 2014 and Yameen Rasheed in 2017. Charges were brought in the former case but were ultimately unsuccessful due to prosecution failures while charges in the latter case have dragged on interminably through the courts.

The general guarantees for freedom of expression and media freedom in the Constitution of the Republic of Maldives are largely in line with international standards, including in terms of the restrictions on these rights that they allow, although the guarantee for the right to information could be more comprehensive in nature. A major shortcoming, however, is the fact that the Constitution subjects all human rights, including freedom of expression, to the undefined notion of the "tenets of Islam". This protects vague and overbroad criminal prohibitions on expression which criticises Islam, causes disregard for Islam or disrupts



religious unity, which in turn have been used to limit debate about matters of public interest and even for political ends.

Apart from the general and overriding problem of independence, some of the key areas where reforms of one sort or another are needed in terms of media regulation are as follows:

- To provide greater protection for the safety of journalists.
- To consider an independent system for accrediting journalists so that they can access limited space and restricted access venues.
- To abolish the 1978 Newspapers and Magazines Act and, along with it, the requirement for newspapers to register.
- To consider providing support to bolster media and especially print media sustainability, albeit in a way that is protected against political interference.
- To provide for explicit legal recognition of community broadcasters and for the Broadcasting Commission to begin to issue licences to this sector.
- To amend the Broadcasting Code of Practice so as to remove overbroad or unduly vague provisions, while also enforcing the rule in the Code which requires broadcasters to ensure that their news and current affairs content is accurate, fair, balanced and impartial.
- To put in place a system for the blocking of websites by the Communications Authority of Maldives which ensures that this happens only when this is appropriate given the content hosted by those websites and through a procedure which respects basic due process guarantees.

Another area where significant reforms are needed is in terms of restrictions on the content of what may be published, broadcast or otherwise disseminated. Defamation was decriminalised in 2009 but this was reversed in 2016 with the Anti-Defamation and Freedom of Expression Act, which also contained a number of other illegitimate restrictions on content, and then decriminalised again in 2018 when the Anti-Defamation and Freedom of Expression Act was repealed. It will be important to ensure that similar legislation is not adopted in future. Beyond that, a comprehensive review of all of the content rules in Maldivian legislation needs to be undertaken with a view to amending those that do not pass muster as restrictions on freedom of expression.

The Maldives does not yet have a comprehensive privacy/data protection law, and it should put in place a process for adopting one shortly. It does have a Right to Information Act, and a very strong one at that, although implementation has so far generally been weak. Key to success here is political will and the appointment of a strong and active Information Commissioner. The government also needs to deliver on its promises to move forward strongly in the area of open data which, along with proper implementation of the Right to Information Act, will usher in important benefits for both government and the public.



Although much needs to be done, as outlined above, it is also the case that the Maldives has demonstrated some important successes in the area of freedom of expression and media freedom. The country has gone from 120<sup>th</sup> position from among 180 countries on the Reporters Without Borders press freedom ranking in 2018 to 72<sup>nd</sup> position in 2021, having climbed in the ranking each year since the 2018 low. With some political will and effective action on the part of the government, the Maldives could significantly bolster respect for freedom of expression thereby continuing to move up the ranking and, far more importantly, creating an enabling environment for media freedom and, through that, respect for democracy and all human rights.



## Introduction

The Maldives has had a rocky history with freedom of expression and democracy more generally. Maumoon Abdul Gayoom was the President for a 30-year period from 1978 to 2008, during most of which political parties were not even allowed. A period of preparation for democracy started in 2003, prompted in part by political unrest. Political parties were first allowed in June 2005 and a new, relatively democratic constitution was ratified by President Gayoom in August 2008. The country held its first multi-party presidential elections in October 2008 when Mohamed Nasheed, a former political prisoner, was elected president.

Since that time, respect for freedom of expression has depending heavily on the prevailing outlook of the government in power. As the International Federation of Journalists, which has actively monitored and reported on press freedom in the country, stated in its 2020-2021 annual report on press freedom:

The health of the media has since [Nasheed's election] been inextricably tied to the country's democratic fortunes.<sup>1</sup>

The Nasheed government was widely credited with improving the situation of press freedom. For example, in its publication, *Freedom of the Press 2009*, Freedom House stated: "In the biggest shift of the year, the Maldives rose from Not Free to Partly Free".<sup>2</sup> The improvements were also recognised by UNESCO in its *Assessment of Media Development in the Maldives: Based on UNESCO's Media Development Indicators*.<sup>3</sup> However, controversy soon engulfed the Nasheed administration following the January 2012 arrest of a senior criminal court judge. Nasheed resigned in February 2012 going on to garner by far the largest number of votes in a September 2013 general election, but not an outright majority. Abdulla Yameen Abdul Gayoom, Maumoon Abdul Gayoom's half brother, won a runoff election in November. Nasheed was convicted in 2015 and sentenced to 13 years' imprisonment for terrorism, although this was overturned by the Supreme Court in November 2018 following a change of government.

Media freedom declined under Yameen Gayoom's government. According to Reporters Without Borders, the country's press freedom ranking declined from 103<sup>rd</sup> position among 180 countries in 2013 to 120<sup>th</sup> again among 180 countries in 2018.<sup>4</sup> On 11 September 2017, when providing an update to the UN Human Rights Council, Zeid Ra'ad al-Hussain,

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<sup>1</sup> International Federation of Journalists, *Truth In A Time Of Contagion: The Viral Frontline Maldives Country Report: 19th Annual South Asia Press Freedom Report 2020-21*, p. 2, <https://samsn.ifj.org/SAPFR/456-2/>. The International Federation of Journalists reports annually on media freedom in South Asia via its South Asia Press Freedom Report.

<sup>2</sup> Freedom House, *Freedom of the Press 2009*, <https://freedomhouse.org/sites/default/files/FOTP%202009%20Final%20Full%20Report.pdf>.

<sup>3</sup> Toby Mendel, *Assessment of Media Development in the Maldives: Based on UNESCO's Media Development Indicators* (Paris: UNESCO, 2009), p. 2, <http://www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/assessment-of-media-development-in-the-maldives/>.

<sup>4</sup> See <https://rsf.org/en/maldives>.



United Nations High Commissioner for Human Rights, said the Maldivian government was “increasingly cracking down on critical views.”<sup>5</sup> In a report published in August 2018 titled “*An All-Out Assault on Democracy*” *Crushing Dissent in the Maldives*, Human Rights Watch stated:

Recent governmental decrees that block opposition parties from contesting elections, the arrest of Supreme Court justices, and the crackdown on the media all reflect government steps to silence critics.<sup>6</sup>

Ibrahim Mohamed Solih, a parliamentarian who was close to former president Nasheed, won a landslide in the September 2018 elections and took power in November of that year, after leading a unified opposition and standing as the only challenger to Yameen Gayoom. Solih’s party again performed very strongly in the April 2019 legislative elections, when his party won three-fourths of the seats. In May, Nasheed was elected as speaker of the People’s Majlis (the parliament) by a unanimous vote. Commentators generally agree that media freedom has improved under Solih, for example as reflected in Reporters Without Borders’ press freedom ranking, which increased to 98<sup>th</sup> out of 180 countries in 2019 and 79<sup>th</sup> out of 180 in 2020.<sup>7</sup> One concrete improvement was Solih’s quick repeal in 2018, just after he had come to power, of the repressive 2016 Anti-Defamation and Freedom of Expression Act, which had recriminalized defamation, following its original decriminalisation in 2009.<sup>8</sup>

This report provides an overview of the legal and policy framework for freedom of expression and of the media in the Maldives, as well as the practical ways in which that framework has been implemented. The assessment is based on international guarantees of the right to freedom of expression, in particular as set out in the *Universal Declaration of Human Rights* (UDHR),<sup>9</sup> adopted unanimously by the United Nations General Assembly in 1948 and generally viewed as the flagship international statement of human rights, and the *International Covenant on Civil and Political Rights* (ICCPR),<sup>10</sup> a legally binding human rights treaty ratified by 117 States,<sup>11</sup> including the Maldives.<sup>12</sup>

The report is divided into four main chapters. The first sets out the key international and Maldivian constitutional guarantees for freedom of expression, looking at international protection for this right, restrictions, three key standards regarding media freedom – namely the need for any body which exercises regulatory powers over the media to be independent of government, the need for States to promote media diversity and the obligation on States to prevent attacks on the media – and then providing an assessment of the extent to which the Maldivian constitutional guarantees are in line with international

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<sup>5</sup> Al Hussein, Zeid Ra’ad, “Opening Statement by Zeid Ra’ad Al Hussein”, Presented at the 36<sup>th</sup> session of the United Nations Human Rights Council, 11 September 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041&LangID=E>.

<sup>6</sup> Human Rights Watch, “*An All-Out Assault on Democracy*”: *Crushing Dissent in the Maldives*, 2018, p. 1, [https://www.hrw.org/sites/default/files/report\\_pdf/maldives0818\\_web2.pdf](https://www.hrw.org/sites/default/files/report_pdf/maldives0818_web2.pdf).

<sup>7</sup> Note 4.

<sup>8</sup> See below under Defamation.

<sup>9</sup> United Nations General Assembly Resolution 217A (III), 10 December 1948.

<sup>10</sup> UN General Assembly Resolution 2200A (XXI), 16 December 1966, in force 23 March 1976.

<sup>11</sup> As of June 2021. See <https://indicators.ohchr.org>.

<sup>12</sup> The Maldives acceded to (ratified) the ICCPR on 19 September 2006.

standards. The second chapter focuses on Regulation of the Media, broken down into sub-chapters focusing on Journalists, Print Media, Broadcasting, Public Media, and Telecommunications and Digital Restrictions. The third chapter analyses some of the key Content Restrictions in Maldivian law, broken down into sub-chapters focusing on Defamation, Religion and Morals, Privacy, Political Interference and Elections, and then Other Issues. The final substantive chapter focuses on Transparency, broken down into sub-chapters on the Right to Information and Other Openness Measures.

This report is based primarily on a desk review of relevant documents. These include a range of authoritative sources of international law, reputable English translations of Maldivian laws, reports from official and credible civil society sources, official press releases from the Maldivian government and referenced news articles from credible media outlets. The report has been reviewed by local and international experts and their comments have been incorporated.

## Background

The Maldives is an archipelago comprised of 21 Atolls, or collections of islands, situated to the southwest of the Indian subcontinent. Approximately 580,000 people currently live on the islands, most of whom speak Dhivehi, a mixture of Arabic and Asian languages, written in a local script. English is widely spoken among elites. The formal State religion of the Maldives is Islam. According to Article 2 of the Constitution of the Republic of Maldives 2008, the country is “based on the principles of Islam”, while Article 9(d) only allows Muslims to be citizens, apparently notwithstanding other claims to citizenship, although it is not clear what would happen if someone who was otherwise eligible for or had citizenship rejected Islam as his or her religion. Article 10 proclaims Islam as the official State religion.<sup>13</sup> These rules, and in particular the one on citizenship, reflect a deep and historical narrative of the Maldives as a homogenous Islamic society, a view which transcends politics, although it is not entirely consistent with the modern situation in the country.

The Maldivian economy is primarily based on tourism. The country’s very low-lying geography – with its highest elevation reaching just 5.1m – places not only its economy but its very existence at unique risk from rising sea levels.<sup>14</sup>

The country achieved independence from the United Kingdom in 1965, becoming a republic in 1968. From 1978 to 2008, the country was ruled as a single-party State under President Maumoon Abdul Gayoom’s leadership but following the first multi-party elections in 2008 there have been regular changes of government. The 2008 Constitution provides for a directly elected president and parliament, the People’s Majlis, and an

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<sup>13</sup> Constitution of the Republic of Maldives 2008, ratified 7 August 2008, available in English translation at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/80953/96239/F510421235/MDV80953%202.pdf>.

<sup>14</sup> UNDP, *Human Development Report 2020*, footnote 11, p. 265, <http://hdr.undp.org/sites/default/files/hdr2020.pdf>.



independent judiciary.<sup>15</sup> The Constitution also establishes several institutions, including the Elections Commission,<sup>16</sup> Human Rights Commission<sup>17</sup> and Anti-Corruption Commission,<sup>18</sup> among others.

The legal system in the Maldives comprises the 2008 Constitution, Islamic Sharia law, laws and regulations duly passed by parliament, and presidential executive orders, as supplemented by British Common Law rules. The Maldives operates a dualist system when it comes to international treaties, meaning that these only become part of the national legal system following incorporation by an act of parliament.<sup>19</sup> However, according to Article 68, courts “shall consider international treaties to which the Maldives is a party” when interpreting the rights and freedoms set out in Chapter II of the Constitution.

The Maldives was ranked in 95th place in the United Nations Development Programme’s *Human Development Report 2020*, second only to Sri Lanka from among South Asian countries, and with a GDP per capita of nearly USD17,500 and mean of seven years of schooling. Its position increased to 82<sup>nd</sup> place, above Sri Lanka, when assessed under the UNDP’s Gender Inequality Index.<sup>20</sup>

## 1. Freedom of Expression as a Human Right

Freedom of expression is a fundamental human right that is guaranteed under international law as well as by virtually every national constitution in the world. The right to express oneself freely, along with the right to receive information and ideas from others, is crucial to human dignity, sustainable development, the search for truth and achieving personal goals. Moreover, it is a key pre-requisite for democracy and good governance, free public debate and the scrutiny and hence accountability of officials and other powerful social actors. It is also key to maintaining respect for all other human rights. Indeed, the introduction of undue constraints on freedom of expression is often a harbinger of the onset of authoritarianism and a decline in respect for all human rights.

Statements by authoritative international human rights actors and bodies continuously reaffirm the importance of freedom of expression. The UN General Assembly emphasised the importance of this right in Resolution 59(I), adopted at its first session in 1946:

Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.<sup>21</sup>

The UN Human Rights Committee, the independent body of experts established to monitor and oversee implementation of the ICCPR, has held:

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<sup>15</sup> Note 13.

<sup>16</sup> *Ibid.*, Articles 167-178.

<sup>17</sup> *Ibid.*, Articles 189-198.

<sup>18</sup> *Ibid.*, Articles 199-208.

<sup>19</sup> See Article 93 of the Constitution, *ibid.*, and especially Article 93(b).

<sup>20</sup> Note 14, statistical tables.

<sup>21</sup> Adopted 14 December 1946.

The right to freedom of expression is of paramount importance in any democratic society.<sup>22</sup>

Similarly, the Inter-American Court of Human Rights (IACtHR) has stated: “Freedom of expression is a cornerstone upon which the very existence of a democratic society rests.”<sup>23</sup> And the European Court of Human Rights (ECtHR) has noted: “Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man.”<sup>24</sup>

## 1.1. International Guarantees

The right to freedom of expression is protected by leading international and regional human rights instruments. This includes the UDHR, Article 19 of which states:

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

As a UN General Assembly resolution, the UDHR is not formally binding on States, but it is widely accepted that parts of it, including its guarantee of freedom of expression, has acquired legal force as customary international law.<sup>25</sup>

Article 19 of the ICCPR also guarantees the right to freedom of expression, stating, in relevant part:

- (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.

Regional human rights treaties use similar language in their guarantees of freedom of expression. For example, Article 13 of the *American Convention on Human Rights* (ACHR)<sup>26</sup> states that freedom of expression “includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers...”. Article 10 of the *European Convention on Human Rights* (ECHR)<sup>27</sup> states that freedom of expression “shall include freedom to hold opinions and to receive and impart information and ideas.” And Article

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<sup>22</sup> *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.

<sup>23</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. 70.

<sup>24</sup> *Handyside v. the United Kingdom*, 7 December 1976, Application No. 5493/72, para. 49.

<sup>25</sup> See, for example, D’Amato, A., “Human Rights as Part of Customary International Law: A Plea for Change of Paradigms” (2010, Faculty Working Papers, 88),

<https://scholarlycommons.law.northwestern.edu/facultyworkingpapers/88>; and Meron, T., *Human Rights and Humanitarian Norms as Customary Law* (Oxford: Clarendon Press, 1989).

<sup>26</sup> 22 November 1969, entered in force 18 July 1978, <http://www.oas.org/juridico/English/treaties/b-32.html>.

<sup>27</sup> Adopted 4 November 1950, entered into force 3 September 1953, [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf).

9(1) of the *African Charter on Human and People's Rights* (ACHPR)<sup>28</sup> states: "Every individual shall have the right to receive information.", while Article 9(2) states: "Every individual shall have the right to express and disseminate his opinions within the law."

As the language of these treaties makes clear, the right to freedom of expression encompasses not only the right to impart information and ideas (to speak), but also the right to seek and receive them. These latter aspects of the right are crucial elements of it and are also independent elements that are as important as the right to express oneself. Accordingly, the UN Special Rapporteur on Freedom of Expression has noted that the right to receive information "is not simply a converse of the right to impart information but it is a freedom in its own right. The right to seek or have access to information is one of the most essential elements of freedom of speech and expression."<sup>29</sup>

International law makes it clear that the right to freedom of expression goes beyond requiring States simply to abstain from restricting expressive activity; they are also required to take positive steps to facilitate the enjoyment and protection of this right in certain contexts. The existence of this obligation has been confirmed in the decisions of international and regional human rights courts. For example, in *Claude-Reyes et al. v. Chile*, the IACtHR found that Chile had breached the freedom of expression rights of its citizens when it failed to take positive steps to guarantee by law the right to access official information:

Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it....<sup>30</sup>

Similarly, in *Özgür Gündem v. Turkey*, the ECtHR held Turkey to be in breach of its freedom of expression obligations for failing to take positive measures to protect a newspaper against repeated attacks: "Genuine, effective exercise of [freedom of expression] does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals."<sup>31</sup>

Some other key features of the right to freedom of expression are that it protects not only speech that is acceptable to people but also speech that is widely deemed to be "offensive"<sup>32</sup> and that it applies across State borders ("regardless of frontiers"). It also protects expressive activity however that takes place and whatever means of communication are used ("through any other media of his choice").

<sup>28</sup> Adopted 27 June 1981, entered into force 21 October 1986, <https://www.ohchr.org/EN/Issues/RuleOfLaw/CompilationDemocracy/Pages/AU.aspx>

<sup>29</sup> *Report of the Special Rapporteur, pursuant to Commission on Human Rights resolution 1993/45*, 14 December 1994, E/CN.4/1995/32, para 35, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G94/750/76/PDF/G9475076.pdf?OpenElement>.

<sup>30</sup> 16 September 2006, Series C No. 151, para 77, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_151\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf).

<sup>31</sup> 16 March 2000, Application No. 23144/93, para 43, <http://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-46141&filename=ERS%C3%96Z%20AND%20OTHERS%20v.%20TURKEY.pdf&logEvent=False>.

<sup>32</sup> *Handyside v. United Kingdom*, note 24, para. 49.

Article 19 of the ICCPR also protects the right to hold opinions. Notably, while States may restrict freedom of expression, the right to hold beliefs and opinions is absolute; a State may never legitimately limit this right.

## 1.2. Restrictions on Freedom of Expression

Although freedom of expression is a fundamental human right, international law recognises that it is not absolute. Instead of prescribing restrictions on this right, for the most part international law allows States to set their own restrictions, but places clear limits on those restrictions. Article 19(3) of the ICCPR sets out the conditions according to which restrictions will be considered to be legitimate:

(3) The exercise of the rights provided for in paragraph 2 of this article [guaranteeing freedom of expression] 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 and reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

This is understood as imposing a strict three-part test for assessing the legitimacy of any restriction on freedom of expression. This test was summarised by the UN Human Rights Committee in its most recent General Comment on Freedom of Expression, No. 34, as follows:

[Article 19(3) of the ICCPR] lays down specific 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 grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of necessity and proportionality.<sup>33</sup>

The first part of the test, which is drawn directly from the language of Article 19(3), is that restrictions must be “provided by law”. A key rationale for this is that only the legislature, acting collectively pursuant to its formal law-making powers, should have the ability to decide what interests, in conformity with international law, warrant overriding freedom of expression. This rules out *ad hoc* or arbitrary action by elected officials or civil servants, no matter how senior, although it does not mean that parliament cannot delegate secondary law-making power to other actors (such as in the form of regulations under a law).

It is not enough, to pass this part of the test, simply for there to be a law; that law must meet certain quality control standards. It must, fairly obviously, be accessible, normally meaning that it should have been published in the official gazette or whatever official publication serves to notify the general public about laws.

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<sup>33</sup> General Comment No. 34, 12 September 2011, CCPR/C/GC/34, para. 22. General Comments are authoritative interpretations of rights that are issued periodically by the UN Human Rights Committee. For another elaboration of the three-part test see *Mukong v. Cameroon*, 21 July 1994, Communication No.458/1991, para.9.7 (UN Human Rights Committee).

The law must also not be unduly vague. When a restriction on freedom of expression is vague, it may be subject to a range of different interpretations, which may or may not reflect the original intent of parliament in adopting the law. Put differently, vague rules effectively grant discretion to the authorities responsible for applying them – whether this is a regulatory body, the police, an administrator or someone else – to decide what they mean. This clearly undercuts the idea that it is parliament which should decide on restrictions. The same is true where a law is clear, but allocates broad discretion to the authorities in terms of how it is to be applied. An example of this might be a law which allowed the police to stop a demonstration if they deemed it not to be in the public interest.

Vague provisions may also be applied in an inconsistent or unclear way. This fails to give individuals proper notice of what is and is not allowed, another key objective of the “provided by law” part of the test. In this case, especially where sanctions for breach of the rule are significant, individuals are likely to steer well clear of the potential zone of application of the rule to avoid any possibility of being censured, leading to what has been called a chilling effect on freedom of expression. In General Comment No. 34, the Human Rights Committee referred to the problem both of vagueness and granting too much discretion:

For the purposes of [Article 19(3) of the ICCPR], a norm, to be characterized as a “law”, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.<sup>34</sup>

This part of the test does not necessarily rule out subordinate legislation (such as rules or regulations under a statute) or other delegated powers to make laws (such as rules adopted by a regulator or even judge-made law in Common Law countries), as long as these powers derive from a primary legal rule (i.e. a law or constitution). The European Court of Human Rights summed up its jurisprudence on this issue in *Sanoma Uitgevers B.V. v. the Netherlands*:

[A]s regards the words “in accordance with the law” and “prescribed by law” which appear in Articles 8 to 11 of the Convention, the Court observes that it has always understood the term “law” in its “substantive” sense, not its “formal” one; it has included both “written law”, encompassing enactments of lower ranking statutes and regulatory measures taken by professional regulatory bodies under independent rule-making powers delegated to them by Parliament, and unwritten law. “Law” must be understood to include both statutory law and judge-made “law”. In sum, the “law” is the provision in force as the competent courts have interpreted it.<sup>35</sup>

The second part of the test is that restrictions must serve or protect one of the grounds or interests listed in Article 19(3). That article makes it quite clear that this list is exclusive and the UN Human Rights Committee has reiterated that point:

Restrictions are not allowed on grounds not specified in [Article 19(3) of the ICCPR], even if such grounds would justify restrictions to other rights protected in the Covenant.

<sup>34</sup> *Ibid.*, para. 25.

<sup>35</sup> 14 September 2010, Application No. 38224/03, para. 83.

Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.<sup>36</sup>

Restrictions which do not serve one of the listed interests are not legitimate. At the same time, it may be noted that the list of interests – namely “respect of the rights and reputations of others” or “the protection of national security or of public order (ordre public), or of public health or morals” – is very broad indeed. Furthermore, courts have tended to interpret it widely. For example, the European Court of Human Rights has interpreted the scope of “public order” quite broadly:

The concept of ‘order’ refers not only to public order or ‘ordre public’ ... [I]t also covers the order that must prevail within the confines of a specific special group. This is so, for example, when, as in the case of armed forces, disorder in that group can have repercussions on order in society as a whole.<sup>37</sup>

Furthermore, restrictions must be primarily directed at one of the legitimate interests and serve it in both purpose and effect. For example, a restriction that has a purpose directed at one of the legitimate interests listed but has a merely incidental effect on that interest cannot be justified. In practice, however, international courts rarely decide freedom of expression cases on the basis that the underlying rules did not serve a legitimate interest.

The third part of the test is that restrictions must be “necessary” to secure the interest. Most international cases are decided on the basis of this part of the test, which is extremely complex. A few key features can be drawn from various authoritative statements interpreting this element of the test, namely:

- restrictions must not be overbroad in the sense that they do not affect speech beyond that which affects the relevant interest;
- restrictions must be rationally connected to the interest they wish to protect in the sense of having been carefully designed to protect the interest and representing the option for protecting the interest that impairs freedom of expression the least; and
- restrictions must be proportionate in the sense that the benefits in terms of protecting the interest outweigh the harm to freedom of expression.

In General Comment No. 34, the UN Human Rights Committee summarised these conditions as follows:

Restrictions must not be overbroad. The committee observed in general comment No. 27 that “restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected...The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law”. The principle of proportionality must also take account of the form of expression at issue as well as the means of its dissemination. For instance, the value placed by the Covenant upon uninhibited expression is

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<sup>36</sup> Note 33, para. 22.

<sup>37</sup> *Engel and others v. the Netherlands*, 8 June 1976, Application Nos. 5100/71, 5101/71, 5102/71, 5354/72 and 5370/72, para. 98.

particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.

When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.<sup>38</sup>

Another good summary of this part of the test has been provided by the Inter-American Court of Human Rights:

Lastly, the restrictions imposed must be necessary in a democratic society; consequently, they must be intended to satisfy a compelling public interest. If there are various options to achieve this objective, that which least restricts the right protected must be selected. In other words, the restriction must be proportionate to the interest that justifies it and must be appropriate for accomplishing this legitimate purpose, interfering as little as possible with the effective exercise of the right.<sup>39</sup>

### 1.3. Right to Information

As has already been noted, the right to freedom of expression protects the rights to “seek” and “receive” information and ideas, or the wider idea of the free flow of information and ideas in society. As part of this, and especially over the last 20 years, it has been recognised that the right also embraces a right to access information held by public authorities (right to information or RTI). The fundamental rationale for this is that these authorities do not hold information for themselves but, rather, hold it on behalf of the public which, as a result, and subject only to limited exceptions, has a right to access this information. Looked at from another point of view, public authorities hold a tremendous amount of information of high public interest value. If this information is limited in circulation to officials, this will seriously undermine the free flow of information and ideas in society. The core principle underpinning RTI is the principle of maximum disclosure of information by public authorities with limited exceptions.

To give effect to this right, States need to adopt comprehensive right to information legislation. Both the main rationale for this right and the need for legislation were stated clearly in Principle IV of the *Declaration of Principles on Freedom of Expression in Africa* (African Declaration), adopted in 2003:

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
2. The right to information shall be guaranteed by law.<sup>40</sup>

It is accepted that there are two key means of accessing information in practice. First, public authorities should proactively publish information of key public importance, so that everyone can access it reasonably easily, something that is significantly facilitated by digital

<sup>38</sup> Note 33, paras. 34-5.

<sup>39</sup> *Claude Reyes and Others v. Chile*, 19 September 2006, Series C, No. 151, para. 91.

<sup>40</sup> Adopted by the African Commission on Human and People’s Rights at its 32nd Session, 17-23 October 2002.



communications technologies. Second, the legislation should put in place a system for making and responding to requests for information. These two approaches were recognised in paragraph 19 of the UN Human Rights Committee’s General Comment No. 34:

To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation.<sup>41</sup>

Currently, approximately 130 countries globally have adopted RTI laws, meaning that this is very widespread among democracies. Significantly, Sustainable Development Goal (SDG) indicator 16.10.2<sup>42</sup> focuses on: “Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information”, thus hardwiring RTI into the development agenda.

What makes an RTI law good or effective is somewhat complicated. The RTI Rating ([www.RTI-Rating.org](http://www.RTI-Rating.org)) is the leading global methodology for assessing the strength of RTI laws, and the 61 indicators used in the methodology essentially reference the different features that a good law should have (such as a broad definition of the public authorities which are covered, clear and user-friendly procedures for making and processing requests, limited exceptions to the right of access, and an accessible and independent system for appealing against refusals to provide access).

The RTI Rating groups the key features of a good law into seven main categories:

1. Right of Access (guarantees of the right in the constitution and law)
2. Scope (scope of coverage of the law in terms of public authorities, requesters and information)
3. Requesting Procedures (the rules for making and processing requests)
4. Exceptions (one of the most complicated parts of the law; see below)
5. Appeals (including the right to lodge an appeal with an independent administrative body)
6. Sanctions and Protections (sanctions for officials who wilfully obstruct access and protection for those who disclose information in good faith)
7. Promotional Measures (measures to make the law work in practice such as public authorities appointing and training information officers)

Like the right to freedom of expression from which it is derived, the right to information is not absolute. Governments may legitimately withhold certain information in limited circumstances according to a three-part test. First, the exception must relate to a legitimate aim that is set out clearly in law. Although there is no universally recognised list of legitimate aims, these are generally understood as being limited to: national security; international relations; public health and safety; the prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests;

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<sup>41</sup> Note 33.

<sup>42</sup> Available at: <https://unstats.un.org/sdgs/indicators/indicators-list/>.



management of the economy; fair administration of justice; legal advice privilege; conservation of the environment; and legitimate policy making and other operations of public authorities.

Second, information should be withheld only if its disclosure would pose a risk of harm to the protected aim. It is not legitimate to withhold information simply because it relates to an aim. Instead, the public authority should demonstrate that disclosure of the information will cause specific harm to one of the aims. Third, there should be a public interest override whereby even if disclosure of information would cause harm, it should still be disclosed unless that harm outweighs the overall public interest in accessing the information. For example, if information exposes corruption or human rights abuses, there is generally a very high public interest in its disclosure.

#### 1.4. Independent Regulation of The Media

The idea that bodies which exercise regulatory powers over the media need to be independent of the government and protected against both political and commercial interference is well-rooted in international standards, as well as the comparative practice of democratic States. The rationale for this is evident: if regulators are controlled by the government, they are likely make regulatory decisions which favour the government of the day, rather than the wider public interest. This will undermine the ability of the media to report critically, especially on political actors, and thereby diminish respect for freedom of expression.

It is equally important for regulators to be independent of the sectors they regulate. While this has not so far been a major issue in many countries, in part because the far greater threat is of government control, it is a major or emerging problem in many democracies, where it is referred to as “regulatory capture”. The negative implications of this are equally evident and essentially the same as for government control: if industry controls the regulator, it will operate with a bias towards industry, rather than making decisions in the wider public interest.

It is worth noting that the principle of independence applies to the exercise of regulatory powers and not to higher-level policy making, which normally remains the preserve of government. For example, in most countries, framework decisions about the digital switchover – including what system will be used, the general timetable for the switchover and any general measures of public support for the process – are policy decisions which are made by a government body. On the other hand, specific decisions about which companies should receive digital multiplexes are regulatory decisions. If these are left to government, the choices will be influenced by politics, to the detriment of freedom of expression.

Numerous international statements by authoritative actors support the need for bodies with the power to regulate the media to be independent. For the most part, these statements have been directed at broadcast or telecommunications regulators, largely because most democracies do not have official bodies that regulate the print media or journalists. A



broader statement of the need for independence is the following quotation from the 2003 Joint Declaration adopted by the (then) three special international mandates on freedom of expression – the United Nations (UN) Special Rapporteur on Freedom of Expression, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the Organization for Security and Co-operation in Europe (OSCE) Special Representative on Freedom of the Media:

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.<sup>43</sup>

More recently, in its General Comment No. 34, the UN Human Rights Committee made a similar statement albeit limited to broadcast regulators:

It is recommended that States parties that have not already done so should establish an independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses. [references omitted]<sup>44</sup>

All three regional bodies for the protection of human rights – in Africa, the Americas and Europe – have also referred to this idea. Thus, the African Declaration states very clearly, at Principle VII(1):

Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.<sup>45</sup>

The *Inter-American Declaration of Principles on Freedom of Expression* (Inter-American Declaration), adopted by the Inter-American Commission on Human Rights in 2000, does not explicitly state that broadcast regulators must be independent. But it does refer to the underlying reason for this:

[T]he concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.<sup>46</sup>

An entire recommendation of the Council of Europe – the key human rights body for the wider community of European countries, which currently has 47 Member States – is devoted to this issue, namely Recommendation (2000)23 on the independence and functions

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<sup>43</sup> Adopted 18 December 2003. Available at: <http://www.osce.org/fom/66176>. The special international mandates, now four with the addition of the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, have adopted a Joint Declaration on a freedom of expression theme every year since 1999.

<sup>44</sup> Note 33, para. 39.

<sup>45</sup> Note 40.

<sup>46</sup> Adopted at the 108<sup>th</sup> Regular Session, 19 October 2000, Principle 13.



of regulatory authorities for the broadcasting sector (COE Recommendation).<sup>47</sup> The very first substantive clause of this Recommendation states:

Member States should ensure the establishment and unimpeded functioning of regulatory authorities for the broadcasting sector by devising an appropriate legislative framework for this purpose. The rules and procedures governing or affecting the functioning of regulatory authorities should clearly affirm and protect their independence.

This view has been upheld by international and national courts. The reasons for this were set out elegantly in a decision of the Supreme Court of Sri Lanka holding that a broadcasting bill which gave a government minister substantial power over appointments to the broadcast regulator was incompatible with the constitutional guarantee of freedom of expression. The Court noted: “[T]he authority lacks the independence required of a body entrusted with the regulation of the electronic media which, it is acknowledged on all hands, is the most potent means of influencing thought.”<sup>48</sup>

Recognising the principle of independent regulation is one thing but guaranteeing it in practice is quite another, and experience in countries around the world shows that promoting independence is both institutionally complex and difficult to achieve in practice. The COE Recommendation provides some guidance as to how independence may be protected in practice, with sections on Appointment, Composition and Functioning (of the governing boards of these bodies), Financial Independence, Powers and Competence, and Accountability.

The way in which members are appointed to the governing boards of regulatory bodies is central to their independence. The African Declaration states that the appointments process should be “open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.”<sup>49</sup> The COE Recommendation devotes some attention to this matter, calling for: members to be “appointed in a democratic and transparent manner”; rules of ‘incompatibility’ to prevent individuals with strong political connections or commercial conflicts of interest from sitting on these bodies; prohibitions on members receiving instructions or a mandate from anyone other than pursuant to law; and protection against dismissal except for “non-respect of the rules of incompatibility with which they must comply or incapacity to exercise their functions”.<sup>50</sup>

The COE Recommendation also notes the importance of suitable funding arrangements to the protection of independence. It calls on public authorities not to use any financial decision-making power to interfere with regulatory bodies, and calls for funding arrangements to “be specified in law in accordance with a clearly defined plan, with reference to the estimated cost of the regulatory authorities’ activities, so as to allow them to

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<sup>47</sup> Adopted by the Committee of Ministers of the Council of Europe on 20 December 2000. See also the Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector, adopted 26 March 2008.

<sup>48</sup> *Athokorale and Ors. v. Attorney-General*, 5 May 1997, Supreme Court, S.D. No. 1/97-15/97.

<sup>49</sup> Note 40, Principle VII(2).

<sup>50</sup> Note 47, Clauses 3-8.

carry out their functions fully and independently”.<sup>51</sup> The Recommendation also calls for regulatory bodies to have the power to set their own internal rules.<sup>52</sup>

Both the COE Recommendation and the African Declaration recognise that broadcast regulators need to be accountable to the public but that such accountability should be achieved in a manner that does not compromise independence. The African Declaration, for example, states:

Any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.<sup>53</sup>

The COE Recommendation emphasises this point and notes that regulators “should be supervised only in respect of the lawfulness of their activities, and the correctness and transparency of their financial activities”.<sup>54</sup>

## 1.5. Media Diversity

The principle of independence is primarily about the manner in which media regulation should take place. The principle of diversity, on the other hand, is a key objective of such regulation, particularly in the context of broadcasting. Jurisprudentially, the principle of media diversity derives from the multi-dimensional nature of the right which, as noted above, protects not only the right of the speaker (to ‘impart’ information and ideas) but also the right of the listener (to ‘seek and receive’ information and ideas).<sup>55</sup> This prevents States from interfering with the right of listeners to seek and receive information from others. However, it also places a positive obligation on the State to take measures to promote an environment in which a diversity of information and ideas are available to the public. It is not enough for the State simply to take a *laissez faire* approach to media regulation, at least in the broadcasting sector, where externalities and rigidities like scarce frequencies and the high cost of entry into the sector have traditionally, in the absence of countervailing regulation, prevented the emergence of a truly diverse media.

Pluralism has received extremely broad endorsement as a key aspect of the right to freedom of expression. For example, in its General Comment No. 34, the UN Human Rights Committee stated:

As a means to protect the rights of media users, including members of ethnic and linguistic minorities, to receive a wide range of information and ideas, States parties should take particular care to encourage an independent and diverse media.<sup>56</sup>

Similarly, the African Declaration states:

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<sup>51</sup> *Ibid.*, Clause 9.

<sup>52</sup> *Ibid.*, Clause 12.

<sup>53</sup> Note 40, Principle VII(3).

<sup>54</sup> Note 47, Clause 26.

<sup>55</sup> See, for example, the Inter-American Court of Human Rights’ judgment in *Baruch Ivcher Bronstein v. Peru*, 6 February 2001, Series C, No. 74, para. 146.

<sup>56</sup> Note 33, para. 14.

Freedom of expression imposes an obligation on the authorities to take positive measures to promote diversity.<sup>57</sup>

The Inter-American Court of Human Rights has recognised that the right to seek and receive information and ideas requires the existence of a free and pluralistic media:

It is the mass media that make the exercise of freedom of expression a reality. This means that the conditions of its use must conform to the requirements of this freedom, with the result that there must be, inter alia, a plurality of means of communication, the barring of all monopolies thereof, in whatever form, and guarantees for the protection of the freedom and independence of journalists.<sup>58</sup>

Within the European context, the issue of media diversity as an aspect of the right to freedom of expression has attracted considerable attention. In a 2012 case, *Centro Europa 7 S.R.L. and Di Stefano v. Italy*, a Grand Chamber of the European Court of Human Rights<sup>59</sup> set out in some detail the key principles governing this idea:

129. The Court considers it appropriate at the outset to recapitulate the general principles established in its case-law concerning pluralism in the audiovisual media. As it has often noted, there can be no democracy without pluralism. Democracy thrives on freedom of expression. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself.

130. In this connection, the Court observes that to ensure true pluralism in the audiovisual sector in a democratic society, it is not sufficient to provide for the existence of several channels or the theoretical possibility for potential operators to access the audiovisual market. It is necessary in addition to allow effective access to the market so as to guarantee diversity of overall programme content, reflecting as far as possible the variety of opinions encountered in the society at which the programmes are aimed.

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134. The Court observes that in such a sensitive sector as the audiovisual media, in addition to its negative duty of non-interference the State has a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism (see paragraph 130 above). This is especially desirable when, as in the present case, the national audiovisual system is characterised by a duopoly.

With this in mind, it should be noted that in Recommendation CM/Rec(2007)2 on media pluralism and diversity of media content (see paragraph 72 above) the Committee of Ministers reaffirmed that “in order to protect and actively promote the pluralistic expressions of ideas and opinions as well as cultural diversity, member states should adapt the existing regulatory frameworks, particularly with regard to media ownership, and adopt any regulatory and financial measures called for in order to guarantee media transparency and structural pluralism as well as diversity of the content distributed”. [references omitted]<sup>60</sup>

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<sup>57</sup> Note 40, Principle III.

<sup>58</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>59</sup> A Grand Chamber involves a larger number of judges, normally 17, and its decisions carry far more weight.

<sup>60</sup> 7 June 2012, Application No. 38433/09. See also See, for example, *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89 and 17207/90, para. 38.



The Court referred to the Council of Europe’s Recommendation 2007(2) on Media Pluralism and Diversity of Media Content,<sup>61</sup> which is entirely devoted to the question of media diversity and measures to promote it. The Recommendation provides: “Member states should seek to ensure that a sufficient variety of media outlets provided by a range of different owners, both private and public, is available to the public.”<sup>62</sup> It also speaks to the need for positive measures to promote diversity:

Pluralism of information and diversity of media content will not be automatically guaranteed by the multiplication of the means of communication offered to the public. Therefore, member states should define and implement an active policy in this field.<sup>63</sup>

The 2007 Joint Declaration on Diversity in Broadcasting of the four special international mandates on freedom of expression focused entirely on media diversity, stressing its importance as an aspect of freedom of expression and as an underpinning of democracy.<sup>64</sup> The Joint Declaration identified three distinct aspects of media pluralism or diversity: content, outlet and source.<sup>65</sup> **Diversity of content**, in the sense of the provision of a wide range of content that serves the needs and interests of different members of society, is the most obvious and ultimately the most important form of diversity. Diversity of content, one aspect of which is giving voice to all groups in society, depends, among other things, on the existence of a plurality of types of media, or **outlet diversity**. Specifically, democracy demands that the State create an environment in which different types of broadcasters – including public service, commercial and community broadcasters – which reflect different points of view and provide different types of programming, can flourish. The absence of **source diversity**, reflected in the growing phenomenon of concentration of media ownership, can impact in important ways on media content, as well as independence and quality.<sup>66</sup>

A number of authoritative statements support the idea that the right to freedom of expression places States under an obligation to promote all three types of diversity, namely of source, of outlet and of content. It has, however, always been recognised that there is a need to distinguish between how the print and broadcast sectors are regulated. In many States, only diversity of source is regulated in the print media sector, which does not suffer from the same externalities and rigidities as the broadcasting sector. At the same time, some States do provide for subsidies for the print media as a means of promoting diversity of content in that sector.

<sup>61</sup> Recommendation No. R (2007)2, adopted by the Committee of Ministers on 31 January 2007. This updates Recommendation No. R(1999)1 in Measures to Promote Media Pluralism, adopted by the Committee of Ministers on 19 January 1999.

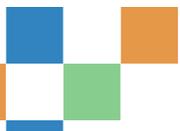
<sup>62</sup> *Ibid.*, para. I(1.1).

<sup>63</sup> *Ibid.*, para. II(1).

<sup>64</sup> Adopted 12 December 2007, <http://www.osce.org/fom/66176>.

<sup>65</sup> See also Thomas Gibbons, “Concentrations of Ownership and Control in a Converging Media Industry”, in Chris Marsden & Stefaan Verhulst, eds., *Convergence in European Digital TV Regulation* (London: Blackstone Press Ltd., 1999), p. 157.

<sup>66</sup> See Toby Mendel, *et al.*, *Concentration of Media Ownership and Freedom of Expression: Global Standards and Implications for the Americas*, (Paris: UNESCO, 2017), page 14, <https://unesdoc.unesco.org/ark:/48223/pf0000248091>.



## 1.6. Safety

The rights to life and security of the person impose an obligation on the State to protect everyone against physical attacks. However, where attacks are a response to what someone has said, known as “attacks on freedom of expression”, then this obligation becomes even more important from a human rights perspective, to prevent what has been termed “censorship by killing”.<sup>67</sup>

The essence of these crimes is that they are designed to stop the flow of information and ideas, often about a matter of high public importance such as corruption, organised crime, nepotism or other serious wrongdoing. As the special international mandates on freedom of expression noted in their 2012 Joint Declaration on Crimes Against Freedom of Expression:

[V]iolence and other crimes against those exercising their right to freedom of expression, including journalists, other media actors and human rights defenders, have a chilling effect on the free flow of information and ideas in society (‘censorship by killing’), and thus represent attacks not only on the victims but on freedom of expression itself, and on the right of everyone to seek and receive information and ideas.<sup>68</sup>

States have a special obligation to provide protection to those who are at demonstrable risk of being attacked (for example as shown by threats they have received). One of the most serious problems in these cases is the very high prevailing rate of impunity, which observers note is above 90 percent globally.<sup>69</sup> This gives rise to a second State obligation, namely to conduct effective investigations, wherever possible leading to prosecutions, where such attacks do occur. The special international mandates on freedom of expression described the obligations of States in the area of safety in their 2012 Joint Declaration:

The above implies, in particular, that States should:

- i. put in place special measures of protection for individuals who are likely to be targeted for what they say where this is a recurring problem;
- ii. ensure that crimes against freedom of expression are subject to independent, speedy and effective investigations and prosecutions; and
- iii. ensure that victims of crimes against freedom of expression have access to appropriate remedies.<sup>70</sup>

While many of the statements on safety refer to journalists, this issue may also be of relevance to others, such as parliamentarians and those working for civil society, where they are at risk of being attacked for their political views. Although many of the statements about safety focus on journalists, as both the title and the substance of the 2012 Joint Declaration make clear, the scope of this protection extends to anyone who is attacked for making statements about matters of public interest.

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<sup>67</sup> See the 30 November 2000 Joint Declaration of the special international mandates on freedom of expression, <http://www.osce.org/fom/66176>.

<sup>68</sup> 25 June 2012, Preamble, [http://www.law-democracy.org/live/wp-content/uploads/2012/08/mandates.decl\\_.2012.pdf](http://www.law-democracy.org/live/wp-content/uploads/2012/08/mandates.decl_.2012.pdf).

<sup>69</sup> See, for example, UNESCO, *World Trends in Freedom of Expression and Media Development: 2017/2018 Global Report* (Paris: UNESCO and University of Oxford, 2018), p. 133.

<sup>70</sup> Note 68, para. 1(c).

Where there is an ongoing and serious risk of crimes against freedom of expression, one of the best ways to provide protection to those at risk is to establish a specialised safety mechanism, something UNESCO has been supporting both generally and in various countries around the world.<sup>71</sup>

In addition to establishing specialised safety mechanisms, where warranted, States should also provide for specific legal recognition of crimes against freedom of expression. This can be done, for example, by providing for heavier penalties for these crimes, as many States do for crimes which are motivated by racism, and by removing statutes of limitation (the period after which a prosecution for a crime can no longer be brought) for these crimes.<sup>72</sup>

## 1.7. Relevant Maldivian Constitutional Guarantees

The 2008 Constitution of the Republic of Maldives<sup>73</sup> includes an extensive set of human rights guarantees in its Chapter II. The guarantee of freedom of expression at Article 27 states:

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.

Article 16 provides for restrictions on all rights as follows:

(a) This Constitution guarantees to all persons, in a manner that is not contrary to any tenet of Islam, the rights and freedoms contained within this Chapter, subject only to such reasonable limits prescribed by a law enacted by the People's Majlis in a manner that is not contrary to this Constitution. Any such law enacted by the People's Majlis can limit the rights and freedoms to any extent only if demonstrably justified in a free and democratic society.

(b) The limitation of a right or freedom specified in this Chapter by a law enacted by the People's Majlis as provided for in this Constitution, and in order to protect and maintain the tenets of Islam, shall not be contrary to article (a).

Article 16(d) goes on to provide that the State or person asserting a limitation on a right bears the onus of proving that it is constitutional.

The primary guarantee of freedom of expression in Article 27 is welcome but falls short of international guarantees in a number of ways. First, it fails to stipulate that the right includes the right to seek and receive, as well as impart, information and ideas. Second, it limits the guarantee to expressions that are not contrary to any tenet of Islam. This is not only contrary to international standards, which do not allow for restrictions on rights to protect religion (see below under Religion and Morals), but it also introduces a highly subjective concept into the guarantee, given that the tenets of Islam are not set down clearly

<sup>71</sup> See, for example, Mendel, T., *Supporting Freedom of Expression: A Practical Guide to Developing Specialised Safety Mechanisms* (Paris: UNESCO, 2016). Available at: [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/publications/Supporting-Freedom-of-Expression\\_Guide-Safety-Mechanisms.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/publications/Supporting-Freedom-of-Expression_Guide-Safety-Mechanisms.pdf).

<sup>72</sup> See, for example, the special international mandates on freedom of expression 2012 Joint Declaration on Crimes Against Freedom of Expression, note 68, para. 2(b).

<sup>73</sup> Note 13.

in a centrally accepted document. Third, it fails to stipulate that the right applies to all kinds of ideas, regardless of frontiers and notwithstanding the means of communication used, although these concepts are all relatively easy for courts to read into the right.

The test for restrictions largely complies with international standards and, in particular, the three-part test for restrictions under Article 19(3) of the ICCPR. It meets the first part of the test by requiring restrictions to be “prescribed by a law enacted by the People’s Majlis”. However, it lacks any equivalent of the second part of the test, setting out a limited number of interests which restrictions must protect. This might, however, be read into other language in Article 16(a), namely that any restriction must be “reasonable” and “demonstrably justified in a free and democratic society”. Whether these formulations conform to the third part of the international law test, namely the “necessity” requirement, depends largely on how courts interpret these terms.

The problem of limiting the primary guarantee of the right to statements which are not contrary to tenets of Islam is seriously exacerbated by the extremely broad protection, in Article 16(b), for any law which aims to “protect and maintain the tenets of Islam”, notwithstanding Article 16(a). This does not include any of the all-important standards in Article 16(a), namely that restrictions be reasonable and justified in a democratic society. As such, it would appear that any law which aimed to protect the tenets of Islam, no matter how it defined them or how effective or ineffective it was in protecting them, would be constitutionally immune.

The Constitution also protects freedom of the media, in Article 28, as follows:

Everyone has the right to freedom of the press, and other means of communication, including the right to espouse, 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.

This guarantee is again welcome and its language partially remedies the lack of any reference to means of communication in Article 27. It is also very useful to have a direct constitutional guarantee of the right to protect sources of information, something which is not very common around the world.

Article 29 of the Constitution provides: “Everyone has the freedom to acquire and impart knowledge, information and learning.” This is supported by Article 61(c), which provides:

All information concerning government decisions and actions shall be made public, except information that is declared to be State secrets by a law enacted by the People’s Majlis.

These are both useful but fall short of a clear constitutional guarantee of the right to information (which would apply to all information held by government and not just about government decisions and actions). An example of a strong constitutional guarantee for the right to information is found at Article 14A(1) of the Sri Lankan Constitution, which states:



Every citizen shall have the right of access to any information as provided for by law, being information that is required for the exercise or protection of a citizens right held by [a broad range of public authorities].<sup>74</sup>

Other relevant constitutional guarantees include the right to form and participate in associations (Article 30), the right to freedom of assembly (Article 32), the right to privacy (Article 24) and the protection of one's "reputation and good name" (Article 33).

## 1.8. The Judicial System in the Maldives

The 2008 Constitution establishes the Supreme Court as the highest judicial authority in the Maldives (Article 145). An appellate High Court and six superior courts – namely a high court, civil court, criminal court, family court, juvenile court and drug court – constitute the rest of the judiciary. Women's representation on these courts is rather limited. However, the appointment of the first female Supreme Court Justices in 2019, and the presence of women in all of the different levels of Maldivian courts by 2020, represent some degree of progress in this regard.<sup>75</sup>

A formally independent Judicial Services Commission (JSC) is established by Article 157 of the Constitution. Under the Constitution and the Judicial Service Commission Act,<sup>76</sup> the JSC is responsible for nominating and dismissing judges and examining their conduct. The JSC is composed of a mix of elected judges and lawyers, the speaker of Parliament, the Attorney General, and appointees of Parliament and the President.<sup>77</sup>

Despite these formal guarantees, the judicial process has been criticised as being slow and unprofessional. Judges are appointed for life and little consideration is given to formal legal training in appointments. There are also well-founded allegations of political interference in the courts.<sup>78</sup> Commenting on the 2015 trial of former president Nasheed, Mona Rishmawi, Chief of the Rule of Law, Equality and Non-Discrimination Branch, Office of the UN High Commissioner for Human Rights (OHCHR), stated that the "entire Maldives judicial system was perceived as politicised, inadequate and subject to external influence."<sup>79</sup> The fact that Nasheed was convicted in 2015 under President Yameen Gayoom, only to have his sentence overturned once Solih was elected, supports this claim.<sup>80</sup>

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<sup>74</sup> The Constitution of the Democratic Socialist Republic of Sri Lanka, <http://www.parliament.lk/files/pdf/constitution.pdf>.

<sup>75</sup> United Nations Sixth Committee on Agenda Item 86: The Rule of Law at the National and International Levels, *Statement by Hassan Hussain Shihab*, 22 October 2020, GA75/CM6-2/23, pp. 6–7, [https://www.un.org/en/ga/sixth/75/pdfs/statements/rule\\_of\\_law/09mtg\\_maldives.pdf](https://www.un.org/en/ga/sixth/75/pdfs/statements/rule_of_law/09mtg_maldives.pdf).

<sup>76</sup> Act No. 10/2008.

<sup>77</sup> Article 158 of the Constitution.

<sup>78</sup> Al Hussein, Zeid Ra'ad, "Opening Statement by Zeid Ra'ad Al Hussein", note 5.

<sup>79</sup> UN News, "Maldives: UN Rights Office Says Trial of Former President Politicized, Unfair", 1 May 2015, <https://news.un.org/en/story/2015/05/497632-maldives-un-rights-office-says-trial-former-president-politicized-unfair>.

<sup>80</sup> See Reuters, "Maldives Lawmakers Dismiss Chief Justice and Senior Judge", 18 November, 2019, <https://www.reuters.com/article/us-maldives-judiciary/maldives-lawmakers-dismiss-chief-justice-and-senior-judge-idUSKBN1XS112>. For a deeper, if somewhat dated, report on the judiciary in the Maldives see Report of the UN Special Rapporteur on the independence of judges and lawyers, 21 May

Since President Solih's election in September 2018, the government has embarked on a series of judicial reforms. In November 2018, the JSC launched a widespread investigation into the country's judges.<sup>81</sup> By October of 2019, 17 instances of judicial overreach or misconduct were uncovered. A month later, the Chief Justice was dismissed by parliament, allegedly on the advice of the JSC.<sup>82</sup>

Additionally, parliament amended the Judicial Service Commission Act in 2019 to establish a new body to hear appeals against JSC decisions. The government claims that the amendment has boosted public confidence in the JSC.<sup>83</sup> The same year, parliament ratified the Legal Professions Act, establishing the first-ever Bar Council of Maldives, a self-regulated institution tasked with standardising the profession.<sup>84</sup> While these reforms bode well for the country's judiciary, further reforms are necessary to ensure fully that the judiciary is independent and capable of protecting the rights of the Maldivian people.

## Recommendations

- In due course, a constitutional review should be undertaken to bring the constitutional guarantee of freedom of expression, including its restrictions, more fully into line with international law, including by reconsidering religious limitations on freedom of expression and by extending the guarantee to cover the rights to seek and receive as well as impart information and ideas. In addition, an explicit guarantee of the right to information should be added to the Constitution.
- Effective measures should be put in place to make the judiciary more independent, including by lowering the proportion of executive or appointed members on the JSC.

## 2. Regulation of the Media

### 2.1. Journalists

In general, there are limited formal (legal) restrictions on journalists in the Maldives. There are no legal restrictions on who may practise journalism. As noted above, Article 28 of the Constitution guarantees the right of journalists, and indeed others, to protect the confidentiality of their sources of information. However, section 17(a) of the Parliament

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2013, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/137/66/PDF/G1313766.pdf?OpenElement>.

<sup>81</sup> A 12 November 2019 Press Release by the JSC indicated that it had looked into some 200 complaints against judges, including four Supreme Court Justices. Available at: <https://jsc.gov.mv/ups/Press-Release-12-NOV-2019.pdf>.

<sup>82</sup> Al Jazeera, "Maldives Legislators Dismiss Chief Justice and Senior Judge", 18 November 2019, <https://www.aljazeera.com/news/2019/11/18/maldives-legislators-dismiss-chief-justice-and-senior-judge>.

<sup>83</sup> *Statement by Hassan Hussain Shihab*, note 75, p. 4.

<sup>84</sup> United Nations Sixth Committee on Agenda Item 86: The Rule of Law at the National and International Levels, *Statement by Hassan Hussain Shihab*, note 75, p. 4.

Privileges and Powers Act, passed in 2013,<sup>85</sup> allows parliament and its committees to summon anyone to “give witness or to hand over any information” which is of interest to them, which could be used to force journalists to reveal their sources.<sup>86</sup> However, parliament rarely takes advantage of this provision.<sup>87</sup> The Anti-Defamation and Freedom of Expression Act, which was in force from 2016 to 2018, provided, in sections 18(c) and (d), that journalists could reveal sources confidentially in a closed part of the proceedings where this was necessary for them to prove the truth of their statements.<sup>88</sup>

In December 2012, the parliament passed the Freedom of Peaceful Assembly Act,<sup>89</sup> which has been criticised for its restrictions on freedom of assembly, although some of the worst provisions were amended in October 2020.<sup>90</sup> For present purposes, Section 54 of the Act requires the Maldives Broadcasting Commission (MBroadCom) to prepare an Accreditation Regulation for purposes of accrediting news reporters wishing to cover an assembly and journalists to obtain such accreditation before doing so. Other parts of that section prevent the police from confiscating equipment being used by an accredited journalist and require them to advise accredited journalists before disbursing an assembly, but also prohibit accredited journalists from behaving as though they are participants in the assembly. While the legal protection afforded to accredited journalists is welcome, there are still credible reports of even accredited journalists being harassed for covering demonstrations, particularly of a political nature.<sup>91</sup> Furthermore, the restrictions on accredited journalists are unnecessary and may put journalists covering an assembly at risk, for example if they needed to blend into the demonstrators to avoid becoming targets themselves.

Beyond this very specific accreditation framework, there is no general accreditation procedure for journalists. In general, accreditation procedures are advisable to ensure that journalists get privileged access to limited space venues – such as parliament and the courts – so as to be able to report on the events taking place there to the general public. Ideally, such accreditation would be managed on a self-regulatory basis by the media itself, especially in relation to identifying who is a journalist, while the authorities would enter

<sup>85</sup> Act No. 5/2013. Available in Dhivehi at: <https://majlis.gov.mv/en/secretariate/laws>.

<sup>86</sup> International Federation of Journalists, “New Maldives Law on Parliamentary Privilege Could Impact Journalistic Freedom”, 11 March 2013, <https://www.ifj.org/fr/salle-de-presse/nouvelles/detail/category/press-releases/article/new-maldives-law-on-parliamentary-privilege-could-impact-journalistic-freedom.html>.

<sup>87</sup> United States Department of State, *2019 Country Reports on Human Rights Practices: Maldives*, p. 11, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/maldives/>.

<sup>88</sup> Law No. 15/2016. Available in English translation in Mariyam Zulfa, *An Examination of the Scope of the Relevant Provisions of the Maldives Defamation Act, Law on the Protection of Reputation and Freedom of Expression 2016 (Maldives), in Providing Protection (or Otherwise) to Journalists When Exercising Their Right to Freedom of Expression*, 1 February 2017, pp. 30-45, <https://ssrn.com/abstract=3010519>.

<sup>89</sup> Act No. 1/2013,

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/106007/129796/F1856810830/MDV106007.pdf>.

1. <sup>90</sup> Shahudha Mohamed, “Parliamentary Committee abolishes Peaceful Assembly Act amendment”, 23 October 2020, *The Edition*, <https://edition.mv/news/19920>.

<sup>91</sup> See, for example, International Federation of Journalists, “Maldives: Channel 13 media workers harassed during opposition-led protest”, 23 February 2021, <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/maldives-channel-13-media-workers-harassed-during-opposition-led-protest.html>; and Reporters without Borders, *State of emergency in Maldives, journalists harassed and attacked*, 6 February 2018, updated on 23 August 2019, <https://rsf.org/en/news/state-emergency-maldives-journalists-harassed-and-attacked>.

into agreements to recognise the professional status accorded through the self-regulatory system. At the same time, it may be premature to consider an accreditation system along these lines for the Maldives, although the idea of the Maldives Media Council (see below) trying to establish some sort of general accreditation system could be explored.

Section 55 of the Freedom of Peaceful Assembly Act requires assembly organisers who purchase broadcasting time to show coverage of the assembly to delay any live broadcast for at least 60 seconds so as to facilitate the blocking of any content that fails to conform to broadcasting standards. It also places liability on any party which is responsible for a live broadcast of an assembly for content that breaches broadcasting standards. While not very problematical, the mandatory 60-second reporting delay sends a negative message to the effect that the authorities are somehow expecting reporting on assemblies to breach the rules. Similarly, while it is not *per se* problematical for those who are responsible for a broadcast to bear liability for any breaches in that broadcast, a specific rule on this in the context of assemblies sends the wrong signal.

The Maldives Media Council (MMC or Council) was established by the 2008 Maldives Media Council Act (MMC Act)<sup>92</sup> to regulate a broad range of print, broadcast and online media and others. The objectives of the Council include “to build up a code of practice and a code of conduct for the people working in the media industry” (section 2(b)) and “to ensure people working in the media industry behave responsibly and ethically”.<sup>93</sup> However, in practice all of the provisions relating to complaints about the media, including the procedures for processing such complaints, refer to media outlets and not individual journalists. This both makes sense – given that the remedies provided for in the Act, mainly to publish an adjudication of the MMC, can be provided only by media outlets – and represents better practice. It is also the approach the MMC has taken in practice to applying the Code. As such, the role of this body is dealt with in the sub-chapter on Print Media below.

In terms of journalists associations, the Maldives Journalist Association (MJA) was founded in 2009 as the leading association for journalists. Among other activities – such as training and advocating for labour rights for its members – it was also a strong voice for media freedom. Unfortunately, a division in its membership led to its demise in 2014, leaving the profession without a strong central association to stand up for it. However, this changed in September 2020, when some 130 Maldivian journalists came together virtually to revive the MJA and to elect a new Executive Committee.<sup>94</sup>

## Safety

In November 2018, partly in response to rising tensions, including an attack on a private

<sup>92</sup> Act No. 15/2008, <https://samsn.ifj.org/wp-content/uploads/2015/05/Media-Council-Maldives.pdf>.

<sup>93</sup> See also section 9(d).

<sup>94</sup> See International Federation of Journalists, “Maldives: Maldives journalist representative association revived”, 8 September 2020, <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/maldives-maldives-journalist-representative-association-revived.html>; and The Edition, “MJA holds first Executive Committee meeting”, 9 September 2020, <https://edition.mv/news/19036>.

college whose chair was alleged to have made disparaging statements about Islam, the Solih government established the Commission on Deaths and Disappearances to investigate past attacks on activists and journalists. The seven-member Commission includes the vice president, the president's chief of staff, and the ministers responsible for defence, home affairs, higher education, youth and sports, and Islamic affairs, and is headed by former Attorney General Husnu Al Suood. In what appears to be a delicate balancing act, the committee is tasked with "taking immediate action and setting long term strategies to prevent actions of those who criticise religion and those who commit crimes such as wilful destruction of property and endangering the lives of people in the name of protecting religion."<sup>95</sup> In January 2019, Suood announced that extremist Islamist gangs had influence over police and criminal courts, and colluded to protect perpetrators and "fix" the outcome of trials.<sup>96</sup>

The most prominent cases of violence against journalists in the Maldives are the murders of Ahmed Rilwan Abdulla in 2014 and Yameen Rasheed in 2017. Rilwan was working for Minivan News, an English news website now named The Maldives Independent when he disappeared in 2014. He was well-known for his liberal views on Islam, having participated in a 2011 protest calling for freedom of belief in the Maldives and having written about the presence and recruitment efforts in the Maldives of the al-Nusra Front, an al-Qaeda-linked group. His fate was not acknowledged publicly until September 2019, when the official Commission on Deaths and Disappearances announced that he had been murdered by a local affiliate of al-Qaeda. This represented a welcome reversal of a long-standing official policy to deny the existence of extremist groups like al-Qaeda in the country.<sup>97</sup>

Yameen Rasheed, an IT professional who ran a satirical blog, The Daily Panic, in his spare time, was found with multiple stab wounds at his apartment on 23 April 2017, and later died in hospital. He had received repeated death threats which he reported to the police but nothing appears to have been done about them. He was, among other things, known for his secular outlook and he had kept asking questions about the circumstances of Rilwan, which were unknown at the time.<sup>98</sup>

On 17 November 2019, the Commission on Deaths and Disappearances reported that local extremists had also murdered a former MP, Dr. Afrasheem Ali, in 2012. The Commission implicated police and politicians in shielding the perpetrators from prosecution in both that case and the case of Rilwan while the trial of six suspects accused of killing Yameen Rasheed had repeatedly been delayed.<sup>99</sup> As of today, the case of Yameen Rasheed continues

<sup>95</sup> Maldives Independent, "President Forms Committee to Address Rising Religious Tension," 23 January 2019, <https://maldivesindependent.com/politics/president-forms-committee-to-address-rising-religious-tension-143573>.

<sup>96</sup> *Ibid.*

<sup>97</sup> Zaheena Rasheed, "Missing Maldives journalist killed by al-Qaeda affiliate", 2 September 2019, Al Jazeera, <https://www.aljazeera.com/news/2019/9/2/missing-maldives-journalist-killed-by-al-qaeda-affiliate>.

<sup>98</sup> Michael Safi, "Maldives blogger stabbed to death in capital", 23 April 2017, The Guardian, <https://www.theguardian.com/world/2017/apr/23/maldives-blogger-yameen-rasheed-stabbed-to-death-in-capital>.

<sup>99</sup> Human Rights Watch, *World Report 2020: Maldives: Events of 2019*, 14 January 2020, <https://www.hrw.org/world-report/2020/country-chapters/maldives>.

to experience delays and there have been calls by human rights organisations for decisive action to be taken to move the case along.<sup>100</sup> Those charged in the case of the disappearance of Rilwan were ultimately acquitted due to failures in the way the case was prosecuted rather than for lack of evidence.<sup>101</sup>

Although violence against journalists has diminished since the 2018 election, harassment of journalists remains disturbingly common. According to reliable sources, extremist gangs with ties to prominent politicians have routinely targeted journalists and others whose reporting they deem offensive to Islam.<sup>102</sup> In February 2021, for example, journalists protested in front of the MMC and MBroadCom over abuse by Maldives Police Service officers.<sup>103</sup> In September 2019, a man who had received death threats online was arrested and charged by police under the Penal Code for “criticism of Islam in a public medium.” Although the police did investigate the death threats, no arrests were made.<sup>104</sup>

## 2.2. Print Media

Newspapers and magazines still have to be registered under the 1978 Newspapers and Magazines Act.<sup>105</sup> Section 1 of this Act provides for publications to be registered with the media ministry (although this is now done by the Ministry of Home Affairs). In practice, this has not been used to prevent publications from registering although it does impose a condition that owners/publishers must be at least 25 years old, which is not legitimate under international law. There were attempts under the Yameen presidency to create barriers to registration under the Act but these were opposed and never became law. However, this illustrates the risks that this system creates.

The MMC, which regulates the media, defined broadly, and sets standards for journalistic conduct, has been relatively independent since its inception. The fifteen-member body consists of eight media representatives and seven public members who are nominated by the Ministry responsible for the media and selected by the eight media representatives.<sup>106</sup> The President and Vice-President are selected by the members from among themselves (section 10). This process gives the media sector significant input into the composition of

<sup>100</sup> Blasphemy News, “Maldives: Presidential Commission calls for end to impunity for murders of bloggers accused of ‘blasphemy’”, 19 May 2021, <https://end-blasphemy-laws.org/2021/05/maldives-presidential-commission-calls-for-end-to-impunity-for-murders-of-bloggers-accused-of-blasphemy/>.

<sup>101</sup> See Asian Forum for Human Rights and Development, “Joint open letter to the Maldives Speaker of The People’s Majlis: Call for justice for murdered human rights defender and blogger Yameen Rasheed”, 23 April 2021, <https://www.forum-asia.org/?p=34612>; and Aishath Shaany, “DDCom’s re-enacted video shows red car waiting outside as Rilwan reached home on night of disappearance”, 1 July 2021, <https://raajje.mv/102594>.

<sup>102</sup> *Ibid.*

<sup>103</sup> Sun Media Group, “Reporters, Journalists Take to Street to Protest over Police Brutality,” 21 February 2021, <https://en.sun.mv/65385>.

<sup>104</sup> Mohamed Junayd, “Maldivian Arrested for Criticising Islam,” 11 September 2019, Maldives Independent, <https://maldivesindependent.com/crime-2/maldivian-arrested-for-criticising-islam-147908>.

<sup>105</sup> Act No. 47/1978. We only have a copy of this in Dhivehi but a rough translation of its provisions was provided to us.

<sup>106</sup> Maldives Media Council Act, note 92, section 5. See also Transparency Maldives, *Review of Appointment and Dismissal of Members of Selected Independent Institutions of Maldives*, p. 35, [http://transparency.mv/v16/wp-content/uploads/2017/04/Review\\_Report\\_Web.pdf](http://transparency.mv/v16/wp-content/uploads/2017/04/Review_Report_Web.pdf).

the MMC, such that this could be described as a co-regulatory system. At the same time, there are challenges with this system. Any media outlet, no matter how small or how irregularly it is published, may participate in the selection process. Thus, the December 2020 election involved participation by one hundred eighty-seven media outlets, which included a number of tiny sectoral outlets.<sup>107</sup>

A number of other provisions also enhance the independence of the MMC. There are strict conditions on members, including that they be “virtuous and of good conduct” (section 6). Tenure is set at two years, which is rather short (section 7), but a member can only be removed by a two-thirds vote of the other members for cause (section 16), which would tend to prevent political interference in the work of the Council. The remuneration for members is set by parliament and may not be reduced during a member’s term of office (section 18), while the overall budget for the MMC is set by parliament and provided from the State budget.

The presence of public members and funding stability gives the MMC greater independence than other media regulators in the Maldives. For example, in 2017, when former Vice President Ahmed Adeb Abdul Ghafoor was being escorted to court, the MMC investigated complaints that the Maldives Police Service obstructed media coverage of the event.<sup>108</sup> The MMC was similarly vocal in 2020 in response to accusations that the police obstructed journalists from accessing opposition-led protests.<sup>109</sup> In 2018, Human Rights Watch noted that the composition of the MMC, as compared to the Maldives Broadcasting Commission, could explain why, at the time their report was published, only the latter had imposed fines on the media it regulates, i.e. broadcasters.<sup>110</sup>

Gender-based violence is rampant in the Maldives and women are underrepresented in government and leadership positions.<sup>111</sup> While the MMC has acknowledged the successes of women journalists, awarding Shafna Hussain its Journalist of the Year Award for 2019,<sup>112</sup> women are underrepresented on the Council and the field of journalism more broadly.<sup>113</sup>

In his February 2019 parliamentary address, President Solih pledged that the new administration’s policies would address gender disparity and work to end the violence,

<sup>107</sup> Mariyam Malsa, “Maldives Media Council Elects 13 New Members”, 6 December 2020, The Edition, [http://edition.mv/maldives\\_media\\_council/20769](http://edition.mv/maldives_media_council/20769).

<sup>108</sup> Avas, “Media Council Investigates Complaint of Police Obstructing Journalists”, 10 August 2019, <https://avas.mv/en/68320>; and Aishath Shaany, “MMC Probes Complaint Against Police, for Allegedly Obstructing Journalists”, 10 August 2019, <https://raajje.mv/61120>.

<sup>109</sup> Aishath Shaany, “MMC Expresses Concern Over Police Obstructing Journalists Covering Opposition Rally”, 28 July 2020, <https://raajje.mv/83258>.

<sup>110</sup> Human Rights Watch, “*An All-Out Assault on Democracy: Crushing Dissent in the Maldives*, note 6, p. 18.

<sup>111</sup> Human Rights Watch, *World Report 2020: Rights Trends in Maldives*, 14 January 2020, <https://www.hrw.org/world-report/2020/country-chapters/maldives>.

<sup>112</sup> Asian College of Journalism, “ACJ Student Wins Award”, 19 December 2020, <https://www.asianmedia.org/acj/acj-student-wins-award/>.

<sup>113</sup> Transparency Maldives, *Position Paper: Good Practice Procedures on the Appointment and Dismissal of Members of Independent Institutions*, (Malé: Transparency Maldives, 2021), p. 4, <https://transparency.mv/v16/2021/01/position-paper-good-practice-procedure-on-appointment-and-dismissal-of-members-of-independent-institutions/>.

harassment and discrimination faced by women.<sup>114</sup> In July 2020, the President’s Chief of Communications was accused of sexually harassing a journalist.<sup>115</sup> The investigation appears stalled and has motivated protests as part of the “#JaagaEhNei” movement, a movement protesting inaction and tolerance of sexual violence.<sup>116</sup>

The MMC has a broad mandate to protect freedom of expression, to resolve disputes between the media and the authorities, and to develop codes of conduct and practice for the media and resolve complaints that media have breached these codes. However, the MMC Act already includes a reasonably detailed code of practice, as well as rules on media respect for privacy (sections 22 and 23). In general, these provisions are in line with standards found in other codes, although there are a few areas where they are unduly strict. For example, section 22(a)(1) states that inaccurate information should not be published, whereas the prevailing standard is that the media should make a reasonable effort to verify information (since it is not possible never to make a mistake). Sections 22(a)(2) and (3) do somehow recognise this but it would be preferable for section 22(a)(1) to start out with the right standard. Section 22(a)(4) calls on the media to respect the “sensibilities of individuals” but international standards make it clear that it is perfectly legitimate for the media to publish even offensive material if that is newsworthy (see also section 23(a) using the same term). Section 22(a)(7)(c) calls on media not to misrepresent using controversial headlines or images but the very purpose of headlines, and often also cartoons (images), is to be controversial so as to attract attention. What is important is that the core content does not seek to misrepresent or mislead.

The rules on privacy are also too strict. Section 22(a)(8) calls for personal information not to be mentioned, although section 22(a)(5) does provide for a public interest override relating to this. Section 23(a) calls for personal information not to be collected unless this is in the public interest but it is often only after collecting information that the public interest in that information can be assessed properly. Better practice here is to provide that private information should not be published unless this is in the public interest. More generally, much of section 23 appears to confuse data protection principles, which are not applicable to media reporting, with protection of privacy, which is. For example, section 23(b) calls for private information only to be used for the purpose it was intended. This is appropriate in the data protection context but obviously media cannot follow such a standard (no one would intend for their private information to be used to expose the corruption they are involved in). Based on these rules in the primary legislation, the MMC has worked with media outlets to develop a consensus Code of Ethics for the media.

<sup>114</sup> Sun Media Group, “President Promises Greater Gender quality in Decision-Making”, 7 February 2019, <https://en.sun.mv/52257>.

<sup>115</sup> Reporters Without Borders, “Maldivian President’s Comms Chief Accused of Sexually Harassing Journalists”, 15 July 2020, <https://rsf.org/en/news/maldivian-presidents-comms-chief-accused-sexually-harassing-journalist>.

<sup>116</sup> International Federation of Journalists, “Maldives: IFJ Critical of Inaction on Journalist Sexual Harassment Case”, 24 July 2020, <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/maldives-ifj-critical-of-inaction-on-journalist-sexual-harassment-case.html>.

According to section 24(o) of the MMC Act, the MMC can, at the conclusion of an investigation into a complaint against a media outlet, require that media outlet to publish its adjudication. That is the only power of sanction that the MMC has, an approach which is in line with international standards.

Most Maldivian newspapers are unprofitable, in part due to high Internet access rates, with most relying on the financial backing of patrons, many of whom have strong political interests.<sup>117</sup> This has led to a situation where many newspapers demonstrate strong political biases in their reporting.<sup>118</sup> A good example of this was the closure, in June 2017, of Channel News Maldives when its funder, who was alleged to be close to the Yameen government, withdrew his support in response to political pressure after the media outlet reported on an incident involving the First Lady.<sup>119</sup>

### 2.3. Broadcasting

The Maldives Broadcasting Commission (MBroadCom or Commission) was established in 2010 under the Broadcasting Act to regulate television and radio.<sup>120</sup> Individuals who wish to become a member of the Commission must apply to the President’s Office, which then sends a prioritised list of applicants to parliament which, in turn, provides the president with a list of the members to appoint (section 6). There are both prohibitions on politically connected individuals from being members and positive requirements, including of maintaining “socially accepted moral standards, integrity, good conduct, impartiality”, for members (section 5). Tenure is set at five years (section 7), but members may be removed by parliament either of its own motion or when the matter is submitted to parliament by the president (section 12). Overall, a roughly equal number of men and women have served on the Commission over the past five years.<sup>121</sup>

Despite these reasonably robust guarantees, the independence of Commission cannot be assured where one party controls both the presidency and parliament. Prior to 2018, the Commission was widely criticised for lacking independence and for imposing fines arbitrarily to penalise opposition-aligned journalists and media institutions. As an illustration of this problem, the report by Human Rights Watch, “*An All-Out Assault on*

<sup>117</sup> Freedom House, *Freedom of the Press 2015 – Maldives*, 29 October 2015, <https://www.refworld.org/docid/56373801c.html>.

<sup>118</sup> Freedom House, *Freedom of the Press 2020*, <https://freedomhouse.org/country/maldives/freedom-world/2020>.

<sup>119</sup> International Federation of Journalists, *New Fronts, Brave Voices: Press Freedom in South Asia 2016-17* (New Delhi: International Federation of Journalists Asia Pacific, 2017), pp. 68–69, <https://samsn.ifj.org/wp-content/uploads/2017/05/New-Front-Brave-Voices-DBP-LR.pdf>. More details about the underlying facts here are provided in the discussion about AdduLive, under Telecommunications and Digital Restrictions.

<sup>120</sup> Broadcasting Act No. 16/2010, available in English translation at: [http://broadcom.org.mv/v2/wp-content/uploads/2015/08/Broadcast-Act-Translation\\_1.pdf](http://broadcom.org.mv/v2/wp-content/uploads/2015/08/Broadcast-Act-Translation_1.pdf).

<sup>121</sup> Transparency Maldives, note 113, p. 4.

*Democracy*”: *Crushing Dissent in the Maldives*, has a whole section titled “Arbitrary Rulings by the Maldives Broadcasting Commission”.<sup>122</sup>

A good example of the Commission’s political bias was the repeated fines the Commission levied on Raajje TV, generally considered to be aligned with the opposition, for allegedly making defamatory statements about President Yameen. Section 27 of the 2016 Anti-Defamation and Freedom of Expression Act<sup>123</sup> tasks media regulators with both responding to complaints about defamation and other breaches, and investigating them on their own initiative. In case of breach, they can apply the fines specified in that Act (MVR 50,000 or approximately EUR 2,700), as well as administrative penalties. Altogether, the Commission levied fines totalling approximately EUR 215,000 on Raajje TV for allegedly defaming President Yameen.<sup>124</sup> Another example is the fact that fines imposed by the Commission on opposition-aligned broadcasters were much larger than the one time prior to August 2018 that the State broadcaster had been fined.<sup>125</sup>

The Commission is responsible for licensing broadcasters, including through developing a Broadcasting Frequency Plan and allocating frequencies in coordination with the Ministry of Transport and Communication, and setting and enforcing broadcast standards, including by formulating and overseeing the implementation of Broadcast Code of Practice (sections 4, 21 and 37). Breach of the Act, any licence condition or the Code of Practice may lead to a range of sanctions, as provided for in section 44, including fines, licence suspension and applying to court to terminate the licence. Overall, the Act is largely compliant with international standards. It does not appear to be unduly difficult to obtain a broadcasting licence although there have been threats, for example in the case of Raajje TV, noted above, of licences being suspended for breach of the rules.<sup>126</sup>

The Broadcasting Act does not make any provision for community broadcasters, although this has been a subject of debate for some time in the Maldives.<sup>127</sup> Given its distributed geography and the emergence of stronger community based organisations, community radio, in particular, would seem like a very good fit for the Maldives and this would contribute to media diversity in the country which, as noted above, is an obligation for States.

A Broadcasting Code of Practice was adopted in June 2012.<sup>128</sup> Although the provisions of the Code respond to issues that are addressed in most such codes, several provisions are

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<sup>122</sup> Note 6, pp. 18-20. See also Freedom House, *Freedom in the World 2019, Maldives*, <https://freedomhouse.org/country/maldives/freedom-world/2019>, which states: “Regulatory bodies, especially the Maldives Broadcasting Commission (MBC), have displayed bias in favor of the government and restricted coverage of the opposition.”

<sup>123</sup> Note 88.

<sup>124</sup> Reporters without Borders, note 4.

<sup>125</sup> Human Rights Watch, *“An All-Out Assault on Democracy”*: *Crushing Dissent in the Maldives*, note 6, p. 18.

<sup>126</sup> The Edition, “Raajje TV pays 2 mln in fines”, 10 September 2018, [https://edition.mv/presidential\\_election\\_2008/7102](https://edition.mv/presidential_election_2008/7102).

<sup>127</sup> Toby Mendel, *Assessment of Media Development in the Maldives: Based on UNESCO’s Media Development Indicators*, note 3, p. 5.

<sup>128</sup> Available in English at: <http://broadcom.org.mv/v2/wp-content/uploads/2015/08/Code-of-Practice-English.pdf>.

overbroad, vague or not fully adapted to the realities of modern broadcasting. For example, the Code prohibits the broadcasting of content that “deliberately undermine laws or promote behaviour contrary to social norms and values” (Rule 1, Principle 1) and requires all content to “conform to the generally accepted norms and values of the society” (Rule 2, Principle 1). This essentially renders coverage of challenging or non-consensus topics very difficult and goes further than rule found in codes in other countries.

In some cases, section 37 of the Broadcasting Act, which sets the standards for the Code, is itself too broad and vague. For example, section 37(c)(7) calls for the Code to prohibit, “content which damages the dignity, nobility and respect of an individual or a group of people or the use of derogatory and abusive language; and actions and activities beyond accepted social norms”. This would prohibit perfectly legitimate, if hard-hitting critical news coverage, among other things.

## 2.4. Public Media

The Maldives Broadcasting Corporation (MBC) was established by Presidential Decree on 22 December 2008 from a merger of the pre-existing public broadcasters, Television Maldives and Voice of Maldives.<sup>129</sup> On 30 March 2015, parliament passed the Public Service Media Act<sup>130</sup> which dissolved the MBC and created a new public media company, the Public Service Media (PSM). As of early 2021, PSM’s media portfolio included two TV channels (TV Maldives and Dhivehi TV) and two radio channels (Dhivehi Raajjeyge Adu and Dhivehi FM). PSM also operates a subsidiary higher training institute, the Maldives Media Institute (MMI).

Despite its name, PSM does not meet the standards associated with public service broadcasting internationally,<sup>131</sup> including due to a reduction in its independence as compared to the MBC.<sup>132</sup> A July 2018 amendment to the Public Service Media Act further eroded the broadcaster’s independence by removing the existing members of the governing board, reducing the number from seven to five and extending the president’s control over appointments to the board. Specifically, the amendment transferred the power to appoint and dismiss members of the board from parliament to the Privatization Board, which is convened by the president.<sup>133</sup> In the 2018 election campaign, PSM stations were reported to have provided disproportionate coverage to ruling-party candidates.<sup>134</sup> At the same time, it

<sup>129</sup> Toby Mendel, *Assessment of Media Development in the Maldives: Based on UNESCO’s Media Development Indicators*, note 3, p. 11.

<sup>130</sup> Act No. 09/2015.

<sup>131</sup> See Toby Mendel, *Public Service Broadcasting: A Comparative Legal Survey, 2nd Edition* (Paris: UNESCO, 2011), pp. 9-20.

<sup>132</sup> Minivan News, “Government Takes Control of State Media,” 29 April 2015, <https://minivannewsarchive.com/politics/government-takes-control-of-state-media-97142>.

<sup>133</sup> Fathmath Shaahunaz, Parliament passes amendment to Public Service Media Act, The Edition, 26 July 2018, <https://edition.mv/news/6630>.

<sup>134</sup> Transparency Maldives, *Review of Electoral Legal Framework*, 29 December 2020, p.10, [https://transparency.mv/v16/wp-content/uploads/2021/01/Review-of-Electoral-Legal-Framework\\_Final-29.12.20-1-1.pdf](https://transparency.mv/v16/wp-content/uploads/2021/01/Review-of-Electoral-Legal-Framework_Final-29.12.20-1-1.pdf).

may be noted that the State media has in the Maldives always been treated as a government mouthpiece.

The problems plaguing the independence of PSM continue. However, the Solih government has published a commitment to amend the Public Service Media Act by the end of 2021 to allow for a “non-partisan and independent public service media.”<sup>135</sup>

We were not able to access any studies on the quality of the programming provided by PSM. However, it has significantly upgraded its equipment over the last two to three years, and some commentators praised it for producing more creative programming content in recent years.

## 2.5. Telecommunications and Digital Restrictions

The Communications Authority of Maldives (CAM) is the regulatory body established under the 2015 Communications Authority of Maldives Act<sup>136</sup> which is responsible for regulating telecommunications in accordance with the accompanying Maldives Telecommunications Act.<sup>137</sup> Telecommunications service providers may only operate after obtaining a licence from CAM.

CAM has the power to enforce content restrictions on websites which are hosted in the Maldives, as well as to block access within the Maldives to any website which fails to respect those content restrictions. CAM is reported to maintain an unpublished blacklist of blocked offending websites. It has not been suggested that CAM monitors websites for content breaches proactively but, instead, it seems to accept requests to block websites from ministries and other public authorities. The leading grounds for such blocking are apparently alleged violations of domestic laws on anti-Islamic content, pornography, child abuse, and sexual and domestic violence.<sup>138</sup>

As an example of this, on 26 April 2016, Home Minister Umar Naseer called on CAM to block AdduLive, an unregistered, opposition-aligned online newspaper. AdduLive claimed that the order was prompted by a 19 April 2016 article linking the First Lady, Fathimath Ibrahim, to corruption. For its part, the Home Ministry claimed the ban was due to AdduLive not being registered, although online news websites do not appear to be required to register in the Maldives or at least the definition of what needs to be registered is very unclear.<sup>139</sup> Upon receiving an anonymous complaint, the MMC forwarded the complaint to the Home Ministry, citing lack of jurisdiction due to AdduLive’s unregistered status,

<sup>135</sup> Government of Maldives, *2019-2023 Strategic Plan* (Malé: 2018), p. 411, <https://erc.undp.org/evaluation/managementresponses/keyaction/documents/download/3556>.

<sup>136</sup> Law No. 42/2015, available in Dhivehi at: [https://www.cam.gov.mv/docs/Laws/communications\\_authority\\_law\\_2015.pdf](https://www.cam.gov.mv/docs/Laws/communications_authority_law_2015.pdf).

<sup>137</sup> Law No. 43/2015, available in Dhivehi at: [https://www.cam.gov.mv/docs/Laws/telecommunication\\_law2015.pdf](https://www.cam.gov.mv/docs/Laws/telecommunication_law2015.pdf).

<sup>138</sup> United States Department of State, *2019 Country Reports on Human Rights Practices: Maldives*, note 87, p. 12.

2. <sup>139</sup> Maldives Independent, “AdduLive was blocked because it was not registered, says home ministry”, 26 April 2016, <https://maldivesindependent.com/politics/addulive-was-blocked-because-it-was-not-registered-says-home-ministry-123879>.

following which the Home Ministry called for the site to be blocked. This particular blocking allegedly created a chilling effect on freedom of expression for journalists and media institutions alike.<sup>140</sup>

The Maldives has launched its digital terrestrial television transition and, although it originally set 2020 as the date for the analogue switch off,<sup>141</sup> this has not been met and the country continues to broadcast in both analogue and digital mode (often referred to as simulcasting). PSM reported in January 2020 that CAM was working closely with it and MBroadCom on the Integrated Service Digital Broadcasting-Terrestrial project, which aimed to provide digital television services to 90% of the population by early 2021, but the onset of the COVID pandemic likely slowed this down.<sup>142</sup>

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<sup>140</sup> *Ibid.*

<sup>141</sup> According to information posted by the International Telecommunications Union, which also noted that it was not informed about whether this deadline had been met. See <https://www.itu.int/en/ITU-D/Spectrum-Broadcasting/DSO/Pages/dataminer.aspx>.

<sup>142</sup> PSMnews, "BroadCom and PSM Hold Discussions on ISDB-T Project," 22 January 2020, <https://psmnews.mv/en/62861>.



## Recommendations

- The prohibition in the Freedom of Peaceful Assembly Act on accredited journalists behaving as though they are participants in the assembly should be removed.
- Consideration should be given to removing the requirement for non-media live broadcasts of assemblies to be delayed by 60 seconds and the explicit imposition of liability for breaches of broadcasting standards arising from live coverage of assemblies on those responsible for the broadcast.
- Effective measures should be put in place to end attacks on journalists and others for exercising their right to freedom of expression, to bring those responsible to justice and to ensure that the Maldives Police Service works to apply the law in an objective and fair manner.
- Consideration should be given to repealing the Newspapers and Magazines Act, 1978.
- The code of practice in the MMC Act should be amended, in line with the comments above, to reflect better the rights of the media to report.
- The government of the Maldives should consider ways to bolster support for media sustainability.
- The Broadcasting Act should be amended to bolster significantly the independence of the Commission, including by amending the manner in which its members are appointed and by putting in place other protections for this, while political actors should respect the independence of the MBC and not try to influence its decisions.
- The Broadcasting Act should also be amended to explicitly recognise community broadcasters as a distinct sector and the Commission should then take steps to issue licences to communities for this purpose.
- The Broadcasting Code of Practice and the relevant parts of section 37 of the Broadcasting Act should be amended to ensure that content and professional restrictions on broadcasters are appropriate and in line with international standards.
- The Public Service Media Act should be substantially amended to ensure that PSM is able to operate in a manner which is robustly independent of government.
- The Communications Authority of Maldives Act should be amended to ensure that:
  - CAM is independent of the government and not subject to political directions in any of its regulatory activities.
  - CAM can only take action against licensees and block access to websites where this is a justifiable measure in accordance with international and constitutional guarantees of the right to freedom of expression.

## 3. Content Restrictions

### 3.1. Defamation



The Maldives took a very progressive step in the area of defamation when it decriminalised defamation in November of 2009 under former President Mohammad Nasheed.<sup>143</sup> However, this was reversed in 2016 when parliament passed the Anti-Defamation and Freedom of Expression Act,<sup>144</sup> with then-President Yameen insisting that additional restrictions on freedom of expression were necessary. The law criminalised a broad range of speech based on a wide-ranging definition of defamation, which included anti-Islamic rhetoric and speech that threatened social norms and values.<sup>145</sup> The law's introduction represented a significant regression in freedom of expression in the Maldives, with the law having been abused to silence opposition voices, as demonstrated by the case of Raajje TV, noted above. In a positive reversal, the Anti-Defamation and Freedom of Expression Act was repealed in 2018.<sup>146</sup>

With this repeal, the Maldives has returned to the *status quo ante* in terms of defamation, which appears to be the 2009 Defamation Act which decriminalised defamation and which was never repealed by the 2016 Anti-Defamation and Freedom of Expression Act. The 2009 Act appears to be largely in line with international standards, at least according to online assessments of it.<sup>147</sup> A key means by which international law balances respect for freedom of expression and protection of reputations is by requiring States to provide adequate defences against a claim of defamation. The 2009 Defamation Act is reported to include a comprehensive defence of truth, and the standard Common Law defences for opinions and of privilege, which protects statements made in good faith where the speaker had a duty to make the statement and the listener had a corresponding interest in hearing it. It also includes a defence of reasonable publication regarding a matter of public interest which applies where the defendant acted in good faith in making a statement on a matter of public interest and where, in all the circumstances of the case, it was fair and reasonable to publish the statement.<sup>148</sup> These largely align with the sorts of defences that are warranted according to international law.

### 3.2. Religion and Morals

Strict restrictions on content to protect Islamic beliefs are both codified in law and enforced in practice by both State authorities and the religious establishment. Journalists, along with ordinary citizens, routinely face harassment and criticism from religious actors over content which allegedly fails to respect Islam. As noted above, constitutional guarantees for rights apply only insofar as they are “not contrary to any tenet of Islam” while any law which is

<sup>143</sup> Mariyam Zulfa, An Examination of the Scope of the Relevant Provisions of the Maldives Defamation Act, Law on the Protection of Reputation and Freedom of Expression 2016 (Maldives), in Providing Protection (or Otherwise) to Journalists When Exercising Their Right to Freedom of Expression, note 88, pp. 2-3.

<sup>144</sup> *Ibid.*

<sup>145</sup> *Ibid.*, p. 4.

<sup>146</sup> Maldives Independent, “Anti-Defamation Law Repealed,” 14 November 2018, <https://maldivesindependent.com/politics/anti-defamation-law-repealed-142649>.

<sup>147</sup> We were not able to get a copy of the Act directly.

<sup>148</sup> RM Warner, Corporate Lawyers, Defamation Laws in the Maldives, no date, <https://kellywarnerlaw.com/maldives-defamation-laws>.

enacted “in order to protect and maintain the tenets of Islam” will not be considered to breach rights.<sup>149</sup>

It may be noted that, under international law, the mere criticism of a religion, no matter how harsh or offensive, remains protected speech. As the UN Human Rights Committee stated in General Comment No. 34:

Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant.<sup>150</sup>

Article 20(2) of the ICCPR prohibits what is commonly referred to as “hate speech”, which includes statements which are made intentionally and which incite others to hatred on various grounds, including religion. Together, these standards mean that, according to international law, one is allowed to criticise beliefs, even in ways that adherents to those beliefs find offensive, but attacking members of a religion *per se*, if that attack reaches the level of hate speech, is not legitimate.

Section 617 of the Penal Code, titled Criticizing Islam, makes it a Class 1 misdemeanour (punishable by up to one year’s imprisonment) to criticise Islam in public or distribute material criticising Islam with intent to “cause disregard for Islam”, or to attempt to “disrupt the religious unity” of citizens or act in a manner which is “likely to cause religious segregation”.<sup>151</sup>

There are also a number of moral offences in the Penal Code. Thus, section 617(3) makes it an offence to produce or distribute pornography<sup>152</sup> while the offence of disorderly conduct includes using abusive or obscene language.<sup>153</sup> Although the provisions on obstruction of justice and obstruction of government functions do not expressly forbid specific types of content, they have been used to silence criticism of the government in practice.<sup>154</sup> These are all problematical among other things because they are not clearly defined.

Restrictions on criticism of Islam also permeates the regulatory system for broadcasting. Thus, the very first rule in MBroadCom’s Broadcast Code of Practice is titled “Respecting Islam, the Constitution and the Laws of the Maldives” and the first principle there under states: “Content must be broadcast in a manner which is not irreverent to the tenets of Islam or create religious discord amongst the people.”<sup>155</sup> While criminal proscriptions along these lines would not be legitimate under international law, this rule is different inasmuch as it is found in an administrative regulatory code, breach of which would normally lead to minor

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<sup>149</sup> Articles 16(a) and (b) of the Constitution.

<sup>150</sup> Note 33, para. 48.

<sup>151</sup> Penal Code, Law No 6/2014. Available in English translation at: <https://www.law.upenn.edu/live/files/4203-maldives-penal-code-2014>.

<sup>152</sup> See also section 622.

<sup>153</sup> *Ibid.*, section 615(a)(3).

<sup>154</sup> *Ibid.*, sections 530 and 533; see Human Rights Watch, “An All-Out Assault on Democracy”: *Crushing Dissent in the Maldives*, note 6, p. 22.

<sup>155</sup> Note 128.

sanctions. Indeed, many codes of conduct for the media include provisions that are similar to this one, albeit applying to all religions, not just one official one.

### 3.3. Privacy

The Maldives lacks comprehensive privacy or data protection legislation although privacy is broadly protected under the Constitution and receives limited protection through laws such as the Penal Code.<sup>156</sup> Some industry-specific regulations involving data protection are in effect.<sup>157</sup> For example, section 72.1 of the Maldives Telecommunications Regulation 2003<sup>158</sup> requires all licensed telecommunications service providers and their agents not to disclose or exploit information that: 1) relates to “the contents or substance of any communication that has been or is being carried by any licensee” or “telecommunications services provided, or intended to be provided, to another person by a licensee; or the affairs or personal particulars of another person”; and 2) “comes... to the participant’s knowledge, or into the participant’s possession, in connection with its business as a participant in the telecommunications industry...”. However, the Regulation does not contain any obligations regarding data retention or protections against making disclosures to the government.

### 3.4. Political Interference and Elections

The Elections (General) Act<sup>159</sup> requires broadcasters to provide equitable time at equitable cost to candidates during elections. The Act has been amended twice since the 2018 election.<sup>160</sup> Section 30 now makes it clear that the MBroadCom has a mandate to regulate broadcasters during elections. As part of this, MBroadComm must submit a report on complaints received and investigated to the Elections Commission. In case of a breach of the rules, actions against broadcasters are taken by MBroadCom(section 30(g)) while the Elections Commission takes actions against candidates.

MBroadCom’s own rules also include relevant provisions on elections. The Broadcasting Code of Practice does not refer directly to elections but Rule 5, Principle 1 states:

News and current affairs programs must strive to maintain accuracy, impartiality, fairness and balance.

It may be noted that although this is a significant constraint on the way broadcasters must report the news, such restrictions are common in democracies, where they have been justified as necessary to prevent the rich and powerful from dominating public debate, including during elections, and to preserve a level electoral playing field.

<sup>156</sup> Note 151. See, for example, the offences in sections 230-234, under the title “Criminal Intrusion Offences”.

<sup>157</sup> DataGuidance, *Maldives - Data Protection Overview*, 15 July 2020, <https://www.dataguidance.com/notes/maldives-data-protection-overview>.

<sup>158</sup> 4 September 2003. Available in English translation at: [https://www.cam.gov.mv/docs/subordinate\\_reg/TelecomReg2003.pdf](https://www.cam.gov.mv/docs/subordinate_reg/TelecomReg2003.pdf).

<sup>159</sup> Act No. 11/2008, available in English translation at: <https://aceproject.org/en/regions/asia/MV/maldives-elections-general-act-2008>.

<sup>160</sup> Transparency Maldives, *Review of the Electoral Legal Framework of the Maldives*, note 134, pp. 9, 13 and 30.

However, in practice there would appear to be little effort to ensure that these rules are enforced properly. For example, the Commonwealth Observer Group noted, in relation to the 2019 parliamentary elections, that the broadcast coverage was “often unbalanced, inaccurate and unfair”.<sup>161</sup> Part of this is a lack of public complaints to MBroadCom about breaches of the rule. The Commonwealth Group noted that up to election day the Commission had not received any complaints about broadcasters.<sup>162</sup> It is unclear why this might have been the case but one reason might be that citizens were uncomfortable with or distrustful of the Commission’s complaints process. It may also be that citizens are not aware of the primary rule regarding balance in the first place.

### 3.5. Other Issues

There are a wide range of other content restrictions in Maldivian law such as one finds in many countries, for example to protect public order, the administration of justice and national security. It is beyond the scope of this report to go into a detailed analysis of all of these content restrictions but a number are unduly broad or vague. Just as an example, the 2015 Prevention of Terrorism Act includes a broad definition of terrorism which covers certain activities if they are carried out with the purpose of “negatively influencing the government or state” or “illegally promoting religious or political views”. This could lead to these provisions potentially covering peaceful civil society activity.<sup>163</sup> These concerns are not unfounded. The government exploited the overbroad and vague wording of the Act to charge dozens of protesters following protests against the declaration of a state of emergency in February 2018.<sup>164</sup>

## Recommendations

- Consideration should be given to revising the legal restrictions on criticism of Islam, although this might require a constitutional amendment. At a minimum, these restrictions should be substantially narrowed in scope and drafted in a manner which makes it clear what content might attract a sanction.
- The government of the Maldives should adopt comprehensive data protection legislation.
- The MBC should apply the various rules on elections and balance and impartiality in a fair and appropriate manner, whether in response to complaints or of its own motion.
- The government of the Maldives should undertake a comprehensive review of other restrictions on the content of what may be published or broadcast with a view to revising all restrictions which fail to meet international and constitutional standards for restrictions on freedom of expression.

<sup>161</sup> The Commonwealth, *Maldives Parliamentary Elections 2019*, (London: 2019) p. 21, [https://thecommonwealth.org/sites/default/files/inline/MaldivesFinalReport\\_13-06-19.pdf](https://thecommonwealth.org/sites/default/files/inline/MaldivesFinalReport_13-06-19.pdf).

<sup>162</sup> *Ibid.*, p. 22.

<sup>163</sup> We were not able to locate an English version of this law. This summary is based on Human Rights Watch, “An All-Out Assault on Democracy”: *Crushing Dissent in the Maldives*, note 6, p. 20.

<sup>164</sup> *Ibid.*, pp. 21-22.

## 4. Transparency

Article 29 of the Constitution, which follows Article 27, guaranteeing freedom of expression, and Article 28, guaranteeing media freedom, states: “Everyone has the freedom to acquire and impart knowledge, information and learning.” This is substantially expanded upon in section 61, which provides, in relevant part:

(c) All information concerning government decisions and actions shall be made public, except information that is declared to be State secrets by a law enacted by the People’s Majlis.

(d) Every citizen has the right to obtain all information possessed by the Government about that person.

Article 61(c) provides important support for the right of individuals to access information held by public authorities, or the right to information, but it falls short of a fully-fledged guarantee, which would apply to all information held by public authorities. For its part, Article 61(d) provides a very initial basis for a data protection regime. The rest of Article 61, along with Article 92, requires the government to publish all laws and rules out being held liable under any law which has not been so published. For its part, Article 89 requires all proceedings of parliament to be published.

These constitutional guarantees were substantially bolstered in 2014 with the adoption of the Right to Information Act.

### 4.1. The Right to Information

The 2014 Right to Information Act (RTI Act)<sup>165</sup> is a very strong piece of legislation, ranking in 16<sup>th</sup> place out of the 128 right to information laws currently assessed on the RTI Rating, the leading global tool for assessing the strength of legal frameworks for the right to information.<sup>166</sup> The legal framework does particularly well in the areas of scope of application of the law, the system of oversight or appeals, and the rules on sanctions and protections.

In terms of the public authorities it covers, the law gets full points, covering the executive, the legislative and the judiciary, independent institutions, State owned enterprises and even private bodies which undertake public functions or operate with public funding. There are measures against both individuals and public authorities which obstruct access, as well as

<sup>165</sup> Act No. 1/2014, available in English translation at:

<http://www.mmc.org.mv/storage/app/media/Information%20Act/144.pdf>.

<sup>166</sup> Available at: <http://www.rti-rating.org>. The RTI Rating, launched in September 2011, is run by the Centre for Law and Democracy (CLD) (<http://www.law-democracy.org>) and Access Info Europe (<http://www.access-info.org>). It is based on international standards adopted both by global human rights mechanisms, such as the UN Human Rights Committee, and by regional mechanisms, such as the African Commission on Human and Peoples’ Rights. The Rating assesses all of the national right to information laws globally (currently 128), and is continuously updated as new laws are adopted or existing laws are amended. It is relied upon regularly by leading international authorities, as well as national decision-makers and advocates, to evaluate national right to information systems.



protections for both good faith disclosures under the Act and to expose wrongdoing (whistleblower protection, on which see below).

The Act also earns 29 of the 30 available points for appeals. Some of the reasons for this include that the information commissioner it provides for is appointed by the president after nomination by parliament from a list of names submitted by the president, that the commissioner reports to and has his or her budget approved by parliament and that the commissioner's office has the necessary mandate and power to perform its functions, including investigating and reviewing information even if it is claimed to be exempt.

However, the first information commissioner who was appointed had reportedly voted against the RTI Bill when it was introduced in parliament. According to reliable reports, that information commissioner also rejected most of the appeals that were forwarded to him, thereby seriously undermining implementation of the Act and opening up the door for public authorities to reject requests even on spurious grounds.<sup>167</sup> A new commissioner, Hussain Fiyaz Moosa, was appointed on 31 October 2019 but resigned very recently.<sup>168</sup> Informal feedback suggests that the situation changed under his tenure, with more cases being decided in favour of applicants and public authorities being forced to disclose information.

Some of the weaknesses in the legal framework include the lack of any reference to the benefits of RTI in the Act, barriers to submitting requests for information, including too much information needing to be provided for this, unduly long time limits for responding to requests, a failure of the RTI Act to prevail over other laws in case of conflict, and overbroad exceptions to the right of access, some of which are not harm-tested.

Article 37 of the RTI Act contains an extensive list of categories of information that all public authorities must disclose on a proactive basis. These include a broad range of information on their functions, responsibilities and structure, the services they provide, their complaints mechanisms, information held by them, their rules, regulations, policies, decisions that would affect the public, their budget and remuneration of employees.

## 4.2. Other Openness Measures

As part of its 2019-2023 Strategic Plan, the government has committed itself to adopt an Open Data policy for "all parliamentary information to increase the transparency of parliamentary processes and procedure (including plenary deliberations and committee meetings) to enable greater access and participation by the public and media."<sup>169</sup>

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<sup>167</sup> Ádám Földes, Maira Martini, and Matthew Jenkins, *Right to Information in Asia Pacific: How 11 Countries Perform on SDG 16.10*, (Berlin: Transparency International, 2019), p. 27, [https://images.transparencycdn.org/images/2018\\_Report\\_RTlinAsiaPacific\\_English.pdf](https://images.transparencycdn.org/images/2018_Report_RTlinAsiaPacific_English.pdf).

<sup>168</sup> Corporate Maldives, "Hussain Fiyaz Moosa Resigns from Information Commissioner's Post", 21 March 2021, <https://corporatemaldives.com/hussain-fiyaz-moosa-resigns-from-information-commissioners-post/>.

<sup>169</sup> Government of Maldives, *2019-2023 Strategic Plan*, note 135, p. 411.

In 2019, the government launched its official website: [www.gov.mv](http://www.gov.mv). This includes the Attorney General's Office ([www.mvlaw.gov.mv](http://www.mvlaw.gov.mv)), which publishes the full text of all existing laws and regulations in the Dhivehi. An English language database of statutes and court judgements is under development.

Earlier, there had been attempts to prevent the live broadcasting of parliamentary sessions. Indeed, in 2017, the MBroadCom reportedly discouraged broadcasters from doing this so as to avoid being charged with reporting "obscene language and content contrary to standards of public decency".<sup>170</sup> However, since the change of government in 2018 and the onset of the COVID-19 pandemic, which forced virtual sittings of parliament, parliamentary sessions are broadcast freely.<sup>171</sup>

In October 2019, parliament passed the Whistleblower Protection Act 2019 (WPA).<sup>172</sup> The Act defines the wrongdoings which warrant whistleblower protection broadly (see section 7) and outlines procedures for reporting such wrongdoings whether they were committed within or outside of the Maldives. It permits anonymous disclosure through various mediums and, importantly, contains stiff criminal penalties for retaliatory acts or omissions toward whistleblowers. Officials who act against whistleblowers face house arrest or five years' imprisonment. It also grants immunity to whistleblowers against civil, administrative and criminal actions (section 30), sets requirements for investigating authorities and designates the Anti-Corruption Commission and Human Rights Commission as the Independent Commission (in different cases) which is responsible for various implementation tasks (section 49).

The WPA was inspired in part by the eight months Gasim Abdul Kareem, a former manager of a Bank of Maldives Branch, spent in prison. In 2016, Abdul Kareem leaked bank records demonstrating a massive corruption scheme in which nearly USD 80 million was stolen from State coffers for the benefit of officials, including former president Abdulla Yameen. Abdul Kareem was arrested on 18 February 2016<sup>173</sup> and served more than eight months' imprisonment before being released. He has yet to be pardoned.<sup>174</sup> Less than four years after Abdul Kareem's arrest, the adoption of the WPA came as a much-needed mechanism to combat corruption and protect those who blow the whistle on it.

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<sup>170</sup> Maldives Independent, "Media Warned over Online Video Coverage from MPs", 3 October 2017, <https://maldivesindependent.com/politics/media-warned-over-online-video-coverage-from-mps-132884>.

<sup>171</sup> Microsoft Stories Asia, "Keeping Legislative Wheels Turning during COVID-19", 14 April 2020, <https://news.microsoft.com/apac/2020/04/14/keeping-legislative-wheels-turning-during-covid-19/>.

<sup>172</sup> Act No. 16/2019. Available in English translation at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/110264/137071/F1364522364/MDV110264%20Eng.pdf>.

<sup>173</sup> [Transparency Maldives](https://transparency.mv/v16/2016/09/gasim-abdul-kareem-the-hand-that-rocked-the-boat/), *Gasim Abdul Kareem: The Hand that Rocked the Boat*, 22 September 2016, <https://transparency.mv/v16/2016/09/gasim-abdul-kareem-the-hand-that-rocked-the-boat/>

<sup>174</sup> Transparency International, "Release of Maldives Whistleblower Gasim Abdul Kareem Welcomed; He Should Now be Exonerated", 17 November 2016, <https://www.transparency.org/en/press/release-of-maldives-whistleblower-gasim-abdul-kareem-welcomed-he-should-now>.

## Recommendations

- The relevant authorities, including individual public authorities and the information commissioner, should ensure that the RTI Act is implemented properly.
- In due course, the RTI Act should be reviewed to bring it even more fully into line with best international standards and practice.
- The government should continue to push for strong open government practices.

## 5. Conclusion

Legislation in the Maldives which impacts on freedom of expression and media freedom ranges, in terms of compliance with international standards in this area, from representing better practice to needing significant improvement. Overall, one major area of weakness is in terms of ensuring the independence of oversight and regulatory bodies, most of which are subject to relatively high levels of government control. One exception is the Maldives Media Council or MMC, which has proven itself to be fairly robustly independent, largely due in practice, it would seem, to the fact that media actors exercise a high degree of control over the appointment of its members. This problem also extends to the judiciary, which is clearly a serious problem not only for freedom of expression but for all human rights, although hopefully measures in progress currently will lead to a more both structurally and practically independent judiciary.

The problem of government control has led to a situation where the enjoyment of freedom of expression, and media freedom in particular, is highly dependent on the political will of the government in power. In practice, this has led to significant fluctuations in the enjoyment of this right in the country, even though legislative changes have been more modest. In essence, where government is determined to quash independent, critical voices, it has a lot of power to do so, although at the same time journalists who are strongly committed to professionalism and independence have always managed to practise in the country.

The Constitution has a reasonably strong general guarantee for freedom of expression, including an appropriately narrow test for restrictions on this right. It could be strengthened by covering not only the right to express oneself but also the right to seek and receive information and ideas, and by incorporating an explicit and comprehensive guarantee of the right to access information held by public authorities or the right to information. However, a major shortcoming of the Constitution, from the perspective of international law, is that it essentially subjects the right to freedom of expression, along with other rights, to the undefined notion of the “tenets of Islam”. This protects vaguely worded legislation criminalising any statements which followers of Islam may find offensive, something which has been abused to prevent debate on matters of public interest as well as for political ends.



For journalists, as a profession, one of the main problems has been an ongoing level of attacks and harassment leading, in the most serious cases, to murder of a number of journalists over the years. While the last couple of years have seen more both recognition of this problem and its sources, and measures to improve protection and safety, more still needs to be done. Consideration should also be given to the idea of establishing some sort of accreditation system to ensure that journalists have access to limited space and restricted access venues, although care needs to be taken to ensure that this is not subject to government control or political interference.

Newspapers are still subject to registration requirements in the Maldives, a hangover from decades old legislation which has little place in a modern media environment. As noted, the main regulatory body for the print media, the MMC, is fairly independent of government, which has helped protect this sector from government interference. At the same time, most newspapers are strongly politically aligned, as a result of their ownership, which contributes to undermining the ability of Maldivians to receive a diversity of information through the media. An underlying problem here is the unprofitability of the sector, suggesting that State support for media sustainability, especially for the print media, should be considered.

The Maldives Broadcasting Commission, which regulates broadcasters including by issuing them with licences to operate, is one of the key media oversight bodies which lacks independence from government, especially when the same party controls the presidency and the parliament, and this lack of independence has manifested itself in very specific ways in the past. The Broadcasting Act fails to recognise community broadcasters as a distinct broadcasting sector, despite the obvious fit for this sector in a small population, geographically disbursed country like the Maldives. The Broadcasting Code of Practice which was adopted by the Commission in 2012 contains a number of overbroad or unduly vague provisions which need to be amended.

The Public Service Media (PSM) in the Maldives is another body which lacks the independence required under international law. Given the importance of this body within the overall Maldivian broadcasting sector, this is a major issue for freedom of expression in the country. A current commitment to amend the Public Service Media Act by the end of 2021 should, if delivered upon, help rectify this problem.

The Communications Authority of Maldives (CAM) is yet another regulator which lacks independence and yet exercises considerable powers over freedom of expression, including through its powers to block websites. At the moment, this power appears to be subject to political direction, which is clearly contrary to international standards. What is needed is a robust both substantive and procedural framework for blocking websites which ensures that the system aligns with the right to freedom of expression.

Maldivian law contains a number of restrictions on what may be published or broadcast through the media or via other means of communication, in line with the situation in every country. A key problematical area, as flagged above, is restrictions on criticising Islam, which is not a legitimate type of restriction on freedom of expression according to



international law (although it is legitimate to protect the adherents of Islam, along with other religions, against hate speech directed at them as a group). Defamation law in the Maldives is a bit of a political football, having been decriminalised in 2009, recriminalized in 2016 and then decriminalised again in 2018 (through the repeal of the 2016 Anti-Defamation and Freedom of Expression Act). The 2016 Act was problematical not only due to its criminal nature, but also because it included very significantly overbroad limits on freedom of expression in the area not only of defamation but far beyond that. Hopefully, criminal defamation will now remain a footnote in the history of defamation law in the Maldives.

More broadly, there is a need for a thorough review of all Maldivian laws, including the Penal Code, which include restrictions on content, with a view to amending those restrictions which fail to pass muster under international law. There is also a need for the country to adopt a privacy/data protection law and for the Broadcasting Commission to take effective steps to enforce the rule in the Broadcasting Code of Practice which requires broadcasters to ensure that their news and current affairs content is accurate, fair, balanced and impartial.

The Maldives boasts a very strong Right to Information Act which is in the top 15% of all such laws globally and which is something the country can be very proud of. At the same time, much remains to be done to ensure proper implementation of this law which, if achieved, would bring important benefits to both government and the public. The government has also made broad commitments to move forward in the area of open data, something which, once again, would be very useful for the country as a whole.

The Maldives has experienced its fair share of both successes and challenges in terms of respect for freedom of expression and media freedom in the areas of both legislation and practice. The current government has made a number of positive promises and commitments in this area, which it will hopefully deliver on. A key area of need is reform of various pieces of legislation to ensure that media regulatory and oversight bodies are independent of government control and political interference. If that is done, it could provide a strong framework for media freedom going forward.



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