

NEVER AGAIN!

The role of parliamentarians in protecting and promoting human rights

Address to the Majlis of the Maldives

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INTRODUCTION

- International human rights law has its origin in the events of World War II in Europe and Asia and a determination at the end of the War that those events should never happen again.
 - International law before the War did not impede the actions of Governments within the territory of their States from doing to their own citizens whatever they liked. The doctrine of national sovereignty prevented this. So as international law was then understood, the actions of the Nazi regime only became unlawful when they were beyond the borders of Germany.
 - After the War, the nations and peoples of the world said “Never again!”. That is reflected in the United Nations Charter, adopted in 1945, and then far more explicitly in the Universal Declaration of Human Rights adopted in 1948. The Universal Declaration has become the foundation of great volumes of international treaties and other instruments forming a body of international human rights law that simply did not exist 65 years ago.
 - The determination not to repeat and not to tolerate the past drove this work of making international law and building international human rights mechanisms. That work continues today. It is not finished.
 - Merely saying “never again”, however, is not enough. The commitment needs to be
 - embedded in law, institutions and culture
 - implemented in practice and
 - monitored.

- The same dynamic has driven the development of human rights law and institutions at the national level. When peoples have emerged from colonial domination and new nations have been established, they often place human rights protection in the constitution as a way to prevent a repetition of past experiences of human rights violation. When they have overthrown authoritarian regimes, they have wanted to provide protection against any reversion. When they have gone through periods of national renewal, they have wanted to express a new vision and a new commitment.
 - The Maldives is in this position today. There were periods in the recent past when serious human rights violations occurred: a lack of democratic political participation, restrictions on freedom of speech and assembly, arbitrary arrest and detention, even cases of torture, and so on.
 - The Maldives today is far different from this. Human rights protection is found in the new Constitution. There is a national human rights commission. The courts are increasingly independent. And this change came not through violent revolution but through peaceful transition in which not only the then opposition but also the former President and his party played important parts.
 - The challenge for the Maldives now is to entrench and strengthen laws and institutions for the protection and promotion of human rights. This responsibility is shared widely in any society but it is an especially heavy responsibility for the parliament and parliamentarians. There can be no going back!
- These responsibilities derive from the various functions of a parliament and its members: legislation, accountability, representation and leadership. I will examine each of these four functions in brief to sketch what their human rights dimensions are.

LEGISLATION

- The first function of parliament is to legislate. Laws need both to recognise human rights and to provide mechanisms for their protection and promotion.
- Given your respective efforts, the law in the Maldives provides human rights recognition.
 - The 2008 Constitution (and in particular Chapter II, articles 16 to 69) provides very extensive recognition of human rights. It is one of the most comprehensive charters of rights in any constitution, according status to both civil and political rights and economic, social and cultural rights.

- The Maldives Human Rights Commission Act (Act 6/2006) extends the recognition of human rights even beyond the Constitution to include rights in *shari'ah* law and to rights recognised by regional and international treaties and declarations to which the Maldives is a party (Article 2(b))
- Maldives law also provides for institutions to implement the protection and promotion of human rights.
 - The Constitution establishes a specialist body to protect and promote human rights, the Human Rights Commission (Articles 189 to 198). The constitutional provisions are supplemented by the Maldives Human Rights Act (6/2006).
 - The Constitution also establishes other generalist bodies whose functions are critical to human rights protection, including an independent judiciary, an independent prosecutor, an elections commission and an anti-corruption commission, as well as bodies whose work has a significant impact on human rights, such as the Judicial Service Commission and the Civil Service Commission.
- Law making for human rights is not a once only responsibility. On the contrary Parliament needs to keep human rights laws and provisions under review, to ensure both their consistency with the Maldives' human rights obligations and their proper and effective functioning.
 - There are some issues of concern, for example, in relation to the Human Rights Commission Act that have prevented the Maldives Human Rights Commission from attaining full recognition as an institution that complies with the international standards for dependent national human rights institutions (the *Paris Principles*). Of course this is a concern for all Parliaments around the world. In this region the Malaysian Parliament has passed two sets of amendments to strengthen the legislation of the Malaysian Commission to ensure it complies with the international minimum standards for human rights Commissions. ALSO SRI LANKA
 - Parliament should be willing to act, and act promptly, to correct deficiencies in legislation that come to its attention.

ACCOUNTABILITY

- The second role of the legislature is to hold the executive accountable. This includes not only ministers but also civil servants and others who perform governmental functions or functions under legislation. Accountability requires that the actions and decisions of those performing public functions are open to review, that civil servants and others can be questioned by parliamentarians, that

the parliament can investigate any area of public policy and practice to ensure conformity with the law, including human rights law.

- Executive accountable to the legislature for the implementation of human rights obligations is best achieved through a specialist parliamentary human rights committee. Many parliaments have established human rights committees, and others are presently considering establishing them, for that reason.
 - Because of its specialisation, parliamentarians on the committee are able to develop their expertise in human rights law and their knowledge of executive policies and practices that might violate that law.
 - They can also act as watchdogs on government legislative proposals, scrutinising those proposals to ensure consistency with the human rights provisions in the Constitution and in other national laws and in international law.
 - In the Maldives context I would recommend that the annual reports and specialist reports of the Commission and their associated recommendations are debated in Parliament.

REPRESENTATION

- Parliamentarians represent and have responsibilities for citizens. They also have responsibilities for non citizens who are within the jurisdiction of the Maldives. This representative role is part of the essential structure of democracy.
- One dimension of representation is the responsibility to speak out for those who are represented. They have views, opinions and experiences and they rightly look to their parliamentary representatives to bring those views, opinions and experiences to the attention of the parliament and, more broadly, the community. Parliamentarians should be advocates for human rights on behalf of people generally in the Maldives.
- The other important dimension of representation is acting on behalf of an individual who has a grievance against the State or some part of the government. Parliamentarians can and should take up the individual cases of those who suffer human rights violations, both to ensure their protection and to obtain a remedy to address the harm done to them. They can
 - raise a case in parliamentary debates
 - make representations on behalf of the person concerned to the appropriate minister or department or authority

- propose and sponsor an inquiry into the case by a parliamentary committee
- refer the case to the national human rights institution for investigation and report
- assist the person to obtain legal advice and assistance.

LEADERSHIP

- Parliaments and parliamentarians play leadership roles in their communities, sharing national leadership with the head of state. A head of state embodies the state but she or he is elected by a majority vote. Because democratic parliaments have many political parties and include government and opposition members, the parliament as a whole is the highest expression of the many and varied views and aspirations of the community. Their responsibility, however, is not only to represent but to lead.
- Parliamentarians are important in shaping culture. It is well recognised that law plays only one part in human rights protection and promotion – an essential part but not sufficient to secure the full protection and promotion of human rights. The best way to protect and promote human rights is to have a human rights culture spreads through all aspects of the society – politics, business and economic life, social life. Law can promote this but leadership is required from those in positions of public responsibility. They lead through what they say and what they do.
 - Parliamentarians can be champions of human rights in the parliament itself, being willing to speak out and be counted in defence of human rights. This requires knowledge. More than that, it requires confidence and at times even courage. They must be willing to risk alienating their parliamentary colleagues and their party leaders, at times, and even to challenge public opinion when it is hostile to human rights values or contrary to human rights obligations.
 - They can also lead by their own example, becoming known as respecters of human rights in how they act. Leadership means acting consistently with the values that are advocated. Leadership is undermined – or rather bad leadership is promoted – where there is hypocrisy or criminality. For this reason, parliamentarians must be free of any suggestion of corruption, for example.

CONCLUSION

- The Maldives is known as a nation that has achieved a peaceful transition to democracy, based on respect for human rights. The responsibility for preserving and further advancing that successful transition now lies with the present

generation of political leaders, including especially those who are members of parliament. The responsibility that you bear is a weighty one but it is an exciting and rewarding challenge to be leading a nation like the Maldives at such a time.

- Much has already been achieved in advancing human rights in the Maldives. I congratulate and applaud you and your recent predecessors on this achievement. But there is still much to be done. There can be no going back. Human rights in the Maldives are now in your hands.