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Atoll Ecosystem  
Conservation  
Project



# Legislative Framework for Biodiversity Conservation





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## The International Level

### *History of international instruments*

The origins of the international legal instruments for biodiversity conservation lie in the 1970s and 1980s. At the time, there was mounting public and political concern – confirmed by scientific findings – that the world’s biological diversity was being lost at an unprecedented rate, and that human activities were largely to blame. Biodiversity conservation was highlighted in June 1972 at the United Nations Conference on the Human Environment, held in Stockholm. In 1973, the very first session of the Governing Council for the new United Nations Environment Programme (UNEP) identified the “conservation of nature, wildlife and genetic resources” as a priority area.

Between 1972 and 1992, more than 300 international environmental agreements were negotiated in an attempt to slow or reverse the loss of biodiversity. These included a number of important individual measures, such as the 1973 CITES convention regulating trade in endangered species, the 1971 Ramsar Convention on Wetlands and the 1979 Convention on Migratory Species.

CITES aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. CITES was drafted as a result of a resolution adopted in 1963 at a meeting of members of IUCN (The World Conservation Union). The text of the CITES Convention was finally agreed at a meeting of representatives of 80 countries in Washington DC., United States of America, on 3 March 1973, and on 1 July 1975 CITES entered in force.

The Convention on the Conservation of Migratory Species of Wild Animals (also known as CMS or Bonn Convention) aims to conserve terrestrial, marine and avian migratory species throughout their range. Migratory species threatened with extinction are listed on Appendix I of the Convention. Migratory species that need or would significantly benefit from international co-operation are listed in Appendix II of the CMS Convention.

The Ramsar Convention (The Convention on Wetlands of International Importance, especially as Waterfowl Habitat) is an international treaty for the conservation and sustainable utilisation of wetlands i.e., to stem the progressive encroachment on and loss of wetlands now and in the future, recognising the fundamental ecological functions of wetlands and their economic, cultural, scientific, and recreational value. The convention was developed and adopted by participating nations at a meeting in Ramsar, Iran on 2 February 1971, and came into force on December 21, 1975.

But given the continued loss of biodiversity, it was clear that further measures were needed. So in 1980, the world's largest conservation organisation, IUCN – the World Conservation Union – proposed a new international framework convention to strengthen and harmonise the various individual treaties. This led to negotiations for a convention on conservation of biological diversity.

### *Convention on Biological Diversity*

The Convention on Biological Diversity was opened for signature at the Earth Summit in Brazil on 5 June 1992 and entered into force on 29 December 1993 when it had been ratified at a national level by 30 of the countries that had signed it in Rio. Its member countries currently number 188 and are known as 'Parties' to the Convention. They meet roughly once every two years. The Maldives is a party to the Convention on Biological Diversity.

### *Cartagena Protocol on Biosafety*

The Cartagena Protocol on Biosafety came into force on 11 September 2003, and lays down rules under which crops and other organisms which have been genetically modified can be transferred from one country to another. It reflects a desire by many developing countries to improve their ability to exploit and regulate modern biotechnology – and to use the CBD negotiating process to achieve this goal. They have succeeded in doing this in the face of opposition from exporters of genetically modified organisms (GMOs) – such as the United

States, Canada, Australia and Argentina – who argue that the restrictions embedded in the proposal could unnecessarily hamper international trade in biotech products.

Under the Protocol, anyone exporting GMOs such as seeds, plants or fish intended for direct release into the environment will need prior permission from the importing country. Organisms intended for direct human consumption, for animal feed, or for use in food processing can be freely exported once a central biosafety information clearing-house has been notified. However, the importing countries can still halt or delay a shipment by calling for a risk assessment. (GMOs intended for use in contained facilities, for transit through third countries, or for use as human pharmaceuticals are generally excluded from the Protocol's agreement procedure.)

An important aspect of the Cartagena Protocol is that its implementation is based on the use of the 'precautionary principle'. This 'better safe than sorry' approach allows countries to refuse the importation of a GMO if they believe that there is insufficient scientific information about its impact on human health or the natural environment. Countries can include socioeconomic factors arising from impacts on biodiversity conservation in making such a decision.

The precautionary principle has many critics, who argue that it demands an assurance of 'zero risk' – or at least a level of certainty about low-level risks – that is impossible to achieve in practice. However, its proponents argue that it is an essential element of any strategy designed to prevent irreversible changes to natural biodiversity that could occur if the risks of GMOs turn out to have been ignored or understated.

The Maldives is a party to the Cartagena Protocol on Biosafety.

### ***International Plant Protection Convention***

The Maldives has become a party to the International Plant Protection Convention (IPPC) as a step to protecting native plant species in the Maldives from the risk of diseases introduced by imported plant varieties. The Maldives adhered to the IPPC on 3 October 2006 and the Convention requires that certificates of phytosanitary condition and origin of consignments of plants and plant products be used for import and export of plants and plant materials. Contracting

parties have the full authority to regulate entry of plants and plant products and may prescribe restrictions on imports or prohibit importation of particular plants or plant products.

### *Convention on the Law of the Sea*

Despite certain difficulties, notably boundary issues, increasing options may further open up in the future to exercise certain rights within the 200 nautical mile Exclusive Economic Zone (EEZ), under the UN Convention on the Law of the Sea (UNCLOS III). UNCLOS came into force in 1994, a year after Guyana became the 60th state to sign the treaty and it represents a useful and broad umbrella agreement to guide the management and sustainable use of coastal water resources. For instance, UNCLOS III supports efforts to minimize coastal resource use conflicts and to alter the notion of the seas as a common property resource. The Maldives is a party to the Convention on the Law of the Sea.

### *Other International Instruments*

The Government of the Maldives also has legally binding commitments under the:

- Basel Convention on Transboundary Movement of Hazardous Wastes;
- United Nations Framework Convention on Climate Change;
- Kyoto Protocol to the UNFCCC
- Vienna Convention on the Protection of the Ozone Layer;
- Montreal Protocol on Substances that Deplete the Ozone Layer (including ratification of the 1989 London Amendments);

The Maldives is also considered acceding to other international agreements, such as the Convention on International Trade in Endangered Species (CITES); the Ramsar Convention on Wetlands; and the Bonn Convention on Migratory Species (CMS).

## The National Level

At the national level, two main laws have been developed to provide a framework to guide the sustainable use, management and conservation of the country's natural resources, and to protect these resources from degradation and over-exploitation. They are:

- Fisheries Law (1970)
- Environmental Protection and Preservation Act (1993)

The other laws that are relevant to biodiversity conservation include:

- Uninhabited Islands Law
- Tourism Law

### *Fisheries Law*

Official conservation efforts were first initiated during the 1970s. The approval of the Fisheries Law by the Citizen's Majlis in 1970 was an important step towards establishing a legal framework for biodiversity conservation at the national level. Under the Fisheries Law, regulations exist to protect marine resources, including turtles, whales, dolphins and certain fish. The Fisheries Law was subsequently reformulated during the mid 1980s to meet the challenges posed by the expansion of the fisheries industry and its position as one of the most important economic activities in the Maldives. Following reformulation, the law gained enhanced provisions for the conservation of living marine resources. The tenth clause of the Fisheries Law states:

“In the event of a special need for the conservation of any species of the living marine resources, the Ministry of Fisheries shall have the right to prohibit, for a specified period, the fishing, capturing or the taking of such species or the right to establish special sanctuaries from where such species may not be fished, captured or taken”.



The species based management measures for conservation of marine biodiversity is through the Fisheries Law (5/97). The protected marine species include dolphins, Napoleon Wrasse, whales, whale sharks, lobsters, turtles, giant clams, triton shells, and black coral.

The Fisheries law also bans the export of a number of marine species including: dolphin species, napoleon wrasse, Parrot fish, Puffer fish, Bigeye scad (under 6”), bait fish used in pole and line tuna fishery, Whales, Whale Sharks, Lobsters and lobster meat, Turtles and their products, Skates and rays, Eels, Triton shells, Trochus shells, all pearl oysters, all stony coral excluding organ pipe coral, black coral and all products of black coral.

### ***Environment Law***

The Environmental Protection and Preservation Act was approved by the Citizen's Majlis in April 1993. This law was important in bestowing the Environment Ministry with a wide range of statutory powers in the area of environmental regulation and enforcement. For instance, it empowered the Environment Ministry to draft guidelines for environmental protection and gave it responsibility for the identification and designation of protected areas and natural reserves. As a means to enforce environmental regulations, this act further empowered the Environment Ministry to levy fines of up to 100 million Rufiya (US\$10 million) in cases of breaches of the law.

Article 4 of Act 4/93 provides Environment Ministry with powers to declare protected areas. On 15<sup>th</sup> October 1995 15 sites were designated as protected sites. On 21st October 1999 10 additional sites were designated as protected sites. On 5th June 2006, three islands and a mangrove ecosystem were declared as protected sites. These areas have been identified for protection because of their outstanding diversity of corals, reef fish, sharks, rays and eels, as well as the existence of other organisms ranging from sponges and molluscs to bivalves. As protected areas, all extractive and human activities, including coral and sand mining, fishing, collecting, netting and anchoring are banned, with the exception of bait fishing. Catching bait fish is permitted in MPAs given its importance for local tuna fishing, however, the methods used for bait fishing in MPAs must not damage or harm any living organism. The location of Marine Protected Areas is illustrated in Map1.

A number of potential sites have already been identified, including islands, wetlands, natural heritage sites and other habitats of significant importance. Some of these sites have diverse birds populations, while others are uninhabited islands that serve as rookeries for sea turtles. These include Kottey and the lake in Addu Atoll, parts of Gan, as well as the lakes in Fuahmulah, and the Hithaadhoo Island of the Gaaf Alif Atoll.

The Government of the Maldives is currently examining options to extend marine protected area status to cover other parts of the archipelago. In addition, opportunities to establish terrestrial protected areas are being considered and some national parks may be designated in the near future.

A regulation on removal of vegetation and transfer of trees from one island to the other was issued by the Environment Ministry on 15 January 2006.

Clause 5 of the Environment Act 4/93 makes EIA mandatory for all development projects that will have a significant impact on the environment. EIA guidelines and procedures were first established in the Maldives in 1994. New EIA regulations were issued in May 2007. The EIA requirement is enforced for all development projects and economic sector investments by both private and public sectors. The key issues in the EIA system include, EIA auditing, monitoring of mitigation measures and ensuring community participation at all stages of the EIA process.

Article 7 of the Environment Protection Act (4/93) prohibits the disposal of wastes, oil and gases in a manner that will damage the environment. Wastes, oil and gases has to be disposed off in areas designated by the Government.

Article 8 of the Environment Protection Act (4/93) prohibits the disposal of hazardous wastes.

The Ministry of Environment, Energy and Water is currently developing a national framework for solid waste management in the Maldives. A national policy on solid waste management has been prepared and a national regulation on solid wastes is presently at draft stage.

### ***Law on Uninhabited Islands***

Terrestrial biodiversity is protected under Law on Uninhabited Islands. Timber on uninhabited islands may only be logged after obtaining written permission of the Ministry of Agriculture, and in the presence of a local government official and the party entrusted with the management of the island. In compensation for each coconut palm tree felled in such manner, the permit holder shall replant two palms in a place designated by the Agriculture Ministry. In the case of other plant and tree species, each unit felled shall be replaced by another.

The Directive No. (FA-E-2/29/98/06) of 5 February 1998 places a restriction on the felling of 20 plant and tree species except with the prior written consent of the Ministry.

Under Law No 21/89 the Agriculture Ministry has the mandate to declare as protected trees and plants over 50 years of age which are in danger or under threat of extinction.

Terrestrial vegetation on inhabited islands except Male' was under the jurisdiction of the Ministry of Atolls Development in accordance with Law No. 21/89. Agricultural biodiversity on land other than private land must be conserved and maintained in accordance with regulations established by the Atolls Ministry. The felling of trees and plants except those protected by the Agriculture Ministry on such land must be done in accordance with the advice of the Agriculture Ministry, and procedures established by the Atolls Ministry.

Further, the pruning of such trees for firewood must follow the advice of the Agriculture Ministry and prior permit from the island office. The law also stipulates allowed practices with respect to such trees and plants.

### ***Tourism Law***

The main law on tourism in the Maldives (Act no. 15/79) was passed by the Citizen's Majlis in November 1979, outlining the basic regulations for the resorts on registration and operation, and tax policies. The original law had seven clauses in it and amendments were made to the original law through law no: 11/80, 14/80, 4/82, 6/83 and 2/87. The present law (2/99) came into force on the first of November 1999.

With the Tourism Law as the basis, a number of regulations, standards and controls have been specified by the Ministry of Tourism and Civil Aviation for operations within the tourism sector.

The book of tourism regulations comprises of important regulatory measures including the Building Standards, Sanitation Standards, Disposal of Garbage, Carrying Capacity, Electricity Code and Tourist Behaviour.

A tourism planning permission has to be obtained from the Ministry of Tourism and Civil Aviation before undertaking any tourism related project. Such permission often requires a study of the environment and the likely impacts.

The Ministry of Tourism and Civil Aviation has released environmental regulations for tourist resort development and operation in 2006.

### ***Ban on Coral Mining***

Coral mining from house reef and atoll rim has been banned through a directive from President's Office dated 26 September 1990.

## Status of Conservation Measures

The main types of in situ conservation methods employed in the Maldives include:

- marine protected areas;
- uninhabited islands;
- resort islands (only 20% of land is used and the remaining 80% is left as wilderness);
- agricultural islands where wilderness areas have been demarcated; and
- areas protected by taboos (e.g. presence of jinni).

A Maldives Protected Areas System project was implemented from 2000 to 2004 to develop guidelines and build the capacity for protected areas management in the Maldives. The Integrated Reef Resources Management (IRRM) programme of the MRC also provides methodologies and systems for the sustainable use of marine biodiversity in the Maldives.

### ***National Strategy for Biodiversity Conservation***

The NBSAP of the Maldives was adopted in April 2001. The formulation of NBSAP was supported by the Global Environment Facility. The process for NBSAP involved a comprehensive assessment of the existing information on biodiversity in the Maldives and the carrying out of a participatory strategic planning process and the development of priorities for action on protecting biodiversity. The NBSAP adopted a comprehensive approach to integrate biodiversity conservation and sustainable utilization of biological resources into all areas of national planning, development, policy and administration. The NBSAP addresses protection and conservation of special habitats and ecosystems as well as species. Emphasis is placed on capacity building, strengthening of legislative and institutional frameworks, working through participatory approaches, and improving and disseminating knowledge while building awareness and competence at community level.

A review of the status of implementation of the NBSAP was undertaken in July 2006 jointly by the AEC project and ICCS project implemented by MEEW.

### ***Integration of Biodiversity Conservation in Development Planning***

Recognizing the important role the National Development Plans will play in shaping the development agenda and allocation of public financing, the UNDP/GEF funded Atoll Ecosystem Conservation Project implemented by the Ministry of Environment, Energy and Water brought together key stakeholders to ensure that biodiversity conservation is adequately addressed in the 7th NDP. The AEC project convened a special Working Group to review the sectoral roadmaps of the NDP7 and recommend policies and strategies to incorporate biodiversity conservation measures in the NDP7. Based on the outputs of the sessions of the Working Group a two-day Workshop on biodiversity conservation and the NDP7 attended by the key stakeholders was conducted. In the Workshop the participants reviewed the status of every action identified in the National Biodiversity Strategy and Action Plan (NBSAP). For all the strategies and actions from the NBSAP that are still relevant the participants checked if those strategies and actions were included in the NDP7 by the concerned agencies of the government. The participants deliberated on the strategies and actions that need to be included and made specific recommendations. These recommendations were forwarded to the Ministry of Planning and National Development for consideration by the Environment and Infrastructure Committee and the Economic Committee of the NDP7. The NDP7 contains several policies and strategies for conservation of biological diversity.

### ***Assessment of Biodiversity Resources***

No comprehensive assessment of the biodiversity in the Maldives has been undertaken. Studies undertaken are limited to commercially important species and to marine flora and fauna.

Under the GCRMN programme the MRC continues to monitor 14 transects of different reefs. Activities planned for 4-5 pilot sites for comprehensive socio-economic and biophysical monitoring. GIS introduced to facilitate data analysis.

MOFAMR and MRC has developed a full listing of the fish species in Maldivian waters.

MEEW has developed a listing of the biological diversity of bird species of the country. 5 endemic sub-species and 18 bird species under threat were identified.

The Maldives has a total enumeration system of reporting to the MOFAMR on marine species utilized commercially. The MOFAMR also has a monitoring system established for monitoring of reef species utilization, especially grouper species.



## Challenges

### LEGAL FRAMEWORK

National legal and regulatory framework is not adequate to address the sectoral conflicts and issues in biodiversity conservation. As with policy frameworks, legal framework is not harmonized across various sectors, leading to conflict, confusion, and difficulties in enforcement. The major conflicts between Environment Ministry and Fisheries Ministry are a good example of this. Newly emerging issues, such as access to genetic resources for commercial use and biosafety is not covered in national laws.

### INSTITUTIONAL MANDATES, JURISDICTIONS, CO-ORDINATION AND DECENTRALIZATION

A consequence of the multi-sectoral or cross cutting nature of issues associated with biodiversity conservation and use is that responsibility for biodiversity is often spread amongst a variety of agencies and institutions. In addition, a wide range of other sectoral agencies and institutions, as well as private and public organizations have responsibilities to carry out actions that have direct impacts on biodiversity.

This leads to considerable overlapping and duplication in responsibilities and activities, which in turn can cause confusion, conflict and inefficiency. Gaps in responsibility are also left. In addition to occurring between agencies and institutions, responsibilities are also confused between national and atoll levels. Success of the implementation of biodiversity conservation measures depends in many cases on the implementation at the atoll levels where people interact directly with biodiversity resources. A number of challenges remain in the decentralization of decision making powers and responsibilities.

Enhanced participation of non-governmental stakeholders, in particular local communities and NGOs in the assessment and management of biological resources is a key strategy to enhance the protection and sustainable use of biodiversity.

There is an urgent need for clarification of mandates, jurisdictions and roles of the various agencies involved in biodiversity. There is also an urgent need for mechanisms to coordinate



actions across agencies and institutions, including setting up and strengthening the role of the biodiversity focal points. Mechanisms to effectively decentralize decision making and management of biodiversity to the appropriate atoll levels, and to coordinate actions between the different levels is also needed. There is an urgent need to enable atoll offices to develop and implement local sustainable development policies which also address conservation and sustainable use of biological resources. Development of partnerships with NGOs, local businesses and other local actors whose activities directly impact biodiversity is a need.

## Decentralization and biodiversity conservation

A decentralised government consisting of island councils and atoll councils has become a national obligation by constitutional stipulation. It is also one of the core strategies outlined in the ruling Party's election manifesto. In March 2009 a bill was submitted to the Parliament, outlining major changes in the governance structure of the country including the introduction of provinces and the appointment of State Ministers to each province. However, before the Bill could be tabled, the Parliamentary elections were held on the 9th of May 2009.

The Schedule 2 of the 2008 Constitution of the Maldives prescribes the 21 administrative divisions (Hussain 2008). The 26 geographical atolls in the Maldives are grouped into 21 administrative divisions. These administrative areas are also referred to as atolls. The national capital Male' forms a separate administrative unit. There were 13 administrative regions according to historical records from the 18th century, and sub division of administrative regions took place in 1958, 1962 and 1984 (Luthfee 1995). A total of 1192 islands are found among the atolls (MPND 2008). Out of the 1192 islands, 194 are inhabited (MPND 2008) and 94 have been developed as tourist resorts by the end of year 2008 (MoT 2009).

The Government has grouped 21 administrative divisions into 7 provinces with the aim to make available basic utilities including electricity, water, sewerage and gas in each province at affordable prices (PO 2009). The 7 provinces and administrative atolls in each province are in Table 1.

**Table 1: The seven provinces and administrative atolls**

Province Local Name	English Name	Administrative Atolls	Capital	Population
Mathi-Uthuru	Upper North	Haa Alif, Haa Dhaalu, Shaviyani	Kulhudhuffushi	41672
Uthuru	North	Noonu, Raa, Baa, Lhaviyani	Felivaru	43539
Malé	Malé	Malé	Malé	103693
Medhu-Uthuru	North Central	Kaafu, Alifu Alifu, Alifu Dhaalu, Vaavu	Maafushi	31202
Medhu	Central	Meemu, Faafu, Dhaalu Atoll	Kudahuvadhoo	13442
Mathi-Dhekunu	Upper South	Thaa, Laamu	Gan	20483
Medhu-Dhekunu	South Central	Gaafu Alifu, Gaafu Dhaalu	Thinadhoo	19275
Dhekunu	South	Gnaviyani, Seenu	Hithadhoo	25662

A major debate is ongoing on the concept of decentralisation. The Bill on Decentralised Administration was accepted by the Parliament after preliminary discussions in August 2009. However, several concerns were raised by the opposition on the current Bill. The creation of the Provincial councils is deemed unconstitutional by some MPs citing that the constitution stipulates forming Atoll Councils for the 21 Administrative Atolls specified in Schedule 2 of the constitution. Some MPs express concern that the appointment of Provincial State Ministers will undermine the authority of elected Councillors. A parliamentary committee was appointed by procedure to study and re-draft the bill. The drafting committee has now resolved that the Province level is not to be included in the administrative structure for decentralisation. The Government, however, continues strengthening province offices and provincial administrations.

Public trust and confidence in having a democratic local governance system is diminishing because of the lack of a local government law. In the past, the system of governance in the atolls except for the constitutional provision regarding appointment of Atoll Chiefs was not based on law. Local governance was entirely based on presidential decrees, ministerial directives and regulations. Thus, there was no local accountability of government officials. As a result, there is strong demand for increased local autonomy at both island and atolls levels. Strong interactions and exchanges take place in response to the frustrations from the current centralised and bureaucratic procedures for even minor decisions. The new 2008 constitution provides for decentralisation of local governance. At present, the parliament is considering a bill on decentralisation of local governance. Even though the Constitution stipulated the deadline of July 2009 for the election of councillors to the local government, the elections are yet to be held.

There is lack of autonomy and representation in the capital Male'. The local administrative set-up for Male' Municipality is currently under the Ministry of Home Affairs. The Male' Municipality lacks autonomy and effective representation. Additionally, the island communities are becoming frustrated that residents in Male' get many development services such as road maintenance, harbour development and waste disposal free of charge while services have to be paid for in the atolls. There is an urgent need for an elected Mayor and a City Council for Male' under the overall legal framework for local governance in the country.

The spatial distribution of the population among 194 islands in 20 administrative atolls is a major challenge for local governance. A total of 59 islands have between 1000 and 500 people while 72 islands had a population of less than 500 people. Furthermore, the islands belong to natural atolls which form geographically distinct communities of people. These natural atolls vary enormously in size. The largest Huvadhu Atoll has an area of approximately 2800km<sup>2</sup> while the smallest Thoddoo Atoll has an area of 5.4km<sup>2</sup>. The larger atolls are approximately 50 km long from north to south and 30 km wide from east to west. The uneven distribution of population among atolls and the varying geographic size makes the assignment of responsibilities among island and atoll councils extremely complicated. For example, the island of Hithadhoo in Addu Atoll has a population larger than most atolls.

Fragmented decentralization is leading to wasting of resources. At the level of service delivery, sectors such as education, health, family, police and justice have already decentralised both functions and resources according to needs through deconcentration. Since the deconcentration approach chosen is not linked to the existing administrative set-up or to the proposed provinces, it creates new structures in service delivery and wasting of meagre resources at the atoll level.





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