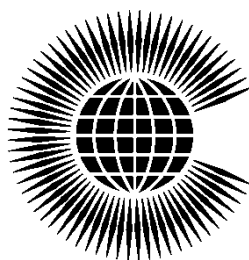


MALDIVES PEOPLE'S MAJLIS (PARLIAMENTARY) ELECTIONS

9 May 2009

Report of the Commonwealth Expert Team



COMMONWEALTH SECRETARIAT



Commonwealth Expert Team

Maldives 2009 People's Majlis Elections

13 May 2009

Dear Secretary General

Following the invitation from the Deputy Secretary General to serve on the Commonwealth Expert Team to observe the People's Majlis (Parliamentary) elections in Maldives, we have now completed our Final report and are pleased to forward it to you with this letter.

Following on from the historic multi-party and multi-candidate Presidential election held in October 2008, the Parliamentary elections presented another significant milestone in the country's continued reform and democratisation process. The Expert Team noted the high expectations that accompanied the elections, and the relative calm and order in which they were conducted.

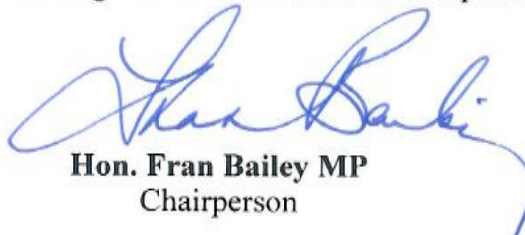
The Expert Team commends the Elections Commissions for the improvements it made in its electoral preparations, though it did note that some administrative and logistical challenges remained. The experiences and lessons learned from the Presidential and Parliamentary elections could be helpful in identifying ways in which the capacity and efficiency of the country's electoral practices could be enhanced.

In this context, we have highlighted a number of areas in which general electoral practice and procedure, including issues related to the voter list and complaints mechanism, could be improved. The Expert Team has made several recommendations with a view to support and assist the Government and Elections Commission, especially to improve electoral processes in preparation for the local Government elections due shortly.

We express our gratitude and thanks to the Commonwealth for giving us this opportunity to contribute to the Commonwealth's ongoing engagement in Maldives, and to the ongoing democratisation process in the country.

The Expert Team would also like to acknowledge its thanks to the many citizens and other interlocutors in Maldives with whom we met, and who made our work possible.

The Expert Team also wishes to express its sincere thanks to the thoroughly professional work of the Commonwealth Secretariat staff. They were at all times supportive and frequently delivered under challenging conditions, and always against a deadline. The preparation they completed before our arrival ensured that at all times we were well briefed. They were a credit to the organisation and acted as exceptional ambassadors.



Hon. Fran Bailey MP
Chairperson

A handwritten signature in blue ink, appearing to read 'Hendrick Gappy'.

Mr Hendrick Gappy

A handwritten signature in blue ink, appearing to read 'M.I. Abdool Rahman'.

Mr M.I. Abdool Rahman

A handwritten signature in blue ink, appearing to read 'H. M. Vally'.

Mr Hanif Vally

Report of the Commonwealth Expert Team

MALDIVES PEOPLE’S MAJLIS (PARLIAMENTARY) ELECTION

9 May 2009

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Chapter 1

INTRODUCTION

Following an invitation from the Elections Commission of Maldives, the Commonwealth Secretary-General, Mr Kamallesh Sharma, announced his intention to constitute a Commonwealth Expert Team for the Parliamentary Elections in Maldives, scheduled to take place on 9 May 2009.

The Secretary-General appointed an Expert Team of four eminent persons, to be led by Hon. Fran Bailey MP, from Australia. The other members of the Team were Mr Hendrick Gappy, Electoral Commissioner of Seychelles; Mr M. Irfan Abdool Rahman, Electoral Commissioner of Mauritius; and Mr Hanif Vally, Strategy Adviser at the Foundation for Human Rights in South Africa. The Expert Team was supported by a three-member staff team from the Commonwealth Secretariat.

Terms of Reference

The Team's Terms of Reference were as follows:

The Commonwealth Expert Team for the Maldives Majlis Election shall observe the preparations for the election; the polling, counting and results process; and the overall electoral environment.

Activities

The Expert Team arrived in Maldives on 3 May 2009. During an initial three day briefing period the Team met with the Elections Commission, senior representatives of political parties; Human Rights Commission; Civil Service Commission; Transparency Maldives (an NGO); representatives of both the state-owned and private media, Commonwealth High Commissioners; EU Technical Advisers attached to the Elections Commission; the EU Election Expert Mission; UNDP; and a UN Assessment Team for the elections.

The Commonwealth Expert Team deployed on 7 May 2009. The Expert Team covered seven atolls – Haa Dhaal, Haa Dhaal, Kaafu/Malé, Seenu/Addu, Gnaviyani, Laamu, and Thaa. On polling day, the Expert Team covered a total of 86 Voting Centres in 26 islands across the atolls.

Over the election period the Expert Team also met with Atoll Election Coordinating Committees, candidates, Complaints Bureaux at national and constituency levels, local observers, Atoll and Island officials, nominated political appointees (hereinafter referred to as 'political councillors'), police officials and other international observers. The Expert Team's Report was completed in Male' prior to departure, and transmitted to the Secretary General.

Chapter 2

POLITICAL BACKGROUND

The People's Majlis (Parliamentary) Elections held on 9 May 2009 marked another significant milestone in the ongoing reform and democratisation process in Maldives. The elections were governed by the transitional arrangements set down in the new Constitution of Maldives, which was ratified on 7 August 2008. The Constitution provided a comprehensive framework for the introduction and maintenance of a multi-party democratic system which afforded greater political and civil human rights for Maldivian citizens.

The Parliamentary Elections were held in the wake of the country's first ever multi-party and multi-candidate Presidential Election which was held in October 2008. No single candidate won an absolute majority of valid votes cast in the first round of the Presidential election held on 8 October 2008, but opposition parties formed a loose coalition which collectively supported the candidature of the Maldivian Democratic Party (MDP) candidate, Mohamed Nasheed (who had secured the second highest number of votes in the first round of the Presidential election), in the run-off election held on 28 October 2008. Mohamed Nasheed gained approximately 54% of the popular vote in the run-off election and won the Presidency.

Economic Downturn and Financial Challenges

The new President's assumption of office was accompanied by high expectations for change among Maldivians, but the new administration was confronted immediately with a number of challenges including a large budget deficit, high government debts, and low foreign reserves.

The Government quickly announced several symbolic cost-cutting measures in a bid to achieve savings. The economic challenges facing the country were publicly debated; allegations of financial misappropriation and mismanagement which were highlighted in the Presidential campaign continued to feature prominently in media and other debates.

In addition, the global economic downturn began to affect tourist arrivals in the country with estimates of decline ranging from 10 to 25%. As tourism is the mainstay, though not only, pillar of the economy and a major employer, any significant downturn in the industry has potentially far-reaching ramifications.

Political and Governance Challenges

Other key challenges facing the new administration was the need to manage the coalition of parties that had enabled President Nasheed's electoral victory, as well as managing public expectations for change.

An early controversial action was the replacement of eight non-elected members of the People's Majlis appointed by former President Gayoom under the previous Constitution with President Nasheed's own appointees.

The new Government argued that the composition of the People's Majlis, including the political appointees, was provided for under the new Constitution for the transitional period up to the election of a new People's Majlis. The new administration, with coalition partners, consequently secured a parliamentary majority. Some parties protested that this was unconstitutional and a petition challenging the appointments was entered in the High Court in November 2008. The matter was taken on appeal to the Supreme Court, which had yet to rule at the time of the Parliamentary Elections.

Challenges within the Coalition

A new 14 member Cabinet, comprising seven fewer members than the previous Cabinet, was sworn in on 12 November 2008. It included members of five political groups in coalition with the MDP¹. Former Presidential candidate Gasim Ibrahim of the Jumhooree party was given the Home Affairs portfolio, while former Attorney-General Hassan Saeed of the New Maldives Movement was appointed a Special Adviser to the President, but without a Cabinet portfolio. Saeed's running mate, former Foreign Minister Ahmed Shaheed, regained his old Ministry.

The challenge of maintaining the coalition proved problematic and senior figures left the coalition relatively quickly. The Home Minister abruptly left just weeks after the election under contested circumstances, and Special Advisor Saeed left on the 100 day anniversary of the new administration, citing an unwillingness of the President to listen to advice as the reason. However, leading members of their parties remained in Government.

Further public rifts and criticisms by coalition members occurred, including public disagreements between the President and the Attorney-General, Dhiyana Saeed. The latter focused on allegations made by the Attorney-General that politically appointed Atoll and Island level councillors appointed by the President were exerting undue influence over voters. She went on to accuse the President of acting unconstitutionally in failing to appoint a permanent Home Minister to replace Mr Ibrahim. She also claimed that the appointment of the Minister of Defence and National Security as Acting Home Minister was in breach of the Constitution, as this represented a potential conflict of interest.

Dissent over Decentralisation

Article 298 of the Constitution provides that elections to Atoll, Island, and City Councils shall be held before 1 July 2009. At the time of the Majlis entering its scheduled recess on 25 December 2008, the enabling legislation and administrative arrangements required for such elections had yet to be developed. Such legislation must now be considered by the new Majlis which is likely to meet in full session at the beginning of June 2009.

The President dismissed Atoll Chiefs in early December 2008, all of whom had been political appointees of the former Government. He went to appoint seven provincial

¹ The Cabinet comprised five members from the MDP, four from the Republican Party, two from Hasan Saeed's political group, two from Vice-President Waheed's National Unity party, and one from Ibrahim Ismail's Social Liberal Party.

Ministers, and proceeded to appoint Atoll and Island ‘Political Councillors’. The Expert Team was informed by the Government that the majority of the Political Councillors were appointed in February 2009. The appointment of these Councillors has proved controversial and became a key feature in the election campaign. The Government stated that Article 115(f) of the Constitution which states that the President can ‘appoint, dismiss and accept the resignation of members of the Cabinet, and such officials necessary for the proper functioning of the duties of his office’, provided the legal authority to the President to appoint the Political Councillors.

No opposition party challenged the legal basis for the appointment of the Councillors through the courts, but openly criticised the action to the Expert Team as being contrary to the spirit of the constitution, and reflecting a practice which the MDP had itself criticised the former Government of using. Many interlocutors complained to the Expert Team that the Political Councillors were largely drawn from the ranks of MDP loyalists, were not qualified for the positions, and their primary mandate was believed to be securing electoral victories for MDP candidates in the Parliamentary Election. The Team noted that some of the Political Councillors were standing for Parliamentary office, and that others had reportedly stated publicly that they would seek local government office on an MDP ticket in the forthcoming local election.

Members of the Government and MDP stated to the Expert Team that the Political Councillors were appointed to lead the implementation of government policy at the Atoll and Island levels, citing active non-cooperation and hostility on the part of civil servants at the Atoll and Island level to the government and its policies. These Political Councillors were political appointees and did not fall under the jurisdiction of the Civil Service Commission, unlike the Island Chiefs. The President continued to appoint Political Councillors well into the Parliamentary Election campaign period.

Further criticism of the Political Councillors as reported to the Expert Team included allegations that Political Councillors were intimidating civil servants and directing the Civil Service Commission to transfer particular island level civil servants. The Civil Service Commission confirmed to the Expert Team that such requests had been made, but that the Civil Service Act and Employment Act prescribed the circumstances under which civil servant placements could be changed, which precluded rapid re-deployment or enforced redundancy. The Expert Team heard many complaints from opposition parties, statutory bodies and civil society actors on the role and actions of these Political Councillors during the election campaign, which are discussed further in Chapter 4.

A Decentralisation Bill submitted to the People’s Majlis attracted criticism from some MPs when debated in parliament in April 2009. Concerns focused on fears that the arrangements proposed in the Bill would concentrate power on larger atolls, and move decision making away from proposed directly elected Atoll Councillors to the seven Provincial Ministers of state already appointed by the President.

Further public clashes between the President and the Attorney-General on this issue, including on her application to the Supreme Court for clarification on the constitutionality of the President’s actions, highlighted ongoing tensions between coalition members and the controversy surrounding the appointment of Provincial Ministers of State and Atoll and Island Political Councillors.

Censorship of Websites

The pressures of maintaining a cohesive government consisting of parties with widely differing ideological viewpoints were further evidenced in a series of events involving the Ministry of Islamic Affairs. This new Ministry had been given to the Islamist Adhaalath Party, which had joined the coalition of parties that coalesced during the Presidential election campaign.

In mid-March 2009, the Ministry of Islamic Affairs ordered the Telecommunications Authority to block access to an Islamic website which reportedly contained interviews and articles by imams and scholars critical of the Ministry. The Expert Team was informed in May 2009 that access to the websites had been restored.

Interim Institutions

Chapter XIV of the Constitution on Transitional Matters in the new Constitution specifies that the composition of the five interim institutions set up upon ratification of the Constitution is to be reviewed by the new Majlis. In addition, Article 297 of the Constitution states that other constitutional posts may also be reviewed within two years of the ratification of the Constitution. As such, key transitional bodies including the Elections Commission, Judicial Services Commission and the Supreme Court, and, potentially, statutory bodies established prior to the ratification of the Constitution including the Human Rights Commission and Civil Service Commission, membership of these bodies could be changed by the new Majlis.

Some interlocutors suggested to the Expert Team that the threat of possible replacement by the new Majlis may have intimidated or influenced in some way the actions of these bodies when considering election related matters. The Team has no way of verifying or disputing such claims. The Team echoes the views of the Commonwealth Observer group that was present for the Presidential Election in October 2008, on the critical importance of ensuring the independence of such bodies if a robust democracy and democratic culture is to be fostered in Maldives.

Former President's Privileges and Immunities Bill

A key question which attracted much public and private debate between the Presidential and Parliamentary Elections was the proposed state provision of support to former President Gayoom, as the former Head of State. Conciliatory remarks made by President Nasheed at the time of the peaceful and cordial transfer of power in November 2008 indicated that amicable relations and appropriate treatment of President Gayoom would continue. The new President stated that “democracy could not be established with a heart full of vengeance,” and, when addressing a joint press conference with former President Gayoom, he said “a test of our democracy will be how we treat Maumoon...I believe he’s one of the most important leaders of this country... he is going to be staying with us.”

He subsequently requested parliament to proceed quickly to approve “pension and protection” arrangements for the former President. The death in late November of Ibrahim Nasir, Gayoom’s predecessor who went into exile, reinforced the fact that the sole and immediate beneficiary of the Bill’s provisions would be former President

Gayoom. This, plus the fact that Mr Gayoom gave no indication that he intended to retire from active politics, appeared to polarise opinion on the granting of retirement provisions for the former President. The Bill remained in Committee at the close of the last Majlis sitting and will be considered by the democratically elected Majlis.

Recent revelations from a report by the Auditor General on expenditure by the former Government have added to the controversy, with allegations made that Mr Gayoom, in the final days of his presidency, had illegally allocated state funds for the establishment of a fully-staffed Secretariat for the Former President. The Auditor General's report recommended that parliament "immediately cease" all spending on the Former President's office, and freeze payment of benefits pending the finalisation of the required legislation by the Majlis².

ELECTORAL MATTERS

Electoral Legislation and Dates

The timing of the Parliamentary Elections became a major source of political tension in December 2008 and January 2009.

Article 296 of the Constitution, in the chapter addressing Transitional Matters, stipulates that the first multi-party election for the People's Majlis shall be held before 15 February 2009, and that the first meeting of the new Majlis shall take place before 1 March 2009. Article 299 of the Constitution provided that the Majlis draw up a schedule to debate and pass all necessary legislation to give effect to the provisions of the new Constitution. This, therefore, included the need to pass enabling legislation for the holding of the Presidential, Parliamentary and local government elections within the stipulated timeframes presented in the Constitution.

The Executive was responsible for producing the necessary Bills to provide the legal framework of the Parliamentary Elections, including the Parliament Elections Bill and Elections Constituencies Bill. The Bills were submitted to the People's Majlis late into the parliamentary session in December 2008. Majlis business was focused on the national budget proposals at that time, and the Parliamentary Speaker stated that the House Standing Orders precluded discussion of any other matter when the budget was before the House. Budget discussion concluded a few days before the scheduled close of the Majlis sitting, with only a few days remaining in which other matters – included the Electoral Bills – could be considered by the House.

On 25 December 2008, Majlis members, including MDP members and Presidential appointees, voted on a motion brought by the Speaker to go into recess until March 2009, by confirming the Standing Orders, which signalled a recess was due. This consequently left no means for the necessary legislation to be passed into law in a timely manner that would allow for the electoral schedule the Elections Commission stated it would need to complete preparations and to conduct the Parliamentary Election (approximately 64 days), in accordance with the timeframes set down in the 2008 Elections (General) Act, before the 15 February 2009 timeframe as set down in the transitional chapter of the Constitution.

² Source: Minivan News, 20 April 2009

Fears were immediately expressed by many opposition political figures and commentators, that Maldives could enter a 'constitutional vacuum' if the new Majlis was not elected before 15 February 2009 and did not meet before 1 March 2009, as it would be an 'illegitimate' parliament.

A number of lawyers lodged a petition in the High Court requesting a ruling to explicitly state that the parliamentary recess violated the Constitution, and directing that the Majlis undertake all necessary steps to uphold the Constitution. The High Court rejected the lawyers' petition. On appeal by the lawyers to the Supreme Court, the Supreme Court ruled on 14 January 2009 that the election dates specified in the Constitution must be adhered to, but did not comment specifically on parliament's decision to break for recess or on the validity of parliament should the election dates pass without an election having been conducted. Thus the Supreme Court upheld the Constitution with regard to the date of the Parliamentary Election.

In response thereto, the Majlis Speaker reconvened parliament on 19 January 2009 and the Election Constituencies and Parliamentary Election were enacted on 9 and 10 February 2009 respectively. The Bills were ratified by the President into law on 15 February 2009. The Elections Commission subsequently announced on 4 March 2009 that the Parliamentary Elections would be held on 9 May 2009.

Electoral Amendments

On 16 February 2009, a day after ratifying the Parliamentary Elections Act, President Nasheed submitted an amendment to Section 20(a) of the Act which specified that all ballot papers should be counted and announced at Voting Centres. The amendment sought to give the Elections Commission authority to take all necessary measures to ensure voting secrecy.

The Commission expressed concern that voting secrecy may be compromised in the case of single voters who voted outside their constituency, and may have to use a separate ballot box. The Commission informed the Team that this would affect 3,210 voters who were the 'sole' voter for a constituency in specific Voting Centres. The Team noted, however, that this could also affect an additional 2,290 electors who were 'one of two' voters registered for specific constituencies at some Voting Centres, and a further 1,727, where electors were 'one of three', depending on the turnout of voters on polling day.

Critics of the proposed amendment feared that the Election Commission might resort to physically moving such ballot boxes from polling stations in order to count them, thus reducing public confidence in the transparency of the voting process. They cited Article 171 (b) of the Constitution, which states that votes should be counted and announced at polling stations.

The Majlis narrowly voted in favour of the amendment on 29 April 2009; the amendment stated that "If the Elections Commission believes that the secrecy of the vote would be compromised, if an individual votes for a polling station in the electoral constituency he/she wants to be registered in, other than the electoral constituency where they have been registered, in that case the Elections Commission can inform

that individual to cast his/her vote in a polling station where the Commission believes the secrecy of the votes can be maintained.” Given that electors were only supposed to vote in the Centre at which they were registered, the voter list had been closed to further amendment at that time, and very little time remained before polling commenced, the Commission stated to the Expert Team that accommodating the spirit of the amendment would likely prove difficult.

Chapter 3

THE LEGAL FRAMEWORK AND ELECTION ADMINISTRATION

The Maldives is a sovereign, independent, democratic Republic based on the principles of Islam, and is a unitary state. The relevant legal framework for the Presidential election generally provides the basic conditions for democratic elections and comprises of the following:

- The Constitution of the Republic of Maldives, 2008
- Elections Commission Act, 2008
- Elections (General) Act – Act No: 11/2008
- Parliamentary Elections Act, 2009
- Electoral Constituencies Act, 2009
- Parliamentary Election Rules and Regulations, 2009

The Constitution

The Constitution, which was ratified on 7 August 2008, is the supreme law of Maldives. Article 8 stipulates that all powers of the State shall be exercised in accordance with the Constitution. It also provides for Transitional Matters in Chapter XIV, which shall apply from the commencement of the Constitution until the election of and assumption of office by the President and the People's Majlis.

It provides for the Parliamentary Elections to be held before 15 February 2009. This chapter also provides for the appointment of a five-member Elections Commission through nominations by each of the political parties and by resolution of the People's Majlis passed by a two-thirds majority. The term of this Elections Commission would be until the appointment of a new Elections Commission under the Constitution after the 2009 Majlis elections. Under this Chapter, the elected Parliament should hold its first meeting before 1 March 2009.

Article 71 (b) of the Constitution stipulates that the country be divided into twenty administrative Atolls plus Male', for a total of twenty one. It further stipulates in Article 71 (a) (1) and (2) each administrative division is allocated two members for the first five thousand residents registered, or two members for administrative divisions with less than five thousand residents; and, where the residents registered to an administrative division exceed five thousand residents, one additional member for each group of five thousand residents in excess of the first five thousand. Majlis members are elected in single mandate constituencies according to the 'first past the post' system.

Elections Commission Act

The Elections Commission is responsible, inter alia, for the conduct and supervision of the Parliamentary Elections. This Act also prescribes a code of conduct for the members of the Commission. Voting in all public elections shall be by secret ballot. Decisions of the Elections Commission may be challenged by means of election petitions presented to the High Court.

The transitional arrangements in the Constitution stipulate that the members of the Elections Commission will serve until the appointment of new members by the newly elected People's Majlis.

Elections (General) Act

The Act establishes an adequate regulatory framework based on democratic norms to ensure that all elections held in the Maldives are carried out fairly and transparently. Eligibility to vote in the election is provided to all Maldivian citizens above 18 years of age.

This Act provides for the general policies and all the general matters in relation to conduct of all elections unless a specific law on a particular election has been enacted (such as the Parliamentary Elections Act). It also provides for voting outside Maldives. For these elections this was provided to eligible persons residing in India (Trivandrum), Malaysia (Kuala Lumpur) and Sri Lanka (Colombo).

The Act prescribes limitations on election expenses and full disclosure of all financial matters relating to a candidate's participation in an election. Election-related offences and penalties are also prescribed. The Elections Commission Act states that all elections shall be held, and all matters in relation to elections shall be conducted and supervised by the Elections Commission. Decisions by the Elections Commission may be challenged by way of election petitions presented to the High Court.

Section 29 (a) of the Act also sets out a Code of Conduct for candidates during election periods.

Electoral Constituencies Act 2009

The Election Constituencies Act sets out the principles on how the membership of the parliament is determined, the manner in which electoral constituencies from every administrative division are determined, and the manner in which the boundaries of all the electoral constituencies are determined.

Sections 7 and 8 of the Act give the Elections Commission authority for obtaining information from the appropriate government authorities, in order to determine the number of members of parliament, in accordance with principles set down in Section 5 of the Act. In so doing, the Commission is required under Section 10 of the Act to consider a number of principles including:

- maintaining an equal balance in the population of electoral constituencies in one administrative division;
- attempt to maintain the population of one island in one electoral constituency;
- have neighbouring islands in one administrative division in the same electoral constituency;
- ensuring that constituency delineation is done in a manner that does not upset the social harmony of the population in an administrative division; and

- if more than one electoral constituency is to be established in one island, have the neighbouring areas belong to one electoral constituency, taking into account any administrative or social divisions in that island.

Notwithstanding these provisions, the Commission is given discretion in Section 9 to establish an electoral constituency, and aim to ensure that the total number of registered residents for each constituency within an administrative division does not vary by more than 15%. Provision is made in Sections 13 and 14 of the Act for citizens to lodge complaints with the Elections Commission against proposed constituency boundaries, with recourse to the High Court if necessary.

Shortly after adoption of the legislation, the Elections Commission released an interim report proposing 77 constituencies be established. Eleven complaints were filed by citizens resulting in two alterations to the proposed list. The High Court on 8 March 2009 dismissed a claim that Seenu Atoll should have seven not six constituencies, and 77 constituencies were subsequently confirmed and contested in the 9 May 2009 election.

Parliamentary Elections Act 2009

The Parliamentary Elections Act governs the election of members to the People's Majlis, as stipulated in the Constitution, and also sets out the procedures to the election in detail. Some of the salient features of the Act deal with the registration of electors, the composition of the parliament, the nomination process and the election date and other election related matters as follows:

Eligibility of Candidates

One member shall be elected for each electoral constituency established by the Elections Commission in accordance with the newly enacted Electoral Constituencies Act 2009. A candidate cannot contest in more than one electoral constituency. A candidate is qualified to contest the Parliamentary Election if she/he:

- is a citizen of the Maldives;
- is not a citizen of another country;
- is a Muslim and a follower of the Sunni school of Islam;
- has attained the age of 18 years; and
- is of sound mind.

The Act stipulates further that a person shall be disqualified from contesting in the Parliamentary Elections if she/he:

- has a decreed debt which is not being paid as provided for in the judgment;
- has been convicted of a criminal offence and is serving a sentence of more than twelve months;
- has been convicted of a criminal offence and has served a sentence of more than twelve months, and a period of three years has not elapsed since his release or pardon for the offence for which he was sentenced; and

- is a member of the Judiciary.

Ministers are not able to simultaneously be members of the Majlis. Candidates may contest as independents or in the name of a registered political party. Independents must provide 50 signed statements supporting their candidature by electors from within the constituency in which she/he is standing. Those standing on party tickets do not have such a requirement, though parties can only be registered if they *inter alia* have 3,000 registered members.

At the close of the official nomination period specified by the Elections Commission on 22 March 2009, the Commission had received 472 nominations. Seven nominations were rejected; a further seven candidates withdrew their candidature; a further three candidates were later de-registered due to court rulings on unsettled debts not being complied with. A total of 455 candidates contested the 9 May 2009 election.

The Commission confirmed on 6 April 2009 that Candidates that contested the poll represented eleven of the thirteen registered parties, with the MDP fielding the highest number of party candidates (75). DRP fielded 59 candidates, with other parties fielding substantially fewer candidates³. The Team noted that a total of 246 candidates stood as independents, representing over half of the total number of candidates contesting the poll. This may reflect the new concept of party-based politics in Maldives and the fact that candidates in previous elections have contested as independents.

Parliamentary Election Rules and Regulations (The Regulations)

The Regulations deal with a series of procedural matters in relation to the conduct of the Parliamentary Elections, including the appointment of election officers in the Atolls by the Elections Commission. The Commission announced that 398 Polling Committees (PCs) would be established to administer voting at 398 Voting Centres (including Centres in 3 overseas locations, at some ‘resort’ and ‘industrial’ islands, and in prisons). Polling Committees would comprise between eight and ten members, depending on the number of voters registered at each Voting Centre.

Section 4 of the Regulations provides for the establishment of a National Advisory Committee to offer advice to the Elections Commission and discuss matters related to the Parliamentary Elections. The Committee comprised a Human Rights Commission member, a staff member appointed by the Maldives Police Service, a representative from civil society, and a representative from registered political parties.

The Regulations also provide for the establishment of 5-member Atoll Advisory Committees to provide similar advice to the Atoll Election Officials, and comprised the Atoll Election Officer, three representatives drawn by lot, chosen from among

³ In late January 2009, public funds for the Maldivian National Congress, Social Liberal Party, People’s Party and Poverty Alleviation Party were temporarily suspended at the request of the Elections Commission, on the grounds that these parties had the support of fewer than 3000 members. Parliament was asked to consider a legislative amendment dissolving such parties, but it was unclear whether the matter would be addressed by the incumbent parliament. The Elections Commission stated that it would *not* be taking any action to dissolve parties with fewer than the requisite number of members.

registered political parties which have filed for candidacy in the respective constituencies. Representatives from other political parties, independent candidates and civil society organisations could also participate as observers.

Election Administration

The Elections Commission is responsible for the conduct and supervision of the Parliamentary Elections and it consists of members of political parties endorsed by the People's Majlis. Despite the fact that the members of the Commission are nominated by political parties, they are directed to act in a non partisan, neutral and transparent manner in the discharge of their duties.

Two new Commissioners were appointed to the Elections Commission on 24 March and 21 April 2009 respectively, following the resignation of one Commissioner in December 2008 and another in March 2009.

The Commission established 398 Voting Centres and recruited 20 Atoll Election Officers to monitor the work on polling day of some 194 Island Election Officers who managed the work of all Polling Committees. The Commission conducted training for all Election officials in Male' prior to polling day.

Voter Registration

Under Article 170(b) of the Constitution, the Elections Commission is responsible for preparing, maintaining and updating the voter list. Weaknesses in the voter list presented a serious problem in the first round of the Presidential election. Though some improvements were made to the list ahead of the run-off election, weaknesses in the list endured and gave rise to a number of complaints and frustrations on polling day.

The Elections (General) Act stipulates that the Elections Commission shall prepare and maintain a register of electors, which shall be made public forty five days before an election. The Elections Commission reported to the Expert Team that it had implemented a number of measures in a bid to clean up the final voter list used in the Presidential election in October 2008, and reduce the number of omissions, duplications, and inclusion of deceased voters, in preparation for the Parliamentary Elections. The voter list for the Elections was gazetted on 8 March 2009, and citizens were given until 18 March 2009 to lodge any complaints and objections.

Voters may register to vote in the island of their permanent residence, but, in accordance with Section 12 (a) of the Elections (General) Act, 'any 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 the Elections Commission', enabling persons to vote outside for the constituency of their permanent residence, though residing or working elsewhere at the time of polling cognizant of the highly mobile nature of the Maldivian population. Voters were requested to view the provisional Voter list between 12 March 2009 and 16 April 2009 and re-register with the Commission if they wished to register at a different location to that which was presented for them in the provisional voter list. The Commission extended the deadline for review of the list and the lodging of complaints and objections to 21 April 2009.

The final voter list for the Parliamentary Elections comprised of some 212,560 voters, an increase of 4,308 of the total voters registered for the Presidential election. The Commission stated to the Team that 158,000 voters would vote in their permanent place of residence, with 54,500 voters casting their ballots in their temporary places of residence (including industrial and resort workers). 1,256 voters had registered to vote at the three overseas Voting Centres.

The Commission stated that there were some 7,000 eligible voters residing in Male' that were yet to be allocated land or living space in Male' or neighbouring Islands. Known as *Dhaftaru*, the Commission allocated these voters across the eleven Male' constituencies. As these voters were also eligible to register at a different location, some candidates complained that some on the list were registered at their previous permanent residence as well as their 'new' address, and, potentially, could also register to vote elsewhere.

Allocated to constituencies and identified only by their serial number rather than their actual place of residence, or probable future place of residence, some candidates complained to the Expert Team that they had no way of identifying or reaching out to those voters in this category that had been assigned to their constituency. They complained that campaigning was, therefore, constrained. Some also suggested that the manner in which these voters were allocated was being used in some way to manipulate the voter list. Potential problems relating to this category of voters had been brought to the attention of the Majlis by the Commission, but no specific guidance had been provided as to what the Commission could do about this matter.

Voter Education

The Elections Commission is mandated to educate and create awareness among the general public on the electoral process and its purpose, under Article 170 of the Constitution and Section 21(g) of the Elections Commission Act. The Team noted and commends the efforts the Commission made to raise awareness among voters using a variety of media about electoral procedures, including the need to ensure proper registration within prescribed timeframes. The Expert Team also noted efforts made by the Human Rights Commission and civil society groups to raise awareness among the electorate.

Whilst there is a high level of literacy in the Maldives, coupled with a large proportion of the population that is ICT literate, the Expert Team felt that events on polling day indicated that an ongoing comprehensive voter education campaign is needed.

Complaints and Appeals

Article 172(a) of the Constitution stipulates that any challenge to an electoral matter or election result may be entered by way of a petition to the High Court. Sections 10 and 62 to 65 of the Elections (General) Act further provides for redress of complaints about information in the register of electors and election results, respectively. The Act also makes provision for the establishment of mechanisms to deal with complaints through the promulgation of regulations. Petitions can be filed to the High Court by voters, candidates, political parties, monitors, observers, and election officials. Section 64(c) stipulates that petitions must be filed within 14 days of the official announcement of results (16 May 2009), and Section 65(b) stipulates that the Court must rule within 30 days of the announcement of the results.

The Elections Commission established the National Election Complaints Bureau (NECB) on 27 April 2009, comprised of five members, three members having “extensive knowledge about the Constitution”, and two senior staff from a civil service or two persons from the public, not affiliated to political parties. All national level complaints would be submitted to the NECB, as well as complaints from Male’, resort and industrial Islands.

In addition, the Commission established 60 Constituency Complaints Bureaux to address complaints at the constituency level. These Bureaux were only opened three days prior to polling and observations by the team indicated that many citizens on the Islands visited in the days before polling were wholly unaware of whether these Bureaux were open and operational. Individual Complaints Officers were also appointed to each Voting Centre under the authority of the Presiding Officer. The Regulations provide that the NECB and Constituency Bureaux will ‘look into complaints’, but also states that they have ‘complete freedom’ to make its own decisions but with the help of the administrative section of the Elections Commission.

The NECB on 9 May 2009 publicly stated that 700 of the over 800 complaints received since the opening of the Bureau, and prior to commencement of polling, related to voter registration issues. 79 complaints related to bribery, intimidation and complaints against elections officials and observers. Other issues included campaigning and the distribution of money after the deadline for close of campaigns on 8 May 2009. The NECB reported on 7 May 2009 that 128 complaints which were administrative errors had been resolved by that date, and that only one case had been referred to the Prosecutor General.

The poor handling of complaints by the NECB during the Presidential Election in October 2008, and in the first round in particular, was a major source of tension and frustration among voters. The Commonwealth Observer Group present for the first round of the Presidential election had recommended that ‘given the many concerns expressed about the complaints mechanism, the mechanism itself should be examined further and revised to ensure greater clarity of process, clear decision making lines and authority, and be explained to the public as part of a widespread voter education programme’.

The Observer Group noted in the run-off Presidential election that the mechanism still faced significant challenges in addressing complaints received during polling day, though the improvements made at that time to the voter list had assisted in reducing the volume of complaints received, compared to the first round. Though some efforts had been made by the Commission to bolster the capacity of the complaints mechanism for the Parliamentary Elections including through the appointment of Complaints Officers at Voting Centres and dedicated training for complaints officials on 4 to 5 May 2009, the mechanism was to prove unable to efficiently deal with complaints on polling day as discussed in Chapter 5.

KEY ISSUES

The Expert Team believes that the provisions in the Constitution related to electoral matters and the legal framework for the Parliamentary Elections was comprehensive and provided an appropriate framework for the conduct of the election. The Team did note, however, that a comprehensive Political Parties Act has yet to be passed to

govern the registration and conduct of political parties, though a Code of Conduct for candidates and parties is included in the Elections (General) Act.

The Expert Team noted that the Commission's statement that it used the voter list which was updated on polling day in the Presidential run-off election as the basis for the voter list for the Parliamentary Elections. The list produced as a result of the Presidential election was later verified and cleaned up. 1,000 records containing duplicate entries and deceased persons were removed and approximately 3,000 new electors were added. As a result, the list used in the 9 May 2009 poll should have been an improvement on than that used in the Presidential election.

Unfortunately, it appeared that many voters were unaware or ignored advice publicly broadcast by the Elections Commission that voters should still check the list when it was publicly displayed, particularly in light of the fact that the registration of many voters who had registered in the Presidential election to vote on resorts and industrial Islands instead of their permanent address had reverted to their permanent address. This was to pose challenges to Elections Commission officials and the NECB on polling day.

Another issue of concern to the Expert Team related to the single electors who were voting for their constituency at a temporary residence. The Expert Team noted the concerns raised by the Elections Commission on the potential undermining of the secrecy of the vote of these electors.

The Expert Team commends the Elections Commission for implementing a mechanism to ensure that all electors are given the opportunity to exercise their franchise, even if they will be located away from their permanent residence at the time of polling. The Expert Team noted with concern, however, the additional administrative and logistical burden of providing the ballot papers needed to cater for these electors. In addition, the Expert Team noted that the reconciliation procedures used for processing the count and tabulation of results for multiple constituencies in individual Voting Centres proved to be a challenge on polling day.

CHAPTER 4

ELECTION CAMPAIGN

The Constitution of Maldives guarantees freedom of expression,⁴ media freedom, freedom of association and freedom of assembly. *The Elections (General) Act (EGA) 2008*, *Parliamentary Elections Act (PEA) 2009*, and the *Parliamentary Election Rules and Regulations* detail the rights and responsibilities of candidates and their supporters. The legislation provides for the right to campaign, use of media, advertising, distribution of written material and the use of emblems and funding. The Regulations also set out a code of conduct for candidates and campaigners. The following assessment of the electoral campaign is considered in this context.

The 9 May 2009 Parliamentary Elections marked the country's first multi-party elections, and followed the Presidential Election of October 2008. The parliamentary elections took place in an environment of global financial crisis and recession, which had the potential to adversely affect Maldives' major industry of tourism.

455 candidates contested the polls. Eleven political parties fielded 209 candidates. The remaining 246 candidates contested as independents. The Maldivian Democratic Party (MDP) and the Dhivehi Rayyithunge Party (DRP) fielded the largest number of candidates, with 75 and 59 respectively. The DRP and People's Alliance (PA) formed an electoral alliance and agreed not to contest against each other in a number of constituencies. The MDP launched its electoral campaign on 6 April 2009, with the DRP/PA alliance following a week later.

Election Issues

Employment, health, education, transport and anti-drug issues were highlighted by all the main parties and candidates. In addition, political debate focussed on the Government's privatisation and decentralisation plans. The Expert Team noted, however, that personality politics dominated the campaign. A number of well known political figures had also chosen to contest as independents rather than on party tickets, a product of the new development of multi-party politics. Although there was no legislative barrier to women standing as candidates, the Expert Team was disappointed that out of a total of 455 candidates, only 21 were women. Five of these were successful in the elections.

Conduct of the Campaign

Political party representatives that the Expert Team spoke to asserted that they were generally able to campaign, meet voters, hold rallies and present their policies to the electorate without interference from the state. However, concerns were expressed by the DRP that it was not able to get approval by the Male' Municipal Authority to hold its closing rally in one of several main public areas in the city. The DRP eventually held its closing rally in the PA's campaign offices. Another candidate contesting in Male' from a smaller political party complained to the Expert Team that the MDP

⁴ Art 27 guarantees freedom of thought and expression "in a manner that is not contrary to any tenet of Islam".

candidate contesting against him had been given preferential treatment by the authorities when holding rallies.

The pre-election environment was observed to be generally calm. Campaign posters, banners and rallies were highly visible, particularly in the capital, and there were no reports of significant political violence.

It is generally expected and accepted that political debate during an election campaign will be robust, and this campaign was no exception. Much of the debate appeared to focus on claims and counter-claims of political manipulation, bribery and corruption. However, the fact that such debate occurred is itself indicative of the change that has already been achieved in this developing democracy.

Campaign Financing

Provisions pertaining to campaign financing are set out in the EGA 2008. These stipulate that each candidate should open a bank account from which all election related expenditure should be met. Candidates are limited to spending a total sum calculated on the basis of 1500 Rufiyaa (MVR) per each eligible elector from the constituency where she/he is standing. Individual contributions must not exceed 0.5% of this amount (2% for contributions by a legal entity).

Candidates are obliged to provide a financial statement to the Elections Commission within thirty days of the election date. The Elections Commission is empowered to make this information available to the public.

While the rules were specific regarding the amount of money that could be spent by candidates, the Expert Team was informed of alleged instances where these rules were flaunted. There were allegations that sums ranging from payments of MVR200 to MVR20,000 were made to individuals in exchange for their vote, as well as the provision of 'free' official Government transport to some candidates.

KEY ISSUES

The Expert Team was told by opposition political parties, civil society groups and others that the Government was inappropriately utilising state resources to support ruling party candidates. Examples cited included the use of official boat transport for electioneering, and the launching of development projects by the President and Ministers in the immediate run-up to the elections. One particular example was the Ministerial unveiling of a project with an official plaque where the tenders for the construction of the project had not yet been called for. Complaints were also made to the Expert Team regarding a speech by the President where he was reported to have made political comments inappropriate to his position.⁵ Interlocutors expressed disappointment at the new Government's recourse to such practices which had been perceived to have been widely used by the former President during his 30 years in power.

⁵ The President was quoted as saying "When a member of my party pesters me, I will do what he asks for. When a member of another party pesters me, they will come to see my ruthlessness as well...don't be mistaken, none of you can even imagine what I might or might not do." (Source: Minivan News, 26 April 2009)

Of particular concern to the Expert Team were allegations made by political parties and others that, in the run-up to elections, the Government had appointed a large number of ‘Political Councillors’ at Atoll and Island level.

These appointments were made without any advice from the Civil Service Commission, and it was claimed by many that they were not appointed on their merit or experience in administration, but that they were MDP political activists. The MDP asserted that the President had made these appointments in order to implement key Government policies, as Island chiefs appointed under the previous administration were obstructing the Government’s reform programme. However, it was alleged to the Expert Team by other parties, independent candidates and NGOs that these appointments were made so that state resources could be utilised to ensure the election of MDP candidates.

In this context, it should be noted that in the pre-election period, the Civil Service Commission, which is established as an independent body under the Constitution, expressed public concern that the civil service was becoming politicised. A legal challenge to Section 53 of the Civil Service Act, which prohibited civil servants from participating in “any political activity,” had been declared by the High Court as unconstitutional. The Court had directed the Majlis to re-draft the clause in a less restrictive manner. However, the Majlis had failed to do so within the three month time period stipulated by the Court. As a result, there was no legal impediment to civil servants engaging in political activity in the lead-up to the parliamentary elections. Conversely there was no legislation permitting civil servants to participate in political activity in their personal time.

Voter Education

In addition to sustained efforts by the Elections Commission to encourage voters to exercise their franchise, civil society organisations such as Transparency Maldives played an important role in promoting voter education, especially among young people. However, the Expert Team noted that NGOs did not play as prominent a role in the Parliamentary Elections as they had previously in the Presidential Election. The Human Rights Commission, an independent body established under the Constitution, also played a significant role in raising public awareness of issues surrounding the elections.

The Media

An example of the positive changes that have already occurred in the development of democracy in Maldives was the role played by the media throughout the campaign. The Expert Team was pleased to learn that the Commonwealth Broadcasters Association had provided a media expert to advise the public broadcaster (TVM and Voice of Maldives) on good practice in relation to election coverage. In this context, the Expert Team noted that for the first time the public broadcaster had developed self-regulating guidelines that incorporated: the need for journalists’ preparation on learning about candidates, constituencies and issues; rules covering the campaign period, and voting and counting of ballots, with particular emphasis on election day, e.g. no cameras to show people marking the ballot, in order to preserve the secrecy of the ballot.

In addition to endorsing these guidelines, the public broadcaster encouraged its journalists not just report an incident e.g. if a voting district ran out of ballot papers, but to question election officials as to why this may have happened and what would be done about it.

Public broadcasting journalists were asked to watch for any irregularities (e.g. stuffing of ballot boxes) and report any incidents to election officials before mentioning the incident on air.

Although the Expert Team did not conduct dedicated media analysis, it noted that newspaper reporting appeared to be forthright and openly covered a variety of political topics, e.g. fears expressed by the Human Rights Commission that the elections would be marred by bribery and corruption; criticism of the Government for allegedly failing to prosecute drug lords; the contentious release of the Auditor-General's report into misuse of public funds under the previous administration; a conflict of interest claim by the Chamber of Commerce to its President, and a break-in at the Anti-Corruption Commission offices.

The Expert Team noted that the members of the media that it met expressed divergent views on the state of media freedom in the country. Some alleged that news and current affairs coverage by the public broadcaster was biased in favour of the ruling party, while others were of the view that journalists no longer needed to fear repercussions for conducting forthright interviews.

Some political parties also claimed that news coverage by the public broadcaster favoured the MDP, and that state functions were used as campaigning tools. This again was cited as a return to practices favoured by the former administration, and in direct opposition to what MDP had campaigned against in the previous presidential campaign.

In contrast to the Presidential Election, free air time was not provided for candidates except in televised 'debates', re-broadcast on public radio. All candidates, grouped with their constituency rivals, were given eight minutes to answer five pre-set questions. Candidates were also able to buy one minute's worth of daily airtime, broadcast as two 30 second slots.⁶ It was reported to the Expert Team that the cost for independent candidates was prohibitive and that the political parties managed to circumvent the 30 second segment allocated per candidate by amalgamating several of these time allocations to just some of their candidates.

In general terms this election campaign was conducted in an environment where individuals had the right to stand for election either as a member of a political party or as an independent, had the right to publish their views, had the right to freedom of movement, had the right to public assembly, and operated within a defined legal framework.

⁶ The cost of these television slots was MVR300 per 30 seconds. Radio slots were priced at MVR200 for two minutes.

RECOMMENDATIONS

These recommendations are designed to build on improvements to the democratic process that have already been achieved, and to further assist in establishing a strong and open democracy.

In order to achieve full transparency and accountability of the political process for both the political parties and candidates, we recommend that the Majlis enact legislation that mandates:

- for full disclosure of gifts and donations including the identity of donors and amount of donation;
- that the free use of official Government transport by candidates be prohibited during an election campaign; and
- that no new Government projects may be announced once an election is called.

MEDIA

The Commonwealth Observer Group to the 2008 Presidential Election has previously made recommendations in regard to transforming state-owned media into public service broadcasters regulated by an independent broadcast commission accountable to the Majlis. We again urge this reform to ensure accountability.

The training and self-regulation of the media is commended and again the Commonwealth Expert Team recommends that the passage of law on Freedom of Expression be expedited.

Chapter 5

VOTING, COUNTING AND THE RESULTS PROCESS

The Parliamentary Elections Act 2009 (PEA) and the Elections (General) Act 2008 (EGA) provided the framework for the first multi-party Parliamentary Elections in the Maldives. The PEA stipulated the nomination procedure for the members of parliament, and the Elections Constituencies Act 2009 set out the provisions for the new electoral boundaries.

The EGA sets out criteria for the eligibility of voters, the framework for the conduct of the election, the counting procedures and the complaints mechanism.

Preparation for Voting

The Elections Commission is responsible for the coordination and managing of the Parliamentary Elections. The main duties of the electoral officials at the Voting Centre were as follows:

- to look after the ballot boxes;
- oversee voting and counting processes within the Voting Centres;
- declare the provisional results of the votes cast;
- oversee observers and monitors; and
- to stop any unlawful activity that takes place in the area designated for the Voting Centre.⁷

The EGA stipulates that the Elections Commission send to each candidate a list of polling officials, three days prior to polls. Candidates would then have an opportunity to challenge or object to any of the individuals, and the Elections Commission would have to investigate the matter. The Commission must also provide training, information and guidance to election officials to discharge their duties.

The EGA states further that transparent ballot boxes be provided, and that only ballot papers provided by the Elections Commission, having a counterfoil bearing a serial number, be used. The Act also directs that the total number of ballots sent to each Voting Centre should comprise the total number of individuals registered to vote at that Centre, plus 1%.

The Regulations state⁸ that the Voter List relating to that particular Voting Centre must be available at the Voting Centre. The list should also include the names of those individuals who would turn 18 years of age on polling day.

The names of the candidates in the order announced by the Electoral Commission should be displayed at the Voting Centre and provisions made to enable the accreditation of observers from political parties, NGOs, international organisations and media to observe or monitor the electoral process.

⁷ Handbook for Polling Station Officials- English Translation

⁸ S17(d)

Organisation of Voting Centres

The Voting Centre should be operational from 09.00hrs to 20.00hrs, and all campaigning should stop, and campaign material should be removed from the Voting Centre and voting area (a radius of 100 metres), by 18.00hrs of the night prior to polling day.

The secrecy of the vote should be assured within the Voting Centre, but transparency in the location of the ballot box and Voting Centre activities should be provided. Election officials must also ensure that all essential materials required for the electoral process be present prior to the opening of the poll, including the voter list, marking ink, ballot box, ballot paper and seals.

Voting Centre Procedures

Polling Committees, consisting of 8-10 officials (depending on the size of the electorate at the Voting Centre) and headed by a Presiding Officer were responsible for the overall management of each Voting Centre. Officials were responsible for checking voters' IDs, placing an indelible ink mark on the voter's left index finger, issuing the ballot paper, and supervising the ballot box and voting areas.

Once ready for polling, election officials must open secured materials such as the ballot papers, display the empty ballot box, seal the box and secure materials in the presence of the first two voters and any observers and monitors present.

Voting Procedures

The procedure to be used for the voting process was as follows:

- check the voter's identification (national ID card, valid passport or driving license) to confirm their eligibility to vote as a Maldivian citizen;
- verify the voter is on the voter list and insert voter's ID card number in the corresponding box on the list and place a tick next to the line which includes his/her details;
- mark the voter's left index finger with indelible ink. Issue valid ballot paper to the voter;
- voter proceeds to the voting booth and places a tick on the ballot paper according to his/her choice;
- voter then places the ballot paper in the sealed ballot box;
An incapacitated or physically challenged voter could be assisted by an individual registered at that Voting Centre, to mark their ballot paper. Under the EGA,⁹ it was prohibited for voters to photograph, record audio or video in the voting area.
- observers were equally prohibited from using communication devices or photographing or recording events within the voting area;¹⁰
- if a voter was still in the queue at the Voting Centre at the designated time of closing, then she/he would be allowed to vote.

⁹ S51(d), EGA

¹⁰ S40(c)5 and 6

The voter was issued with the ballot paper for his/her relevant constituency. If registered for a different constituency than the one in which they were currently resident, the voter was issued with a ballot paper for the constituency in which they were permanently registered. In Male', due to the large number of voters hailing from other Atolls, separate Voting Centres were set up for these voters. In the Islands, one Voting Centre and ballot box were used for all voters.

Ballot boxes were to be sealed in the presence of observers at 20.00hrs, or when the last voter present in the queue at 20.00hrs had cast their vote.

Counting Procedures

Counting of ballots would take place in the Voting Centre from 21.00hrs on polling day, in the presence of all the political parties, and accredited persons.

The sealed ballot boxes would be opened in the presence of the representative of the political parties, independent candidates and accredited persons, and two members of the voting public who had voted at the Voting Centre.

Once the ballot box was opened, votes were to be sorted by constituency, then candidate groupings, then counted and collated in bundles of 50.

Once such bundles were checked and verified, the results were to be tallied and announced publicly within the Voting Centre, and displayed outside the Voting Centre. The result sheet would then be faxed to the Elections Commission in Male'.

Invalid votes would be the following:

- Ballot paper other than those supplied by the Elections Commission
- Ballot papers marked with any symbol other than a tick
- Ballot papers with more than one (1) tick
- Ballot papers not clearly indicating the voter's choice
- Ballot papers not eligible or acceptable under the constitution

Issuing Complaints

A Complaints Officer was to be present at every Voting Centre to address complaints by voters, candidate agents, observers and monitors. According to the Regulations¹¹, the role of the Complaints Officer is "to look into and resolve all the problems that need to be resolved regarding the Parliamentary Elections presented to that particular polling station." They were to refer those complaints "that could not immediately be resolved" to the Constituency Complaints Bureau. (In Male', such complaints were to be referred directly to the National Complaints Bureau). Unresolved matters at the constituency level would be submitted to the National Election Complaints Bureau (NECB). Complaints had to be filed within seven days, and petitioners were entitled to a decision within 48 hours. Appeals against a decision by the National Election Complaints Bureau could be submitted to the High Court.

¹¹ Art 31(b), Regulations

Voters in resorts, industrial islands or abroad, were to submit complaints directly to the NECB.

The Tabulation and Announcement of Results

Upon completion of the count in the Voting Centres, the Presiding Officer was to place a copy of the interim results sheet in “clear public view.”¹² These interim results were to be sent directly to the Elections Commission’s national results centre in Male’. In Voting Centres outside of Male’, the results sheets were to be faxed to dedicated fax numbers at the results centre.

Overview of the Conduct of the 9 May 2009 Parliament Elections

Members of the Commonwealth Expert team covered over 20 islands across seven Atolls (Seenu, Gnaviyani, Ha Dhaalu, Ha Alifu, Kaafu, Laamu, Thaa.) during the election period. This coverage ensured that election preparations, voting and counting procedures were observed in a cross-section of both small and large islands, in an impartial and independent manner. Industrial and resort islands were also covered.

At Atoll and Island level, the Expert Team met voters, Election Coordinating Committees, Island chiefs, Councillors, police, political parties, voters and civil society representatives.

There was a high voter turnout of 79% on polling day.

The Commonwealth Expert Team was pleased to note that several of the recommendations made by the Commonwealth Observer Group to the Presidential Election in October 2008 had been implemented. These included:

- Some improvements to the Voters register database, and cleaning and updating of the voters list;
- More comprehensive training for election officials at Voting Centres;
- Better management of queues at polling stations and provision of seating for voters in the queue;
- Prohibition of the use of mobile phones and recording equipment in the voting area. However, it was observed that this prohibition was only partially enforced; and
- Better placement of the voting booth so as to ensure secrecy of the Ballot.

KEY FINDINGS

As had also been noted during Commonwealth observation of the Presidential Election, the Expert Team had concerns on the issue of the complaints mechanism.

Polling day was generally peaceful and calm, albeit with some allegations of intimidation, as well as allegations of bribery across the political spectrum. In Hithadhoo, for instance, the Expert Team observed individuals being arrested for

¹² Handbook for Polling Station Officials- English Translation

distribution of drugs to voters on polling day in the vicinity of the polling station. The Police Commissioner reported four serious election-related violent incidents across the country on polling day.

The Elections Commission had made available the use of SMS, through the two main mobile phone networks, to verify the voter's constituency, and this was a commendable initiative. The Expert Team observed however, that the system became inaccessible by around midday of polling day.

There were also allegations of representatives of candidates taking ID cards from voters before polling and then arranging transportation for the said voters, thus ensuring that the latter voted for a particular candidate.

The Expert Team was pleased to observe that election officials efficiently and diligently carried out their duties. Officials were courteous and helpful to voters, had generally provided a good layout at Voting Centres, and were seen to support and prioritise assisted voters. The Team noted in particular that the atmosphere in Voting Centres was generally orderly, and that chairs had been provided for queuing voters.

The Expert Team noted that the supply of election material at Voting Centres was sufficient. The police presence provided for by law was discreet and unobtrusive. The queuing system was effective and speeded up the electoral process. Secrecy of the vote was assured, but at the counting stage was potentially compromised in cases where single voters had to cast their vote for another constituency.

The Expert Team welcomed the presence of party and candidate observers at all the Voting Centres visited. The Expert Team also noted that domestic observers organised by Transparency Maldives were present for the polling and counting in many polling stations visited. Party and candidate observers were present in all Voting Centres visited.

Though some efforts had been made by the Commission to improve the complaints mechanism for the Parliamentary Elections, including through the appointment of Complaints Officers at Voting Centres, the mechanism proved unable to efficiently deal with complaints on polling day. The Expert Team found that Complaints Officers at Voting Centres lacked the authority and / or information needed to deal with complaints on the spot, and transmitted the majority of complaints to the NECB in Male'. The NECB was consequently over-burdened with complaints from across the country.

Minutes before the scheduled close of voting at 20.00 hrs, the Elections Commission announced that due to unresolved complaints relating to registration, Voting Centres were to remain open until 01.00hrs (10 May 2009). There was some confusion about the statement, which appeared to suggest that *all* Voting Centres were to remain open until 01.00hrs.

In a further clarification, issued two hours later, the Commission stated that *only* Voting Centres where registration complaints had already been lodged would remain open. However, the Expert Team noted discrepancies in the application of these instructions, and general confusion amongst election officials.

As had been the case during the Presidential Election, the last minute announcement by the Elections Commission on television, and the official transmittal of these instructions by telephone from the Atoll Coordinating Committees to the 395 individual Voting Centres (plus three outside the country), generated uncertainty and, in some cases, tension among candidates and voters. This was compounded by the fact that television reports were announcing unofficial and unconfirmed results while polling was continuing in some areas.

Additionally, the last-minute extension of polling hours could have led to a shortage of ballots, and, since the 1% extra ballots allocated to each Voting Centre were to be stored at a separate location, a shortage of ballots could potentially have led to tensions at Voting Centres.

The uncertainty caused by the extension of polling delayed what would be a very slow counting process. The Team noted that the counting of ballots was conducted transparently but was not conducted as efficiently as could be possible. It should be noted that the polling officials were over-burdened with the amount of paper work required at the close of the poll. The paperwork required for ballot papers for different constituencies delayed the counting process further.

RECOMMENDATIONS

The Expert Team believes that in the interests of clarity and legal certainty, the Elections Commission must adhere to the polling hours prescribed by law. Although it is laudable that the Commission wished to ensure that no voter would be disenfranchised through registration issues, the late issuance of the instructions on polling hours caused much confusion throughout the country.

It is essential that the Elections Commission exercise its role with confidence and consistency, and establish a reputation as a robust institution. The Expert Team recognises that the Elections Commission had been partly reconstituted since the Presidential Election, and that it was under pressure from political parties on election night to extend polling. However, it is the Expert Team's view that the confusion caused by this decision impacted negatively on an otherwise well-managed polling day.

Furthermore, it is the Expert Team's opinion that the relatively small number of unresolved complaints that led to the decision to extend polling did not warrant such an action. In fact, the complaints received during these elections were far fewer than during the Presidential Election, and we recognise the Elections Commission's efforts in cleaning up the voter list since then.

A related and important point that the Team wishes to emphasise is that voter education campaigns must stress that it is incumbent upon the individual voter to personally check whether she/he is on the voter list. It should be made clear through voter education that failure to take responsibility for registering as a voter by the stipulated deadline will mean that the individual will not be able to cast their ballot on polling day.

The Expert Team reiterates recommendations made by the Commonwealth Observer Group present at the 2008 Presidential Election, regarding the need for an audit of the Voter List and better management of the database of electors. In this context, the Expert Team commends the Elections Commission for the efforts made through door-to-door enumeration to ensure that voters are registered to the correct area. This practice should continue.

In the areas it observed, the Expert Team did not find that voter secrecy was compromised for voters who were voting outside their constituency. However, we noted anecdotal evidence that some individual voters were reluctant to vote as they knew they would be the only voter voting for that constituency and therefore their choice would be not be secret.

We are of the view that voter data could be better managed by decentralising the storage of this data on networked ‘mirror databases’ set up at the provincial levels. These ‘mirror databases’ would reflect the information on the central database held by the Elections Commission in Male’, but would be housed on a separate server. Voters in the provinces would be directed to check their details on these ‘mirror databases.’ This would ensure that the central database was not over-burdened, and voters should receive a speedier response to queries. Security provisions related to the Elections Commission’s databases must be strengthened to ensure public confidence in the integrity of the information and voter list.

The posting of election results on the Elections Commission website as they were verified, was a good practice and should be continued. However, the Expert Team noted that the website collapsed under the weight of internet traffic, and that its home page was also hacked into. These instances generated immediate conspiracy theories and suspicion. We recommend that efforts be made to establish a duplicate website on a server outside of Male’ so as to disperse the volume of traffic and place less pressure on the bandwidth. The Expert Team urges the Commonwealth Secretariat to assist the Elections Commission in expanding its ICT capacity in this regard.

The Election Commission’s SMS initiative was laudable and should be continued, but efforts must be made to ensure that network capacity on polling day is expanded so that the system does not break down.

The Expert Team noted complaints relating to the accreditation of liaison persons for political parties and candidates, both at the Elections Commission results centre in Male’ and at Voting Centres elsewhere in the country. We recommend that named, photo passes be issued for such individuals so as to increase public confidence in the integrity of the electoral process.

Counting and paperwork procedures at the end of the polling must be simplified and streamlined. The present voluminous documentation and reconciliation required of polling officials in relation to multiple constituencies is too cumbersome and should be reviewed.

Chapter 6

CONCLUSIONS AND RECOMMENDATIONS

The People's Majlis (Parliamentary) election held on 9 May 2009 marked another significant milestone in the ongoing reform and democratisation process in Maldives. The election was governed by the chapter on Transitional Matters set down in the new Constitution of the Republic of Maldives, which was ratified on 7 August 2008.

The Team found many aspects of the Parliamentary Elections to have been credible, largely due to a high level of inclusiveness, transparency, participation and the competitive nature of the poll as was seen in the two rounds of the Presidential Election held in October 2008. This was also reflected in a high voter turnout at 79%. The Expert Team was pleased to note that some of the recommendations made by Commonwealth and other Observer missions for Presidential Election had been implemented, and that this contributed to a general improvement in the electoral process.

The Expert Team also found that problems related to the compilation of the Voter List persisted, though much reduced from the level seen in the Presidential Election. The legal framework for the election generally provided the basic conditions for democratic elections, though, as in the Presidential Election, the right to participate was limited to Sunni Muslims.

Article 296 in Chapter XIV under Transitional Matters in the 2008 Constitution stipulates that the first Parliamentary Elections held under the new Constitution shall be held before 15 February 2009, and that the new People's Majlis should hold its first meeting before 1 March 2009. The failure of the People's Majlis to promulgate in sufficient time the necessary draft legislation required to meet the timeframe set down in the Constitution was a serious error.

The decision of the People's Majlis to enter into the usual scheduled recess rather than continue its sitting so as to be able to consider the draft legislation, guaranteed the failure to meet the timeframe of 15 February 2009 for the Parliamentary Elections set down in the Constitution. This, in effect, ignored the Constitutional deadline.

As the timeframe presented in the Constitution had effectively passed at the time of the enactment of the necessary legal framework, the Elections Commission was able to announce a polling date that took full account of the timeframes set out in the 2008 Elections (General) Act for electoral matters, including nomination periods for candidates, voter list preparations and display, and so on. As such, the Commission was in a better position, compared to that prior to the Presidential Election, to make the necessary administrative and logistical arrangements for the Parliamentary Elections.

The efforts made by the Elections Commission resulted in an improvement of the voter list, though problems persisted into polling day and were the source of understandable frustration among voters. In the areas it observed, the Expert Team did not find that voter secrecy was compromised for voters who were voting outside their constituency. However, we noted anecdotal evidence that some individual voters were

reluctant to vote as they knew they would be the only voter voting for that constituency and therefore their choice would be not be secret.

The Expert Team noted that the Commission had sought to conduct an extensive public awareness campaign using various media to inform voters to check their entry on the provisional voter list. The Expert Team also noted, however, that some of the confusion on registration issues on polling day related to the fact that voters had not reviewed the Voter list when it was displayed and, therefore, did not alert the Elections Commission of errors or omissions. It is incumbent upon the Commission to ensure it take the necessary means to produce an accurate Voter list, but it is also incumbent upon individual voters to take responsibility for ensuring their data is registered correctly in line with the procedures and timeframes specified by the Commission.

The Expert Team noted that polling day itself went smoothly with diligent and courteous electoral officials assisting voters in an efficient manner. The late decision by the Elections Commission to extend polling hours just minutes before the polls were due to close created confusion across Voting Centres and among voters and electoral officials alike. Though the Expert Team believes the Commission was acting in good faith and a desire to ensure all voters could cast their ballot, the late change in the rules created suspicion and confusion which resulted in some tension at various locations and at the National Elections Complaints Bureau (NECB). In addition, the extension of polling hours in some Voting Centres resulted in television reports announcing unofficial and unconfirmed results while polling was continuing in some areas.

The Expert Team believes that in the interests of clarity and legal certainty, the Elections Commission must adhere to the polling hours prescribed by law. Although it is laudable that the Commission wished to ensure that no voter would be disenfranchised through registration issues, the late issuance of the instructions on polling hours caused much confusion throughout the country.

It is essential that the Elections Commission exercise its role with confidence and consistency, and establish a reputation as a robust institution. The Expert Team recognises that the Interim Elections Commission had been partly reconstituted since the Presidential Election, and that the Commission was under pressure from political parties on election night to extend polling. However, it is the Expert Team's view that the confusion caused by this decision impacted negatively on an otherwise well-managed polling day.

The Expert Team noted that the poor handling of complaints by the NECB during the Presidential Election in October 2008 and in the first round in particular, was a major source of tension and frustration among voters. Though some efforts had been made by the Commission to bolster the capacity of the complaints mechanism for the Parliamentary Elections including through the appointment of Complaints Officers at Voting Centres and dedicated training for complaints officials on 4 to 5 May 2009, the mechanism proved unable to efficiently deal with complaints on polling day with Complaints Officer at Voting Centres lacking the authority and / or information needed to deal with complaints on the spot.

The slow processing of complaints at the NECB resulted in the build-up of complaints and agitated voters outside the NECB location which, in turn, contributed to escalating frustrations on polling day. This then contributed directly to the Commission deciding to extend polling hours, which caused widespread confusion and suspicion among many candidates and voters.

Furthermore, it is the Expert Team's opinion that the relatively small number of unresolved complaints that led to the decision to extend polling did not warrant such an action. In fact, the complaints received during these elections were far fewer than during the Presidential Election, and we recognise the Elections Commission's efforts in cleaning up the voter list since then.

The confusion on polling hours also impacted on the counting process. The large volume of reconciliation paperwork required at Voting Centres in which voters for multiple constituencies were registered, resulted in an extremely slow reconciliation and counting process. The Expert Team believes that a more simplified reconciliation system would greatly enhance the efficiency of the count.

The Expert Team was concerned at the tension and incidents that occurred at the time of the tabulation of preliminary results, and trusts that any outstanding complaints are channelled peacefully through the appropriate judicial mechanisms.

The Expert Team commends the Elections Commission for the improvements it made in its electoral preparations, though it did note that some administrative and logistical challenges remained. The experience and lessons learned from the Presidential and Parliamentary Elections could be helpful in identifying ways in which the capacity and efficiency of the country's electoral practices could be enhanced.

RECOMMENDATIONS

The Commonwealth has issued reports on the conduct of the 2005 Majlis Elections, the 2007 Referendum and the 2008 Presidential Election. A number of recommendations contained in the reports have been adopted and resulted in positive innovations in the process. The recommendations in these reports remain relevant.

In addition, we offer the following recommendations on the basis of the findings of this Expert Team:

LEGAL FRAMEWORK AND ELECTION ADMINISTRATION

1. In any effective multi-party democracy the checks and balance between the Executive, Legislature and Judiciary must be respected. It is extremely important that the rulings of the Supreme Court, which adjudicates on Constitutional matters, is diligently complied with.

ELECTIONS CAMPAIGN

2. In order to achieve full transparency and accountability of the political process for both the political parties and candidates, we recommend that the Majlis enact legislation that mandates:

- for full disclosure of gifts and donations including the identity of donors and amount of donation;
- that the free use of official Government transport by candidates be prohibited during an election campaign;
- that no new Government projects may be announced once an election is called.

MEDIA

3. The Commonwealth Observer Group to the 2008 Presidential Election has previously made recommendations in regard to transforming state-owned media into public service broadcasters regulated by an independent broadcast commission accountable to the Majlis. We again urge this reform to ensure accountability.
4. The training of the media is commended and again the Commonwealth Expert Team recommends that the passage of law on Freedom of Expression be expedited.

VOTING, COUNTING AND THE RESULTS PROCESS

5. The Expert Team believes that in the interests of clarity and legal certainty, the Elections Commission must adhere to the polling hours prescribed by law. Although it is laudable that the Commission wished to ensure that no voter would be disenfranchised through registration issues, the late issuance of the instructions on polling hours caused much confusion throughout the country.
6. It is essential that the Elections Commission exercise its role with confidence and consistency, and establish a reputation as a robust and impartial institution. The Expert Team recognises that the Interim Elections Commission had been partly reconstituted since the Presidential Election, and that the Commission was under pressure from political parties on election night to extend polling. However, it is the Expert Team's view that the confusion caused by this decision impacted negatively on an otherwise well-managed polling day.
7. A related and important point that the Team wishes to emphasise is that voter education campaigns must stress that it is incumbent upon the individual voter to personally check whether she/he is on the voter list. It should be made clear through voter education that failure to take responsibility for registering as a voter by the stipulated deadline will mean that the individual will not be able to cast their ballot on polling day.
8. The Expert Team reiterates recommendations made by the Commonwealth Observer Group present at the Presidential Election regarding the need for an audit of the Voter List and better management of the database of electors. In this context, the Expert Team commends the Elections Commission for the efforts made through door-to-door enumeration to ensure that voters are registered to the correct area. This practice should continue.

9. We are of the view that voter data could be better managed by decentralising the storage of this data on networked ‘mirror databases’ set up at the provincial levels. These ‘mirror databases’ would reflect the information on the central database held by the Elections Commission in Male’, but would be housed on a separate server. Voters in the provinces would be directed to check their details on these ‘mirror databases.’ This would ensure that the central database was not over-burdened, and voters should receive a speedier response to queries. Security provisions related to the Elections Commission’s databases must be strengthened to ensure public confidence in the integrity of the information and voter list.
10. We recommend that efforts be made to establish a duplicate website on a server outside of Male’ so as to disperse the volume of traffic and place less pressure on the bandwidth. The Expert Team urges the Commonwealth Secretariat to assist the Elections Commission in expanding its ICT capacity in this regard.
11. The Election Commission’s SMS initiative was laudable and should be continued, but efforts must be made to ensure that network capacity on polling day is expanded so that the system does not break down.
12. The Team noted complaints relating to the accreditation of liaison persons for political parties and candidates, both at the Elections Commission results centre in Male’ and at Voting Centres elsewhere in the country. We recommend that named, photo passes be issued for such individuals so as to increase public confidence in the integrity of the electoral process.
13. Counting and paperwork procedures at the end of the polling must be simplified and streamlined. The present, voluminous documentation and reconciliation required of polling officials in relation to multiple constituencies is too cumbersome and should be reviewed.

Annex I

BIOGRAPHIES OF MEMBERS OF THE COMMONWEALTH EXPERT TEAM

Hon Fran Bailey MP (Australia)

Ms Fran Bailey is a serving member of the Australian National Parliament. She served as Minister for Employment Services, Minister for Small Business and Tourism, and Junior Minister for Defence. She has also served as Chair of Standing Committee for Primary Industry and Regional Services. Prior to entering Parliament, she was a Secondary School Teacher, Academic and self-employed businesswoman. She was a member of the Commonwealth Observer Group to the 2008 Maldives Presidential Election.

Mr M Irfan Abdool-Rahman (Mauritius)

Mr M Irfan Abdool-Rahman has been the Electoral Commissioner of Mauritius since January 1998 and before that was a Returning Officer for 12 years. He worked previously as a Barrister at Law Crown Counsel in the Attorney-General's Office, a Senior District Magistrate and an Intermediate Court Magistrate. Mr Abdool-Rahman was a member of the Commonwealth Observer Group which was present in Nigeria for the National Assembly and Presidential Elections in 1999, Chairperson of the Francophonie Observer Group for the Seychelles Presidential Election in 2001 and a member of the Francophonie Observer Group in the Comoros in April 2002, an Observer for the African Union for the Zimbabwe Presidential Election in 2008, and Head of the SADC Observer Group for the Swaziland Parliamentary Election in 2008. He was a member of the Commonwealth Observer Group to the 2008 Maldives Presidential Election.

Mr Hendrick Gappy (Seychelles)

Mr Hendrick Gappy has been the Electoral Commissioner of Seychelles since 1998. Prior to this, he served as the Director-General of the Management and Information Systems Division responsible for National Statistics Office and the National IT Office. He has been the Census Commissioner on several counts. At present he is also the Boundaries Commissioner and Registrar of Political Parties. Internationally, he has been involved with various organisations including the Commonwealth, SADC, COI, the United Nations and others in the context of electoral observation, statistical reform, etc. He was in 2007 part of the Commonwealth Expert Team to the Maldives Referendum, and a member of the Commonwealth Observer Group to the 2008 Maldives Presidential Election.

Mr Hanif Vally (South Africa)

Mr Hanif Vally currently serves as Strategy Advisor of the Foundation for Human Rights (FHR) in South Africa. FHR is one of the largest indigenous grant makers to human rights groups. Prior to this, he was the Head of the Human Rights Unit of the Commonwealth Secretariat in London. He has also served as the National Legal Officer of the South African Truth and Reconciliation Commission. He has been a human rights lawyer and activist for over 30 years. He has been an elections observer in eleven countries. He was a member of the Commonwealth Observer Group to the 2008 Maldives Presidential Election.

Annex II

