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大会 2006 年 3 月 15 日题为“人权理事会”的
第 60/251 号决议的执行情况。

宗教或信仰自由问题特别报告员阿斯玛·贾汉吉尔的报告

增 编

对马尔代夫的访问* **

* 本文件的内容提要以所有正式语文分发。报告本身载于内容提要附件，仅以原文分发。

** 本文件迟交是为列入最新资料。

内 容 提 要

2006年8月6日至10日，宗教或信仰自由问题特别报告员阿斯玛·贾汉吉尔应政府邀请访问了马尔代夫。这是她为了履行其关于评估该国境内宗教或信仰自由情况的任务进行的访问。

本报告第一部分简要介绍了马尔代夫的地理、政治和历史背景。第二部分概述了特别报告员为评估宗教或信仰自由情况而进行国别访问时所依据的宗教或信仰自由国际标准。第三部分探讨了马尔代夫政府对相关宗教或信仰自由国际标准所持的保留，并概览了与宗教或信仰自由相关的宪法条款。

特别报告员在第四部分中分析了马尔代夫境内的宗教或信仰自由情况。她具体评估了马尔代夫在法律上和实际上多大程度地保障了信奉或皈依宗教或信仰的自由、免遭胁迫和表明个人宗教或信仰的自由。她还评估了基于宗教或信仰原因的歧视程度，具体重点评估了弱势群体，包括被剥夺自由的人、移徙工人及其家属和其他外籍人和妇女享有的宗教或信仰自由权。

特别报告员欢迎马尔代夫高度珍视国家统一，但注意到国家统一的概念似乎已无法与宗教统一，甚至与宗教同源问题分开来谈。为此，她对马尔代夫若干关于宗教或信仰自由权的法律上和实际上限制表示了关注，并提出了一组详实的结论与建议，旨在协助政府确保遵循宗教或信仰自由权。

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION
OR BELIEF, ASMA JAHANGIR, ON HER MISSION TO THE MALDIVES
(6-10 AUGUST 2006)**

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 5	4
I. POLITICAL AND HISTORICAL CONTEXT	6 - 10	5
II. INTERNATIONAL STANDARDS ON THE RIGHT TO FREEDOM OF RELIGION OR BELIEF	11 - 15	6
III. LEGAL FRAMEWORK ON FREEDOM OF RELIGION OR BELIEF IN THE MALDIVES	16 - 28	7
A. Overview of relevant international standards	16 - 26	7
B. Overview of relevant constitutional provisions	27 - 28	9
IV. RESPECT FOR FREEDOM OF RELIGION OR BELIEF IN THE MALDIVES	29 - 53	9
A. Freedom to have or to adopt a religion or belief	32 - 34	10
B. Freedom to manifest one's religion or belief	35 - 42	10
C. Discrimination on the grounds of religion or belief	43 - 45	12
D. Freedom of religion or belief of vulnerable groups	46 - 53	13
V. CONCLUSIONS AND RECOMMENDATIONS	54 - 71	15

Introduction

1. The Special Rapporteur on freedom of religion or belief, Asma Jahangir, carried out a mission to the Maldives from 6 to 10 August 2006, at the invitation of the Government. The Special Rapporteur requested the invitation following the receipt of information alleging that adherents of religions other than Islam were subjected to de jure and de facto limitations on their right to freedom of religion or belief. The visit was carried out pursuant to her mandate to assess compliance with international standards on the right to freedom of religion or belief. During her stay, she visited the capital Male and the islands of K. Dhiffushi and K. Thulusdhoo in Kaafu Atoll. She also visited Maafushi Prison in Kaafu Atoll.
2. In Male, the Special Rapporteur had the honour of meeting with President Maumoon Abdul Gayoom. She also held meetings with the Minister of Foreign Affairs, the Attorney-General, the Minister of Gender and Family, the Speaker of the People's Majlis, the Chief Government Spokesman, the Chief Justice, the Supreme Council for Islamic Affairs, the Minister of Home Affairs, the Minister of Information and Arts, the Minister of Higher Education, Employment and Labour, the Principal Collector of Customs, the Minister of Justice, the Minister of Atolls Development, the Speaker of the Special Majlis, the Chair of the Drafting Committee of the Special Majlis and the Minister of Education. She also had the opportunity to meet with the staff and pupils of a local school.
3. Besides, the Special Rapporteur met with representatives of the Human Rights Commission, non-governmental organizations, representatives of the print and television media, the Law Society, and religious representatives. She also met with representatives of three political parties, the ruling Dhivehi Rayithunge Party (DVP), the Maldives Democratic Party (MDP) and Adhaalath Party. Despite her efforts, she was unable to meet with representatives of the Islamic Democratic Party (IDP).
4. In K. Dhiffushi and K. Thulusdhoo, the Special Rapporteur met with local governmental officials, representatives of the Island Development Committees and representatives of the Island Women's Committees. She also had the opportunity to meet with a number of expatriate workers. During her visit to Maafushi Prison, she met with prison authorities and foreign prisoners.
5. The Special Rapporteur would like to thank the Maldivian authorities for their invitation. Her visit was the first official mission to be carried out by a special procedures mandate-holder to the Maldives. She also thanks the Government for the good cooperation extended to her both during and subsequent to her visit by replying to her questions and providing further documents. In particular she is grateful to those interlocutors, who spoke freely with her and were able to hold a candid discussion on the subject of freedom of religion or belief. She would also like to thank the United Nations Country Team for the logistical support provided to her both before and during the mission. Furthermore, she would like to express her gratitude for the information she received from institutions and bodies of the United Nations system and international civil society groups.

I. POLITICAL AND HISTORICAL CONTEXT

6. The Maldives has a population of approximately 300,000 people. In addition, there are about 31,000 migrant workers, primarily from the South Asia region, based in the Maldives. The country is made up of a chain of 1,190 islands grouped into 26 natural atolls. For administrative purposes these islands have been divided into 20 administrative districts. Only 33 islands have a land area of more than 1 square kilometre. The main industry in the Maldives is tourism and of the 200 inhabited islands, 87 have been designated as tourist islands. Tourists visiting the Maldives stay in the designated resorts, and can visit Male, but have minimum contact with the local population of islands other than Male.

7. The Maldives gained independence in 1965 and became a Republic in 1968 under the presidency of Ibrahim Nasir. President Maumoon Abdul Gayoom first came to office in 1978 and was elected for a sixth five-year term in 2003. The President is the Head of State, Head of Government, Commander-in-Chief of the Armed Forces and the Police, Head of the Judiciary. The President also appoints the Cabinet of Ministers. The People's Majlis (the parliament) is made up of 50 members, of which 42 are elected by popular vote and 8 are appointed by the President.

8. Riots broke out in Male in September 2003 following the death of a prisoner, allegedly as a result of torture. Soon thereafter the President set up a Human Rights Commission. In February 2004, the President announced his intention to convene a People's Special Majlis (a constituent assembly) to consider and pass constitutional reforms with a view to strengthening democracy. The People's Special Majlis, for which elections were held in May 2004, is made up of directly elected members, the members of the People's Majlis, the Cabinet and eight members appointed by the President. In June 2004, President Gayoom proposed wide-ranging constitutional reforms including the right to establish political parties, greater separation of powers, establishing the office of the Prime Minister, limiting the tenure of President to two terms of five years and qualifying women to hold the post of President.

9. Following pro-reform demonstrations in August 2004, which ended in violence, the Maldivian authorities declared a state of emergency and arrested a number of political activists. The state of emergency was lifted on 10 October 2004 and on 22 January 2005 general elections were held. In March 2006, the Government published a Roadmap for the Reform Agenda, which sets out a timetable for the implementation of reforms. The reforms are divided into eight broad categories including (a) strengthening the system of governance; (b) promoting and strengthening the protection of human rights; (c) enhancing the independence of the judiciary; (d) developing the multiparty political system; (e) strengthening the civil service; (f) modernizing the electoral system; (g) enhancing the role of the media; and (h) strengthening key institutions and civil society.

10. The Constitution stipulates that Islam is the State religion and the President is designated as the supreme authority to propagate the tenets of Islam. The President and all cabinet ministers only qualify if they are Sunni Muslims. Members of the People's Majlis and the People's Special Majlis, Atoll Chiefs, the judiciary and voters in elections or public referendums are all required to be Muslims. In November 1996, the President has appointed a Supreme Council on Islamic Affairs, which is responsible for providing guidance on religious matters. The functions

of the Supreme Council also include centrally drafting sermons, certifying Imams, as well as building and maintaining mosques. The members of the Supreme Council are appointed by the Government for unlimited terms.

II. INTERNATIONAL STANDARDS ON THE RIGHT TO FREEDOM OF RELIGION OR BELIEF

11. This section provides an overview of the main international legal standards relied upon by the Special Rapporteur in carrying out her assessment of the situation regarding freedom of religion or belief in the Maldives.¹

12. Article 18 of the Universal Declaration of Human Rights (UDHR) and article 18 of the International Covenant on Civil and Political Rights (ICCPR) set out the basic elements of the right to freedom of religion or belief.

13. In addition to article 18, there are a number of other articles of the ICCPR and UDHR, which are relevant to freedom of religion or belief. These include article 2 and article 16 of UDHR. Relevant articles of ICCPR include article 20, which obliges States to prohibit advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence, article 26 prohibits discrimination and guarantees to all persons equal and effective protection against discrimination on religious grounds, and article 27 provides for the right of members of religious minorities to profess and practise their own religion. The Special Rapporteur is also guided by general comment No. 22 (1993) of the Human Rights Committee, which interprets the content of article 18 of the ICCPR.

14. The Special Rapporteur also takes into account other human rights treaties containing provisions relevant to freedom of religion or belief, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

15. The Special Rapporteur is also guided by other relevant instruments produced by various United Nations bodies. The most important of these instruments for the mandate is the 1981 General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief ("1981 Declaration"). Other relevant instruments include the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, along with relevant resolutions of the former Commission on Human Rights and its successor, the Human Rights Council.

¹ For further information on the international legal standards relied upon by the Special Rapporteur in the implementation of her mandate see E/CN.4/2005/61, paras. 15-20 and E/CN.4/2006/5, Annex.

III. LEGAL FRAMEWORK ON FREEDOM OF RELIGION OR BELIEF IN THE MALDIVES

A. Overview of relevant international standards

16. On 4 July 2005, the Supreme Council for Islamic Affairs issued a press statement in which it declared that article 18 of the UDHR contradicted the Constitution of the Maldives and the Islamic faith. The statement was issued in reaction to a project being implemented by the Maldives Human Rights Commission, which involved distributing translations of the UDHR. The press release stated that, “As no Maldivian wishes to practise another religion but Islam we have banned people from possessing the UDHR that is being distributed by the Commission.”

17. On 8 July 2005, the Special Rapporteur sent an Urgent Appeal to the Maldives together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on human rights defenders. On 31 August, the Government assured the mandate-holders that the press release had no legal effect. The Government also informed the mandate-holders that it had issued a public statement in response, explaining that the UDHR was not banned in the Maldives. Nevertheless, even informed members of Maldivian civil society remain under the impression that the UDHR was not applicable in the Maldives.

18. The Special Rapporteur took the opportunity of the mission to follow up on the issue with various interlocutors. The representatives of the Supreme Council for Islamic Affairs indicated that they were still of the opinion that article 18 of the UDHR conflicted with the principles of Islam, particularly with regards to the issue of conversion. Members of the Human Rights Commission informed her that the Commission had nonetheless subsequently continued to distribute the translations of the UDHR without hindrance. However, other interlocutors told her that it was not clear whether the translations had in fact been distributed.

19. The country has ratified or acceded to a number of international human rights treaties. It has ratified the Convention on the Rights of the Child, along with its two Optional Protocols and acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, to CEDAW and its Optional Protocol and to ICERD. In October 2006, the Government took the important step, in accordance with the Roadmap for the Reform Agenda, of acceding to ICESCR and ICCPR and its First Optional Protocol.

20. The Maldives has entered reservations relevant to freedom of religion or belief to a number of international treaties. These reservations are discussed below.

International Covenant on Civil and Political Rights

21. On accession to ICCPR on 19 September 2006, the Government entered a reservation to article 18 on freedom of religion or belief. The reservation provides that, “The application of the principles set out in article 18 of the Covenant shall be without prejudice to the Constitution of the Republic of Maldives.” The Special Rapporteur notes that the text of the reservation does not clearly specify whether the reservation is limited to the manifestation aspects of the right, or whether it is also intended to apply to the freedom to have or adopt a religion or belief of one’s choice. In this regard, the Special Rapporteur notes that the Human Rights Committee, which is

the body responsible for monitoring the implementation of the ICCPR, provides, in paragraph 8 of its general comment No. 22, that States parties may not reserve the right to deny freedom of thought, conscience and religion or to deny to minorities the right to profess their own religion.

22. The Special Rapporteur notes however, that the Government did not enter any other reservations to ICCPR and that as such, a number of important articles relevant to freedom of religion or belief are now applicable in the Maldives. These include article 2, which obliges the Government to respect and to ensure the rights recognized in the Covenant to all individuals within its territory and subject to its jurisdiction without distinction on the basis of religion. They also include article 20, which obliges the Government to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence; article 26, which prohibits discrimination on religious grounds; and article 27, which provides for the right of members of religious minorities to profess and practise their own religion.

Convention on the Elimination of All Forms of Discrimination against Women

23. The Government of the Maldives has entered a reservation to article 16 of CEDAW, which concerns equality between men and women and the elimination of discrimination against women in all matters relating to marriage and family relations. The text of the reservation provides that, “The Government of the Republic of the Maldives reserves its right to apply article 16 of the Convention [...] without prejudice to the provisions of Islamic sharia, which govern all marital and family relations of the 100 per cent Muslim population of the Maldives.”

24. In January 1999, the Maldives submitted its initial report to the Committee on the Elimination of Discrimination against Women (CEDAW/C/MDV/1). The Government explained “the purpose” of the report was to explain the rationale behind the reservations made to the CEDAW. The Government assured that “new steps and actions” would result in reducing the reservations. In matters of testimony, the report clarifies that men and women have equal weight except in matters specified in the Koran (CEDAW/C/MDV/1, para. 6). With respect to family laws, the report explains that there is little codification but it is easier for men to obtain a divorce (*ibid.*, para. 155). A female *de jure* requires the consent of the male guardian for a marriage contract to be valid but according to the report women have “a lot of autonomy to choose a marriage partner” in practice (*ibid.*, para. 158). Polygamy is permitted under the law, though is not very common.

Convention on the Rights of the Child

25. The Maldives has entered a reservation to article 14, paragraph 1, of the CRC which requires States parties to respect the right of the child to freedom of religion or belief. The reservation states that, “The Government of Republic of the Maldives expresses its reservation [...] since the Constitution and the Laws of the Republic of the Maldives stipulate that all Maldivians should be Muslims.” The Special Rapporteur emphasizes that the rights in the CRC are not limited to children who are Maldivian citizens. The Convention confers rights on all children within the jurisdiction of the Maldives, including non-citizens, who may well adhere to religions other than Islam. The Special Rapporteur also notes that the text of the reservation specifically reserves article 14, paragraph 1, which comprises the right to have or adopt a religion or belief of one’s choice.

26. The Maldives has also entered a reservation to articles 20 and 21 of the CRC, dealing with alternative care and adoption. The text of the reservation provides that, “Since the Islamic sharia is one of the fundamental sources of Maldivian Law and since Islamic sharia does not include the system of adoption among the ways and means for the protection and care of children contained in sharia, the Government of the Republic of Maldives expresses its reservation with respect to all the clauses and provisions relating to adoption in the said Convention on the Rights of the Child.” Articles 20 and 21 of the CRC concern the provision of temporary and permanent care, including foster care, adoption and kafalah for children deprived of their family environment. It would be productive to further discuss these concepts in relation to the rights of abandoned or vulnerable Muslim children.

B. Overview of relevant constitutional provisions

27. The Constitution of the Maldives was adopted on 1 January 1998. Article 1 provides that, “The Maldives shall be a sovereign, independent, democratic republic based on the principles of Islam.” Article 7 goes on to provide that, “The religion of the State of the Maldives shall be Islam” and according to article 38 “The President shall be the supreme authority to propagate the tenets of Islam in the Maldives.” Chapter II of the Constitution relating to the fundamental rights and duties of citizens does not provide for the right to freedom of religion or belief. She notes that in the context of the constitutional reform process, the Law Society has recommended that an article prohibiting discrimination on grounds of religion or belief be included in this chapter on the fundamental rights and duties of citizens. However, following discussions with representatives of the Law Society, it is unclear to what extent there is unanimous support for this recommendation within the Law Society itself.

28. The Special Rapporteur notes that many of her interlocutors, at all levels of society, were of the opinion that the Constitution of the Maldives required all Maldivians to be Muslim. Furthermore, the text of the reservation to article 14 of the CRC states that the Constitution of the Maldives stipulates that all Maldivians should be Muslims. However, the Office of the Attorney-General clarified to the Special Rapporteur that while the Constitution does designate Islam as the State religion, there is in fact no constitutional provision expressly requiring Maldivians to be Muslim.

IV. RESPECT FOR FREEDOM OF RELIGION OR BELIEF IN THE MALDIVES

29. The Maldives has traditionally been recognized as a moderate Islamic country. The Government has placed great importance on preserving and promoting religious unity within the country, a concept which it regularly links to that of national unity. The Special Rapporteur notes that the Government receives widespread support amongst the population, and from the opposition parties, on this issue. The emphasis on religious identity is central to the political and legal framework of the country, and religious homogeneity is considered a vital element for guaranteeing national unity.

30. In her discussions with various interlocutors, the Special Rapporteur was informed about a number of potential challenges to religious unity, including the potential impact on the population of the influx of large numbers of tourists from various cultural backgrounds. Many of her interlocutors expressed their concern about citizens returning from carrying out their

studies at madrassas abroad and some were of the view that the creation of the political party system could result in some parties campaigning on political platforms based on more fundamental ideas about Islam. Additionally, some of her interlocutors expressed their concern about the possibility of foreigners trying to carry out missionary work in the country.

31. The Special Rapporteur is impressed by the desire of the Maldivian people to preserve national unity, but is concerned that the concept of national unity appears to have become inextricably linked to that of religious unity, which some of her interlocutors seemed to equate with religious homogeneity. She recognizes that almost all Maldivians are indeed Muslim. However, she considers that some of the laws and policies that have been implemented to preserve religious unity have the potential to violate freedom of religion or belief, and may in some instances have resulted in actual violations thereof, particularly in the case of certain vulnerable groups including migrant workers and other foreigners and persons in detention.

A. Freedom to have or to adopt a religion or belief

32. “[T]he freedom ‘to have or to adopt’ a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views”, observed the Human Rights Committee in paragraph 5 of its general comment No. 22. It also includes the right to be free from any coercion in matters of religion or belief. The freedom to have or to adopt a religion or belief cannot be limited or restricted under any circumstances. In the Maldivian context, the President has been quoted as saying that all Maldivians are born Muslim and although the “Law on the Protection of the Religious Unity of Maldivians” does not expressly require Maldivians to be Muslim, it presumes that all Maldivians are Muslim. Apostasy, or the formal renunciation of Islam, is a criminal offence under applicable, although uncodified, sharia law.

33. The Special Rapporteur received anecdotal information about a relatively small number of Maldivians who had converted away from Islam. She was informed that these individuals had not been able to admit to converting due to the potential social and legal ramifications. She was informed that on the rare occurrences in which Maldivians have been suspected of having converted to another religion, they have not been formally charged with apostasy, but have been detained and subjected to coercion in order to encourage or force them to reaffirm their faith in Islam. She was also informed that individuals suspected of having converted to another religion have been subjected to verbal abuse by members of the population. In theory a Maldivian residing abroad could change religion, but as a result, he or she would be denied a number of important political rights.

34. There is no bar on non-Muslim foreigners converting to Islam. Indeed, the Special Rapporteur received information about a number of foreign prisoners who converted to Islam while in custody. The Special Rapporteur also notes that the Family Law prohibits Maldivian women from marrying non-Muslim foreigners, whereas it allows Maldivian men to marry non-Muslim foreigners, as permitted by the sharia.

B. Freedom to manifest one’s religion or belief

35. The right to freedom of religion or belief includes the freedom, either individually or in community with others and in public or in private, to manifest one’s religion or belief in worship,

observance, practice and teaching. The freedom to manifest one's religion or belief may only be subjected to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Law on the Protection of the Religious Unity

36. According to the Law on the Protection of the Religious Unity, the Government and the people of the Maldives are obliged to protect and safeguard religious unity and harmony in the country. The law criminalizes any action or form of expression intended to disrupt, jeopardize or disunite social and religious order and harmony. A person convicted of committing, or attempting to commit, an offence can be sentenced from two to five years' imprisonment or house arrest.

37. A person convicted of aiding or abetting an offence can be sentenced to a fine, two to four years' imprisonment or house arrest. The Special Rapporteur notes that seven people have been convicted of offences under that law during the last five years. Of these, four were convicted in 2002 for spreading materials which called to join Christianity and two people were convicted in 2005 for conducting Friday prayers without the licence to do so. Another person was convicted in 2006 for teaching Islam without the proper authorizations. Furthermore, 3 people were arrested under the act in 2001, 22 were arrested in 2002, 15 were arrested in 2003, 2 were arrested in 2004 and 11 were arrested in 2005.

38. In addition to criminalizing certain actions and forms of expression, the religious unity law also empowers the President, who has designated the role to the Supreme Council, to license preachers and authorize domestic and imported materials about Islam. The sole role of preachers is to read Friday prayers, which are centrally drafted by the Supreme Council in order to maintain religious harmony. According to the Supreme Council, nobody had lost their licence for expressing their own ideas to their congregations. However, other sources informed the Special Rapporteur that at least one individual had been arrested and subsequently lost his licence for this reason.

39. In addition to the Law on Religious Unity, there are a number of other legal provisions that restrict speech and other forms of expression about religion or belief. Article 25 of the Constitution limits freedom of expression in the interest of protecting the basic tenets of Islam. The Constitution also provides that members of the People's Majlis or the Special Majlis can be held liable for anything they say that contradicts the basic tenets of Islam.² Section 22 of the Rules Governing the Publication of Newspapers, Magazines and other such Items prohibits the publication of anything that may create religious dissent among people or impair the Islamic character of the Maldives. The Government informed the Special Rapporteur that when a person breaches Section 22 of the said Rules, that person would be tried under Section 88 (a) of the Penal Code (Disobedience to order issued under or authorized by judicial or legal authority), for which the penalties are a maximum of six months' house arrest or banishment or jail.

² See article 84 and article 104, respectively (the Constitution is available on the Internet at: <http://www.unhcr.org/cgi-bin/txis/vtx/rsd/rsdocview.html?tbl=RSDLEGAL&id=3ae6b59618&count=0>).

40. The Special Rapporteur emphasizes that a number of limitations also undermine the freedom of religion or belief of Muslims, in that they are bound to follow the official interpretation of Islam. She received credible information that the Government issued orders prohibiting Islamic teachers from answering students' questions on certain subjects. Instances were also reported of students being picked up by the police for discussing other religions. She notes that a survey published in 2005 by the United Nations Development Programme, UNICEF and United Nations Population Fund entitled "Youth Voices - Facts, opinions and solutions", indicates that 81 per cent of the youths in the Maldives consider that it is not important to respect other religions. She encourages the Ministry of Education in its efforts to ensure that values of pluralism constitute an important part of learning.

The Law on Prohibited Items in the Maldives

41. The Law on Prohibited Items in the Maldives prohibits the import of religious material offensive to Islam and idols used for worshipping. The law prohibits the import or carrying of religious symbols, written text or other banned items, like dogs associated as being *haram* (taboo) in Islam. The offence carries a penalty of imprisonment, banishment, or house arrest for a period of three to eight years. The Special Rapporteur was informed that although custom officials did confiscate certain items under the law, criminal charges were rarely brought against persons caught trying to import objects contrary to the law. She received differing information as to the type of items and materials that were confiscated under the law. Some of her interlocutors informed her that custom officials would only confiscate large idols intended for public display. However, others informed her that custom officials confiscated items like bibles or small idols of the Lord Buddha intended for private use.

The Law on Associations

42. Furthermore, the Law on Associations essentially prohibits the creation of faith-based associations, other than those based on Islam. Article 6 of the Law on Associations provides that an association can only be registered if its rules of procedure are not contrary to the principles of Islam. Article 19 of the Law on Associations goes on to provide that it is forbidden to establish an association to contradict a tenet of Islam, or to insult Islam, or to violate or diminish the religious unity of Maldivians, or to expose or spread ideologies and slogans of religions other than Islam.

C. Discrimination on the grounds of religion or belief

Constitutional provisions excluding non-Muslims from public positions

43. The Constitution precludes non-Muslims from voting and holding various political positions. Article 34 (a) requires the President to be a Muslim of Sunni following and article 56 (a) requires the Cabinet, which includes Ministers and the Attorney-General, to be Muslims of Sunni following. Article 66 (a) requires members of the People's Majlis to be Muslim, article 107 requires Atoll Chiefs to be Muslim and Article 113 requires the Chief Justice and High Court judges to be Muslim. Furthermore, article 134 (a) provides that a citizen can

only be qualified as a voter if he is Muslim. The Special Rapporteur notes that in the context of the constitutional reform process, the Law Society has recommended that the Constitution be amended to require holders of public posts to be Maldivian, without additionally requiring them to be Muslim.

Legislation excluding non-Muslims from public positions

44. There are also a number of laws limiting eligibility for public office to Muslims. The Human Rights Commission Act, which was adopted by the People's Majlis on 8 August 2006 and subsequently ratified by the President, stipulates that only Muslims qualify as members of the national human rights institution. This provision was retained in the legislation, despite opposition from members of the Human Rights Commission and the international community.

Legislation preventing non-Muslims from obtaining citizenship

45. It is not possible for non-Muslims to obtain Maldivian citizenship. Section 2 (a) of the Citizenship Act provides that in order for a person to become a citizen of the Maldives he must satisfy a number of conditions, including being a Muslim. The Special Rapporteur was informed by a number of her interlocutors that it is necessary to pass a test on Islam in order to obtain Maldivian citizenship. In this regard, however, the Government stated that it was not a legal requirement for applicants to undergo a written or oral test on Islam. A draft bill has been under consideration, which if adopted, would replace the current Citizenship Law. The Special Rapporteur notes that this bill also requires applicants for Maldivian citizenship to be Muslim. Indeed, it goes further than the current law, in that it stipulates that converts to Islam can only apply for Maldivian citizenship two years after their conversion. Following a debate in Parliament, the Government decided to withdraw the draft bill in order to make several changes and it envisages resubmitting the bill to Parliament in 2007.

D. Freedom of religion or belief of vulnerable groups

Migrant workers, their families and other foreigners

46. There are approximately 53,000 expatriate workers in the Maldives, from a number of countries. Their right to adhere to religions or beliefs of their choice is respected in the Maldives. However, restrictions are placed on their right to manifest their religion or belief. In this regard, the Special Rapporteur emphasizes that it is all persons within a particular country, and not just the citizens of that country, who have the right to freedom of religion or belief, including the right to manifest that belief. Muslim foreigners do not generally suffer any restrictions on their right to manifest their religion or belief, although members of local congregations on some of the islands do not allow foreign manual labourers to attend the mosque.

47. In relation to non-Muslim foreigners, the Special Rapporteur notes that there are practical limitations on their right to manifest their religion publicly, and these limitations are supported by the vast majority of the population. As a matter of practice, they are not allowed to build places of worship or carry out prayers or religious rituals outside of their homes. They are allowed to congregate in their own homes to pray and carry out religious rituals, but they are not allowed to invite Maldivians to these gatherings. In the Maldives there is not a single official place of worship for religions other than Islam. Any suggestion of allowing foreign workers,

teachers and other non-Muslim residents to worship openly is met with firm resistance. All foreigners are prohibited from propagating their religion or carrying out missionary work.

48. Furthermore, the Special Rapporteur has been informed that expatriate school pupils who choose not to study Islam are unable to pass their end of year school exams. Islam forms an integral part of the school curriculum and it has been alleged that alternative subjects are not offered to expatriate school pupils. The paradox of this situation seems to be that a large percentage of schoolteachers in the Maldives are expatriate themselves. However, the Government maintains that expatriate students who choose not to follow Islamic Studies and Dhivehi language can opt out not to do so.

Persons under any form of detention

49. The Special Rapporteur visited Maafushi Prison to assess compliance with international standards on the freedom of religion or belief of persons under any form of detention. At the time of her visit there was a total of 475 remand and convicted prisoners. Of these, 33 were women and 12 were foreigners, predominantly from South Asian countries. The Special Rapporteur notes that Maldivian prisoners are given a choice as to whether they want to attend the prison mosque for Friday prayers. However, foreign prisoners who adhere to the Islamic faith are allegedly not allowed to attend the prison mosque, although they are not prevented from performing their prayers in their cells. The Special Rapporteur was informed that some of these prisoners had their copies of the Holy Koran confiscated. The Government, however, informed the Special Rapporteur that there do not exist any discriminatory practices that prejudice foreign prisoners of Islamic faith from performing their prayers or acquiring copies of the Holy Koran.

50. Foreign prisoners adhering to other faiths do not have access to clergy, although such a denial may well be legitimate given their small number. However, she is concerned that they are unable to perform their prayers due to the objections of their Maldivian cellmates. Until recently they had been detained together and had at that time been able to perform their prayers in an unhindered manner. She received differing information regarding the provision of religiously sensitive meals to non-Muslim prisoners. The prison officials informed her that they catered for the different diets and the Government noted that the prison authorities have not received any requests for a vegetarian diet from non-Muslim prisoners. However, the Hindu prisoners informed her that they were not provided with a vegetarian diet, but received the same diet as the other prisoners, including meat.

Women

51. The Special Rapporteur was informed that the number of women wearing the headscarf has significantly increased during the past year, and particularly on the islands outside the capital. Many of her interlocutors expressed to her their concern that the increasing use of the headscarf was indicative of a growing trend towards Islamic extremism in what has traditionally been a moderate Islamic country. In this regard, she emphasizes that there can be a wide variety of reasons behind a woman's choice to wear the headscarf. She also stresses that the display of religious symbols, including the wearing of the headscarf, constitutes an integral element of the right to manifest one's religion or belief.

52. The Government informed the Special Rapporteur that, except for the two Arabic medium schools, it is not compulsory to wear headscarves at school. Furthermore, the Special Rapporteur received information that in at least one case a female student had been excluded from school for wearing a headscarf, as it covered the school insignia on her uniform blazer. She was also informed about a public notification dating from the late 1990s, which prohibits women from wearing veils that cover the whole face, although she received differing information on the extent to which the domestic legislation is enforced. A distinction should be made between limitations placed on the wearing of headscarves in general and limitations on veils which cover the whole face. In any event, she considers that where an individual has freely chosen to wear a religious symbol, any restrictions on their right to do so will be legitimate if they are applied in a restrictive manner on the grounds of public safety, order, health, morals or the fundamental rights and freedom of others as laid down in article 1, paragraph 3 of the 1981 Declaration and article 18, paragraph 3, of ICCPR.

53. On the other hand, the Special Rapporteur also received reports that some women may have been pressured into wearing the veil. The Special Rapporteur was unable to identify the source of such pressure although some of her interlocutors told her that in some cases women who do not wear the headscarf are being pressured by their relatives and other citizens. Others informed her that such messages had been broadcast on State media, which carries 28 per cent religious content on the television and 34 per cent religious content on the radio. Indeed, on one of the islands she visited, the women informed her that they had begun to wear the headscarf after programmes on the State-owned media, according to which, the Tsunami had been the result of Maldivians failing to live in accordance with Islam. Others told her that either self-proclaimed preachers, acting outside the authority of the Supreme Council, or newly formed political parties were encouraging women to wear headscarves. The Government noted that it was not the policy of the Government to pressure women into wearing the headscarf and that it does not broadcast programmes that promote or urge women to cover their heads.

V. CONCLUSIONS AND RECOMMENDATIONS

Historical and political context

54. **The Special Rapporteur was the first special procedures mandate-holder to carry out a country mission to the Maldives. She welcomes the steps the Government has taken to engage with international human rights mechanisms and is particularly pleased that the Government has issued a standing invitation to all special procedures in April 2006. She looks forward to sustained cooperation between the Government and the various special procedure mandates.**

55. **She appreciates the Roadmap for the Reform Agenda and sincerely hopes that it will be implemented effectively. She emphasizes the interdependency of all human rights and notes that freedom of religion or belief can only be truly respected in a context in which other human rights are also respected. The implementation of a number of elements of the Reform Agenda, including strengthening the system of governance, enhancing the independence of the judiciary, enhancing the role of the media and strengthening civil society, will also be vital contributories to ensuring protection of the right to freedom of religion or belief.**

56. Whilst welcoming the fact that national unity and harmony are highly prized in the Maldives, she notes that the concept of national unity appears to have become inextricably linked to the concept of religious unity, and even religious homogeneity, in the minds of the population. She notes that religion has been used as a tool to discredit political opponents and that political opponents have publicly accused each other of being either Christians or Islamic extremists, both of which have proved to be damaging accusations in a country in which religious unity is so highly regarded. She emphasizes that political actors across the board must refrain from using religion as a tool to discredit opponents. She considers that the Government must take the lead in raising awareness about the issue of freedom of religion or belief, and human rights in general, and she notes the potential role of the Human Rights Commission in this regard. She stresses that efforts to improve respect for freedom of religion or belief can only be effective if carried out in full consultation with the population as a whole, and as such she encourages the Government to translate her report, and to disseminate it throughout the country.

57. The Special Rapporteur notes that many of her interlocutors expressed their concern about the potential impact of increasing religious extremism in what has been a traditionally moderate country. In this regard, she notes that the extensive *de jure* and *de facto* restrictions on religious rights are not easy to reconcile with a moderate approach to issues of religion. She is also concerned that despite the fact that the Maldivian economy is largely dependent on income from tourism, numerous steps have been taken to restrict contact between tourists and Maldivian citizens, apparently in an effort to limit the impact of other cultures on the local population.

Relevant international standards

58. The Special Rapporteur welcomes the Government's decisive action in response to the public statement issued by the Supreme Council for Islamic Affairs, which purported to ban the Universal Declaration of Human Rights (UDHR). However, she regrets that the Supreme Council continues to hold the view that article 18 of the UDHR contradicts the Constitution of the Maldives and the Islamic faith. She encourages the Human Rights Commission to continue its efforts to translate and disseminate international human rights standards, and calls upon the Government to lend the Human Rights Commission its full support in this endeavour.

59. She welcomes the recent accession of the Maldives to the International Covenant on Civil and Political Rights (ICCPR), although she regrets that the Government has felt it necessary to enter a reservation to article 18 on freedom of religion or belief. While she understands that freedom of religion or belief is particularly sensitive in the Maldivian context, she does encourage the Government to keep the reservation under review and to revisit it in the near future. She also hopes that the Government will review reservations that are currently in place in relation to articles 14, 20 and 21 of the Convention on the Rights of the Child and article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Relevant constitutional provisions

60. The Special Rapporteur encourages the members of the Special Majlis to give serious consideration to including the right to freedom of religion or belief in the new draft of the Constitution. This right should not be limited to citizens of the Maldives, but should be extended to all persons in the Maldives. She takes this opportunity to underline that the designation of Islam as the State religion of the Maldives does not require all citizens to adhere to that religion alone. Indeed, she notes that there are numerous countries, including in the South Asia region, which have adopted a State religion, but do not require their citizens to adhere to that religion.

Freedom to adopt, change or renounce a religion or belief

61. The Special Rapporteur regrets legislative provisions requiring all Maldivians to be Muslim and hopes that legislators will review these provisions to ensure respect for the right to adopt one's own religion or belief. While she is aware that almost all Maldivians are indeed Muslims, she is concerned that these legislative provisions could result in actual violations of the right to adopt one's own religion or belief. She would like to reiterate the words of the first mandate-holder, Angelo Vidal d'Almeida Ribeiro: "Mankind has a right to diversity, to the freedom of thought, conscience and belief, without limits being imposed on anyone, except in cases where restrictions to their exercise are prescribed." (E/CN.4/1993/63, para. 53.)

62. She is also concerned by reports that individuals who are suspected of having converted away from Islam have been subjected to coercion in detention to persuade them to reaffirm their belief in Islam. She reminds the Government that the right to freedom of religion or belief includes the right to be free from coercion and encourages it to ensure that nobody is detained with the purpose of coercing them to reaffirm their belief in Islam. She welcomes the draft Criminal Code, which seeks to codify Maldivian criminal law, including sharia law. The draft Criminal Code does not criminalize apostasy and the Special Rapporteur strongly encourages legislators to adopt the pertinent provisions of the draft Criminal Code in its current form.

Freedom to manifest one's religion or belief

63. The Special Rapporteur is disturbed by provisions of the Law on Religious Unity, which criminalize any action or form of expression intended to disrupt, jeopardize or disunite social and religious order and harmony, and considers that the law has the potential to limit the manner in which people choose to manifest their religion or belief. She considers that the law may fail to satisfy the requirement that any limitations on the right to manifest one's religion or belief must be prescribed by law and must be necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. She also considers that the restrictions provided for in the above-mentioned law, as well as in the Law on Prohibited Items in Maldives and the Law on Associations, may well be disproportionate and go beyond what would be considered legitimate within the framework of international human rights law.

64. The Special Rapporteur notes that freedom of expression, as articulated by article 19 of the ICCPR, includes the freedom to express ideas and opinions about issues of religion or belief. In some instances, the expression of such ideas may also constitute part of an individual's right to manifest his religion or belief. Accordingly, she is concerned that people are prevented, both by the Law on Religious Unity and other legislative provisions, and as a result of social pressure, from expressing their views about issues relevant to religion or belief. Indeed, she observed that many people, ranging from everyday citizens, journalists and parliamentarians, exercise self-censorship on issues of religion or belief.

65. While she recognizes the desire to maintain religious harmony in the country, she notes that the role of the Supreme Council in licensing preachers and centrally drafting their sermons does have the potential to violate the right of individuals to manifest their religion or belief. In this regard, she is particularly concerned by reports that at least one preacher has been arrested and lost his licence for deviating from the centrally drafted set texts. In this regard she is also concerned by the role that the Supreme Council plays in vetting domestically produced and imported literature on Islam. In addition, she is concerned that there also appears to be limited access to the main religious texts.

Discrimination on the grounds of freedom of religion or belief

66. The Special Rapporteur is concerned that constitutional provisions, restricting eligibility to vote and hold certain public offices to Muslims, constitute *de jure* discrimination on religious grounds. She is aware that almost all Maldivians are indeed Muslims and that as such, the presence of these discriminatory provisions is unlikely to result in many actual instances of discrimination. However, the very presence of these provisions in the Constitution contradicts the treaty obligations of the Maldives, and particularly article 2, paragraph 1, in combination with article 25 of the ICCPR, as well as article 26 of the ICCPR.

67. She is also concerned by legislation limiting eligibility for certain public posts to Muslims, including the Human Rights Commission Act, and by the Citizenship Law, which stipulates that only Muslims can apply for Maldivian citizenship. She encourages legislators to consider introducing amendments to these pieces of legislation, to bring them into compliance with the treaty obligations, particularly under article 26 of the ICCPR. She notes that according to article 4, paragraph 2, of the 1981 Declaration, all States must make all efforts to enact or rescind legislation where necessary to prohibit discrimination on the grounds of religion or belief.

Freedom of religion or belief of vulnerable groups

Migrant workers, their families and other foreigners

68. The Special Rapporteur is extremely concerned by the current limitations placed on the right of migrant workers and other foreigners to manifest their religion or belief. She notes that these limitations are implemented as a matter of practice, and not as a matter of law. As such, they may fail to comply with the requirement in article 18, paragraph 3 of the ICCPR that any limitation on the right to manifest one's freedom of religion or belief must be prescribed by law. Furthermore, the Special Rapporteur questions to what extent

these limitations are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others, as set out in article 18, paragraph 3, of the ICCPR and article 1, paragraph 3, of the 1981 Declaration.

69. The Special Rapporteur encourages the Government to give serious consideration to amending the current practice to enable non-Muslims to manifest their religion or belief in a manner consistent with human rights law. She recognizes that there is a notable amount of public opposition to any changes in this regard, and as such she would encourage the Government to make serious efforts to raise awareness about freedom of religion or belief. She also strongly recommends that the Government consider acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which contains important provisions on the right to freedom of religion or belief, including the right to manifest one's belief, in public or in private, of migrant workers and their families.

Persons under any form of detention

70. The Special Rapporteur expresses her concern that the right to freedom of religion or belief of foreign prisoners is not being fully respected, including by limiting their ability to manifest their religion through prayer and worship and failing to provide them with a religiously sensitive diet. In this regard she notes paragraph 8 of general comment No. 22 (1993) of the Human Rights Committee, which provides that, "Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint." Accordingly, she calls upon the Government to develop, and ensure the immediate implementation of, a set of regulations, which could be included as an integral part of the prison rules, to ensure that persons under all forms of detention have the right to manifest their religion or belief in accordance with relevant international standards, including rules 41 and 42 of the Standard Minimum Rules for the Treatment of Prisoners.

Women

71. The Special Rapporteur expresses her concern about the seemingly widespread willingness to equate the wearing of the headscarf with increasing Islamic extremism and emphasizes that there can be a wide variety of reasons behind a woman's choice to wear the headscarf. Nevertheless, the Special Rapporteur noted with appreciation that women were able to wear headscarves without hindrance, including civil servants. At the same time she notes that every woman must have the freedom to choose how she wishes to manifest her religion or belief, and as such registers her concern about reports of increasing pressure being placed upon women to wear headscarves, including in State-controlled media.
