

CONSTITUTIONAL RECOMMENDATIONS

FOR THE REPUBLIC OF THE MALDIVES

A Report Submitted to the Attorney General
Of The Government of the Republic of
Maldives

by

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THE CONSTITUTION OF THE REPUBLIC OF THE MALDIVES

(date of enactment of the
Constitution to be entered)

ALL PRAISE UNTO ALLAH, THE CHERISHER, SUSTAINER, EVOLVER AND PERFECTOR OF THE WORLDS, AND BLESSINGS AND PEACE BE UPON OUR PROPHET MUHAMMAD, THE LAST OF THE PROPHETS AND MESSENGERS AND UPON HIS FAMILY AND UPON HIS COMPANIONS.

PREAMBLE

WHEREAS the Maldives has always been a self-governing country;

AND WHEREAS more than eight centuries have elapsed since the people of the Maldives chose and accepted the sacred religion of Islam;

AND WHEREAS the Citizens' Special Majlis representing the people of the Maldives have resolved to frame for the sovereign independent state of the Maldives a Constitution:

WHEREIN it is provided that the State should exercise its powers and authority through the chosen representatives of the people;

WHEREIN are enshrined the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam;

WHEREIN are guaranteed the fundamental rights of personal liberty, right to property, equality of status, equality before the law and freedom of thought, expression and association;

WHEREIN are safeguarded the integrity of the territory of the country, its independence and all its rights including its sovereign rights over land, sea and air;

SO THAT the people of the Maldives may prosper and attain their rightful place amongst the nations of the world, and make their full contribution towards international peace and the progress and happiness of humanity;

NOW THEREFORE we, the people of the Maldives, through our representatives in the Citizens' Special Majlis do hereby adopt, enact and give to ourselves this Constitution on this day of the Hijrah 1411 corresponding with the day of 199...

CHAPTER I

1. THE REPUBLIC OF MALDIVES

The Maldives is an independent, sovereign, democratic republic founded on the principles of Islam and organised as a unitary state. It shall be known by the name of the Republic of the Maldives. Hereinafter in this Constitution the Republic of the Maldives shall be referred to as the Maldives.

2. THE POLITICAL TERRITORY OF THE MALDIVES

The political territory of the Maldives shall consist of the land, the sea, the sea-bed, the sub-soil situated beneath the sea and the continental shelf and the air of the area being included in a line drawn through the points in the geographical map set out in the First Schedule. The Citizens' Majlis shall determine the number of Atolls the said area is to be divided into for administrative purposes.

3. POPULAR BASIS OF STATE SOVEREIGNTY

Political sovereignty resides in the people and all governmental authority emanates from them.

4. DIVISION OF POWERS

For the purposes of administration, the powers of the State shall be divided into the following:

- (1) The Legislative Power vested in the Citizens' Majlis and the Citizens' Special Majlis.
- (2) The Executive power vested in the President of the Republic and the Minister's Majlis.
- (3) The Judicial power vested in a High Court and such subordinate courts as are established by Law.

5. THE MALDIVIAN STATE

The Maldivian State shall consist of the government at Male' and in all the atolls, the political territory of the Maldives and the people of the Maldives.

6. CONSTITUTION AS HIGHER LAW

- (1) Any law passed after commencement day which is inconsistent with this Constitution shall be void to the extent of the inconsistency.
- (2) All laws existing on commencement day which are not inconsistent with this Constitution shall continue to be in force on and after commencement day.
- (3) All laws existing on commencement day which are inconsistent with this Constitution shall be enforced after commencement day only after such modifications as may be made therein by the authority having power to do so under this Constitution in order to bring those laws into accord with this Constitution.

Provided that any modification of pre-commencement law shall be without prejudice to anything previously done by virtue thereof or any rights previously accorded thereunder.

- (4) Any court or tribunal applying the provision of any existing law which has not been modified on or after commencement day may apply it with such modifications as may be necessary to bring it into accord with the provisions of this Constitution.
- (5) In this Article "modification" includes amendment, adaptation and repeal.

7. COMMENCEMENT

- (1) Subject to clauses (2), (3) and (4), "commencement day" is the day on which the Constitution Amendment Bill 1991 is enacted into law by the Citizens' Special Majlis under the authority of Article 82 of the 1968 Constitution.
- (2) On that day Chapters 1 and 2 of this Constitution shall begin to have operation.
- (3) The coming into operation of the other provisions of this Constitution may be delayed for no more than six months from commencement day by a Presidential Proclamation in order to facilitate transitional and procedural arrangements.
- (4) Under clause (3) different dates may be assigned for giving effect to different provisions of the Constitution.

(5) Six months after commencement day or an earlier date proclaimed by the President, the Constitution of 1968 shall cease to have any legal effect.

8. THE CAPITAL

The Capital of the Maldives shall be Male'

9. THE STATE RELIGION

The Religion of The Maldives shall be Islam.

10. THE NATIONAL LANGUAGE

(1) The National Language of the Maldives shall be Dhivehi.

(2) The President of the Republic may, by notification, permit the use of any other language or languages for any one or more official purposes either throughout The Maldives or in any part thereof.

11. THE NATIONAL FLAG

The National Flag of The Maldives shall be the flag depicted in the Third Schedule of this Constitution.

12. THE NATIONAL ANTHEM

The National Anthem of The Maldives shall be the anthem, the words and music which are set out in the Fourth Schedule of this Constitution.

13. THE NATIONAL DAY

The National Day of The Maldives shall be the First Day of Rabeu'l Awwal.

14. THE CURRENCY OF THE MALDIVES

The Unit of Currency of the Maldives shall be the Rufiyaa which shall consist of one hundred larees.

15. CITIZENSHIP OF THE MALDIVES

The following persons shall be citizens of Maldives.

- (1) Every person who immediately prior to the commencement of this Constitution was a citizen of Maldives.
- (2) Every person, wherever born, whose father or mother was a Maldivian citizen at the time of that person's birth.
- (3) Every person who qualifies for citizenship by naturalisation or registration under an existing law.

16. DEPRIVATION OF CITIZENSHIP

- (1) No Maldivian citizen shall be deprived of citizenship except in accordance with express provisions of the law.
- (2) The Citizen's Majlis may by law provide for the revocation of the citizenship status of any citizen:
 - (a) who has voluntarily and formally acquired by registration or naturalisation the citizenship of any other country;
 - (b) who attempts or conspires to abrogate or subvert the Constitution by the use of force or show of force or by other unconstitutional means;
 - (c) who during any war in which The Maldives is or was engaged, unlawfully traded or communicated with an enemy in such a manner as to assist the enemy in that war;
 - (d) who obtained his citizenship by means of fraud, false representation or the concealment of any material fact; or
 - (e) whose citizenship certificate was effected or granted by mistake
- (3) No order for the deprivation of citizenship shall be made without giving to the affected party a prior and adequate opportunity to make representations.

17. RENUNCIATION OF CITIZENSHIP

Any citizen of or over the age of twenty-one years and of sound mind may renounce his citizenship with the permission of the Minister of Home Affairs. Provided that this right shall not be available in times of war or national emergency.

EXPLANATORY NOTES TO CHAPTER I

I have followed closely the Draft Rules except in relation to the following;

1. A new Article (Art. 6) on the Constitution as a higher law has been added which provides for existing laws to be modified to bring them in line with the Constitution. This Article incorporates Articles 141 and 143 of the Draft.
2. An Article (Art. 7) on commencement has been added to this Chapter to incorporate ideas in Article 142 of the Draft.
3. Article 15 (2) on citizenship by descent has been clarified.
4. The Article on deprivation of citizenship seeks to prescribe the grounds on which the Citizen's Majlis may deprive a citizen of his citizenship.

It is submitted that citizenship is too basic and important a right to be left entirely to the will of the Majlis. The specific grounds on which citizenship may be deprived ought to be mentioned. In enumerating the law, I have combined Draft Articles 14 and 15.

5. Renunciation of citizenship should not be allowed in times of war or emergency. I have made this change to Article 14 (b).

(SHAD SALEEM FARUQI)

Addendum to Chapter I

Article 142 of the Draft empowers the President, in a transition period of six months after the new Constitution is enacted, to suspend or amend the provisions of the new Constitution.

It is submitted that the conferment of these powers on the President is not necessary.

The new Constitution should get a strong foothold on commencement day itself. Its Chapter One with a provision on 'constitution as a higher law' and its Chapter Two on fundamental rights should be given force immediately. The rest of the Constitution can come to life within the next six months.

Chapter II

Fundamental Rights and Obligations of Citizens.

<u>18.</u>	<u>Equality Before the Law.</u>	<u>Comments</u>
	(1) All citizens are equal before the Law and entitled to equal protection of the Law.	- Based on Draft Article 16
	(2) Clause (1) does not preclude any Law, programme or activity that has as its object the amelioration of socially and economically disadvantaged groups or sections of the population.	- Added in order to permit " protective discrimination " in favour of women, aged, disabled etc.
<u>19.</u>	<u>Personal Liberty.</u>	
	(1) Everyone has the right not to be deprived of his life or liberty except in accordance with the Law.	- Based on Articles 17 (1) (b) & 17 (1) (c)
	(2) Everyone is entitled to equal protection of the law and equal access to the machinery of justice.	
	(3) Every person who is arrested has the right:	
	a) to be informed promptly of the grounds of arrest;	- Based on Draft's 17 (1) (b)
	b) to retain and, if he chooses, to instruct a counsel within a reasonable time after arrest;	- Added
	c) to not be detained for more than seventy-two hours after arrest except under the authority of Law; and	- Articles 17 (1) (d)
	d) to not be denied reasonable bail without just cause.	- Added

(4) Where a complaint is made to the High Court by way of habeas corpus that a person is being unlawfully detained, the Court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order the release of the detainee.

- Added in order to allow for the writ of habeas corpus to challenge an unlawful detention

20. Fair Criminal Process.

(1) Any person charged with an offence has the rights:

- a) to be informed without unreasonable delay of the specific offence with which he is charged; - Added
- b) to be tried within a reasonable time; - Added
- c) to be presumed innocent until proven guilty according to the Law - 18 (1) (a)
- d) to be allowed to make a proper defence on the charge against him - 18 (1) (b)

21. Protection Against Arbitrary Punishment.

(1) No act shall be punishable as a crime unless it is forbidden by the Law.

- New section to limit the power of the executive to impose punishments according to its discretion.

(2) Penalties for crimes shall be prescribed by the law and no person shall be arbitrarily punished, detained, imprisoned, deprived of property, subjected to a fine or banished to an island except under the express provisions of the law.

22. No retrospective legislation.

(1) No person shall be punished for an act or omission which was not punishable by law when it was done or made.

(2) No person shall suffer greater punishment for an offence than was prescribed by law at the time the offence was committed. Criminal laws enhancing or altering the prescribed penalties for offences shall not be retrospective.

23. Prohibition against repeated trials.

A person who has been finally acquitted or finally convicted of an offence shall not be tried for the same offence again.

24. Freedom of Speech and Expression

(1) All citizens have the right to freedom of speech and expression orally, in writing or in any other form.

Comments

- 18 (2).

- 18 (3).

- 18 (4).

- The word ' tried ' has been altered to 'acquitted ' or ' convicted ' to permit retrials if the first trial was quashed by the High Court or the accused was discharged because of want of prosecution.

- Also note that Article 23 does not prevent one previously acquitted from being subjected to disciplinary proceedings because the latter are not for the same offence.

- Article 2 3 of Draft Rules.

- Words "in any other form " have been added.

(2) The Citizens' Majlis may, by law, impose such restrictions on freedom of speech and expression as it deems necessary in the interest of national ^{security,} public order, morality, incitement to any offence, defamation, contempt of court, parliamentary privileges and in order to promote principles of Islam

- List of permissible restriction has been expanded.

25. Freedom of Movement.

(1) Every citizen has the right to freedom of movement throughout the Maldives irrespective of the place wherein he resides, freedom to travel abroad and to return to any of the territories of the Maldives. Provided that the Citizens' Majlis may impose restrictions on these rights in the interest of public order, national security and the prevention or prosecution of crime.

- Article 20.

26. Protection Against Banishment.

No citizen may be banished from the Maldives except in pursuance of an order under the law to deprive him of his citizenship under Article 16

- Based on 1968 constitution Article 8.

27. Freedom of Assembly.

Subject to the laws on public order and national security, all citizens may assemble peaceably and without arms.

- Article 21.

28. Freedom of Association.

Subject to the law on public order and national security, all citizens have the right to form associations in accordance with the procedures established by law.

- Article 22.

29. Right to Property.

(1) Every citizen has the right to acquire, hold, receive and transact private property in accordance with the law.

- Article 25

(2) No person shall be deprived of his property except in accordance with the law.

- Article 17 (1) (c)

(3) The law may provide for compulsory acquisition or use of private property for a public purpose subject to just compensation.

- Article 27 (1) has been modified to add the words " or use "

(4) The law may provide for compulsory expropriation without compensation of the following types of private property:

- Based on Article 27 (3)

a) property, the existence or management of which is detrimental to human life, public health or other property;

b) property, which was obtained unlawfully;

c) property which is owned by an enemy of the Maldives in times of war;

- The words 'in times of war' have been added

d) property, the import, acquisition, possession or ownership of which is forbidden by the law.

Provided that any person to be affected shall be given an adequate opportunity to make representation.

(5) In the enforcement of criminal penalties or civil claims, the State shall ensure that no one is deprived of his entire property or made homeless.

(law 65) 19
Inspired by Draft Article
27(2) which has been
reformulated.

30. Sanctity of Private Premises.

Private premises and dwellings shall be respected and no person shall enter such premises except in accordance with the law.

- Article 19

31. Privacy of Letters and Messages.

Correspondence and communication in whatever form whether through letters, messages, telephone or other means of communication shall be respected and no one shall hear, see, intercept or disclose these except in accordance with the law.

- Article 24.

32. Right to Work.

Every citizen has the right to engage in any work, trade, vocation, profession, occupation or employment not prohibited by the law.

- Articles 25 & 31 are combined

33. Right of Pension.

Every citizen who is an employee of a public service shall have the right to receive a pension in accordance with the law.

- Article 31

- Please refer to comments at end of chapter

Provided that no one may receive more than one pension.

- Proviso added

- Words "who is an employee of a public service" have been added.

34. <u>Procedural Safeguards for Public Servants.</u>	<u>Comments.</u>
(1) Subject to clause (2), every employee of a public service holds office during the pleasure of the President of the Republic and may, on the recommendation of the Public Services Commission, be dismissed or reduced in rank.	- Added
(2) No employee of a public service who has completed his period of probation shall be dismissed or reduced in rank without being given a reasonable and prior opportunity of being heard	- Added
35. <u>Rights in respect of Education.</u>	
There shall be freedom to impart and to seek knowledge subject to the laws of the land.	- Article 32
36. <u>Right to Dignity, Honour and Reputation.</u>	
No person shall be deprived of his dignity, honour or reputation except in accordance with the law.	- Article 17 (1) (c) - The word 'dignity' has been added
37. <u>Remedies.</u>	
Anyone whose rights or freedoms, as guaranteed by this Chapter, have been infringed or denied may apply to the High Court to obtain such remedy as the court considers appropriate and just in the circumstances.	- Added

38. Inconsistent Legislation to be Void.

(1) Any Law, regulation or administrative action that is inconsistent with the provision of this Chapter shall, to the extent of the inconsistency, be void.

(2) Fundamental rights in this chapter shall not be suspended save as expressly provided in the Constitution.

(3) In this Article the term ' Law ' does not include a constitutional amendment.

39. Obligations of Citizens.

Every citizen has a constitutional obligation to:

- a) show respect for and loyalty to the Maldivian State, its flag and national anthem;
- b) submit himself to the Constitution and laws of the Maldives irrespective of the place wherein he resides;
- c) preserve, protect and defend the constitution of the Maldives
- d) respect the rights and freedoms of other Maldivian citizens

Comments

- Based on Article 30
- Adds the word " administrative action " to Article 30 (1)

- Clause 2 of Article 30 should be dropped. The Citizens Special Majlis should have the power to amend the constitution.

- Added

- Based on Articles 28 & 29

Memo on Chapter II

1) The numbering in my Report does not correspond with the numbering in the Report of the Draft Committee because I have added Articles, rearranged the order in which the Articles appear and in some cases, combined two Draft Articles into one. For example Draft Articles 25 and 31 are combined to make Article 39.

2.) Article 31: Pensions: (a) It may not be advisable to make pensions a constitutional right in case the government's ability to pay is reduced and pension payments become too burdensome in twenty or thirty years' time.

(b) The problem of more than one pension needs to be tackled and this is done in the proviso to Article 33.

3) Article 30 (2) of the Draft:

Should fundamental rights be incapable of amendment? The implication of Article 30 (2) is that even the Citizens' Special Majlis cannot amend the chapter on Fundamental Rights.

I recommend that Article 30 (2) of the Draft should be deleted.

4) I have included in Article 26 a protection against banishment which was provided in the 1963 Constitution, Article 3 but has been left out in the Draft.

5) The following Articles in the Draft have been left out pending further clarifications:

a) Article 17 (2) on Iltimas. This should not be in the Chapter on Fundamental Rights and will be placed elsewhere to allow citizens to " Iltimas " the President, the Ministers and the Members of the Majlis.

b) Article 30 (2) of the Draft makes fundamental rights totally unamendable. It is suggested that fundamental rights should be protected against legislation by the Citizens' Majlis (refer to Article 38) but the Citizens' Special Majlis ought to have powers to amend the Constitution.

CHAPTER IIIEXECUTIVE ITHE PRESIDENT OF THE REPUBLIC

- | <u>40. PRESIDENT OF THE REPUBLIC</u> | <u>COMMENTS</u> |
|---|--|
| There shall be a President of the Republic elected in accordance with the Constitution and the laws. | Draft Article 32 |
| <u>41. HEAD OF STATE</u> | |
| The President shall be the Head of State, the Head of Government, the Commander-in-Chief of the Armed Forces and the supreme authority for propagating the religion of Islam in the Maldives. | Article 33 |
| <u>42. QUALIFICATIONS</u> | |
| The President of the Republic shall have the following qualifications: | The Draft Article 34 has been modified to exclude requirements 34 (d) and (e) for two reasons: |
| (a) He shall be a Muslim of the Sunni sect | |
| (b) He shall be a Maldivian citizen born to Maldivian parents | (i) Requirement (e) is too vague and subjective. |
| (c) He shall be a male of over 35 years of age | (ii) Requirement (d) is rather embarrassing. No person with this drawback will win the nomination of the Majlis. |
| (d) He shall not be a person convicted of treason or a Hadd offence under the Sharia | |
| (e) He shall not be a person married to a foreign national | |
| <u>43. ELECTION OF THE PRESIDENT</u> | |
| (1) The candidate for the office of the President shall be elected by secret ballot by an absolute majority of the total membership of the Citizens' Majlis in accordance with Article 44. | - Draft Article 35
- As the President is not finally |

(2) The name of the person so elected shall then be submitted to the people at a public referendum in accordance with Article 45 and if a simple majority of those voting ratify the nomination made by the Citizens' Majlis, the nominee shall be elected to the office of the President of the Republic.

elected till the people ratify his nomination, it is recommended that the nominee of the Majlis be referred to as "candidate for the office" or as the "nominee of the Majlis" rather than as "the President"

- Distinction should be made between an absolute majority of the total membership (Art. 43(1) and a simple majority of those voting (Art. 43(2)).

(3) Ten years after commencement day the Citizens' Majlis shall by law provide for direct election for the office of the President on the principle of universal adult suffrage.

- Please refer to Memo. point 1 for further clarification.

44. PROCEDURE FOR ELECTING CANDIDATE FOR PRESIDENT

(1) The Citizens' Majlis shall, by secret ballot, elect a qualified person to be its nominee for the office of the President in accordance with the following three-stage procedure involving :

- Draft Art.
35(1)

(a) a nomination stage;

(b) selection of three candidates who secure the top three places;

- (c) election of one of the three as the nominee of the Majlis for the office of the President.
- 2) The nomination stage shall be conducted as follows:
- (a) At a meeting of the Citizens' Majlis, the members shall propose the names of candidates for the office of the President on special ballot papers which shall be put into a special box kept for the purpose.
- (b) The name or names of the candidate or candidates shall then be announced by the Speaker of the Citizens' Majlis.
- (3) If there is only one candidate, he shall be declared to be the nominee of the Citizens' Majlis for the office of the President. - Added in order to provide for a situation when only one name is proposed
- (4) If there is more than one candidate, the selection of the three candidates who secure the top three places shall be conducted as follows:
- (a) A secret ballot shall be held in which each member shall have only one vote and shall vote for the candidate of his choice.
- (b) The top three (or two) candidates (as the case may be) shall then be chosen and their names announced. - Provision for a situation when there may be only two candidates has been added
- (c) If two or more candidates get the same number of votes, another secret vote shall be taken on the candidates securing equal number of votes to determine the candidate who leads.

- (5) From amongst the candidates securing the top three (or top two) places, the winner shall be chosen by a secret ballot; his name announced; and he shall be the nominee of the Citizens' Majlis for the office of the President of the Republic.
- (6) If no candidate receives an absolute majority of the total membership of the Majlis, a new secret ballot shall be held in accordance with clauses (1) (2) (3) (4) and (5) of this Article.
- (7) At any stage of the proceedings, if any question arises as to the validity of any proceedings, a decision of the Citizens' Majlis shall be taken and the decision shall be final. - Added.
- (8) The Speaker of the Citizens' Majlis shall write to the person elected in accordance with clause(5) to enquire whether the person is willing to offer himself for the office of the President. - I have added the word 'Speaker'.
- (9) The person so selected shall reply to the Speaker within seven days of the receipt of the letter and if he accepts the nomination, his name shall be referred to the Commissioner of Elections for a secret public referendum. - "Seven days" has been clarified.
- (10) If the nominee gives no reply within the stipulated time or refuses to accept the nomination, a new candidate shall be chosen by the Majlis in accordance with clauses (1) to (6).
- (11) From the commencement of the meeting of the Citizens' Majlis for the election of the candidate for the office of the President, till the process of election is completed, no debate or discussion on the candidates shall be conducted.

- (12) After the completion of the procedures in clauses (1) to (6) of this Article, all ballot papers shall be destroyed and only then shall the Majlis be adjourned.
- (13) The procedures in clauses (1) to (7) and clause (12) shall be completed in one sitting but if, after six hours of continuous sitting, a candidate has not been finally selected, or if, for any reason, the meeting has to be adjourned before the aforesaid procedures are completed, the procedures shall be repeated at a subsequent meeting.

45. REFERENDUM TO ELECT PRESIDENT

- (1) If the candidate nominated for the office of the President by the Citizens' Majlis receives a majority of the votes cast at a secret public referendum, the candidate shall be declared elected to the office of the President of the Maldives.
- (2) If the candidate fails to receive a majority of the votes cast at the secret public referendum, a new candidate shall be proposed by the Citizens' Majlis in accordance with Articles 43 and 44.
- (3) If any electoral malpractices or offences are alleged to have taken place in the conduct of the public referendum, the Election Commissioner or a person designated by him, shall be notified within twenty four hours of the close of the election in the area and the Commissioner shall take all necessary steps to investigate the allegation.

- 35 (3) (b) of the Draft has been deleted. Please refer to Memo point 2.

46. OATH OF OFFICE

The person elected to the office of the President shall assume the said office after taking the Oath set out in section (a) of the Second Schedule of this Constitution.

- Art. 36 of the Draft.

47. TERM OF OFFICE

(1) The Term of office of the President shall be five years from the date of the assumption of office.

- Draft Art. 37

Provided that an incumbent President shall continue to remain in office after his term expires till all matters connected with the election of the new President are completed.

(2) No President, whether elected under a past or present Constitution, shall be eligible for more than two terms in office.

- For implications of this clause and for alternative proposals, please refer to Memo point 3.

Provided that for the purpose of this Article a partial term shall be deemed to be a full term.

And provided further that the term of the incumbent President shall be extended to a period of five years from commencement day.

48. RESIGNATION

If the President wishes to resign from his office he shall write to the Speaker of the Citizens' Majlis notifying him of his intention but he shall remain in office till an Acting President takes over the functions of the President under Article 54.

- Draft Art. 38 has been amended to exclude the need to give reasons and to wait for his resignation to be accepted. It was not clear who accepts the resignation and whether it can be refused.

49. ELECTION OF PRESIDENT
BEFORE EXPIRY OF TERM

- (1) At the start of the last sixty days of the term of office of a President, the procedures for the election of the new President shall be set into motion and all matters connected thereto shall be completed at least seven days prior to the expiry of the President's term of office.
- (2) If the office of the President falls vacant due to his death, resignation or removal, a new President shall be elected in accordance with Articles 43 and 44 within 60 days from the date the office of the President falls vacant.

50. FUNCTIONS OF THE PRESIDENT

- (1) The executive power of the State shall be vested in the President of the Republic who shall perform it subject to the Sharia, the Constitution and the Laws. The executive power includes the power to:
- (a) appoint a Vice President;
- (b) appoint, transfer or dismiss members of the Minister's Majlis;
- (c) convene the Minister's Majlis and preside over its proceedings;
- (d) appoint the Attorney General, the Auditor General, the Commissioner of Elections, the Chairman and members of the Public Services Commission, The Police Force Council, The Armed Forces Council, Atoll Chiefs and representatives of Maldivian missions abroad;

- Draft Art. 40 has been expanded and divided into four separate clauses to indicate the President's functions in relation to the executive, legislature, judiciary and Islam.

- A new Public Services Commission, Police Force Council and Armed Forces Council are being proposed. Please refer to Memo point 5.

- (e) confer honours, medals or decorations on behalf of the State;
 - (f) sign treaties and international agreement;
 - (g) declare war or make peace, conduct foreign relations and receive foreign ambassadors, High Commissioners and Heads of Missions;
 - (h) declare a state of emergency;
 - (i) organise the executive branch of government and allocate functions to each Ministry, Department or unit;
- (2) Subject to the Constitution and the laws, the President shall perform the following functions in relation to the legislature:
- (a) address the Citizens' Majlis at its annual opening and present to it the government's legislative programme and policies for the year;
 - (b) assent or withhold assent to Bills passed by the Citizens' Majlis and the Citizens' Special Majlis in accordance with the Constitution;
 - (c) propose legislative measures to the Majlis;
 - (d) initiate procedures to convene the Citizens' Special Majlis to amend the Constitution;
 - (e) initiate procedures for the holding of a referendum on a matter of public importance;
 - (f) appoint nominated members to the Citizens' Majlis in accordance with the Constitution;

- g) promulgate regulations, orders and decrees in times of emergency.
- (3) Subject to the Constitution and the laws, the President shall perform the following functions in relation to the Judiciary:
- (a) appoint the Chief Justice and the other judges of the High Court;
 - (b) suspend and remove judges of the High Court in accordance with the Constitution;
 - (c) appoint and remove members of the Judicial and Legal Services Commission;
 - (d) temper justice with mercy by granting a full pardon or suspending or reducing a criminal sentence;
 - (e) appoint a Presidential Commission to investigate any matter of public importance and confer on the Commission powers to administer oaths and to order the production of evidence and attendance of witnesses.
- (4) The President shall be the supreme authority for propagating the religion of Islam in the Maldives.
- I have added the words "in times of emergency" to Draft Art. 40(e). Please refer to Memo point 4.
- A new Commission is being proposed.
- Draft Art. 44.

51. DISABILITIES OF THE PRESIDENT

- (1) The President shall not hold any other appointment carrying a remuneration.
 - (2) The President shall not actively engage in any commercial enterprise.
- New Article.

52. REMOVAL OF THE PRESIDENT

- (1) If one-third of the members of the Citizens' Majlis write to the Speaker that the President ought to be removed from office on the ground of:
- (a) inability from infirmity of body or mind to properly discharge the functions of his office; or
 - (b) intentional disregard of the Constitution of the Maldives; or
 - (c) conviction for a Hadd offence; then the Speaker shall cause the motion to be debated in Parliament.
- (2) If, after debate, the motion is carried by a two-thirds majority of the total membership, a Special Committee shall be appointed to investigate and report on the motion.
- (3) The Special Committee shall comprise of:
- (a) Three persons appointed by the Majlis;
 - (b) Three persons appointed by the President;
 - (c) Three persons agreeable to both parties who all have the qualifications to be High Court Judges.
- (4) If no agreement can be reached on the three members agreeable to both parties, the Majlis shall, by an absolute majority of the total membership, nominate the three members.
- Draft Art. 43
- I recommend that for the motion to carry an absolute majority should be sufficient: A two-thirds majority should be required to remove the President but at the initial stage of the impeachment, an absolute majority should be sufficient.
- The President has a very significant say in the composition of the Committee to investigate his conduct. This is rather unusual and makes it well nigh impossible to impeach a President.

- In clause (4) I have ^{reduced} "two-thirds majority" to "absolute majority". I am concerned that if a two-thirds majority is not available and a deadlock exists, the proceedings to impeach will stop dead in their tracks.
- (5) The Chairman of the Committee shall be from amongst the three members agreeable to both parties.
- Provided that if the President and the Majlis cannot agree on the Chairmen, the Majlis shall choose the Chairman by an absolute majority of the total membership.
- Recommend that the two-third majority be reduced to an absolute majority for purposes of clause (5).
- (6) The President shall have the right to appear personally or through a lawyer before the Committee.
- (7) The Committee shall complete its investigation and report to the Majlis within thirty days of the appointment of the Committee.
- The clock should begin to run only after the wrangles over the Committee's composition are settled.
- (8) On receiving the report of the Special Committee, the Majlis may, after considering the Report, remove the President from Office by a resolution passed by two-thirds of the total membership of the Majlis.
- The Majlis should be free to accept or reject the findings of the Committee.

- (9) On such a vote being passed, the Speaker of the Citizens' Majlis shall write to inform the President of his removal from office.

53. TEMPORARY ABSENCE OF PRESIDENT

If the President is temporarily unable to perform his functions due to sickness, absence or other cause, the Vice President, if there is one, shall deputize for the President, and if there is no Vice President, then a member of the Cabinet appointed by the President shall deputize for him and if no such member of the Cabinet was appointed, then the longest serving cabinet minister shall deputize for the President.

- Draft 50 (c)

54. VACANCY IN THE OFFICE OF THE PRESIDENT

- (1) If the office of the President falls vacant due to his death, resignation or removal from office, the Speaker of the Citizens' Majlis shall deputize for the President and perform his functions till a Special Committee to Administer the State is selected in accordance with clause (2) of this Article.
- (2) Within seventy-two hours after the Speaker of the Citizens' Majlis temporarily assumes the functions of the President, a meeting of the Citizens' Majlis shall be convened for the selection of a Special Committee to Administer the State till a new President is elected in accordance with Articles 43, 44 and 49. The members of the said Committee shall subscribe to the Oath set out in clause (1) of the Second Schedule.
- (3) Any person temporarily assuming the Office of the President shall have the same qualifications as are required for the President.

- Draft 50 (a) and (b)

- Draft Art. 48

55. IMMUNITY

(1) Subject to clauses (2) and (3) of this Article, the President of the Republic shall not be liable to any proceedings in any court or tribunal in his personal capacity.

(2) The immunity conferred by clause(1) shall not apply to any proceedings in any court regarding the constitutionality of presidential decisions or actions nor does it apply to proceedings relating to the election of the President.

Provided that any proceedings under clause(2) shall be instituted against the Government of the Maldives and not against the President.

(3) The immunity conferred by clause(1) shall not apply to Sharia offences for which prosecution may be instituted as follows:

(a) A charge made in the Citizens' Majlis against the President shall only be debated if the motion to debate receives an absolute majority of the total membership of the Majlis.

(b) Subsequent to the debate a resolution to try the President before a Special Tribunal may be introduced and shall be carried only if it is supported by a two-thirds majority of the total membership of the Citizens' Majlis.

(c) The Citizens' Majlis shall then appoint a Special Tribunal consisting of three persons qualified to be High Court judges. Of the three persons, one shall be nominated by the Citizens' Majlis, one by the President and one shall be a person agreeable to both sides.

- Draft Art. 42

- Immunity for the Head of State is a common feature of Western but not Islamic Constitutions. In the West the immunity is restricted to the personal acts of the Head of State but his official actions are challengeable in superior courts on constitutional grounds though not he, but the Government is made a respondent in the court.

- Please refer to Memo point 7.

If there is no agreement between the Majlis and the President on the joint nomination, the Majlis shall make the nomination by a two-thirds majority of the total membership.

- I recommend that on the composition of the Tribunal, there should be no need to obtain a special two-thirds majority.

- (4) The determination of the Special Tribunal shall be final and conclusive and shall not be challenged in any court of law or in the Citizens' Majlis.

- New Clause.

56. PENSION

If the President of the Republic relinquishes his duties constitutionally, he shall be entitled to a pension equivalent to two-third of his last drawn remuneration.

- Not found in the Draft. Taken from 1968 Constitution Art. 47

57. VICE PRESIDENT

- (1) The President may appoint a Vice President to carry out such duties and responsibilities as are delegated to him by the President. The Vice President shall take the Oath set out in clause(b) of the Second Schedule before the President.
- (2) The Vice President shall have the same qualifications as are required for the President.
- (3) Subject to Article 53, the Vice President shall be the Chairman of the Cabinet in the absence of the President.
- (4) The President shall have the power to remove the Vice President.
- (5) The Vice President may resign his office by sending a letter for the purpose to the President. But he shall continue to discharge his functions till the resignation is accepted by the President.

- Draft Art. 47

- Draft Art. 49(1)

- Draft Art. 49(2)

MEMORANDUM

Chapter on The President of the Republic

- 1) The Maldivian system of electing the President is indeed unique. It is neither a purely " direct election " (because The Majlis nominates only one candidate and the people have no real choice at the referendum); nor is it an entirely " indirect election " (because the choice of the Majlis is not conclusive and a popular referendum is required).

From the Maldivian point of view the advantage of the system is that political parties are not needed; politicking is not necessary; a bitter, dirty and expensive gladiatorial contest is avoided. Everyone's dignity is preserved and characters are not assassinated during the run-up to the President's nomination and election.

But the great disadvantages of the existing system are:

- (1) The election and re-election of the most important office in the Maldives depends on a mere 25/48 members of the Majlis. If the majority in the Majlis turn hostile against the President then even if he is immensely popular with the people, he may not be renominated.
- (2) As the President is not assured of majority support in the Majlis because the 40 elected MPs are potentially independent minded, he has to build his parliamentary power base on the support of the eight nominated members, plus those Majlis members who are in his Cabinet.
- (3) This set up promotes an unhealthy system of patronage.
- (4) The eight nominated members acquire a disproportionate amount of influence. Even though they may have no political base of their own, they play a crucial role in a President's re-election plans. It is for this reason that no President will easily agree to any change in the proportion of nominated members in the Majlis.

Will it not be better if the President could build his power-base on direct popular support and not have to secure parliamentary support by exercise of patronage?

A further factor is that a look at the electorate's profile indicates that the resurgent youth will play a larger and larger role in electing independent-minded members to the Majlis in future elections. An increasingly independent - minded Majlis can be expected in the years ahead.

For the above reasons a direct election to the Presidency is worthy of consideration for the future strength of the Presidency.

Alternatively, the Majlis could nominate two candidates and the people could have a true choice of electing the next President.

2. Draft Article 35 (3) (b) lays down that after the declaration of the result of the referendum, any allegation of illegality shall be made to the Majlis. It does not state what the Majlis may do to act on the allegation. I suggest that this clause be deleted altogether for the following reasons:
 - a) The Majlis should not seek to supervise the conduct of the referendum which should be left to the Commissioner of Elections and the Election Court.
 - b) If the Majlis is given jurisdiction in the matter of referendums, its decision may clash with the decision of the Election Court on an election petition. Conflicting jurisdictions may result in conflicting decisions.

3. Draft Article 37 (b) restricts the President to two terms of five years each. But it is not clear on the position of the incumbent President. It is submitted that as the new Constitution comes into effect only on commencement day, Article 37 (b) cannot apply to any election held prior to commencement day. The incumbent is, therefore, eligible for reelection under the new Constitution.

I wish to submit three different drafts of this Article for your consideration:

(i) " A person elected as President under this Constitution shall not be eligible for more than two terms in office "

" Provided that for the purpose of this Article a partial term shall be deemed to be a full term. " (new proviso)

OR

(ii) "No President, whether elected under a past or the present constitution, shall be eligible for more than two terms in office "

" Provided that for the purpose of this Article a partial term shall be deemed to be a full term. "

OR

(iii) "No President, whether elected under a past or the present Constitution, shall be eligible for more than two terms in office.

Provided that for the purpose of this Article a partial term shall be deemed to be a full term.

And provided further that the term of the incumbent President is hereby extended to a period of five years from commencement day."

The choice is the Committee's.

This formulation would not touch the position of the incumbent President. He will be eligible to be reelected for two more terms.

This version should be chosen if the Committee wishes to bar past Presidents and the incumbent from recontesting.

This version would offer a compromise and respectful solution. Future presidents would be limited to two terms. The incumbent will have five more years after commencement day.

4. Draft Article 40 (e) creates a parallel Parliament in the Maldives. Along with the Majlis, there is another concurrent and coextensive law-making authority in the President.

What the Majlis creates, the President can repeal.

What the Majlis repeals, the President can re-enact.

There will also be difficult problems for the courts if the law of the Majlis conflicts with a law enacted by the President. Which one will prevail?

- (i) For the above reason I recommend that Article 40 (e) of the Draft be dropped.
- (ii) Another reason for dropping this Article is because it conflicts with Article 84 of the Committee's Draft. Article 84 gives legislative power to the President but subject to the control of the Majlis. A specific time frame has been laid down in Article 84 and it is wholly adequate to meet the need for legislation by the President when the Majlis is not in session.

5. It is recommended that the Police and the Army should be separated, and for each there should be a separate Council to advise the President on all matters relating to recruitment, transfer, promotion, terms of service and discipline.

The recommendation to separate the Armed Forces from the Police is based on the following factors:

- a) The Armed Forces deal with enemies of the State. The Police deals with ordinary, loyal citizens who may fall foul of the law on some occasions. The functions of the Police and the Armed Forces, while overlapping, are essentially separate.
- b) Techniques for handling enemies of the State and Citizen of the State ought to be different because different sets of laws apply. For enemies of the Maldives or war prisoners international law may apply. Handling violators of Maldivian law is done under local statutes.

c) A separation between the Police and the Armed Forces will "soften" the image of those officers of the security services who deal with everyday human problems like traffic control, domestic violence, brawls, theft etc.

d) Proper public relations should be an essential part of the police arsenal and ought to be developed in a separate Police Force.

e) Separation between the Police and the Armed Forces will be an important check and balance between these two services and this will help to maintain supremacy of civilian control over the security services. In large parts of Asia, Africa and Latin America an overpowered military establishment interferes in political affairs.

6. Deleted

7. Draft Article 42 (renumbered Article 55) confers immunity on the President. I feel extremely uneasy about this article and wish to make the following observations:

a) Immunity for the Head of State is a common feature of Western, secular constitutions but not of Islamic Constitutions.

b) In the West the immunity is restricted to the personal acts of the Head of State but his official actions are challengeable in superior courts on constitutional grounds. Whenever the Head of State is sued for an official action, the proceedings are commenced against the Attorney General or the Government and not against the Head of State.

c) Unconstitutional actions of the President, if any, should not be immune from challenge in the courts.

d) The Draft Proposals subject the President to the Sharia but have several unusual features:

(i) The President does not appear before ordinary courts.

(ii) He has a strong say in the composition of the Tribunal which shall try him.

(iii) At every stage there is a requirement of a two-thirds special majority. First when there is a motion to debate the charge. Second, when there is a motion to commit him for trial before a Special Tribunal. Third, when there is disagreement on the composition of the Tribunal.

I recommend that at all stages there should be a requirement of *only* an absolute majority of the total membership. This will not do injustice to the President. He will be heard by the Tribunal. He will have a say in the composition of the Tribunal.

8.

I have recommended in Article 43 (3) the possibility of direct elections to the Presidency in the future. The disadvantages of the present system of indirect elections have been mentioned above in the Memorandum's point number 1.

Chapter IVExecutive IIThe Cabinet (Ministers' Majlis)58. The Cabinet

(1) There shall be a Cabinet of Ministers which shall aid and advise the President in the exercise of all his constitutional functions.

- Draft Article 51 (1)

(2) The Cabinet shall consist of such number of Ministers (of whom one shall be the Attorney General) as the President may consider appropriate.

Provided that the Citizens' Majlis may by law fix the maximum number of Ministers the President may appoint.

- Proviso added.

(3) The Chairman of the Cabinet shall be the President of the Republic. But if the President is temporarily unable to perform his functions, the Cabinet shall be presided over by the Vice President or, if there is no Vice President, by a member of the Cabinet appointed by the President to deputise for him or, if there is no Minister with such authority, by the longest serving Cabinet Minister .

- 51 (1)

59. Functions of the Cabinet.

(1) Cabinet Ministers shall perform such functions as are entrusted to them by the President or by the constitution and the laws.

(2) A Minister shall assist the President in formulating policy on national and international matters; advise the President on economic and social matters for the development of the Maldives; assist the President in the preparation of the Annual Budget and the drafting of Government Bills for presentation to the Citizens' Majlis; advise the President on the ratification of agreements between the Maldives and foreign states, missions and organisations.

- 55 (2) please refer to Memo point number 4

(3) Nothing in this Article shall preclude the President from taking charge of any Ministry or the office of the Attorney General.

- 52 (3)

60. Appointment, Removal and Resignation.

(1) Cabinet Ministers shall be appointed by the President in his sole discretion.

(2) They shall hold office during the pleasure of the President who may, in his discretion, transfer or dismiss any Cabinet Minister or the Attorney General from office by a letter sent under his hand.

- 58 (1)

(3) The President may dissolve the entire Cabinet if, in his opinion, it is failing in the performance of its functions. In such case the President shall inform the Citizens' Majlis of the reasons for dissolving the Cabinet and shall appoint a new Cabinet at the earliest opportunity.

- 51 (2)

(4) Individual Cabinet Ministers may also be removed from office by a vote of no confidence on the floor of the Citizens' Majlis in accordance with this Constitution.

- The Majlis cannot dismiss the entire Cabinet but may vote against individual ministers under Draft Article 58 (3)

A Minister against whom a vote of no confidence has been passed shall submit his resignation to the President.

(5) Any Minister and the Attorney General may resign from office by a letter sent to the President.

Provided that till the President notifies him of the President's acceptance of his resignation, the Minister or the Attorney General shall continue to perform his functions in office.

- 58 (2)

61

Qualifications.

A Minister including the Attorney General shall be a Muslim, a citizen of the Maldives, at least thirty years of age and shall not have been convicted within the last five years of a bad offence.

- 52 (2)
- I have removed requirements in 52 (2) (a) and (e) because they are too vague.

62

Disabilities.

(1) A Minister of the Cabinet may be appointed from within the Citizens' Majlis or from outside but he shall not be a serving member of the judiciary.

- New provision added.

(2) A Cabinet Minister shall not involve himself in commercial activities which involve a conflict of interest with his ministerial portfolio.

- Added.

62 A.

Declaration of Assets.

Every Minister shall, on assumption of office and, after that, annually, submit to the Integrity Commission a confidential, complete and truthful declaration of the assets and liabilities of himself and his immediate family members.

- New provision

The Commission shall ensure that the confidentiality of these declarations is fully preserved.

63. Responsibility of the Cabinet to the President.

In the performance of the functions allocated to them by the President or by the Constitution and laws, all Cabinet Ministers shall be individually and collectively responsible to the President.

- 53

64. Responsibility of the Cabinet to the Majlis.

(1) In the performance of the functions allocated to them by the constitution and the laws or by the President, all Cabinet Ministers shall be individually responsible and answerable to the Citizens' Majlis and shall supply information, answer questions and explain policies whenever required to do so by the Majlis.

- Article 54 and
58 (3)

(2) Questions put to the Ministers in accordance with the Rules of the Majlis shall be answered as soon as possible in the manner provided by the Rules.

- 54

(3) If a vote of no confidence is passed by the Majlis against a Minister, the Minister concerned shall inform the President and resign.

- 58 (3)

Provided that a Minister against whom a vote of no confidence has been introduced shall be given due notice of the motion and an adequate opportunity to defend himself on the floor of the Majlis.

- Proviso added

65. Attorney General.

(1) There shall be an Attorney General appointed by the President from amongst the members of the Citizens' Majlis or from outside the Majlis.

- 56 (1)

(2) It shall be the duty of the Attorney General to advise the President or the Cabinet or any Minister upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President or the Cabinet.

- Added

(3) The Attorney General shall have power to institute, conduct or discontinue proceedings for an offence other than proceedings before a court martial.

- Added

- Please refer to Memo point number 5

(4) In the performance of his duties the Attorney General shall have the right of audience in any court or tribunal in the Maldives.

66. Deputy Ministers and State Ministers

(1) The President may appoint Deputy Ministers and State Ministers.

- Added

(2) The provisions of the constitution dealing with Cabinet Ministers shall also apply to Deputy Ministers and State Ministers.

67. Oath.

Every Minister and the Attorney General shall take the oath set out in section (c) of the second Schedule.

68. Continuity in Office.

If the office of the President falls vacant due to any reason, the Ministers shall continue to remain in office until a new President is elected.

- Borrowed from
Article 58 of
the 1968 constitut:

MEMORANDUMTHE MINISTERS' MAJLIS (THE CABINET)

- 1) Under the 1968 Constitution, Articles 56 and 57, Ministers could be tried for Sharia offences under special procedures devised for the purpose. These Articles find no corresponding provision in the Draft Proposals.

I support this omission. Ministers accused of Sharia offences should be tried in ordinary courts and under the ordinary law. Special courts and special procedures are not in accordance with the spirit of Islam.

- 2) Article 68 in my Recommendations provides for Ministers to continue in office even if the President's Office falls vacant. The 1968 Constitution included this provision in Article 58.
- 3) I have added provision to forbid the involvement of Ministers in conflict-of-interest situations (Article 62(2)) and requiring disclosure of assets (Article 62(3)). I believe that these provisions, if observed, will contribute to accountability. In the Chapter on Directive Principles, an Integrity Commission is being proposed.
- 4) On the functions of Ministers, the Committee's Draft in Article 55(2) implies that the Ministers perform only such functions as are assigned to them by the President. I have tried to bring about a subtle change in this in my Articles 59, 63 and 64. Ministers shall perform such functions as are assigned to them by the President and/or entrusted to them by the Constitution and the laws. The subtle implication is that in relation to all functions assigned to them by Article 59(2) of my Report, Ministers are entitled to advise the President though, of course, he is not bound to listen to their advice. The President will have his way in Maldives' Presidential system. But cabinet ministers will have their say.

I have had private proposals to redraft things in such a way that the President is required to consult the Cabinet and to follow its advice.

I regret that in a Presidential system the President cannot be required to act on advice in the way the British Queen in the Indian President can be required to do so.

- 5) The Attorney General's role in prosecuting cases has been strengthened: Article 65(2) and (3).

Chapter V

THE LEGISLATURE (I)

THE CITIZENS' MAJLIS

	<u>Comments</u>
<p>58 Constitution of the Citizens' Majlis</p> <p>-----</p> <p>The legislative authority for enacting legislation, other than constitutional amendments, shall be vested in the Citizens' Majlis.</p>	Art. 59 redrafted
<p>59 Composition of the Citizens' Majlis</p> <p>-----</p> <p>(1) Subject to clause (3) the Citizens' Majlis shall consist of elected and appointed members as follows :</p> <p>(a) Two elected members from each Atoll;</p> <p>(b) Two elected members from Male;</p> <p>(c) One extra elected member for every 10,000 people in each Atoll and in Male;</p> <p>(d) Eight members appointed by the President who, in his opinion, have rendered distinguished public service or have achieved distinction in their profession or are representatives of women, of the aged or of any sector of the population underrepresented in the Majlis.</p> <p>(2) The Commissioner of Elections shall, by notification, determine the total number of seats for Male and each Atoll in accordance with Clauses (1) (a) to (c)</p> <p>(3) After a period of five years from commencement day the Citizens' Majlis may by law decrease the number of appointed members to the Majlis.</p>	<p>Committee's Article 60 has been reformulated.</p> <p>Criterion for appointment has been added.</p> <p>Added to enable the citizens to know how many seats are available for contest.</p> <p>Added in order to provide for a transition period in which gradual evolution could take place.</p>
<p>60 Qualifications and Disqualifications</p> <p>-----</p> <p>(1) Every person is eligible to be a member of the Citizens' Majlis if he is :</p> <p>(a) a Muslim;</p> <p>(b) a Maldivian citizen born to Maldivian parents;</p> <p>(c) not having the citizenship of any other country;</p> <p>(d) at least 25 years of age;</p> <p>(e) not declared to be of unsound mind;</p> <p>(f) not convicted within the last five years of a <u>Hadd</u> offence.</p>	<p>-Committee's Draft Article 61</p> <p>-Disqualification on grounds of bankruptcy is found in most constitutions but has no place in the Draft.</p> <p>-61(c) has been altered. Even if a person is <u>eligible</u> for foreign citizenship e.g. if he was born in a country with <u>jus soli</u> or citizenship</p>

(2) If a person who is disqualified from being a member of the Majlis is elected or appointed to the Majlis, the election or appointment shall be void and the seat shall be declared vacant and there shall be an election to fill the vacancy in accordance with Article 74.

61 Oath

The persons elected as members of the Citizens' Majlis shall take office after taking the oath set out in section (f) of the Second Schedule of the Constitution before the Speaker of the Majlis.

62 Speaker and Deputy Speaker

(1) The Speaker and the Deputy Speaker of the Citizens' Majlis shall be elected by the Majlis from amongst its members by a secret ballot at the earliest opportunity after a newly elected Majlis has been convened.

(2) The meeting of the Citizens' Majlis for the purpose of the election of the Speaker and the Deputy Speaker shall be chaired by an interim Chairman who shall be the longest serving member of the Majlis.

(3) If, at any time, the office of the Speaker or the Deputy Speaker falls vacant, the Majlis shall fill the vacancy from amongst its members.

(4) The Speaker and the Deputy Speaker shall take office after taking the oath set out in section (2) of the Second Schedule of this Constitution.

63 Duties of the Speaker

(1) The Speaker shall preside over the normal meetings of the three customary sessions of the Citizens' Majlis and any

by birth, why should he be deprived of any rights in the Maldives if he does not acquire foreign citizenship?

In 6(f) the term "Hadd offence" should be used in preference to "Hadd penalty" Hadd penalties are rarely awarded for Hadd offences in most Muslim societies today.

Added

Committee's Article 62 has been amended. Please refer to Memo point 1 which explains why the President need not be involved in the administration of oaths in the Majlis.

-Article 63

-Reference to person nominated by the President deleted.

The Majlis must be the master of its own proceedings and must not be dependent on other branches of the government to conduct its internal affairs.

-Provision for secret ballot added.

-Speaker and Deputy must be from amongst the members of the Majlis. This was not clear in the Committee's Draft.

Article 64

Special meetings of the Majlis convened by the President.

(2) The Speaker shall send all resolutions passed by the Majlis to the President.

(3) In the situation envisaged by Article 54 of this Constitution, The Speaker shall temporarily assume the office of the President and shall in accordance with the said Article conduct all proceedings to elect the Special Committee to Administer the State.

64 Duties of the Deputy Speaker

(1) The Deputy Speaker shall deputise for the Speaker whenever called upon to do so.

(2) During any vacancy in the office of the Speaker or during any absence of the Speaker from any sitting, the Deputy Speaker or, if his office is also vacant, such other member as may be determined by the rules of procedure of the Majlis, shall act as Speaker.

65 Summoning, Prorogation & Dissolution

(1) There shall be three sessions of the Citizens' Majlis in one year.

Provided that the President shall have the right to convene the Citizens' Majlis for special meetings outside of the three regular sessions

(2) The first session of the Citizens' Majlis shall commence during the last week of February on a date to be determined by the President. The dates for subsequent sessions and meetings within each session shall be determined by the Majlis in accordance with its Rules.

Provided that no more than thirty days shall elapse between the last meeting in one session and the date appointed for its meeting in the next session.

(3) Other than the three regular sessions within the year and any meeting convened in pursuance of Article 54(2) of the Constitution, no meeting of the Majlis shall be held without a summons from the President and any resolution or Bill passed at such a meeting shall be null and void.

-Article 65

-Clause (1) has been added.

-In clause (2) of Article 65 reference to a "member nominated by the President" has been dropped in order to avoid conflict with Article 63 (1) of the Committee's Draft.

66(1) &(2)

Article 68 of the 1968 Constitution.

Added to provide safeguards against lengthy recesses.

-Article 66(3)

-It is difficult to see the justification for this restriction on the powers of the Majlis to convene in order to transact

(4) The life of the Citizens' Majlis shall be five years from the date of its first meeting and at the expiry of the five years, the Citizens' Majlis shall stand dissolved

(5) Whenever the Majlis is dissolved a general election shall be held within sixty days from the date of dissolution and the Majlis shall be summoned to meet on a date not later than ninety days from the date of dissolution.

(6) A Bill pending in the Majlis or a Bill pending reconsideration in pursuance of Article 73(4) or a Bill awaiting the assent of the President under Article 73 clauses (3) and (4) shall not lapse by reason of the prorogation of the Citizens' Majlis

(7) A bill pending the assent of the President under Article 73 shall not lapse by reason of the dissolution of the Citizens' Majlis under Article 65 (4)

66 Extension of Life

If for any reason whatsoever the election of a new Majlis is not held at the end of the life of the existing Majlis, the President may extend the term of the existing Majlis for a specified period not exceeding one year through an official notification

business
I recommend
that this
clause be
deleted.

-Article 85

-It is
recommended
that
premature
dissolutions
of the Majlis
should not be
allowed. Refer
to Memo,
point 1(c)

Article 87 has
been redrafted
to provide a
time table for
reconvening
the new
Majlis after
dissolution of
the previous
one

Added in order to
ensure that
work done
on a Bill is
not wasted
because of
prorogation or
dissolution

Added

-Based on Art
67(1).

-It is
strongly
recommended
that Art 67(2) of the draft
be dropped.
There is no
need to assign
special powers
to the
President to

- | | |
|---|---|
| <p>67 <u>Rights of the President, Ministers and AG</u>
 (1) The President shall address the Majlis at the opening of its first term of the year</p> <p>(2) The President and the Ministers of the Cabinet shall have the right to attend and speak at the meetings of the Citizens' Majlis or of its Committees but they shall have no right to vote unless they are members of the Majlis or the committees thereof.</p> | <p>dissolve the Majlis prematurely.
 If circumstances are such that the Majlis should not hold meetings, a recess (prorogation) can be called for a period up to 30 days under Art.65
 (2). Please refer to <u>Memo</u> paragraph 1(c)</p> <p>Added</p> <p>Words "or of its Committees" added to Article 68</p> |
| <p>68 <u>Resolutions and Bills</u>
 (1) Except for the resolutions or motions requiring a special two-thirds majority, all other resolutions, motions and Bills shall be passed by an absolute majority of the total membership of the Majlis. In case of a tie, the presiding officer shall have a casting vote.
 (2) If ten members rise in their places to demand a secret vote, the voting shall be secret.</p> | <p>Words "and Bills" added to Art 69</p> <p>The words "majority of the members" have been clarified</p> <p>Added to encourage independence and fearlessness.</p> |
| <p>69 <u>Quorum</u>
 The quorum for all Majlis meetings shall be one-half of the total membership of the Majlis and without such a quorum no meeting may proceed after reasonable efforts to obtain a quorum have failed.</p> | <p>-The quorum of one half is rather high in a comparative setting.
 -I have added the words "after reasonable efforts .."</p> |
| <p>70 <u>Legislative powers</u>
 (1) All Bills other than those assigned to the Citizens' Special Majlis shall be enacted by the Citizens' Majlis.

 (2) No law violating the Constitution shall</p> | <p>Article 71</p> <p>Article 72 (1)</p> |

be passed by the Citizens' Majlis or the Citizens' Special Majlis.
 Provided that the term 'law' in this clause shall not include a constitutional amendment.

Added to allow amendments to be enacted.

(3) No legislative enactment, order, decree or Ordinance by any authority empowered to make laws shall secede any part of the political territory of the Maldives to any foreign person or power.

Article 74 (A) expanded to cover orders or decrees by the President

71 Use of Maldivian Territory By Foreigners.

(1) Except with the approval of the Citizens' Majlis no part of the political territory of the Maldives shall be leased or handed over for use to foreigners for a period exceeding twenty-five years

74B separated from 74A because 74A deals with legislation. 74B deals with executive acts with foreigners.

(2) Foreign military bases, troops or facilities shall not be allowed in the Maldives except under a treaty duly ratified by the Citizens' Majlis.

Based on 74 (c)

72 Control over Finance

(1) No tax or rate shall be levied except under the authority of the Citizens' Majlis

-Article 73
 -Words "or rate" have been added.

(2) Before the beginning of each financial year the Minister of Finance shall submit to the Majlis a detailed statement of :

Based on Art 77 (1)

- (a) the State Revenue for the previous year;
- (b) the estimated State Revenue for the current year; and
- (c) the estimated State expenditure for the following year.

(3) The Budget for the new financial year shall not be operative unless it is passed by the Citizens' Majlis.

Based on 77 (1)

(4) The following items of expenditure shall not be reduced by the Citizens' Majlis :

- (a) Salaries and allowances of judges, Commissioner of Elections, Auditor General and Chairmen of other Commissions and Special Offices appointed under the Constitution
- (b) the salaries of public servants
- (c) payments for pensions
- (d) payments of monies which the

Added

In (d) I have

government is required to pay as a result of an award or judgement in a court of law

(e) money on loans taken by the government

(5) No charge shall be created on the public revenue unless it is authorised by the Citizens' Majlis.

included all courts beside shariah courts.

Added in order to require the government to seek clearance for any expenditure.

73 Legislative Procedure

(1) No Bill shall be deemed to have passed the Citizens' Majlis or the Citizens' Special Majlis unless it has obtained the support of an absolute majority of the total membership of the Majlis or the Citizens' Special Majlis.

Article 69

(2) A Bill passed by the Citizens' Majlis or the Citizens' Special Majlis shall be sent to the President within seven days of the day the Bill was passed.

Article 76 (1)

(3) On receipt of a Bill the President may in his discretion :

Article 76 (1)

(a) assent to the Bill within sixty days in which case the Bill shall become law on the date of his assent;

Sixty days could be reduced to thirty because otherwise the President can delay a Bill by about 100 days - 60 days time for reconsideration plus a further 30 days after it is returned to him under Article 73 (4)

(b) return the Bill to the citizens' Majlis or the Citizens' Special Majlis within sixty days with a written statement of the reason for his objection to the Bill

(4) If a Bill, sent by the President to the citizens' Majlis or the Citizens' Special Majlis in accordance with clause (3) of this Article is passed a second time by the Majlis concerned by a two-thirds special majority of the total membership, and submitted to the President in accordance with Article 73(2), the President shall ratify the Bill within 30 days of its receipt.

The Draft Article had laid down no time limit within which The President should assent to a Bill sent to him a second time.

I have inserted the time limit of 30 days. This could be reduced to seven days.

(5) If a Bill is not assented to by the President within the time specified in

Added

clause (4) hereof, it shall become law at the expiration of the time as specified in clause (4) in the like manner as if he had assented to it.

(6) Every law shall be published in the Government Gazette before being enforced.

74 Vacancies in Members' Seats

(1) - same as 78 (1)

(2) - Same as 78 (2)

(3) - Same as 78 (3)

(4) If a member appointed by the President is removed from his office by the President his seat shall be considered to have fallen vacant.

(5) If a seat in the Citizens' Majlis falls vacant an election to fill the seat shall be held within sixty days from the date the Speaker certifies that the seat has fallen vacant.

Provided that if a casual vacancy in the Citizens' Majlis is established on a date within six months of the date the Majlis shall, in accordance with clause (4) of Article 65 stand dissolved, such casual vacancy shall not be filled.

75 Vacancies in the Office of Speaker and Deputy Speaker

-same as Article 79 of the Draft.

76 Removal of Speaker and Deputy Speaker

-No modification to Article 80 needed.

77 Parliamentary Privileges

(1) In the exercise of their parliamentary functions members of the Majlis shall enjoy such privileges, powers and immunities as are established at law or by the resolutions or rules of procedure of the Majlis.

(2) No person shall be liable to any proceedings in any court in respect of anything said or done or any vote given by him when taking part in the proceedings of the Majlis or any committee thereof.

(3) The Majlis and its Committees shall have the right to require attendance of witnesses

-Article 75

-The implication of this Article are far reaching. Even delegated legislation will have to be published as a pre-condition of enforcement.

-Article 78

-In Article 78(4) the words "by the President" are added.

-Article 86

Added to remove need for elections in certain circumstances.

Article 79

Article 80

Article 81 has been reformulated and expanded.

Rewritten and expanded.

Added to allow Majlis to question

and the production of evidence.

- | | | |
|----|---|---|
| 78 | <u>Right to Question Ministers.</u>
- same as Draft Article 82 | representatives of departments not having a Minister.

Article 82 |
| 79 | <u>Vote of No Confidence Against Minister</u>
- same as Draft Article 83 | Article 83 |
| 80 | <u>Legislative Powers of President</u>
(1) Same as Draft Article 84 (1) which needs no modification.
(2) Same as draft article 84(2). But a proviso may be added : "Provided that if a presidential decree has become inoperative for failure to obtain the ratification of the Majlis, such failure shall not affect the validity of any action taken under the decree while it was validly in force"

(3) -same as Draft Article 84 (3) | Article 84(2) needs a proviso

Conflict between Article 84 and Article 40(e) of the Draft should be noted. Article 40(e) should be deleted. |
| 81 | <u>Secretary General of Parliament</u>
-Same as Article 88 of the Draft except that the first line should read :
"The President shall, <u>after consultation with the Speaker of the Citizens' Majlis</u> " | Article 88 |
| 82 | <u>Committees</u>
The Citizens' Majlis may appoint such number of Committees as it deems necessary but shall in any case appoint the following:
(a) A Public Accounts Committee with the Auditor General as an ex-officio member
(b) A Privileges Committee
(c) A Legislation Committee | New provision |
| 83 | <u>Pensions</u>
Members of the Citizens' Majlis who have served two or more terms in the Majlis shall be entitled to a pension in accordance with the law. | New provision to bring the position of Majlis members similar to that of the President, Ministers and civil servants who receive pensions. |

MEMORANDUM ON
THE CITIZENS' MAJLIS

1) In several provisions of the Committee's Draft Rules the role of the President in the affairs of the Majlis has been strongly emphasised. This is not in keeping with the efforts to create a Constitution with a fair degree of separation of powers. Some of the provisions are merely symbolic but they nevertheless indicate a subjugation of the Majlis to the executive branch of the State. This should not be so because the Majlis is a representative institution deriving its authority and legitimacy from the people. In the legislative sphere it must not be subordinate to anyone. In its internal proceedings and procedures it should be its own master subject only to the Constitution.

In relation to the following matters, I recommend minor changes so that the prestige of the Majlis can be enhanced and its legislative role strengthened.

a) Majlis members take their oath before the President even though most of them are not his appointees. It is recommended that the oath should be taken before the Speaker of the Majlis (Draft Article 62).

b) In the Committee's Draft Article 63 (1) the President nominates the person to chair the Majlis during the election of the Speaker and the Deputy Speaker. Election of the Speaker is an internal matter and during the election, the Majlis should be chaired by its longest serving member.

c) In the Committee's Draft Article 67 (2) the President can dissolve the Majlis.

I recommend that 67 (2) should be deleted for the following reasons:

(i) The Majlis is, perhaps, the most representative institutions in the country. Its mandate comes from the people and ought not to be withdrawn with ease. In parliamentary systems like the ones in the UK, India and Malaysia, though the Prime Minister can recommend the premature dissolution of the lower House, his recommendation is not binding on the Head of State who may refuse premature dissolution. No such obstacle exists in the Maldivian Constitution.

(ii) The argument that the President and judges can be removed and so the Majlis too should be subject to premature dissolution fails to take note of the extremely difficult (and virtually impossible) procedures which have to be complied with before the President can be dismissed. No such safeguards exist in Article 67 (2) prior to the dissolution of the Majlis.

(iii) The Majlis has powers to dismiss the President. If it initiates procedures to do so, a future President may retaliate by dissolving the Majlis and thus rendering many constitutional provisions useless.

(iv) The emergency proclamation by the President under Draft Article 138 has to be laid before the Majlis and the permission of the Majlis is needed to extend it beyond three months. This is a vital safeguard against abuse of emergency power by a future government. The Hon'ble members of the Special Majlis should remember that in many parts of Asia, Africa and Latin America, "constitutional dictatorships" exist because constitutional provisions dealing with emergencies have been abused in such a way as to prolong the state of emergency for decades. During an emergency in the Maldives the Majlis is the best safeguard against abuse of emergency power. Draft Article 67 (2) may deliver a death-blow to the Majlis. Most humbly, I recommend that this Article 67 (2) should be deleted in its entirety.

2) There is a conflict between Article 84 and Article 40 (e) of the Committee's Draft. Article 84 allows the President power to make temporary laws if the Majlis is not in session. The President's power is subject to adequate checks and balances by the Majlis which may accept or reject the President's laws. More importantly, a law made by the President under Article 84 is subject to a time limit. It lapses after 60 days.

However Article 40 (e) gives the President blank-cheque legislative powers with no checks or time limits.

I have recommended in point 4 of the Memo on the President that Article 40 (e) should be dropped. That recommendation is reiterated here.

CHAPTER SIXCITIZENS' SPECIAL MAJLISDraft Committee's
Article

Comments

90

(1) Art.90 (c) should be rewritten to indicate the number of newly elected members as follows:

"Such number of members elected from Male and the Atolls in a General Election conducted in accordance with the law to equal the number of elected members of the Citizens' Majlis.

90

(2) The 1968 Constitution gives to the President, eight new nominated members in the Citizens Special Majlis (Refer to Article 83 (d) of 1968. Is it the intention to delete this second group of eight nominated members?

91

No comment

92

1) The President has the exclusive power to summon the Special Majlis.

I recommend that the Citizens' Majlis also should have the power to convene a constituent assembly to discuss amendments to the Constitution.

92

2) What is meant by "completion of what has been proposed"? Does it mean "passage of the amendment through the special Majlis" or does it mean "ratification by the President of the amendment"?

92

3) Under the 1968 Constitution, a constitutional amendment did not require the President's assent. Under the new Draft Article 97 (1) and 97 (2) the President's ratification requirement has been introduced.

So, amendments will now become more difficult than before and, as in the

case of ordinary Bills, the President may send them back to the Special Majlis for reconsideration.

In the light of this, it is obvious that the Special Majlis should not be dissolved after it has passed the amendments. If the President disagrees with the amendment, the Special Majlis will have to reconsider it and must, therefore, stay constituted till the President ratifies the amendment.

92(1)

4) I recommend that Article 92 (1) and (2) be amended as follows:

92(1) "If the President, or the Citizens' Majlis by a resolution supported by a two-thirds majority of the total membership, directs the Commissioner of Elections to constitute a Citizens' Special Majlis, then an election shall be held within sixty days of the directive in accordance with Article 90 to elect the said Special Majlis."

Article 92 (2) should be reformulated as follows:

92 (2): "Upon ratification by the President of the Constitution Amendment Bill passed by the Citizens' Special Majlis, the said Special Majlis shall be dissolved by an instrument of the President addressed to the said Special Majlis."

93

No comment

94

Please delete the words "as instructed by the President" because the Special Majlis is an elected constitutional body and its Speaker should not be instructed by the executive

95

No comment

96

No comment

97(1)

1) In the Maldives any constitutional amendment, no matter how minor, requires a special Constituent Assembly (the Special Majlis) to be convened.

Such rigidity in the amendment process will protect the Constitution from hasty and ~~too-~~ frequent changes. But such rigidity will also be inconvenient if the amendment required is only a minor one e.g. changing the name of the Qazis Courts to Atoll Courts or changing the number of judges.

It may be better to divide constitutional provisions into two categories and spell out the two categories:

(i) Those very special and "sacred" provisions, the amendment of which requires a special constituent assembly.

(ii) Those other provisions like oaths, miscellaneous provisions etc. which can be amended by a special two-thirds majority in the Citizens' Majlis.

97(2)

As I have mentioned earlier, Art. 97 (1) and (2) of the Draft have introduced provisions for requiring the President's assent to constitutional amendments. This requirement is absent in the 1968 constitution.

97(3)

A new clause should be added to Article 97 to take note of the absolute prohibition against secession of Maldives territory to any foreign power in Article 74(A) of the Draft Proposals (Article 70(3) of my Recommendations).

" 97(3): Nothing in this Chapter authorises the Citizens' Special Majlis to amend the Constitution in order to secede any part of the political territory of the Maldives to any foreign power or person."

Chapter Seven

ATOLL CHIEFS

Draft Committee's Article	Comment/Recommendation
98 to 103	No modification necessary
103A	A new Article 103A is recommended. In the light of previous experience with elected island committees, the experiment with representative institutions in the Islands and Atolls should be conducted afresh.

"103A: Representative Institutions in Atolls

Within five years from commencement day, the Citizens' Majlis shall enact legislation to provide for the establishment of popularly elected Island and Atoll Committees to assist Kateeps and Atoll Chiefs to administer their respective territories."

Memorandum of Explanation
to Chapter Seven
ATOLL CHIEFS

Due to the Country's unitary set-up, governmental power is concentrated at Male. The atolls (and islands) have no legislative or executive institutions of their own which reflect the popular will of the local inhabitants.

The absence of representative institutions within the atolls and islands is compounded by the fact that the Atoll Chief is a direct appointee of the President and is not required to be an inhabitant or former inhabitant of the atoll (though, of course, he resides there during his term of office).

The Kateebis in the Islands are, normally, local people but they too are appointed and not elected by the island inhabitants.

Members of the Citizens' Majlis who represent the Atolls are not always inhabitants or former inhabitants of the atoll (there being no residence requirement in the Maldives as a pre-condition for contesting from a constituency).

Majlis members rarely, if at all, pay visits to their constituencies. No allowances are available to encourage such visits. I was surprised to learn that some candidates for the Majlis election do not even go to their electoral district prior to the election. But they get elected anyway because of traditional loyalties to "official candidates".

The absence of representative institutions within the atolls and the lack of constituent-representative relationship between Majlis members and atoll residents is indeed worrying. No doubt that the Ministry for Atoll Administration and the Atoll Chiefs are the government's eyes and ears in the Atolls. But how adequately they are able to monitor the pulse-beats of the local inhabitants is open to debate.

With knowledge of central-regional tensions in other countries with large geographical distances and with memories of the 1959-1963 revolt in the "United Suvadiv Republic", it is recommended that the new Constitution should provide for evolution of representative institutions within the atolls.

Recommendations

A new Article 103A is proposed to require establishment of representative institutions within the Atolls and the Islands.

The Citizens' Majlis is advised that as a matter of parliamentary practice, two or three days every month should be declared by the Citizens' Majlis to be "constituency days" during which members should return to their electoral districts to stay in touch with the pulse-beats of their constituents.

This will have economic implications and the Majlis and the Minister of Finance will have to work out an appropriate allocation in the next Budget.

Chapter VIII: THE JUDICIARY

1. INDEPENDENCE OF THE JUDICIARY

- (1) Subject to the constitutional provisions dealing with the grant of mercy and the appointment and removal of judges, the judicial power of the State shall be vested in a Judiciary which shall be separate from and independent of the Executive and the Legislature.
- (2) Judicial decisions shall be open to appeal, review or revision only by other courts in accordance with the law and no executive official, Ministry or Department may interfere in the adjudication of disputes in the courts.

2. CONSTITUTION OF THE COURTS

The Judiciary shall consist of the following courts:

- (1) A High Court with its registry at Male' consisting of a Chief Justice and such number of judges as are provided by the law.
- (2) Atoll Courts and Male' courts in such numbers and such places as is provided by the law.
- (3) Other subordinate courts and tribunals established at law.

3. JURISDICTION OF THE COURTS

- (1) The High Court's jurisdiction shall be laid down by the law and shall include the following:
- a) original jurisdiction
 - b) appellate jurisdiction
 - c) supervisory jurisdiction
 - d) advisory jurisdiction
 - e) powers of revision

(2) Under its original jurisdiction the High Court shall have the power to rule on the constitutionality of any legislative or executive action and to adjudicate on any disputes involving the fundamental rights and obligations of the citizens.

(3) Under its appellate jurisdiction the High Court shall have exclusive power to determine appeals from the decisions of Atoll and Male' Courts and such other subordinate courts and tribunals from whose decision appeal is provided by the law.

Such determinations are to be final and conclusive and are not to be reviewed, revised or quashed by any person or authority other than the High Court which may, in the interest of justice, re-open a prior determination of its own and try it de novo.

(4) Under its inherent, supervisory jurisdiction, the High Court shall ensure, in a proceeding initiated by a party with sufficient interest, that all public authorities remain within the limits of their powers.

In the exercise of this jurisdiction the High Court may issue the following:

- a) the writ of habeas corpus;
- b) the orders of Prohibition, Certiorari, Mandamus, Injunction, Declaration and Quo warranto.

(5) In the exercise of its advisory jurisdiction the High Court shall, pronounce in open court, in those instances where the President of the Republic or the Citizens' Majlis, refer to the High Court for its opinion any constitutional question which has arisen or appears likely to arise, its opinion on any question so referred to it.

(6) In the exercise of its revision powers the High Court may, either at its own initiative or on the application of a party with sufficient interest:

- a) call for and examine the record of any criminal proceeding before any subordinate court for the purpose of any satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such subordinate court;
- b) direct a subordinate court to make further inquiry into any criminal complaint which has been dismissed or into the case of any accused who has been discharged.

Provided that no order under this clause shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by an advocate in his own defence.

And provided further that nothing in this Clause shall be deemed to authorise a High Court judge to convert a finding of acquittal into one of conviction.

4. NO SPECIAL COURTS

- (1) No citizen shall be deprived of his right to seek justice from an ordinary court of law.
- (2) The establishment of ad hoc courts or tribunals is prohibited. But the Citizens' Majlis may, by law, establish permanent tribunals with limited jurisdiction under specific legislation. All such tribunals shall be inferior to the High Court and shall be subject to the High Courts' supervisory jurisdiction on questions of law.

5. APPOINTMENT OF JUDGES

- (1) The Chief Justice and the other judges of the High Court shall be appointed by the President of the Republic as follows:
 - a) The President shall nominate for consideration of the Citizens' Majlis, a qualified person to fill each vacancy arising.
 - b) Before nominating judges, other than the Chief Justice, the President shall consult the Chief Justice.
 - c) The name(s) of the nominee(s) shall be communicated to the Speaker of the Citizens' Majlis who shall table the name or names before the Majlis at the earliest possible opportunity.
 - d) On ratification by the Citizens' Majlis, the President shall issue the instrument of appointment under his seal.

- (2) Judges of the Atoll and Male' Courts, Chairmen of tribunals and of any other subordinate courts established by law shall be appointed by the President of the Republic after consultation with the Chief Justice of the High Court.

6. QUALIFICATION OF JUDGES

- (1) No person shall be appointed a Judge of the High Court unless he satisfies the following requirements:
- a) He is known for his piety and for his knowledge and understanding of the laws.
 - b) He is a Muslim of the Sunni sect.
 - c) He is a citizen of the Maldives born of Maldivian parents.
 - d) He is at least thirty-five years of age.
 - e) He is of sound mind.
 - f) He has never been convicted of a Hadd offence by a court in the Maldives.
 - g) He has ten years' experience as a judge of a subordinate court or as an advocate in the High Court or as a legal officer with the government.
- (2) Qualifications of subordinate court judges shall be provided by a law passed by the Citizens' Majlis.

7. OATH OF OFFICE

- (1) The Chief Justice and the other judges of the High Court shall before exercising the functions of their office take and subscribe the oath of office and allegiance prescribed in Schedule.....of the Constitution before the President of the Republic.
- (2) Judges appointed to the Atoll and Male' courts and other subordinate courts shall take and subscribe the above mentioned oath before the Chief Justice of the High Court.

8. SECURITY OF TENURE

- (1) No office of Judge shall be abolished while there is a substantive holder of that office.
- (2) A judge of the High Court shall hold office until he attains the age of fifty-five years.

Provided that it shall be lawful for the President of the Republic to remove a judge from office on a resolution of the Citizens' Majlis, passed by a special two-thirds majority of the total membership of the Majlis, that the Chief Justice or a judge of the High Court ought to be removed on the ground of misbehaviour or of inability from infirmity of body or mind to discharge the functions of his office.

- (3) Judges of the Atoll and Male' Courts shall, likewise, hold office until they attain the age of fifty-five years.

Provided that it shall be lawful for the Judicial and Legal Service Commission consisting of:

- a) the Chief Justice of the High Court;
- b) two other judges of the High Court;
- c) the Minister of Justice;
- d) the Attorney General;

to remove an Atoll or Male' Judge from office on the ground of misbehaviour or of inability from infirmity of body or mind properly to discharge the functions of his office.

- (4) No judge shall be removed from office unless he has had a fair opportunity of being heard either personally or by an advocate in his defence.
- (5) Pending proceedings for removal, a judge may be suspended from office by the President of the Republic.
- (6) Notwithstanding anything in this article, a judge may resign his office by writing under his hand addressed to the President of the Republic.

Provided that he shall continue to discharge his judicial functions till the resignation is accepted by the President.

9. TRANSFER OF JUDGES

- (1) The Chief Justice and the other judges of the High Court shall not, without their consent, be transferred to another organ of the State during their tenure as members of the judiciary.
- (2) Any transfer, with consent, shall not involve any alteration to the remuneration and other terms of service to the disadvantage of the judge so transferred.

- (3) A judge of the Atoll or Male' courts may be transferred laterally to a court of concurrent jurisdiction by the President of the Republic on the recommendation of the Chief Justice of the High Court but not to another organ of the State save with his consent and subject to clause (2) of this article.

10. REMUNERATION OF JUDGES

The salaries, allowances and terms of service of judges shall be provided by the law and the remuneration so provided shall not be altered to the detriment of a judge after his appointment.

11. RESTRICTION ON PARLIAMENTARY DISCUSSION

- (1) Matters which are sub-judice shall not be discussed in the Citizens' Majlis.
- (2) The conduct of a High Court judge shall not be discussed in the Citizens' Majlis except on a substantive motion of which notice has been given by not less than one fourth of the total number of members of the Majlis.

12. JUDICIAL IMMUNITY

No suit or proceeding shall lie against any judge for any act which is done in good faith and in the exercise or purported exercise of his duties and functions as a judge.

13. POWER TO PUNISH FOR CONTEMPT

- (1) Implementation of Court decisions is the duty of every person, whether public official or private citizen, and failure to observe this duty may be punishable as contempt of Court.
- (2) The High Court shall have power to punish any contempt of itself or of any subordinate court.

14. COURT PROCEEDINGS TO BE PUBLIC

All court proceedings shall be open to the public.

Provided that in the interest of national security or public decency the presiding judge may order the court to be cleared of the public or to forbid the publication of any information or evidence.

15. POWER TO MAKE RULES

The High Court shall have the power to formulate rules to regulate judicial ethics and judicial procedure in the High Court and all subordinate courts.

EXPLANATORY MEMORANDUM
TO THE CHAPTER ON THE JUDICIARY

- 1) This Chapter combines Chapter 8 and Chapter 9 of the Draft Proposals.
 - 1.1 In preparing it, the effort has been to provide for a strong, capable and independent judiciary which, in a functional way is separate from the executive. At the same time, however, the President's formal position as the fountain of justice is retained in the following ways:
 - (a) His power to grant mercy;
 - (b) His power to appoint, remove or suspend judges subject to constitutional safeguards;
 - (c) His power to propose to the Citizens' Majlis legislation to promote justice.
 - (d) It would be permissible for the President to refer (but not recommend) to the High Court a citizen's petition to him for Ilthimas and the High Court may, in its discretion, review or revise the matter under Article 3(3) or Article 6 of this Chapter by trying it de novo.
 - (e) As the head of the executive, the President can review/revise any decision of an executive department, which in the view of the President, causes hardship to a citizen or results in maladministration.
- 2) On the need to separate the judiciary from the executive, there are some sincere but dissenting voices on the ground that "Islam requires the judicial power to reside ultimately with the Head of State." This view is based on the fact that in early Islam the Prophet (S.A.W) and the Righteous Caliphs were the supreme head of all three organs of State.

3) But I wish to submit nine arguments in favour of judicial independence in the Maldives:

- 3.1 There is no specific injunction of the Quran or the Hadith known to me which requires us to amalgamate the executive and the judiciary. (Refer to extracts from S. Abul Ala Maududi, Islamic law and Constitution, 8th edition, 1983, pp. 225 - 228, 319 - 320, 334 included as Appendix 1).
- 3.2 The practice 1400 years ago is worthy of emulation. But where do we get leaders who match the piety and the quality of the early leaders of Islam? The Prophet (S.A.W) was inspired by Allah. The early Caliphs were men of exceptional integrity, honesty and devotion to God. But today we no longer have assurance of having personalities worthy of such reliance and faith. Therefore, we ought to construct a constitutional structure which supplies some checks and balances against governmental abuse of power - which itself is an ideal of an Islamic State.
- 3.3 The Islamic requirement that the Head of State is answerable to the law and subject to the jurisdiction of the ordinary courts, necessitates a separation between the executive and the judiciary.
- 3.4 Islam requires due process during a trial. Modern leaders are too busy with other affairs of state to give a patient and full hearing to both parties in a case.
- 3.5 In Islam whatever is not prohibited, is deemed to be permitted. There is no express prohibition against an independent and separate judiciary and having one will not be un-Islamic.

- 3.6 Even if the President is not involved directly in determining disputes, he will remain involved in the administration of justice through his power of appointment of judges and involvement in their removal. He can exercise the power to grant mercy. He can initiate legislation to promote justice. He can refer to the High Court a citizen's petition to him for Ilthimas and the High Court may, in its discretion, review or revise the matter under Article 3(3) or Article 6 of this Chapter.
- 3.7 All modern constitutional documents emerging from Islamic countries give the judiciary protection from executive interference. Reliance may be placed on:
- The Constitution of the Islamic Republic of Iran, especially Articles 156, 164, 165 and 170.
 - The Constitution of the Islamic Republic of Pakistan especially Article 175. (Appendix 3)
 - Constitutional Recommendations for Islamic Ideology, Government of Pakistan, Islamabad, 1983. Chairman: Justice Dr. Tanzilur Rahman, pages 16-19. (Appendix 4)
 - A Model of an Islamic Constitution, Islamabad. Articles 35-41. (Appendix 5)
- 3.8 In the context of the Maldives, there is an urgent need to decentralize powers and to reduce the burdens on the Presidents' Office so as to allow him to plan for the future.
- 3.9 If Maldives is to attract foreign capital and integrate itself with world commerce there is a need to have a separate and independent system of adjudication which would arouse confidence of foreign commercial houses.

- 4) I have, therefore, sought to ensure that, all in all, the judiciary is separate from and independent of the executive and the legislature in a functional way, yet, subject to some checks and balances from the President and the Citizens' Majlis.
- 5) If my proposals are accepted, the following existing practices will have to be modified.

5.1 The Presidents' power to "review" or "revise" High Court decisions will have to be discontinued. (Article 1(2)). It is humbly submitted that the President should not burden himself with judicial matters which are best decided after hearing both parties and by reliance on pre - determined rules and precedents.

5.2 The Ministry of Justices' practice of guiding and supervising Qazis Courts will have to cease. (Article 1(2)). However the Ministry can continue to assist the judiciary by preparing the annual budgetary proposals, undertaking publication of law reports, recruiting administrative staff, obtaining facilities and services and library books etc. The Ministry could remain involved in formulating proposals to the Citizens' Majlis for law reform.

If the Ministry stops supervising the Qazis Courts, who will watch them ? As the standard of justice in the lower courts is not always high, Articles 3(4) and 3(6) of this Chapter seek to provide powers to the High Court to supervise and revise lower court proceedings. This way no vacuum will be created when the Ministry withdraws from its traditional role.

5.3 The practice of transferring judges from the Bench to executive departments will have to cease. (Article 9)

- 5.4 The power to decide whether the Court will sit in public or in camera will reside with the courts and not with the Ministry of Justice. (Article 14)
- 5.5 Rules of Court Procedure and Ethics will be drawn up by the High Court and not by the President or the Ministry of Justice. (Article 15)
- 6) The judiciary, especially the subordinate courts, will be subjected to control and supervision by the executive and the legislature in indirect ways, for example, in the appointment and removal of High Court judges (Articles 5(1) & 8(2)); appointment of Subordinate Court judges after necessary consultation with the Chief Justice (Article 5(2)); power to dismiss subordinate court judges by a newly created Judicial and Legal Service Commission consisting of judges and members of the executive (Article 8 (3)).

In criminal cases the president shall retain his power to grant mercy.

- 7) The High Court shall be vested with a new supervisory jurisdiction to issue Writs and prerogative orders (Article 3 (4)). The basic principles of these are included in Appendix 6.

- 7.1 The Writ of Habeas Corpus: Anyone deprived of his personal liberty can challenge his detention under this writ procedure. The High Court may order the detainee to be brought before the court along with the legal reasons for his detention. If the detention is according to the law, the Court will refuse habeas corpus. But if there is violation of law or procedure, habeas corpus will issue.

An order of habeas corpus does not operate as an acquittal on conviction or an appeal. It merely tests whether the detention is legally valid. A prisoner released on habeas corpus may be rearrested if the next

time around all the substantive and procedural requirements of the law are complied with.

7.2 Certiorari: If an inferior court or tribunal in reaching its decision acted Ultra Vires, in breach of natural justice, in error of law or its decision was affected by fraud, perjury or duress, the High Court may:

- Order the inferior court to have the reasons for its decision and the records of its proceedings sent to the High Court for review.
- If the High Court detects any of the four defects mentioned above, it may quash the previous decision.
- The High Court may remit the proceeding back to the tribunal to be tried de novo after correcting whatever defect existed.

7.3 Prohibition: This is similar to certiorari but comes at an earlier stage.

If an inferior court or tribunal is acting ultra vires or in breach of natural justice, the High Court may prohibit it from continuing with its proceedings. For example, if a Court Martial wrongly exercises jurisdiction over a civilian, the High Court may issue an order of Prohibition to prevent the Court Martial from exceeding its jurisdiction.

7.4 Mandamus: This is an order from the High Court to a public authority to perform its public duty. For example, if the Pensions Department refuses to pay the pensions due, or the Police or Customs Department seize property unlawfully, Mandamus may issue.

7.5 Injunction: This is an equitable remedy which can order a public authority or a private person to:-

- (i) desist from doing something which he is not entitled to do. e.g. encroaching on somebody's land; seizing private property unlawfully.
- (ii) do what is his duty under the law to do. (mandatory injunction) This type of Injunction is similar to Mandamus except that Mandamus does not lie against private persons. Injunction is available against public authorities as well as private persons with one exception: Injunction is not issued against the Crown or Head of State.

7.6 Declaration: This is a judgment of a superior court on the state of law on a particular point or the right and duties of the parties in dispute. It is a very broad-ranging remedy and enables a person to seek the courts' opinion on a whole range of legal issues e.g. whether a particular piece of legislation is unconstitutional or whether a citizen has a right to go abroad.

7.7 Quo Warranto: This is an order to a public authority to vacate a public position to which he is not entitled under the law.

- 3) I strongly recommend that a special course in 'Judicial and Constitutional Practice' be organised to brief judges and law officers on the exercise of their jurisdiction under the proposed new Constitution.
- 9) The Drafting Committee may wish to consider creating a 3 - tiered judicial system with a Supreme Court (or a Court of Appeal) above the High Court and vest it with the following jurisdiction:

1. Exclusive original jurisdiction to determine questions of constitutionality. (Refer to Articles 3(1)(a) and 3(2))
2. Appellate jurisdiction to hear appeals from the High Court in areas provided by the Law.
3. Exclusive advisory jurisdiction. (Article 3(5))

If such a 3-tiered system is accepted, the High Court will lose its jurisdiction in Article 3(2) and Article 3(5) but will retain its jurisdiction in Articles 3(3), 3(4) and 3(6).

- Shad Saleem Faruqi -

Addendum to the Charter on the Judiciary.

- 1) In line with the increased jurisdiction of the High Court it is necessary to increase the number of High Court judges from three to five.
- 2) To enable the High Court to exercise supervision over lower courts it is submitted that one High Court judge should oversee the work of subordinate courts in the Northern region, another High Court judge should scrutinise Central region subordinate courts and the third should keep an eye on the Southern atoll courts. Two High Court judges could review/revise Male' court decisions.
- 3) The Honourable Chief Justice may wish to consider the practice of superior courts going on "circuit" once in a while to see how the machinery of justice is working around the country.

The subordinate courts need to be closely supervised because the standard of justice in them is below par. The Ministry of Justice was, upto now, performing an absolutely necessary (if unconstitutional) function of reviewing the work of the Qadis Courts. If the Ministry of Justice withdraws from this function, as we recommend that it should, a vacuum will be created, which the High Court should eagerly step in to fill. Unless the High Court succeeds in supervising the lower courts, the separation of powers which we are so strongly recommending will do more harm than good to the administration of justice in this country.

Chapter IX
MUHTASIB (COMMISSIONER OF ADMINISTRATION)

1. Appointment

There shall be a Muhtasib or Commissioner of Administration who shall be appointed by the President for a term of five years and shall be eligible for reappointment.

2. Qualifications

The Muhtasib shall have the qualifications of a member of the Ministers' Majlis and shall be a person who, in the opinion of the President, is capable of enjoying public confidence.

3. Disabilities

No person holding the office of the Muhtasib shall hold any other office of emolument whether in the public service or otherwise nor engage directly in any other occupation or profession for reward.

4. Salary

The salary and terms of service of the Muhtasib shall be determined by the Citizens' Majlis and shall not be diminished during his term of office.

5. Resignation & Removal

The Muhtasib may at any time resign his office but shall not be removed from office except on like grounds and in the like manner as a judge of the High Court.

6. Functions

The Muhtasib shall have the following powers, functions and duties:

(1) To investigate and report on any administrative act or omission of any public official, public employee, office or agency, when such act or omission appears to involve a breach of law or appears to be unjust, improper, oppressive, inefficient or unreasonable.

(2) To recommend to any public official or employee of the government, or to any agency or instrumentality thereof, to perform and expedite any act or duty required by the law or to stop, prevent or correct any abuse or impropriety in the performance of duties;

(3) To direct the officer concerned to furnish to the Muhtasib any information or documents relating to the matter under investigation except as is provided by Article 10;

(4) To determine the cause of inefficiency, red tape, mismanagement, fraud and corruption in the government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

7. Procedure for investigation

(1) The Muhtasib may investigate any matter mentioned in Article 6 in any of the following circumstances:

- (a) Where a complaint is duly made to the Muhtasib by any person alleging that the complainant has sustained an injustice as a result of maladministration;
- (b) Where the President of the Republic, a member of the Ministers' Majlis or a member of the Citizens' Majlis request the Muhtasib to investigate the matter on the ground that some person or body of persons has or may have sustained injustice;
- (c) In any other circumstance in which the Muhtasib considers that he ought to investigate the matter in the interest of justice or efficiency.

(2) Where the Muhtasib proposes to conduct an investigation he shall afford to the principal officer of any Ministry or department concerned, and to any other person who is alleged to have taken or authorised the action or omission in question, an opportunity to comment on any allegations made to the Muhtasib in respect of it.

(3) Every such investigation shall be conducted in private. The procedure for conducting the investigation shall be such as the Muhtasib considers appropriate in the circumstances of the case. The Muhtasib may obtain information from such persons and in such manner, and may make such enquiries as he thinks fit, and may determine whether any person may be represented by counsel or attorney in the investigation.

8. Jurisdiction

(1) Subject to the other provisions of this Article, the Muhtasib shall have the power to investigate and report on the actions and omissions of the following officers and authorities:

- (a) Any Ministry or department of the government;
- (b) Any enterprise owned or controlled by or on behalf of the State;
- (c) The Police Force or any member thereof.

(2) The Muhtasib shall not have powers in relation to the following officers and authorities:

- (a) The President or his personal staff;
- (b) The Chief Justice and other judges of the High Court;
- (c) The Auditor General;
- (d) Any Commission or Commissioner established by this Constitution;
- (e) The Armed Forces and members thereof.

(3) The Muhtasib shall not conduct an investigation under this Article in respect of any complaint in so far as it relates to -

- (a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a court or tribunal constituted by or under any law in force in the Maldives; or
- (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law or tribunal;

Provided that the Muhtasib may conduct such an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to avail himself or to have availed himself of that right or remedy.

9. Discretion to investigate

In determining whether to initiate, continue or discontinue an investigation, the Muhtasib shall act in his discretion. Without prejudice to the generality of this discretion, the Muhtasib may refuse to initiate or may discontinue an investigation where it appears to him that -

- (a) a complaint relates to action of which the complainant had knowledge for more than twelve months before the complaint was received by the Muhtasib;
- (b) the subject matter of the complaint is trivial;
- (c) the complaint is frivolous or not made in good faith.

10. Power to obtain Evidence

(1) Subject to the other provisions of this Article the Muhtasib shall have the powers of the High Court to summon witnesses to appear before him and to compel them to give evidence on oath and to produce documents relevant to the proceedings before him and all persons giving evidence at those proceedings shall have the same duties, liabilities and immunities as in the High Court.

(2) The Muhtasib is not empowered to summon a Minister to appear before him or to compel a Minister to answer any questions relating to any matter under investigation but persons other than a Minister may be summoned and compelled to assist in the investigation.

(3) The Muhtasib may not summon any witnesses to produce any Cabinet papers or to give any confidential income tax information.

(4) The Attorney General may give notice to the Muhtasib with respect to any document or information specified in the notice that in his opinion the disclosure of that information or document would be contrary to the public interest in relation to defence, external relations or internal security.

Where such a notice is given, the Muhtasib shall be entitled to examine the document or information in person but neither he nor his staff shall be entitled to communicate the document or information to any person for any purpose.

11. Proceedings after Investigation

(1) Where, after making an investigation, the Muhtasib is satisfied that the action or omission complained of reflected a breach of law or was based on a mistake of law or fact or was unreasonably delayed or was otherwise unjust, oppressive or unreasonable, he shall report his opinion along with reasons and recommendations -

(a) to the person who or to the authority which had referred the complaint to him; and

(b) to the principal officer of the Ministry, Department or Authority concerned.

(2) The Muhtasib may, in his discretion, submit a special report to the President and to the Citizens' Majlis on any matter of public importance and shall, in any case, submit an annual report to the President and to the Citizens' Majlis on the performance of his constitutional functions.

12. Adequate Staff

The Muhtasib shall be provided with a staff adequate for the efficient discharge of his functions.

13. Fiscal Autonomy

The office of the Muhtasib shall enjoy fiscal autonomy. Its approved annual appropriations shall be automatically and regularly released though they shall be subject to audit by the Auditor General.

14. Fees

No complainant may be required to pay any fee in respect of his complaint or request for any investigation.

15. Immunity

(1) No proceeding, civil or criminal, may lie against the Muhtasib, or against any person holding an office or appointment under him for anything he may do or report or say in the course of the functions of the Muhtasib unless it is shown that he acted in bad faith.

(2) The Muhtasib, and any person holding office or appointment under him may not be called to give evidence in any court or tribunal in respect of anything coming to his knowledge in the exercise of his functions.

16. Oath

Before entering upon the duties of his office, the Muhtasib shall take and subscribe the oath of office prescribed in ----- before the President of the Republic.

Memorandum on

THE MUHTASIB (COMMISSIONER OF ADMINISTRATION)

Introduction

The strong tradition of Iltimas in Maldivian society needs to be given an institutional backing.

There is also a need in all Asian societies for supplying to the citizens non-technical, inexpensive and expeditious remedies to air their grievances.

The proposed Muhtasib will fulfil these expectations.

Terminology

The term Muhtasib has been chosen in honour of the Islamic institution of Hisba which empowered a Muhtasib to enforce ethical conduct both in the government and in the market place. The learned members of the Draft Committee may, however, wish to opt for the terms Ombudsman or Commissioner of administrative

The Muhtasib's link with the President

The Muhtasib should investigate any complaint of maladministration forwarded to him by the President, a cabinet minister or a member of the Citizens' Majlis (Art. 7(1)) and report his findings to them (Art. 11). This way the President, the Cabinet and the Citizens' Majlis will be able to play an effective role as redressors of citizens' grievances and as facilitators of administrative justice.

The Muhtasib should, however, also have the power to receive complaints directly from the public because in some situations the citizen may be reluctant to take his complaint to the holder of an office. (Art. 7(1)(a)).

The Muhtasib's relationship with the courts

The Muhtasib is primarily concerned with acts or omissions which, though legal, may fall short of the standards of justice, reasonableness and good administration. It is presumed that the Muhtasib will not be concerned with issues of pure law or with adjudication involving rights and duties. Those should be left to the courts (Art. 8(3)). But the Muhtasib may investigate a complaint against the administration even if a legal remedy was, theoretically, available if the citizen was not in a position to make use of his legal remedies (Proviso to Art. 8(3)).

The Muhtasib is not a court of law. He cannot overrule or review any judicial decision. In fact he cannot investigate or supervise any adjudication before the courts. His job is to investigate acts or omissions of an administrative (not judicial) nature by public officials (Art. 6(1)).

The Muhtasib's relationship with Ministers and their Ministries

The Muhtasib can only investigate and report. He can recommend changes. But he cannot overturn an administrative decision. That will have to be done by the President and the Ministers

In all countries with an ombudsman system, the findings of the ombudsman, though not strictly binding, are not easily brushed aside by the executive and the legislature.

The Citizens' Majlis can strengthen the position of the Muhtasib by appointing a Committee to examine the work of the Muhtasib.

The Muhtasib's power to summon witnesses and evidence

To free the President and the Ministers to attend to their duties, the Muhtasib should not summon the President and the Ministers to answer questions. But other officials should be required to cooperate with the Muhtasib.

His terms of service

The terms of his service, his salary and allowances have been left to the Citizens' Majlis to establish. It is recommended that the Muhtasib be appointed for a term of at least 5 years and be available for reappointment subject to a retirement age. Once appointed, he should not be removable except in the like manner as a High Court judge.

THE AUDITOR GENERAL

(This draft is to replace the previously submitted handwritten draft).

Committee's Draft
Proposals

Comments & Recommendations

- Article 116(1)
on appointment

- No modification needed

- Article 116(2)
on qualification

- No modification needed

- Article 117 on
oath

- No modification needed

- Article 118 on
Auditor General's
functions

- Article 118 of the Draft allows the Auditor General to act only on the instructions of the President. I suggest that the Auditor General should have constitutional authority to audit all state accounts on his own initiative and without having to wait for the green light from the President. A new Article 118 is proposed:

118(1) The Auditor General shall audit and report on all state accounts and the accounts of all enterprises that are owned or controlled by or on behalf of the State.

118(2) The Auditor General is empowered to have access to all books, records and returns relating to the abovementioned accounts.

118(3) The Auditor General shall submit his reports to the President who shall cause them to be laid before the Citizens' Majlis.

118(4) The Auditor General shall be an ex-officio member of the Public Accounts Committee of the Citizens' Majlis.

-Article 119 on
Auditor General
not to hold any
property

- No modification needed

- Article 120 on
form of state
accounts

- No modification needed

Committee's Draft
Proposals

Comments & Recommendations

-Articles 121
and 122 on
resignation and
removal

-Major changes are recommended to give the Auditor General some security of tenure so that he can act independently and fearlessly. He should not be hired and fired like ordinary public servants.

121 The Auditor General may, at any time, resign his office but shall not be removed from office except on like grounds and in the like manner as a judge of the High Court.

Chapter XI

Elections and Public Referendum

Committee's Draft Proposals	Comments and Recommendations
Article 123 on Commissioner of Elections	- Article 123 (1) needs no modifications.
- Article 123(2) on qualifications of the Commissioner	- A minor change is recommended. "The Commissioner of Elections shall have the qualifications of a member of the Citizens' Majlis and shall be a person who in the opinion of the President is capable of enjoying public confidence."
- Art 124 on oath	- No modification.
- Art. 125 on duties	- No modification.
- Art. 126 on secret ballot	- No modification.
- Art. 127 on qualifications of voters	- Minor modifications recommended. - 127(1) on the requirement to be a Muslim should be deleted in the interest of a good international image. I believe that Islam does not deny voting rights to non-Muslims. In any case you have no non-Muslim citizens.
- Art. 127	- Art 127(b) should be modified to read "serving a sentence imposed by a court of law."

Committee's Draft Proposals	Comments/Recommendations
<ul style="list-style-type: none"> - Art 128 on Election Complaints 	<ul style="list-style-type: none"> - A residence requirement in the constituency should be added. - Article 128 is not very clear. I suggest the following : "Except as is provided by Article 35(3)(a), (and Art. 45(3) of my Recommendations) no election or referendum shall be called in question except by an election petition presented to the High Court."
<ul style="list-style-type: none"> - Art 129 on removal of Commissioner. 	<ul style="list-style-type: none"> - Major change recommended to give Commissioner independence. 'The Commissioner of Elections may at any time resign his office but shall not be removed from office except on like grounds and in the like manner as a judge of the High Court.'

Chapter XII

State Ownership, Agreements, Claims

Committee's Draft Proposal	Comments/Recommendations
1) Article 131 on things owned by the State	No modification necessary.
2) Article 132(1)	Not translated because Article is vague.
3) Article 132(2) on ownerless property.	No modification necessary.
4) Article 133 or things found in land and sea.	No modification necessary.
5) Article 135 on power to grant and sell property.	This Article should be modified to bring it in line with Article 74B of the Committee's Draft and my Article 71. The Article should read as follows: "Subject to constitutional restrictions on use of Maldivian territory by foreigners, the President may, for the purposes of the State, transfer, sell, dispose, grant and pledge state property."
6) Article 135 on borrowing in the name of the State.	No Modification necessary.
7) Article 136 on suits against the Government.	No modification necessary

Chapter 13 : EmergencyRecommendationsComments

Newly drafted Articles 137, 138, 139 and 139A are recommended :

137 Proclamation of Emergency

(1) If the President is satisfied that a grave emergency exists whereby the security of the Maldives or any part thereof is threatened due to war, a foreign attack or civil strife, he may issue a Proclamation of Emergency.

Based on Draft Art¹¹
137.

(2) A Proclamation of Emergency under clause(1), unless sooner annulled by the Citizens' Majlis under Article 138(3) or lapsed under Article 138(4), may be revoked by the President anytime he is satisfied that there is no further necessity for the emergency Proclamation to continue.

Draft Article
139(3) expanded.

138 Power of Citizens' Majlis to review Proclamation

(1) A proclamation of Emergency under Article 137(1) shall be laid before the Citizens' Majlis at the earliest possible opportunity along with the reasons for its issuance.

Added to provide some control over exercise emergency of powers.
- To enable the Majlis to review the Proclamation, reasons should be stated at this stage rather than one month after emergency ends as is required by Draft Article 139(4)

(2) If the Citizens' Majlis is not in session due to prorogation under Article 65(2) or dissolution under Article 65(4), the Majlis shall be summoned to session as soon as may be practicable or legally permissible but in no case later than three months from the date of the Proclamation'

- This is to enable the Majlis to review the proclamation.

(3) A Proclamation of Emergency, if not sooner revoked by the President, shall cease to have effect if a resolution, supported by a two-thirds majority of the total membership of the Majlis, is passed annulling the Proclamation but without prejudice to anything previously done by virtue thereof.

- In a state of emergency, the executive should not be easily by-passed. Hence the need for a 2/3 majority.

(4) A Proclamation of Emergency, unless sooner revoked by the President or annulled by the Majlis, shall last for three months from the date of its issuance and shall then cease to have any operation. But on the application of the President, the Majlis may extend the proclamation for further periods of three months each.

- Extensions must have time limits attached to them.

139. Power of President to issue Ordinance etc.

(1) Subject to the other clauses of this Article, while a Proclamation of Emergency is in operation, the President may promulgate such ordinances and decrees as circumstances appear to him to require.

(2) An Ordinance or decree promulgated under Article 139(1) shall have the same force and effect as a law passed by the Citizens' Majlis and shall continue in full force and effect until it is withdrawn by the President, annulled by the Citizens' Majlis under clause (3) of this Article or until it lapses under clause (4) of this Article.

(3) An Ordinance or decree promulgated under clause(1) shall be laid before the Majlis as soon as is practicable or legally possible and the Majlis may, by a two-thirds majority of the total membership, annul the said Ordinance or decree but without prejudice to anything done previously by virtue thereof.

(4) An Ordinance or decree, if not sooner withdrawn by the President or annulled by the Citizens' Majlis under clause (3) shall last for the duration of the emergency and shall cease to have any operation once the Proclamation of Emergency comes to an end by revocation under Article 137(2), annulment under Article 138(3) or through expiration of time limit under Article 138(4) but without prejudice to anything previously done by virtue thereof.

- During an emergency the President can step into the shoes of the Citizens' Majlis but not of the Citizens' Special Majlis. The Constitution cannot be permanently amended; only temporarily suspended.

(5) Subject to clause (6) while a Proclamation of Emergency is in operation, the President may, notwithstanding anything in this Constitution or any law, make laws with respect to any matter, including the suspension of any Fundamental Rights, if it appears to him that the law is required by reason of the emergency.

(6) No provision of any ordinance or decree under this Article shall suspend, repeal or invalidate any of the powers of the Citizens' Majlis under Articles 138 and 139 to review the emergency Proclamation and emergency ordinances or decrees.

- The rest of the constitutional safeguards can be suspended but not the safeguards of this Chapter.

139A Power of Citizens' Majlis to enact laws

(1) While a Proclamation of Emergency is in operation, the Citizens' Majlis may, notwithstanding anything in this Constitution, make laws with respect to any matter if it appears to it that the law is required by reason of the emergency. Provided that the limitations on the President's powers to issue emergency Ordinances and decrees stated in Article 139(6) shall apply mutatis mutandis to the power of the M'ajlis to make emergency laws.

- New article added to enlarge Parliament's powers during an emergency.

(2) An emergency law enacted by the Citizens' Majlis under Article 139A(1) shall cease to have operation:

(i) by a resolution of the Citizens' Majlis to that effect; or

(ii) by the termination of the Emergency Proclamation through revocation under Article 137(2), annulment under Article 138(3) or lapse under Article 138(4)

MEMORANDUMChapter 13Special Powers to Combat Emergency

Introduction

All constitutional lawyers view emergency provisions with interest and concern because these provisions permit constitutional ways to suspend constitutional safeguards.

While it is conceded that emergency provisions are an unfortunate necessity, it is submitted that efforts should be made to surround emergency powers with constitutional safeguards. The Draft provisions achieve considerable success but need further improvement.

Committee's Draft Proposal

Article 137 : Adequately phrased.

Article 138 : (a) The President's powers are too broadly phrased. His power "to suspend any laws" could be used to suspend the Constitution including this Chapter, suspend Parliament, postpone elections and, in general, to do away with any limits on presidential power. Some express limits on his emergency powers ought to be prescribed.

(b) During an emergency, there is no mention of the law-making powers of the Majlis and only the President acquires wide legislative powers. It appears that during an emergency the Majlis has no significant role in law-making. Perhaps it is contemplated that during an emergency, the Majlis will be dissolved or remain in recess. I submit that this should not be so.

- Article 139(1) (a) This section has some excellent safeguards. Emergency proclamation have a limited time span and need parliamentary approval for further extension.
- b) But the period for which an extension may be granted is not specified.
- c) There is no safeguard against repeated emergency proclamations by the President after the expiry of the earlier proclamation.
- d) The Majlis has no power to annul a proclamation made by the President. Such a power is necessary as a safeguard against repeated proclamations made every three months.

- Article 139(2) : a) Reference to dissolution of the Majlis by the President should be deleted.
Please refer to the Memo on the Citizens' Majlis para 1(c) wherein it is submitted that the President's power to dissolve the Majlis could dismantle a whole system of checks and balances.
- b) No time limits for summoning the Majlis have been prescribed.

Article 139(3) : Appropriate.

Article 139(4) : Appropriate.

Chapter XIV
General Provisions

Committee's Draft Proposals

Recommendation or Comments

Article 140 on signing and ratifying of Agreements

Recommend that a new clause (2) be added to Article 140.

"140(2) : If the agreement involves an alteration to the Constitution or laws of the Maldives; if it creates a charge on the public revenue; if it leases or hands over for use to foreigners the political territory of the Maldives for more than twenty-five years; if it allows foreign military bases, troops or facilities on Maldivian soil, then it shall not come into operation till ratified by the Citizens' Majlis."

This addition is necessary to harmonise Article 140 with Article 74B (of the Committee's Draft) which is renumbered as Article 71 in my recommendations.

Under this new 140(2), not all treaties need ratification by the Majlis. Only treaties having abovementioned effects will need the approval of the Majlis.

Committee Draft Proposal

Comments and Recommendations

2) Article 141 dealing with operation of existing laws.

- I have shifted this Article to Chapter I as Article 6(2) of my recommendations. It is more appropriate there.

3) Article 142(1) and (2) on suspension of the new Constitution for six months.

- This is a crucial Article and I have shifted it to Chapter I, Article 7 of my Recommendations. I strongly advise against the adoption of Article 142 in its present form. Please refer to my Addendum to Chapter I in which I have given reasons for my opposition to the Article.

4) Article 143 on laws inconsistent with the Constitution.

- This has been shifted to Chapter I as Article 6(3) of my Recommendations.

Chapter XV
THE PUBLIC SERVICES COMMISSION

1. Appointment and Composition

The President shall appoint a Public Services Commission which shall consist of a Chairman and four other members.

2. Tenure

The Chairman and members of the Commission shall hold office for a period of five years from the date of their appointment and shall be eligible for reappointment.

3. Resignation

A member of the Commission may resign his office by sending a letter to the President but shall continue to perform his functions till his resignation is accepted by the President.

4. Termination of Service

A member of the Commission may be removed from office by the President on the ground of misbehaviour or of inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause).

5. Function

(1) The Public Services Commission shall advise the President on appointments, confirmations, transfers, promotions, dismissals and exercise of disciplinary control over all employees of the public services other than those excluded from the jurisdiction of the Public Services Commission by clause (3) of this Article.

(2) The Public Services Commission shall advise the President on the organisation of the public services and on the formulation of uniform terms of service for all employees of the public services other than those excluded from the jurisdiction of the Public Services Commission by clause (3) of this Article.

(3) The jurisdiction of the Public Services Commission shall not extend to the following Special Offices, Commissions or Councils:

(a) The Chief Justice and judges of the High Court and judges of all subordinate courts.

(b) The Auditor General.

(c) The Commissioner of Elections.

(d) The Muhtasib.

(e) The Chairman and members of the Judicial and Legal Service Commission.

(f) The Chairman and members of the Police Force Council.

(g) The Chairman and members of the Armed Forces Council.

(h) The Chairman and members of the Integrity Commission.

(i) The Commissioner for Law Revision.

(4) The jurisdiction of the Public Services Commission shall extend to all employees of the general public services who are seconded to the Special Offices and services mentioned in clause (3) of this Article.

Provided that before exercising any of its powers in relation to employees of the general public service who are seconded to the services mentioned in clause (3) of this Article, the Public Services Commission shall consult the Chairman or Head of the Special Office, Commission or Council to which the public employee had been seconded.

6. Delegation

The Public Services Commission may delegate any of its powers to any member or members of the Commission or to any public officer.

Chapter XVI

JUDICIAL AND LEGAL SERVICES COMMISSION

1. Composition

There shall be a Judicial and Legal Services Commission which shall consist of the following:

- (a) The Chief Justice of the High Court as Chairman.
- (b) Two other judges of the High Court appointed by the President. The appointment shall be for a period of five years and the judges shall be eligible for reappointment provided their judicial tenure has not expired due to resignation, retirement or dismissal.
- (c) The Minister for Justice
- (d) The Attorney General

2. Function

(1) The dismissal and disciplinary control of all subordinate court judges shall be vested in the Commission and it shall be lawful for the Commission to remove a subordinate court judge from office on the ground of misbehaviour or of inability from infirmity of body or mind properly to discharge the function of his office.

Provided that no judge shall be removed from office unless he has had a fair opportunity of being heard either personally or by an advocate in his defence.

Explanation of Article 2 of the Chapter on the Judicial and Legal Services Commission

The Judicial and Legal Services Commission shall not be involved in appointments and transfers of judges of the subordinate courts. That power is vested in the President subject to the constitutional requirement to consult the Chief Justice. See my Recommendations on the Judiciary, Articles 5.8 and 9.

Chapter XVII

POLICE FORCE COUNCIL

(The creation of this Council rests on the recommendation made earlier that the Police and the Armed Forces should be separated. See Memorandum on the President, paragraph 5, page 4.)

1. Appointment and Composition

There shall be a Police Force Council appointed by the President which shall consist of the following members:

- (a) The Minister for the time being charged with responsibility for the police, who shall be Chairman;
- (b) The officer of police in general command of the police force;
- (c) A member of the Public Services Commission appointed by the President;
- (d) Two other persons appointed by the President.

2. Tenure

Members of the Council, other than those who hold ex-officio posts, shall be appointed for a period of five years and shall be eligible for reappointment.

3. Resignation

A member of the Council, other than an ex-officio member, may resign his office by sending a letter to the President but shall continue to perform his functions till his resignation is accepted by the President.

4. Termination of Service

A member of the Council may be removed from office by the President on the ground of misbehaviour or of inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause).

5. Functions

- (1) The Police Force Council shall advise the President on appointments, confirmations, transfers, promotions, dismissals and exercise of disciplinary control over all employees of the Police Force.
- (2) The Council shall advise the President on the organisation of the Police Force, training and equipping of police personnel and the administration of jails and other penal institutions.

(3) The Council shall advise the President on the formulation of terms of service for all employees of the Police Force.

6. Delegation

The Council may delegate any of its powers to any member or members of the Commission or to any public officer.

Chapter XVIII

ARMED FORCES COUNCIL

1. Appointment and Composition

There shall be an Armed Forces Council appointed by the President which shall consist of the following members:

- (a) The Minister for the time being charged with responsibility for defence, who shall be Chairman;
- (b) The Chief of the Armed Forces Staff;
- (c) One representative each of the land, air and naval units of the Armed Forces.

2. Tenure

Members of the Armed Forces Council, other than the ex-officio members, shall hold office for a period of five years from the date of their appointment and shall be eligible for reappointment.

3. Resignation

Any member of the Armed Forces Council, other than an ex-officio member, may resign his office by sending a letter to the President but shall continue to perform his functions till his resignation is accepted by the President.

4. Termination of Service

A member of the Council may be removed from office by the President on the ground of misbehaviour or of inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause).

5. Functions

(1) The Armed Forces Council shall be responsible under the general authority of the President for the command and administration of, and all other matters relating to the armed forces, other than matters relating to field operations.

(2) The Armed Forces Council shall advise the President on appointments, confirmations, transfers, promotions, dismissals and exercise of disciplinary control over all employees of the Armed Forces.

(3) The Armed Forces Council shall advise the President on the formulation of terms of service for all employees of the Armed Forces.

6. Delegation

The Armed Forces Council may delegate any of its powers to any member or members of the Council or to any public officer.

Chapter XIX

THE COMMISSIONER FOR LAW REVISION

Introductory Note

This new officer shall make recommendations to the President on reform, revision and updating of all the laws of the Maldives.

The Commissioner would be expected to be independent. Yet he would work closely with the Attorney General's office, the Ministry of Justice and other MINistries and Government Departments to obtain suggestions for further investigation.

He would have no law-making power of his own. He would merely recommend changes in the existing law or propose new laws for formulation. He would not replace but merely complement the drafting unit in the Attorney General's office.

His periodic reports to the President would be laid before the Citizens' Majlis.

THE COMMISSIONER FOR LAW REVISION

1. Appointment

The President shall appoint a Commissioner for Law Revision who shall hold office for a period of five years from the date of his appointment and shall be eligible for reappointment.

2. Resignation

The Commissioner may resign his office by sending a letter to the President but shall continue to perform his functions till his resignation is accepted by the President.

3. Termination

The Commissioner may be removed from office by the President on the ground of misbehaviour or of inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause).

4. Functions

(1) The Commissioner for Law Revision shall be responsible for the compilation of all the laws of the Maldives and their codification, consolidation and periodic reform, revision and updating.

(2) In the performance of his functions the Commissioner shall act after consultation with the Attorney General and the Minister for Justice.

(3) The Commissioner shall submit periodic reports and proposals to the President who shall cause them to be laid before the Citizens' Majlis.

5. Staff

The Commissioner shall be provided with a staff adequate for the efficient discharge of his functions.

Chapter XX INTEGRITY COMMISSION

1. Appointment

The president shall appoint an Integrity Commission which shall consist of a Chairman and two ordinary members.

2. Qualifications

The Chairman and the other members of the Integrity Commission shall have the qualifications of a member of the Ministers' Majlis and shall be persons who, in the opinion of the President, are capable of enjoying public confidence.

3. Disabilities

Neither the Chairman nor the other members of the Integrity Commission shall hold any other office of emolument whether in the public service or otherwise nor engage directly in any other occupation or profession for reward.

4. Salary

The salary and terms of service of the Chairman and members of the Commission shall be determined by the Citizens' Majlis and shall not be diminished during their term in office.

5. Resignation and Removal

The Chairman or any member of the Commission may at any time resign his office but shall not be removed from office except on like grounds and in the like manner as a judge of the High Court.

6. Functions

The Integrity Commission shall have the following powers, functions and duties:

(1) The Commission shall receive from time to time declarations in writing of the assets, liabilities and income of the following officials of the state and their immediate families:

- (a) Members of the Ministers' Majlis;
- (b) Deputy Ministers and Ministers of State;
- (c) Members of the Citizens' Majlis
- (d) Members of the Citizens' Special Majlis;
- (e) Holders of such posts in the Government as are specified by the President;
- (f) Holders of such posts in enterprises that are owned or controlled by or on behalf of the State as are specified by the President.

(2) The Commission shall supervise all matters connected with its functions in clause (1) of this Article.

(3) The Commission shall have proper custody of declarations and other documents delivered to the Commission.

(4) The Commission shall maintain secrecy in respect of all information received by the Commission in the course of its duties with respect to the assets, liabilities and income of any persons subject to its jurisdiction.

(5) The Commission shall have all the powers necessary to enable it to perform its constitutional functions.

(6) When the Commission is of the opinion that an officer is or appears to be -

- (a) maintaining a standard of living which is beyond his official emoluments and other legitimate private means, if any; or
- (b) in control or in possession of pecuniary resources or property, movable or immovable, the value of which is disproportionate to, or which could not reasonably be expected to have been acquired by the officer with his official emoluments and any legitimate private means;

the Commission shall, by letter, call upon the officer to explain in writing within a period of thirty days from the receipt of such letter how he is able to maintain the said standard of living or how he came by his pecuniary resources or property.

(7) Upon receipt of the explanation from the officer concerned or if the officer fails to give any explanation, the Commission shall report this fact to the President enclosing the officer's explanation, if any. The President may thereupon take such steps as he deems fit but without prejudice to the powers of the Citizens' Majlis to provide for a law to deal with the matter.

7. Adequate Staff

The Integrity Commission shall be provided with a staff adequate for the efficient discharge of its functions.

8. Fiscal Autonomy

The Integrity Commission shall enjoy fiscal autonomy. Its approved annual appropriations shall be automatically and regularly released though they shall be subject to audit by the Auditor General.

9. Immunity

No proceeding, civil or criminal, may lie against the members of the Commission or against any person holding an office or appointment under the Commission for anything they may do or report or say in the course of their functions unless it is shown that they acted in bad faith.

10. Oath

Before entering upon the duties of his office, the Chairman and members of the Commission shall take and subscribe the oath of office prescribed in before the President of the Republic.

Chapter XXI

Definitions

' National Security ' refers to the independence, sovereignty and territorial integrity of the Maldives; the defence of the nation against foreign aggression; the maintenance of law and order against organised violence by any substantial body of persons (whether inside or outside the Maldives) against persons or properties within the Maldives.