



NEW YORK
CITY BAR

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Ms. Aishath Bisham
The Prosecutor General's Office
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Dear Ms. Bisham:

I am writing on behalf of the New York City Bar Association regarding the pending adjudication in the Criminal Court of the Republic of Maldives of former Bank of Maldives Branch Manager Gasim Abdul Kareem on the criminal charges of Unlawful Disclosure of Information (594/Cr-C/2016) and Unlawful Acquisition of Information (595/Cr-C/2016). We urge you to consider all circumstances of Mr. Kareem's case and the Republic of Maldives' international and domestic law obligations in prosecuting the case and, if he is convicted, in making any recommendation concerning the appropriate sentence. In particular, as this reportedly is the first whistleblower case to reach the Court under the provisions of the new penal code, we urge consideration of the "good faith" exception in recognition of these legal obligations and generally-recognized international standards of transparency.

The Association is an independent non-governmental organization with more than 24,000 members in over 50 countries. Founded in 1870, the Association has a long history of dedication to human rights, notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world. In addition, the Association's Cyrus R. Vance Center for International Justice advances global justice by engaging lawyers across borders to support civil society and an ethically active legal profession.

We understand that while working as Manager of the BML Nilandhoo branch, Mr. Kareem disclosed to BML staff and members of the public the account details of a company that was embroiled in a corruption scandal.¹ Since we have not had the opportunity to review the court record, we do not speak to the facts of the matter. However, Mr. Kareem's case indisputably raises serious concerns, as a matter of international law, about protections for those

¹ Shafaa Hameed, *Bank staff arrested over leak of transactions by company in MMPRC scandal*, MALDIVES INDEPENDENT (February 22, 2016, 17:15), <http://maldivesindependent.com/politics/bank-staff-arrested-over-leak-of-transactions-by-company-in-mmprc-scandal-122363>.

who report corruption. Indeed, Maldives law appears consistent with international law in requiring consideration of Mr. Kareem’s motives and actions in the case.

We note that Section 232 of the Penal Code of the Maldives provides an exception for a person who unlawfully acquires private information “in good faith for the purpose of exposing wrongdoing,”² and Section 44(c) of the Maldives Banking Act³ similarly provides a “good faith” exception to the disclosure of bank information or statements. These provisions, we understand, were included in legislation to incorporate so-called whistleblower protections, a cornerstone of generally-accepted standards of transparency and free expression.

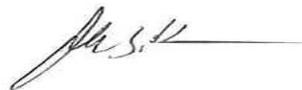
Article 13 of the U.N. Convention Against Corruption to which Maldives acceded in 2007, obligates state parties to take measures “[r]especting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.”⁴ Under Article 33, states parties are also called upon to consider creating legal measures to protect reporting persons, something it appears that Maldives has done by enacting the aforementioned “good faith” exceptions to what might otherwise be criminal conduct.

Moreover, having acceded to the International Covenant on Civil and Political Rights in 2006, Maldives has undertaken an obligation to ensure that Mr. Kareem receives a fair trial. Article 14 of the ICCPR provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”⁵

Mr. Kareem’s extended detention prior to consideration of the good faith exception already threatens a chilling effect on whistleblowers, even if he is ultimately exonerated. This danger of course would be somewhat mitigated by application of the exception in the current proceedings. If the Court were to find Mr. Kareem guilty despite that exception, a lenient sentence would demonstrate recognition of the Maldives’ international legal obligations and would be a significant step toward enforcing whistleblower protections as currently codified in domestic legislation.

In 2015, the Working Group on the Universal Periodic Review commended Maldives’ “activist policy of promoting its international human rights obligations.”⁶ In view of the far-reaching implications of Mr. Kareem’s case, the Association respectfully urges consideration of the good faith basis on which Mr. Kareem acted and in any event to exercise appropriate leniency in any recommendation or imposition of any sentence.

Respectfully,



John S. Kiernan

² Penal Code of the Maldives, Law No. 6/2014, Section 232(b)(2).

³ Maldives Banking Act, Law No. 24/2010 as amended by Law No. 3/2015 (First Amendment), Section 44(c).

⁴ United Nations Convention Against Corruption art. 13, Oct. 31, 2003, 2349 U.N.T.S. 41; United Nations Treaty Collection, Depository, Status of Treaties, Chapter XVIII, UNCAC, at no. 14 (Oct. 31, 2003), *available at* https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-14&chapter=18&clang=_en.

⁵ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 and 1057 U.N.T.S. 407; United Nations Treaty Collection, Depository, Status of Treaties, Chapter IV, ICCPR, at no. 4 (Dec. 16, 1966), *available at* https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en.

⁶ Report of the Working Group on the Universal Periodic Review: Maldives, 30th Sess., ¶ 10, U.N. Doc. A/HRC/30/8 (July 13, 2015).

Cc:

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