

Written contribution for the draft of GC 38

The Maldives: unconstitutional legal requirements and practices hinder the full enjoyment of the right to freedom of association.

Submitted by the Maldivian Democracy Network (MDN)

The Maldivian Democracy Network (MDN) is a non-governmental, non-profit organisation advocating for human rights and democracy in the Maldives. MDN was formed in 2004 and allowed to register in the Maldives in 2006. It was arbitrarily shut down in December 2019 following blasphemy allegations by the Government and all funds from its bank accounts seized. MDN currently works in exile.

Contact person:

Shahindha Ismail (she/her/hers)

Executive Director

E-mail: shahindha@mvdemocracy.org

Website: www.mvdemocracy.org

Contents

Introduction	3
1. Prohibitions on associations	3
1.1 Non-recognition of the right to form associations without registration.	3
1.2 The use of Islam to place ambiguous prohibitions and criminal liability on associations.	3
2. Unconstitutional exclusion from the right to freedom of association	4
2.1 Exclusion of prisoners and individuals with a criminal record.....	4
2.2 Introduction of new limitations of the right through a government-enacted regulation.	4
3. Political overreach	5
3.1 Registrar of Associations is a political position.....	5
3.2 Control over governance and administrative decisions of associations.....	5
3.3 Surveillance of members of the association.....	6
3.4 Imposition of specific positions in the governing bodies of associations.....	6
3.5 Excessive mandatory reporting requirements.....	6
3.6 Associations subject to raids under the claim of national security.	7
4. Impediments on the provision of assistance for the protection of human rights defenders	7
4.1 Prohibitions on providing financial assistance to rights holders.	7
4.2 Requirement to report to the Registrar of Associations prior to commencing activities.....	8
4.3 Limitations on eligibility for membership of the governing body of an association.	8
5. Due process rights of the association	9
5.1 Administrative action against associations.....	9
6. Risk of defamation of an association	9
7. Unconstitutionally mandated requirements that hinder the operations of an association	10

Introduction

The Maldives enacted its current Freedom of Association Act in 2022. Until then, a pre-constitutional law on associations passed in 2003 was enforced, which created serious challenges and caused harm to associations. One of the major introductions to the current law is the requirement for the Registrar of Associations to outline a process of right of reply in the Regulation of Associations (No. 2024/R-74), which must be invoked before any order or action against an association is carried out. Contrastingly, several drawbacks still exist in the law and regulation that obstruct the full enjoyment of the right to freedom of association in the Maldives, which are outlined in the sections below. Obstructions to the freedom of association due to unconstitutional practices carried out by the government are also explained in this submission.

1. Prohibitions on associations

1.1 Non-recognition of the right to form associations without registration.

The law does not prohibit unregistered associations from operating (as was the case previously under the now repealed law) - but does not recognise such associations either. Given that it has been prohibited for decades, it causes confusion over whether associations are allowed to operate without registration. The language used across the law is “an association registered under this law...”.

Section 12 of the Associations Act on prohibitions against associations, the language used is “it is prohibited for any association operating in the Maldives to engage in or promote the following...” which indicates that while the law does not explicitly prohibit operating associations without registration, it does not explicitly state that it is allowed to do so.

1.2 The use of Islam to place ambiguous prohibitions and criminal liability on associations.

“Engaging in or encouraging of any act that is in contradiction to a tenet of Islam, and any criminal offense under the laws of the Maldives” (Associations Act).

This articulation is ambiguous, does not specify prohibited acts, and is subject to interpretation as to whether an act contradicts a tenet of Islam. Article 274 (a) of the Constitution defines a “tenet of Islam” as “*principles derived from the Holy Qur’an and the sunnah of Prophet Muhammad which are based on consensus as to its authenticity*”. As such, adherence to this section of the law will be difficult and risky in the absence of a specific list of actions or principles that have received consensus. Moreover, Article 19 of the Constitution states that “*Everyone has the right to do what is not explicitly*

prohibited by law or Islamic Shari'ah. And no one shall stop or obstruct anyone without the authority derived from law."

This specific provision in the Associations Act has been used against associations to restrict treaty reporting and even arbitrarily de-register organisations, placing individuals associated with such organisations at the risk of targeted religious and political violence as well as criminal proceedings.

2. Unconstitutional exclusion from the right to freedom of association

2.1 Exclusion of prisoners and individuals with a criminal record.

Article 16 of the Constitution states that any limitation to a fundamental right listed under the Chapter of Rights may only be brought through a law passed by the People's Majlis. Article 30 of the Constitution states:

- a) Every citizen has the right to establish and to participate in the activities of political parties.*
- b) Everyone has the freedom to form associations and societies, including the following:*
 - 1. The right to establish and participate in any association or society for economic, social, educational or cultural or purposes.*
 - 2. The right to form trade unions, to participate or not participate in their activities."*

Section 25 of the Associations Act state that two individuals or legal entities may request for the registration of an association, together with the required documents stated in the regulation enforced under the Act. Section 25 reiterates that *if* the documents required by the regulation are completed, the association will be registered.

However, section 19(d) of the Regulation of Associations requires a criminal record clearance form from those seeking to register an association, as part of the submission documents. Moreover, the regulation does not provide any indication of the period of criminal record clearance required, which automatically places a lifetime on the clearance process.

This rule prevents prisoners from forming associations. Additionally, it applies to individuals who have been convicted of any crime at any time, even if they have already completed their sentences.

It also renders the section of the regulation unconstitutional, as the Associations Act does not place a restriction on individuals with a criminal record from forming an association.

2.2 Introduction of new limitations of the right through a government-enacted regulation.

Section 43(e) of the Associations Act lists the criteria for membership of the governing committee or board of an association. The section does not list exclusion of persons held in detention.

However, section 37(a)(5) of the Regulation of Associations state that an individual who is detained upon allegation of a crime or upon judicial order or by law may not be eligible for membership of a governing body of an association.

Again, this introduction of a limitation by a regulation is in contravention of Article 16 of the Constitution. Moreover, the inclusion of detention on any grounds except for conviction violates the principle of innocence until proven guilty.

Section 67(a) of the Regulation of Associations states that the association can be declared “inactive” based on three characteristics. This limitation is not mentioned in the Associations Act, as should be according to Article 16 of the Constitution. Moreover, the regulation does not clarify the consequences of being declared “inactive” or what it means.

3. Political overreach

3.1 Registrar of Associations is a political position.

The Registrar of Associations remain a politically appointed position under the Section 13 of the law, which states that the Registrar shall be appointed by the President of the republic, answerable to the cabinet minister, and that the remuneration of the Registrar shall be determined by the President.

Section 18 gives the authority of termination of the Registrar to the President, under ambiguous criteria such as “...if they are found to be incapable of carrying out the duties of their position or if found to have neglected duties.”

The political control over the Registrar of Associations place associations critical of the government, such as human rights organisations, at the risk of persecutory action by the Registrar of Associations.

3.2 Control over governance and administrative decisions of associations.

3.2.1 Section 26 of the Regulation of Associations outlines standards required in the selection of a name for an association. Part (c) of this section states that a shortened name of the association must be derived from the letters of the full name of the association and that the Dhivehi language must be prioritised when choosing a name for the association.

Although this restriction does not place a hindrance on the work of the association, it is placing undue controls over the name of an association. No restriction on the choice of name of an association is stated in the Associations Act, whereby this restriction is in contradiction with Article 16 of the Constitution.

Section 47 outlining extraordinary assemblies initiated by a 33% membership request provides that a meeting must be organised within 30 days of the request and give a minimum of 7 days advanced notice to members. These timelines are inadequate, as it will be difficult to make all arrangements for a general assembly within 30 days; and the imposition of a 7 days' notice is too short to ensure that all steps are taken to accommodate the meaningful participation of all members in the decisions of the association, as members may already have made other commitments that they cannot change in such short notice.

3.3 Surveillance of members of the association.

Section 34(c) of the Regulation of Associations requires that updated registers of the members of the association must be sent to the Registrar of Associations every January. This requirement, which was not present under the previous Associations Act, will discourage individuals from becoming members of associations that are engaged in sensitive topics such as civil and political rights.

Targeting of associations and HRDs have resulted in the targeting of individual members of associations before, creating an environment of fear and diminished support for civil society due to these threats.

3.4 Imposition of specific positions in the governing bodies of associations.

Section 43 of the Associations Act, which outlines the Executive / Governing Committee of associations, states that such a committee must be enacted by every association according to the statutes of the association. As the statutes of the association are decided upon by the General Assembly, it is clear that the composition of the committee is left to the decision of the association.

However, section 36(a) of the Regulation of Associations, without reference to the law, stipulates specific positions and the number of positions that a governing committee must have. In addition to this stipulation creating problems for associations that were registered prior to the enforcement of the regulation in 2024 whose statutes may not align with the stipulation, the stipulation itself is considered government overreach to further control the decisions of the associations and exclude smaller associations from the ambit of the law.

3.5 Excessive mandatory reporting requirements

Sections 46 and 47 of the Regulation of Associations require specific reporting to the Registrar on matters related to activities carried out by an association, in addition to specific timelines for reporting on administrative changes to the association. It must also be noted that these requirements are not mentioned in the Associations Act.

These include reporting on any project over the value of MVR 25,000 (approximately 1,300 Euro) *before* the project is commenced, reporting on the following year’s activity plan and associated budget – together with information about how funding will be acquired for it and if the donors are foreign, information about them, and reporting within 30 days whenever a change is made to the activity plan.

These reporting requirements are unrealistic and will require much more administrative capacity of an association than most of the associations will have. Moreover, from a terrorism finance monitoring perspective, the banking rules mandate associations to provide detailed information about any funds received into the accounts of associations including copies of the contracts made with donors. This process by the banks already exists and the Associations Act duplicates it. Moreover, the same reporting is mandatory under the annual reporting requirements under the law.

3.6 Associations subject to raids under the claim of national security.

Section 54 of the Regulation of Associations states that “investigative authorities and relevant authorities” of the state have the power to conduct searches of the premises of associations and places where an association conducts activities, should they receive information about a crime that may present a threat to national security or any other “such crime”.

National security is not defined by law in the Maldives and this terminology is often used to target human rights defenders, CSOs and media, in addition to refusing information requested under the right to information law. Moreover, the Police Act clearly outlines instances where the police may enter and search places, with a court order, in instances where information about illegal activity is reported. This specific clause is not common in laws associated with every specific type of entity and therefore is concerning that it is used in the Regulation of Associations when there is no mention of such extravagant powers of the state in the Associations Act.

4. Impediments on the provision of assistance for the protection of human rights defenders

4.1 Prohibitions on providing financial assistance to rights holders.

Under section 12 on prohibitions, the Associations Act lists the following:

(a)(5) *“Providing a financial or other similar benefit to a founder or member of the association, or an individual or entity, with the exception of those receiving an allowance or per-diem in connection with an activity conducted by the association that they are participating in.”*

This prohibition places associations that provide HRD protection or facilitate such protection in partnership with transnational advocacy networks if they assist in the transfer of funds for to HRDs, who may be a founder or member or any other individual, for the purpose of emergency protection

such as security enhancement or temporary relocation. The assistance may not necessarily be provided through a regular activity conducted by the association, but as a measure of support to HRD protection in urgent situations. It is further worrying that protection is usually provided to HRDs facing persecution from the state or other forms of violence from non-state actors due to impunity by the state.

4.2 Requirement to report to the Registrar of Associations prior to commencing activities.

Section 56 of the Associations Act states that any association receiving an amount over MVR 500,001 (approximately 27,700 Euro) must inform the Registrar of the donor, the amount, and the planned activities for which the funds are received, before such activities commence.

This requirement again places associations providing emergency protection to HRDs in a risky position and the affected HRD in an even more precarious situation. Moreover, the threshold for mandatory audit of the association is also the same amount, and providing that all registered associations are required by the law to submit annual reports and financial reports for every year, reporting requirements ahead of activities not only impose threats but are also unnecessary.

4.3 Limitations on eligibility for membership of the governing body of an association.

Section 43(e)(3) of the Associations Act outlines the criteria of Executive Committee (governing committee) of an association, which prohibits any individual from being elected or appointed to more than one such committee.

This restriction is an unfair limitation of the right to freedom of association as well as the right to protect human rights outlined in the UN Declaration on Human Rights Defenders. Providing there is no conflict of interest, individuals must be free to contribute to the work of civil society. Moreover, the Maldives is a small island nation with a population of half a million, limiting the availability of such exclusive public contribution to associations.

Part (e)(4) of the same section of the Associations Act prohibits anyone who has previously been a member of a governing body of an association which has repeatedly violated the Associations Act or any regulation under the law, at the time of such a violation, from becoming a member of a governing body of another association.

This limitation is problematic as the law clearly prescribes actions against associations violating the law or regulation. Placing a further limitation on an individual member after action has been taken on the association is unfair. Furthermore, it can be possible that individual members of governing bodies may have dissented to decisions that lead to actions that may be considered a violation of the Associations

Act and Regulation. It is therefore illogical to place such a restriction without a process of determination of involvement in such violations.

The two restrictions are also reflected in the Regulation of Associations.

5. Due process rights of the association

5.1 Administrative action against associations.

Section 62 outlines authorised action that the Registrar of Associations can take against associations:

- a. The section imposes two potential actions, (i) a warning, and (ii) a fine between MVR 500 and 5000. It further states that both penalties can be applied to the same association, against the same action or in-action by the association, providing that a period of thirty days pass between the two actions taken under this section.
- b. The law does not provide a schedule of fine amounts between MVR 500 and 5000, however, states that the amount of fine must be proportionate to the seriousness of the act or fault. The proportions or schedule is not available on the Regulation of Associations. The section 44 (d) of the regulation states that failure to submit the annual report and financial statements will result in a fine between MVR 500 and 5000, without a determination of proportion.

62(d) of the Associations Act states that the regulation under the law must outline processes the Registrar must follow when taking action against an association and that the regulation must also outline the process for the right of reply of associations.

62(e) states that if the Registrar decides to fine an association, the amount must be reflective of the gravity of the mistake committed by the association.

Section 5 of the Regulation of Associations outlines the [permitted] activities of associations. Part (d) of this section states that the Registrar is authorised to take action, based on the gravity of the matter, under section 62 of the Associations Act against any association found in violation of the parts (b) and (c) of the section. It does not provide any further information on how “gravity of the matter” is measured or what the corresponding action should be.

*Note – the current law requires a process of right of reply before the Registrar can issue any orders or take any action against an association, which is outlined in the Regulation of Associations.

6. Risk of defamation of an association

Section 67 outlines the authority of the Registrar to cancel the registration of an association under circumstances prescribed in the law. Part (b) of the section states that the Registrar must publish in the government gazette, their decision to cancel the registration of an association, before taking the action.

Considering that section 63 mandates the Registrar to employ a process of right to reply of the association before *any action is taken against them*, and in which process the association may be able to provide evidence requiring the Registrar to withdraw their proposition to cancel the registration, publishing such a decision prior to the process of right to reply may cause potential defamation to the association and thereby obstruct the work of the association.

7. Unconstitutionally mandated requirements that hinder the operations of an association

In addition to imposing the above-mentioned obstructions to the right to freedom of association in the Maldives, the government currently employs ad-hoc and unwritten rules that place significant obstructions to the operations of associations.

One such unwritten rule is related to the registration of the governing body of the association. Section 38(c) of the Regulation of Associations requires that the governing body of an association must be registered at the ministry no later than 30 days following the election, and that any further changes brought to the body after registration must be further sent to the ministry for registration no later than 15 days of the change. The section also states that a specific form annexed to the regulation must be used for the purpose.

However, when associations send the said form to the ministry to register elected governing bodies of associations, they are told to also provide proof of criminal record clearance of each elected member in order for the ministry to register the body.

This sudden and unknown requirement hinders the operations of associations as criminal record clearance takes several weeks, and the void created by not having an active governing body affects the reputation of associations and their ability to maintain donor relations. Furthermore, failure to have the governing body registered will result in administrative action and potential suspension of activities. Any requirement for compliance from associations must be written down in published processes.
