



**UNOFFICIAL TRANSLATION**

14 February 2005

**Amendments Proposed by the President to the  
Constitution of the Republic and the Rationale for the  
Proposals**

**Fundamental Rights of Citizens**

1. The following are to be added to the chapter on the fundamental rights of citizens

1. To stipulate that all citizens are equal before and under the law and are entitled to equal rights without regard to their sex or race.

*(Rationale: The amendment strengthens the standard for equality of citizens in regard to providing equal participation in development and equality of all citizens before the law)*

2. Every citizen has the right to seek just compensation for loss or injury suffered due to unlawful acts, regardless of who may have committed them.

*(Rationale: Such a provision is integral to a chapter on fundamental rights)*

3. Everyone has the right to be free from subjugation to slavery and involuntary servitude without recompense.

*(Rationale: Such a provision is integral to a chapter on fundamental rights of citizens)*

4. Every citizen shall have the freedom to seek, acquire and disseminate knowledge and information as provided for by the law.

*(Rationale: Such a provision is integral to a chapter on fundamental rights of citizens)*

5. Amend Article 16 (2) of the Constitution where it states "The right to defend himself in accordance with Shari'ah" to "The right to defend oneself in accordance with the laws of the country"

*(Rationale: The proposed amendment would further strengthen the exercise of that right)*

6. While providing guarantees of freedom of expression, the Constitution should also stipulate that the following does not constitute as freedom of expression.
  - a. Inciting or promoting war
  - b. Calling for or supporting murder, violence, vandalism, and other similar militant acts
  - c. Inciting or promoting hatred and enmity among the people on the basis of gender, race, residency or on other basis.

*(Rationale: None of the above acts are protected under guarantees of freedom of expression in any part of the world, and their exclusion would serve the public interest.)*

2. To provide for the right to form and carry out the activities of political parties.

*(Rationale: As political parties play a central role in modern democracies, the provision for political parties would strengthen the framework of the democratic system in the country)*

## **The Presidency**

3. To change the way the President is elected so that all candidates for the presidency will face direct election by the public rather than being subject to winning the nomination by a vote in the parliament.

*(Rationale: To widen the choice for the public in electing a president)*

4. To remove the gender bar in contesting for the presidency.

*(Rationale: There should be nothing in the Constitution that violates gender equality)*

5. To limit the number of terms anyone can hold the office of president to two terms of five years.

*(Rationale: A limitation of tenure is consistent with modern democratic practices.)*

6. To divest the presidency of its role as the head of the judiciary.

*(Rationale: To ensure greater separation of powers between the executive and the judiciary)*

### **Vice Presidents**

7. To confer upon the President the right to appoint a Vice President or Vice Presidents to discharge the duties and responsibilities assigned by the President.

*(Rationale: To provide the President the option of appointing more than one Vice President where it becomes necessary to appoint such persons in the discharge of duties and responsibilities of the President)*

### **The President and the Prime Minister**

8. To create the office of Prime Minister and to enumerate the functions of the President (Head of State) and Prime Minister (Head of Government) separately.

*(Rationale: The separation of the roles of Head of State and the Head of Government would increase decentralization of executive power)*

9. To include the following among the powers and functions of the President:
  - a. To defend Islam, the Constitution, and national independence and sovereignty
  - b. To appoint and dismiss, on the advice of the People's Majlis, the Prime Minister, the Chief Justice, the Commissioner of Elections and the Auditor-General, and to appoint and dismiss on the advice of the Prime Minister, Ministers, the Attorney-General, Envoys of the State sent abroad with special privileges, and Atoll Chiefs.
  - c. To appoint and dissolve the Council of Ministers
  - d. To make a statement outlining government policy at the annual opening of the parliament
  - e. To give assent to bills passed by the People's Majlis, the Senate and the People's Special Majlis
  - f. To conduct public referendums on matters where the President requires to consult public opinion
  - g. To grant pardon to persons convicted of offenses
  - h. To declare war and to declare peace

*(Rationale: The matters listed above are normally identified as the functions of a Head of State and therefore need to be enumerated in the Constitution)*

10. To include the following among the powers and functions of the Prime Minister:
  - a. To preside over the Council of Ministers
  - b. To advise the President as required by the Constitution

- c. To plan, organize and carry out public services and national development programmes
- d. To promulgate regulations, decrees, directives and decisions as are required for the proper conduct of the affairs of government
- e. To make an annual report on the work of the government to the parliament
- f. To submit a statement of income and expenditure annually to the parliament and to secure approval of the budget by the parliament

*(Rationale: The matters listed above are normally identified as the functions of a Head of Government and therefore need to be enumerated in the Constitution)*

### **The People's Majlis**

11. To abolish the category of appointed members in the People's Majlis

*(Rationale: This would further strengthen the separation of powers)*

12. To increase the number of constituencies on the basis of population strength and make all constituencies single-member constituencies

*(Rationale: The widespread practice in democracies is single-member constituencies)*

13. To re-organise the Male' constituency for a more proportionate representation for Male'

*(Rationale: As Male' is very densely populated, increasing the number of constituencies in Male' would produce a more proportionate representation for the electorate)*

14. To increase the number of female MPs in the People's Majlis

*(Rationale: It is the practice in many developing countries, where the number of women in parliament is low, to have seats designated for women in order to increase the number of women in parliament)*

15. To provide that the Speaker of the People's Majlis and Deputy Speaker of the Majlis shall be elected by the Majlis from amongst its members

*(Rationale: The proposed amendment is in line with modern democratic practices)*

16. To strengthen the role of the People's Majlis. In this regard, to provide that the President will appoint and dismiss the Prime Minister, the Chief Justice, Judges of the Supreme Court, the members of the Human Rights Commission, the Auditor-General, and the Commissioner of Elections on the

advice of the Majlis. Further, also to provide that the President will appoint and dismiss the members of the Supreme Judicial Council on the advice of the Majlis.

*(Rationale: The proposed amendment is in line with democratic practices)*

17. To add to article 89 an authorization for the President to extend the life of parliament, for a specified period, in situations of natural disasters which impede the conduct of parliamentary elections within the stipulated timeframe for holding such elections

*(Rationale: The tsunami disaster of 26 December 2004 imposed numerous hurdles on carrying out the election within the stipulated timeframe and has demonstrated the usefulness of such a provision)*

### **The Senate**

18. To make the legislature bicameral, consisting of a People's Majlis and a Senate, and for the Constitution to stipulate the number and the basis of the composition of the Senate.

*(Rationale: In many countries, a second chamber serves to strengthen the functions of the legislature, and the existence of second chamber would also serve to strengthen the legislature in the Maldives)*

### **The People's Special Majlis**

19. To stipulate that the People's Special Majlis shall comprise a joint sitting of the Senate and the People's Majlis and would be empowered to formulate and amend the Constitution

*(Rationale: There is a need for a less cumbersome procedure than at present to amend the Constitution)*

20. To provide that amendments to the Constitution shall enter into force when amendments are passed by People's Special Majlis, and are ratified by the President after such amendments are approved in a public referendum.

*(Rationale: It would be democratic for all people to have a say in the promulgation of the basic laws of the country)*

### **The Judiciary**

21. To stipulate the power of administering justice is vested in the Chief Justice and the courts

*(Rationale: Such a provision will strengthen the separation of powers)*

22. To provide for the establishment of a Supreme Judicial Council in the Maldives, and further that one-half of the membership of the Council shall comprise members appointed by the President on the advice of the People's

Majlis and that the other half shall be elected by judges of the courts from their benches.

*(Rationale: The creation of a Council to advise the Chief Justice on the appointment and dismissal of the benches of the High Court and lower courts, to establish procedure for appeals, to determine which cases filed the State may be heard in the Supreme Court, and to determine the number in the bench of the High Court, will serve to strengthen the administration of justice)*

23. To provide for the establishment of a Supreme Court presided by the Chief Justice

*(Rationale: The establishment of a Supreme Court will strengthen the protection of fundamental rights and the administration of justice)*

24. To stipulate that the High Court shall consist of a Senior Judge and bench of specified number of judges and that the Senior Judge and the members of the bench shall be appointed and dismissed by the Chief Justice on the advice of the Supreme Judicial Council

*(Rationale: To implement the principle of separation of powers and strengthen the independence of judges)*

25. To provide that the Chief Justice, acting on the advice of the Supreme Judicial Council will have the authority to determine the number of courts to be established and the places they are to be established, and further that the judges to such courts will be appointed and dismissed by the Chief Justice on the advice of the Supreme Judicial Council

*(Rationale: To implement the principle of separation of powers and strengthen the independence of judges)*

26. To stipulate that judges shall determine cases before them in accordance with Islamic Shari'ah and the laws of the Maldives and that no power or influence may be exercised over the work of the judges

*(Rationale: To implement the principle of separation of powers)*

### **The Human Rights Commission**

27. To stipulate that there shall be a Human Rights Commission and to stipulate in the Constitution the powers of the Commission and the manner in which the members of the Commission are to be appointed

*(Rationale: Making the Human Rights Commission a constitutionally established body will strengthen its role and powers)*

### **The Atoll Chiefs**

28. To provide that in every atoll there shall be an Atoll Chief appointed and discharged by the President on the advice of Prime Minister, and further that he shall administer the Atoll as directed by the Prime Minister

*(Rationale: To give effect to the role the Prime Minister as head of government)*

### **The Commissioner of Elections**

29. To provide that the Commissioner of Elections shall be appointed and dismissed by the President on the advice of the People's Majlis

*(Rationale: To institutionalize the independence of the Commissioner of Elections)*

### **The Auditor-General**

30. To provide that the Auditor-General shall be appointed and dismissed by the President on the advice of the People's Majlis

*(Rationale: To institutionalize the independence of the Auditor-General)*

### **Leasing or otherwise giving possession of Maldivian territory to a foreign person or party**

31. To amend the existing Article 77 (2), in order to extend beyond 25 years the period for which parts of the territory of the Maldives may be leased or given possession of to a foreign person or party

*(Rationale: To provide a stronger incentive for foreign investment)*

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