

Newsletter

Maldivian Democratic Party

15-31 July 2004; Issue 16

Gayoom Absolved?

In a surprising press release from the Ministry of Home Affairs and Environment on 13th July 2004 President Gayoom was absolved from the non-registration of MDP as a political party. According to the press release Gayoom's decision not to register the MDP was based on the advice given by his Attorney General and the Majlis.

Gayoom thought it ethical to publish the confidential advice given by the Attorney General which essentially argues that the laws of the country are inadequate for a political party to function in the manner they do in more robust democracies. The advice, however, does not at any stage state that parties cannot be formed under present laws.

In fact the advice categorically states that the laws of the country do not bar anyone from forming political parties. While the advice is full of arguments, including some that are outrageously childish, against the concept of political pluralism in the Maldives, nothing in it gives the President any legal right to violate the constitutional right of freedom of association. Furthermore the press release does not give

any legal basis for determining that the opinion or advice of Gayoom's rubberstamp parliament overrides the constitution of the country.

Gayoom's pathetic arguments to justify the obviously illegal act of not registering the party are getting more comical by the day. He still has not answered our frequently asked question as to how he reconciles his unequivocal statement "our laws do not bar anybody from forming a political party if they want to. Yet, no one seems to be thinking along those lines", with his present stand to refuse the registration of MDP.

Gayoom, as the main architect of the present constitution, knows very well that article 27 does indeed enshrine freedom to form political parties. If he was misinformed by his former Attorney General, he should get fresh advice from his present Attorney General and honour the constitutionally enshrined fundamental rights of those who seek freedom of association. □

Continuing Calls for Freedom and Justice

As reported in the Newsletter 15, pro-democracy gatherings continued in Male'. More and more people gathered the courage to unshackle their fear of arrest and torture.

Participants at the pro-democracy gathering held in Ghiyaasuddeen School Hall on the evening of July 05, 2004 proved yet again that Maldivians were tired of living under the oppressive, suffocating regime of Mr. Gayoom. The conference was organised and chaired by Hon. Ibrahim Ismail, Male' Member for the Special Majlis and Member of the MDP General Council. It proved to be a highly charged conference where participation and inclusion became the underlying themes. MDP activists succeeded in opening up the debate on pluralism and party politics. An estimated 900 eager people attended the meeting, which began at 9:00 pm and went on for more than 2 hours.

"The hall was echoing with support for party system to be introduced in the Maldives. Prominent people like Hon. Qasim

Ibrahim, Member of Special Majlis for Ari Atoll pointed out the importance of the check and balance system and the significance of the party system in that it creates healthy competition which can only benefit the society and the people at large. Sheikh Fareed also discussed in detail the advantages of party politics from an Islamic perspective and mentioned that discussing national issues is the way of Islam. Hon. Athif, Special Majlis Member for Male' also

expressed his views about pluralistic democracy and demonstrated his support for the introduction of political party system in the Maldives." - reported DO.

"But our intention is liberal democracy and we believe that liberal participatory politics is important for good governance" - Mohamed Latheef, MDP Spokesman

Further reviews followed giving highlights of the conference:

Mr. Nazeer Jamal, former Presidential candidate and an outspoken reformist also called for the release of political prisoners namely Naushad Waheed and the writers of Sandhaanu Newsletters. These are innocent people who have been given long prison sentences for opposing the government of Gayyoom and calling

Continued on Page 2

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Continued from Page 1

Continuing Calls for Freedom...

for democratic reform. Mr. Nazeer Jamal said that he is also adding his voice to that of Amnesty International and other human rights organisations demanding the release [of these prisoners of conscience.

Hon. Qasim Ibrahim, Special Majlis Member for South Ari Atoll also expressed his support for free media and the importance of freedom of expression in shaping up a democratic state.

Mr. Adam Zahir, a teacher from Male' also expressed the importance of sharing the wealth of the nations equally rather to create a stronger and a more prosperous society. He said "when I give a chocolate to my child, she shares it with everyone in the house". It is encouraging to see people like Mr. Zahir participating in these debates and contributing to the political reform in the Maldives.

MDP General Council Member Mr Mahir described the essence of this gathering when he said, "I am not surprised at all... we Maldivians are not stupid, everyone desires a better life, freedom of expression and association. Here is clear evidence of what Maldivians aspire [to become]"

A banner which read "WE ALL WANT MAUMOON'S IMMEDIATE RESIGNATION!" in Dhivehi and English generated much attention.

According to DO, Hon. Ibrahim Ismail stated after the meeting, that the conference had served its purpose well and that he was hopeful of a brighter future for the Maldives with the introduction of pluralism and democracy in the country".

Perhaps as a reaction to the public's awakening to the spirit of freedom, Mr. Gayoom's government moved swiftly to frighten, harass and derail the freedom movement.

On, July 07, 2004, when the Ministry of Home Affairs banned future meetings by the organizers (Ahmed Nazim of the

Oriental Academic Centre and Special Majlis MP, Hon. Ibrahim Ismail) it was on the grounds that they failed to stop some speakers airing "anti-government" sentiments. What seems to have hurt Gayoom most was the placard calling for his resignation. However, the meetings are

"We are trying to educate people on party politics and its advantages" England educated Fisheries Economist Dr.Hussain Rasheed Hassan

being conducted in an exemplary and orderly manner, and are attended by many leading personalities in Maldivian society including many members of the Special Majlis for constitutional reform.

On the other side of the street, the President and his supporters are lecturing and coercing the general public in all the islands to condemn multi-party politics and to support the president's call to elect a Prime Minister and continue business as usual. Also, the National Security apparatus keeps on dragging innocent citizens and interrogating them and continues its fear campaign. The public's spontaneous call for his resignation and an end to his 26 year rule has incensed the dictator. This is all too apparent in his extremely tyrannical reaction to popular opinion.

This did not deter the multiplying number of daring pro-democracy activists from holding more meetings and spreading the message of democracy. A visitor to the capital city of Male', for example would soon discover that the local community has no secure and safe place to hold big gatherings unless the government agrees to rent out space in school halls and public buildings. Any gathering, even if peaceful, would immediately be dispersed by the ever-present NSS paramilitary forces.

MDP's appeal to the responsible members of the international community is reflected in the party's Press Release of July 07, 2004.

"The Maldivian Democratic Party welcomed Gayoom's offer for constitutional reform with a lot of reservations. The party's skepticism about Gayoom's intentions is proving to be right. Gayoom's relatives and cronies have already embarked on a concerted effort to intimidate the population into resisting introduction of competitive politics. Gayoom's appointed MP and main spokesman on religious matters in the parliament has condemned in writing that separation of powers is an anti-Islamic concept. The Maldivian Democratic Party believes that it is imperative that the international community fully appreciates that after 26 years of absolute dictatorial rule, Gayoom his family and cronies - pronouncements about introducing greater democratic participation not withstanding - vehemently resists any changes to the status quo. If the international community wishes to see more meaningful sustained reform in the Maldives they need to hold Gayoom more accountable to his words"

Since the third meeting, organized by the popular film star Mr. Reeko Moosa Manik, crowds have swelled in many folds, indicating the inner strength that the Maldivians are acquiring through peaceful communication, and by addressing long-suppressed emotions. More meetings followed on a daily basis.

The meetings held so far resulted in an unprecedented level of animated debate among the capacity crowd who attended the meeting. The standard of discussion at the public gatherings is better than anything heard in Majlis or cabinet meetings, and far more convincing than the incoherent and duplicitous ravings of Gayoom.

MDP is determined to continue advocating for the observance of the universal principles of human decency, and the party shall continue leading the freedom movement towards pluralism and the many gains of establishing a free and open society. □

Opinion

Mugabe Is Still There...

Mugabe spurns the British and other Western democracies, hurls insults at them and still remains in power. Maumoon plays up to the West who in turn tolerates his dictatorial rule; so why would we want to believe that Gayoom will mend his ways or quit?

That is the question that many Maldivians when they reflect on the possibilities of either regime change or even sustainable change in the system of governance in the Maldives. The argument is not without merit. The International Donor Community

has been instrumental in developing this LDC which just graduated this month. However, the IDC seems to have ignored the human rights abuse, nepotism and rampant corruption that have been the hallmark of Gayoom's 26 years of repressive rule.

Multilateral donors such as the World Bank and ADB have been surprisingly lenient in laying conditionalities when giving development assistance to Maldives. Issues of good governance or the role of civil society in the development process does not seem to play a significant role in programs undertaken by these institutions.

Our bilateral development partners seem to be as uncaring. The basic social services have been developed with substantial assistance through bilateral aid. However, the donor countries seem to condone the unconscionable waste and corruption that goes into every development project undertaken by the government. The resultant high cost is borne by the poor people of Maldives. When staple food like rice, flour, and sugar gifted by the people of a friendly nation is sold at a profit by the state trading agency, surely it is time the donor steps in?

The UN agencies are perceived at times to be just as callous. While institutions like UNDP have contributed

Continued on Page 5

Who initiated reform?

An extract from the Editorial of Maldives Royal Family - Majid Abdul-Wahhab

There is a general feeling among Maldivians, partly as a result of a regime-driven propaganda campaign, that the current process of constitutional reform in the Maldives is the result of a home-grown initiative of the head of the regime. There are others who feel that it may have something to do with a the shooting of prisoners by the regime or the outcome of political pressure from an overseas-based opposition group.

Investigations by this website have revealed that the current constitutional reforms were initiated as a result of direct pressure from the Commonwealth, the Secretary General of which is New Zealand's former Deputy Prime Minister the Right Honourable Mr. Don McKinnon. Those reforms are directly related to sections 7, 8 and 9 of the Abuja Communiqué (copied below in the inset) agreed to by the Commonwealth member states in December 2003 after months of deliberations by officials.

This Communiqué refers to fundamental political values the Commonwealth seeks to implement in members states that will promote democracy, eliminate all forms of corruption, stop human rights violation and police brutality, prevent misuse of public funds and international aid, and to bring to an end organised crime such as terrorism, money laundering and drug trafficking.

Countries within the Commonwealth that do not comply with the maxims of this Communiqué could face suspension and economic sanctions from the organisation. There is too much foreign aid at stake to allow this to happen.

In this Age of Information, any attempt at claiming that current constitutional reforms in the Maldives are the result of the magnanimity of the current regime is a dishonest exercise that will end in futility. Such an attempt would also be a breach of the fundamental political values agreed to in Abuja.

Rule of Law

One of the many fundamental political values noted in the Abuja Communiqué is the "Rule of Law". It is important to comment on this concept as it is a concept that is much misunderstood by educated Maldivians of all levels and persuasions. There seems to be a belief that the Rule of Law means compliance with legislation, edicts, proclamations, regulations, administrative precedents and political practices. Given that definition (if considered to be correct), the Ayatollah Khomeini, Adolf Hitler, Saddam Hussein and Mullah Mohamed Omar would have claimed to have governed under the Rule of Law.

The Rule of Law is a complex legal concept that evolved in Common Law jurisdictions such as England and Wales, Scotland, New Zealand, Australia and Canada over many centuries. The following is an extract from a publication by the New Zealand Ministry of Justice that briefly outlines what the Rule of Law means.

Good Governance

Another important political value referred to in the Abuja Communiqué is "Good Governance". The New Zealand Government runs a global programme to promote good governance, through the promotion and protection of human rights, participatory development, and peace and social stability, at regional, national and local levels.

To this end the New Zealand Government has hosted and trained several high-ranking officials of the Maldivian regime. A person by the name of Mohamed Hussain attended three times and a certain

Asim and one Abdulla Shahid Jameel attended once each. These officials are based at the Maldivian regime's office of the president of the republic.

The New Zealand Government, along with those of the United Kingdom and Australia provide significant amounts of assistance to the Maldives through taxpayer-funded aid programmes. New Zealand taxpayers have a right to find out whether or not these funds are misused. It is hoped that New Zealand tax dollars spent on these individuals have not gone to waste.

The current constitution failed

Surprisingly, it took 17 years and millions of dollars in local funding and foreign aid to draft the current Maldivian constitution. It has taken barely seven years to make this "structure built on loose sand" totally obsolete as predicted in this website nearly 3 years ago. Someone has to take responsibility for this mammoth failure. The least that the current lawmakers could do is to make note of the gross legislative negligence that resulted in this fiasco in the preamble to the new constitution.

Will the proposed reforms succeed?

Our team of legal experts has reviewed the proposed reforms to the Maldivian republican constitution. They have highlighted the following examples in particular, amongst many other issues, as areas of concern and why they believe any amended constitution will probably fail to deliver the maxims of the Abuja Communiqué. They are:

Failure to provide parliamentary immunity

1. There is no proposal for parliamentary privilege. Members who express their opinions in parliament could still be handcuffed and thrown into prison and beaten into cripples as per the current practice. Alternatively private litigations could be brought against them mainly for alleged libel or defamation.

Failure to provide effective "judicial independence"

2. While there are suggestions that the Judiciary will function independently from the Executive and Parliament, there is no suggestion of any security of tenure for the Judges. Neither is there any suggestion of Judges not being subject to criticism and influence by the Executive and Parliament.

Failure to address "Rule of Law"

3. There are no proposals to allow judicial review of the administrative decision-making process. The regime and its departments will continue to be immune from prosecution. Fundamental human rights are not guaranteed by the Maldivian Constitution, and people are not treated equally.

Failure to ensure "Accountability"

4. While there is provision for an auditor general, there is no proposal for an effective mechanism to ensure public scrutiny of disbursement of revenue. Certain sectors of government (for example, the Office of the President of the Republic, the Presidential Compound, the Ministry of Defense and National Security, and the Ministry of Finance) could still continue to spend along the current bottomless-pit model - i.e. with an unlimited budget.

The question is will the proposed reforms succeed, and will they deliver the maxims of the Abuja Communiqué? Judge for yourself!

Is Gayoom’s Police State Unravelling?

Gayoom’s governance practice is strongly rooted in his Ba’athist ideology and in his deep adulation of such Arab dictators as his friend and mentor Saddam Hussein and other Arab dictators who influenced his political thinking during his years in Egypt. Gayoom emulated his heroes and quite naturally gravitated to running the Maldives as a police state. Gayoom saw himself as the enlightened, heroic Zaim who knew what was best for his subjects.

To give his flock prosperity the revered leader needs to build a “stable, peaceful and harmonious society.” Like other despots running similar police states, Gayoom knows this would best be achieved by completely controlling and co-opting the coercive institutions of the state.

Maldives, under Gayoom is run as a classical police state. An underlying feature of Gayoom’s rule is the open contempt of the rule of law. The police force, the office of the Attorney General and the Ministry of Justice, all under Gayoom, work as part of a single organism in thwarting anyone even mildly disapproving of Gayoom’s brutal rule. Though formally enshrined as fundamental rights, civil liberties including freedom of expression, freedom of movement and freedom of association are routinely denied to Maldivian citizens. A journalist out of favour or a person regarded as even mildly critical of the regime can never expect a fair trial. There is, even now not even a sham show of going through the motion of following the rule of law.

The police are so powerful that in the islands other than Male’ even atoll chiefs and island chiefs are known to differ to ordinary privates or lance corporals. There have been instances where police have beaten and tortured citizens in front of the island chiefs after inviting the people to watch the public humiliation. Senior NSS officers are given cars and perks given normally to cabinet ministers. They are also pampered in other ways; through awarding of land, government loans, lease of agricultural islands and through other business opportunities.

Perhaps the most dramatic manifestation of Gayoom’s police state lies in the mind-boggling fact that the Maldives – a nation of only 300,000 peaceful people sharing one religion, one language and one race – is among the top ten spenders on defense as calculated as a percentage of GDP. Gayoom spends more on keeping him in power than, for example, on rural development. Gayoom’s police have, till now, done an excellent job in keeping him comfortably in power.

However, since the torture/killing in September 2003, and the subsequent killing of unarmed prisoners, the NSS seems to be losing some of their earlier impunity they took for granted. Gayoom had covered earlier torture/killing by his boys by simply ignoring them or by labeling them as “suicides” or “death from childhood diseases.” He knows that primed machines of violence need an outlet to practice their art. Torture was a recreation for the more sadistic elements in the NSS. After all they all know very well that Police Commissioner and role model Adam Zahir is one of the most competent practitioners of the fine art of torture and sadism in the country.

The international outrage necessitated Gayoom to reluctantly admit that everything was not perfect within the NSS. Hoping to quickly overcome the crisis with some cosmetic change, he removed the symbol of torture in Maldives, Adam Zahir, and sent him on holiday. He also kept aside Deputy Commissioner who was implicated in the custodial killing at Maafushi. This started the process of creating cracks in the monolith of NSS. Many senior officers with a conscience wanted to resign while others threatened to resign en masse because the Sattar Commission questioned their behaviour. They sensed their comfortable immunity eroding.

All this was too much for Gayoom who was used to orderly, unquestioning obedience and blind loyalty. To bring back the comfort of repression he has got so used to, he had no choice but to bring back the partner who provided that comfort – Adam Zahir. The Torturer went immediately into action, beating and

arbitrarily arresting supporters of MDP who he thought might try to exercise their constitutional right to freedom of assembly.

However, Adam Zahir is finding some difficulties in imposing his reign of terror. His biggest obstacle, surprisingly enough, is his prop Gayoom himself. Succumbing to international pressure, Gayoom has called for open debate on his constitutional reform proposal. Pro-democracy advocates have taken Gayoom’s offer seriously and have organized open discussions on such matters as participatory democracy and political pluralism. While the meetings have been orderly, people expressed ideas that only a few months back would have got them 10-15 years jail sentences and a heavy dose of torture. One person even went to the extent of actually holding a placard that called upon Gayoom to resign – pure sacrilege that would have cost him his backbone and perhaps “death from childhood disease.” some months back! Others, who brought into a meeting, T-shirts expressing pro-democracy sentiments, had them confiscated but were not even beaten up! This, in Maldives, is progress.

All this liberalism is annoying the hardliners like Head Torturer Adam Zahir. However, the younger, more professionally trained officers believe that they must assume that Gayoom did really mean what he said and hence cannot break the law by beating and arresting people taking part in the debate. All this tension is very unsettling for the police. Once again the pro-reformist officers are threatening to resign or to act only within the bounds of the law.

Gayoom himself is faced with a dilemma: should he back his Head Torturer Adam Zahir and go back to the old methods of brutal police rule thereby risking the wrath of the international community or should he go through the process of reform he has promised, thereby risking his survival as the omnipotent despot of Maldives? Decisions, decisions, decisions. It is tough to be a dictator in this globalized world – especially when one is dependent on external aid for survival. □

Continued from Page 2

Mugabe Is Still There...

significantly to the development of the country, it has been less vocal in demanding for good governance and in promoting democratic practices. Resources channeled through the UN system to strengthen civil society participation, seems at times to produce the exact opposite result of further strangling civil society.

The simple, inescapable fact is that the IDC has, for whatever reason, ignored

Gayoom’s rampant abuse and corruption. This in turn has resulted in a sense of hopelessness and inevitability amongst Maldivians. The international community needs to dispel the cynicism presently ingrained in Maldivian society. They need to demonstrate more forcefully that they are with the people of Maldives and that they are not politically and financially propping a despotic regime. The international community needs to be more assertive in holding Gayoom responsible for his corruption and human rights abuse. □

Maldives can become the youngest democracy of this century. Help Maldivians achieve their dream!

Honorable Ibrahim Ismail Calls on the Maldivian Government to respect Fundamental Rights

The second meeting was organised by Hon. Ibrahim Ismail on 5th July 2004. However, to the joy of many attendees, a known reformist Abdul Rasheed displayed a banner calling for Gayyoom's immediate resignation. This was too much for Gayyoom and Rasheed was taken to police and he was warned as well as a statement was taken from him regarding that act. Soon after, Home Ministry announced that Hon. Ibrahim Ismail and Mr. Ahmed Nazim Sattar will no longer be given permission to organise and chair such meetings or debates. This followed a week of failed attempts by reformist to get another meeting organised in Male' with no success. Home Ministry was willing but no hall was available. Male' English School confirmed their hall but later Justice Minister Ahmed Zahir over ruled Principle Ali Mustafa's decision and stopped the meeting from taking place in his school. Mr. Zahir is one of the founders of the School, who was known previously for being People's Voice until Gayyoom appointed him to the cabinet



activists and prominent people to gather at the Giyaasudden School Hall. Hon. Ibrahim Ismail with his communication skills and diplomacy earned the respect of those who attended, when he helped to embark on a debate that has galvanized all Maldivians in their quest for freedom. Confirming the reservations felt by reformers in general, the Maldivian Government reacted to these peaceful expressions in a most lowly manner. Soon after the July 05, 2004 gathering in which a call for the president's resignation was announced by a single banner, the National Security Services

and the Ministry of Home Affairs both took action in order to thwart the attempts of reformists to exercise their freedoms of expression and assembly. A known reformist, Abdul Rasheed displayed the banner calling for Gayyoom's immediate resignation.

Ministry of Home Affairs announced that Hon. Ibrahim Ismail and Mr. Ahmed Nazim Sattar will henceforth be denied the permission to organize and chair pro-democracy meetings or debates.

According to Hon. Ibrahim Ismail, he will be filing a case, and will fight in court for being deprived of his civil and constitutional rights as an elected member of the Special Majlis. □

On July 05, 2004, the Male' MP of the Special Majlis and MDP Councillor Ho. Ibrahim Ismail braved the threat of Gayoom's oppressive rule, by organizing the hitherto most effective pro-democracy gathering in Maldives. Working in association with MDP Councilor and Founder Member of the Oriental academic Centre, Mr. Ahmed Nazim, he rallied eager followers and other

Continued from Page 3

Serial Injustice: Slain

attacking the armory(5.5.14). This is obvious targeted killing; i.e. assassinations. The guards had picked their prey cunningly and by choice. Meanwhile, none of the documents describe what Captain 'Fusfaru' Adam Mohamed was doing for the thirty minutes during the shootings. Instead, we get a 2.8.6 (removed for National Security purposes). This raises serious questions. What is the government trying to hide here? How is 2.8.6 relevant to National Security?

Soon afterwards, Captain 'Fusfaru' Adam Mohamed calls Major Ibrahim Latheef who was at "Mission Control" and informs that "some have fired shots" and "some are injured". Major Ibrahim Latheef would later tell the commission that he followed that remark by several questions. Captain "Fusfaru" Adam Mohamed would later reject them, in his own words "I was never asked any such questions".

Was Captain 'Fusfaru' Adam Mohamed instructed to shoot? If he was instructed to do so, then that instruction could only come

from, according to the rules and regulations of NSS, the Commander-in-Chief Maumoon Abdul Gayoom. Please also note that no deliberate shots have been fired at a Maldivian citizen by the government in the last thirty years. This begs for a special authorization by Commander-in-Chief Gayoom. Also, the one statement, which negates all the "discoveries" made by the Sattar Commission, is 2.7.1 - the "gesture" and order to take arms. Why did he make that gesture? Was he given the "go" to shoot under certain predefined circumstances? Why did his subordinates take arms and shoot so easily? Were they instructed before hand that they were to shoot with his "gesture"? Was this what "Mission Control" had planned, all morning up till 12 noon? Were these the instructions at the fall-in before the inmates broke out?

One of those fifteen who carried weapons on that fateful day has been sentenced to 6 months in exile. Others are still on trial. Compare that with the 10 years in jail for Fathimath Nisreen who was only a supporter of free speech. □

" That evening, after dinner, Saddam took Maumoon aside and told him that to govern the country, he needed to have an organization. In Iraq, he said, there was a single party with power, the Arab Ba'ath Socialist Party. It was only through the one-party system that he was able to govern effectively.

Following the visit, Maumoon developed a close friendship with Saddam Hussain."

From 'A Man for All Islands' - Royston Ellis (p.147)

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Separation of Powers in Maldives

David Cordery - Friends of Maldives

The separation of powers is an established constitutional principle. It dictates that, in order to prevent the accumulation of too much power in one person or decision-making body, there must be some separation of the three branches of the constitution: the Executive, the Legislature and the Judiciary. If this is not achieved, there is a danger that absolute power will be vested in one individual, which could lead to inefficiency and corruption. This article will examine the doctrine of separation of powers and how it applies to the constitution of the Maldives.

The theory of separation of powers has been developed by writers as far back as Aristotle, who, writing in the 4th century BC, recognised that the "rule of a master is not a constitutional rule"[1] and that government has 3 functions. He opined that government intervention is necessary because of human imperfection; however it should be limited to ensure that government vests as far as possible in the people. The classic formulation of the theory of separation comes from the writings of the 18th-century philosopher the Baron de Montesquieu. In his 1752 work

L'Esprit des Lois (The Spirit of the Laws), he explained that there are three functions of government and three main organs of government. In order to protect individual liberty, the three functions of government - the formulation, the application and the enforcement of the law - should be kept separate and performed by the three organs of government - the Legislature, the Executive and the Judiciary. The structure should provide a system of checks and balances between the different branches to ensure that no one body can monopolise power in order to abuse it. Political theorists have long pointed out the dangers of non-observance of the separation of powers. According to Article 16 of the French Declaration of the Rights of Man of 1789, drafted after the overthrow of the despotic King Louis XVI, 'Any society in which the safeguarding of rights is not assured, and the separation of power is not observed, has no constitution.'

There is some debate as to whether a just constitution can accommodate an overlap of personnel between the different branches. To take two examples, the UK constitution displays a considerable overlap of personnel, not the least of whom is the Prime Minister. He is the head of the executive, but is also a Member of Parliament, hence drawn from the body of the legislature. He is therefore responsible for proposing legislation and can ensure its passage through Parliament by use of the party whip system and his Parliamentary majority. In contrast, the Constitution of the United States clearly stipulates that there can be no overlap of personnel. Article 1 of the US Constitution vests the Legislative power in Congress, Article 2 vests the Executive power in the President and Article 3 vests the judicial power in the Supreme Court and other inferior courts. Further, the Constitution states that there can be no overlap of personnel between the different functions. That the US Constitution adheres to Montesquieu's strict model of separation is unsurprising: it was produced in 1787, just 25 years after the *Esprit des Lois* was published, and the draftsmen were well-versed in Montesquieu's constitutional theories. As for the Maldives, it has been said that "An Englishman would say the President of the Republic of the Maldives is Her Majesty the Queen, the Prime Minister, the First Lord of the Admiralty, the Chief Constable,

"An Englishman would say the President of the Republic of the Maldives is Her Majesty the Queen, the Prime Minister, the First Lord of the Admiralty, the Chief Constable, the Leader of Her Majesty's Opposition, the Chief Justice of England and Wales, the Speaker of the House of Commons, the Lord Chancellor, the Head of the Church of England, the Archbishop of Canterbury and the Archbishop of York, all rolled into one." - Majid Abdul-Wahhab

the Leader of Her Majesty's Opposition, the Chief Justice of England and Wales, the Speaker of the House of Commons, the Lord Chancellor, the Head of the Church of England, the Archbishop of Canterbury and the Archbishop of York, all rolled into one." [2]

The Maldivian Constitution was first produced in 1932. The current Constitution dates from 1998. At its conception, it was heralded as proclaimed 'the world's most democratic constitution' by President Gayyoom. This, of course is no guarantee: Joseph Stalin made a similar claim at the unveiling of the Soviet Constitution of 1936.

Article 4 of the Maldivian Constitution of 1998 sets out the functions of government:

"(1) The powers of the State of the Maldives shall be vested in the citizens. The said powers, for purposes of governing the State, shall comprise the following:

(a) the Executive;

(b) the Legislature; and

(c) the Administration of Justice.

(2) In accordance with this Constitution the executive power shall be vested in the President and the Cabinet of Ministers, the legislative power shall be vested in

the people's Majlis and the People's Special Majlis and the power of administering justice shall be vested in the President and the courts of the Maldives."

It can be seen from Article 4 that the Maldivian government does not operate a strict separation of powers. The functions of government are clearly divided, but the organs of state overlap. There is a supposed separation of the Executive and Legislative branches, but Article 4(2) clearly states that the President occupies dual responsibilities as head of the executive and the judiciary.

The Executive and the Legislature

The cabinet of ministers is appointed by the President, although it is notable that Article 55(2) of the Constitution allows him to take direct charge of any ministerial department without appointing a Minister. Currently there are 20 ministries, and President Gayyoom is in control of the Ministry of Finance and Treasury and jointly in charge of the Ministry of Defence and National Security.

Under Article 42, the President has further powers which seem to undermine any pretence of separation. He may appoint or remove many members of the government, including the Vice-President, the Speaker and Deputy Speaker of the People's Majlis, government ministers, the Attorney-General, Atoll Chiefs, the Auditor-General and the Commissioner of Elections. The Commissioner of Elections is charged with preparing an approved list of candidates for the Presidency, from which the Majlis may select a candidate. This effectively means that a Commissioner appointed by the incumbent President has considerable influence over the choice of that President's challenger in the elections. Those looking for reasons why the current Maldivian President, Maumoon Abdul Gayyoom, is the

Continued on Page 8

Continued from Page 7

Separation of Powers in Maldives...

longest serving “democratically elected” President in Asia need only look to the powers he has to influence his own election.

The President also has powers to “promulgate decrees, directives and regulations, as may be required from time to time for the purposes of ensuring propriety of the affairs of the government and compliance with the provisions of the Constitution and law” under Article 42(e). This allows him to temporarily enact quia timet legislation without having to lay it before the Majlis for approval until they reconvene at the next sitting. This allows him to bypass the Majlis, thereby infringing upon the functions of the legislature, in the same way as delegated legislation does in the UK constitution.

Whilst the President has extensive discretion over the appointment and dismissal of members of the government, removal of the President by the Legislature is a far more difficult process. According to Article 47, a motion must be brought by at least one third of the Majlis, having signed it in their own hand, alleging either that the President is permanently physically or mentally incapable of remaining in office, that he has intentionally violated the Constitution, or has committed a serious offence under Islamic law. The motion must then be approved by a two-thirds majority of the Majlis before being investigated by a commission comprising five members, two chosen by the President and a third member ‘acceptable to both the People’s Majlis and the President’.

In the UK, where it has been argued that there is no effective separation of powers, there nonetheless exist checks on the power of the executive.[3] They include a strong Parliament, the courts and the media. In Maldives, the People’s Majlis should operate to check the President’s powers. However, not only does the President himself select eight of its members (Art. 64), he also appoints the Speaker of the House, who administers all the affairs of the Majlis and presides over its meetings (Art.68), and the Secretary-General, who organises the sittings of the Majlis (Art.91). In addition, the President has considerable powers in approving legislation. A Bill, once passed by the Majlis, must be presented to the President within 7 days. If he chooses not to assent, he may amend the Bill and return it to the Majlis for reconsideration. The amended Bill must be assented to by a two-thirds majority of the Majlis; otherwise it will be declared void. There is no opportunity for the Majlis to negotiate the Bill by making its own amendments. This places clear barriers in the path of any reform-minded Majlis. Given that a two-thirds majority amounts to 34 votes in the Majlis, this is quite a task, especially given that the President already controls the appointment of eight of these members. Even if passed, any act which is

inconsistent with the Constitution is voidable. Who is the arbiter of what is unconstitutional? Unsurprisingly perhaps, it is the President who has wide-ranging powers with regard to interpreting the Constitution, including being able to promulgate decrees to enforce compliance with the Constitution (Art. 42(e)). Under Article 90, the President may even pass legislation without calling a Majlis, if it is not currently sitting and if ‘in [his] opinion, expedient legislation is required.’ This confers a considerable amount of discretion to alter the law, albeit temporarily.

In most constitutions, a multi-party system operates to keep checks on the political establishment. However, “Because of certain provisions in the constitution,” the President claimed recently, “a party system is not viable or cannot be operated in the country as the Constitution stands.”[4] Recent moves towards establishing a multi-party system have been met with scepticism from those attempting to initiate reform in the country. The lack of a critically-minded Majlis means that the President can effectively act without fear of the political consequences.

Similarly, the press usually operates to bring pressure to bear on the government for any misguided policy decisions. The press is often called the fourth organ of the Constitution, as it has tremendous influence over political decision-making. However, state control of the media in Maldives has extinguished any hopes of establishing a free press capable of effective criticism, thus removing a valuable constitutional safeguard.

The judiciary

In the UK, the courts play a vital role in ensuring that the government adheres to the rule of law. This is a role that has developed throughout history. As far back as 1765, a prominent English judge, pointed out that a government may not act unless it is in accordance with the law, and it is for judges to decide whether the government possesses such a legal right:

“If it is law, it will be found in our books. If it is not to be found there, it is not law... By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my license... If he admits the fact, he is bound to show by way of justification, that some positive law has empowered or excused him. The justification is submitted to the judges, who are to look into the books; and if such a justification can be maintained by the text of the statute law, or by the principles of common law. If no excuse can be found or produced, the silence of the books is an authority against the defendant, and the plaintiff must have judgment.”

Lord Chief Justice Camden in Entick v Carrington (1765)

The President is the head of the judicial system in Maldives. Article 39 states that ‘the President shall be the highest authority of administering justice in the Maldives.’ This obviously has its dangers. The independence of the judiciary is essential to ensure that those facing charges do so in the absence of the possibility of political bias. A body that is part of both the executive and the judiciary will be responsible for formulating policy and then interpreting that policy in the courts. There is no independent arbiter of justice and therefore no check on executive authority.

The President appoints the Chief Justice and all other High Court, and inferior, Judges (Arts. 112 & 118). He may also remove from office any High Court Judge if ‘in the opinion of the President, [the Judge] fails to satisfactorily discharge his duties and responsibilities’ (Art.117). In the case of inferior judges, the President has even greater powers, able to remove a judge entirely at his discretion (Art.122).

The High Court hears all appeals from inferior courts in the Maldives (Art.115). If the cases have been brought by the State, then it is the President who decides which cases are worthy of referral to the High Court.

There is no independent system of judicial review. A recent investigation into the death of an inmate at the Maafushi gaol was undertaken by a Presidential Commission, whose members were all appointed by the President, by virtue of a Presidential Decree.[5] Parts of the report were not even made public. It is claimed that this is ‘for reasons of national security’, but with no system of independent verification, how can one be sure?

The only conclusion to draw is that the Maldivian constitution lacks an effective separation of powers. Even where such a separation theoretically exists, as between the Executive and the Legislature, the influence of one over the other seeks to undermine the separation. In addition, the mechanisms which normally operate to safeguard the constitution, such as a free press and multi-party politics, simply do not exist in Maldives to bring the government to account for their actions. In such a climate, the potential for abuse of power is evident. Where is the guarantee, that a President possessed of such a wide-ranging power, can be trusted to wield it responsibly? One cannot simply hope for a President to be a paradigm of morality, there must be a constitutional system guaranteeing that he cannot misuse his power. To return to Aristotle: “constitutions which aim at the common advantage are correct and just without qualification, whereas those which aim only at the advantage of the rulers are deviant and unjust, because they involve despotic rule which is inappropriate for a community of free persons”[6]. Reformers currently meeting to discuss amendments to the Constitution will do well to remember this. □

Letters

I am writing to MDP on behalf of Friends of Maldives because I am concerned for the well-being and safety of individuals involved in the organisation of free debates of reform in Maldives.

I have heard reports that individuals, including Ahmed Nazim Sattar and Special Majlis member Ibrahim Ismail, have been banned from organising and holding these forums for open and fair debate. In addition Mr Sattar has been persecuted on unfounded corruption charges unrelated to the debates, clearly an attempt to silence those involved.

I have also been informed that the NSS have been following and harassing organisers; they were specifically looking for Mr. Abdul Rasheed, who displayed the banner calling for Gayoom's immediate resignation. The NSS took a statement from Mr. Rasheed as to why he showed the banner and declared, that as per Criminal Law Act 38, he had committed a crime by displaying the banner to the public. Mr. Rasheed responded that as per article 25 of the Constitution, guaranteed by Article 31 (1) and (2), he had an inviolable constitutional right to express his view.

If this is the reaction of a government that has openly declared that "Freedom of Expression is guaranteed by our constitution", I can only assume that the President is playing a game with the international media and international organisations who have given him the chance to reform and respect the norms of good governance.

Rebecca

Harassed for exercising a constitutional right

Mr. Rasheed, now a folk hero among pro-democracy activists for holding aloft a placard calling for Gayoom's resignation, is now under police investigation under Article 38 of the Criminal Code.

He is being represented by Gayoom's former Attorney General Mr. Mohamed Munawwar. In Gayoom's police state the police officers still firmly believe that freedom of expression enshrined in article 25 of the constitution does not include any expression that might cause even mild embarrassment to the Dictator. The placard very clearly stated "We all want Maumoon's immediate resignation!"

This is construed by the police as an act of rebellion with intent to cause friction between the citizens of Maldives and their duly elected leader.

To foreigners used to less draconian reaction to such mild expression, all this might seem rather excessive. To us Maldivians what surprise us most is that Mr. Rasheed has not yet been beaten to pulp and summarily sentenced to 10-15 years or life.

In Support of Political Party Systems

I am in support of political party systems and I am proud of it. I will not let Gayoom's goons intimidate me any more. On the pro-democracy meeting held on the 13th at Kalaafaanu School I was among those who wore a T-shirt that said, "In support of political party system". Earlier, T-

shirts with the same message were confiscated by Gayoom's goons. My contention is: the dictator himself expressed his support for party system, so why didn't the cops arrest him last month? Surely, the message on the T-shirt is a simpler, ordinary expression of someone's belief and should be allowed under the constitutional right to freedom of expression. Gayoom's goons need to know that supporting political pluralism does not tantamount to an act of terrorism.

I will continue wearing this T-shirt whenever I feel like it. I am a young woman and if it is forcibly removed I should not be charged for indecent exposure.

Gayoom on Castro two decades back:

"the revolutionary... whose name has become synonymous over the past decades with freedom, justice and human dignity"

From 'A Man for All Islands' - Royston Ellis (p.139)

Call on MPs

Since Evan's killing in September 2003, and the aftermath of the Male Riots, we have learned many lessons, indeed! We have now found out to our horror that torture and degrading treatments continue in the Maldives jails and detention centers.

In all this, what I find completely baffling is that the current Citizen's Majlis has stayed completely silent on all the uncovered cruelties and misdeeds of President Gayoom and his gangster-Cabinet.

In a recent pro-democracy gathering, people for the first time gave respect to Evan Naseem, by observing an interval of silence. Do we not, as a society, bear the blame for all those custodial deaths?

As voters we have also a right to ask our local MP why the government is given free reign to continue ruling, when it is clear to everyone that the people of Maldives has no confidence in President Gayoom's rule.

I wish to call upon all members of the Citizen's Majlis to honor their oath and to fulfill their promises or resign now.

I hope dear reader that you will also write to your MP and tell him/her exactly what you think of this government and the atrocities they continue to commit.

Citizen Y

"First they ignore you, then they ridicule you, then they fight you, then you win." - Mahatma Gandhi

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