

**The reform process and the state of human rights
in the Maldives**

**Report of the SAHR fact-finding mission to the Maldives
26-29 December 2005**

South Asians for Human Rights (SAHR)

March 2006

BACKGROUND AND INTRODUCTION

The year 2005 saw an improvement of the democratization process in the Maldives, with a number of new political parties permitted to register and carry out political activities, and an agenda for political reform.

The South Asians for Human Rights (SAHR)¹, in its capacity as a democratic regional body with a large membership base of people committed to addressing human rights issues at both national and regional levels, feels that it is well-placed to strengthen the democratic process in the Maldives through the perspective of human rights. With this in mind, SAHR planned for a fact-finding mission to ascertain the state of human rights in the country, and to assess the extent to which reforms were in progress. It was able to obtain funding from the Open Society Institute, USA for a project entitled "Strengthening the democratic process in the Maldives" whose objective was to assess the state of human rights in the country and the reform process underway.

Project activities include the organization of a fact-finding mission to the Maldives, presenting the findings at a seminar to be held in Colombo, Sri Lanka, and distribution of a comprehensive report – including the mission report, mission recommendations and recommendations of the seminar -- to a wide audience comprising NGOs, human rights institutions, academia, think-tanks, government and intergovernmental organisations.

SAHR wishes to place on record its gratitude to Open Society Institute for its generous funding of this project.

Mission members and terms of reference

The delegation consisted of Dr. Kamal Hossain (Bangladesh), Zohra Yusuf (Pakistan) and J C Weliamuna (Sri Lanka). They were assisted by Shantha Jayawardena (Sri Lanka)².

The mission to the Maldives was undertaken with the following Terms of Reference:

¹ See annex 1 for description of SAHR

² Brief biographies of the team members are provided in annex 2.

1. To assess the human rights situation in Maldives in light of the recent political developments and in particular, their impact on the freedom of press and media, the newly-formed political parties and people's basic freedoms.
2. To give a situation report on the state of reform underway in the Maldives.
3. To assess election laws and reforms in the pipeline.
4. To identify areas in which SAHR can contribute to the ongoing reform process.

Acknowledgements

In preparing for the mission, members of SAHR met Maldivian Foreign Minister Dr Ahmed Shaheed, and the High Commissioner for Sri Lanka in Colombo, Dr Mohamed Asim who welcomed the proposed mission of SAHR and agreed to facilitate the mission.

The government of Maldives, in particular the Ministry of Foreign Affairs, welcomed the mission's visit, facilitated the meetings with government officials and engaged in a frank dialogue with the delegation. Ms. Aisath Velezinee, Editor of the Aduvaas Weekly Magazine, facilitated the meetings with other individuals and entities³.

The meetings with the ministers, officials and political parties were extremely cordial and the delegation had a frank dialogue with them. The delegation did not face any obstructions from the government or any other groups. It is striking to note that some of the young members of the Cabinet with whom the delegation met are persons with international exposure, reform-minded and forward-thinking and essentially technocrats of high caliber.

³ The full list of those interviewed is attached in annex 3.

THE FINDINGS OF THE MISSION

1. Governance issues affecting human rights

- (a) The Maldives is a nascent democracy and its framework of governance is affected by the long history of monarchy. Most of those who were interviewed by the delegation, including some of the government representatives, felt that President Gayoom has been in the position far too long and underlined the need for changes.
- (b) The governance issues are linked to the constitutional framework, which is essentially a highly centralized presidential system of governance with hardly any separation of powers. The striking features of the Constitution include the following:
 - I. The President is effectively the Head of the Executive and legislature and exercises control over the judicial branch. Constitutionally he is not answerable to Majlis (Parliament), judiciary or any other authority.
 - II. The President is elected through an unusual electoral system whereby a single candidate is elected by the Majlis. Judging by the way the electoral system works without effective checks and balances, the likelihood that the current President will be that candidate is very strong.
 - III. The members of the cabinet⁴ appointed by the President perform the functions assigned to them by the President. The Attorney General is also a member of the Cabinet of Ministers and carries out the functions assigned to him by the President. The People's Majlis is the main legislative body consisting of two groups: some members directly elected and others appointed by the President. The speaker is also appointed by the President.
 - IV. The People's Special Majlis which is the constitution-making body includes the Cabinet of Ministers, the elected members of the Majlis⁵; and members appointed by the President. The

⁴ Presently the cabinet has 13 ministers. There is no limitation on the number of ministers.

⁵ Members of the Majlis are elected for 5 years. Out of the 50 members 42 are elected by the people and the balance eight are nominated by the President.

president has the power to convene and dissolve the People's Special Majlis.

- V. All laws passed by the People's Majlis and the People's Special Majlis do not come into operation without the assent of the President. Judges of all the courts including the Chief Justice are appointed by the President.
 - VI. A minister nominated by the President can issue directions on the administration of the courts and the conduct of the judges. The President may at his discretion remove a judge of any court.
 - VII. Both the Auditor-General and the Commissioner of Elections are appointed and removable by the President.
- (c) The above constitutional provisions make the governance system extremely President-centred and vests in his office wide-ranging and absolute powers -- hardly a characterization of a constitutional democracy.

2. The Government's Reforms Agenda

- (a) The Delegation is grateful to the ministers and the officers of the Attorney General's office for engaging in a fruitful discussion on the reform agenda of the government. The delegation also had the benefit of reading a publication issued by the AG's office, entitled "Through the Reforms of the 6th Presidential Term".
- (b) The reform agenda of the Government is an ambitious multifaceted action plan. There is evidence that the Government seriously addresses some of the items in the reform agenda. For example it has prepared a comprehensive penal law with a commentary, under the guidance of Prof. Paul Robinson of the University of Pennsylvania. Quite interestingly the draft incorporates *Sharia* law into the domestic legislation.
- (c) In relation to the reform agenda, there was hardly anyone who did not agree that its contents are extremely important to strengthen democracy. However, our interviews clearly indicate that the government is yet to convince the public on its bona fides regarding the proposed reforms. The feeling is that the

agenda has been introduced half-heartedly due to external pressure brought upon on the government and not because of a genuine willingness to establish democracy in the Maldives.

- (d) It is also evident that there was no sufficient publicity or detailed discussions within Maldivian communities on the reform agenda. It was also revealed that the media has not taken the reform agenda as a priority issue.
- (e) The President has invited all the parties to a dialogue on the reforms. However the MDP appears to be expecting conciliatory gestures from the government such as release of some political prisoners in order to establish the bona fides on the part of the government. The government on the other hand complains that the MDP has introduced conditions to avoid a frank dialogue. The Delegation feels it is quite natural for people not to have faith in a regime, which has governed a country for a quite a long time.

3. Multiparty Democracy

- (a) Multiparty democracy is gaining ground in the Maldives. Consequent to a decision of the People's Majlis on 02.06.2005 it was decided to allow registration of political parties. The registered political parties are Divehi Rayyithunge Party (DRP), Maldivian Democratic Party (MDP), Adaalath (Justice) Party and Islamic Democratic Party (IDP). Even though the new political parties complained of major obstacles for registration it is a fact that these parties are now active in the Maldives.
- (b) The delegation feels that establishing a multi-party system is a process that naturally takes time. The following features were observed:
 - (i) The elections are not held on party basis nor are the Members of Majlis elected party whips. Campaigning and representation in the Majlis is still on the basis of independent membership even though, in reality, the members are known to be linked to one political party or the other.

- (ii) An all-powerful President is not elected on a party candidacy though he is seen as unchallenged leader of his own party.
- (c) The MDP and IDP representatives admitted that there is space for democracy growing at present. It is also heartening to state that even the government officials and ministers whom we met welcome the emergence of multiparty democracy. ↗
- (d) The delegation has been informed that the Political Parties Bill has been drafted to replace regulation of political parties. This is certainly a healthy move.

4. Freedom of Association

- (a) Freedom of association is recognized by the Constitution as a fundamental right and the government ministers interviewed too conceded the importance of freedom of association. The same constitutional provisions recognize political parties which are now actively engaged in political activities in the country. It could be reasonably assumed that the role of the MDP was pivotal in promoting democracy in the present environment.
- (b) MDP has however been subjected to some restrictions; especially as leading personalities of the party are prosecuted in criminal action and are under detention.
- (c) The government has now in principle agreed to the registration of NGOs. The Home Affairs Minister stated that NGOs including human rights NGOs have been registered but we did not obtain specific names of these NGOs.

5. Media Freedom

- (a) There are four newspapers and several electronic media institutions. All electronic media institutions are owned by the State. The government officials informed the delegation that they have no objection to licenses being issued to non-governmental entities and individuals. We are informed by the government that at present five bills have been drafted on this subject:

- Freedom of Information Act (already circulated to Ministries)
- Freedom of Media Act
- Press Council Act
- Defamation Act
- Registration of Newspapers and Magazines Act

The delegation was told that the objective of these statutes is to ensure greater media freedom, streamline registration of newspapers and to change defamation from a criminal offence to civil wrong.

- (b) The Delegation has been informed of the existence of four newspapers and their ownership are given below;
- Haveeru Daily – owned by Shahir Hussain, a colleague of the President.
 - Affathis - Abbas Ibrahim, brother-in-law of the President.
 - Miyadu – Ahmed Abdullah, Minister of Energy
 - Minivan News – Opposition (MDP) newspaper
- (c) It is observed that the government is financially supporting all but the opposition Minivan News. The Chief Government Spokesman indicated that the three newspapers were provided such financial support because they requested it, while Minivan News has not. The editor of Minivan News told the delegation that she was unaware that any newspaper could ask for financial support from the government. The editor of Haveeru Daily also said he was unsure whether his newspaper has requested for grants from the government. However, Haveeru gets Rufiya 5000 per month which they say is a nominal amount.
- (d) The Delegation is of the view that there is evidence of editorial independence although there is no organization of media professionals to support the struggle for media freedom.
- (e) While newspaper editors conceded that they enjoyed freedom like never before, there appears to be fear psychosis on contribution to media on sensitive matters. There are instances

of potential prosecution in respect of some articles that appeared in the print media. Although there is no clear evidence of formal prosecutions, there is a likelihood of this in due course in respect of the following articles:

Minivan Newspaper

- i. An article on star force by Hussein Nazeer published on 02.08.2005.
- ii. An article titled "Unrest created in Male are planned by certain people" by Abdulla Saeed published on 21.08.2005
- iii. An article titled "Injustice out of control" by Abdulla Saeed published on 21.08.2005
- iv. An article titled "Thanks Performed" by the editor published on 21.08.2005
- v. An article titled "Government instills fear in students calling for the resignation of the President" by Abdulla Saeed published on 15.08.2005
- vi. An article titled "the Secret of de-education Policy" by Aki Zahir published on 25.08.2005
- vii. An article title "He may do anything to remain in power" by Hidayatulla published on 18.09.2005

Haveeru

An article by the Editor Ahmed Zahir published on 25.08.2005

Adduvas Magazine

An article by Aishath Velizinee on wasteful expenditure by the Tsunami Management Centre.

- (f) Some of the important public figures were critical of Minivan for its language and political journalism and accused it of being biased while a large section of those who were interviewed accused the other newspapers of being pro-government. This is an indication of political diversity in reporting. Unfortunately there is still lingering intolerance against sensitive political criticism.

6. Prison Conditions

- (a) The delegation visited the Maafushi prison, the largest prison with over 200 prisoners (the total prison population is a little over 300). They interviewed a large number of male prisoners but due to lack of time could not meet women inmates. Earlier the delegation also had the opportunity of meeting Jennifer Lathif (adopted as a 'prisoner of conscience' by Amnesty and currently under house arrest at a relative's place) and several others who had been prisoners. It appears that prison conditions have improved tremendously during the recent past. The facilities in this prison are exemplary by South Asian standards. Prisoners are entitled to one home visit in 3 months and 6 minutes of telephone calls every week. The prison also had facilities for prisoners' families to come and stay. The prisoners were content with satisfactory food, recreation and entertainment. They were not required to do any work. However, prisoners complained that they were unaware of their rights. There is no parole programme.
- (b) There are allegations that there are secret detention camps but such facts cannot be established or denied through an announced mission visit.
- (c) Though the government is claiming to have new prison rules, no such rules were displayed to the prisoners or given to the prison officials. In fact, the prison officials and the prison oversight committee welcome such new rules and saw the importance of having them displayed in the prisons in Divehi.

7. Independence of the Judiciary

- (a) Constitutionally the judiciary operates as a branch of the executive of which the President is the head. The role of the judiciary vis-à-vis the interpretation of the law appears to be vague but at least in several identified instances (for example Sharia law) the judges are bound by interpretation of the law by the President.
- (b) The lack of an independent judiciary appears to have created serious concerns and occupies a major part in the reform agenda. The present constitutional structure does not recognize an independent judiciary or judges independent of the executive.
- (c) According to the Minister of Justice, though the President is the head of all the organs of the State, when it comes to the judiciary the President's role is only ceremonial (somewhat similar to the Queen as the British Constitutional Monarch). However, the Queen does not engage in politics which is a fundamental difference between the Queen of England and the President of the Maldives.
- (d) On 11.11.2005 the government announced the separation of the judiciary from the executive. It is expected to vest the judicial power in the Chief Justice and judges, making the judges answerable to the Chief Justice only.
- (e) It is premature to judge whether this separation of judiciary has taken effect.
- (f) The Judicial Services Commission was established on 11.11.2005. However the delegation did not have an opportunity to meet the Chief Justice and other judges to understand its present situation. It was informed by the Justice Ministry that JSC has been created but not yet constituted. According to the Attorney General's office it will comprise 4 judges, 2 representatives from the executive, 2 non-government lawyers and 2 civilians.
- (g) The Chief Justice and other judges appear to have trained in Egypt. The Chief Justice is an Islamic scholar but not a lawyer. The lawyers on the other hand have exposure to common law and thus there is a conceptual gap between the lawyers and

judges on legal concepts. The previous practice of recruiting judges with no (limited) legal experience is indicative of the fact that the judges had a very narrow role within the administration of justice system. A Judicial Committee located within the President's Office could give advice and guidance on many aspects of administration of justice. There is no evidence of a clear judicial oversight system over the lower judiciary.

- (h) The government has expressed interest to undertake judicial reform with a decree entitled the "Amendment of Rules relating to the Conduct of Judicial Proceedings" introduced in May 2004. In December 2004 the Attorney-General's office launched a National Criminal Justice Action Plan 2004-2008. These proposals acknowledge the serious lacuna prevalent in the justice system while showing the commitment of the government to address these by 2008.
- (i) The first Maldivian lawyer qualified in the common law legal system came to the country in 1985. At present there are an estimated 150 registered lawyers. About 40 lawyers are in private practice and some are serving government institutions including the Attorney General's Department and Ministry of Justice. The law society established in 1990 is inactive and is not known to be sufficiently concerned about judicial reforms.
- (j) The delegation had the opportunity of having discussions with a section of Maldivians who are allegedly victimized by politically motivated trials. They are facing charges of treason and terrorism. It is observed in these trials that there were lengthy pre-trial proceedings or long detentions. The most recent case is that of Jennifer Lathif who was charged with terrorism during the September 2003 riots. There are four leading politicians (for instance Mohammed Nasheed, Chairman of the MDP) who are under house arrest for a considerable period without trial. In all these cases the following striking features could be identified:
 - There are no habeas corpus proceedings or similar legal framework;
 - The trials of these politicians were sensitive and high profile;

- They were generally charged for treason, terrorism or for violating religious unity;
- The charges were invariably against politicians of the opposition.

8. Human Rights Commission (HRC)

- (a) HRC was first established by a Presidential Decree on 10.12.2003 and attained full statutory status on 08.08.2005
- (b) Presently the Human Rights Commission is defunct and its vacancies remain unfilled. The Majlis has refused to consider the nomination made by the President on the basis that it had no adequate time to consider the suitability of the nominees. However the Speaker of the Majlis said that the HRC would be operative by March 2006.
- (c) We observed that some of the key political figures do not have positive attitude to the establishment of a strong HRC, perceiving it to be an obstacle. However the Police Commissioner did not see the HRC as an obstacle for law enforcement.
- (d) When it was active the HRC visited jails, monitored elections and in fact made an impact on the human rights situation of the country. However, since it did not conform to the Paris Principles on the Independence of the Human Rights Commission it was denied entry to the Asia Pacific Forum.
- (e) When the new statute was presented on 21.07.2005, the Human Rights Commission members recommended major changes to the Bill. It also included suggestions not to limit the membership to Muslims. The Commissioner suggested amendments also to various clauses of the Bill to make the commission functionally independent. The government reportedly sought consultation with the Office of the High Commissioner for Human Rights to identify the areas for improvements, which should be commended.
- (f) The delegation strongly feels that there is a need for the HRC to be reconstituted with people with integrity at the earliest and

the government must strengthen the HRC administratively and financially while ensuring its independence.

9. Religious Freedom

- (a) The Maldives is a country with one religion. The Constitution provides that the citizens of the Maldives should be Muslims and Muslims should hold all the key positions. The Constitution -- and the fundamental rights chapter -- do not recognize the presence of any other religion. Hence non-Muslims are not given citizenship and neither do they have public places of worship. Incidentally, the position of all political parties is identical on the issue of the rights of non-Muslims.
- (b) None of the political parties recognize religions other than the Islamic faith. In fact Islamic Democratic Party accuses the Adaalath party of being a fundamentalist party and the MDP of being a secular party. There is widespread fear of preachers of other faiths (Christians or Buddhists) converting Maldivian Muslims. In fact, smear campaigns against opposition politicians often accuse them of being Christians or Buddhists.
- (c) At the same time there is fear of rising Islamic fundamentalism among the youth returning from madressahs in Pakistan and Saudi Arabia. The Justice Ministers described Maldivians as "culturally Muslims", rather than orthodox

10. Commitment to International Human Rights Obligations

- (a) The Maldives has signed the Convention against Torture, CEDAW and the Convention on the Rights of the Child. The Government is considering ratification of ICCPR and IESCR in the near future. It appears that the Human Rights Commission has also recommended the ratification of these conventions and the government too has been favorably disposed to the ratification.

11. Recommendations

- ❖ The MDP and all other parties should enter into a dialogue with the Government. Conciliatory gestures from the President in releasing at least a few high profile prisoners is the key to establishing trust in the genuineness of the reforms and in this dialogue. We recommend unconditional pardon by the President to at least three key high profile prisoners.
- ❖ President has appointed members to Majlis and Special Majlis in terms of the law. This is one of the major reasons for tension in the political environment. The President by his own decree may remove these members if he wishes. Such a move is recommended at present to expedite a democratic political dialogue in the Majlis.
- ❖ All neighboring countries need to assist the Reform Agenda of the government and in particular to strengthen the institutional framework of Maldives. It has considered potential as a nation and at present, there is an environment for democratic change.
- ❖ SAHR is ready to extend its fullest support to the Government of Maldives and all stakeholders to strengthen its democracy and democratic values.
- ❖ The implementation of the reform agenda should be monitored by SAHR. This is not very difficult as time-lines in most areas of reform are given.
- ❖ Rules, regulations and decrees must be transparent and easily accessible to the public in Divehi.
- ❖ The government should ratify the ICCPR and IESCR and the Optional Protocols.
- ❖ The government should take all steps to ensure media freedom without fear of criminal prosecution.
- ❖ The human rights commission must be appointed at the earliest whilst protecting its financial and administrative independence, in keeping with Paris Principles.

Annex 1

Brief introduction to South Asians for Human Rights (SAHR)

South Asians for Human Rights is a democratic regional body with a large membership base of people committed to addressing human rights issues at both national and regional levels. To foster the concept of multiple South Asian identities by enabling people to realise their ideals and aspirations for peace, democracy, secularism and human security, while promoting pluralism in approaches towards social, political, economic and cultural development of different communities, ethnic, linguistic, religious and other groups.

SAHR seeks to contribute to the realisation of South Asian peoples' right to participatory democracy, good governance and justice by strengthening regional response, including regional instruments, monitoring human rights violations, reviewing laws, policies and practices that have an adverse impact on human rights and conducting campaigns and programmes on issues of major concern in the region.

SAHR's basic policy is to identify the gaps in regional initiatives and to undertake activities which do not duplicate the work carried out by other regional or national NGOs. Its strength and legitimacy comes from its democratic structure and broad-based membership of recognised human rights defenders in the region.

According to the organisation's structure, its members – both institutional and individual – form the network's general body. An elected bureau works as the organisation's executive body and an elected membership committee oversees enrolment of members. The SAHR Chairperson and Co-Chairperson are Mr I K Gujral, former Prime Minister of India, and Ms Asma Jahangir, UN Special Rapporteur on Freedom of Religion or Belief, respectively. The SAHR Secretariat is based in Colombo, Sri Lanka.

The delegation to the Maldives – a brief profile

Ms Zohra Yusuf is currently Vice-Chairperson (Sindh), Human Rights Commission of Pakistan. She is co-founder of Women's Action Forum, a lobbying group in Pakistan and was closely involved with WAF's activities and campaigns. She is a member of a number of NGOs including Commonwealth Human Rights Initiative, South Asian Forum for Human Rights and South Asians for Human Rights. Ms Yusuf also writes on issues of human rights, women's rights and the state of the media, among others.

Dr Kamal Hossain is a senior advocate with the Supreme Court of Bangladesh. Dr Hossain previously occupied a number of important posts including Member of Parliament; Minister of Foreign Affairs; Vice-Chairman, Forum for Democratic Leaders in the Asia-Pacific; Chairman, Bangladesh Legal Aid and Services Trust; and Vice-Chairman, Transparency International.

Mr J C Weliamuna is attorney-at-law of the Supreme Court of Sri Lanka, with speciality in Human Rights and Constitutional law. He is an Eisenhower Fellow (2004) and the Executive Director of Transparency International Sri Lanka, member of the Board of Directors of Sarvodaya Legal Aid Movement in Sri Lanka, and bureau member of the South Asians for Human Rights.

Mr Shantha Jayawardana, Attorney-at-Law of the Supreme Court of Sri Lanka assisted the mission with research.

Annex 3

List of meetings and persons interviewed

During the visit to Maldives from 26th to 29th December 2005, the delegation formally met the following persons;

- Mr Ahamed Zahir, Speaker of the Majlis
- Hon. Mohammed Jameel Ahmed, Minister of Justice
- Hon. Ismail Shafeeu, Minister of National Security and Defense
- Hon. Thasmeem Ali, Minister of Home Affairs
- Hon. Ms Ameer Ahmed Magu, Minister of Gender and Family
- Mr Adam Zahir, Police Commissioner
- Mr Mohammed H. Shareef, Chief Government Spokesman
- Mr Ahmed Saleem, Member, Human Rights Commission
- Mr Maumoon Hameed, Director General of the Attorney General's Department
- Mr Hussain Rasheed, a Member of the People's Special Majlis
- Mr Ibrahim Rasheed, a Political Writer
- Ms Jennifer Lathif, an active member of the MDP who is currently serving a 10-year prison sentence for terrorism
- Mr Shuaib Ali, a Member of the MDP National Council
- Mr Mohammed Nasheed, Chairman of the MDP
- Members of the Public Complaints Bureau
- Representatives of the Jail Oversight Committee
- Senior Officials and male prisoners of the Maafushi Detention Centre
- Ms Mariya Ahmed Didi, Former Director, Prosecution
- Mr Umar Naseer, Chairman of the Islamic Democratic Party
- Mr Ahmed Zahir, Editor of Haveeru Daily
- Ms Aminath Najeeb, Editor of Minivan News and founder of the Human Rights Association.

The delegation regrets that it could not meet representatives from the Divehi Rayyithunge Party (DRP) and Adaalath (Justice) Party. However, government ministers reflected the views of DRP (the official party).