

# The Political Reform Agenda

## *A Mid-Term Progress Report*

*A background paper prepared by the Government of the Maldives  
for the Maldives Partnership Forum  
to be held in the Maldives on 26 June 2006*

### ***The Context of Reform: Catching Up***

The Maldives is unique amongst the members of the Commonwealth in having emerged out of the colonial era without inheriting a political or legal system that had been modernised by the imperial powers. As a result of the relative isolation of the country, and its fleeting interaction with colonial powers, the Maldives entered the global society of the post-World War era with its own unique customs and traditions.

At independence in 1965, the country had retained its centuries old Sultanate, although the Sultan was subject to a written Constitution since 1932. Shortly after independence, the Maldives established the Second Republic in 1968, abolishing the Sultanate with a public referendum which voted in favour of a republic, just 14 years after the First Republic, which had lasted 7 months, was violently overthrown. Although the country had faced a few abortive coups in the 1970s, power was transferred from President Ibrahim Nasir to President Maumoon Abdul Gayoom peacefully and through the electoral process.

Elections to the Presidency, based on a parliamentary nomination and confirmation directly by the people, had been held regularly, as have parliamentary elections, based on dual member constituencies. A process of revising the Constitution was initiated in 1980, but was not completed until 1997, a period during which the Maldives had attained tremendous social and economic progress to qualify for graduation from the UN's list of least developed countries. The period also saw the country complete the first phase of a demographic transition, in which the population growth rate had peaked at 3.4% in 1985 before declining to 1.9% in 2000. The population today has tripled since independence in 1965 and doubled since 1978.

On the basis of these momentous changes in the country's demography, economy and society, the Government drew up a Maldives Vision 2020 which envisaged, within a 20 year time span a country that was not only economically even more prosperous and socially more advanced, but also politically more democratic and mature. On pure demographic situation alone, in the context of seeking a longer smooth transition period

from LDC status, the government sought to raise the awareness of the international community, to the challenges of meeting the growing expectations of a burgeoning youth population for greater economic opportunity, political participation and social inclusion. Numerous measures of economic, social and political reform were identified through extensive national consultations that produced the Strategic Plan, published in October 2002, to implement the Vision 2020. By the end of the President Gayoom's fifth term of office, the government had identified the underdevelopment of the country's legal system as a major constraint to greater democracy, better human rights protection and faster development.

This was the backdrop, together with the prison disturbances and the ensuing riots in the capital in September 2003, to the announcement by President Gayoom, on taking office for a sixth term in November 2003, of a sweeping reform programme to bring wholesale change to the way the country was governed. He also pledged to accelerate plans for political and legal reform, increase transparency and responsiveness, and strengthen accountability mechanisms, in order to meet public expectations, ensure better governance, and strengthen human rights protection.

### ***The Reform Agenda: a 'New' Maldives***

The Reform Agenda covers both strengthening democracy and enhancing human rights protection. It includes making sweeping changes to the Constitution to strengthen the independence of the judiciary and provide for stronger checks and balances amongst powers of the State, overhauling the country's criminal justice system, creating independent oversight institutions, modernising the legal system, measuring up to international human rights standards, enhancing media freedom, developing a vibrant civil society, and carrying out civic education programmes. The objective of the agenda is to virtually create a new society and polity in the Maldives, and indeed, a 'new' Maldives.

The main elements of the reform programme are covered in the following documents:

1. Inaugural Address of the President, 11 November 2003
2. The Criminal Justice Action Plan 2004 - 2008.
3. The President's Constitutional Reform Proposals of 9 June 2004
4. Ushering in a Modern Democracy: Roadmap for the Reform Agenda, 27 March 2006

The reform programme is being pursued with a high degree of transparency, openness and international engagement. Assistance is being sought from UNDP, Office of the UN

High Commissioner for Human Rights, the Commonwealth Secretariat, and several bilateral partners and international NGOs.

## ***The Scorecard: A Work-in-Progress***

From the setting up of the Human Rights Commission of the Maldives on 10 December 2003 to the proclamation of a regulatory framework to protect the right to public assembly on 15 May 2006, a number of reforms have already been implemented.<sup>1</sup> These reforms have both enhanced democracy and improved human rights standards to levels hitherto unprecedented in the Maldives. Nevertheless, the challenges are numerous, and there are areas of concern as well. Some of the controversies even tend to overshadow significant changes that have been implemented under the reform programme.<sup>2</sup>

### **1. THE DEMOCRATISATION PROCESS**

A central pillar of the reform agenda is to create a mature democratic framework, with a new Constitution that produces new arrangements in the distribution of powers, and a vibrant party system that increases political participation.

#### ***a) Convening of the People's Special Majlis (Constitutional Assembly)***

Elections to the People's Special Majlis, the sole body with the power to amend the Constitution, were held in May 2004 and the Majlis was convened in July 2004. On 14 February 2005, the President presented to the Special Majlis his proposals for constitutional revision together with numerous proposals received from the public, including the Law Society and the Human Rights Commission of the Maldives. The President expressed his desire to see the work completed within a year. The Special Majlis took nearly one year to adopt its rules of procedure, and revised target date proposed in the Roadmap is end of May 2007. The debate on fundamental rights has been completed and the drafting committee, chaired by the former president of the MDP, would soon be reporting back to the chamber with a formal text on that chapter. The debate on the other main chapter, form of government, would be completed in June, and that would provide a major breakthrough in taking forward the work of the drafting committee. The government is seeking the help of international experts, at the request of the Special Majlis, to assist them in the drafting process.

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<sup>1</sup> See Attorney General's Office, *Through the Reforms of the 6<sup>th</sup> Presidential Term of President Maumoon Abdul Gayoom*, 2<sup>nd</sup> Ed, March 2006, Male'.

<sup>2</sup> For an independent assessment of some of the changes that have resulted from the reform programme over the past two years, please see, US Department of State, *Maldives: Country Reports on Human Rights Practices – 2005*, Bureau of Democracy, Human Rights and Labor, 8 March 2006

***b) Formation of Political Parties***

One of the most significant achievements in the democratisation programme has been the introduction of political parties. In 2001, the parliament had resolved that political parties could not be registered in the Maldives prior to amending the Constitution to provide for a party system. However, in June 2005, on the basis of a revised Legal Opinion by the new Attorney-General, the parliament voted in favour of allowing the registration of parties. Accordingly, a provisional regulatory framework was established by decree, pending legislation by the parliament, to allow for the registration and functioning of political parties.

Since then four parties have been registered and are in operation today. These are the Dhivehi Raiyyathunge Party (DRP), Maldivian Democratic Party (MDP), Adhaalath Party, and Islamic Democratic Party (IDP). Members belonging to DRP and MDP hold seats in the parliament and the Special Majlis. Contrary to claims made in some quarters, these parties have been able to hold numerous public rallies, without requiring permission, and have freely been able to propagate their views through the printed and electronic media. Party activities are covered by the national TV and Radio on an equal basis. (Check policy of Information Ministry on this).

***c) Strengthening the Independence of the Judiciary***

A key element of the reform agenda is the strengthening of the independence of the judiciary. On 11 November 2005, the President announced the implementation of steps designed to bring about the separation of the executive and judiciary, the cornerstone of which was the establishment of a Judicial Service Commission. The Commission would oversee the appointment and dismissal of judges, and would act as a ‘watchdog’ to ensure that Judges upheld their own codes of conduct.

In addition, with the reforms implemented on 11 November 2005, the final stage of appeal, which had hitherto been carried out by a Presidential Advisory Council on Judicial Matters meeting in camera in the President’s Office, has been reorganised to be chaired by the Chief Justice, hold public hearings, and function outside the offices of the executive. Further, members of the Council are to be appointed by the President only on the advice of the Judicial Services Commission. The Council are to decide cases presented to it as per the majority of the Council, decisions are to be made available to members of the public, and full transparency to be maintained on its rules and procedures.

*d) All Party Dialogue*

In November 2005, the President invited all the parties to a process of dialogue in order to speed up the implementation of the reform programme and to draw up a roadmap that would provide a matrix of reform measures and target dates. He also appointed a National Co-ordinator to formalise a dialogue process. The main Opposition parties declined to take up the offer, setting down a set of conditions that they wanted fulfilled as pre-requisites for a dialogue process. Intermittent feelers have been sent out informally from both sides, but there has been no formal breakthrough in the impasse yet.

*e) The Commonwealth Special Envoy*

At the request of the Government, the Commonwealth Secretary-General deputed a Special Envoy, Tan Sri Musa Hitam, former Deputy Prime Minister of Malaysia and former Chairman of the Commonwealth Ministerial Action Group to facilitate the speedy implementation of the reform programme. The Commonwealth also deputed a constitutional expert, Tan Sri Anver, a former High Court judge of Malaysia, to assist the Maldives in the drafting of a new Constitution. Attempts by the Special Envoy to convene all party talks had failed due to the refusal of the main Opposition Party, MDP to meet either informally or formally with representatives of the DRP in the presence of the Special Envoy. However, in January this year, the Special Envoy held separate meetings with each of the parties and sought the positions of the parties on the proposed changes to the Constitution. The main obstacle cited by the MDP to agree for all party talks is the continued house arrest of its chairperson.

*f) Glimmers of Hope: Dialogue in all but name*

Although the parties have not been able to meet formally in an all party setting, the political process is making significant progress through dialogue and discussion. The drafting committee of the Special Majlis, which includes members of both the Government and Opposition, has been established. Debate and discussion among members of the Government and the Opposition in the parliament are also advancing the legislation of key reform measures, such as bills on the human rights commission, media freedom, police powers, etc. The contribution made by the Opposition in these legislative bills is significant.

In recent weeks, international pressure on all parties to engage in a process of dialogue has increased, as has domestic public pressure for peaceful engagement in the political process. These augur well for the commencement of several tracks of dialogue, some of which could be on the record and transparent, while others could be informal, but with key stakeholder engagement.

*g) Electoral Reform*

The Government has proposed the holding of the first multiparty elections in the period July-October 2008. It has also proposed that significant changes be brought to the electoral system in terms of achieving fair and full representation of constituency votes. In addition, the office of the Commissioner of Elections is to be made independent by subjecting his appointment and dismissal to approval by the parliament. A major part of electoral reform will include civic education programmes, some of which has already been begun by the Commissioner of Elections in June 2006. The government is seeking the assistance of the Government of India in strengthening the electoral system, including the introduction of electronic voting machines.

## **2. STRENGTHENING RESPECT FOR HUMAN RIGHTS**

The reform agenda covers not only a democratisation programme that would lead to multiparty elections, but also the pursuit of better human rights standards. The objective is not merely the attainment of a multiparty electoral democracy, but a genuine liberal democracy where there is both political pluralism and strong human rights safeguards. The measures identified below comprise key priorities in the pursuit of better human rights protection.

*a) Human Rights Commission*

The Human Rights Commission of the Maldives (HRCM) was established under presidential decree on 10 December 2003, with a commitment to make the body fully compliant with the Paris Principles through the provision of statutory powers. The Commission is now an independent statutory body following the coming into force of its statute on 18th August 2005.

The government's new bill to amend the HRCM Act was presented to the People's Majlis on 15 March 2006. The bill has completed its second reading and in its current form, the new bill will make the HRCM fully compliant with the Paris Principles. The government will nominate for endorsement by the parliament a full complement of members once the new bill is passed by the parliament.

*b) Prison Reform*

In January 2004, the Government introduced new regulations to ensure better prison conditions, following recommendations made by the Presidential Commission which looked into the disturbances in the Prison in September 2003. Among the measures adopted were the drawing up of a code of conduct for wardens and inmates, the

construction of better physical facilities, and improvement of medical facilities, and the establishment of a Jail Oversight Committee of MPs and Judges . In addition, the Government also signed an agreement with the ICRC in October 2004 to facilitate prison visits. Moreover, the government has acceded to the UN Convention against Torture and ratified the Optional Protocol to the Convention against Torture. It has also provided access to prison to Amnesty International, and to fact-finding missions from international stakeholders.

The Government believes that the prison reforms have improved conditions for inmates and have reduced the scope for and incidence of abuse. Further reform of prison is being implemented through a UNDP funded project on custodial services, under which a bill on prisons and parole will be submitted to the parliament, and a superintendent from the Western Australian Department of Justice will advise the government from November 2005 to August 2006 on meeting international penitentiary standards.

*c) Police Reform*

On 1 September 2004, the Maldives Police Service was created, reporting to the Home Minister. Until then, the police had functioned as part of a paramilitary force within the National Security Services.

The police were set up as a civilian outfit in order to modernise the police service and improve standards of 'democratic' policing. Resources are being invested in the training of police as a community service and to equip them with the skills necessary to gather evidence and crime through forensics and investigative skills.

Training programmes are being carried out with the assistance of development partners. A police and human rights training programme with the support of the Commonwealth is due to be started in August 2006.

A Police Bill is before the parliament, tabled in February 2006 as part of the reform programme, and will provide a clear mandate to the police on how they may carry out their duties and will define the limits of their authority and power.

Internal organisation within the police force has been strengthened to increase transparency and accountability.

Continued police reform remains an urgent priority, especially in terms of providing adequate training to better sensitise the police to human rights and democratic policing.

***d) Engagement with international stakeholders***

The Government is pursuing the reform programme with a high degree of openness and engagement with the international community. As part of this process, the following developments are noteworthy:

*International Committee of the Red Cross (ICRC)*

The Government of Maldives signed a formal agreement with the International Committee for the Red Cross (ICRC) on 5 October 2004, under which ICRC was granted access to prisons in the country. ICRC conducted visits to prison in April and August 2005.

*Amnesty International (AI)*

From February 2004, the government has pursued a policy of engagement and constructive dialogue with Amnesty International. A fact-finding mission visited the Maldives in October 2004, and issued its report in February 2005. A number of the concerns raised in the report related to the detainees who, since the AI visit, had been released and pardoned by the New Year amnesty. As the AI report noted, some of the concerns raised by the AI fact-finding mission had been addressed by the time the report was issued.<sup>3</sup>

*International Commission of Jurists (ICJ)*

ICJ has been invited to observe the trial of MDP Chairperson Mr. Mohamed Nasheed and the appeal of Ms. Jennifer Latheef (MDP member). An Observer visited in October 2005 and in April, May and June 2006 to observe the trial proceedings.

*European Union (EU)/European Parliament (EP)*

A delegation of the European Parliament (EP) and an EU Fact Finding Mission visited the Maldives in August 2004 and in March 2005, to visit detention facilities and to meet with detainees and relevant officials. These visits were undertaken by those bodies and facilitated by the Government due to allegations of poor prison conditions and mistreatment of detainees. The outcome of these visits was generally to dispel many of the rumours but also identify areas for improvement.

*United Nations Office of the High Commissioner for Human Rights (OHCHR)*

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<sup>3</sup> Amnesty International, Human Rights Violations in the Context of Political Reform, AI Index: ASA 29/001/2005, London, 25 February 2005.

The Government of Maldives is also working with the United Nations Office of the High Commissioner for Human Rights (OHCHR) in obtaining their advice on the issue of making the Human Rights Commission compliant with the Paris Principles and also in assisting the Maldives in acceding to the ICCPR and the ICESCR. The Government has given a firm commitment to accede to these two covenants by 10 December 2006.

*Engagement of the Commonwealth*

In addition to the services of a Special Envoy, the Commonwealth is also assisting the Maldives, through its Human Rights Division, in accelerating the work of acceding to the ICCPR and the ICESCR during the current year.

*e) Development of civil society*

Just as the absence of political parties had been a major shortcoming in the political arrangements in the country, the poor state of the civil society sector has been a major drawback in the advancement of human rights, especially in shifting the equation in favour of the individual in matters that relate to the State. However, under the revised regulatory framework, and with encouragement in the formation of civil society organisations, the number of NGOs registered has increased dramatically (the total figure now is 595) and the average time required for their registration has been just 5 days. Recently established NGOs include many with a specific commitment to the promotion of human rights, such as Hama Jamiyyaa, Network of Detainees, the Open Society Association, and the Maldives Centre for Human Rights and Democracy.

*f) The Space for Dissent*

The space for dissent had been very limited in the Maldives until recently, as evidenced by the prosecution of dissidents through the courts as late as just four years ago. Further, the penal code provision of criminal liability for defamation also inhibited the scope for dissent. However, in July 2004, the Attorney General gave a formal legal opinion asserting the right to dissent as a constitutional right, and set a prosecution bar to protect activities that expressed peaceful opposition to the government. Legal proceedings against a number of persons who had been arrested in mid-February 2004 for activities that opposed the government were stopped.

In fact, reflecting the new spirit, four dissidents who had been convicted **for sedition** **criminal defamation** just four years ago were pardoned and released in February this year.

The space for dissent has been further widened by the introduction of political parties.

The cases of Mr. Mohamed Nasheed and Ms. Jennifer Latheef are cited by critics of the government to argue that there is no real improvement in the space for dissent. The government's response is that both persons have been charged with clear criminal offences and not political offences. There is also a huge gap between the government and its critics with regard to the actual facts of the cases.

***g) Media Freedom***

The media is another area where self-censorship had been practiced by most journalists until recently. This was the result of the limited space for dissent and of the provision of criminal liability for defamation.

A key priority of the reform programme is enhancing the role of the press and promoting the right to freedom of expression, through the enactment of necessary legislation including the Media Freedom Act, the Freedom of Information Act, and the Freedom of Registration of Newspapers and Magazines Act.

The following Bills were submitted to the Parliament on 19 February 2006, and are in various stages of the legislative process.

- Bill on Freedom of Information
- Bill on Freedom of the Press
- Bill on Media Council
- Bill on Registration of Print Media

To promote media freedom, it is also important to develop the professionalism of journalists. In collaboration with the country's development partners, the government is carrying out programmes to raise professionalism amongst journalists.

Today there are five dailies, one of which is an opposition newspaper, and two others are owned by senior members of the government. The largest daily, Haveeru, frequently carries articles that are highly critical of the government. The newest daily, Haama Daily, professes to be an independent paper.

In addition to dailies, there are also numerous weeklies, most of which are very critical of the government.

A survey carried out by Haama Daily in early May 2006 showed that 49.6% of the respondents believed there was substantial media freedom in the Maldives.

***h) Right to Assembly***

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The right to assembly is guaranteed by the Constitution, except where it is limited by law in the interest of public order. The Maldives does not have a culture of peaceful street protests or of political rallies. Under the political parties regulation of 2005, , parties were granted a protected right to hold public assemblies indoors without need for permission but with due notice. Over two hundred rallies and meetings have been held by the political parties over the past year.

The right to protest in the street was not covered in the political party regulation and until mid-May 2006, there was no guideline that the police could use in seeking to maintain general law and order when streets protests or marches were organised.

As stated in the Roadmap, on 15 May 2006, the government introduced provisionally by a decree, a framework to protect the right to protest in streets and public places, with requirement for due notice, reasonable hours and routes. On 15 June 2006, the period for notification was reduced from 14 days to 7 days.

A bill on public assembly has now been formulated and has been submitted to the political parties for their comments before submission to the parliament for enactment.

Protests undertaken for successive nights in violation of the reasonable hours provision resulted in a cumulative total of 127 arrests being made in mid-May. Most were released with only a caution, but 20 protestors were prosecuted.

*i) Accession to International Instruments*

Since April 2004, the Maldives has acceded to the “UN Convention against Torture and other Cruel, inhuman or Degrading Treatment or Punishment”. On 14 September 2005, the Maldives ratified the Optional Protocol to the Convention.

The Government has given a firm undertaking to accede to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR during 2006. It has also extended a standing invitation to all Special Procedures Rapporteurs of the United Nations Human Rights Commission to visit the Maldives.

*j) Strengthening the Criminal Justice System*

### *Due Process*

Immense strides have been taken to ensure that the rights of detainees are safeguarded. In this context, measures taken to protect rights of detainees include, specification of arrestable and non-arrestable offences; where detained, informing the detainee the reason of detention; informing families of detainees' whereabouts; granting access to a lawyer during interrogation and at the trial; recording of interviews; establishment of regulations on the use of force, physical restraint, batons and handcuffs; and providing guidelines on the extension of period of arrest.

### *New Penal Code*

The current Penal Code of the Maldives is outdated and the source of numerous concerns about the criminal justice system. A key component of the National Criminal Justice Action Plan, which was launched in December 2004 to overhaul the judicial system with a view to bring the national judicial system in line with international standards, is to modernise the Penal Code. A new Penal Code, which has been formulated by Professor Paul Robinson of Pennsylvania University under a UNDP funded project, is due to be tabled before the parliament by July 2006.

### *Bail System*

The Government introduced a bail system in June 2005, which allows for the temporary release of an accused awaiting trial, when in police custody or during trial, depending on the nature of the alleged offence and perceived flight risk.

### *Training of Judges*

On 2 May 2005, a total of eighteen students were sent to Malaysia to pursue higher education as judges at the International Islamic University of Malaysia. The batch included women who would become the country's first female judges. They would undergo judicial training during their course of studies, and upon graduation they would also undergo attachment programmes in judicial areas in either UK or Australia.

## ***The Challenges***

It is one thing to enact laws, and another task entirely to change mindsets. The Maldives is a young democracy, with traditions, dating back to centuries, favouring centralised authority. Nevertheless, these traditions are coming under strain from the demographic structure of the country, rapid social and economic development, and increased exposure to international influences. Managing the scale and pace of change would have crucial implications to attaining a durable democracy.

The pace of change becomes highly important when the need for civic education is borne in mind. Unless extensive civic education programmes are carried out, the full benefits of the reform programme may not be realised by the general public. Indeed, without proper civic education, it would be difficult to create a new political order that has organic roots to the values and needs of the people.

As important as increasing public awareness is the task of building trust and confidence amongst differing political groups, and fostering a climate of tolerance. The study undertaken at the request of the Government of Maldives by the National Democratic Institute for International Affairs in October 2004 stressed the importance of building trust and confidence, especially given the lack of maturity in the political discourse in the country.

To make the reform agenda a resounding success, it would be important to foster a vibrant civil society, a professional and free press, and a culture of tolerance. At the same time, it would be very important to recognise that the reforms must also be accompanied by improvements in the quality of life of the people, in the political, economic, social and cultural spheres. Failure to make progress in any of these areas could increase pressures towards radicalisation.

The Maldives today has a unique opportunity to create a durable and modern liberal democracy. But it can only succeed in a climate of trust and confidence, and of tolerance and mutual respect, and where dialogue, debate and discussion give precedence to direct action and disruption.

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