

EUROPEAN COMMISSION

EIDHR – NEW Democracy and Human Rights

EU Election Expert Mission to the Maldives

FWC Benef 2008/162374

Final Report

19 November 2008



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I. EXECUTIVE SUMMARY	4
II. INTRODUCTION.....	8
III. BACKGROUND.....	9
A. POLITICAL CONTEXT	9
B. HUMAN RIGHTS	10
C. SEPARATION OF POWERS	12
IV. LEGAL FRAMEWORK FOR PRESIDENTIAL ELECTIONS	13
A. TIMEFRAME FOR ELECTIONS	13
B. APPLICABLE LEGISLATION	14
C. EVALUATION OF THE LEGAL FRAMEWORK FOR ELECTIONS	14
D. ELECTION SYSTEM.....	14
V. ELECTION ADMINISTRATION.....	15
A. STRUCTURE AND COMPOSITION	15
B. FUNCTIONING.....	16
C. CANDIDATE ELIGIBILITY AND REGISTRATION	17
D. VOTER REGISTRATION AND VOTER LISTS	17
E. THE ELECTION COMPLAINTS BUREAUX.....	21
VI. ELECTION CAMPAIGN	22
A. LEGAL FRAMEWORK FOR ELECTION CAMPAIGNING	22
B. PRESIDENTIAL ELECTION CAMPAIGN 2008.....	22
VII. THE MEDIA.....	24
A. LEGAL FRAMEWORK	24
B. CANDIDATES COVERAGE FOR THE 2008 ELECTIONS.....	24
VIII. COMPLAINTS AND APPEALS	25
IX. ELECTION OBSERVATION	27
X. FIRST AND SECOUND ROUND ELECTION DAYS.....	27
A. 8 OCTOBER (1ST ROUND).....	28
B. ANNOUNCEMENT OF RESULTS	29
C. ACTIVITY OF THE ELECTION COMMISSION (9-27 OCTOBER)	30
D. OBSERVATION OF THE ELECTION (28 OCTOBER).....	31
XI. THE 2009 PARLIAMENTARY ELECTIONS	32
XII. RECOMMENDATIONS	35
A. CIVIL AND POLITICAL RIGHTS	35
B. VOTER REGISTRATION AND VOTER LISTS	35
C. ELECTION ADMINISTRATION	35
D. ELECTION COMPLAINTS AND APPEALS.....	36

E. CAMPAIGN AND MEDIA	36
F. ELECTION DAY AND POLLING PROCEDURES	37
G. LEGISLATIVE ELECTIONS.....	37
H. OTHER	37
XIII. ANNEX A SHORT REPORT ON CIVIL SOCIETY IN MALE.....	39

This report has been prepared with the financial assistance of the European Commission. The views expressed herein are those of the consultants and therefore in no way reflect the official opinion of the Commission.

I. EXECUTIVE SUMMARY

In September 2008, the European Commission deployed a three person EU Election Expert Mission (EU EEM) to the Republic of the Maldives to assess the presidential elections. The EU EEM did not ‘observe’ the elections, but inter alia assessed the electoral framework against international standards and the work of the election administration.

The process of political reform in the Maldives began in 2004. In 2005 the People’s Majlis (Parliament) voted to allow the establishment of political parties and in March 2006 ‘the Road Map for the Reform Agenda’ was adopted. In September 2006, the Maldives acceded to the ICCPR. The adoption of a new Constitution on 7 August 2008 represented a milestone in the democratic development of the Maldives.

The Constitution requires that the first multi-party presidential elections be held before 10 October 2008. The process of drafting and adopting the Constitution dragged on beyond the timeframe originally foreseen. While the Elections Commission (EC) was appointed 34 days before the election, it could not begin its work in earnest until after the applicable legislation was passed in mid September. The 8 October election day was announced on 16 September, leaving just 21 days to organise the process.

The Constitution guarantees the civil and political rights necessary to conduct genuine elections. The election related legislation provides an adequate basis to conduct democratic elections, if its provisions are applied transparently and impartially. However, the legal deadlines set out in the Presidential Election Act do not correspond to the actual amount of time normally given to administer pre-election tasks properly.

The election was administered by a three-tiered election administration structure comprising the EC, Atoll Coordinating Committees (ACCs) some 396 Polling Committees (PCs). The appointment of party nominees to the Election Commission (EC) enhanced transparency, accountability and general confidence in the election administration. The EU EEM found that the EC functioned as a collegial body and that political considerations did not influence its decision making. However, the appointment of senior civil servants as ACC ‘focal points’ could have lessened the independence of these structures and some political parties complained that the ACC focal point de facto controlled the appointment of PC members.

The electoral timeframe presented the EC with enormous challenges, which were met with different degrees of success. The scale of the task facing the EC was magnified due to its relative inexperience and because it was compelled to undertake activities that would in many jurisdictions have been completed before elections were called e.g. registering voters. Other challenges included

logistical complications stemming from the topography of the Maldives, the obligation to organise voting facilities for citizens abroad, and a general lack of civic knowledge and experience of multi-party election processes.

In general, the EC went about its tasks energetically and sought to comply with its responsibilities in a generally transparent and professional manner. While the quality of the election process was certainly adversely affected by the limited time available, some shortcomings e.g. the reliability of the voter registers cannot be attributed solely to a shortage of time. The EC rarely held formal sessions or adopted formal written decisions to regulate organisational and procedural issues. Had any citizen objected to any EC action, in the absence of a written decision, he/she may have faced difficulty in filing a petition with the courts.

With the exception of the requirement that candidates are adherents to a specific religion (Sunni Muslim), the candidate eligibility and registration criteria are reasonable. The EC registered six presidential candidates: Maumoon Abdul Gayoom (candidate of the ruling *Dhivehi Rayyithunge Party* (DRP); Mohamed Nasheed (Maldivian Democratic Party); Qasim Ibrahim (*Jumhoree* (Republican) Party); independent candidate Hassan Saeed; Ibrahim Ismail (Social Liberal Party), and Umar Naseer (Islamic Democratic Party). This ensured the election was competitive and gave voters a genuine electoral choice.

Under the new legal arrangements, to participate in an election a citizen must be registered to vote. Most citizens were registered to vote in the island in which they are entered in the local civil register (i.e. their 'home island') However, the Maldives has a highly mobile population, and in fact many citizens actually reside on islands other than the one holding their civil registration e.g. in Male' or one of the resort islands. The General Elections Act provides that the EC should register electors who are away from their home island, enabling them to vote on the island where they will be on election day. This occurred between 18 and 27 September. After the completion of the process, the EC informed the EU EEM that it had re-registered some 37,000 persons.

On 8 October, it became apparent that the voter lists in some locations contained inaccuracies, in particular omissions of persons who should have been registered to vote. In a few islands, large numbers of persons were omitted from the lists. Other notable problems included polling stations receiving old versions of the lists, and instances where citizens' names appeared on the EC database (available for scrutiny on the website) but not on the voter lists distributed to polling stations. The EC was unable to satisfactorily explain why this problem occurred.

The legislation requires that, for the first time, voters must present personal identification documents to prove his/her identity before receiving a ballot. It was estimated that in mid-September – when the legislation was adopted – some 17,000 Maldivians had not been issued an official identity document, and thus potentially faced 'administrative disenfranchisement'. The Department for National Registration (DNR) put in place accelerated procedures to issue ID cards swiftly and from 23 September – 7 October it received 10,975 ID card applications and was able to issue some 9,500 ID cards. However, on election day some citizens were unable to vote as they were not in possession of a valid ID card.

Prior to the election, the EC established complaints offices at national, atoll and island levels. While the establishment of complaint bureaux was a good legal initiative, particularly in view of the limited number of courts available, in practice there was insufficient time to put in place effective procedures, and appoint and train staff. In addition, the bureaux were not adequately resourced, did not have sufficient capacity as call-handling centres and suffered from poor co-ordination with the

EC and government departments. One of the major problems was a general lack of clarity (in law or regulation) regarding the scope of their authority and jurisdiction.

The legislation provided sufficient guarantees for presidential candidates to undertake their campaigns without obstruction. However, presidential candidates could spend up to almost Euro 19 million on their campaigns. Such a high ceiling could have led to significant differences between candidates abilities to campaign on an equitable basis.

The ‘official’ campaign period prior to the first round began after the confirmation of the candidacies. It began on 29 September, and ended at 18.00 on 7 October, technically giving only nine days to campaign. Some candidates complained that period was too short. The EU EEM was not informed by either candidate’s campaign teams of any problems in organising events and while serious rivalry existed between the MDP and DRP supporters with a notable exceptions, the pre-election atmosphere prior to both election rounds remained generally calm.¹

On 20 October, the Election Commission (EC) publicly announced that it had received complaints that atoll chiefs, assistant atoll chiefs, senior officials of the atoll offices, island chiefs and civil servants intimidated or used their official positions to influence voters on 8 October and that it also received similar complaints in the run up to the 28 October run off. The Civil Service Commission (CSC) also expressed its concern that many civil servants and public employees were subject to undue influence in their electoral choices, that state resources were used in the ruling party’s election campaign, and that the state reacted differently towards public employees that were campaigning for the DRP on the one hand, and the MDP on the other.

Under a June 2008 agreement, since July, the State media (Television Maldives) and radio (Voice of the Maldives) granted free airtime to *political parties*. The election legislation requires the State media to provide free airtime to all *presidential candidates*. This began on 14 September. In addition, the legislation requires that *all* broadcasters provide an equitable amount of airtime to candidates. Prior to the first round, most candidates met by the EU EEM were generally positive about their level of media access. However, the MDP complained that prior to the second round TVM news broadcasts gave considerably more campaign coverage to President Gayoom than Mohamed Nasheed. If true, this would violate the applicable legislation.

The Constitution provides that a citizen may challenge an EC decision, or the results of an election, or legality of any other election-related matter, with the High Court. Petitions must be submitted to the High Court within 14 days after the official announcement of results and the Court must rule within 30 days. The Supreme Court has sole and final jurisdiction to determine all disputes concerning the qualification or disqualification, election, or status of a presidential candidate. Thus, post election appeals regarding the first round could actually be ruled upon after a second round is held. Various cases were filed with the courts. All were either dismissed or rejected on procedural grounds.

The legislation provides for election observation by political parties, candidates, non-government organizations registered in the Maldives, international organisations and individuals. Both election days were monitored by observers from diplomatic missions based in Colombo an ‘Observer Group’ from the Commonwealth, and some 100 volunteers from various Maldivian NGOs under the co-ordination of Transparency Maldives (TM). The 3-member EU Election Expert Mission (EU

¹ However, on 27 October, the eve of the second round, a young MDP campaign activist was fatally stabbed while handing out MDP campaign material, allegedly by DRP supporters.

EEM) visited polling stations in Male' and followed developments at the Election Commission as did a two person team from the United Nations.

In view of the serious time constraints faced by the election authorities, the election was reasonably well administered. However, various shortcomings were noted by the observer groups, most clearly regarding the reliability of the voter registers, problems in issuing ID cards to all citizens in advance of election day, unreliable ink stain (used to prevent multiple voting), slow processing of voters, specific problems related to voting by resort workers, and inadequate capacity of the National Election Complaints Bureau (NECB) to respond to these issues.

In late morning of election day, the EC considered cancelling the election. However, five of the six candidates wished to continue the process, although some were sharply critical of the organisation of the process. Later, the EC announced that citizens would be able to register to vote on election day if they could prove eligibility, and that polling would continue beyond 20.00 hrs. While the EC's actions diffused tensions, potentially it opened the door to post-election legal challenges, and increased the possibility of double voting - particularly in view of the problems with faulty ink stain. Following the decision, some observers noted a lack of uniformity in the PCs application of the new procedures. Long queues formed at some stations, where voting continued well after the appointed time to close polling stations.

Notwithstanding frustration associated with inaccuracies in the voter register, polling was largely conducted in a largely peaceful atmosphere, with only few public order incidents reported. Voters participated in large numbers. Observers did not encounter any obstruction of citizens' right to a free vote or any undue influence in their choices. The vote count was conducted transparently, and according to the correct procedures.

No candidate secured a majority of votes on 8 October. Thus a second round was required to determine the final election outcome. This took place on 28 October, in apparent contravention of article 22(m) of the Presidential Election Act which provides that a second round election should take place 10 days after the first round. The second round was contested by incumbent President Maumoon Abdul Gayoom, who won 40.6 per cent of the vote, and Mohamed Nasheed who won 25.1 per cent of the vote.

In view of the difficulties experienced in the first round, and the short lead time the EC had at its disposal, it is clear that the EC benefitted from the additional time to organise the second round. By 14 October, the EC had entered the details of all persons who had registered to vote on the first round. The EC informed the EU EEM that 10,445 citizens had registered to vote on 8 October. Subsequently this figure rose to 16,000 persons, nearly 10 per cent of all voters. Between the two election rounds, some 3,500 voters re-registered to vote at a location different from their permanent residence. After 8 October, the DNR received some 1,500 additional ID card applications and cleared the backlog of applications received prior to 8 October.

The 28 October election proceeded relatively smoothly and polling was conducted in a calm atmosphere. The organisation of the election was improved compared to 8 October. Additional staff member assigned to check electors' entry in the voter lists speeded up the processing of voters. However, electors at some polling stations were once again required to wait patiently for long periods before casting their votes. The ink used to mark voters' fingers was more reliable and DMOs did not report any problems with voters not being in possession of ID cards.

Problems with the voter lists were again noted, albeit mostly on a lesser scale than on 8 October. However, some locations still experienced serious problems with the accuracy of the voter lists.

Once again the names of some voters included in the EC's registration database did not appear on printed lists. The EU EEM was aware of some polling stations where the names of persons who had cast votes in the first round had been omitted from the list for the second round. As for the first round, many island bureaux were unable to contact the NECB due to congested phone lines. However, in contrast to 8 October, the NECB was able to keep open its doors to citizens who wished to complain in person. The Bureau received some 1,650 complaints, mostly regarding the voter lists. Some 80 per cent of complaints were resolved. The vote count was conducted quickly, transparently, and according to the correct procedures.

On 29 October, the EC announced final preliminary results, giving Mohamed Nasheed an 8 per cent margin of victory. Final results were announced on 1 November which gave Mr Nasheed 54.21 per cent of the vote.

The vote margins between the second and third placed candidates in the first round and the first and second placed candidates in the second round (both approximately 8 per cent), meant that the noted problems with the poll, most obviously the voter lists did not lead to any candidate challenging the results. This was down to good fortune. Had the election results been closer, the elections may have been much more contentious.

Legislative elections are due to be held before 15 February 2009. The EC informed the EU EEM that it anticipates calling for the election to be held in late January. The Constitution provides that each administrative unit establishes separate electoral constituencies. All MPs are elected in single mandate constituencies according to the 'first past the post' (FPTP) election system. The EC anticipates that there would be approximately 70 constituencies established. As at early November, the Bill on Constituencies has yet to be finalised. The boundary delimitation issue will present a significant challenge to the EC.

The issue of civil registration (legal residence) and 'temporary/actual residence' are likely to be of crucial importance in the parliamentary elections because the number legal residents is the key factor in determining how many constituencies an administrative unit is entitled to. Arrangements for *de facto*/temporary residents are of crucial importance because if citizens are attributed to a constituency based on their civil registration rather than their actual residence then the polling arrangements could become extraordinarily complicated - it is possible that polling stations may have to accommodate voters who are registered in many different constituencies.

Other legislation is required in advance of the 2009 parliamentary elections, e.g. the 'Parliamentary Election Act' (PaEA) and the 'Political Parties Act'. Certainly it would be beneficial if these acts were adopted well in advance of the election. The PaEA should detail the arrangements for registering candidates. If this falls to the EC, it will represent a serious task, in view of the number of constituencies and potential candidates. If the law delegates this to a lower level elections body e.g. a constituency level election committee, these will need to be established well in advance of the election, and their responsibilities set out in law.

If the election is called for 30 January, the EC will be required to publish the revised voter lists by 16 December. This presents an additional serious challenge.

II. INTRODUCTION

In November 2007, the Minister of Foreign Affairs invited the EU to send observers to follow the election process. The European Commission decided to deploy an EU Election Expert Mission (EU

EEM) to the Republic of the Maldives rather than a full-scale Election Observation Mission. The EU EEM consisted of a Legal Expert (Team Leader), an Election Expert, and a Training Expert. The EU EEM and the EU Technical Assistance Team, which was also deployed to the Maldives, operated under their separate specific mandates.

Following briefings in Brussels 12 September and in Colombo on 15-16 September, the EU EEM arrived in the Maldives on 17 September.² The EU EEM opened its Malé office on 22 September and remained in the Maldives until 6 November.

The EU EEM's overall objective was to contribute to transparency in the Maldives, and to enhance the EC's monitoring and reporting on political developments, in particular the 2008 Presidential Elections. Its specific objective was to provide analysis and reporting to the EC and EU Member States on the ongoing electoral processes, during and after the elections.³ Inter alia, EU EEM experts analysed the legal framework and the organisation of the process for compliance with international standards for democratic elections. The EU EEM also provided training for 22 election day observers from diplomatic missions based in Colombo.

The EU/EEM did not issue any public statement before or after elections, but it did provide input on the two EU Presidency declarations. Targeted recommendations can be found at the end of this report.

III. BACKGROUND

A. *POLITICAL CONTEXT*

In November 1978, Maumoon Abdul Gayoom succeeded Ibrahim Nasir as President of the Republic of Maldives. Since 1978, President Gayoom served six five-year presidential terms having won six 'referendum elections' in which he was the only candidate. He was, until recently, Asia's longest serving President.

During his rule, the political opposition criticised President Gayoom for his authoritarian style of rule and restrictions on human rights. Under the former Maldivian Constitutions, political parties were not permitted, the possibility for citizens to change their government was limited, and the executive had significant powers to influence parliament and the judiciary.

In June 2004, the President proposed wide-ranging constitutional reform. In the same year, a special Majlis (Assembly) began sitting to discuss the reform agenda. In June 2005, the People's Majlis voted unanimously to allow the registration of political parties as legal entities. In March 2006, the Road Map for the Reform Agenda was adopted. This included plans to strengthen the Maldives' system of governance, protect human rights, enhance the independence of the judiciary, liberalise the media and establish a multiparty political system. In September 2006, the Republic of Maldives acceded to the ICCPR and the optional protocol.⁴

A key component of the reform agenda was the commitment to hold multi-party presidential elections in 2008. A referendum on the future form of government (parliamentary versus

² The Training Expert arrived in the Maldives on 21 September 2008 and remained until 15 October. The Legal and Election Experts remained until 6 November.

³ The EU EEM issued four Interim Reports between 17 September and 6 November.

⁴ The Maldives entered a reservation to article 18 on freedom of religion or belief.

presidential system) was held in August 2007. Some 62 per cent of voters backed President Gayoom's proposal to institute a 'presidential system of government'. The vote was not observed internationally.

The adoption of a new Constitution on 7 August 2008 represented a milestone in the democratic development of the Maldives. Following the adoption of relevant primary legislation, the first multi-party presidential election in the Maldives, was scheduled for 8 October. The election was contested by six candidates: Maumoon Abdul Gayoom (candidate of the ruling *Dhivehi Rayyithunge Party* (DRP); Mohamed Nasheed MDP); Qasim Ibrahim (*Jumhoree* (Republican) Party); independent candidate Hassan Saeed; Ibrahim Ismail (Social Liberal Party), and Umar Naseer (Islamic Democratic Party).

The presidential election will be followed, no later than 15 February 2009, by legislative elections. It is also foreseen that local elections will take place in summer 2009.⁵

B. HUMAN RIGHTS

1.1 Free Political Association

Until recently, while political activity was permitted, citizens were not allowed to formally establish political parties. This changed on 2 June 2005, when the Majlis voted unanimously to permit the formation of parties. On 5 June, the 'Regulation on Political Parties' was adopted. This recognised parties' legal right to exist and established a mechanism for their registration.

To be 'initially' registered, parties must submit 50 signatures to the registering body. Within 60 days of applying for registration parties must register a minimum of 3,000 members (approximately 1.5 per cent of the number of registered voters) and receive the approval of its party constitution. The number of signatures required to form a party (3,000) is high in the context of the Maldives. (R) The Regulation requires the authorities to register requests to establish a political party within fifteen days.

The August 2008 Constitution (article 30.a) recognises the right of every citizen to establish and to participate in political parties. It also provides (article 170.f) that parties are registered by the Election Commission. A Political Parties Bill was originally submitted to the Majlis in February 2006. This was rejected in July 2006. A revised Bill was drafted in May 2008, and passed to the political parties for comments. However it was not debated by parliament prior to the election.⁶

Currently, 12 parties are registered: *Dhivehi Rayyithunge Party* (DRP); Islamic Democratic Party (IDP); Justice Party (*Adhaalath Party*) (AP); Maldivian Democratic Party (MDP); Maldives National Congress (MNC); Maldives Social Democratic Party (MSDP); National Alliance (*Gaumii Ithihaad*); People's Alliance (PA); People's Party (PP) ; Poverty Alleviating Party (PAP); Social Liberal Party (SLP); Republican Party (*Jumhoree Party*) (JP)

1.2 Civic Associations

The Associations Act (No. 1/2003) provides for the establishment of civic associations. Under Article 37.b, "if a person incorporates or operates an association without registering in accordance

⁵ The Election Commission informed the EU EEM that the local elections will take place in June, after the expiry of their mandate.

⁶ The Political Parties Act was one of eight pieces of legislation thought necessary for the holding of the presidential election.

with or in contradiction to [the] Act such a person shall be given a penalty of two to five years sentence in jail or banishment to another island or be placed under house arrest.”

The August 2008 Constitution (article 30.b) provides that “Everyone has the freedom to form associations and societies for economic, social, educational or cultural purposes”. (R)

Some 600 civil society organizations are registered in the Maldives. However, many are not active, and few operate countrywide. Only a small number are engaged in promoting civil and political rights. See Annex X.

2. Peaceful Assembly

The 2006 Regulation on Assemblies defines a gathering as a congregation of more than three people.⁷ It requires application forms to be submitted to police at least two weeks in advance of the planned event, and mandates a ministerial committee to decide where assemblies can be held. Some of these provisions place unreasonable limits on the freedom to assemble peacefully. However, the Regulation states that it is not permitted to deliberately impede or attempt to breakup an assembly in which the participants respect the applicable laws.

The 2008 Constitution (article 32) provides that “Everyone has the right to freedom of peaceful assembly without prior permission of the State”. Nevertheless, in order to protect the right during the election period, initially it was thought necessary to adopt a legal act on public assembly. This did not happen. However, the Constitution and the electoral legislation provided sufficient guarantees for presidential candidates to hold assemblies without undue restriction.

On 20 October, the Parliament held a first reading of the Freedom of Assembly Bill. It accepted the Bill and passed it to the Public Affairs Committee for review. Some MPs expressed their concern that provisions of the Bill do not respect the freedom of assembly guaranteed by article 32 of the Constitution. The media reported that the Bill defines an assembly as more than five people, limits the hours of assembly to 8am to 8pm, and specifies a wide range of places where assemblies cannot be held. It also requires those planning an assembly to inform police, and gives police the discretion to halt assemblies in advance. R

3. Expression, Opinion and the Press (Media)

Until recently, the freedom of expression, in particular media freedom, was limited in law and practice. However, under the 2006 Roadmap for Reform, the government committed itself to permitting independent media to function, and in 2007 the Ministry of Information issued licenses to seven private radio stations and gave permission for the establishment of three television stations. Since 2006, the authorities have considered defamation a civil matter, and have not applied provisions of the Penal Code (article 150-163), which could lead to penalties for defamation including ‘house imprisonment’ or exile. R

The 2008 Constitution guarantees the freedom of thought, opinion and expression⁸ (article 27); equal access to the state media (article 23(e)), and the right to free press and other means of communication, including the right to espouse, disseminate and publish news, information, views and ideas (article 28), although there is no specific prohibition on censorship). The Constitution requires the State media to provide equal access. However it does not require media to offer election

⁷ ‘Regulation on Strengthening the Right to Freedom of Assembly in the Maldives’ adopted 15 May 2006.

⁸ Article 27 provides “Everyone has the right to freedom of thought and the freedom to communicate opinions and expression in a manner that is not contrary to any tenet of Islam”.

candidates impartial treatment/representation i.e. to avoid bias for or against their candidacy, political programme or campaign. However, this issue may be covered in primary media legislation, which is to be adopted in due course. **R**

Until recently, the state media, TV Maldives (TVM), was the sole television network. In July 2008, TVM coverage began covering political parties' activities and offered them opportunities to air their views. After the relaxation of restrictions on independent media new broadcast media have been recently formed, including Future TV (launched 6 June), DhiTV (launched 1 July) and VTV⁹ (launched 5 September). The broadening of the number of media has offered citizens a much more diverse range of political information.

On 27 October, Parliament passed the Media Council Bill. Other relevant legislation, which will be adopted in due course includes: the Broadcasting Bill, and the Bill on Freedom of Expression, which received a second parliamentary reading on 21 October. The Printed Media Law has yet to be amended in line with the provisions of the new Constitution. No body had competence to hear media-related complaints or enforce the legal provisions during the 2008 elections. **R**

According to the Ministry of Information, once when the Broadcasting Bill is passed, a National Broadcasting Corporation will be created, amalgamating the state media (Television Maldives and the Voice of Maldives), allowing it to be re-established as a fully-fledged public service broadcaster enjoying editorial independence, independent management, and guaranteed funding.¹⁰

4. Women's Right to Participate in Public Life

According to the US State Department "For reasons of tradition and culture, relatively few women seek or are selected for public office."¹¹ In the January 2005 Majlis elections, two women were elected (out of 42 seats) and the President appointed three women MPs (from his quota of eight seats). Thirteen women served in the Special Majlis formed in 2005.

Under the 1998 Constitution, only men were permitted to seek election as President (article 34.c). The 2008 Constitution permits men and women to seek election as President. Even though women were eligible to contest to 2008 election, all candidates were men. However, one candidate, Ibrahim Ismail, had a female running mate.

C. SEPARATION OF POWERS

The August 2008 Constitution establishes State institutions based on the principle of separation of powers. However, the Maldives can be considered as a 'Presidential Republic', with the President enjoying the right to formulate fundamental policies of the State, and to submit policies to the institutions of Government. However, while the President appoints members of the Cabinet and presides over their meetings, his cabinet nominees must receive parliamentary approval. The Majlis can hold the executive to account by questioning and passing a non-confidence motion in any minister. The Majlis also has the power to impeach the President.

⁹ VTV is owned by Qasim Ibrahim, who was one of the presidential candidates.

¹⁰ 'Press Forward Maldives', Ministry of Information and Arts (2007)

¹¹ Maldives, Country Report on Human Rights Practices (2001), US Department of State, <http://www.state.gov/g/drl/rls/hrrpt/2001/sa/8232.htm>

All legislative power is vested in the People’s Majlis. The cabinet has the power to recommend draft bills and proposals to the President. These are then submitted to the Majlis for consideration. Bills passed by the Majlis require presidential assent before they become law.

The President is entitled to make a number of important appointments, including: the Attorney General, the Chief Justice, the judges of the Supreme Court, Auditor General and Prosecutor General. In addition, the President ‘constitutes’ the Judicial Service Commission. However, most of these appointments require the approval of a majority or a qualified majority of the Majlis¹² and parliament has the most important role in deciding the membership of the Elections Commission, the Civil Service Commission, the Human Rights Commission and Anti-Corruption Commission.

Judicial power is vested in the Supreme Court, the High Court, and Trial Courts. The Supreme Court is the highest judicial authority. The Constitution provides that the courts are independent and impartial. Both the Supreme Court and the High Court have jurisdiction to enquire into and rule on the constitutional validity of any statute enacted by the People’s Majlis.¹³

IV. LEGAL FRAMEWORK FOR PRESIDENTIAL ELECTIONS

A. TIMEFRAME FOR ELECTIONS

The process of drafting and adopting the Constitution dragged on beyond the timeframe originally foreseen. It was ratified on 7 August 2008 – relatively close to the expiry of President Gayoom’s mandate (11 November 2008). Article 301a provides that the presidential elections must be held before 10 October 2008,¹⁴ and article 292 stipulates that no amendment may be made to constitutional provisions until after the assumption of office by the new President and the new People’s Majlis. Thus, even though the time available to organise the elections was limited, it was not possible to postpone the process.

Before the election date could be announced, Parliament was required to adopt an entirely new legal framework for elections and appoint ‘interim’ State commissions and institutions: the Election Commission, the Judicial Services Commission, the Office of the Prosecutor and the Supreme Court.¹⁵

The most important pieces of primary legislation regulating the presidential election are: the General Elections Act, the Presidential Election Act and the Election Commission Act. These were all adopted between 25 August and 16 September. On 16 September, the newly formed Election Commission announced the 8 October as the election date, giving it just 21 days to make all election preparations.

Prior to the election, three political parties with candidates (the Social Liberal Party (SLP), the Republican Party, and the Islamic Democratic Party - IDP) expressed their view that insufficient time was available to hold elections that conformed to ‘international standards’, specifically the

¹² For example, the appointment of the Supreme Court must be supported by a majority of the Majlis members ‘present and voting’ and the appointment of the Auditor General requires the support of a majority of MPs.

¹³ The Supreme Court shall be the final authority on the interpretation of the Constitution, the law, or any other matter dealt with by a court of law.

¹⁴ In addition, article 110 provides that “Elections for the office of President shall be held within one hundred and twenty days to thirty days prior to the expiry of the existing presidential term”.

¹⁵ The first three bodies were appointed on 4 September 2008. The Supreme Court was appointed on 18 September 2008.

‘universality’ of the vote, (i.e. ensure voter registers were accurate). Conversely, the DRP, the MDP, and the independent candidate Hassan Saeed favoured conducting the election on schedule.

B. APPLICABLE LEGISLATION

The Elections Commission Act (ECA) details the functions, duties, powers, composition and qualification of the members of the Elections Commission (EC). The General Elections Act (GEA) sets out procedures for voter registration, election campaigning, voting, vote counting, announcing results, registering complaints, filing legal appeals, and election offenses and penalties. The Presidential Election Act (PEA) covers candidate nomination and registration, candidates rights and duties, access the State media, and the possible second round election. Importantly, the PEA revises (shortens) electoral deadlines set out in the GEA.

On 21 September, the EC adopted the Presidential Election Rules and Regulations (PERR). These supplement the primary legislation and elaborate important procedural details. The EC also adopted a Manual for Polling Committees, which sets out procedures, not contained in any law or regulation. The EC also adopted various public notices relevant to the holding of elections, although their legal status is unclear.

Two bills, previously thought necessary to the holding of democratic elections, the Freedom of Expression Bill and the Freedom of Assembly Bill were not adopted prior to the election.

C. EVALUATION OF THE LEGAL FRAMEWORK FOR ELECTIONS

The Constitution guarantees the civil and political rights necessary to conduct democratic elections. The election related legislation provides an adequate basis to conduct democratic elections, if its provisions are applied in a spirit of transparency and even-handedness. However, the necessity of meeting the constitutional deadline over-rode other considerations including applying best practice. Thus the legal deadlines set out in the Presidential Election Act do not correspond to the actual amount of time normally given to administer pre-election tasks properly.

Some legal provisions are vague e.g. regarding the composition and appointment of the Polling Committees and the jurisdiction of the EC Complaint Offices **R**. Furthermore, the deadlines for some activities may not be appropriate e.g. the possible hearing of election appeals by the Courts on the first round results after a possible second round has been held.

Nevertheless, overall the legal framework largely complies with international standards for democratic elections as set out in General Comment 25 on the ICCPR.

D. ELECTION SYSTEM

Until the adoption of the August 2008 Constitution, the People’s Majlis selected one presidential candidate who was approved through a national referendum. The new Constitution provides for multi-candidate presidential elections. To be elected, the winning candidate requires over 50 per cent of the votes cast. If no candidate secures this number of votes, a run-off election between the

two candidates with the highest number of votes must be held.¹⁶ Article 19 of the Presidential Election Act (PEA) provides that run-off election (second round) shall be held within twenty one days after the first election. However, the transitional provisions of the PEA requires that the second round shall be held no later than 10 days after the first round (article 22.m).

V. ELECTION ADMINISTRATION

A. STRUCTURE AND COMPOSITION

The current 5-member Elections Commission (EC) is an interim, independent body. All political parties were entitled to propose nominees to the EC, and the Majlis received seven nominations. On 4 September, it selected, by a two-thirds majority, nominees from the DRP, MDP, MSDP, PP and IDP.¹⁷ The EC elected Mr Mohamed Ibrahim (DRP nominee) as Chair and Mr Ahmed Shahid (MDP nominee) as Vice-Chair. Each of the members was assigned functional responsibilities (e.g. voter registration, operations, relations with political parties, etc). The EC will be re-appointed after the 2009 Majlis elections.

The appointment of party nominees enhanced transparency, accountability and general confidence in the election administration. While formally no party held a majority of EC members, some opposition party representatives complained that in practice the ruling DRP had a ‘working majority’. Nevertheless, the EU EEM found that the EC functioned as a collegial body and did not find the EC’s decision making rested on any partisan political consideration.

The Presidential Election Rules Regulation (PERR) provided that the 2008 presidential election would be administered by a three-tiered election administration structure comprising the EC and its Secretariat¹⁸, Atoll Coordinating Committees (ACCs) some 396 Polling Committees (PCs) of which 4 were located abroad.¹⁹ The PERR provide for an Advisory National Committee for Elections (ANCE), to support the EC.

ACCs were composed of one member appointed by the EC, one member from the Civil Service in the atoll (appointed by the EC), and one nominee from each candidate. In the first round ACCs had up to eight members, while in the second round they had four members. In Lamu and Addu atolls, the EU EEM found that the ACC member from the civil service in the atoll was the Deputy or Assistant Atoll Chief. This could have lessened the formal independence of the ACC from the local government authorities.²⁰ **R**

For the first round, each PC was required to have at least seven members (six main members and a reserve member). For the second round, the number of appointed PC members varied according to the number of electors registered in every polling place. Formally, all PC members were appointed by the EC. However, the PERR grants ACCs complete freedom to decide on actual PC composition. While the law does not grant parties the right to nominate PC members, because their nominees were represented on ACCs in theory they would have been able to nominate PC

¹⁶ If there are candidates in second position with an equal number of votes, then the run-off election is held among the top three candidates.

¹⁷ Formally, EC members are appointed by the President.

¹⁸ During the electoral period, the Vice-Chair served as the EC Secretary. A Secretary General was appointed on 1 November.

¹⁹ The polling stations were located in Trivandrum, Colombo, Singapore and Kuala Lumpur. For the 28 October second round, an additional polling station was established in London.

²⁰ It also found that the ACC member appointed by the EC was often not resident in the atoll, and joined the ACC only a few days before the elections.

members. After the first round, a number of PC members resigned their positions. The ACC was tasked with finding the new ‘additional’ PC members and replacements. Political parties were approached to propose *non-partisan* nominees. In the event that parties did not propose nominees (or their proposals were rejected), ACCs decided on the appointment of new members.

On 17 September, the EC began the process of recruiting ACCs and PCs. However, some committees were formed only very shortly before 8 October and some did not have a full compliment of members on election day, although all were able to function.

The MDP alleged that the member appointed to ACCs from the local civil service (the ‘focal point’) took decisions on PC membership without reference to the other ACC members, and that on occasions their PC nominees were not appointed. The actual political balance of PCs membership remained unclear and may well have varied from location to location. **R**

B. FUNCTIONING

While the Election Commission was appointed 34 days before the election, it could not begin its work in earnest until after the applicable legislation was passed. On 16 September, immediately after the Majlis adopted the PEA, the EC called for the presidential election to be held on 8 October. Thus, the election was held just 22 days after it was called. This presented the EC with enormous challenges, which were met with different degrees of success.

The scale of the task facing the EC was magnified due to its relative inexperience and because it was compelled to undertake activities that would in many jurisdictions have been completed before elections were called e.g. registering voters. The EC had very little lead time to plan and prepare for the process (e.g. re-staffing its Secretariat) before it was required to begin implementing the legal provisions. Other challenges included logistical complications stemming the topography of the Maldives, the obligation to organise voting facilities for citizens abroad, and a general lack of civic knowledge and experience of multi-party election processes.

In general, the EC went about its tasks energetically and sought to comply with its responsibilities in a generally professional manner. In the days after 16 September, *inter alia* the EC adopted the Presidential Election Rules and Regulations (PERR) – needed to complete the regulatory framework and ‘operationalise’ the legislation; conduct a re-registration of voters according to their place of actual residence as well as citizens residing abroad, and process the data; register candidates; appoint committees (national co-ordinating committee, atoll committees, etc); accredit observers and candidate representatives; adopt the Polling Manual; train PCs; conduct civic education, and organise the election logistics.

The quality of the election process was certainly adversely affected by the limited time available. While the EC sought to meet the tight legal deadlines imposed on it by the Majlis and the Constitution on occasion it had to extend administrative deadlines which it had itself imposed. However, some shortcomings cannot be attributed solely to a shortage of time e.g. the reliability of the voter registers, and some aspects of the organisation of the poll.

While the EC generally administered the election transparently, it rarely adopted formal decisions or held formal sessions to decide organisational and procedural issues. The absence of formal written EC Decisions meant that there was a lack of clarity regarding certain aspects of the process. **R** Moreover, had any citizen objected to any EC action, in the absence of a written decision, he/she may have faced difficulty in filing a petition with the courts.

The EC finalised the Polling Manual, which sets out voting, counting and result announcement procedures, extremely late. **R** This complicated the training of polling officials. Indeed, during period when PC trainers were receiving instruction, which took place shortly before the 8 October election, some procedures were being amended or added to the Manual.

The Constitution (article 170(g)) requires the EC “to educate and create awareness among the general public on the electoral process and its purpose”. The EC conducted a civic education campaign in TV and the printed media. However, the only didactical materials on display at polling stations were two posters: one with a sample of the ballot paper and one A-4 format monochrome poster explaining how to tick the candidate box. Nevertheless, in both rounds invalid votes amounted to only about 1 per cent of votes cast. However, some citizens were not aware of the location of their polling station **R**, or that they had to be in possession of an official form of identification. The voting process was complicated by the absence of voter lists on public display **R** and an uneven distribution of voters per polling station. **R**

C. CANDIDATE ELIGIBILITY AND REGISTRATION

To be eligible to contest the election, *inter alia* candidates must be: a Maldivian citizen; a Sunni Muslim; at least thirty-five years of age; not have been convicted of a criminal offence and sentenced to a term of more than twelve months,²¹ and not have been convicted of a ‘*hadd*’ offence.²² The President is elected for a five-year term. No person elected shall serve for more than two presidential terms in office; consecutive or otherwise. The provision that candidates must be a Sunni Muslim may not be compatible with international standards.

Presidential candidates may be nominated by a party, or self-nominated i.e. an ‘independent’. According to the Presidential Elections Act, all candidates must provide a financial deposit of MVR 40,000 (€2,250). Independent candidates must submit a list of 1,500 signatures given in support of his/her nomination. **(R - Regarding sufficiency of time to collect signatures – GC 25 point 17)** Signatures are not required of party backed candidates. All candidates are required to nominate a running-mate as Vice-Presidential candidate.²³

Six candidates filed their nomination papers on or before the legal deadline (21 September 2008). All were registered. This ensured the election was competitive and gave voters a genuine electoral choice. On 28 September the EC finalised the order of the ballot as follows: Qasim Ibrahim (JP); Maumoon Abdul Gayoom (DRP), Hassan Saeed (independent), Mohamed Nasheed (MDP), Ibrahim Ismail (SLP); Umar Naseer (IDP).

With the exception of the requirement that candidates are adherents to a specific religion, the candidate eligibility and registration criteria are reasonable.

D. VOTER REGISTRATION AND VOTER LISTS

1. Legal Framework

²¹ Unless a period of three years has elapsed since *his* release, or pardon for the offence for which *he* was sentenced

²² Under Shari’ a law there are specific offences know as ‘*hadd* offences’, covered by Shari’a law.

²³ The qualifications of office for the Vice President are the same as those for the President. If the office of the President becomes vacant for any reason, the Vice President succeeds to the Presidential Office.

The Constitution (article 26) provides that every Maldivian citizen aged eighteen years of age or older has the right to vote in elections, and in public referendums. Previously, only those aged 21 years or older had suffrage rights. All voters must be Sunni Muslims as this is a requirement of citizenship. This may contravene the ICCPR, although it should be noted that the Maldives registered a reservation regarding ICCPR, article 18, about which the UNHCHR expressed her ‘regret’.

Article 5.b of the General Elections Act (GEA) provides that “an individual who has been convicted of a criminal offence and sentenced to imprisonment for a period of more than 5 years and who is serving that sentence shall be exempted from the right to vote in elections”. This provision was challenged in the High Court, which on 2 October, struck down the provision on the grounds that it was a violation of constitutional rights granted to all citizens. For the first time, polling arrangements were provided for citizens residing overseas (albeit at selected locations). This required the electoral registration of citizens abroad. However, no specific arrangements were made for homebound or hospitalised persons to vote. **(R)** It should be noted that point 11 of General Comment 25 provides that “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right”.

In previous elections, citizens could vote in any location without the need to register. Under the new legal arrangements, to participate in an election a citizen must be registered to vote. He/she may only be registered to vote at one location and must cast his/her vote at that place. Most citizens were registered to vote in the island in which they are entered in the local civil register (i.e. their place of legal residence). Civil registers are maintained in each of the 192 inhabited islands by the Island Office (local administration). The civil register should contain the details of all residents on a particular island. However, the Maldives has a highly mobile population, and in fact many citizens actually reside on islands other than the one holding their civil registration. Indeed, it is estimated that of Male’s actual population of some 103,000 less than half are formally registered with the municipal authority as Male’ residents.²⁴

The GEA (article 12.a) stipulates that “An elector who will not be in the island of which has been entered as his permanent address in the Register of Electors, and who wishes to vote in the election, should inform to the Election Commission [...] where he will be on the date of the election”. According to the Constitution, (article 170.b), the EC is responsible for the ‘preparation, maintenance and updating of electoral rolls’ (registers).

2. Voter Registration Prior to the 8 October Election

The system of voter registration in the Maldives is a combination of the ‘passive citizen model’ (for citizens who actually reside in the place of their civil residence), and the ‘active citizen model’ (for citizens who reside in locations other than the place of their civil registration). Prior to the expiry of its mandate, the former EC compiled voter registers based on the civil registration data held by Island Offices and also compiled voter lists for electors working in tourist resorts.²⁵ The data was made publicly available on 31 July. However, initially it was only available in the Latin script, which many Maldivians cannot read. **(R)** It was publicised (on the internet) in Dhivehi only on 2 October.

The new EC was legally obliged to undertake a re-registration of electors according to their actual residence. This commenced on 18 September 2008. It was due to be concluded by 25 September,

²⁴ The EU EEM was informed that the Law on [Civil] Registration requires that a citizen is resident for five years in a location before he/she may apply for inscription in the local civil register. The Law on Registration may require future amendment to ensure it is compatible with the terms of the new Constitution (article 41, freedom of movement and establishment).

²⁵ See “TEAM Says Tourism Staff Could Be Disenfranchised” (23 September), www.minivannews.com

but was extended until 27 September. The compressed timeframe for registering voters certainly contributed to problems witnessed on 8 October. However, some questions remain unanswered, for example why the names of some electors appeared on the electronic registration database, but not on printed lists – in both election rounds.

The legislation and the PERR do not specifically provide that citizens must submit their registration application in person. **R** Unusually, two political parties (the MDP and the DRP) were actively involved in gathering citizens' data and submitting registration forms to the authorities.²⁶ The appropriateness of this practice was questioned by some other parties.

The EC requested the management of each tourist resort to compile a list of Maldivian citizens who would be working on the resort island on the day of the election. In most cases, resort workers voted at polling stations located in the closest inhabited island. However, polling stations were established in 13 resorts. The Tourism Employees' Association of Maldives (TEAM) estimated that up to 30,000 Maldivians work in the tourism sector. It expressed its concern over a lack of information from the EC on the modalities for registering resort workers, and in particular crew of 'safari boats' and expressed a concern that some of these persons could face disenfranchisement. One presidential candidate expressed his concern that the registration process was carried out by the resort management rather than state or electoral officials.²⁷ **R**

The processing of the registration data was time consuming. In some regards, the EC's policies on voter registration were not always clear e.g. in the case of a re-registration, whether to remove the original entry from the register; the modalities for displaying updated information at island level, and the form in which parties were to receive copies of the voter lists.²⁸ **R** After the completion of the process, the EC informed the EU EEM that it had re-registered some 37,000 persons, of which 25,000 were *de facto* residents of Male', while the remainder were *de facto* resident on other islands (including 'factory' islands and tourist resorts) as well as abroad.

On 2 October, the EC uploaded the voter register to its website, enabling citizens to check their entries and apply for correction, if required.²⁹ In many cases, however, voter lists were not publicly displayed, as required by law. In many cases, Island Offices only received copies of the printed voter lists on 7 October, giving them very little time to check their accuracy.

While the EC and Department of National Registration (DNR) claimed that the data in the voter register had been verified the database of ID cards (maintained by the DNR)³⁰, prior to 8 October the two complete databases were not compared to identify possible inconsistencies.³¹ Instead, only individual entries in the voter register were checked against the DNR database. **R**

At this stage, the quality of the lists was 'an unknown'. On 4 October, one member of the EC publicly stated "irregularities" had been found in the voter lists which could lead to multiple voting. He claimed that the lists were "influenced by some atoll chiefs who had other interests" and that the lists contained names of deceased persons and double registrations (in some cases with two

²⁶ Applications could also be made in person at registration centres, by fax, or by e-mail.

²⁷ Minivan News, op cit

²⁸ The MDP complained to the EU EEM, that it did not receive a copy of the voter list, but simply a list detailing the number of registered voters at polling stations. The EC had previously informed the EU EEM that parties (that requested), would receive a copy of the voter list without the ID card numbers.

²⁹ However, there was a delay in uploading the data for the tourist resorts.

³⁰ To identify possible duplicates by checking the ID card numbers matched on both databases.

³¹ This verification could possibly have identified (i) any person listed in the DNR database who did not appear on the voter register, and (ii) person on the voter register who, according to the DNR database had not been issued with an ID card (i.e. a probable erroneous entry).

different ID card numbers).³² The other four EC members all acknowledged errors in voter lists, mostly caused by inaccuracies in the original source data provided by local Island Offices and the Male' municipality to the former EC. According to the EC, prior to the 8 October election 208,252 electors were registered to vote.

On 8 October, it became apparent that the voter lists in some locations contained inaccuracies, in particular omissions of persons who should have been registered to vote. In a few islands, large numbers of persons were omitted from the lists e.g. Hulhumale and Villingili Islands (North Male' atoll), where hundreds of electors were omitted. Other notable problems included polling stations receiving old versions of the lists, and cases where citizens' details appeared on the EC database (available for scrutiny on the website) but not on the printed lists distributed to polling stations. The EC was unable to provide a satisfactory explanation as to why this problem occurred. **R**

3. Identity Cards

The GEA (article 50.a) requires that, for the first time, voters must present personal identification documents to prove his/her identity before receiving a ballot.³³ It was estimated that in mid-September – when the GEA was adopted – some 17,000 Maldivians had not been issued an official identity document, and thus potentially faced 'administrative disenfranchisement'. In addition, some 6,000 citizens were in possession of an expired ID card.

The national identity card system is maintained by the Department of National Registration (DNR). In the run up to the election, the DNR despatched mobile teams (based in the atoll capitals) to the islands to receive ID card applications and to return newly issued ID cards to citizens. The DNR also put in place accelerated procedures to issue ID cards swiftly. Parliament acted to alter the regulations such that expired cards were considered sufficient to prove a citizen's identity and thus allow him/her to vote.

On 8 October, the DNR informed the EU EEM that since 23 September it had received 10,975 ID card applications and that following verification some 9,500 cards had been 'issued'.³⁴ The DNR also informed the EU EEM that some batches of applications were received only shortly before the election day and that it became aware of other batches that had been overlooked.³⁵ These factors together with the late and unanticipated decision by the High Court to permit all prisoners to vote (some 800+ persons) seriously stretched the DNR's capacity. Nevertheless, the DNR was successful in issuing ID cards to the large majority of applicants.

On 22 October, the EU EEM was informed that 213,078 citizens (aged 18 or over on 28 October) have been attributed an ID card number.³⁶ This is some 5,000 higher than the number of registered voters.³⁷ As at 21 October, 199,408 citizens had been issued with a 'new series' ID card. While this figure is some eight thousand lower than the number of registered voters, some 'old series' ID cards are still valid.³⁸

³² See: "Elections Commission Member Slates Own Institution", 4 October, www.minivannews.com

³³ The GEA provides that the national identity card, Maldivian passport or a valid driver's license are valid ID documents.

³⁴ This figure corresponds to the number printed, but it is not clear whether all of these cards were received by citizens.

³⁵ At the time of the meeting, the DNR was aware of 946 applications that had not even been entered into the system (the first stage of issuing an ID card).

³⁶ All citizens are given an ID number regardless of whether they actually apply for an ID card.

³⁷ This figure includes an unknown number of deceased persons, who may or may not be also included in the voter register, and the DNR's database may be more prone to duplicate entries than the voter register. The possibility of double entries arises, because of the design of the database and human error during the process of entering data from handwritten forms into the electronic database.

³⁸ The old series ID cards used the same numbering system as the 'new series' cards. The issue records for old ID cards are not computerized, and so it is not possible to know exactly how many are still valid. Persons with expired ID cards from this series

E. THE ELECTION COMPLAINTS BUREAUX

The GEA (article 62) requires the EC to “establish a mechanism to receive and expeditiously deal with complaints from individuals”. The PERR (article 24.a), provides that before, on and after election day, electoral complaints can be filed at “complaints bureaux” to be established at national, atoll and island levels. Complaints Bureaux should have receive administrative support from the EC, but had complete authority in their decision making.

The PERR provides that the National Electoral Complaints Bureau (NECB) is composed of three lawyers with extensive constitutional knowledge, and either two civil servants or two non-partisan citizens. The NECB was supported by a team staff to receive complaints. The Atoll Election Complaints Bureaux consisted of three members: one appointed by the ACC, a female member appointed by the Atoll Committee, and a senior civil servant. Island Election Complaints Bureaux consisted of three members: a male and a female member from the Island Development Committee and a senior civil servant.

The bureaux should have been established 10 days before the election and open to receive complaints seven days before and nine days after the election. While all were functional by election day, some were only formed very close to 8 October. Frequently island and atoll offices did not receive sufficient training and consequently had little idea of their role, procedures, or the scope of jurisdiction.³⁹ **R**

While the establishment of complaint bureaux was a good legal initiative, particularly in view of the limited number of courts available, the complaints handling system did not function as intended. In practice there was insufficient time to put in place effective procedures, and appoint and train staff. In addition, the bureaux were not adequately resourced, did not have sufficient capacity as call-handling centres⁴⁰ and suffered from poor co-ordination with the EC and government departments. One of the major problems was a general lack of clarity (in law or regulation) regarding the scope of their authority and jurisdiction. **R** In practice, the island and atoll offices simply served as a channel to pass complaints to the NECB.

On 8 October, the NECB received a large number of complaints directly from citizens whose names did not appear on the printed voter lists. It also received many enquiries from island and atoll complaints bureaux. The NECB had insufficient capacity and moreover was not in a position to offer remedy as it had not been given access to information databases (such as the voter registry or the DNR’s database of ID cards). As election day progressed, discontent voters began to congregate at the NECB offices and tensions rose. Around noon, the NECB closed its doors to persons wishing to make complaints in person and the police cordoned off the area around its premises. However, the NECB continued to receive calls from citizens and referrals from island and atoll offices. The NECB registered 1,168 complaints and enquiries on the 8 October, mostly concerning voter registry issues. It is believed that the number was limited by the NECB’s capacity to receive complaints.

are able to vote. A few citizens are in possession of ID cards which pre-date even the old series cards. These documents are no longer valid.

³⁹ During field visits, the EU EEM found that Island Complaints Offices had not been well-prepared for their tasks and in some cases had not even received and written guidance on their tasks prior to 8 October. Some training did take place through teleconferencing and by the second election round the complaints bureaux had received written instructions.

⁴⁰ In both election rounds the NECB had only five telephone lines in operation. On 28 October, it had 10 staff working in two shifts. Some 630 island and atoll complaints offices were appointed. This caused a bottleneck, as in many cases the island bureaux simply tried to pass the complaints upwards to the NECB.

The EC anticipated that the volume of complaints it would receive for the second round would be significantly lower than on 8 October, as it believed it had, to a large extent, addressed the problems with the voter registers. For the second round, the NECB was granted access to the voter registration and DNR databases. As for the first round, many island bureaux were unable to contact the NECB due to congested phone lines. However, in contrast to 8 October, the NECB was able to keep open its doors to citizens who wished to complain in person, although processing each complainant's case proceeded slowly. On 28 October, the NECB received some 1,650 complaints, again mostly regarding problems with the voter registers. Overall, 80 per cent of complaints were resolved, enabling citizens to vote.

VI. ELECTION CAMPAIGN

A. LEGAL FRAMEWORK FOR ELECTION CAMPAIGNING

The Chapter on Fundamental Freedoms, incorporated into the Constitution, and the provisions of the elections-related legislation, generally provided sufficient guarantees that presidential candidates can undertake their campaigns without obstruction. The GEA specifically provides that candidates have the right to campaign (until 18.00 hrs on the day before the election). *Inter alia*, candidates are permitted to meet and speak with electors; hold peaceful assemblies, use the media, send letters to the electorate of the electoral constituency or distribute photos, stickers or writings or display such items and place advertisements. The PERR (article 11) contains a 'Code of Ethics' for candidate that establishes a reasonable basis for mutual respect during the campaign. However, the inclusion of some *restrictions* e.g. 'that no person should be forced or threatened to vote or not vote for a particular candidate' and that 'there should be no bribing with money or gifts, nor aiding financially for voting or not voting for a particular candidate', appear superfluous as these are criminal offenses. **R**

The EC has the responsibility to receive and rule on complaints regarding candidates' campaigns. However, the EC (or the complaints bureaux) may not have the authority to directly impose sanctions.

Every candidate is required to open a bank account for campaign expenditure. All financial contributions received by the candidate in relation to the election should also be deposited in the same account. Contributions should only be received by the candidate in person or by his/her official election agent. Candidate may only spend on their campaigns an amount equivalent to MVR 1500 per eligible elector in the electoral constituency in which he/she is standing. In parliamentary elections this would amount to ca. MVR 7,500,000 (Euro 450,000) and in presidential elections MVR 312 million (Euro 18.9 million). Such a high campaign spending ceiling in presidential elections could lead to highly disproportionate spending by the various candidates, and militates against the purpose of expenditure ceilings – namely to create a level field of contest and to avoid distorting electors choices. **R** Candidates are required to disclose the names of all campaign donors and provide a financial report within 60 days of the election. The EC is required to make sure these reports are open to public inspection.

B. PRESIDENTIAL ELECTION CAMPAIGN 2008

Unlike a full-fledged EU Election Observation Mission, the EU EEM did not have the resources necessary to assess the election campaign. However, the following observations and findings are relevant.

1. First Round

The ‘official’ campaign period prior to the first round began after the confirmation of the candidacies. It began on 29 September, and ended at 18.00 on 7 October, technically giving only nine days to campaign. Some candidates complained that period was too short. Nevertheless, most candidates began their campaigns several weeks or months before the election.

Campaign material was prominently on display in Male’, with posters for DRP, MDP and JP candidates most visible. Most candidates travelled extensively in the atolls and islands and held numerous rallies, generally without interference or major incident. However, claims were publicly aired that President Gayoom illegitimately used State resources to support his campaign⁴¹ and that vote buying schemes were in operation.⁴²

2. Second Round

After the first round, three opposition candidates: Hassan Saeed; Qasim Ibrahim and Ibrahim Ismail pledged to support Mohamed Nasheed. On 14 October, these candidates formed an alliance with the MDP: ‘*Wathan Edhey Gothah*’ (As the Nation Wishes).⁴³ Umar Naseer did not endorse either candidate and suggested his supporters vote according to their conscience.

The two second round candidates had 18 days to conduct their campaigns (from 10-27 October). The second round election campaign was keenly contested. The EU EEM was not informed by either candidate’s campaign teams of any problems in organising events.

3. Campaign Environment

While serious rivalry existed between the supporters of the candidates, in particular the MDP and DRP, with a few exceptions, the pre-election atmosphere remained generally calm. However, on 13 October, one of Mr Qasim’s bodyguards was injured by a knife at a campaign event, and on 27 October, the eve of the second round, a young MDP campaign activist was fatally stabbed while handing out MDP campaign material, allegedly by DRP supporters.⁴⁴

MDP officials appeared to lack confidence in the integrity of the electoral process and prior to the first round voiced their concerns to the EU EEM regarding: the possibility of so-called ‘carousel voting’ (using a pre-marked ballot, and retaining the blank ballot), the quality of the ink stain (used to prevent double voting), intimidation of civil servants to support the ruling party candidate, and pressure by resort owners to influence the electoral choices of their staff. Prior to the second round the MDP complained of the active participation of ministers and civil servants and misuse of state resources in President Gayoom’s campaign, and pressure on civil servants and public employees not to attend MDP campaign events,⁴⁵ and vote buying.

⁴¹ See: ‘DRP Campaign Admits Using State Funds’ Minivan news (17 August 2008), www.minivannews.com

⁴² See: ‘Opposition Politicians Say Bribery Widespread’, Minivan news (28 September 2008), www.minivannews.com

⁴³ The alliance includes the Adhaalath Party, which did not field a candidate in the election.

⁴⁴ See “Fifteen-Year-Old Critical After Gang Attack On Election Eve” (27 October, 2008), and “15 Year Old Dies After Election Eve Stabbing” (1 November, 2008) www.minivannews.com

⁴⁵ On 15 October, the media reported that “Nurses at the country’s largest public hospital say they were warned against attending an industry meeting planned by the MDP” The EU EEM also received a complaint by the MDP that they were unable to organise a leaflet distribution aimed at explaining the MDPs education policy outside a school building in Male’.

The Civil Service Commission (CSC) informed the EU EEM that there was a well publicised general instruction that civil servants should not engage in any overt political activity.⁴⁶ Nevertheless, it was aware that some civil servants were actively engaged in election campaigning.⁴⁷ A majority of the five-member Commission expressed a concern that 30,000 civil servants and public employees were being subject to undue influence and pressure regarding their electoral choices by their superiors.⁴⁸ The Election Commission (EC) publicly announced that it had received complaints that atoll chiefs, assistant atoll chiefs, senior officials of the atoll offices, island chiefs and civil servants intimidated or used their official positions to influence voters on 8 October and that it also received similar complaints in the run up to the 28 October run off.⁴⁹ The CSC also cited examples of differential treatment by the authorities towards public employees that were campaigning for the DRP on the one hand, and the MDP on the other.⁵⁰

VII. THE MEDIA

A. LEGAL FRAMEWORK

On 25 June 2008, the State broadcaster (Television Maldives (TVM) and the Voice of Maldives) entered into an agreement with political parties on its coverage of the 2008 presidential election, and since July, the State media granted free airtime to political parties.

Article 30 of the GEA regulates campaigning in the media. *Inter alia*, it requires *all* broadcasters in the Maldives to provide airtime to presidential candidates to campaign through advertising or other programs on an equitable basis. Broadcasters may not give or sell to one candidate time that exceeds by 10 per cent the time given to other candidates.⁵¹ Article 13 of the PEA provides that the “state broadcasting authorities shall give free airtime (in accordance with the manner determined and publicized by them, without discriminating) to all presidential candidates.

B. CANDIDATES COVERAGE FOR THE 2008 ELECTIONS

The EU EEM did not conduct any media monitoring. Hence it was not possible to assess the total time devoted to the candidates in the State and privately owned media, the balance of reporting on the candidates’ campaigns and the diversity of information available to electors.

⁴⁶ The CSC informed the EU EEM that commissioners had met with some 90 per cent of civil servants in Maldives to explain what it means to be politically neutral. Public announcements on this issue are posted in every Island Office.

⁴⁷ Since the inception of its work until mid-October the CSC received 41 complaints regarding inappropriate political activity by civil servants. Of these, proof of civil servants’ involvement in political activity was submitted in eight cases, of which four evidenced inappropriate behaviour. However, the CSC had received many more verbal reports of problems, but citizens were unwilling to make formal complaints – particularly in small close-knit communities. The CSC reported an exponential increase in the number of complaints it had received during the campaign period.

⁴⁸ This is in direct contravention of point 19 of General Comment 25 on the ICCPR which provides that voters “should be free to support or oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector’s will”.

⁴⁹ The EC reminded the public that it is illegal to “to exert pressure or influence to force the voting public to vote in a specific manner” and that vote buying is also prohibited. See “Reports on voting irregularities received – EC” (Miadhu News, op cit)

⁵⁰ The CSC cited the example where the Managing Director of MIFCO, a public corporation was dismissed after public comments supporting the MDP while another head of a public corporation is serving as an election campaign manager for the DRP.

⁵¹ Thus, in a second round, neither of the candidates should receive more than 55% of the airtime devoted to the two candidates.

On 14 September, prospective presidential candidates were granted free airtime on (Television Maldives) and radio (Voice of the Maldives).⁵² Prior to the first round, most candidates met by the EU EEM were generally positive about their level of media access. However, Hassan Saeed commented that while parties received access to State media since July, as an independent candidate, he was not entitled to receive free airtime on State TV until 14 September.

Prior to the second round, the media covered the candidates' campaign activity in news broadcasts and special election related slots. However, the MDP complained to the EU EEM that TVM news broadcasts gave considerably more coverage to his visits to island communities etc than for Mohamed Nasheed. If true, this would violate article 30 of the General Elections Act.

Reporters without Borders (RSF) measured MTV's allocation of air time systematically during the 10 days prior to today's polling. In a press release of 28 October, RSF stated "We hail the government's efforts to guarantee a satisfactory level of freedom and safety for both Maldivian and foreign journalists," and added "We nonetheless regret that it did not go the whole way by ensuring the ruling party and the opposition got the same amount of time on the public TV station." The organisation listed a number of occasions where the President Gayoom/the government/DRP received quantitatively more airtime than Mohamed Nasheed/MDP.⁵³ **(R)**

VIII. COMPLAINTS AND APPEALS

1. The Courts

The Constitution provides that a citizen may challenge an EC decision, or the results of an election, or legality of *any other* election-related matter, by filing a petition with the High Court (article 172.a).⁵⁴ The GEA provides that in addition to citizens, petitions can be filed by parties, candidates, observers and election officials. However, where an individual commits a criminal offence in contravention of the law or PERR, only the EC has the discretion to refer the matter to the High Court through the Prosecutor General.

Petitions must be submitted to the High Court within 14 days after the official announcement of results (article 64.c). The Court must rule within 30 days (GEA article 66.b). Thus, a post election appeal regarding the first round could actually be ruled upon after a second round is held, and in the case of a petition regarding a second round, possibly after the swearing in of the new President. **(R)**

The High Court can invalidate an election results *in a voting area* where it is proven that an irregularity took place, and the court determines that due to that, the results of the election could change. In such cases, the election for that area should be repeated. **(R)**

The Supreme Court⁵⁵ has sole and *final jurisdiction* to determine all disputes concerning the qualification or disqualification, election, status, of a presidential candidate or running mate or

⁵² The Ministry of Legal Reform and Information announced that "the move was made ahead of the Elections Commission's announcement of eligible presidential candidates, to give access to the state media to individual candidates ahead of the polls. Candidates are allocated three 15-minute slots daily on rotation basis while political parties get one 15-minute slot a day" (Maldives Reform Process, Report 21, 18 September 2008).

⁵³ http://www.rsf.org/article.php3?id_article=29114

⁵⁴ Prior to the 8 October election, the EU EEM requested to meet the High Court to discuss its role in hearing election-related court cases. On 7 October, the High Court wrote to the EU EEM declining its meeting request. A second request to meet the Court was sent on 13 October. On 16 October the EU EEM requested to meet the Supreme Court, and on 20 October it requested to meet the Supreme Judicial Council. The EU EEM did not receive a response from any of these bodies.

⁵⁵ The interim Supreme Court was appointed on 18 September. Opposition MPs walked out of the parliamentary session which approved the President's nominees in protest at the lack of information on the judges.

removal of the President by the People’s Majlis (article 113). Thus, it is possible to appeal certain High Court rulings to the Supreme Court. The Commissioner for Legal Reform informed the EU EEM that the Regulation on the Supreme Court⁵⁶ provides that appeals on High Court rulings must be filed with the Supreme Court within 90 days. Importantly, there is no deadline by which the Supreme Court must issue a ruling on the appeal. (R)

The Supreme Court has sole jurisdiction to hear appeals against the decision of the EC to reject a person’s application to register as a candidate. Appeals should be submitted within five days and the Court must issue its ruling within seven days.

All Maldivian citizens aged at least 18 years and political parties have the right to file complaints raise complaints regarding the voter registers. Complaints must be filed with the EC within 10 days of publishing the register in the official gazette. The EC must notify the complainant in writing of the reasons for its decision on the complaint. The High Court has the jurisdiction to hear appeals filed against the EC’s decisions on voter registration complaints. Despite issues with the accuracy of voter registers, the EU EEM is not aware of any appeals filed with the High Court in this regard.

2. EC Complaints Bureaux

According to the GEA, only individual citizens have the right to file election complaints with the EC established complaints bureaux. Complainants are entitled to adjudication within forty-eight hours. Appeals against the NECB may be filed with the High Court. Citizens may also file complaints regarding the election process with the EC and the Courts.

3. Petitions Filed Before 8 October Election Day

On 17 September, the SLP filed two cases with the High Court, one challenging the 8 October election date and one challenging the overall electoral timeframe. Similarly, the JP filed a petition with the High Court to annul PEA article 22 which sets out revised timeframes for holding the 2008 presidential election. The EU EEM was informed by the JP that the High Court ruled that the petition was inadmissible.

Three petitions were filed with the Supreme Court regarding the EC’s decisions on candidate registration. Two regarded the candidacy of President Gayoom. One claimed that he was not a practising Sunni Muslim and was therefore ineligible to serve as President.⁵⁷ The other claimed that as he had already served six terms, he was ineligible to seek re-election.⁵⁸ One petition claimed that a 2001 court conviction rendered Mohamed Nasheed ineligible to seek election.⁵⁹ On 2 October, the Supreme Court dismissed the three petitions.

A fourth case was filed by a prospective independent candidate who complained that the PEA contained the provision that independent candidates submit 1,500 supporting signatures – a requirement which is not foreseen in the Constitution. The Supreme Court decided that it did not have the jurisdiction to hear the case.

4. Post-Election Petitions and Other Cases

⁵⁶ The Regulation is adopted by the Supreme Court.

⁵⁷ The case was brought by Adhaalath, a conservative Islamic political party.

⁵⁸ Article 107 of the Constitution provides that “no person elected as President pursuant to *this* Constitution shall serve for more than two terms in office”.

⁵⁹ In 2001, Mohamed Nasheed was convicted of theft for taking documents left outside the residence of former President Ibrahim Nasir, resulting in a banishment sentence and the removal of his seat as an MP. The charge was widely condemned as politically motivated.

No petitions on the conduct or results of the 8 October were filed. However, on 15 October, eight prominent lawyers filed a case with the High Court, challenging EC's decision to schedule the second round of the election on 28 October. The media reported that the petitioners "contend parliament should have been involved in [the] decision to break the 10 October elections deadline in the constitution, plus the ten-day limit for the second round set out in [law]".⁶⁰ The case was heard by the High Court on 21 October.⁶¹

Two cases were referred by the EC to the Office of the Prosecutor General regarding the 8 October election, one concerning the distribution of campaign material after the 18.00 hrs deadline on 7 October, and one concerning visits to polling station on 8 October by Mohamed Nasheed, where it was claimed he engaged in election campaigning. The case against Mr Nasheed was scheduled to be heard on 4 November. However, the President elect did not present himself at court. On 5 November, the Prosecutor withdrew the case.

IX. ELECTION OBSERVATION

The GEA (article 40) provides for election observation by persons nominated by political parties, candidates, non-government organizations registered in the Maldives, international organisations and individuals. The PERR sets out a Code of Conduct for election observers. On 23 September, the EC issued a 'Public Notice' which established a deadline of 13.30 hrs on 27 September to nominate observers. This timeframe was insufficient for many parties and organisations to nominate their observers. Fortunately the EC did not enforce the deadline. (R)

Both election days were monitored by observers from diplomatic missions based in Colombo (*hereafter* diplomatic mission observers – DMOs)⁶², an 13-person 'Observer Group' from the Commonwealth,⁶³ and some 100 volunteers from various Maldivian NGOs under the co-ordination of Transparency Maldives (TM).⁶⁴ The 3-member EU Election Expert Mission (EU EEM) visited polling stations in Male' and followed developments at the Election Commission as did a two person team from the United Nations (Election Assistance Division). The various observer delegations and groups met frequently and exchanged views over election day.

The Commonwealth and TM issued statements for both election rounds. The EU Presidency issued Declarations on the elections, which utilised information gathered by the EU EEM and DMOs.

X. FIRST AND SECOND ROUND ELECTION DAYS

In the first round⁶⁵ polling took place in 396 polling stations including 13 established in tourist resorts, some 50 stations established for persons outside their place of registration (i.e. permanent residence), mostly in Malé⁶⁶, 2 prisons, and four stations located abroad.

⁶⁰ See Minivan News "Lawyers Launch High Court Case Against Second Round Date" (15 October 2008), www.minivannews.com

⁶¹ The EU EEM has no information on the outcome of the case.

⁶² On 8 October 22 observers were deployed and included diplomats from EU States (France, Germany, Italy, the Netherlands and the UK), USA, Canada, Australia, Japan, Norway and Switzerland. A similar number were deployed on 28 October.

⁶³ On 8 October, the group comprised 13 persons including eight eminent persons led by Rt Hon Owen Arthur, MP (former Prime Minister of Barbados, and five Commonwealth Secretariat staff. On 28 October the Group had eight members.

⁶⁴ On 8 October, TM deployed 104 observers and followed polling in 120 of the 396 polling stations.

⁶⁵ For the second round, 401 polling places were established.

⁶⁶ In the islands, temporary residents were assigned to normal polling stations.

A. 8 OCTOBER (1ST ROUND)

In general, Diplomatic Missions' Observers (DMOs) assessed polling positively. Most polling stations received sufficient balloting material, although some exceptions were noted.⁶⁷ Voters participated in large numbers. Some DMOs found that electors were not evenly distributed - some Polling Committees (PCs) had to process around 1,000+ voters, while others had been allocated far fewer R.⁶⁸ Thus, some electors had to wait many hours to cast their votes.

Polling Committees (PCs) largely followed correct polling procedures, and conducted the election transparently. The secrecy of the vote was respected. Candidate representatives were present at many polling stations, notably in Male'. Some DMOs reported a lack of uniformity regarding which documents were accepted to evidence a voter's identity and in some cases PCs did not permit voters with expired identity cards to vote R.⁶⁹ DMOs also reported that some PCs did not give citizens an official complaint form when problems arose. R Clear evidence exists that at some polling stations the ink used to mark voters' thumbs to prevent double voting was easily removable. The EC did take measures to replace the ink during the Election Day, but in many cases only after many voters had already cast ballots. Electors on some islands and in prisons had not been issued with ID cards, despite filing applications.⁷⁰

Media and DMO reports indicated that the names of some voters had been omitted from voter lists. However, initial findings suggested that omissions did not affect large numbers of voters, although the voter lists at a few polling stations clearly had serious errors. Some citizens excluded from the lists were in possession of registration cards (issued when they re-registered according their place of actual residence) and some polling stations received old or incomplete lists. In some cases, electors' details appeared on the database of electors' posted on the EC's website but did not appear on printed lists distributed to polling stations.⁷¹ It became apparent that voter lists for resort workers were particularly problematic.⁷² Difficulties were compounded by requiring resort workers to travel to neighbouring 'inhabited islands' to vote and some were required to return to their work without voting.⁷³ Some DMOs noted that voter lists, where posted publicly, were in the Latin script, not in Dhivehi, making it harder for citizens to check their names were listed.

In late morning of election day, the EC responded to the problems with the voter lists by 'provisionally deciding' to cancel the election. However, before conveying this decision to the public, it sought to hear the views of the candidates. Five candidates strongly opposed the cancellation of the process - some strongly, while only one (Umar Naseer) supported it.⁷⁴

⁶⁷ E.g. on Kulhudhuffushi (Haa Dhaal atoll), where at the start of polling at one station, only seven ballot papers were received for 280 electors. Observers at Marfushi Prison noted that some polling material was missing and polling only started at 12.15 hrs. The media reported insufficient ballots at a polling station for tsunami affected IDPs on R Meedhoo Island.

⁶⁸ Some DMOs reported that PCs were processing voters at roughly the rate of one per minute. In polling stations with many registered voters, this would be too slow to process all voters in the 11-hour voting period.

⁶⁹ Haveeru Media reported that on Kurendhoo Island the PC did not allow some persons with expired ID cards to vote, even though their names were on the voter list.

⁷⁰ At 11.30 a member of the EU EET visited Male' prison and was informed that of 133 inmates, only 10 had been able to cast votes because the remaining 123 did not have an identity card. A DMO at Maafushi Jail noted that only 232 ID cards for over 700 inmates had been distributed. On Miladhoo 70 persons that had not received ID cards obstructed the polling process. The media reported that in Hdh Neykurendhoo some 120 persons out of 663 registered voters and some 100 citizens in Innamaadhoo and Maakurathu islands (Raa atoll) did not receive their ID cards (source: www.haveeru.com).

⁷¹ One such case was reported by DMOs on Hithadhoo. The EC supplied some of these PCs with updated versions of the lists during the course of election day.

⁷² Haveeru (media) reported that in W Retreat and Spa (North Ari Atoll), the names of only 30 resort workers appeared on the voter list whereas some 200 persons were eligible to vote. Similar problems were reported at Alifu Alifu Fesdhoo Island Resort.

⁷³ For example at Biyadhoo (Marfushi Atoll), where some 70 resort workers were not able to cast votes.

⁷⁴ Mr Umar informed the EU EEM that some 21,000 persons were omitted from the voter register, that voter lists contained duplicates in different polling stations and that 'thousands' of persons lacked ID cards necessary to vote. However, he did not substantiate these claims.

Nevertheless, most candidates were critical of the organisation of the poll, with some alleging that the errors in voter registers targeted ‘their electors’.⁷⁵ The EC decided to go ahead with the election, and at 15.30 it publicly announced a series of measures aimed at ensuring all citizens would be able to vote, including:

- Permitting electors to register to vote on election day if they were able to prove their eligibility to vote at that specific polling station;
- Permitting electors whose names were not included on the voter list to register to vote if they were in possession of a voter registration slip;
- Permitting all those in line at 20.00 hrs to cast votes: and,
- Requiring the EC to check the voter lists (*ex-post*) to identify any persons who voted more than once and pass their details to the police for prosecution.

The EC’s actions diffused tensions. However, it did not officially publish a formal written decision regulating these measures, which varied the law. The decision opened the door to possible post-election legal challenges and increased the possibility of multiple voting, particularly in view of the problems noted with faulty ink stain.

It took time for all polling stations to become aware of the EC’s decision, and in the absence of a formal written decision or instruction, a lack of uniformity was evident in the PCs’ application of the new procedures. Many polling stations continued to allow voting well after the legal close of voting at 20.00 hrs e.g. in Villingili and Hulhumale islands (North Male’ atoll) where some 500 voters at each location were still waiting to vote at 01.00 hrs. As PCs registered new electors, a few polling stations ran out of ballot papers.

Notwithstanding frustration associated with inaccurate voter lists, polling was largely conducted in a peaceful atmosphere, with only few public order incidents reported.⁷⁶ In general, voters displayed remarkable patience. Observers did not encounter any obstructions to citizens participating as voter or any undue influence in their choices. The police and security forces did not interfere in the process, except where their intervention was required.

The vote count was conducted transparently and according to the correct procedures. However, the total number of voters casting ballots (turnout) and the total number of ballots in the ballot box were, in general, not determined before counting votes for each candidate – it was deduced after simply adding up all valid and invalid votes. While not contrary to law, this is not good practice. (R) No major violations were noted by DMOs or reported by the media.

B. ANNOUNCEMENT OF RESULTS

Beginning on election night, the EC began announcing election preliminary election results, based on a cumulative total of individual polling station results received. Considering the relatively small number of polling stations, the processing of results was slow.⁷⁷ However, voting was still taking

⁷⁵ For example, one of Qasim’s electoral team claimed that some 6,000 of ‘their electors’ had been omitted from the lists. Later on the election day, the Jumhoree Party claimed that the Ministry of Interior has illegitimately issued 30,000 ID cards. These claims were not substantiated.

⁷⁶ DMOs based on Thinadhoo Island (Ghaaf Dhall Atoll) reported polling was suspended in two polling stations due to a tense atmosphere, and the damaging of one ballot box. Polling was also suspended for a time on Hithadhoo (Lamu Atoll) and tension was also reported by observers in Marfushi and Komanadhoo – also because of problems with the voter list.

⁷⁷ The EC was receiving data from islands by fax. Results for polling stations in Male’ were delivered directly to the EC. By 02.00 hrs on 9 October, the EC announced a cumulative total of some 66 polling stations, constituting some 9,000 voters. In contrast the Voice of the Maldives at the same time had announced results with over 86,000 voters.

place at some polling stations as preliminary results were being announced. At 23.30 hrs on 9 October the EC announced the final results of voting as follows:

Candidate	Votes	Percentage of the Vote	Percentage of the Valid Vote
Qasim Ibrahim (JP)	27,056	15.21%	15.32%
Maumoon Abdul Gayoom (DRP)	71,731	40.34%	40.62%
Hassan Saeed (Independent)	29,663	16.68%	16.80%
Mohamed Nasheed (MDP)	44,293	24.91%	25.08%
Ibrahim Ismail (SLP)	1,382	0.78%	0.78%
Umar Naseer (IDP)	2,472	1.39%	1.40%
Invalid Votes	1,235	0.69%	
Total	177,832	100.00%	100.00%

The EC posted the results for all 396 polling stations on its website, allowing all candidates and stakeholders to verify the final results. This created a high degree of transparency and contributed to confidence in the results.

Simultaneously with announcing the final results, the EC declared that the second round of the election will be held on 29 October. On 13 October, the EC brought forward the date to 28 October. The scheduling of the second round was controversial. While Article 19(a) of the PEA provides for the holding of a second round election ‘within 21 days after the day of the election’, article 22(m) of the same act reduces this time period to 10 days for ‘elections pursuant to section 301 (a) of the Constitution of the Maldives, held before 10th of October 2008’.⁷⁸

C. ACTIVITY OF THE ELECTION COMMISSION (9-27 OCTOBER)

In view of the difficulties experienced in the first round, and the short lead time the EC had at its disposal, it is clear that the EC benefitted from the additional time to organise the second round (i.e. 20 days instead of 10 days).

1. Voter Registration

By 14 October, the EC had entered the details of all persons who had registered to vote on the first round. The EC informed the EU EEM that 10,445 citizens had registered to vote on 8 October.⁷⁹ This figure corresponds to some 5 per cent of the registered electorate and some 6 per cent of the number of actual voters. The details of any person not included in the ‘original’ voter list, but who added their names to the register on 8 October, were be added to the voter lists that was used on 28 October second round.

The EC found that the names of some 4,800 voters persons who registered during the first round were already part of the voter registration database, (although not necessarily on the voter list at the actual place where they voted). Some 3,830 persons were listed in the electronic database but their

⁷⁸ On 13 October, the EC issued a statement justifying its decision to hold the second round of voting on 28 November, 20 days after the first round: “Dates relating to the presidential election were shortened under Article 22 for the election to be held on 10 October 2008 as specified under...the constitution. [But] as the date 10 October 2008 has passed, the commission believes we must return to acting on Article 111 (a) of the constitution and Article 19 (a) of the Presidential Elections Act which states the maximum time period between the first and second round of elections is 21 days.”

⁷⁹ However, shortly before the second round election day the EC informed the EU EEM that actually 16,000 persons had registered to vote on 8 October.

details did not appear on the printed lists, 596 persons registered to vote at polling stations outside Male' actually voted at polling stations designated for Male' residents, and 1,166 names were 'new' registrations, i.e. persons that were not previously registered (or where no match between existing names, ID card number, addresses etc, could be found with a pre-existing entry).

From 15-19 October, a second voter re-registration took place for those citizens who wanted to vote in an island other than the one where they voted for the first round. For the second round, all applications to change data had to be made in person. The EC verified all changes by 23 October and on 24 October uploaded the revised voter register to its website. Voter lists should have also been on display at Island Offices and at three kiosks in Male' enabling citizens to check their entries.⁸⁰ Between the two election rounds, some 3,500 voters re-registered to vote at a location different from their permanent residence. In addition, the names of 446 persons who turned 18 years of age between 8 and 28 October were added to the register. The total number of registered voters was announced on 24 October with just a slight variation compared with the first round.

2. Identity Cards

After 8 October, the DNR received some 1,500 additional ID card applications and cleared the backlog of applications received prior to 8 October.⁸¹ However, the DNR informed the EU EEM that it was unable to process some 1,000 'problematic' applications (e.g. where applications lacked essential data or supporting documentation).

3. Other Issues

The EC procured new ink for use on 28 October. However, it did not take any measures to investigate why the ink in some stations was not effective e.g. by returning the batch to the manufacturer to check for any product defect.

In a few locations with high numbers of registered voters, the EC created additional polling stations e.g. in Hulhumale. Additional measures to avoid congestion included tasking additional PC members to check the details of citizens waiting in line to vote against the voter list before they enter the polling station. The EC has printed 218,740 ballots for the second round, which incorporated new security features (a watermark and special printing ink).

D. *OBSERVATION OF THE ELECTION (28 OCTOBER)*

The 28 October election proceeded relatively smoothly and polling was conducted in a calm atmosphere. The organisation of the election was improved compared to 8 October, and the additional staff member assigned to check electors' entry in the voter lists speeded up the processing of voters. However, electors at some polling stations were once again required to wait patiently for long periods before casting their votes.

The ink used to mark voters' fingers was more reliable, although if a voter was intent on removing the stain, it was possible to do so using bleach. DMOs did not report any problems with voters not being in possession of ID cards.

⁸⁰ However, the EU EEM cannot verify that the lists were displayed as envisaged.

⁸¹ By 21 October, the DNR had entered the data of all valid applications received into its database, and it hoped to print all ID cards by 22-23 October.

Problems with the voter lists were again noted, albeit mostly on a lesser scale than on 8 October. However, some locations still experienced serious problems with the accuracy of the voter lists e.g. Hulhumale, where local party observers estimated that some 200 voters were omitted from the lists out of 1,800 registered voters. In Male' prison some 30 per cent of inmates were not included on the lists.

Once again the names of some voters included in the EC's registration database did not appear on printed lists. The EU EEM was aware of some polling stations where the names of persons who had cast votes in the first round had been omitted from the list for the second round. Some DMOs reported that voter lists were not publicly displayed and others noted that those that were on display were written in Latin not Dhivehi and did not list voters in an apparent order.

Some citizens located in Male' filed complaints with the NECB, mostly regarding their omission from the voter lists. The NECB received many enquiries from island offices, mostly regarding persons omitted from voter lists. Having verified the person's entitlement to vote, the EC took decisions on registering a voter and informed the PC by sending a written confirmation. A number of persons were still present at the NECB at 20.00 hrs the appointed time for the close of polls. The EC decided that one polling station in Male' would remain open to accommodate those citizens who were still awaiting a decision on whether they could vote.

The vote count was conducted quickly, transparently, and according to the correct procedures. The EC and the media were announcing cumulative electoral results. Although slightly behind the media, the EC's results announcement proceeded much quicker than on 8 October.

On 29 October, the EC announced final preliminary results, giving Mohamed Nasheed an 8 per cent margin of victory. Final results were announced on 1 November, as follows:

Candidate	Votes	Percentage of the Valid Vote
Maumoon Abdul Gayoom (DRP)	82,121	45.79
Mohamed Nasheed (MDP)	97,222	54.21
Invalid Votes	1,861	-
Total	181,204	100

The vote margins between the second and third placed candidates in the first round and the first and second placed candidates in the second round (both approximately 8 per cent), meant that the noted problems with the poll, most obviously the voter lists did not lead to any candidate challenging the results. This was down to good fortune. Had the election results been closer, the elections may have been much more contentious.

XI. THE 2009 PARLIAMENTARY ELECTIONS

1. Election System

Under the 1998 Constitution the former Majlis had 50 MPs. Each administrative unit⁸² elected two members to the People's Majlis (hereafter MPs), while the President appointed eight deputies. All candidates stood as 'independents' as parties were not legally recognised until 2005. The previous election system was problematic for a number of reasons, not least the large inequality in the

⁸² The Republic of Maldives is divided into 21 administrative units – comprising all islands in an atoll, an agglomeration of atolls with small populations, and split atolls with larger populations and the municipality of Male'.

number of electors in Male' compared to other administrative units, and the presidential prerogative to appoint eight MPs thereby giving him significant influence in the legislature.

The 2009 parliamentary elections will be the first multi-party elections in the Maldives. The EC informed the EU EEM that it anticipates calling for the election to be held in late January.

According to the 2008 Constitution (article 71), each administrative division is allocated 2 MPs for the first five thousand registered residents.⁸³ In cases where an administrative unit has less than 5,000 residents it too shall be allocated two MPs. Where the number of registered residents exceeds 5,000, it shall receive an additional MP for each 5,000 residents in excess of the first five thousand.

Number of Residents	Number of MPs
< 5,000	2
5,001-9,999	2
10,000-14,999	3
15,000-19,999	4
40,000-44,999	9

Article 72 of the Constitution provides that “each administrative unit shall establish separate electoral constituencies in accordance with the principles set out in article 71. All MPs are elected in single mandate constituencies according to the ‘first past the post’ (FPTP) system.

2. Constituencies and Legislation

The Constitution provides that the manner of determining the number of constituencies in each administrative unit, the boundaries of each constituency and the principles to be used in delineating constituencies shall be set out in law. It also requires that “the law shall [ensure] that there is an approximately equal division of the population [in each constituency]”. However, it is unclear whether the law must provide ‘equality’ within the divisions pertaining to an administrative unit⁸⁴ or countrywide, and what is the acceptable margin of variation. **R**

The Constitution (article 170) mandates the EC to “fix, vary, demarcate and continuously review the boundaries and names of constituencies or voting units in all elections in accordance with principles specified by law. The EC anticipates that there would be approximately 70 constituencies established. As at early November, the Law on Constituencies is in the drafting process. The boundary delimitation issue will present a significant challenge to the Election Commission in the period after the presidential elections.

The issue of civil registration (legal residence) and ‘temporary/actual residence’ are likely to be of crucial importance in the parliamentary elections because the number legal residents is the key factor in determining how many constituencies an administrative unit is entitled to. Questions which arose during the presidential elections over the accuracy of the civil registration data (which

⁸³ The administrative divisions of the Maldives are set out in schedule 2 (an annex) of the Constitution. There remain 21 units (comprising atolls, divisions of an atoll, or an agglomeration of small atolls as well as Male' municipality). All citizens are required to have a registration of residence including minors (children).

⁸⁴ It would be hard to achieve equality on a countrywide basis because of the stipulation in Article 71 regarding administrative units with a population of less than 5,000 – e.g. an administrative unit of 4,000 could establish two constituencies, say of 1,900 and 2,100 residents, while an administrative unit with 9,500 would also have two constituencies, say with 4,580 and 5,020 residents – i.e. a considerably higher number.

was used as the source data for voter lists) are likely to become even more important when used to determine how many constituencies are established in an administrative area.

If citizens are attributed to a constituency based on their civil registration rather than their actual residence, and if the EC is required to register persons to vote based on GEA article 12 (which provides that the EC must re-register electors who will not be in the island of their permanent address in the Register of Electors, according to their de facto residence, then the voter registration and polling arrangements will become extraordinarily complicated. In this scenario, it is possible that polling stations may have to accommodate voters who are registered in many different constituencies. Thus they would need various different voter lists and supplies of different types of ballot papers. It may be relatively easy to deal with Male' 'non-residents', but serious difficulties could arise with the tourist resorts. Thus, the Parliament and the EC should give serious consideration to attributing citizens to constituencies according to their 'de facto' residence. **R** A decision in this regard would have to occur prior to dividing the administrative units into constituencies. However, such a solution may not be compatible with constitutional provisions, unless the Law on Registration is first amended to permit the registration of 'temporary residents'.

In an electoral situation where 10s of voters could determine election results, the accuracy of the voter lists and decisions on 'attributing' non-residents to a constituency could well become politicised issues. Moreover, the issue of where to 'attribute' non-residents is likely to be an emotive issue among voters.

Other legislation is required in advance of the 2009 parliamentary elections, specifically, the 'Parliamentary Election Act' and the 'Political Parties Act'. It is also possible that the EC will request parliament to amend some provisions of the General Elections Act. Certainly it would be beneficial if these acts were adopted well in advance of the election, and certainly further in advance of the election than the legislation relating to the presidential election.

3. Candidate Eligibility and Registration

To be eligible to contest the Majlis elections, candidates must be a citizen of the Maldives; not be a citizen of a foreign country; be a Sunni Muslim; have attained the age of eighteen years; and be of sound mind. Persons who have acquired Maldivian citizenship are qualified to be a member of the Majlis five years after the acquisition of citizenship, providing that he/she is domiciled in the Maldives. MPs are elected for five year terms of office.

The Constitution does not set out the registration procedures for candidates to the Majlis, and primary legislation has yet to be adopted. If the EC is tasked with registering candidates, it will represent a serious task, in view of the number of constituencies and potential candidates. If the law delegates this to a lower level election body e.g. a constituency level election committee, these will need to be established well in advance of the election. If the latter option is chosen, it may be necessary to adopt new legislation (or amend existing legislation) to set out the responsibilities of the subordinate election committees. **R**

4. Voter Registration

The GEA (article 9.a) provides that "Not less than 45 days before an election, the Elections Commission shall publish the Register of Electors, including updated information pertaining to electors name, gender and permanent address, in the Government Gazette". If the election is called

for 30 January, the EC will be required to publish the revised voter lists by 16 December. This presents an additional serious challenge to the EC in advance of the parliamentary elections.⁸⁵

XII. RECOMMENDATIONS

A. CIVIL AND POLITICAL RIGHTS

- 1 The number of signatures required to form a party (3,000) is high in the context of the Maldives. Consideration should be given to reducing this number.
- 2 The Freedom of Assembly Act should not unreasonably restrict citizens' right to gather peacefully.
- 3 The provisions of the Penal Code which establish defamation as a criminal offence punishable by imprisonment should be repealed.

B. VOTER REGISTRATION AND VOTER LISTS

- 4 Voter lists should be available in Dhivehi, and posted in public sites well in advance of the elections – thereby enabling any omissions to be identified, and appeals to be filed with the EC and the courts. It is insufficient just to post the voter lists on the internet as many citizens cannot access lists by this means.
- 5 All persons registering to vote should do so in person.
- 6 Voter lists should order voters in a coherent manner – e.g. alphabetically.
- 7 In cases where citizens re-register to vote according to their temporary place of residence on election day, the legislation or regulation should clarify what course of action the EC should take (e.g. whether to remove the original entry from the register or not).
- 8 The legislation should clarify parties' entitlement to receive a copy of the voter register and the form in which it should be given i.e. what data parties are entitled to receive.
- 9 The EC should compare its registration database with that held by the DNR to identify discrepancies between the two.
- 10 The EC should undertake checks to ascertain exactly why there were differences between the printed and electronic versions of the voter lists.

C. ELECTION ADMINISTRATION

⁸⁵ Although it may be feasible to amend the deadline in the Parliamentary Election Act, as was done for the presidential elections.

- 11 The Election Commission should have the authority to issue Regulations on any aspect of the process it deems necessary as the need arises, not just those issues specifically identified in the legislation.
- 12 The Elections Commission should be required to adopt formal decisions for all significant organisational and procedural issues. The legislation should establish a reasonable deadline for filing legal petitions against the decisions of the EC and for the High Court to issue its ruling in this regard.
- 13 The Polling Manual for the upcoming parliamentary election should be adopted much earlier in the election process, enabling training of poll workers and allowing parties and candidate representatives to familiarise themselves with its provisions. As a general rule, the Polling Manual should avoid introducing new procedures which have not been set out in legislation.
- 14 Consideration should be given to measures to enhance the independence of the lower level election committees (ACCs and PCs). In particular, the wisdom of appointing a serving senior civil servant in the Atoll Offices as ACC focal point should be reconsidered to enhance confidence in the impartiality of these bodies.
- 15 There should be greater political inclusivity in PCs composition.
- 16 ACCs should be required to take votes on important issues, e.g. PC membership. The legislation should detail the majority required for an ACC decision to be adopted.

D. ELECTION COMPLAINTS AND APPEALS

- 17 Serious consideration should be given to revising legal deadlines for election petitions challenging the results of a first round presidential election or requesting the invalidation of an election in an area, which would affect the election outcome. Ideally these should be heard by the highest court before a second round is held.
- 18 Some contests in the 2009 parliamentary elections may have very close results. Thus it is very important that the complaints filing system works effectively in the next elections. The jurisdiction and powers of the Election Complaint Bureaux should be further clarified in the EC Regulations. Procedures for their functioning should be further elaborated and communicated to all bureaux.
- 19 The NECB must receive sufficient resources to do its job properly, including a modern call flow system with enough phone lines and staff to handle incoming calls. Island and Atoll complaints offices should receive sufficient training well in advance of election day.

E. CAMPAIGN AND MEDIA

- 20 Consideration should be given to lowering the campaign spending ceiling for presidential candidates.
- 21 Any person who unduly influences another in their electoral choice e.g. through pressure, should be prosecuted under the existing legal provisions.

- 22 The new media legislation should require State media to represent political subjects (parties and candidates) equally i.e. to avoid bias for or against parties/candidates, their political programme or campaign.
- 23 The legislation should clearly stipulate which body has competence to hear election related complaints regarding the media's coverage of candidates/parties and their election campaigns. It is not advisable to give this task to the EC, as it should concentrate on administering the election and is unlikely to have the skills required to undertake the task effectively.
- 24 Parties that field more than a certain number of candidates in parliamentary elections should be entitled to receive free airtime on the state media.

F. ELECTION DAY AND POLLING PROCEDURES

- 25 The legislation should establish a reasonable deadline for election observers to deposit their applications for accreditation with the EC.
- 26 The law should establish a maximum number of registered voters per polling station. In view of the problems witnessed on the election days, it is strongly recommended that no more than 700 voters are registered per station.
- 27 Provision should be made to enable hospitalised and homebound persons to vote.
- 28 The law should clarify if expired identity documents are sufficient to prove identity on election day.
- 29 Polling Committees should be supplied with sufficient complaint forms and a public notice should be displayed informing electors of their right to file a complaint.
- 30 The legislation should require that the PC enters all relevant data into the official minutes e.g. before opening the ballot box, the PC should record the total number of voters casting ballots and before counting votes for each candidate, the PC should record the total number of ballots in the ballot box.

G. LEGISLATIVE ELECTIONS

- 31 The law on Constituencies should clarify whether there must be equality in the number of electors within the divisions pertaining to an administrative unit or countrywide, and what is the acceptable margin of variation.
- 32 Parliament and the EC should give serious consideration to attributing citizens to constituencies according to their 'de facto' residence. A decision in this regard would have to occur prior to dividing the administrative units into constituencies. However, such a solution may not be compatible with constitutional provisions, unless the Law on Registration is first amended to permit the registration of 'temporary residents'.

H. OTHER

33 Parties should make more effort to ensure that a higher proportion of women candidates are elected. Consideration should be given to requiring parties fielding a certain number of candidates to field a given number of female candidates.

XIII. ANNEX A Short Report on Civil Society in Male

Short Report on Civil Society
in Male
-Maldives Republic-

Table of contents

Introduction: A general overview..... 3
1.NGOs working in electoral observation and other pertaining fields..... 5
1.1 Transparency Maldives..... 5
1.2 Open Society Association. 6
1.3 People’s Foundation Maldives..... 7
1.4 Maldives NGOs Federation..... 8
1.5 Live & Learn Environmental Education..... 9
Conclusions..... 10
NGOs’ contacts and websites..... 11

INTRODUCTION

A general overview

The Maldives are a chain of 1.190 small coral islands grouped into 26 atolls in the Indian Ocean: 198 islands are inhabited and 80 of them house tourist resorts.

Tourism and fisheries are the base of the economic resources in Maldives. Around 400.000 tourists every year enjoy the sea and the beaches of Maldives and this activity represents the 62% of the income of the country.

Agriculture is practised in the islands, but it is limited and it is the sector that was most undamaged by tsunami; it represents only the 20% of the income.

The average income of the country is one of the highest in the southern Asia region even if some people are still living with one dollar a day. In order to uplift overall socio-economic condition many NGOs are involved in various development initiatives. By 2000, nearly all of the 200 inhabited islands had at least one NGO. According to the record of registration by the end of 2002, the total number of NGOs was counted 374 of which 26 functioning in development related areas.

In Maldives Republic, up to 2003, the law made no distinction between association and NGOs. According to a research led by “*School of Business and Research Centre, Binary University College, Malaysia*”; “*Society for Health Education, Maldives*” and “*Business and Advanced Technology Centre*”, *University Technology Malaysia* in 2006 it was in late 1970s, for the first time the Island Development Communities (IDC) started providing non-governmental service in Maldives. IDC’s various components including social and sports clubs and development programs evolved as NGOs in the subsequent years. These NGOs had a wide range of objectives and vision of developmental work.

Despite significant contribution made to socio-economic development, NGOs’ genuine role occasionally seems to be ambiguous to many of the beneficiaries in terms of legal aspects. This ambiguity and need of a legislative environment for NGOs led to a reform in civil society regulations by the government in 2003.

In the same year, in order to set transparency and eliminate confusion about NGOs’ objectives and activities, the government made a requirement for each NGO to be registered with Ministry of Home Affairs and Environment (2003) by enlisting at least two founders. Due to another amendment in the civil society regulations made in 2004, NGOs are allowed to work as financial institution to provide loan to beneficiaries or to other small organizations.

In spite of that the panorama is wide, the number of associations and NGOs is high. Some of them are associations for sport (e.g. football) and sometime also these associations promote a small project, an initiative in order to help a community and solve its issues.

The NGO “*People’s Foundation Maldives*”, in its analyse of NGOs assessment in Maldives, result of a survey on this matter, says: “*Since 2003, over seven hundred new associations have registered. However, comparatively few are active and fewer have to date engaged in direct advocacy. This is due to both the lack of managerial and project management capacity within NGOs as well as the lack of any wider supporting infrastructure for the civil society sector*”.

Most of them are small entities that work just in a community of an island. They are financed by themselves doing small jobs. Much often they are grouped under the umbrella of a bigger NGO that does coordination and can get funds at international level.

The projects of the most NGOs concern education, agriculture, drug issues, water, health; only some of them are engaged in democracy and good governance.

Even if the number of inhabitants of Maldives is small they are spread across many small islands and this dispersion of the population raises the cost of delivering social services.

The NGOs based in Male complain the absence of infrastructures and social services in the atolls that were further exacerbated by the damage that followed the waves of the tsunami. “Tourism, fishing and agriculture are all significant income generating sectors; the tsunami highlighted their vulnerability and the government must be encouraged to work with the communities in ensuring and safeguarding these sectors” they also say. Furthermore, the characteristic of Maldives territory increases the cost of the projects as the transports from Male are expensive. Much often the international stockholders finance the implementation of the project, but not the cost for operating. An other problem that the NGOs have to face is also due to the dispersion of the territory. The communities living in the various atolls and islands, as isolated by the water one to each other, have sometime developed different mentalities and habits that have to be taken into consideration for the approaching of a project.

The responsible of the NGO “Live & Learn Environmental Education”, based in Male, says: “We always work with the communities and with their chiefs, we study with them their issues and how to solve them. We have to respect their mentality and habits. We must be very flexible.”

For NGOs working in social fields as “Care Society” that works with disabled people, especially children, the difficulty is to find operator having properly back-ground. In Male, at the university there are only faculties as management and informatics, nothing concerning social or humanist fields.

1.NGOs working in electoral observation and other pertaining fields

1.1Transparency Maldives

The only NGO in Maldives working for electoral observation is the Transparency Maldives. Based in Male it is a national contact of the Transparency International (TI) a non-political organization that promotes collaboration, awareness and other initiatives to improve governance and eliminate corruption.

Thirteen NGOs are currently engaged under the umbrella of the Transparency Maldives and they gave volunteers for the observation in the first round of Presidential Elections. Although islands have active local associations, most of these organizations do not know how to use their network to improve governance. Training these groups in domestic electoral observation and giving them some grounding in civic education and voter responsibility would support political accountability as well as provide a means for positive citizen engagement in political process. Transparency Maldives organised training, workshops, logistic and coordination for observation: in the first round the volunteers could cover 83 PSs on 396. The observers of Transparency spent all day at the same Polling Station; the decision was taken as the number of volunteers were enough to cover more than 20% of PS.

Ahead of this election, Transparency Maldives undertook a community-based assessment of the country’s election system, which was funded by AusAID/Australian High Commission Colombo and the Royal Netherland Embassy in Colombo. This electoral assessment is a component of Transparency Maldives’ project “I choose” that provided voter education and training on domestic observation before the presidential election.

The assessment was carried out through a series of six participatory workshops conducted across the Maldives over a two-weeks period between 24 May and 6 June 2008. These workshops provided a platform for the opinion, concerns and recommendations of the Maldives public, including civil society, media and political parties, on the procedures, management and conduct of the forthcoming election.

The project has four components: Assessment, Voter Education and Training of the Trainers (ToT) Program; Online Complaints Database; Media Awareness Campaign.

All four components could be put into effect before election even if they had to face some problem. The declaration of the responsible of Transparency concerning the implementation of the Voter Education and ToT program is baffling even if understandable in a society at the beginning of its democracy.

She says: "It was quite successful, but there was a small issue with people feeling like they didn't want to participate because they were been told it was a political activity. Civil servants were being threatened by their bosses that the civil servants Commission would demote or fire them if they attended the workshops. We later requested a letter from the Commission explaining the situation and they gave their approval. The issue here is that there is not a clear distinction between *political* and *civic* activity. Also, that when the civil servant bosses do not want their employers to engage in an activity they use the civil servant Commission as a tool of coercion."

The organization had some weakness in gathering the results of the forms from the islands and in elaborating data before the official results. The forms had to be faxed and this involved some problems in finding fax machines. For the second round they will use sms. The responsible also complains the restraint number of the staff members (three persons); very competent people, but not enough especially on the E-Day when it's important to elaborate data in very short time. Transparency Maldives is planning to organize a long term observation for the Parliamentary election of the 2009. Their strength is to have volunteers in many atolls and islands who can work in their territory reducing the fees of transport.

Other domestic NGOs are planning and willing to be engaged by Transparency Maldives, they recognize that Transparency has already experience in electoral observation and they prefer to work with it than to organize another group of observation. They can undertake other fields pertaining to democratization as civic education, good governance, human rights.

1.2 Open Society Association

The Open Society Association (OSA) is a non-governmental organisation (NGO) that promotes the values of an open society in the Maldives. These values include peace, liberalism, democracy, human rights, free market traditions, and the development of a vibrant civil society.

The Association could get funds by British High Commission and Canadian High Commission.

In order to sensitize the awareness of the people the Association organized lectures, meetings and conferences on various issues as:

- **Civil Society Development**
- **Civic Education**
- **Democracy Promotion**
- **Human Rights**
- **Youth Development**
- **Gender Equality**
- **Freedom of Expression**
- **Combating Corruption**
- **Environmental Awareness**

The activities could reach six atolls and material was also distributed.

OSA participated also to “Go Vote” campaign organised with other seven NGOs (Hama Jamiyya, Madulu, Maldives Aid, Maldivian Detainee Network, Rights For All, Strength Of Society, Transparency Maldives) in Colombo in order to sensitize on election Maldivian people living there. The ‘Go Vote’ campaign, which aims to educate and empower the Maldivian people ahead of the first multi-party elections in the Maldives this year, was publicized at a mass street rally held to conclude the South Asian People’s Assembly 2008.

The Association managed to get a space in the channel of the radio. Considering the characteristic of Maldivian territory it’s not easy to reach physically all people, but almost any body can hear radio.

The OSA with the other seven NGOs could launch, last May, a series of radio programs called ‘Voice of Society’ on the state radio station ‘Voice of Maldives’. This is a real breakthrough for getting the voice of civil society heard with shows which will cover a range of subjects such as human rights, the role of civil society and promoting democracy. The programs should go on also the next year. At the same time OSA organized a blog “Power to the People” in order to know people’s opinion on the program “Voice of Society”, on the access to the space of the state radio, on the role of private radio as Dhi Fm, Faraway, Hfm and Capital.

1.3 People’s Foundation Maldives

People's Foundation Maldives (PFM) is a politically independent, not-for-profit, registered, non-government organisation that works towards a just and inclusive society in Maldives and South Asia.

People's Foundation Maldives aims to:

- Strengthen the capacity of civil society in the Maldives,
- .Encourage Maldivian civil society engagement with local, regional and international communities,
- Support & develop civil society projects or activities, by providing a comprehensive range of training, support services and other initiatives, which reflect the priority needs of emerging civil society actors and organisations who share the vision, mission, values and principles of PFM.

The abridged version of a NGO Capacity and Needs Assessment given by the “People Foundation Maldives” and reported above, in the introduction, “is undertaken as part of the NGO Strengthening Pilot Project, it is intended as a first step to address these concerns as well as support the Maldivian government, United Nations and Commonwealth in their stated goals of strengthening civil society” the NGO responsible says.

The assessment highlights the need for urgent efforts to be undertaken NGO capacity training, the development of NGO networks and partnerships, the forging standards and minimum performance expectations within the civil society sector as well as the promotion and inclusion of civil society within the governance process.

Under the near thirty year tenure of President Maumoon Abdul Gayoom, the Maldives has recently embarked on a process of democratic reform which includes relaxing the restrictions on civil society activity.

However, there is a frequent expression, supported by the results of the survey made by “People’s Foundation Maldives”, “that many of registered associations now require the basic capacity development to be able to add value to the civil society sector. The 2007 UN Common Country Assessment further notes that those civil society organisations which are active are largely state funded and “avoid 'advocacy' that could lead to conflict with the government” and goes on to identify the lack of independent civil society engagement as one of the Maldives’ major development challenges. Developing a capable and independent civil society sector in the

Maldives encounters two significant challenges. Firstly, according to this survey, the majority of NGOs and associations in the Maldives lack the ability to build basic sustainable operational structures, to strategically plan and implement activities/projects, or to undertake vital tasks such as fundraising or mobilising volunteers.

Secondly, compared to many other Asian countries – and India in particular – the Maldives currently possesses a limited infrastructure to support civic activism and organized volunteerism. There are significant knowledge vacuums, especially regarding civic awareness and understanding of human rights, and currently few successful NGO or civil society organisation role models to follow.

At the time of preparing this assessment, no coordinated national strategy or countrywide action-plan to increase civil society's capacity and improve the enabling environment had been developed or implemented.

The baseline survey aims to compile detailed information on existing NGOs in Male' and provide a guide for the effective delivery of future capacity development initiatives as well as encourage NGO sector coordination, the sharing of limited resources and minimizing of overlap. As such, the publication should be of assistance to Maldivian NGOs as well as other national and international actors supporting the development of the civil society and NGO sector.

More generally, the NGO Strengthening Pilot Project is designed to complement the framework laid out in key Maldivian government and United Nations strategies, such as the Seventh National Development Plan, with particular emphasis on the 2008-10 UN Development Assistance Framework (UNDAF) jointly signed by the Maldivian government and the United Nations Maldives mission. In addition, the NGO Strengthening Pilot Project also aims to facilitate the realisation of the Commonwealth principles, values and priorities as enshrined in the 1991 Harare Declaration. Specifically, the Harare Declaration supports the participation of civil society for the promotion of human rights and opportunities for all, democracy and good governance, gender equality, access to education and training, poverty reduction, environmental protection and sustainable development.

The “People’s Foundation” is, at present, planning (depending funding) a small project around the Parliamentary Election that will include:

1) **training for NGOs and civil society groups** (with as many groups from atolls participating) so they can clearly understand:

- a) how to critique government/party policies, and
- b) how to formulate good quality policy alternatives

2) to support the creation of **civil society monitoring and advocacy tools** to allow the public to critique party policies against key social issues, and lobby for genuine implementation of policies.

1.4 *Maldives NGOs Federation*

It is a grouping of 42 NGOs, funded in 2006 their area of work is NGO management, strengthening and capacity building, governance, human rights, social development, live hood development. The NGO Society for Health Education (SHE) belongs to this Federation and it was object of a research on “Knowledge Management: practice and performance of NGO in Maldives” made by :

- *School of Business and Research Centre, Binary University College, Malaysia*
- *Society for Health Education, Maldives*
- *Business and Advanced Technology Centre, University Technology Malaysia*

This study discusses the Knowledge Management (KM) practices of non-governmental organization (NGO) such as Society for Health Education (SHE), one of the leading NGOs in Maldives. The study further focuses on the linkage between KM practices and culture, strategy, information technology and training of SHE. The sample size of the study is 130, which has been collected by using simple random sampling technique and analyzed using statistical tools. The findings show that KM practices are not linked institutionally to the above components whereas the awareness of KM can be moderately seen. SHE is potential to improve adoption of KM for better organizational performance. The study recommends that initiatives must be taken by SHE to adopt KM practices to gain more competitive advantage.

The Federation is especially interesting in planning program for good governance. Before the new constitution the various atolls and islands had chiefs appointed by the Government, now the constitution says that they will be governed by a Council whose members will be elected by regular election.

The responsible of the Federation complaints that much often the funds cover only the implementation of the project, but not the fees of the program and the transports for the operators from island to island are expensive. They received funds just once by ActionAid International (UK).

1.5 Live & Learn Environmental Education

This NGO works in environment field (water, waste, beach erosion), health and education. Its operator work always in strict contact with the communities, for them community mobilisation is very important and say that community mobilisation is the process of bringing together members of a community and enabling them to act on common concerns and problems.

They don't have projects directly linked to election, but they have a program for women's rights that takes into consideration the education to vote and the rights of women to participate to political life.

Conclusions

The panorama of civil society in Maldives Republic is wide enough considering the small number of inhabitants. There is a strong potentiality that can be developed. The infrastructures to support civic activism and organized volunteerism are limited, but they can be improved. It should be important to enhance the coordination between NGOs in order to use at maximum their capacity and reduce the overlap. The position adopted by all NGOs on the matter of electoral observation that leaves to the Transparency Maldives the leadership and the coordination is a good example.

At the University in Male there are many courses in management, building capacity and informatics, consequently it's not difficult for the NGOs to get well prepared persons in these fields. Different situation for the NGOs working in social fields as "Care Society". It is one of the oldest NGO present in the territory and it works with disable children, but there is no psychologist in its staff. The operators work in close contact with the family and try to overtake the lack of a specific preparation with the common sense and the experience.

The characteristic of Maldivian territory can create difficulties in reaching the various communities in islands and atolls, but it can offer some solutions as for the recruitment of volunteer observers for election who could exercise their task in their own territory. A possibility is that the NGOs' operators contact and train some persons chosen in each community and stay in close contact with them for updating. These persons become operators and can sensitise people of their community on different matters. Here the project conceived by "Transparency" on training of the trainers (ToT) becomes important. This procedure can reduce the fees and give more strength to the concepts because elaborated by someone of the same

community who shares the same life and traditions. This “*line of conduct*” is already use by *Live & Learn*.

Media and especially radio is a very important and useful tool for NGOs. The project of the OSA and other seven NGOs has to be enhanced. Radio state can reach all communities everywhere in islands and atolls as almost anyone has a small radio set. Private radios can cooperate in this project and they can be encouraged in conceiving this kind of program.

Finally projects for women’s rights have to be encouraged, it is important to sensitize women’s awareness considering also that a finding of electoral observation showed a lower participation of women compared to the men’s one.

NGOs’ contacts and websites

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