

Ahmed Muizzu



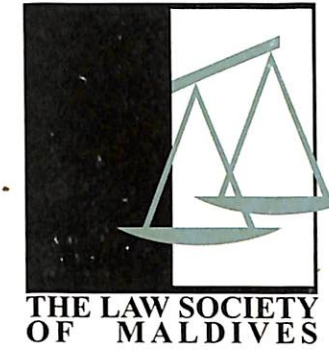
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2004 ވަނަ އަދަދު



Ahmed Muizzu



Submission of
The Law Society of Maldives



Reform of the Constitution
June 2004



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(5) $\frac{d}{dx} x^2 = 2x$

(6) $\frac{d}{dx} x^3 = 3x^2$

$\frac{d}{dx} x^4 = 4x^3$

הגזירה של x^n היא nx^{n-1}

(1) $\frac{d}{dx} x^5 = 5x^4$

(2) $\frac{d}{dx} x^6 = 6x^5$

הגזירה של x^n היא nx^{n-1}

(1) $\frac{d}{dx} x^7 = 7x^6$

(2) $\frac{d}{dx} x^8 = 8x^7$

(3) $\frac{d}{dx} x^9 = 9x^8$

הגזירה של x^n היא nx^{n-1}

הגזירה של x^n היא nx^{n-1}

(1) $\frac{d}{dx} x^{10} = 10x^9$

(2) $\frac{d}{dx} x^{11} = 11x^{10}$

(3) $\frac{d}{dx} x^{12} = 12x^{11}$

הגזירה של x^n היא nx^{n-1}

הגזירה של x^n היא nx^{n-1}

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(1) $\frac{d}{dx} x^4 = 4x^3$

(2) $\frac{d}{dx} x^5 = 5x^4$

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הגזירה של x^n היא nx^{n-1}

(1) $\frac{d}{dx} x^7 = 7x^6$

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הגזירה של x^n היא nx^{n-1}

(1) $\frac{d}{dx} x^{10} = 10x^9$

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הגזירה של x^n היא nx^{n-1}

(1) $\frac{d}{dx} x^{12} = 12x^{11}$

(2) $\frac{d}{dx} x^{13} = 13x^{12}$

הגזירה של x^n היא nx^{n-1}

(1) $\frac{d}{dx} x^{14} = 14x^{13}$

(2) $\frac{d}{dx} x^{15} = 15x^{14}$

(3) $\frac{d}{dx} x^{16} = 16x^{15}$

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• שאלות לתרגול
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• שאלות לתרגול

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התקנת חוקי התעבורה

התקנת חוקי התעבורה היא אחת מההתקנות החשובות ביותר שהתקיימו במדינת ישראל. מטרתן היא להגן על חיי אדם ורכוש, ולקדם את התנועה בתחבורה. החוקים כוללים הוראות לגבי תנאי הרישוי, אמצעי הבטיחות, ותקנות שונות המסדירות את התנועה. החוקים נחקקו בשיתוף פעולה בין משרד התחבורה לבין משרד המשפטים, ונכנסו לתוקף בהדרגה.

החוקים החדשים יביאו לשיפור בתנאי התנועה, ויגבשו את אמצעי הבטיחות. הם יאפשרו למשרד התחבורה להטיל קנסות על נהגים שפרזו, ויגבשו את אמצעי הבטיחות. החוקים יאפשרו למשרד התחבורה להטיל קנסות על נהגים שפרזו, ויגבשו את אמצעי הבטיחות.

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1. (1) מטרת החוק היא להגן על חיי אדם ורכוש, ולקדם את התנועה בתחבורה.
- (2) החוק יאפשר למשרד התחבורה להטיל קנסות על נהגים שפרזו, ויגבשו את אמצעי הבטיחות.
- (3) החוק יאפשר למשרד התחבורה להטיל קנסות על נהגים שפרזו, ויגבשו את אמצעי הבטיחות.
- (4) החוק יאפשר למשרד התחבורה להטיל קנסות על נהגים שפרזו, ויגבשו את אמצעי הבטיחות.
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110 וטר דא

החוקים החדשים יביאו לשיפור בתנאי התנועה, ויגבשו את אמצעי הבטיחות.

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111 וטר דא

החוקים החדשים יביאו לשיפור בתנאי התנועה, ויגבשו את אמצעי הבטיחות.

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112 וטר דא

החוקים החדשים יביאו לשיפור בתנאי התנועה, ויגבשו את אמצעי הבטיחות.

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התאחדות המורים והתנועה הליברלית
המרכז הליברלי

התאחדות המורים

המרכז הליברלי

ביום 14 בספטמבר 2003 התקיימה ישיבת המרכז הליברלי ובה נדונו מספר נושאים ובהם:

1. תוכנית המעורבות של המרכז הליברלי במערכת החינוך.
2. תוכנית המעורבות של המרכז הליברלי במערכת החינוך.

ביום 14 בספטמבר 2003 התקיימה ישיבת המרכז הליברלי ובה נדונו מספר נושאים ובהם: 1. תוכנית המעורבות של המרכז הליברלי במערכת החינוך. 2. תוכנית המעורבות של המרכז הליברלי במערכת החינוך.

1. תוכנית המעורבות של המרכז הליברלי במערכת החינוך

ביום 14 בספטמבר 2003 התקיימה ישיבת המרכז הליברלי ובה נדונו מספר נושאים ובהם: 1. תוכנית המעורבות של המרכז הליברלי במערכת החינוך. 2. תוכנית המעורבות של המרכז הליברלי במערכת החינוך.

2. תוכנית המעורבות של המרכז הליברלי במערכת החינוך

ביום 14 בספטמבר 2003 התקיימה ישיבת המרכז הליברלי ובה נדונו מספר נושאים ובהם: 1. תוכנית המעורבות של המרכז הליברלי במערכת החינוך. 2. תוכנית המעורבות של המרכז הליברלי במערכת החינוך.

the electoral process. A general fine-tuning of election procedures is suggested to ensure that ballot boxes are counted and results determined in the locality immediately without involving transfer of boxes to other localities. Opening of ballot boxes and counting of ballots should preferably be done in the presence of contestants in their respective constituencies.

It is further suggested that the Elections Commission should be totally independent and should stand outside the executive and the civil service branches of government. The terms of appointment and termination of the commission chairman and its members should be determined such that ensure their independence from all departments of government. The Commissioners should preferably be given a one-term appointment of ten years duration so as to enhance the prospects of impartiality in the workings of the commission. The Elections Commission should remain a constitutional body as it is but the constitution should provide further assurance of its independence, which may in turn also require additional legislation on matters of detail concerning efficient and impartial management of the electoral process. It is further suggested that chairman of the election commission should be appointed by the President with the approval of the People's Majlis.

10. Political Parties

Views are divided over the formation of political parties, which do not exist at present, even though the 1997 constitution does permit formation of societies and associations. It was thought the absence of political parties was due probably to a recent People's Majlis vote on the issue. Those who are against political parties say mainly that it might encourage disunity and also that neither the existing constitution nor any of the previous constitutions have addressed the subject in specific terms and provided no guidelines on political parties. That Maldives does not have political institutions to intergrate an orderly party mechanism within its constitutional structure. It was further argued that the people of Maldives are 100% Muslim and there was no scope for political parties in Islam. This is not, however, an accurate position as Muslim scholars and commentators have held different views on the subject. Whereas some are of the view that the Muhajirun and the Ansar (migrants and helpers) were Islam's earliest parties, others have intimated that the madhahib are in many ways like juridical parties. Even the Qur'an contains a sura by the name al-Ahzab (the parties)!

Those who support the formation of political parties argued that the constitution should assign a role for organised opposition to present its case openly to the nation, failing which it would be difficult to distinguish between disciplined and uncontrolled opposition. This can only be done by allowing formation of political parties. It was further argued that in the absence of opposition the entire government is like one single party especially in view of the fact that the President appoints most of the leading figures in all the three organs. Then it was pointed out that the Maldives has already seen, within recent months, the emergence of a political party in exile. In the absence of a constitutional framework to ensure legitimacy, there is the possibility of emergence of parties with undeclared agendas and no identifiable plan of activity and manifesto. Yet a note of caution was also added that careful guidelines should be provided for political parties and that the constitution should contemplate a certain period of time for preparatory work, including the introduction of political parties law within that period. There should be a set of basic guidelines in the constitution to preclude formation of divisive and sectarian parties. Thus it was suggested that no political parties should be allowed based on Islam, nor a particular madhhab and

school thereof, as all Maldivians are Muslim and religion should not be politicized in that way. Similarly regionalism and monarchy were mentioned as two other themes that should be precluded and no parties should be allowed to take these as their basic agenda and plan of action. This would leave such subjects as democracy, social justice, basic rights and liberties, and peoples welfare themes for political party activism. There should be total transparency and no party may be either financed or promoted by an alien government.

11. Principles of Policy

It may seem advisable to add a small chapter to the constitution that provides a set of guidelines regarding matters of interpretation, government policies and the practices of lawyers and judges. Some general guidelines to strengthen the foundation of democracy, the rule of law, accountability, fundamental rights and liberties may be provided. There are even in the present constitution sections which really incorporate a basic principle of policy. Article (31) for example provides thus that any section of the existing laws and regulations that is inconsistent with fundamental rights and liberties "shall to the extent of such inconsistency be void." Another principle of a similar type may be added, for example, that a minimalist approach should be taken toward imposing restrictions on basic rights and liberties, whenever the constitution subjugates such rights to the application of the existing law. Some principles of policy that cannot be placed elsewhere in the text such as guidelines on social justice and distribution of wealth, guidelines that address the needs of the family and the youth, Maldives international obligations and the extent it may commit itself to the Universal Declaration of Human Rights 1948 and so forth may also be placed in this chapter.

Conclusion

What has been said and presented in this paper is the outcome of consultation with a cross-section of people who had an opinion or a counsel to give on issues of concern to the prospects of constitutional reform in the Maldives. I have personally enjoyed the experience and would like to thank everyone most warmly for their friendly encounter and contribution. I have met with a large number of people and it would not be possible here to refer to all of them by name. Some have also said they would prefer not to be quoted or named. Their advice and counsel would hopefully mark a fresh momentum toward improving the prospects of justice and good governance in this country, a government that articulates the term of its commitment to the welfare of its people. The effort that is made here is, I believe, also in harmony with the best values and objectives of Islam. Government in Islam bears a strong affinity with consultation (shura) and public benefit (maslaha). According to a legal maxim of Islamic Law "the affairs of the Imam (or government) is judged by reference to maslaha- amr al- Imam manut bil-maslaha." The best way to identify and realize the people's maslaha is through consultation. In a reference to one of the virtues of the early Muslim community, the holy Qur'an declared that "their affair is (determined) through consultation among them." If the attempt in this paper marks a step in that direction by identifying the avenues of bringing greater benefit to the people and it has done so through consulting the people, then I believe the basic approach here bears harmony with Islamic values. The government and people of Maldives stand tall for their impressive maslaha-oriented achievements in the eradication of poverty and their strident march toward prosperity, and this really bodes well for their continued success along the path they have already treaded for a long time.

The more specific aspects of fundamental rights that came under scrutiny included the following:

- a. As already noted there are too many references to law in the present constitution whereby the text refers to law in the context of almost everyone of the basic rights. Such references to law tend to derogate from the force of the constitutional affirmation of rights and liberties, which is why they should be reviewed and references to law should be made only when deemed to be absolutely inevitable or when reference to law strengthens the substance of a basic right.
- b. The constitutional clauses on freedom of expression should be fine tuned with a view to providing a firm constitutional foundation for freedom of expression. The constitution should also make a clear reference to freedom of the press, which many observers noted to be next to non-existent.
- c. Notwithstanding the fact that the present constitution (Art. 27) provides for freedom of societies and associations, this has remained unimplemented. Many commentators recommended formation of political parties. Some also drew attention to the provision of the penal code which prohibits assembly of three persons against the government. This was said to be too restrictive and should be revised.
- d. Article 15(b) of the constitution which proscribes arrest and detention of anyone unless the law explicitly provides so is not being observed. Some commentators noted that there were persons in detention for as long as one year without any judicial order. In this connection it was suggested that a partial remedy for this situation could be sought through introducing a bail system.
- e. Many commentators spoke of persistent ambiguities concerning the right to counsel and the defense lawyer's right to appear before the court. Even though new regulations that were introduced in March 2004 entitled the defense counsel to appear in court, ambiguities still persisted over the extent of the right of defense and standards of proof. To address these especially in the context of Shari'ah is necessary in order to strengthen the position of the defendant in court proceedings. Some guidelines could be provided in the constitution.

A question also arose as to who made the request for a legal counsel, and how was that request recorded or made verifiable. Could the parents of a detainee send a lawyer to defend their son or daughter under arrest? Commentators also noted that the arrest and detention procedures needed to be clearly articulated by law. It was unclear right now, for instance, as to whether confinement to an island actually amounted to detention.

Article 15(2) of the constitution entitles a Maldivian citizen who is "subjected to oppressive treatment" to appeal to "the concerned authorities and to the President." It was said that "the concerned authorities" did not include the courts. A further ambiguity exists here as the President can refer the case to a Minister or vice versa neither of whom may take a clear position and protracted delays may thus be caused. Someone should be answerable and a clear procedure should therefore replace the present one; the courts should naturally play a role in that procedure.

A certain ambiguity was also noted in Article 16(2) of the constitution which provides, with reference to the right to defence of an accused person who "shall be allowed to obtain the assistance of a lawyer whenever such assistance is required." The word "required" is ambiguous, and the phrase "shall be allowed" is also said to be unwarranted and non-committal; both should be revised. It was further noted in the same Article that the right to defence was subjected to the phrase "in accordance with Shari'ah." This was said to be unnecessary and should be omitted altogether. Moreover, entitlement to legal counsel should be assured as of the time of arrest, and not from the time one is "charged with an offence" in the court as Article 16(2) tends to suggest. The accused should also know the charge he is faced with as of the time of arrest.

A question was asked: is there a right to silence for the accused either in the trial or pretrial proceedings?

It was further stated that there is no law on privacy at present, and yet Article(20) of the constitution protects confidentiality of personal letters, messages, and communication subject to this clause: "except as expressly provided by law"!

Article (18) of the constitution declares personal dwellings inviolable, yet irregularities in police practice have been noted with concern. Sometimes the police enters a private home for search and seizure at 2.00 a.m without a warrant or judicial order. The text should address this in such a way that would curb such violations.

Article (19) declares that people are free to acquire knowledge and impart it provided it "does not contravene law." It was suggested that the last phrase should be omitted and also that education, especially at the primary school level, should be provided by the state as a matter of right.

Article (30) declares it a duty of the citizens "to protect and uphold the constitution." It was suggested that this should be a duty of the state as well.

f. The right to work and the worker's right to pension are recognised in the present constitution. Yet there is no pension law to provide the necessary details on workers' right to pension. The public sector employees are entitled to pension but not the private sector as they are not bound by any law. It is suggested that Article (24) of the present constitution should elaborate further on this. Some commentators also said there should be a social security system to protect the unemployed and that the constitution should provide some guidelines.

g. A new clause should be added on the right to life that may also provide basic guidelines on such matters as euthanasia and abortion.

9. Elections

Commentators spoke of irregularities in the election procedures that tended to undermine credibility of

sometimes to correct procedure. The other side of this story is a certain shortage of qualified people to fill judicial positions. It seems that competent individuals are attracted by the more lucrative rewards of private practice and even though the judges are relatively well paid, the salaries are not competitive. Then there is the question of employing to judicial posts persons who are competent in both the civil law and Shari'ah, which is not easy to obtain. The constitution should set guidelines nevertheless on the immunity of judicial office and its protection against executive interference. Appointment, salary and promotion matters of the judges as well as the terms of their termination and dismissal should be separately regulated by law. They should not in other words be treated as civil servants in every respect. More specifically the following suggestions were made for constitutional reforms of the judiciary.

a. There should be a three-tiered system of courts under the supervision of Chief Justice. There is at present a basically two-tiered system in operation and it is the President who acts as Supreme Court himself. This is arguably said to be in line with the Islamic position whereby the head of state also combines the highest judicial authority in the land. The President sits, it seems, in council with the Chief Justice, the Speaker of People's Majlis, and Minister of Justice. They receive petitions and apply decision making methods that are more akin to issuing executive orders with no proper judicial procedures. The anomaly of this method is obvious when it is noted that the Chief Justice may be involved in approving or disapproving his own decisions. If the case involved a crime against the state, then the state would also be judging its own case. This practice ought to be discontinued altogether and replaced by a regular three-tiered court system with a Supreme Court as the highest authority at its helm.

b. The Chief Justice should be appointed by the President based on professional merit including a track record of at least 15 years of judicial service. The President's selection and appointment of the Chief Justice should be subject to ratification by parliament. Some commentators also spoke of the exceedingly authoritarian methods of the Chief Justice who tended to supervise every decision of the High Court, saying that there had never been a dissenting judgement in the High Court, and that the five judges decide all cases by unanimous consensus. The High Court judges, indeed all judges, should enjoy independence in making their decisions without any level of supervision that amounts to interference.

c. Due to the relatively small size of the population of Maldives it was thought that Supreme Court consisting of five judges would probably be sufficient.

d. In the interest of their independence from executive domination the Chief Justice and Justices of Supreme court should be appointed for a one non-renewable term of say ten years. An earlier termination should only be possible in the event of serious violation that the law should specify.

e. The Minister of Justice who is currently the effective head of the lower tier judiciary should no longer play any role in the court administration and judicial affairs in any capacity whatsoever. The Chief Justice and the Supreme Court should be entrusted instead with both the judicial and administrative affairs of the judiciary.

f. To ensure objectivity and professionalism in the selection and appointment of judges, some commentators suggested that there should be a judicial service commission that is in charge of selection and appointment of judges.

g. The authority to interpret the constitution should be entrusted exclusively in the Supreme Court.

h. There are at present some 204 courts in the Maldives in line with the number of its inhabited islands. It is suggested that this number should be downsized and reduced. The other side of this picture is that the islands are often far apart, such that transportation and accommodation costs might make it impractical to reduce the number of courts. This matter should be looked into in further details perhaps.

8. Fundamental Rights and Liberties

Commentator touched on various aspects of the fundamental rights chapter of the present constitution. Some observations were general and others more specific. The general critique alluded mainly to lack of enforcement mechanisms for the entire spectrum of rights and liberties. There were suggestions that one should enquire into the possibility of introducing the Common Law writs of courts such as habeas corpus, mandamus, certiorari etc., which authorise the courts to address violations of basic rights, especially by government parties, through summary and binding procedures. There may be other ways that could be explored.

Many commentators noted that weaknesses in the area of basic rights relate to parallel weaknesses in the judiciary. The courts of justice are supposed to be the bulwark and champion of people's rights and unless the country's judiciary can provide the necessary assurance, a great deal of the constitutional rights would remain theoretical and in want of implementation.

Accountability in government came under scrutiny and it was suggested that one should look into the possibilities of enhancing the substance and scope of accountability at all levels of government. More specifically it was noted that the newly established Human Rights Commission should be strengthened and accorded an independent status in the constitution. It was said that some people thought the Human Rights Commission was unconstitutional as there was no reference to it in the constitution. A similar point was made with regard to the Anti-Corruption Board which is currently a part of the civil service and has little power to look into the activity of powerful government figures. This should too be elevated into a constitutional body and guidelines should be provided on the scope and the methods of its operations. A free press goes a long way to advance the cause of accountability by exposing instances of violation. The same purpose is served by creating space for an opposition party and the recognition generally of political parties. Many commentators spoke forcefully that everyone should be accountable and no one should be allowed to escape a systemic commitment to the principle of the rule of the law. It was further stated that there should be transparency in the system so that violation of the basic rights of people is made visible and addressed in accordance with correct procedures.

6. The People's Majlis

It is widely held that the People's Majlis should be strengthened and measures should be taken to make it an effective authoritative assembly that is engaged in the legislative affairs of the country. Most commentators favoured a stronger parliament within a presidential system. The constitution should first of all ensure that the People's Majlis consist only of elected members that represent their constituencies. This would mean that there should be no appointed members in the People's Majlis including its Speaker and Deputy Speaker, who are appointed by the President under the present constitution.

A certain review of a similar kind was also suggested with regard to the composition of the People's Special Majlis. Thus it was noted in this connection that a substantial number of the People's Special Majlis under the present constitution are appointed by the president. This number may be as high as (35) out of the total of (100) members if one takes into account that the Cabinet Ministers are also appointed by the President.

It is further suggested that a member of parliament should not at the same time be an employee of the executive branch or the judiciary as this would go against the principle of separation of powers. It is noted in this connection that about eighty percent of MPs are currently also holding civil service positions. It should therefore be made a precondition of candidacy for parliament that the candidate resigns any government or civil servant post he might be holding in the first place and should not be engaged in any other employment for as long as he or she is a standing MP.

Parliament should be engaged in legislative matters and its sessions should be regular and consistent. If parliament is not in plenary session, its standing committees should still be functioning and engaged in committee works. There are parliamentary committees, yet it is noted that they hardly meet and are not engaged in the works they are supposed to be doing. Parliamentary sessions are very irregular and constituency representation is not effective. A culture of silence also tends to prevail and members of parliament are not sufficiently assertive in representing the people. The existing parliament orally debates and gives opinion but hardly acts as a decision making body even in cases where the constitution may require otherwise. A certain mindset tends to prevail in the government that parliamentary procedures are lengthy and time consuming and that most of the MPs are not experts. So the government makes all the rules.

The Speaker of the People's Majlis should have administrative powers to supervise smooth progress of parliamentary affairs, however, not independently of the parliament itself. The Speaker should have an administration committee, as he indeed has, consisting of his Deputy and Secretary General etc., who should be elected by the parliament to these offices. This may be twice within the five years tenure of parliament, once at the outset when a new parliament is inaugurated, to be renewed mid term after say two and half years. The Majlis Speaker is currently a Cabinet Minister and so are some members of the President's office who are simultaneously members of parliament. It is partly due to this strong executive anchorage of the Speaker that he more or less dictates, as noted by some commentators, the rules of procedure to the House. A set of such procedures were passed by the People's Majlis in 1990 only to be suspended in 1998 almost unilaterally by the Speaker on the assumption that it is his sole prerogative to determine the rules of procedure of the People's Majlis. All of this should be changed and the Majlis

itself should ratify its own rules of procedure. All committee chairs and members should be elected by the Majlis itself.

It is further suggested that the relevant section of the present constitution which stipulates three sessions in a year of the Peoples Majlis should be adjusted and revised as it tends to affect regularity of attendance and participation. A total of seven working months divided into two sessions might be more conducive to a regular work pattern of the People's Majlis. Some commentators observed that the constitution should stipulate among the conditions of eligibility for People's Majlis the possession of a certificate of education. According to yet another suggestion the section of the existing constitution which stipulates for two members of People's Majlis from each atoll regardless of the population size should be revised so as to make the Majlis more genuinely representative. And lastly Article (141) of the 1997 constitution concerning the sale, lease and mortgage of state property by the President should be revised so as to make such transactions also subject to ratification of the People's Majlis. One other such provision that should be revised concerns bilateral agreements with foreign governments, which are the subject of Article (147). This should also be made contingent on ratification of the People's Majlis.

7. The Judiciary

There is wide convergence of opinion on the need for judicial reforms so as to ensure a strong and independent judiciary free from the hitherto prevailing pattern of executive domination.

Commentators spoke for a revision and examination of the appointment procedures of judges and office holders in the judiciary. There is a persistent demand for transparency, accountability and procedural propriety in the judiciary. In this connection, some commentators referred to the much-publicised case in September 2003 of Evan Naseem and highlighted irregularities not only concerning excessive use of force by prison and security personnel but also torture that resulted in the death of Naseem. Irregularities in the trial procedures of Evan Naseem were also noted. One commentator thus stated that the principle of open trial was violated when Naseem's mother was barred by the authorities from attending her late son's trial. It was noted in this connection that Naseem's mother had, on a previous occasion, hit in open court one of the accused persons who was on trial for the murder of her son. Yet it was stated that barring the mother from attending her deceased son's murder trial on that ground alone was unjustified and extremist.

More generally, it is suggested that the trial court sometimes resorts to incorrect procedures, such as ordering the defence counsel to discontinue presentation whereas criminal procedure should normally entitle the defendant to have the last word.

It was further noted that weaknesses in the judiciary tended to undermine business confidence of foreign partners who conduct business with the Maldives. It is essential therefore that measures are taken in the constitution to provide for a credible judiciary that inspire public confidence within the country and beyond. The constitution and the laws of this country should ensure that everyone is accountable to the courts and that no one is either privileged or discriminated against.

Commentators also noted irregularities in the appointment and dismissal of judges with little regard

judiciary and parliament relate to one another and the executive in such ways as the constitution stipulates and they do so mainly through the President. The three organs should otherwise be self-contained and competent to deal with their own affairs.

4. Definition of Law

The definition of law in Article (156) of the 1997 constitution should be revised and clarified so as to preclude “practices of government” and also to clarify relationship of law with the Shari’ah. It is possible that practices of government actually contravene the legal norms, hence it cannot itself be a part of the definition of law. Law under Article (156) also includes “the norms and principles of Shari’ah established by the noble Quran and the traditions of the noble Prophet and the rules derived therefrom.” This wording is flexible enough to include the rulings of the fiqh schools and madhhabs as a part of Shari’ah next to the Quran and Sunnah. The reference to Shari’ah thus becomes exceedingly wide such that would be of little help to address the position of a lawyer and judge vis-a vis the Shari’ah in particular cases. The issue is complicated further by the fact that commentators have advanced different interpretations of the Quran and Sunnah even in the area of the legal rulings, or the ahkam, and parts which are known to be open to interpretation (i.e zanni). All of this tends to introduce uncertainty when it comes to the specifics. Article (156) would have been adequate perhaps if the Shari’ah were codified for purposes of judicial practice in the Maldives, But such a code does not seem to exist. If law includes the Shari’ah, as indeed it does, and Shari’ah remains uncoded, then an element of uncertainty would have entered the definition of law.

Another point that many commentators have noted in this connection is that there are too many references in the present constitution to law so much so that it often tends to dilute the constitution itself and make it dependent on law. This is particularly noted in the chapter on fundamental rights and liberties where the text frequently makes an affirmative statement and then goes on to limit the scope of the right or liberty in question by reference to law. This often tends to establish a circular position. Besides, there are times when such a law does not exist in which case a legal vacuum is created with reference to certain areas at least of the basic rights and liberties.

References to law in the text of the constitution cannot be avoided altogether. But an attempt should be made to minimize such references by omitting them or by rephrasing the relevant text such that would replace the need of making a reference to law.

5. The Executive

With regards to the constitutional status of the President of the republic there is a wide convergence of opinion on the following:

- a. There is much concentration of power in the office of the President, which calls for a review and trimming down in certain parts as may be suggested by the idea of separation of powers.
- b. The methods of election of President into office should be revised such that only an independent Election Commission supervises candidacy matters and that the People’s

Majlis does not play a role in the nomination of candidates for presidency it is assigned to under the present constitution. Parliament should basically not play any role in presidential nomination. It was further suggested that the candidate for presidency should provide a statement of policy and plan of action to enable the public to make a considered choice.

c. Nomination procedures should be designed such that require more than one contestant to run for presidency. Thus the provision of the present constitution which stipulates that only one candidate be selected by the Peoples Majlis should be revised and changed. The constitution should basically specify the conditions of eligibility for nomination of individuals that run for presidency and leave the contest open for multiple entries. The electoral process itself will determine the process of elimination and reducing the number of candidates. The Constitution should only entitle every citizen of Maldives who fulfill the stipulated conditions for nomination.

d. The constitution should also confine the number of terms a person can hold the office of president. Many have suggested that this should be confined to two four- year terms only. A person who has served for two terms should not be eligible for candidacy again.

e. There is a suggestion also that anyone who fulfills the requisite qualifications, whether man or woman, should be entitled to be nominated for presidential office. The views obtained are, however, not unanimous on this.

f. It was further suggested that the constitutional provision which stipulates that the grand parents of the candidate for presidency should be Maldivian ought to be omitted. It is deemed to be sufficient for the presidential candidate to be born of Maldivian parents.

g. The President should be accountable for his conduct in office and any references in the present constitution, such as the ones in Article 44(1&2), that are not consistent with this position should be revised.

h. The President’s powers in Article (40) to “grant pardon to persons convicted of offences and to commute sentences...” should be subjected to a process and specification of certain grounds.

i. With reference to Article 47(2b), it was suggested that the President should not appoint two of the five-member Investigation Committee that looks into his own conduct in office. The Article should therefore be revised.

Instances of disregard for separation of powers have been cited, for example, of civil servants who are simultaneously members of parliament, and also within the executive branch, of instances of irregular practices where the Minister of Transport may sit on the board of Airport Authority and of the Trade Minister appointed as a CEO of a public company. It is further noted that the Speaker of the People’s Majlis should not hold a Ministerial position as he does under the present constitution. All of this tends to interfere with the notion of separation of powers.

relevant parts, or suggest some additions but to retain the basic structure and framework thereof. Having said this, many commentators have made statements such as “There should be a complete separation of powers,” that “there has to be a real change” and “major changes to the constitution are necessary” and “one ought to make a fresh start”. There were also commentators who advised that “a change should only be considered when necessary” that “there is no such thing as complete separation of powers” and that the future directions should be informed by the constitutional precedent and history of Maldives.

Since Maldives has a fairly rich experience in constitution making that embraces an extensive range of ideas and alternatives, many ideas for amendments and reform can be derived from Maldives’s own experience. This may imply that one is not really marking unfamiliar and radical departures. Yet the reforms must be credible and address issues of public concern and unfettered, if need be, by past precedent. One ought to look not only toward the precedent of the past, but more importantly toward the current realities of Maldives and the views and legitimate wishes of its present generation. Some commentators suggest that the previous pattern of top-down approach to the constitution whereby a new ruler and regime handed down a constitution to the people should not be repeated: that the next constitutional reform should take its cue from public opinion and existing socio-economic conditions. A bottom –up approach would now seem to hold a greater appeal due to the pace and rapidity of socio-economic changes Maldives has experienced in recent decades. It is thus noted that a dominant majority of about 70% of the population are now younger people between 15-35 years age, and about 50% are below 19 years of age. Thanks to the rapid economic prosperity that Maldives has experienced, the youth are no longer concerned, as they used to be, with a basic job and bread and butter questions, but more so now with basic rights, role and participation in decision making processes. One commentator noted that a generation gap has emerged between the youth and the government. The former think that the government is unresponsive to their needs whereas the latter think it should not respond to demands but do what it considers fit. Many observers noted that there has been a great concentration and a remarkable push on the economic front which has not, however, been matched by parallel political changes.

There is also a turn around, as it were, in the locus of economic power. It was noted in this connection that in 1978, 80% of the economy was government-owned. Now it is almost the exact opposite: 80% is now private and the government only owns 20%. Yet it is noted even in this contest that within the private sector, only a small number of individuals in the tourism sector, namely the resort owners, are the ones who dominate the economy owning a drastically disproportionate part of the wealth. This concentration of wealth in the hands of small numbers has given rise to views that something should be done about a more equitable distribution of wealth in this country. The concern is equally prominent, however, that the constitution should preserve and promote national harmony, it should not penalize the wealthy for their achievements and avoid unnecessary disruptions.

3. The System of Governance

Commentators focused mainly over the choice of a presidential or a parliamentary republican system. There was no consensus on either of these but many tended to opt for a presidential republic with adequate checks and balances that allow effective participation for parliament and the judiciary. Presidential republic is seen to bear greater harmony with the constitutional history of the Maldives. A

total system change toward a parliamentary system wherein the head of state is reduced to a figure-head would require too much adjustment and may even create a political vacuum at the top to begin with.

As for the question of creating the post of Prime Minister, this too received mixed responses. The advantage of having a Prime Minister may be that it allows for a more visible separation of powers: The Prime Minister heads the executive side by side with the Speaker of the People’s Majlis and the Chief Justice who lead the other two organs respectively. Having said this, however, it was felt that having a Prime Minister within the presidential system was likely to give rise to complications. The French and Sri Lankan systems are based on this pattern and both tend to be somewhat complex, as recent experience in Sri Lanka tends to suggest. The likelihood of confusion and even conflict of jurisdiction between the President and Prime Minister cannot be ruled out, as also shown by Maldives’s own experience whereby differences between the President and his Prime Minister led to the latter’s dismissal in 1975 and no one has replaced him ever since. Hence a Presidential republican system of government without a Prime Minister is likely to be the preferable choice for this country.

There is basically no support for federalism but it was forcefully suggested that efforts should be made to develop local government by delegating power to elected local community councils. The Atoll Chiefs and the Island Chiefs should also be made accountable to their communities. The Island Committee structure that exists at present has not worked well, and Island chiefs usually do not get along well with the community due primarily to differences over financial management matters and the fact also that the chiefs are appointed by the central government. It was also said the Island Chief position tends to run in some families due to lack of proper selection procedures to ensure adequate representation.

There is a strong current of opinion that the executive power dominates both the judiciary and parliament under the present constitution. Any revision that is undertaken of the present constitution should therefore aim at a functional independence of the three organs of state from one another. This would require enhancing the roles of the People’s Majlis and the judiciary on one hand and of trimming down of the powers of the executive branch and the President on the other. It is acknowledged that complete separation of powers is neither desirable nor realistic, yet it is generally held that the 1997 constitution should be thoroughly reviewed on this. The constitution should also define and articulate how the three organs relate to one another. Thus it is felt that there is no real link between the three organs under the present constitution. It is suggested, for example, that the Chief Justice and Cabinet Ministers should be appointed with the approval of the People’s Majlis. The latter should also retain its supervisory role over the activities of Ministers. There was some reservation, however, over the question as to whether the People’s Majlis should have powers to pass a vote of no confidence on the government as a whole. The view tended to prevail that going as far as that was not likely to work out well within the presidential system. Yet it was generally held that the President should appoint Ministers and the Chief Justice and certain other key figures with the consent of parliament. In this way the system of checks and balances between the three organs could find a better grounding in the constitution. The attempt to establish a meaningful network, coordination, and inter-dependence between the three organs of state should then go hand in hand with the notion of separation of powers. Besides, the choice of a presidential republic limits to some extent the scope of separation of powers, The president, who is basically the head of the executive branch is not a figure-head and remains as a moderator who supervises the proper functioning of all the organs of state and rectifies any incidents of imbalance and conflict between them. The

Article 146

This provides for approval by the Majlis of the State of Emergency.

The Law Society proposes that:

this should provide that if the Majlis is in session its approval for the State of Emergency should be required within 14 days

If the Majlis is not in session it should be summoned as soon as possible, and approval of the State of Emergency should be required within one month from the original declaration by the President

Thereafter the State of Emergency can be retained only if the Majlis approves it for periods of three months or less as determined by the Majlis.

A Chapter on Transition

The existing Chapter XIV contains a little on how the Constitution comes into effect.

The Law Society proposes that:

provisions make it clear that any new laws must be passed within a certain period, indeed there should be a list of the new laws and institutions required and a timetable for their implementation.

Annex 1

Constitutional Reforms in the Republic of Maldives

What are the issues?

by: Professor Mohammad Hashim Kamali

Mohammad Hashim Kamali is currently Professor of Law at the International Islamic University Malaysia, specializing in Islamic jurisprudence and constitutional law. During the latter part of 2003, he served as a member, and sometime chairman, of the Constitutional Review Commission of Afghanistan and was actually involved in the drafting and review of that Constitution which was promulgated in January 2004.

1. About This Survey

The survey presented in the following pages focuses on identification of issues for purposes of possible amendment and reform of the 1997 Constitution of the Republic of Maldives, which came into force on 1st January 1998. The survey is based on interviews, meetings, and seminar discussion and consultation with lawyers, members of parliament, scholars, leading officers, and government Ministers in the Maldives over a period of two weeks of intensive engagement in May 2004. The project was sponsored by the UNDP office in Male' in cooperation with the Law Society of Maldives. The survey attempted here is basically preliminary and tentative aiming to thrash out ideas over a wide range of issues based on the audience opinion and response. It also contains suggestions and recommendations for reform coming from the persons interviewed as well as the presenter's own views and contribution to the themes. The presenter has, however, confined his views to the themes and issues that were raised in the interviews.

2. Framework and Scope

The title of this paper may call for some qualification with regard to the approach taken toward the identification of issues. One question that arose was whether one should attempt to identify a wide range of issues that tended to relate, in one way or other, to the concerns of constitutional reform, or should one take a more restrictive approach and identify only salient issues of immediate concern to the constitution. It seemed reasonable for purposes of this preliminary survey to take a wider approach and present all issues of concern the interviewees have raised and discussed and then leave it open for further consultation which may subsequently select some and exclude others in the light of what may seem feasible and in line with the prevailing conditions of the Republic of Maldives.

A parallel, although slightly different, question also arose as to whether one should aim at retaining the 1997 Constitution and work with the existing structure that it sets in place while trying in the meantime to suggest amendments, addition and omission in parts where such may seem appropriate and relevant, or else to take a fresh approach that might look more like a new constitution that is not confined to mere amendment and adjustment of the present constitution. In response it may be said that the present constitution does provide a basic framework and it would seem preferable to amend and change its

Article 134

This deals with the qualifications of voters.

The Law Society proposes:

That the age limit (c) be reduced to 18 years

That the exclusion of those in prison or detention be removed

That it be stated that a law may provide for residential qualification to be registered as a voter

Article 135

This deals with how an election result is to be challenged in court.

The Law Society proposes that it be amended to read:

Any challenge to the result of an election to the People's Majlis shall be made by means of a court action known as an election petition presented to the High Court.

This is intended to make it clear what court the case should go to rather than leaving it to the President, and also to make it clear that this is a formal court action that must be heard like any other case, and for which a decision must be made.

NEW ARTICLE ON ELECTIONS

The Law Society proposes a new article to provide that:

there must be a law regulating elections

the law must provide for limits on the amount of money that may be spent by an individual or a political party on election campaigning

the law must provide that publicly owned news media must give equal time to all political parties

the law provide for the regulation of campaigning for and on behalf of candidates within constituencies:

the Electoral Commission will publish within the constituency information about each candidate, along with the manifesto of each candidate

|| candidates must not address individual meetings, but all meetings must be convened by the Electoral Commission and every candidate will be eligible to attend every meeting in the constituency

no candidate will be allowed to canvass alone in the streets or house to house

|| these rather unusual provisions are designed to ensure that candidates do not offer bribes or other inducements, do not make promises that other candidates are unaware of, and that the information available to voters is strictly relevant to the only issue: which candidate (and party where relevant) is best able to represent the constituency

Article 136

This deals with resignation of the Commissioner.

The Law Society proposes that:

[it be deleted and replaced by the general provision on resignation of public office holders.]

Property

Article 141

The Law Society proposes that:

|| Article 141 and 142 should be amended to remove the powers of the President. Giving away state property (141) should be done according to law and be carefully regulated. There should be no suggestion that this is the personal benevolence of the President.

Emergency Powers

It is important that the authorities should be able to react swiftly and effectively to unusual situations, and it may sometimes be necessary to require citizens to do things that they are reluctant to do. On the other hand, many governments have abused emergency powers, sometimes keeping states of emergency in effect for many years, enabling them to hold political opponents in detention. So the powers should be regulated, and it should also be clear that certain rights of citizens cannot be taken away in any circumstances. At present the Constitution has provisions on emergency that in some ways do not give enough power to the authorities, but in other ways give them too much.

Article 144

This states when an emergency may be declared but is restricted to threats of war, foreign aggression or civil unrest.

The Law Society proposes that

it be amended to cover natural disasters and epidemics, [and also cover actual invasion etc (rather than just the threat)]

the declaration must be necessary to maintain or restore peace and order or to meet the needs of the public in the circumstances

such a declaration should only be used when it is really necessary.

Article 145

This indicates what sorts of powers may be used during an emergency.

The Law Society proposes that:

it be amended to restrict the rights that may be taken away and the general scope of the powers of the authorities

There ought to be a general law to provide for states of emergency, passed by the normal democratic procedures, that will set out as far as possible what the special powers would be and who would exercise them

The right to life should not be able to be taken away, and there should be a procedure to review the position of any person who is detained

The Law Society is aware of the wish of many Maldivians, particularly the younger generation, for the legal recognition of political parties as central actors in the political process. It also realises that political parties have the potential to advance democratization or to lead it in divisive directions. In trying to balance these different interests and tendencies, the Society considers that the Constitution should enable the establishment of political parties, but should neither encourage nor discourage them, taking a neutral position. Therefore we do not recommend that candidates for the presidency, the People's Majlis or the People's Special Majlis should have to have the nomination of a political party. Nor should the government be able to prevent the registration of a party which it considers opposed to its policies. For this reason, we recommend that the function of registration or deregistration should be given to an independent electoral commission. Political parties should develop naturally in response to the needs or pressures of society, instead of being forced upon it. But the Law Society also believes that we should establish now a framework for the formation and operation of parties which will facilitate a positive rather than a negative development, ensure that they increase people's choices and participation, encourage parties to follow democratic practices and be accountable, rather than become the means of intolerance, intimidation, and corruption.

We recommended the following broad principles for these purposes, leaving the details to be set out in legislation.

A NEW ARTICLE ON POLITICAL PARTIES

- (a) Every citizen has the right to form and join political parties.
- (b) A person seeking to register a political party must apply to the Commissioner of Elections. The Commissioner of Elections must register the party if the following conditions are satisfied:
- (i) a copy of the constitution of the party is provided;
 - (ii) the constitution:
 - (1) establishes a governing council whose members represent the diversity of the people of the Maldives;
 - (2) admits to membership those citizens who share the objectives of the party;
 - (3) provides for regular elections for party offices;
 - (4) undertakes that the party shall avoid violence and intimidation;
 - (5) provides that the party or its members shall not seek to secure votes by bribes or other improper inducements;
 - (6) requires the party to publish its audited accounts; and
 - (7) upholds the values and principles established in this Constitution.
- (c) The Commissioner of Elections must cancel the registration of a party which is in persistent breach of its constitution or the provisions of this Constitution.

Chapter XI Elections and public votes

Introduction

In order to obtain a complete picture of the situation with regard to voting, this chapter should be read with article [14] which deals with the right to vote. Voting is one of the most important civic acts performed by a citizen. If party politics come to be important, there is a risk that competition for power will become so intense that a variety of illegal and unfair means may be used to gain votes or even to distort the votes that have actually been cast. Some countries have seen voters being individually bribed to cast their votes in a certain way, or bribed not to vote at all. Other countries have seen fake ballot paper being used in large numbers, while in India voting booths have sometimes been seized by a particular party so only that party's supporters are able to vote. Returning officers have been known to disappear so that they cannot receive the nomination papers of opposition candidates. It is therefore very important that the elections are run by a body, the Election Commission, that has the resources to do so properly, and that can resist pressure. The changes recommended here, are all intended to make the outcome reflect the true wishes of the voters.

Article 130

This deals with the appointment of the Commissioner of Elections.

The Law Society **proposes** that:

The Commissioner should be appointed by the Majlis on the recommendation of Public Office Recommendation Committee.

The Commissioner must have the standard qualifications for appointment to public office under article B1

Article 132

This deals with the functions of the Commissioner.

The Law Society **proposes** that it read:

(1) It shall be the duty of the Commissioner of Elections, in accordance with the Constitution and law, to organise and conduct the general public vote to elect the President, elections of the members of the People's Majlis and public referendums.

The reference to the Special Majlis has been removed as has the reference to referendums being called by the President to reflect changes proposed elsewhere in this document.

(2) It shall be the duty of the Commissioner to ensure that elections and referendums are free and fair, free from violence, intimidation, improper influence, and corruption and conducted in such a way as to ensure the fulfillment of the citizen's right to vote.

Article 133

This deals with the secret ballot.

The Law Society **proposes**:

*that this be merged with the previous article;
that secret ballot be more clearly defined.*

Rights of individual police officers

- D3 (1) Members of the police service must not be dismissed or punished in any way without being given a fair hearing.*
- (2) Disciplinary proceedings must be subject to supervision by the courts, whether in the form of a right of appeal or some other proceedings.*
- (3) Members of the police service are free to join non-political organisations, including unions to represent their interests, but such unions must comprise only members of the police service.*
- (3) Any police officer who wishes to stand for electoral office must take leave during the period of campaigning.*
- (4) The provisions of article [C3] (5)-(7) relating to standing or being appointed to public office apply to the Police Force as to the public services generally.*

Military Services

General Principles

D4 The military services must be guided by the following principles:

- (a) The objective of the military services is to safeguard the territorial integrity and security of the state and to protect the Constitution,*
- (b) The military services are the servants of the people and abide by the Constitution and human rights,*
- (c) The military services must be impartial with regard to political, ethnic or other groups or sections of society,*
- (d) The military services must strive to achieve the highest standards of professionalism and readiness.*

Principle of Civilian Control and accountability

- D5 (1) The military services are to be at all times subject to the control of the civil authorities, and in accordance with the Constitution.*
- (2) Members of the military services may be involved in civil development projects, provided that they do so unarmed and in circumstances that make it clear that they are acting in the service of the civil authorities and the people, and offer no threat to citizens.*
- (3) The military services may only be engaged to secure internal order on the order of the President and with the approval of the People's Majlis*
- (4) Parliament must form a committee with the responsibility to keep under review issues of national defence and security*
- (5) Command of the military services must be exercised in accordance with the directions of the President [or Minister of Defence acting under the direction of the President].*

The National Security Council

- D6 (1) The National Security Council must oversee and coordinate the operation of all national security services of Maldives, including military, national police, and intelligence organizations.*
- (2) The President shall chair the National Security Council.*
- (3) The National Security Council must also include:*

- (a) the Vice-President*
- (b) the President's national security advisor if any*
- (c) the Minister of Defence*
- (d) the Minister of Home Affairs*
- (e) the Minister of Finance*
- (f) the chair of the relevant committee(s) of Majlis and*
- (g) The Officer Commanding the Military*

Elections and Political Parties

The Role of Political Parties

The current Constitution does not contain any special provisions for the establishment of political parties. Nor does the Constitution say anything about the function or role of parties. However, it does not prohibit the formation of parties, as parties, which are a form of association, can be established under Article 27 (Freedom of assembly). The Constitution also protects the freedoms of expression (Article 25) and assembly (Article 26) which are critical to the operation and activities of political parties. There are no formal political parties in the Maldives and attempts to establish them have been frustrated by government policy. The Law Society considers that the Constitution should recognize the roles of political parties and expressly authorize the registration of parties and regulate their management and conduct.

Political parties play a fundamental role in democracies. They bring together citizens with similar political views and thus increase their effectiveness. They help to promote national integration by linking people from all parts of the country around a common set of values, principles and objectives. They offer people choices regarding policies. They mobilize people in support of particular policies. They provide an important means to citizens for participation in public affairs. They provide cohesion in the government through the discipline of the party. They offer prospects of an effective opposition to the government. As the economy of the Maldives develops and diversifies, establishing new interests, and as the aspirations of the people for democracy and participation increase, political parties can facilitate the lobbying for and aggregation of interests, stimulate national debates, promote political coalitions, and strengthen the political process and democratic practices generally. Political parties can vitalize politics and open possibilities for groups which may be socially or economically marginalized.

For these reasons the Constitutions or laws in many countries permit or even encourage the formation and operation of political parties. However, political parties can also have a negative impact on national unity or democratic politics. They can promote sectional or regional interests, including religious or linguistic differences, they can divide and polarize society deeply, they can bring violence into politics and society, they may be the cause of corruption as they seek to increase their resources for electoral purposes and buying of patronage, they can become the source of personal power at the expense of democratic politics. They can marginalize minority interests, such as gender. They may become instruments of powerful politicians, pursuing their personal ambitions and fail to offer people genuine choices. In small scale societies as in the Maldives, where different aspects of living are integrated through community institutions, they can become the source of bitterness and be deeply disruptive of social peace. For these reasons several states have imposed conditions on the registration of parties and their participation in electoral politics, seeking to promote their positive aspects and minimize the negative.

- (b) promoting persons within the public service;
 - (c) organising training for public servants;
 - (d) creating and abolishing posts within the public service, except those created or required by this Constitution;
 - (e) exercising disciplinary control over public servants, except where this Constitution makes special provision for a particular post;
 - (f) drawing up codes of practice for members of the public service, and making these codes available to the public;
 - (g) providing avenues of complaint for members of the public service; and
 - (h) keeping under review the structure, terms and conditions, and provision for training and other matters concerned with the running of the public service and making recommendations to the Government.
- (5) Law may extend the mandate of the Commission to other categories of public employees.
- (6) Law may exclude the highest office within each Ministry from the scope of the Commission.

Rights of individual public servants

- C3 (1) Members of the public service must not be dismissed or punished in any way without being given a fair hearing.
- (2) Disciplinary proceedings for all types of public employees must be subject to supervision by the courts, whether in the form of a right of appeal or some other proceedings.
- (3) Subject to the following clause, members of the public service are free to join political parties and other organisations, including unions to represent their interests.
- (4) Law may provide that public servants above a certain level may not be members of political parties. The level set for this purpose must be such that exclusion from political activity is necessary for the proper functioning of the public service.
- (5) Law [or regulations] may provide that any public servant who wishes to stand for electoral office must take leave during the period of campaigning.
- (6) Law [or regulations] must provide for the possibility that public servants are elected or appointed to public office. Such law:
- (a) must provide that if elected or appointed to public office the holder of a position in the public service must take leave without pay for as long as the individual holds elected office;
 - (b) may provide that in the case of senior or key posts in the public service an officer must resign on being elected or appointed to public office; and
 - (c) may provide that certain unpaid public offices of a non-political nature are compatible with continued employment in the public service.
- (7) A public officer who is appointed as a Minister in the Government must immediately take leave from the public service.
- (8) Law may provide that certain categories of public servants must immediately resign or retire from the public service on becoming a Minister in the Government.

Anti-corruption Commission

C4 An independent Commission must be established by law to investigate allegation of corruption in any sector of the public service or in the exercise of any public office or position.

This provision should perhaps be inserted elsewhere, in view of the fact that it applies not just to the public service. Its scope should be clarified – should it for example apply to the President, members of the People’s Majlis, etc.

A New chapter [D] on the police and security services

The Law Society proposes that there be a new chapter (called temporarily here Chapter D). The reason for this is that it should be clear to all – that is to the public and the members of the relevant forces – that they are essentially servants of the public and the Constitution, that they must respect the Constitution and the human rights of the people, that control of these forces is with the civilian authorities, and that the members of the forces are themselves citizens and entitled to fair treatment. It should also be clear that the forces are not to be used by the President or the government to oppress the people.

Police

General principles and objectives

D1 The Police Service is guided by the following principles and objectives:

- (a) working with and for the people
- (b) upholding the principles of this Constitution and the values of the nation
- (c) the protection of the security of the people and a peaceful and safe environment;
- (d) the protection of human rights;
- (e) the prevention and detection of crime and the support of victims;
- (f) the protection of property;
- (g) the highest standards of professionalism;
- (h) absence of corruption;
- (i) merit as the basis of appointments and promotions;
- (j) adequate and equal opportunities for training and advancement of men and women equally, and the members of all ethnic groups; and
- (k) reflection of ethnic composition of the population in the composition of the police force at all levels.
- (l) impartiality with regard to political, ethnic or other groups or sections of society; and
- (m) accountability to society and democratic institutions.

Complaints against the police

- D2 (1) Law must provide for a mechanism by which members of the public can complain against the police for violation of the Constitution, the law or human rights.
- (2) Such a mechanism must be independent of the police.

Other matters relating to administration

Chapter X: National Accounts

This chapter deal mainly with the question of the auditing of the national accounts, and the Law Society **proposes** that the provisions be strengthened somewhat to ensure the greater independence and effectiveness of the system.

Article 124

This deals with the basic issue of appointment and qualifications of the Auditor General.

The Law Society **proposes** that:

The Auditor General should be appointed by the Majlis on the recommendation of the Public Office Recommendation Committee

The appointee must have the basic qualifications for appointment under article B1 and also appropriate formal qualifications in accountancy, as well as suitable experience

This would make the Auditor-General more independent which is important as he or she has to investigate how government money has been spent, which may sometimes be a sensitive issue.

Article 126

This deals with the duties of the Auditor General

The Law Society **proposes** that:

This be amended to clarify that the Auditor General audits the accounts of the government, the People's Majlis, independent offices and commissions established under the Constitution, and state owned corporations, and that the law may provide for other bodies that receive public funding should also be audited by the Auditor General.

That the Auditor General be required to make an annual report to the People's Majlis

This fits with the requirement that no public money can be spent without authority that derives from the Majlis (article [78]), and also that the Majlis must have a committee that oversees the budget and also looks at the report of the Auditor General, and recommends suitable action.[]⁶

Article 127

This deals with how the accounts of state bodies are to be kept.

The Law Society **proposes** that:

that the requirement of this be done on the advice of the President should be removed, but a requirement that appropriate accounting standards should be used should be added

Article 128

This deals with the resignation of the Auditor General which could be covered by the general provision suggested earlier.

Article 129

This deals with the removal of the Auditor General.

The Law Society **proposes** that:

The Auditor General be removable according to the general procedure suggested in article [B4] and that the body that investigates the allegation include at least one other Constitutional office holder and atleast one person with considerable experience of accounting.

A New Chapter [C] on Public Administration

The Law Society **proposes** that there be a new chapter (called temporarily here Chapter C) dealing with the public service:

General Principles of Public Administration

C1 (1) Public administration is guided by the following principles and purposes:

- (a) furthering the good of the nation and the principles of this Constitution*
- (b) maintenance and promotion of a high standard of professional ethics;*
- (c) promotion of efficient, effective and economic use of resources;*
- (d) impartial, fair and equitable provision of services;*
- (e) honesty and integrity;*
- (f) encouragement of people to participate in the process of policy making;*
- (g) prompt and timely response to people's needs;*
- (h) accountability for administrative acts of omission and commission;*
- (i) transparency fostered by providing the public with timely, accessible and accurate information;*
- (j) merit as the basis of appointments and promotions;*
- (k) adequate and equal opportunities for training and advancement of men and women equally, and the members of all ethnic groups; and*
- (l) observance of political neutrality at the institutional level.*

Management of the public service

C2 (1) There is established a Commission for the Public Service which is responsible for the appointments to the public service, administration and development of the service, and discipline of its members.

(2) The mandate of the Commission is to develop the public services of the nation to the highest possible standards of integrity and competence, observing the principles set out in the previous article.

(3) The composition of the Commission must be fixed by law, which must ensure that:

- (a) the composition is such as to ensure that the Commission can fulfil its mandate;*
- (b) members of the Commission are drawn from individuals who hold no other public office, nor any political party office;*
- (c) at least [25%] of the Commission are women;*
- (d) the Commission is free from government and political influence; and*
- (e) members of the Commission have a fixed term of office, and can only be removed for good cause and by an impartial process.*

(4) The powers and functions of the Commission include:

- (a) organising and carrying out recruitment to the public service;*

⁶: See proposal for new article on committees page 41

Committee) to put forward names for appointment. Possible make-up of such a body could be:

- the chair of the Public Service Commission (as Chair)
- a Minister (appointed by the President)
- the leader of the Opposition Members of the Majlis (this might be difficult to identify unless and until a system of party politics is established)
- the Chair of the Human Rights Commission (except where the position in question was for membership of the Human Rights Commission when perhaps the Chair would give his or her opinion but not be a member of the Recommendation Committee)
- The Auditor General
- Speaker of the Majlis
- One or two other heads of highly respected bodies (including perhaps one in the commercial world)

Duties of office holders

B3. All office holder have as their primary duty the upholding of the Constitution and the law. And in addition to the specific responsibilities of office, all holders of offices and positions to which this article apply must observe the following tenets of Constitutional behaviour, violation of which constitutes violation of the Constitution sufficient for the holder to be subject to proceedings for removal. The office holder must not:

- (a) place himself or herself in a position where his or her personal interest conflicts with the duties and responsibilities of office or compromise his or her honesty, impartiality and integrity;*
- (b) ask for or receive any property, gift or benefit as an inducement or bribe for the granting of a favour to any person or institution;*
- (c) misappropriate or waste public funds; or*
- (d) engage in any business while in receipt of a salary from the state.*

Removal from office, general provisions

B4 (1) This article applies to all the offices and positions listed in article [B1] except that of Member of the People's Majlis.

(2) The holders of offices and positions to which this article apply may be removed from office only for the following grounds

- (a) being physically or mentally incapable of discharging the functions of their office or position*
 - (b) violation of the Constitution or gross misconduct*
- but the specific article may add other grounds for particular offices or positions.*

(3) The holders of offices and positions may be removed only according to the procedures set out in this article, provided that articles relating to specific offices or posts may add to or alter these provisions.

(4) Any holder who is undergoing proceedings that may lead to removal has the right to know

of all allegations, to put his or her case in person or through a lawyer to the deciding body, and to call evidence and witnesses, but may not participate in the actual decision.

(5) The decision making body must observe principles of fair procedure including giving adequate time for proper presentation of submission and for consideration, and ensuring that no member of the deciding body has any personal interest in the outcome.

Resignation procedures

5. (1) The holder of a public office or position may resign to the officer or body by whom he or she was appointed

(2) The resignation takes effect immediately or upon the date specified by the officer or in the contract of employment, and it does not require to be accepted by the officer or body to whom the resignation is tendered.

points can be found in the “Basic Principles on the Independence of the Judiciary: Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders” in 1985 (available at <http://www.w3.org/TR/REC-html40>).

The draft chapter also provides for a law on the courts, and also that other tribunals that decide disputes could be set up but should be properly governed by law.

A new chapter (B) on appointment, qualifications, removal and responsibilities of public officers

Introduction

There are many issues that recur in connection with various positions: who is qualified, who appoints, how people can be removed from office, etc. It is desirable that these requirements be uniform for all offices as far as possible, and at present the requirements for holding office are largely similar. It would be useful to have the general requirements all in one place, while the relevant articles could deal with special requirements for a particular office. This would also help to keep down the length of the constitution.

The Law Society **proposes** that:

there should be a chapter dealing specifically with these issues.

General qualifications for public office

B1. (1) This article and the following [4] articles relate to the following public offices and positions:

- (i) President and Vice-President*
- (ii) Minister of the Cabinet*
- (iii) Member of the People’s Majlis*
- (iv) Judge*
- (v) Attorney General*
- (vi) Director of Public Prosecutions*
- (vii) Auditor General*
- (viii) Election Commission*
- (ix) Chair or member of the Human Rights Commission*
- (x) Chair or member of the Public Service Commission*
- (xi) Chair or member of the Judicial Service Commission*
- (xii) Ambassador or other diplomatic representative of the Republic*
- (xiii) Atoll Chiefs*
- (xiv) The holder of any independent office, or member of any independent commission set up by this Constitution or by any law.*

(2) The minimum qualifications applicable to all public offices positions covered by this article are as follows:

- (i) to be a Muslim*
- (ii) to be a citizen*
- (iii) to be an adult*
- (iv) to be of sound mind*

(v) not to have been convicted of a criminal offence that carries a maximum sentence of more than three years imprisonment under Maldivian law, provided that if the date of conviction, or the date of the completion of sentence if any, whichever is the later, was more than 5 years before the date of taking office, the offence is to be treated as ‘spent’ for the purposes of this provision, and shall not automatically bar the person from office.

This would have the effect of excluding people who have been found guilty of a serious offence. It also allows for the possibility that a person who did once commit a criminal offence but has reformed and now is viewed by the electors as a suitable person to hold public office. In the case of some posts it might be desirable to require that a person who has been convicted of an offence should never hold office (or that a person convicted of an offence of dishonesty should never be able to hold office – this might be appropriate for a Judge or the Auditor General, for example).

(vi) not to have been previously removed from any public office on the grounds on misconduct or incompetence

In some countries people who have been removed from office have managed to come back, and this may make the removal process appear toothless.

(3) Clause (2) applies unless the specific article of the Constitution in relation to a particular post provides otherwise

(4) Legislation or rules of the public service in relation to particular posts may modify these requirements by clear words, but any additional qualifications must respect the human rights provisions of this Constitution and not operate unreasonably.

(5) In appointing to any public office the relevant appointing body must also have regard to the qualifications, competence and personal qualities of the candidates, as well as to the need to respect gender balance, to give opportunities to persons with disabilities, and the principle of balanced development set out in Article [referring to the suggested new chapter A on Directive Principles]

Public Office Recommendation Committee

B2. A body should be set up to recommend names for appointment to office except where there is special provision.

There are many positions where the services of experienced Maldivians are called for – especially under the proposals made in this report. For example, to the Human Rights Commission. There seems to be some consensus that the appointments made by the President should be approved by the Majlis, but if the President and the majority of the Majlis members are from the same party this ceases to be an effective safeguard. It is desirable that there is a wider input, especially from non-party political sources, even if the appointment will go to the Majlis. Appointees made under a more independent procedure may have more legitimacy in the eyes of the public than if office is seen as a reward for party loyalty. Of course this independent procedure would not apply for appointments to political offices such as Minister. It is proposed that a body could be set up (called something like the Public Office Recommendation

3. (1) *The Supreme Court shall comprise the Chief Justice and four or five other judges, and 5 judges should sit for the decision of an appeal or a decision on the Constitution.*
 (2) *The Supreme Court shall have jurisdiction in appeals from the High Court, and a law must prescribe the circumstances in which appeals may be brought to the Supreme Court.*
 (3) *The Supreme Court has the principal responsibility to interpret the Constitution and if an issue of Constitutional interpretation arises in any court below the Supreme Court a party may apply for the point to be referred to the Supreme Court for decision.*
 (4) *In order to be appointed as Chief Justice or a judge of the Supreme Court a person must have the standard qualifications for appointment to public office as laid down in Article [B1], subject to the following modifications and additions:*
 (a) *for a period of [15] years after the coming into force of this Constitution a non-citizen may be appointed as a judge of the Supreme Court other than the Chief Justice.*
 (b) *in order to be appointed a candidate must have formal educational or professional qualifications in law and experience in the practice or teaching of law for at least 10 years, provided that the candidates must have good knowledge, derived from formal education or practice or both, of both western law and Shari'a.*
 (5) *The Chief Justice and other members of the Supreme Court must not hold any other public office, other than as a part time member of a commission or committee related to strictly legal issues, and for which no additional remuneration is paid.*
4. (1) *The High Court shall comprise the President of the High Court and up to 5 other judges.*
 (2) *The High Court shall have jurisdiction in appeals from the lower courts, and a law must prescribe the circumstances in which appeals may be brought to the High Court from the lower courts and from tribunals or other bodies.*
 (3) *A law may confer the High Court jurisdiction to try certain cases at first instance.*
 (4) *The High Court shall have the jurisdiction to call for the record of any trial in a lower court, whether on the basis of a complaint or on its own initiative, and if it thinks fit may conduct a hearing as though there were an appeal against the decision, provided that even if the court decides not to conduct such a hearing it must notify the parties to the first instance trial that it is reviewing the case and give the parties a chance to request a hearing.*
 (5) *The President and other judges of the High Court must have the standard qualifications for appointment to public office as laid down in Article [B1], subject to the following modifications and additions:*
 (a) *for a period of [15] years after the coming into force of this Constitution a non-citizen may be appointed as a judge of the High Court, other than the President.*
 (b) *in order to be appointed a candidate must have formal educational or professional qualifications in law and experience in the practice or teaching of law for at least 10 years, provided that the candidates must have good knowledge, derived from formal education or practice or both, of both western law and Shari'a.*
 (6) *The President and other members of the High Court must not hold any other public office, other than as a part time member of a commission or committee related to strictly legal issues, and for which no additional remuneration is paid.*

5. *There shall be other courts in the Maldives as may be prescribed by a law or, in the absence of any law, by the President, and such other tribunals as may be prescribed by law.*
6. (1) *A Judicial Service Commission is created.*
 (2) *The Judicial Service Commission shall consist of:*
 (i) *The Attorney General*
 (ii) *The chair of the Law Society*
 (iii) *The chair of the relevant committee of the People's Majlis*
 (iv) *One member of the Supreme Court other than the Chief Justice*
 This is because the Chief Justice may exert too great an influence on decisions by virtue of his position
 (v) *The Speaker of the People's Majlis*
- (3) *The Judicial Service Commission must identify suitable persons for appointment to the position of Chief Justice, President of the High Court or judge of the Supreme Court, the High Court or other courts, after carrying out consultations as it thinks fit; the names of the persons must be presented to the President who will make the formal appointment of those persons.*
- (4) *Judges may be removed only by the President acting on the advice of the Judicial Service Commission, and only on the grounds set out in Article [B4] (on removal of public officers)*
- (5) *The Judicial Service Commission must observe the principles of fair hearing including those set out in article [B4]*
- (6) *The Judicial Service Commission has the functions of administering the judicial service*
6. (1) *There must be a law or laws regulating the courts and tribunals, and regulating the legal profession.*
 (2) *The laws may provide for rules of court to be made by the Chief Justice sitting with a rules committee, or for rules of procedure for tribunals to be made by the appropriate government department in consultation with the Attorney-General; the promulgation of such rules must comply with the principles and procedures laid down in article []⁵ (on delegated legislation)*
7. *Before taking office a judge of any court shall take the appropriate oath of office set out in schedule of this Constitution*
8. *A judge of any court may resign from office by submitting a resignation in writing under his hand to the President.*

This chapter differs in various ways from the existing Constitution. Specifically it makes the role of the President only formal in the appointment of judges. It provides for an independent body, the Judicial Service Commission that makes the actual decision as to the appointment and dismissal of judges, and has the general responsibility for the discipline of the judicial service (which would include other officials of the courts as well as judges).

The principles here are basic requirements for preserving the independence of the judiciary and further

⁵: Article no. to be inserted depending on acceptance of proposal to insert a new article on regulations - page 43.

Article 110

This deals with resignation of the Atoll Chief.

The Law Society proposes that:

The second sentence be removed

This is recommended generally throughout the Constitution

Article 111

This deals with removal of the Atoll Chief.

The Law Society proposes that:

That this read:

The President may remove an Atoll Chief for good reason after consulting the Atoll Committee. The removal must be reported to the Majlis and reasons given unless the relevant parliamentary committee agrees that it is not in the national interest, or is an unreasonable infringement of the privacy of the Atoll Chief to make the reasons public.

OR MAKE IT SUBJECT TO THE PUBLIC OFFICER REMOVAL PROCEDURE

NEW ARTICLE ON ATOLL COMMITTEES

The Law Society proposes that:

There be a new article providing that Atoll Committees be elected, and that an Atoll Committee must include at least one member from each inhabited island in the atoll.

The Administration of Justice

The legal system in Maldives faces a number of problems. First of all is the coexistence of different systems of law, for which professional training tends to be different. People educated in 'western' systems of law tend to know little in a formal way about the Shari'a, while those educated in Shari'a may not be familiar with modern commercial transactions (this of course depends on the institutions which the lawyers attended). Both systems are important. In fact some judicial personnel have very little formal training in law of any sort. There is a shortage of trained personnel in the country, and it is not realistic to introduce the sorts of requirements that many countries would have for judges (common law countries would require formal training in law and at least 10 years experience in some sort of legal practice; civil law countries will require a long period of legal education, and though a person may become a judge at any early age, he or she will have substantial experience before being promoted to the higher courts). The current Constitution requires judges to be citizens, but this limits the pool from which judges might usefully be drawn at least for a while. True it is not ideal to have foreign judges when the courts in Maldives operate in Dhivehi, but it may be one solution to the problem – it does have the implications that there must be at least one interpreter trained in legal terminology for each foreign judge.

A further range of problems relates to the geographical structure of the country. There is a court for each island though some have very small populations and the judges are not fully occupied. However, there is a reluctance to remove courts from the islands. Supervision of the courts may need to be strengthened.

At present the court system is too closely associated with the executive, especially the President. Most scholars of Islam are agreed that there is nothing contrary to Islam in having a system of independent courts.

Chapter VIII Judiciary

The Law Society proposes that:

This chapter and the following one on other courts be merged into one chapter and the following is a suggested draft

1. (1) *The role of the courts is to administer and interpret the law.*
(2) *The courts must be independent from all political, financial and personal influence.*
(3) *The courts must be adequately equipped, and the judges paid sufficiently in order to avoid the temptation to take bribes.*
(4) *The courts must be open to the public, including the press, and the decisions of courts publicly announced except where national security or, exceptionally, where the legitimate interests of individuals may be adversely affected by publicity.*
(5) *Even where cases are conducted or judgments announced in a closed courtroom, the decision and reasons in the case must be a matter of public record, though names may be concealed, on grounds similar to those under (4).*
2. *The higher courts of the Republic of the Maldives shall be:*
 - (a) *The Supreme Court*
 - (b) *The High Court.*

Amendment of the Constitution: Chapter VI The Special Majlis

The Law Society **proposes** that:

The Special Majlis should no longer be the body to amend the Constitution, and the following provision should deal with constitutional amendment:

The People's Majlis has the power to pass legislation amending the Constitution.

Any amendment must have the support of at least 66% of the full membership of the Majlis.

Major Amendments must also be supported by a referendum.

Amending the Constitution is a serious business and should not be possible for reasons of political whim or expediency; it is common to make this rather difficult by requiring a special majority such as the 2/3 proposed here.

If the President refuses to sign the amendment legislation, the Majlis may decide to submit the proposal to the people in a referendum, or if the matter has already been the subject of a referendum the President may not refuse to assent.

If the Majlis strongly believes that a change is desirable, then even if the President does not agree the people should be able to give its consent.

The Government or any committee of the Majlis or any member may propose amendments to the Constitution.

When an amendment is proposed, the Majlis must set up a committee to study the proposal, and any other current proposals for change to the Constitution

The proposals to amend the Constitution must receive proper consideration.

The Majlis must draw up rules for the conduct of the review and amendment, provided that those rules must respect the following principles:

at least 3 months must elapse between the establishment of the committee, or the formal proposal to amend (whichever is the later) and the introduction of the Bill for amendment in the Majlis

Adequate publicity must be given, throughout the country, to the proposed amendment and sufficient time allowed for the public to comment on the proposals

This preserves the role of the Majlis, but also involves the public, and contains delaying provisions so that amending the Constitution cannot be done in a rush (which has happened in some countries).

An amendment to the Constitution that benefits members of the Majlis, or members of the Government comes into effect only following the next general election after the amendment is signed by the President or approved by a referendum

This means that Majlis members and Ministers etc cannot abuse their positions and benefit personally from a change to the Constitution unless there is a general election first; the public then have the chance to reject the Majlis members who voted for the amendment at the next election. This provision should operate as a disincentive to amend the Constitution hastily.

The Atolls

Introduction

It is important that the majority of the people who live in the atolls should feel that their views are respected and their interests taken into account. The Constitution declares that the Maldives is a unitary state and the Law Society does not propose that this should be changed. However, there are several proposals that are designed to give greater weight to atoll views and interests. One of these is the principle of even and fair development recommended to be introduced in a new chapter on guiding principles (see page 15). Another is the proposal that the number of members of the People's Majlis be increased so that all but the smallest atolls will have more members in the Majlis (see page 38). And the proposals made here on local administration are also put forward in the same spirit.

Chapter VII: Atoll Chiefs

Article 106

This deals with the appointment of atoll chiefs.

The Law Society **proposes** that:

The President must consult the Atoll Committee before appointing an Atoll Chief and that the Majlis must approve the appointment of Atoll Chiefs

There has been some dissatisfaction with Chiefs in some atolls, and the people sometimes have little confidence in them. The provision is intended to make the chiefs more acceptable, while ensuring that the appointee has the necessary experience.

Article 107

This deals with the qualifications of atoll chiefs

The Law Society **proposes** that:

this article refer to a general provision on qualifications for office (see Chapter D) with the specific requirement of being at least 30 years retained from this article

Article 109

This sets out the general role of the Atoll Chief and the President.

The Law Society **proposes** that:

The article be amended to read:

The Atoll Chief has the responsibility to administer the affairs of the atoll according to the Law, in consultation with the Atoll Committee. The Minister of Atoll Affairs may give general directions to the Atoll Chief, provided that these are in accordance with the law and are in the public interest

This is intended to make the Atoll Chief more responsive to the local community, while ensuring that the law is obeyed and atoll affairs are conducted in a coherent fashion across the country. 'General directions' – an expression in the current article – is intended to indicate that the Minister must not interfere with the day to day administration of the atoll.

Article 91

This deals with the administration of the Majlis

The Law Society proposes that:

The Secretary General should be appointed by the Majlis rather than by the President

Should there be a second chamber?

The following are the typical functions of a second chamber:

(i) to enhance representation in the legislature—principally by providing for the representation of special interests, such as ethnic minorities, or social classes (the British House of Lords, as the name suggests, was meant for the representation of nobility), or eminent citizens and retired politicians and public servants (typified by the current reforms of the House of Lords), or territory (the best known example comes from federal Constitutions where the second chamber, as the Senate in the US or the Rajya Sabha in India, gives representation to states/provinces and protects their interests);

(ii) the existence of a second chamber provides an opportunity for further consideration of legislative bills, especially where a bill may have been rushed through one house. The need for a bill to be debated in two chambers, involving more time, also gives the public time to discuss the bill and to inform the second chamber of its views;

(iii) The existence of two chambers enables one chamber to scrutinise the activities of the other (a sort of checks and balances within one principal organ of the state). This factor is especially important if the principal chamber is dominated by one political party. Often the second chamber is less pre-occupied with party politics or represents different kinds of interests than those in the other chamber. The Thai Constitution, for example, prohibits party based elections for its second chamber.

(iv) The second chamber is sometimes used to entrench the constitution or specified articles in it. A higher majority may be required in the second chamber or larger participation may be secured by virtue of different representation in the second chamber.

(v) In some countries, the role of a second chamber is critical in impeachment proceedings. One house brings charges against the president or other senior officials and the second house investigates the charges and decides on impeachment.

All these are important arguments in favour of a second chamber. Arguments against a second chamber are:

(i) the increase in the cost of the legislature;

(ii) sometimes the second chamber may merely replicate the interests represented in the other chamber (as in Fiji and some Caribbean islands), often with less able or popular leaders than in the first chamber;

(iii) if too many special interests are represented in the second chamber, the system may be

criticised for being undemocratic;

(iv) it is frequently difficult to decide if both chambers are of equal status or if one is superior to the other. If both are of equal status, difficulties may arise if they cannot agree on legislation, budget or policies. If one chamber is deemed superior to the other (as for example in Britain, where the House of Commons is superior to the House of Lords), differences are ultimately resolved in the superior chamber. Even in that case, law making or the budgetary process can become complex and long drawn.

It is not obvious to us what the gains of a second chamber in Maldives would be. Atolls are not given specific legislative or administrative tasks, whose protection might require a second chamber, and the ordinary electoral process should ensure that all sections of society are represented, in view of the fact that Maldives is relatively homogenous. We are unsure what other special interests should be represented in the second chamber. The costs of the legislature would increase considerably if such a chamber were created.

However, the Law Society proposes that:

some of the benefits of a second chamber should be secured in other ways outlined below:

(i) *No legislative bill should be enacted unless it has been referred to Atolls Advisory Committees after its introduction in the Majlis. The Majlis should be required to consider the comments of the Atolls Advisory Committees before proceeding to enactment*

(ii) *The President and senior ministers should meet annually with chairpersons of Atolls Advisory Committees to exchange information and to discuss matters of mutual interest, including co-ordination, and complaints and requests of chairpersons.*

(iii) *Atoll Advisory Committees should be consulted in the appointment of Atoll chiefs and Atoll chiefs should consult with the Committees on the discharge of their responsibilities (see under Atolls).*

(iv) *A referendum should be held as part of the procedure for major amendments of the Constitution after the Electoral Commission has explained the proposed amendment to the people.*

NEW ARTICLE ON REGULATIONS

The Law Society proposes a new article after the current Article 80:

(1) Laws passed by the Majlis may give to the President or the appropriate Minister or, in the case of rules of court, the Chief Justice sitting with a rules committee, the power to make regulations having the force of law.

(2) Regulations passed under clause (1) must be strictly within the terms of the power to make them under the law.

(3) Regulations made under clause (1) must be laid before the Majlis, which may discuss them in a committee or the full house, may invite the relevant Minister or official to explain the regulations, and may strike out the regulations for good cause.

(4) Regulations do not come into force until one month after they have been laid before the Majlis, and have been published in the Government Gazette.

This places limits on the power to make regulations, and ensures that they are made public. In many areas of technical law regulations are longer than the law, but it is important that regulations should not be used to by-pass the Majlis.

Article 81

This deals with the role of Ministers in relation to the Majlis.

The Law Society proposes that:

the various articles that deal with the Ministers and the Majlis be reorganised so that the provisions all come together

that ministers may be asked supplementary questions without further authority

The current provisions are confusing and complex.

It should not be necessary to have a law on supplementary questions; accountability is enhanced through asking supplementary questions.

Article 83

This deals with whether the decisions of the Majlis can be challenged in court.

The Law Society proposes that:

this be amended to provide that the courts may not enquire into whether the Majlis has followed its own rules of procedure provided the Speaker certifies that those rules have been complied with

otherwise it is not right that the Majlis be above the law; laws that it has made may be challenged as being contrary to the Constitution. And the rules of the Majlis could themselves be challenged in court if they infringed a principle such as the freedom of speech of members – and only a court could really decide if this was so.

Article 84

This provides:

No member of the People's Majlis shall be held liable in respect of any thought expressed or anything said without contradicting the basic tenets of Islam or any vote given by him in a duly constituted sitting of the People's Majlis or any committee thereof.

The Law Society proposes that this be amended to read:

No member of the People's Majlis shall be held liable in civil or criminal proceedings for anything said or any vote given by him in a duly constituted sitting of the People's Majlis or any committee thereof

This makes it clearer that the protection of members relates to liability in law; there is nothing to prevent a member being criticised in the press or otherwise for what was said in the Majlis. But it is an important Constitutional principle that members are free to express their views, and the sanction is that they will not be re-elected if their behaviour is unacceptable to the voters. The rules of the Majlis itself should provide for exclusion of a member for serious breaches of behaviour inside the house.

Article 85

This deals with the resignation of the Speaker or Deputy

The Law Society proposes that:

*the resignation be to the Majlis through the Secretary-General
the resignation takes effect immediately and does not require to be accepted*

Article 86

This deals with the question of when a member of the Majlis ceases to be a member.

The Law Society proposes that:

(2)(a) should be amended to read:

*where a member of the People's Majlis is absent without leave of the Speaker for one third of the sitting days in a year, the seat of that member shall be declared vacant
this is rather more demanding*

the other provisions can be reduced to:

*a member ceases to be a member if he or she is appointed as a Minister or loses any of the qualifications for membership listed in article 66
in effect this means being convicted of a serious criminal offence or taking public office*

*if the member is convicted of a criminal offence carrying a maximum sentence of three years or more, the member loses his or her seat when the time for appealing against conviction or sentence expires, or the final appeal is unsuccessful
the loss of seat should not take effect until the conviction is final.*

Note: this removes the provision about detention other than following conviction. There should be no right to detain a person otherwise than for an offence.

Article 90

This provides that the President may promulgate laws during the recess of the Majlis.

The Law Society proposes that:

this be removed from the Constitution

the President has the power to request that the Majlis meet at any time; secondly the Majlis will meet more frequently than in the past. There is no reason why the President should not be able to ensure that legislation is passed in the usual way. If there is an emergency then the emergency provisions of the Constitution can be used.

NEW ARTICLE ON RESPONSIBILITIES OF MEMBERS

The Law Society proposes that:

*there be an article that specifies the duties of members of the Majlis including:
that they must work for the good of the nation as a whole as well as for the interests of their constituencies*

that three times a year they must visit their constituencies in order to explain what the Majlis has been doing and to seek the views of their constituents, as well as to understand the problems of their constituents.

This is intended to help both the public and the members of the Majlis understand their roles

The second provision is intended to ensure that members at least visit their constituencies once in each break between sessions of the Majlis. At present people often complain that they never see their MPs.

NEW ARTICLE ON COMMITTEES

The Law Society proposes a new article:

The People's Majlis must set up committees of members of the Majlis, including a committee or committees to review the report of the Auditor General and the budget

The work of Majlis committees should be organised so that each area of government responsibility is subject to the scrutiny of a committee

Ministers must make themselves readily available to discuss with the chairs of the relevant committees, and also be available when reasonably requested to do so to attend meetings of the committees and answer questions and explain policies.

It is very often the case that the most important work of legislatures is done in committee, where members with a particular interest or expertise can work together, perhaps in a more cooperative atmosphere than in the full house.

Article 73

This deals with the quorum (the minimum number of members who must be present in order for proceedings of the Majlis.)

Quorum should be 50% - but if there is no quorum the Majlis should be adjourned to next day when quorum would be 30%

Delete (2)

At present the quorum is 50%; if the government has less of a hold over the Majlis, or there is at any time a lack of cooperation between the President and the Majlis, there might be a risk that Majlis members would deliberately stay away. Also 50% is, compared with other countries, quite a high quorum.

Article 74

This deals with the majority necessary to make decision in the Majlis.

The Law Society proposes that this should say:

Unless the Constitution or a law provides for a higher majority, all decisions made by the People's Majlis shall require a simple majority of all members present and voting

Otherwise although there might be a quorum under the rule proposed for article 73, it might be impossible to make any decision (for example, if the quorum is 30% of a 50 member house, and there were actually 18 people present, even if they all voted one way the existing rule of 26 could not be satisfied).

Article 75

This deals with the role of the President and Ministers in the Majlis.

The Law Society proposes that:

The President should have the right to attend as at present

The Ministers should have the right to take part in the proceedings of the Majlis but their participation in committees would be only at the request of a committee; in neither case would ministers have the right to vote

This involves the Ministers a little more than the President in the working of the Majlis

That there should be a period one day a week when the members of the Majlis may ask questions of the Ministers – and the Ministers must attend unless there is good reason.

The government must assist the Majlis to carry out its functions of monitoring the working of government.

Following the President's annual speech under article 42(d), the members of the Majlis will debate the progress reported by the President and the programme he outlines in the speech, and the President must reply to the debate and respond to questions asked

Article 77

This limits the right of foreign persons companies or countries to own or use land, and in some circumstances requires the approval of the Majlis for grants of rights to foreigners.

The Law Society proposes that:

this provision does not quite fit here and should be moved to Chapter XII

it appears between two provisions, one on taxation and one on budget, that ought to be next to each other

the provision also needs some rethinking:

it creates some injustice for especially the foreign spouses of Maldivians; but any change needs to be very carefully thought out, because of the risk of handing over the nation's most valuable assets to foreigners.

Article 78

This concerns the budget.

The Law Society proposes that:

clause (i) should include the statement that no public expenditure can be incurred without the approval of the Majlis but there should be some provision for provisional expenditure if it is impossible to pass the budget before the beginning of the financial year.

this does not mean that the Majlis must approve every individual expenditure, but that the entire budget must be approved.

The Law Society **proposes** that:

the life of a Majlis be 4 years

This would accord with the term of the President and would also act as a more frequent means of accountability.

Article 66

This deals with the qualifications of members

The Law Society **proposes** that the following qualifications be changed:

the age limit be 18 (i.e. the voting age)

that the criminal record requirement be the same as for the President

that (e) be removed

no member of the Majlis shall hold any public office; a person who holds such an office must stand for election, but if he or she wins must resign

the Majlis is the body that represents the people not the government. Members may have political affiliations, but should not be subject to pressure to support the government that might come from holding public office. It is also inappropriate that some constituencies should have an advantage because their Majlis member is a public servant.

Article 67

This deals with the swearing-in of members

The Law Society **proposes** that:

Remove the requirement that the Majlis members be sworn in before the President

This would perhaps be appropriate when the President is a ceremonial head of state, but here the President is the head of government as well, and there should be no suggestion that the oath sworn is one of loyalty to the President.

Members must declare their assets publicly on being elected and annually.

Article 68

This deals with the Speaker

The Law Society **proposes** that:

The Speaker should be appointed by the Majlis itself; he or she should not be a member of the Majlis. The Speaker must not be a minister or hold any other public office.

Appointment is the first act of the Majlis, even before the members are sworn in.

The Majlis is quite small so it is undesirable that the Speaker be a member. But the Speaker must have the confidence of the Majlis, and so should be chosen by it.

Article 69

This deals with the functions of the Speaker

The Law Society **proposes** to:

Delete (2) as it is no longer necessary

Article 70

This deals with the Deputy Speaker.

The Law Society **proposes** that:

the provision read:

The Deputy Speaker of the People's Majlis shall be elected by the members of the People's Majlis from among its members.

Like the Speaker the Deputy should have the confidence of the Majlis, but since he or she will not be called on to sit as such for long periods, there seems no justification for incurring the expense of having an outsider; the proposal is therefore fairly similar to the existing Constitution except that the President will not appoint.

NEW ARTICLE ON RULES OF PROCEDURE

The Law Society **proposes** that:

There should be a new article reading:

Except where this Constitution provides otherwise, the Majlis shall draw up and make public its own rules of procedure

These rules must respect the following principles:

adequate time must be available for the discussion of government business

this is to avoid the possibility that if there is a lack of cooperation between the government and the Majlis, the latter cannot block government business

adequate time must be allowed for the discussion of issues raised by individual members and by committees of the Majlis

members of the Majlis must have access to all information necessary for them to carry out their responsibilities

the meetings of the Majlis and of its committees must be open to the public including the media

reasonable provision must be made for members of the public to make representations to the Majlis or its committees and for the public to be consulted in connection with the passing of laws

democracy should not be merely a matter of voting every 4 years, but the public should be informed as to what is going on and be able to contribute ideas, as well as monitor what their elected (and paid) representatives are doing

Article 72

This deals with the question of the frequency of sitting of the Majlis.

The Law Society **proposes** that:

there should be a specified minimum number of sitting days in the year (at least in principle) in addition to the existing requirement of three sessions a year

The Majlis is an important element in the system of government, yet many countries have had the experience that the legislature does not work as hard as the electorate would wish.

The President should be able to request the calling of a special session of the Majlis, and that request must be honoured

The Majlis must be convened at the request of one third of its members

The dates for the commencement and conclusion of sessions of the Majlis shall be determined by resolution of the members or its Business Committee

This rule will give members authority to determine the calendar of the Majlis and thus enhance its autonomy

democratic control as ministers can be removed by Majlis but the President cannot be

Clause 56

This provides for the qualification of Ministers

The Law Society proposes:

that this be reduced to saying that the only qualification is that of eligibility for standing for election to the Majlis (which means essentially being an adult without recent serious criminal conviction)

the President should be able to select the people he believes are competent, subject to their being approved by the Majlis; the combination of these should guarantee the competence of the Ministers.

The provision should be amended to provide that a person cannot be a member of the Majlis and a Minister; if a Majlis member is appointed to the Cabinet he or she must resign.

this is more consistent with the separation of power and means that Majlis members can concentrate on their responsibilities, it also means that Ministers are not distracted from their responsibilities by constituency duties; the French Constitution is one that has a similar provision.

Article 58

This sets out the functions of the Cabinet.

The Law Society proposes that:

this include the possibility that elsewhere in the Constitution and the law there may be provisions that the Cabinet must be consulted or consent on certain issues

(d) [provision] be removed and this responsibility be given to the Majlis (see under article 63 below)

Article 59

This sets out the responsibilities of Ministers.

The Law Society proposes that this be redrafted as:

Every Minister shall discharge the duties of his office with loyalty and to the best of his ability, and in the best interests of the nation as a whole. Every Minister shall be responsible for the functions assigned to him and shall be accountable to the President, and the people through the Majlis

The Ministers must not benefit only their own areas or their own interest groups of any sort. Their duty is not only to the President but to the nation as a whole. The existing article says 'Any Minister whose negligence causes loss or damage to the State shall accept the responsibility thereof'; this sounds like a good idea, but it may mean that they have to pay financial compensation. If it means that the Minister should resign if he or she is incompetent, it would be perhaps all right – but this should be covered by the general accountability provision.

Article 60

This deals with the Attorney General.

The Law Society proposes that:

The Attorney General should be an independent office; the holder must be qualified, have at least 5 years experience of legal practice in Maldives, and is not able to be easily dismissed.

There should also be provision for an office of the Director of Public Prosecutions, which should be independent, and who should have the same qualifications as for the Attorney General

The Attorney General should be free from the temptation to please the government; it may be important that the government hear unpalatable advice on its legal position.

The DPP must be able to decide whether or not to take a case to court – and not decide this on the basis of whether the case involves the interest of the government or individuals within the government.

Article 61

This deals with dismissal or resignation of Ministers and the Attorney General

The Law Society proposes:

that the Attorney General not be covered by this provision

that Ministers' resignation takes effect immediately and does not have to be accepted in order to be effective

Chapter V : The Majlis

Article 63

The Law Society proposes that the powers of the Majlis be specified to include:

the power to make law

the power and responsibility to supervise the working of government on behalf of the people

the power, when so provided by the Constitution, to approve appointments to certain offices

the power to approve the ratification of treaties

in many countries it is the function of the parliament to decide finally whether the country should be bound by an international agreement

Article 64

This deals with the makeup of the Majlis

The Law Society proposes

that there be more members so that the composition of the Majlis more accurately reflects the population distribution of the nation as a whole while making sure that every atoll retains a reasonable representation.

The Ministers will be (non-voting) members [see below]⁴

The power of the President to appoint 8 members should no longer exist

Article 65

This deals with the duration of a Majlis

4: see Article's 75 and 81

Article 46

This deals with the resignation of the President

The Law Society proposes

that the President's resignation should not depend on acceptance; it should take effect the following day [or the letter of resignation could postpone the effectiveness for up to 3 days].

Article 47

This deals with the removal of the President. This procedure is often called 'impeachment' which is the process under which the lower house of a parliament 'prosecutes' before the upper house (as in the USA). 'Removal' is the better word here.

The Law Society proposes that:

that the ground for removal should include behaviour bringing the office into disrepute there are all sorts of ways in which the President can behave that might not fit under the other provisions; this needs to be carefully phrased so that it cannot be abused. if the restrictions on prosecuting the president remain, suspected serious breaches of the criminal law must be a ground for removal – an example would be corruption.

neglect or abuse of office should be grounds which are perhaps not covered by the existing provisions

A President who spends half each year travelling overseas (other than for good reason) or a president who is grossly extravagant might be within these categories but perhaps not under any of the others.

Serious violation of the Constitution should be a ground for removal – it is not clear that there is need for it to be deliberate

when the ground for removal is the medical condition of the President there should be provision for the involvement of senior and appropriate medical personnel

that the body that deals with the removal should be constituted slightly differently; it should consist of 7 members (of whom only two shall be nominees of the President) and a senior judge should preside over its proceedings

that the President should be given the charges/allegations against him and have the right to defend himself which includes the right to have a lawyer

There should be a cross reference to a provision about the removal of public office holders (see proposed Chapter [B])

Articles 48, 49 and 51 to 53

These deal with related issues: what happens if there is a vacancy in the office of President, and the existence of a Vice-President.

The Law Society proposes:

That the President be required to appoint a Vice-President from among the Ministers, who should be approved, as Vice-President, by the Majlis

currently to have a Vice President is an option; the Law Society believes that there should be a Vice-President to take over when the President is ill, out of the country or resigns etc.

the Vice-President should take office for 60 days if the President resigns or dies or is removed

there will be an election for the Presidency, and the person elected would hold office for a full 4 year term

There will need to be a fall-back provision for the (hopefully unlikely) event that there is no Vice-President when the Presidency falls vacant

Chapter IV: Cabinet

Article 54

The Law Society proposes:

that the provision be changed to include a requirement that the Majlis must approve members of the Cabinet; they take office straight away but must be confirmed within 3 weeks.

This means that the Cabinet does have the approval of the Majlis which should help to make the relationship between Majlis and government smoother.

Article 55

This deals with the membership of the Cabinet.

The Law Society proposes:

that the Attorney General should not be a member of the Cabinet though the President may invite him when relevant

The role of the Attorney General is to be legal adviser to the government and he or she should be independent (see below under article 60)

The Constitution should specify the minimum and maximum size of the Cabinet

The minimum size is to ensure a fair distribution of ministerial responsibilities and the maximum for reasons of economy and to prevent ministerial appointments purely as a form of patronage and support for the President.

Clause (2) says:

Nothing in this Article shall restrict the President from directly taking charge of a Ministry or the Attorney General's Office, as he deems fit, without appointing a Minister or an Attorney General.

The Law Society proposes:

that this be removed

it gives the President the possibility of controlling too much power, and reduces the

Article 41

This provides for the power to grant honours etc.

The Law Society proposes:

that this be merged with Article 42

Article 42

This contains a list of presidential powers

The Law Society proposes:

That it be stated in clause 1 that all these powers are exercised in accordance with the Constitution

Later articles may regulate or even limit the powers of the president, and this should be clear in article 42 so that there is no confusion.

That it be made clear that ordinary law cannot give to the president powers that go beyond the sorts of powers that are appropriate to the model of limited presidency that this draft proposes

In some countries presidents are given wide powers under ordinary law (to give away state property for example); this can effectively bypass the controls the Constitution imposes.

The reference to appointing judges should be removed

The situation is clearly set out in the chapter on the Courts.

The provision about appointing a minister to chair the Cabinet should be removed

It is not consistent with the proposal made later about a Vice-President.

The existing provision:

(d) Making a statement declaring the policies of the government at the opening session of the People's Majlis every year.

Should become a duty of the President

The existing provision:

(e) Promulgating decrees, directives and regulations, as may be required from time to time for the purposes of ensuring propriety of the affairs of the government and compliance with the provisions of the Constitution and law.

Should be removed

The powers to make law should be restricted to the Majlis (with the assent of the President) dealt with in chapter V and to making regulations under laws which the Law Society proposes later (see proposed new Article after Article 78) should be specifically dealt with.

The existing provision:

(f) Holding public referendums on major issues concerning which the President requires to obtain public opinion

should be removed

It may be desirable to have a law about referendums, but these are expensive, and there seems

no reason to give such a wide power to the president; in some countries such referendums have been abused to build up a groundswell of allegedly popular support for a president to have an (unconstitutional) third term in office etc

Item (i) need refer only to international law, not 'customs and usage'

Article 43

This provides that the President must act in accordance with the Constitution and the Shari'a

The Law Society proposes

that this be removed

there should be a general provision that all acts of public officers etc must be in accordance with the Constitution; it is unnecessary to have specific reference to the President (see proposed Article [3] in proposed new Chapter B.

Article 44

This deals with the liability of the President to be sued or prosecuted for breaches of the law. It is common for constitutions to contain such provisions. On the other hand they are to some extent the relic of old constitutions where the head of state was an all-powerful monarch, and they seem rather odd in modern constitutions where the head of state is the elected servant of the people and where a fundamental principle is equality before the law. There may be some risk of the processes of the law being used for political ends, and it would not be desirable to let this happen. The answer may be for there to be a system under which special approval is needed to bring civil or criminal cases. At present there is a provision that protects the president even after his term of office, unless the Majlis lifts the immunity. If politics become dominated by parties, this might be used in a party political way – so that the immunity would be lifted if the Majlis was dominated by people from the same party as the ex-president, but not otherwise. If it is too difficult for the president or ex-president to be prosecuted the deterrent effect of the law will be severely weakened.

In the light of these various considerations, the Law Society proposes:

no legal proceedings can be taken against the president while in office.

legal proceedings may be instituted when the term of the president comes to an end in respect of private or official activities during the period of office

any rule about time limitation for the commencement of legal proceedings will start at the end of the period of office

that clause (2) be removed

this is quite unnecessary – no one can be (successfully) prosecuted unless they have broken the law, and the only way to decide whether the law has been broken is to go through the legal processes.

Article 45

This deals with the restriction on the power of the president to engage in business

The Law Society proposes:

that (either here or elsewhere) there be a requirement that the President (and other holders of major public office) be required to make a public declaration of their assets at the beginning of their terms of office and annually thereafter; this should be done to the Auditor-General

is hard to see why they should be prevented from doing so (note also that the method of election suggested for the President would require that a successful candidate gets more than half the votes cast).

That requirement (f) be removed

In the modern world many people have the citizenship of more than one country, and many more people than in the past marry citizens of other countries. To do this does not suggest any lack of loyalty to one's own country.

A new provision should be inserted to the effect that a person can only stand if he or she has not previously served two terms as President, whether consecutive or not, under this or any previous Constitution.

While on the one hand it may be a good thing to have an experienced person as president, there are risks attached to allowing one person to serve for many years. The risks include the fact that no successor may be prepared for office, that the president may acquire too much power over the state machinery. These are not inevitable, but in recognition of the risk many constitutions prescribe a limit to the terms of office.

that the other, general requirement, be set out in an article that applies to the holder of all public offices, and there is a cross reference here to this new chapter called here temporarily Chapter B.

Overall the purpose of these suggested changes is to put more power in the hands of the public – they are less restricted in their choice of President. But the provisions also guard against situations that might give rise to risk of abuse. An important support to these changes would be a system under which the maximum information is given to the people so that they can exercise their choice in full knowledge of the record of the candidates for office.

Article 35

At present this provides for the Majlis to choose the candidate, but for that person to require the support of the public in a referendum.

The Law Society proposes:

that the role of the Majlis in the election of the President be removed and that the Presidential candidates be presented directly to the people

This is a more democratic provision; it does offer the possibility that the President would not be a member of any political party, or not of the same political party as the members of the Majlis, or even be someone whom the majority of the Majlis would wish to work with. In order for government to work effectively the President and the Majlis will have to learn to work together. If the current system was retained, along with the introduction of political parties that will be possible under the Law Society's proposals, there would be a risk that one party would dominate all aspects of government, thus destroying the possibility of checks and balances. Under the Law Society's proposals, the President will owe his or her position to the people, and not just to a political party, which will give the President at least greater moral

authority in case of any dispute with the Majlis. On the other hand, the Majlis will also perhaps feel freer to criticize the President, and exercise its functions of scrutinizing the actions of government, and holding the Executive accountable.

that in order to stand for election a person must have the support of [500] electors (who must sign the nomination paper submitted to the Election Commission) and that these must include at least [20] people from each atoll

This would guarantee that the candidate was a serious person with some support from the public, and wide support through out the country.

that each candidate must pay a deposit (that must be fixed by law)

this is further evidence of the person being a serious candidate; the deposit must not be fixed so high that it unreasonably excludes possible candidates.

that the election be conducted nationwide, and if no candidate obtains more than 50% of the votes cast there must be a second, run-off, election between the two top-scoring candidates.

This ensures that the person finally elected has strong support; otherwise, if there were, perhaps, 5 candidates one might become president having obtained only something like 30% of the vote.

Article 39

This at present provides:

The President shall be the highest authority of administering justice in the Maldives.

The Law Society proposes:

that this article be deleted

This memorandum explains when discussing Article 4 why it is desirable to separate the personnel who administer justice – that is decide disputes – from those who hold other roles in government, especially because they may be tempted, or there will anyway appear to be a risk, to decide cases in their own favour or that of the government.

Article 40

This at present provides:

The power to grant pardon to persons convicted of offences and to commute sentences of such persons shall be vested in the President.

The Law Society proposes:

that this article be merged with article 42 (so that there is a comprehensive list of the regular powers of the President in one article) and

that there be established a committee to advise the President on this function otherwise the power may be used for political or personal reasons.

A President:

who is directly elected by the people, rather than, as at present, being selected by the Majlis subject to confirmation by the people in a referendum

who is clearly the head of the nation, but who has relatively few powers that he is able to exercise without consulting the Majlis, or requiring the approval of the Majlis or some other body

who chooses the members of the Cabinet of Ministers with whom he must be able to work, but whose choice is subject to the approval of the Majlis

who is accountable to the people, through the Majlis and through other independent bodies, including through the courts

who serves the people of the Maldives

A Cabinet of Ministers:

that is comprised of people in whom the President has confidence

drawn from any section of society where the President can find the competence and commitment he needs to form an effective government

a minister cannot be a member of the Majlis (so that if a Majlis member is appointed as minister he or she would have to resign from the Majlis)

that recognizes that its role is to serve the people and to be accountable to them

A Majlis:

that is more truly representative of the people

that has the capacity to act as a check on the powers of the government, on behalf of the people

Courts:

that are competent for the tasks of applying the law and doing justice

that are independent from any sort of pressure – whether political, commercial or personal.

In the context of this vision of a system of government that is basically familiar to people, but that is more effective, more democratic and more accountable than provided for under the existing Constitution, the Law Society makes the following specific proposals.

Chapter III on the President

Article 33

This currently reads:

The President shall be the Head of State, Head of Government and the Commander-in-Chief of the Armed Forces and of the Police of the Maldives.

The provision that the President heads the Armed Forces is standard in many constitutions and is not intended to suggest that the forces are available for the personal purposes of the President, not even to be available to keep the President in power. It is a formal headship, and there is a new provision proposed (see Chapter D) about security and civilian control.

The Law Society **proposes**

that the reference to the Police be removed so that there can be no impression that the police are at the personal beck and call of the President.

Article 34

This currently requires a long list of qualifications for a person wishing to stand for election to the office of President:

- (a) is a Muslim of Sunni following;
- (b) is a citizen of the Maldives whose parents and grandparents are Maldivian citizens;
- (c) is a male who has attained thirty-five years of age;
- (d) is of sound mind;
- (e) is capable of discharging the duties and responsibilities of the office of President;
- (f) has not been convicted of an offence for which a *hadd* is prescribed in Islam or of criminal breach of trust and thereby brought into disrepute;
- (g) is not a citizen of a foreign country; and
- (h) is not married to a national of a foreign country.

The Law Society **proposes:**

that the following changes be made:

that it be enough that a candidate's parents were Maldivian; it is presumed unless the contrary is proved that both parents of a Maldivian citizen were themselves Maldivian at the date of the citizen's birth

the purpose of such a provision is to ensure that the candidate is truly connected to the country; for some people it may be difficult to show that their grandparents were actually citizens, and the citizenship of a grandparent really shows nothing about the candidate's own commitment to the country. The provision about the presumption is to avoid the problem that may arise if a parent (more likely the father) of a citizen is unknown.

that it be no longer necessary that a candidate be male if more than half the people who vote in the country are prepared to elect a woman President it

- involved in other forms of political participation;*
- (f) to commit themselves to oppose and resist all forms of violence;*
- (g) engage in work, including home-making, for the support and welfare of themselves and their families, for the common good and to contribute to national development;*
- (h) develop their abilities to the greatest possible extent through acquisition of knowledge, continuous learning and the development of skills;*
- (i) to educate their children through formal and informal means to be good citizens of the nation;*
- (j) contribute to the welfare and advancement of the community where they live;*
- (k) strive to foster national unity and harmony, showing an attitude of respect and tolerance towards others;*
- (l) promote democracy and human rights;*
- (m) promote family life and act responsibly in the context of the family;*
- (n) protect and safeguard public property from waste and misuse;*
- (o) protect the environment and conserve natural resources;*
- (p) co-operate with law enforcement agencies for the maintenance of law and order;*
- (q) desist from acts of corruption; and*
- (r) understand and enhance Maldives' place in the international community.*

Government structure

Introduction

Maldives has a system of government often described as a presidential system. The most important person in the government is a President, who is not part of the Majlis, and who can exercise many of the powers of government on his own without requiring the advice or support of anyone else. Although his appointment in the first place involves the support of the majority of members of the Majlis, he does not need the active support of the Majlis to remain in office. There are many other countries that have Presidential systems, though probably none that has a system identical to that of Maldives. The most famous presidential system country is probably the United States of America, where the President does not even need the support of the Congress (the equivalent of the Majlis) to be appointed.

The other main type of governmental system is often known as the parliamentary system: there the person who is the head of government is a member of parliament, is chosen because he enjoys majority support in parliament, and can only remain in office so long as he has the support of parliament. Other ministers are usually also members of parliament. Countries with parliamentary systems include Bangladesh, India, Canada, and Australia. In these countries there is usually a different person who is the head of the state (sometimes called a president and sometimes a king or queen) but that person can make very few decisions about the exercise of government powers; the powers are very formal ones that are carrying out the wishes of the government.

There are also many countries that have something of a mixture between these other two systems: there will be a president with some powers that he can exercise on his own initiative, but there is also a prime minister who has powers that he can exercise (often in conjunction with a cabinet). Sometimes the powers of each – president and prime minister – are spelled out in greater detail. Sometimes the prime minister is appointed by the president, but sometimes the president must appoint the person with support of parliament. Sometimes the prime minister is really a sort of assistant to the president, managing government business in parliament of which the president is not a member. Different mixed systems are found in various countries: France, Poland, Russia, and Sri Lanka. Sometimes there is little risk of conflict between the president and prime minister. But in some countries there can be problems as the president and prime minister depend for their support on different sections of society, may have different views about policies, and where there is no guarantee that they are able to work together. Recent problems in Sri Lanka have shown the weakness of at least that particular mixed system. On the other hand, a mixed system has the virtues that it prevents a great deal of power accumulating in one pair of hands.

In truth it is not possible to say that one of these systems is always better. But it does take time for people to get used to a new system, and if there are some problems with a particular system in a country, it may be better to retain the basics and try to tackle the problems, rather than switch to a new system unfamiliar to everyone. For this reason the Law Society is proposing that Maldives keep its presidential system, but make changes necessary to prevent the president having too much power, and also that will make the system easier to understand, and reduce the possibilities of abuse of power.

The general scheme of what the Law Society is proposing is:

- (b) to have the environment protected for the benefit of present and future generations;
- (c) to free access to information about the environmental situation; and
- (d) to compensation for damage arising from the violation of the rights recognised under this clause.

Right to work

28. (1) Every person has the right to work and to choose his or her occupation.
- (2) Citizens are eligible for employment in state services on the basis of their qualifications and without discrimination, subject to Article [2]

Social Security

29. The state has a duty to take steps to, including legislation, to provide pension rights and other social security benefits for citizens.

Labour relations

30. (1) Every worker has the right to fair labour practices, including:
- (a) a fair remuneration;
 - (b) reasonable working conditions;
 - (c) the right to form, join, or participate in the activities and programmes of a trade union; and
 - (d) to strike; provided that the law may require workers and employers to participate in mediation or conciliation processes in order that the right to strike is used only as a last resort.
- (2) Every employer has the right to form or join an employers' organisation and participate in its activities.
- (3) Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

Right to disobey an unlawful order

31. Every person has a right not to obey unlawful orders.

Crimes against humanity

32. The international law relating to crimes against humanity is part of the law of the Maldives.

The special position of women

33. (1) Women have equal rights with men in accordance with the law.
- (2) The state must take steps necessary to enable women to play a full part in the life of the nation and fulfil their full potential.
- (3) The state must respect, protect and fulfil the right of women to remain free from physical violence and other forms of abuse, whether at home or in the community.
- (4) Organs of the state must take steps necessary to enable them to deal with the needs and problems of women.

The special position of children

34. (1) It is the duty of the family, society and the state to nurture, protect and educate children so that they can develop in a safe and stable environment and be able to fulfil their full potential in all respects.
- (2) All children are equal before the law.
- (3) Every child has a right to –
- (a) a name and a nationality from birth and to have their birth registered.
 - (b) be protected from exploitation, discrimination, harmful cultural practices, exploitation, neglect or abuse;
 - (c) not take part in hostilities or to be recruited into armed conflicts and to be protected from situations of armed conflict;
 - (d) not be arrested or detained except as a measure of last resort, and where a child is arrested or detained be treated in a manner, and to be kept in conditions that take account of the child's gender and age.
- (4) Children with special needs, orphans, children with disabilities, refugee children, and homeless children, are entitled to the special protection of the state and society.
- (5) Those under the age of 18 are children for the purposes of this Constitution.

Persons with disabilities

35. (1) Everyone with a disability is entitled to the same rights and has the same duties under this Constitution and the law as others. They are entitled to participate fully in society.
- (2) These rights and duties are limited only to the extent inevitable as the result of the disability.
- (3) The state has the obligation to take steps to ensure the full participation of those with disabilities in society by:
- (a) Providing appropriate education.
 - (b) Ensuring access to public facilities and to information.
 - (c) Educating the public about disabilities.
 - (d) Encouraging the development and use of sign language.
- (4) Society and the private sector has the obligation to take steps to ensure that people with disabilities can participate as fully as possible in society.

Duties of citizens and residents

36. In order to fulfil the national goals, values, and principles, all citizens have the duty to:
- (a) acquaint themselves with the provisions of the Constitution and propagate its ideals and objectives;
 - (b) uphold and defend the Constitution;
 - (c) protect the sovereignty and integrity of the Maldives, including participating in the defence of the nation, unless this is contrary to their consciences;
 - (d) Respect the rule of law, which includes:
 - complying with their legal obligations
 - paying taxes and other dues to the state
 - not settling disagreements by violent means;
 - (e) exercise their democratic rights by voting according to their conscience and being

Freedom of expression

17. (1) Freedom of expression is inviolable.
- (2) Everyone has the right to express opinions in speech, writing or other means, including through the press.
- (3) There shall be no prior censorship of speech or other forms of expression.
- (4) The law may regulate printing presses, radio, television, press and other media. Such law must comply with the criteria of art. [2].
- (5) The freedom of expression does not extend to:
 - (a) Propaganda for war;
 - (b) Incitement to violence; or
 - (c) Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.
- (6) The management of state owned media must be independent of the government and should be expressly required to give all interests and points of views fair coverage.

Freedom of assembly and of association

18. (1) Everyone has the right to assemble for peaceful purposes without prior permission of the state.
- (2) Everyone has the right to form or join organisations.

Protection of privacy

19. (1) A person's home, family and personal life are free from interference and invasion.
- (2) Confidentiality and freedom of correspondence and communication by any means are free from interference or invasion.
- (3) Law may provide for the entry into and inspection of the residence of a person or any other premises, with the prior approval of a court, and subject to the criteria laid down in art. [2].

Right of property

20. (1) Property is immune from interference.
- (2) No person shall be forbidden from acquiring, making use of or selling property.
- (3) Compulsory acquisition of property is permitted only in accordance with a law providing for prior and just compensation. Such compulsory acquisition is only permitted in order to secure public interests. The law must provide for legal challenge. The law must satisfy the criteria in art. [2].

Right to education

21. (1) Everyone has the right to education.
- (2) The state must give priority to the provision of free, compulsory primary education.
- (3) The state must give priority to the eradication of illiteracy for those of all ages.
- (4) The state must respect and promote and progressively fulfil the right to education at levels above primary education.
- (5) Institutions and individuals may establish private educational institutions. Such institutions must respect the values of the Constitution and the Maldivian nation. The state may pass legislation to regulate standards of education provided by private institutions.

- (6) Everyone has the right to be educated about their own rights and duties and the rights of others.

Artistic, cultural and scientific work

22. (1) Everyone has the right to participate in cultural life.
- (2) Everyone has the right to benefit from literary, artistic and scientific endeavours.
- (3) The state must promote science, culture, literature and the arts, within the limits of its available resources.

Right to health

23. (1) Everyone has the right to the highest attainable standard of physical and mental health.
- (2) The right to health includes:
 - (a) the right to preventive health care;
 - (b) the right to primary health care; and
 - (c) the right to appropriate drugs, facilities and qualified medical care.
- (3) The state has the obligation to promote appropriate health care by private institutions and individuals, subject to reasonable regulation of standards.
- (4) The state has the obligation progressively to provide health care within the limits of its available resources.

Right to Food and Water

24. (1) Everyone has the right to food which is of adequate nutritional value and culturally acceptable.
- (2) Everyone has the right to a supply of clean water sufficient to sustain life.
- (3) The state must respect these rights. It must make it possible for individuals to satisfy these rights for themselves and their families. It must encourage and facilitate other institutions to satisfy these rights where it is not possible for residents to do so for themselves. Within the limits of its available resources the state must also take steps to supply these needs for those who are unavoidably unable to do so for themselves.

The Family

25. (1) The fundamental importance of the family is acknowledged.
- (2) Everyone has the right to marry and found a family, without compulsion.
- (3) Society at large and the state have the duty to support families especially those which have the care of dependent children.

Right to Housing

26. (1) Everyone has the right to have access to adequate housing.
- (2) No person may be evicted from his or her home, or have his or her home demolished, without an order of court made after considering all the relevant circumstances.

Right to healthy environment

27. (1) Everyone has the right-
 - (a) to an environment that is safe for life and health;

inhumane or degrading manner.

(2) Except for legislation under clause (1)(b) the rights and freedoms in this article may not be limited.

Slavery and Forced labour

10. *(1) Slavery and forced labour are prohibited.*

(2) Compulsory labour in times of war, calamities, and other situations threatening life and property is permitted.

(3) Children may not be required to perform forced labour.

Criminal Justice

11. *(1) The following rights apply to all in connection with the criminal law and justice:*

(a) An accused person is presumed innocent until proved guilty beyond reasonable doubt, by proper procedure before an authorised court.

(b) Criminal liability is a personal matter and the arrest, prosecution or conviction of one person shall not affect the legal rights of another person.

(c) No-one shall be convicted of an offence if the act was not a crime when it was committed.

(d) No-one shall be punished more severely than provided for by law in force when the offence was committed.

(e) No-one shall be arrested, imprisoned or detained except in accordance with a law that satisfies art. [2].

(f) The treatment of persons arrested, being questioned, being tried or after conviction must not violate the provision of article [9].

(g) Any statement or evidence obtained by means of compulsion or other unlawful means must not be relied on in any trial, if this would make the trial unfair. A confession must not be relied on unless it was made before an authorised court by an accused person who was in a sound state of mind.

(h) Any person who is arrested has the right to contact a lawyer. Any person who is being tried or investigated has the right to be represented by a lawyer of his or her own choice.

(i) A person who is arrested must be brought before a court within 48 hours.

(j) In serious criminal cases the state must appoint a lawyer for an accused person who cannot afford to do so.

(k) Any person who is arrested must be informed of the reason for the arrest in a language which he or she understands. Any person being investigated for or being charged with a criminal offence must be informed as soon as possible of the details of the charge, in a language which he or she understands.

(l) Any person undergoing investigation or accused of a criminal offence must be allowed adequate time and facilities to prepare for the investigation or prepare the defence. These facilities must include an interpreter if the person does not understand the language of the court or investigating body.

(m) A person who is convicted of an offence must have an opportunity to appeal against the conviction, or sentence or both.

(2) The criminal justice system must observe the principle that loss of liberty should be

restricted to those who have been convicted of an offence. Accordingly, the law must provide for bail except in restricted circumstances. The power to refuse bail should exist only in cases of very serious offences, where there is a real danger of the person concerned absconding, or interfering with the investigation, or committing a serious offence. These exceptions are subject to the general criteria in art.[2] Conditions imposed for granting bail must not be excessive.

(3) Criminal investigations and trials must be concluded within a reasonable time.

(4) Criminal trials must take place in open court and in the presence of the person accused.

Deprivation of liberty

12. *(1) Any person whose liberty is restricted under any law, whether convicted of an offence or not, must be treated in accordance with international standards.*

(2) A person who is detained retains all constitutional rights, except those clearly incompatible with being under detention.

Freedom of Movement

13. *(1) No citizen may be deprived of the right to move freely around the country.*

(2) Citizens have the right to live in any part of the country.

(3) Citizens have the right to a passport and to enter and leave the country.

(4) Citizens have the right to call upon the authorities for protection when outside the country.

Political Rights

14. *(1) All citizens have the right to participate in elections as voters and as candidates.*

(2) Elections shall be conducted by secret ballot.

(3) All citizens have the right to form or join political parties provided these comply with the provisions of Chapter []³.

Freedom of information

15. *(1) Every citizen has the right of access to:*

(a) information held by the state; and

(b) any information that is held by another person and that is required for the exercise or protection of any right or freedom.

(2) Every person has the right to demand the correction or deletion of untrue or misleading information which affects that person.

(3) The state has the obligation to publish and publicise any important information affecting the life of the nation.

Right to fair administration

16. *(1) Every person has the right to administrative action that is expeditious, lawful, reasonable and procedurally fair.*

(2) Every person whose rights have been adversely affected by administrative action has the right to be given written reasons for the action.

3: intentionally left blank

This means that the Bill of Rights is not a matter for the state only to respect, but that individuals and companies and organisations must also do so.

Beneficiaries of rights

4. Unless otherwise clearly stated in relation to a right, all the rights in this Chapter are applicable equally to all Maldivians and to all persons within the borders of the Maldives.

Remedies for violations of rights and access to courts and other institutions

- 5.(1) The right of access to court for a remedy for breach of this Chapter is guaranteed.
- (2) If any person can show actual damage or loss caused by such a violation, a court may award reasonable compensation.
- (3) A claim that a law is unconstitutional, or for a declaration that a government policy is unconstitutional, as in violation of this Chapter, must be referred to the Supreme Court.
- (4) When interpreting any law in the light of this Chapter, the Supreme Court must, if possible, interpret the law so that it complies with the spirit of this chapter.
- (5) If an individual or group affected by a violation is unable for financial or other reasons to go to court on the individual's or group's own behalf, any other individual or organisation may go to court on their behalf, if acting in good faith.
- (6) There must be a Human Rights Commission established by law. That law, and government practice in relation to the Commission, must ensure that
 - (a) members are appointed from all communities and sectors of society after wide consultation;
 - (b) individuals appointed as members have experience of or commitment to human rights values;
 - (c) members are appointed for a fixed term and cannot be removed from office except for good cause;
 - (d) the commission is independent;
 - (e) the commission is assured adequate resource;
 - (f) its functions include
 - (i) promoting knowledge of human rights;
 - (ii) facilitating training of public officers in human rights;
 - (iii) setting standards for government and other institutions for the fulfilment of their human rights obligations;
 - (iv) monitoring the human rights situation;
 - (v) investigating possible human rights violations on the part of all public bodies whether on its own initiative or as a result of complaints;
 - (vi) offering conciliation and mediation;
 - (vii) making recommendations;
 - (viii) taking cases to court to secure rights or to obtain declarations of whether laws and policies comply with this Chapter;
 - (ix) advising on whether existing or proposed laws comply with international standards and this Chapter; and
 - (x) assisting in reporting to treaty bodies in respect of international or regional treaties signed by the Maldives.

Equality and non-discrimination

6. (1) Everyone is equal before the law.
- (2) The state and natural and juristic persons must not discriminate against anyone intentionally or by laws or practices which have a discriminatory effect.
- (3) Prohibited grounds of discrimination include: language, ethnic affiliation, nationality, place of birth, place of past or present residence, religion or belief, sex, age, health status or disability.
- (4) In addition to the general power to provide reasonable limitations by law under art. [2], this article may be limited by:
 - (a) laws passed to provide justified benefits for disadvantaged groups or individuals in accordance with article [7].
 - (b) laws relating to rights to vote or belong to parties, to ownership of land or rights of residence providing for reasonable distinctions between citizens, and non-citizens and between residents and non-residents. These distinctions must meet the criteria in art. [2] This provision will need to be made consistent with whatever decision is made about whether foreigners can own land [see below]

Affirmative action

7. The state may pass laws and take other measures designed to benefit individuals or groups who are disadvantaged, whether or not as a result of past discrimination, but any such measure must –
 - (a) adequately provide for benefits to be on the basis of genuine need; and
 - (b) satisfy the criteria in Article [2] (1) subject to the modification that groups may be specified as beneficiaries of affirmative action programmes under this article.

This makes it possible for a law to give favourable treatment in granting scholarships to people who come from atolls where education is weaker, to take one example, without any allegation that this is discriminatory treatment.

Right to life

8. (1) Everyone has the right to life.
- (2) The death penalty is abolished
- (3) Legislation, including legislation applicable during a period of emergency, must not limit the right under this article.

The right to freedom, dignity and security of the person

9. (1) Everyone has inherent dignity and the right to freedom, and security of the person. These freedoms include the following:
 - (a) not to be deprived of freedom arbitrarily or without just cause;
 - (b) not to be detained without trial. This freedom is subject to laws relating to the criminal process, which satisfy the requirements of articles [2] and [10]. It is also subject to special laws applicable during a state of emergency which satisfy the requirements of article []²;
 - (c) to be free from all forms of violence from public or private sources;
 - (d) not to be tortured in any manner, whether physical or psychological; and
 - (e) not to be subjected to corporal punishment or to be treated or punished in a cruel,

2: intentionally left blank

tive authorities which have the power to make regulations.

The Law Society realises that not all rights can be absolute (as it is sometimes put 'my rights end where your nose begins'!). But we believe that the Constitution should provide guidance on what kind of restrictions may lawfully and reasonably be imposed. For example, the restriction should be proportional to the harm that it seeks to prevent, so that draconian measures cannot be imposed to deal with conduct which causes only minor inconvenience to others. Also the restriction should be justifiable in a democratic society.

The Law Society considers that the best way to deal with restrictions is to have a general provision which covers all rights and freedoms, setting out the scope of permissible restrictions, and the procedures for balancing the importance of the right and the necessity of restricting it. In this way there would be no need to include the reference to restrictions in the articles on individual rights. This method of dealing with restrictions has been employed in a number of well known recent constitutions, including South Africa.

4. The Constitution does not provide any mechanism for the enforcement of rights and freedoms or redress for their violation. The Constitution does not specify remedies and orders that courts can issue when a person's rights are violated. Without an easy method of complaining about and challenging violations of rights, most people are not able to protect their rights. And those who commit the violations will have no reason to improve their conduct.

The Law Society **proposes** a two fold approach in which remedies can be obtained either from an administrative agency or the courts. It recommends that for the former, the Human Rights Commission (and its independence) should be entrenched in the Constitution. The principal functions of the Commission should be specified; these would include providing education about rights, informing people how they can approach the Commission, setting standards of conduct to conform to the rights, receiving and investigating complaints about the violation of rights or administrative injustices, facilitating settlement of disputes, and taking appropriate cases to courts when other methods of settlement fail and the complainant cannot afford the costs of going to court. In this way the Commission would also perform the functions of an Ombudsman. For those readers who are not familiar with the idea of the Ombudsman: the word is Swedish but has really entered the English language; it refers to an official who receives complaints from the public about the administration, where the complaint is about unfairness, incompetence, unreasonable delay, perhaps even rudeness. The Ombudsman does not usually have any power to order the offending public body to change its behaviour, or to compensate a victim, but he/she may make recommendations. In many countries there are both Ombudsmen and Human Rights Commissions, but The Law Society **proposes** that because Maldives is a small country the functions should be combined in one body. This also avoids the problem of members of the public not knowing where to go – is their problem a human rights issue or an ombudsman-type complaint?

The Constitution should also empower courts to hear cases about violations of human rights and authorise them to award appropriate remedies, like compensation, injunction, punishment for those who have violated rights of others, and declarations of invalidity of policies, administrative practices, and laws and regulations.

5. The article on citizenship in the fundamental rights chapter (article 14) could be merged with article 5 (which deals with the acquisition of citizenship) in chapter 1.

Proposed Revised Chapter II

Fundamental Rights and Duties of Citizens

Principles

1. (1) *Fundamental Rights and duties are an important part of the foundation of democracy and social justice in the Maldives. They are part of the framework for all laws and policies.*
- (2) *The purpose of the recognition and protection of human rights is to protect the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.*

Limitation of rights

2. (1) *A right or freedom set out in this Chapter (which shall be known as the Bill of Rights) may be limited by a law, provided the law satisfies the requirements of this article.*
- (2) *The law must apply generally, not just to specific individuals or groups.*
- (3) *The law must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.*
- (4) *In deciding whether a limitation is justified, a court or other body should take into account all relevant factors, including:-*
 - (a) *the nature of the right;*
 - (b) *the importance of the purpose of the limitation;*
 - (c) *the nature and extent of the limitation; and*
 - (d) *whether there are less restrictive means to achieve the purpose.*
- (5) *No limitation on a right is valid if it is so extensive that it destroys the core or essential content of the right.*
- (6) *The responsibility of establishing that a limitation meets these criteria rests on the state or other person claiming that the limitation is valid.*
- (7) *In case of a declaration of a state of emergency certain rights may be further limited in accordance with art. []¹ below.*
- (8) *The limitations provided for in this article are subject to specific provisions in other articles about the extent to which individual rights may or may not be limited.*

Duty of the state and others regarding human rights

3. (1) *The state must respect, protect, promote and fulfil the rights and freedom described in this Chapter;*
- (2) *It is the duty of every state organ, including the security forces, to give effect to sub-clause (1) whenever that organ, or its agents and employees discharges any of its responsibilities and functions.*
- (3) *A provision of this Chapter binds a natural or juristic person to the extent possible, given the nature of the right, and the nature of any duty imposed by that right.*

1: intentionally left blank

A Proposed New Chapter A on Directive Principles

Many recent constitutions contain a chapter entitled Principles of State or Directive Principles of Policy. The purpose is to set out the values which should underlie the state and society and to provide directions on law and policy. Often the principles cannot be enforced in the courts as such, although they do impose moral and legal obligations on the state and the people. Some constitutions require the head of the government to make an annual report to the Nation on the implementation of the Principles.

The current Constitution does not include Directive Principles of State. The Law Society **proposes** that Directive Principles of State should be included with a statement that they bind all state institutions and require the President to make an annual report on their implementation.

The substantive principles should include:

democracy, rule of law and protection of human rights;

that the government has the duty to implement international obligations in Maldivian law

it is not right that the country should commit itself to certain obligations to the international community, but then not take the necessary steps to make these obligations part of the national law. Some of these international obligations give rights to people in Maldives; for example the human rights treaties that the country is party to (particularly the Convention on the rights of the child and that on the rights of women) really need national law in order to be fully effective;

the promotion of social justice;

social justice includes fair treatment of all sections of the society, and taking positive steps to bring up disadvantaged members of society:

equitable distribution of resources and equitable development throughout the country;

preservation of the environment;

participation as a responsible citizen in world affairs; commitment to peaceful resolution of disputes;

gender equality;

care of the needy and the disabled, etc.

Fundamental Rights and Duties of Citizens

The fundamental rights and duties of citizens are contained in chapter II of the current Constitution. The chapter needs considerable improvement. In this section the Law Society identifies the principal shortcomings of the chapter and indicates the ways in which they can be overcome. At the end of the section we propose a new chapter to replace the present chapter II.

The principal shortcomings of the chapter are as follows:

1. It omits a number of important rights, such as

- The right to life
- The protection against torture or slavery
- The right not to be discriminated against on specific grounds, like gender, age, or social origin
- The right to vote or stand for elections
- Freedom of information
- Rights in connection with religion
- Rights about the family
- Rights in respect of employment and
- Rights to housing, food, health and education

Also, some rights are expressed in language that does not guarantee the full scope of that right (e.g., the freedom of movement). The right to equality does not expressly protect against discrimination on grounds such as gender and social origins. There is no special protection for vulnerable members of society, such as women and children, although the Maldives has ratified UN conventions for the rights of women and children. The Law Society **proposes** the inclusion of these rights. The draft we have prepared will fill these gaps.

2. The chapter does not specify the obligations of the state or other bodies for the protection and promotion of rights. This makes it hard for the members of the Majlis, ministers and administrative agencies to know exactly how to tailor their policies and activities to fully discharge their responsibilities in respect of the rights and freedoms of citizens.

The Law Society **proposes** that the Constitution should specify the precise obligations of the state and other actors (e.g., commercial corporations). These obligations include not merely the duty to desist from violation of rights, but active steps to ensure that they are protected from violation by others, and indeed that positive steps are taken to enable people to enjoy their rights (e.g., by creating an environment in which there is tolerance of opposing views, support is given to civil society organisations, and knowledge of rights and their importance is disseminated).

3. Most rights and freedoms are made subject to the law, in expressions such as 'in accordance with the law', 'as provided in the law', 'unless prohibited by the law', etc. Rights should be guaranteed by the Constitution and should override other laws which unreasonably restrict them. Under the current Constitution, rights can be restricted and indeed completely denied through ordinary law. The definition of law in the Constitution is very broad and puts rights at the mercy of the Majlis, the President and administra-

General Provisions

Separation of Powers: Proposals on Article 4 and their relationship to the rest of the Constitution

In a modern state there are many powers that are exercised on behalf of the people by public officials and bodies. The state is likely to provide for education and roads, for health and defence, for pest control and public libraries, for economic development and regulation of banks. It is not necessary for the Constitution to spell out that government can do all these things – indeed, it is for the people to decide, by means of election and other forms of participation, what it wants government to do about them. But it is common for constitutions to say something about what bodies can exercise the various types of powers. These powers are commonly divided like this:

- The power to decide on the policies that the government should follow in the interests of the country, and the power to carry out those policies (carrying them out involves the use of the public service, and the police and other forces)
- The power to make laws (a government cannot do much without law, and especially it cannot raise or spend money without rules that provide how to raise money and on what it can be spent)
- The power to interpret the law and decide individual disputes – whether those disputes involve the government or not

It is undesirable for all these powers to be in the hands of one person or even of a small group of people. This would put too much power in the hands of a few. And there is also a particular risk if the power to decide disputes between the government and a citizen is in the hands of someone who is part of government: that person would be tempted to decide disputes in favour of the government of which he or she is a part. That is something of a problem with the existing Constitution: the power to decide cases is given partly to the President, even though some disputes may involve the interests of the President himself, or of the government which he heads. Even if the President was completely fair in deciding disputes, it really would look very unjust for him to be deciding disputes in which he or his government has an interest. If a company has a dispute with the government over a contract or over tax, if the President decides the case, which might now be possible, the company would find it very difficult to believe that the President was being totally fair if he decided in favour of the government! For these reasons, it is common for a Constitution not only to make it clear who has these various powers, but also to avoid giving too much power to any one person or body.

There is another reason for distributing these powers: that each type of power can operate as a check on the exercise of the other powers. So the courts (that decide disputes) can be used to ensure that the executive (that makes and carries out policies) does not step beyond its legal powers. And the Majlis, that contains the representatives of the people and makes laws, can also keep a check on the exercise of power by the executive. The courts also ensure that the Majlis does not exceed its power – any law that goes beyond what is permitted by the Constitution can be declared invalid by the courts. Also, the

Majlis cannot easily make law without the agreement of the President, because the signature of the President is needed to approve any law passed by the Majlis. You might now say – but this means that the power to make law is actually split between the President and the Majlis! And that is true – sometimes the best way to prevent abuse of a power is to split the power among more than one persons or bodies.

But this Article cannot spell out all the details; it would be too long. The Law Society **proposes** that the article be revised to

make clear the two important principles –

firstly that the power to make and administer policy, to make law and to decide disputes is given by the people through the Constitution to these various bodies, and

secondly the principle of distributing power

specifically it should no longer provide that the President has the power to decide disputes

The last power is for the courts and similar bodies.

For details about the complete distribution of power one has to look at other parts of the Constitution (that is why this Article refers to ‘in accordance with this Constitution’). The articles on the ‘Executive’, that includes the President and the Cabinet of Ministers (Chapters III and IV), as well as the provisions on security (see suggested new chapter [D]) set out the powers of policy making and administration. In order to gain the complete picture of how those powers are exercised it is necessary to look also at the powers of the Majlis (see Chapter V); there you will see how the approval of the Majlis may be required for certain decisions of the Executive. The powers of the Majlis to make laws are contained in articles 63, and the power of the President to refer laws back to the Majlis for reconsideration in article 79. There is also a power to make regulations, but this must be carried out within the limits of acts of the Majlis (see proposed new article after Article 78). In an emergency situation the President may also make certain laws, and those powers, which require the approval of the Majlis, can be found in Chapter XIII. The powers of the courts are set out in general terms in chapters VIII and IX which the Law Society proposes should be merged into one chapter.

All these powers should also be seen in the context of various provisions to ensure the independence and the accountability of public bodies and officers. These include the office and functions of the Auditor General (article 124), of the Electoral Commission (article 130), of the Human Rights Commission (article 5 of the proposed redrafted Chapter II) and of the Anti-Corruption Commission [Proposed article C4]. These powers are so important that they can almost be considered a separate set of government powers.

There is an important connection between this principle and the whole question of the system of government that the Constitution adopts. All modern constitutions do have a high degree of separation of powers, but precisely how the powers are distributed will depend on the particular type of system adopted. The Law Society’s draft is proposing that a presidential system be retained – but that the powers of the President be considerably reduced.

- The role of independent institutions and independent office holders should be constitutionally recognised and protected.

4. *Need for a consultative and participatory process*

The Law Society considers that the process of discussing and agreeing on constitutional reform should be as consultative and participatory as possible. We propose that the People's Special Majlis should undertake a programme of informing the people about the process of reviewing the Constitution and educating them on the issues of reform. After that people in the Atolls should be given opportunities to express their views and recommendations. Panels of the members of the Majlis should visit the Atolls to collect the recommendations of the people which should then be analyzed together with other recommendations received by the Majlis. Majlis members should begin their deliberations on reform only after these recommendations have been received and analyzed.

There are a number of reasons why the people should be involved in this way in the reform process.

- Only in this way can a national consensus be developed on national values and state principles and the direction of future development.
- People will gain a better understanding of political and social issues.
- People will become more knowledgeable about the new Constitution and this will increase their capacity to take part in public affairs, enjoy their rights and fulfil their civic duties.
- The new Constitution will enjoy support and legitimacy among the people which will facilitate its implementation.

5. *A note on this document*

This report proposes changes to many articles of the existing Constitution. Some of the changes are major, sometimes they are quite small changes that would make the Constitution clearer, or are necessary just to produce a coherent document. Sometimes this report proposes an actual redrafting of the provision; sometimes it just suggests the purpose of the change rather than proposing actual wording. Sometimes the reason for the change will be obvious (especially when viewed in the light of the underlying assumptions set out earlier in this Introduction). Sometimes a brief explanation is added. Suggestions (whether of actual wording or of substance) are in italic print.

Cross-references to other articles or chapters are to the numbers in the current Constitution; if the proposals of the Law Society are adopted, there would be new articles and new chapters, and some existing articles would disappear. If the cross-reference is to a proposal for something quite new, the cross-reference is placed in a square bracket and may be more detailed so that the reader can find it.

Preamble

The current Constitution does not have a Preamble. The function of a Preamble is to provide the background to the adoption of the Constitution, like the reasons for the change of the Constitution. It usually acknowledges the sovereignty of the people and sometimes states the identity of the people or the state (e.g., religion or history). It also provides a statement of the values underlying the state and the constitutional order as well as the aspirations of the people.

For the above reasons, the Preamble is of assistance to the authorities who have to implement or interpret the Constitution, especially in cases of ambiguity. It is also of great symbolic significance. It introduces an element of poetry in what can be a dry and technical document!

The Law Society **proposes** the inclusion of a Preamble and suggests the following ideas might be included:

- *The guidance of Allah*
- *The ancient history of Maldives as a people*
- *Inspired by Islamic faith*
- *State exercising its authority through the chosen representatives of the people*
- *State committed to democracy, rule of law, human rights and social justice*
- *Wishing to bequeath to future generations a country free of strife*
- *Promote peace and stability in the world and in our region*
- *Constitution adopted by the freely chosen representatives of the people through the People's Special Majlis*

Introduction

1. *The responsibilities and role of the Law Society*

The Law Society has a special professional responsibility to assist the process of constitutional reform and development. The purpose of this memorandum is to promote discussions on options for reform, not to close the debate. In keeping with its professional status, the Law Society does not take political partisan positions.

The Law Society is grateful to President Maumoon Abdul Gayoom for his important initiative in proposing a review and reform of the Constitution. The President has stated his position succinctly in this way:

“I want, with the blessing of Allah, to bring about major corrective reforms needed by this country, for the peace and development of the people and for these reforms to be undertaken in consultation and in agreement with the people.”

The Law Society endorses both his reasons for reform and the method for reform. We intend to play a constructive role in constitutional reform.

2. *How this memorandum was prepared*

From the outset, the Law Society was determined to produce a comprehensive review of the Constitution, with assistance from Consultants, and most importantly, in consultation with the lawyers, government officials, Members of the People’s Majlis and members of the public. At the same time, it was also decided that the Law Society would not seek financial assistance from local parties for this project, in case it may be seen as a political alignment. Instead, the Law Society sought the assistance and collaboration of the UNDP. Indeed, the Law Society is grateful to the Government for granting the permission, as required by law, to obtain and accept the foreign aid.

The initial task of identifying the main issues for in-depth study was carried out by Professor Hashim Kamali, at the request of the UNDP. During a two-week stay in Male’, Professor Kamali met a number of lawyers, government officials, Members of the People’s Majlis and members of the public. His report is attached hereto as Annex I.

The second and major task of preparing these proposals for constitutional reform were carried out during the five-day working sessions held at the UNDP conference room. The UNDP was also kind enough to make available in Male’ during that period two constitutional law experts, Professors Yash Ghai and Jill Cottrell, for consultation and drafting.

In keeping with the Law Society’s policy to seek reform and development through consultation instead of confrontation, we invited the Attorney General’s Office, Law Commission of Maldives, High Court of Maldives, Ministry of Justice and the Human Rights Commission of the Maldives to participate in the process of preparing these proposals for constitutional reform. In this regard, the Law Society recognises the valuable input and assistance we received from the Law Commission of Maldives, Attorney

General’s Office and the Human Rights Commission of the Maldives. The Law Society acknowledges and appreciates the financial, technical and logistical support and assistance provided by UNDP, without which the project would not have succeeded.

3. *Principal assumptions of the memorandum*

The Law Society agrees with the President’s analysis of the need for reform. Changes in the global system and in Maldives’ position in the world, as well as the aspirations of its people, require a reconsideration of the present Constitution. The President has stated that in order to meet Maldives’ targets for social, economic and national development, “we have to lift our existing democratic system to a higher level” and proposes the modernisation of democratic system “in line with other modern democratic systems”. He has also identified the need to modernise the system of governance and the distribution of powers through a clearer separation of powers and the reduction in the powers of the president. He supports the more effective protection of the fundamental rights of citizens including the equal rights of women. The Law Society considers that due to economic and social changes of recent years, Maldives is at a crossroads. It is critical to our future to take the right path now. We believe that that path lies in the direction of greater democracy and the active participation of the people, an effective and accountable system of government with a clearer separation of powers and rules and procedures for the exercise of state power, improvements in the legal and judicial system, and the better protection of the fundamental rights of citizens. On this analysis, we set out the assumptions on which our recommendations are based.

- There is urgent need for constitutional reform
- There is considerable consensus on the need for reform as well as on the recommendations for change
- Reforms should build on the existing Constitution whose provisions are known and understood
- Nevertheless, there is need for greater democratization and new forms of public participation in state affairs
- There should be clearer separation of power and a better scheme of checks and balances between different state organs
- The powers of the President should be reduced by removing his/her role in the judicial process, by subjecting various appointments made by the President to ratification by the People’s Majlis, reducing the term of office from 5 to 4 years and limiting the terms a person may serve as President to two, and removing powers to make decrees or regulations other than those expressly authorized in the Constitution or a law.
- The judiciary should be made fully independent and standards of qualifications and professionalism should be raised.
- The mechanisms of the Majlis to supervise the conduct of government and to discharge functions of law making should be strengthened so that the Majlis can play a more effective role as people’s representatives.
- Provisions for the protection and enforcement of human rights should be improved.
- There should be more transparency in and accountability of the conduct of the executive and other state institutions.

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Foreword

The constitution is the most fundamental document in the life of a nation and its people. It is a guiding instrument and a foundation upon which a nation is built. On ... 2004, President Maumoon Abdul Gayoom invited recommendations to amend the Maldives' Constitution to be submitted before 29th June 2004. The Law Society of Maldives is keen to contribute to the revision of the Constitution of Maldives. And with the assistance of the UNDP, we have been able to bring constitutional law experts to comprehensively review the Constitution and prepare recommendations within the relatively short period of time available.

This report and its recommendations is intended to assist the Members of the People's Special Majlis, in their deliberations for the constitutional amendments, and the wider public, in understanding the issues involved and the extent of the revisions needed. Accordingly the report has been written in reasonably plain language, unlike other documents of similar nature. Due to the limitation of time, the report was submitted in English language. However, a Dhivehi version has since been prepared. Both versions are being published in one book, so that cross-references can be made with convenience.

For the purposes of this publication, we have taken some editorial liberties – to correct some typing errors, insert or correct cross-references and to fill in a couple of blanks – without affecting the substance of the submissions made to the President.

We are deeply grateful to the UNDP for their financial administrative and moral support in preparing the report and seeing it through to publication. Indeed, we would not have been able to carry out this project without their assistance.

We are also grateful to the Government and the Attorney General of Maldives for their co-operation and valuable input. We also thank the Human Rights Commission of the Maldives and the Law Commission of Maldives for their participation in and valuable contributions to the review process.

We wish to thank Professor Hashim Kamali, Professor Yash Ghai and Professor Jill Cottrell for providing their expertise at such short notice and within such a short period of time.

Last but not least, we thank our members who have provided their active and moral support in carrying out this project.

Shaaheen Hameed
Vice-Chairman
The Law Society of Maldives

Foreword

This country is at an important crossroads. Maldivians are now beginning to engage in an open and free dialogue on the constitutional and political reforms in their country. Healthy debate on the political front, formation of political parties and ways to promote a culture that values and protects human rights are some of the welcome advances of the recent past. Today, Maldives has an unprecedented opportunity to further this ongoing reform and development process in the country.

We are confident that draft proposal on the Constitutional Reform, submitted by the Law Society to the President of the Maldives, will help promote and enhance this debate further. Leading international experts have contributed to this effort based on their extensive experiences in other countries that have gone through a similar reform process. Needless to say, this is a result possible largely due to the President of Maldives' open invitation to the public to voice their opinion on how the constitutional reform should proceed in the country.

UNDP has had a long and successful partnership in supporting legal reforms in this country. Recently, in co-ordination with the Law Society and the Attorney General's Office, UNDP has supported a mission by a leading international expert in Islamic Jurisprudence to identify possible amendments to the Maldives Constitution. The mission's recommendations have formed a significant basis of this document. This proposal now marks a considerable step forward in the reform process.

I wish to congratulate the Law Society of the Maldives for their vigorous efforts with a great degree of commitment and professionalism during the entire process. I would like to thank the Attorney General's Office, the Law Commission, the High Court, the Ministry of Justice, and the Human Rights Commission, for their positive participation and active support.

I wish success to the people of the Maldives in this endeavour.

Patrice Coeur-Bizot
UNDP Resident Representative
Maldives

Ahmed Muizzu
25/1/06

Submission of The Law Society of Maldives
on
The Reform of the Constitution
to
The President of the Maldives

29 June 2004