

Commentary and recommendations on 2003 Associations Act

by Christopher Roberts

I. Overview

1. This briefing paper addresses several legal issues with the 2003 Associations Act of the Maldives. In general terms, the issues to be addressed are as follows.

2. First, the law must recognize the right to freedom of association as such, without the need to register under the law.

3. Second, the law is broad and vague as to the provisions governing the registration and operations of associations. In this context, the law should be amended in order to: (i) stipulate with necessary clarity the grounds upon which decisions may be made; (ii) require that all decisions be supported by publicly available, clearly articulated reasoning; and (iii) provide for the necessary oversight of decision-making, in particular through providing for impartial review of decisions.

4. Third, the prohibitions on the activities of associations are also put forward in broad and vague terms, that fail to provide associations necessary clarity.

5. Fourth, the law should assure that an independent and impartial governance system for associations is established. Among other features, this should involve the consultation of civil society and strong transparency and access to information provisions.

6. Fifth, the law should do more to support and encourage civil society, through removing burdensome requirements and obstacles, enhancing access to information, and providing additional incentives and support.

7. If all of these issues are addressed, the Maldives may achieve a simplified and streamlined legal framework for civil society. This will benefit all sectors: the government will benefit through freeing up resources from inessential tasks, civil society will benefit from a clarified procedure and additional incentives, and society will benefit through the initiatives that a newly empowered civil society may engage in.

8. Moreover, such a system will promote the rule of law and help authorities address dishonest or corrupt practices. By freeing up government resources from inessential tasks, those same resources may be refocused on matters of serious concern, such as embezzlement, fraud or the like.

9. Association is a right guaranteed by international law and the Constitution of the Maldives. The purpose of an associations law is to promote this right to the greatest extent possible. Through taking a series of simple steps as laid out in this commentary, the Maldives may adopt a law that fulfills this right to the maximum extent possible, and that will serve as an example of best practice to the world.

II. Detailed analysis and recommendations

A) Definition of associations and the right to associate freely

10. The definition of associations provided by article 39(a) of the act is circular and inadequate. The law should instead adopt the definition used at the international level, such that an association in general is defined as “any group of individual or legal entities brought together in order to act, express, promote, pursue or defend a field of common interest,” with a civil society association being further defined as an organization devoted to a not-for-profit purpose.

11. Article 2 of the Associations Act states that every association in the Maldives should operate under the provisions of the Act, and article 37(b) imposes serious penalties should this requirement be contravened. Once a proper definition of associations is adopted, however, it becomes clear why such provisions are inappropriate – as they would outlaw any group of people working together towards a common purpose, without seeking profit, as such. Instead, the law should be clear that informal associations are free to operate as such – although without the additional benefits and privileges obtained by associations with legal status.

12. The law should also contain a general statement of purpose, noting that the law is intended to promote and enable the existence of civil society and to be interpreted in accordance with international law. The law should also clearly state that any form of discrimination is forbidden.

B) Civil society versus business entities and other associations

13. Articles 39(a) and 39(g) of the law suggest that the law is intended to cover business associations as well as not-for-profit associations. In contrast, for the sake of simplicity and clarity, business entities should be governed by entirely separate legal regimes. Similarly, unions must be governed by a separate law. While professional associations of certain sorts as well as trusts and foundations may be governed by the associations law, special provisions are necessary in such cases.

C) Governing regulations

14. The information that associations are required to submit initially should be simplified and entirely listed in the law. In addition, articles 5(j) and 20 potentially limit associations by preventing them from undertaking activities not envisioned at the time of founding. In contrast, the law should recognize that associations' scope of activities and focus may grow and change following founding, and associations should not be limited by their initial vision. Articles 9(a) and 11 grant excessive discretion relative to the approval of names or symbols. In contrast, names or symbols should only be refused when they create confusion by overlapping with those already existing. In contrast to article 18, approval should only be needed for changes of the name or changes of the purpose of associations, on the grounds noted above and below.

D) Notification

15. The law should be clear that registration is governed by a notification rather than an authorization regime. Using the terminology of notification helps to ensure that the law is interpreted in the proper manner, by emphasizing that the presumption should be in favor of granting legal status to associations. Overall, the system must be such as to ensure independence, fairness and transparency, and must avoid granting excessive discretion to the authorities. The law should stipulate that following a certain number of days without receiving comments from the authorities – 30 days at a maximum, with a smaller time period preferable – an association will obtain legal status. The law should stipulate that, should the authorities find the governing regulation inadequate in some regard, they contact the submitters to inform them of such, and allow them a chance to submit the missing information or any changes suggested. Should the authorities seek to refuse registration, the law should require that they submit detailed legal reasoning explaining their rationale for doing so. Moreover, the law should clearly specify that those seeking to obtain legal status be able to challenge decisions either requesting more information or refusing to grant legal status (for more information, see the section on judicial review below). Associations should be able to register through a simple online procedure.

E) Founders of associations

16. Article 6(b) of the law prevents children from founding associations, in violation of article 15 of the Convention on the Rights of the Child. In addition, the right to found associations should not be limited to nationals. International associations with legal status already in another jurisdiction should be able to obtain status following submission of proof of such.

F) Purposes and activities of associations

17. The grounds for limiting the purposes of association in the 2003 law do not comply with international human rights law, and should be removed and replaced by the language used in international law, with a further statement that the grounds are to be interpreted in compliance with international human rights law. In particular, establishing paramilitary activities, operating for profit, advocating hatred or seeking to undermine democracy are all reasonable grounds for prohibiting associations.

18. The law should moreover stipulate clearly several activities which associations are free to undertake, in order to make clear that associations may not suffer any penalties for doing so. Such activities include expressing opinions, disseminating information, fundraising, public opinion canvassing including through surveys, activities on behalf of minority cultures, and advocacy, including campaigns to change law or policy, including the constitution, at the national and international levels.

G) Funding

19. The acquisition of funding should not be subject to approval. Instead, annual reporting is generally a sufficient means to ensure financial regularity. Audits may also be used in such occasional circumstances as they are necessary.

H) Internal functioning of associations

20. Associations should be free to dictate their own internal workings and organization. In particular, associations should be free to determine when general meetings are necessary, and the means through which they will be conducted. It would be helpful for the government to provide various templates of internal organization structures associations may choose to use however. Similarly, the government may support civil society through trainings and workshops on establishing associations and effective governance.

I) Tax benefits and public support

21. The law should do more to encourage the formulation of legal associations, in particular by specifying that associations have limited liability and that they qualify for certain tax exemptions. In addition, the government may consider providing additional resources to support the development of civil society associations. In doing so however, it is important that resources be provided in an impartial and apolitical manner, respecting the independence of civil society space. Best practice guidelines for the distribution of funding are available.

J) Independence of governing bodies

22. The independence of the registrar as well as the authority responsible for issuing implementing regulations should be assured. This may be promoted by ensuring that: (i) their appointment procedure relies upon a degree on consensus likely to produce a neutral figure; (ii) the law requires that they act independently; (iii) their positions are insulated from political interference; and (iv) civil society be given the opportunity to provide inputs on potential candidates in a public consultation process. Bodies rather than individuals are preferable for these positions.

K) Dissolution and other penalties

23. The law should be clear that dissolution of associations is only possible in situations in which there is “a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law.” Less severe violations of law should be met only by proportionate sanctions. Dissolution or penalty should

only be possible under the oversight of an impartial decision-making body, and associations should always be able to appeal, with the penalty taking effect only after all appeals have run.

L) Participation of civil society in public affairs

24. Civil society plays a crucial role in the development of a society and its policies and laws. As such, civil society participation in government mechanisms should be encouraged. The adoption of policy documents or a compact between the government and NGOs, at both the national and local levels, is to be encouraged in this regard; such compact should not interfere with the independence of civil society space, however, and should promote the diversity of civil society, rather than unduly favoring certain actors over others.

M) Principles of good governance

25. Good governance requires several practices. First, any restrictions must appear in the law itself, and not be imposed by regulation or practice. Second, all decisions should be supported by clear and publicly available written reasoning, based on the law. Third, time periods should be required for all actions. Fourth, parties should strive to resolve differences where possible; failing that, recourse to an impartial decision-making body, and ultimate recourse to the courts, should always be available. Remedies should always be available for violations of rights. Fifth, there should be public hearings, and the opportunity for inputs, whenever new policies are adopted. And sixth, access to information should be guaranteed, not only be enabling individuals and associations to request and receive desired information, but also through the active publication of clear and easily accessible guidelines as to procedures, decisions and the like.

III. Conclusion

26. If the law is amended following the above guidelines, the Maldives may achieve a legal framework governing civil society that is clear and simple, requires minimal resources to administer, and that fosters a strong civil society that may act to the benefit of society as a whole, while allowing the authorities to focus their resources on support and governance concerns. Improving national wellbeing through empowering civil society is eminently achievable, as rather than devoting additional resources, a streamlined and simplified procedure is all that is needed. With such reforms, the Maldives may ensure that article 30 of the Constitution is fulfilled, and may set an example of effective civil society governance.