

A stylized illustration of a ballot box on the left side of the page. The box is composed of several vertical sections in shades of blue, green, and brown. The top section is dark brown with a pattern of small blue dots. A white ballot paper is shown emerging from the top of the box, with the word 'VOTE' written vertically on it in a light blue font. The background is a solid grey-blue color.

PRE-ELECTION ASSESSMENT

2013 PRESIDENTIAL ELECTIONS
IN THE MALDIVES

28 MARCH 2013

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EXECUTIVE SUMMARY

The upcoming Presidential Elections are headed to unfold against a context of uncertainty, crises of political legitimacy and unprecedented levels of political polarization. The latter is characterized by mistrust, categorical negative framing of one another and by the lack of self-accountability of institutions, politicians and their parties for their role in existing political crises. The electoral background is therefore discouraging.

However, Maldivians have in the past shown they do respect the outcomes of free, fair and inclusive elections. The upcoming elections therefore give hope. Yet to convert hope into reality requires realization of the tri-values of freedom, fairness, and inclusiveness for the upcoming elections.

Assuring **freedom** for the upcoming elections requires sustaining an electoral environment for voters to freely choose a president without fear, intimidation, and undue influence, but through the opportunities to fully exercise freedom of expression, association and assembly. The recently passed laws on peaceful assembly, political parties, and the parliamentary privileges, infringe on these prerequisite freedoms for democratic elections.

Likewise, the existing practice, if not culture, of vote buying violates the concept of freely choosing a representative. Implicit in free choice is informed choice. Thus, the media, especially the broadcast media, must refrain from fueling polarization, but do a far more responsible job in informing voters of policies and programs on offer. Similarly, the apparently deteriorating security environment for the media must be reversed.

Freely choosing a president also means ensuring an electoral environment free from the sort of political violence that has rocked the country since February 2012. There is real fear that without inclusiveness, widespread violence will break out skewing, if not making inhospitable, the electoral environment for elections.

These fears and concerns can be mitigated through political dialogue with a view of upholding public interest. They can also be mitigated if the security services, including the Maldives Police Service, engage in confidence-building activities through internal reforms and through being held and holding themselves to greater account.

Fairness at a minimum requires a level playing field. Thus, the existing culture of misuse of public resources by the incumbency to their electoral advantage must stop.

Inclusiveness requires ensuring an electoral context for all to participate in elections, and ensuring that no potential presidential candidate is prevented from contesting the Presidential Elections through any questionable processes. Under the current political context, ensuring inclusiveness thus requires dialogue among political actors and cooperation among institutions and the citizens to consider common public interest.

It also requires ensuring the integrity and accountability of judicial processes handling any case with potential implications for electoral rights. Likewise, ensuring inclusiveness is necessary for addressing fears of active disruptions to the upcoming elections.

Free, fair and inclusive elections cannot be held without an independent, impartial and reasonably competent and efficient Elections Commission. The internal issues between staff and the members should be resolved through open communication. Transparency and impartiality of the EC can be increased through more open and frequent stakeholder consultations, including speedy convening of the National Advisory Committee for the elections.

Priority must be given to voter education, which is already too late, and overhauling a broken electoral complaints system. As recruitment of non-partisan polling workers would be a challenge in the current context of political polarization, the delays in the process should be immediately addressed, and timely and sufficient training must be given to them. Addressing voter registration issues such as the names of dead people on the voter registry and educating the voters on registry verification are crucial. The concerns of human resource and capacity limitations within the EC and budgetary constraints should be addressed.

The electoral legal framework is in need of urgent reform: areas such as campaign finance, electoral complaints resolution and the roles and responsibilities of Maldives Police Service, Auditor General, the Maldives Broadcasting Commission, the Anti-Corruption Commission *vis-a-vis* the EC for elections must be further defined in the electoral legal framework.

Thus, beyond and besides others, freedom, fairness and inclusiveness for the upcoming elections are tied to:

- 1 Dialogue and cooperation among the state and political actors towards ensuring fully inclusive elections and a conducive electoral environment for elections**
- 2 Enhancing transparency of and maintaining confidence in the electoral administration and processes through immediate convening of regular stakeholder consultations on all aspects of the upcoming elections**

-
- 3 Ensuring an electoral environment free from the culture of misuse of state resources and vote buying, by refraining from such practice and taking all necessary enforcement and political finance reform measures
 - 4 Ensuring informed choice by voters through immediate and effective voter education and vibrant public debate on issues
 - 5 Increasing public trust in and strengthening electoral complaints resolution mechanisms

KEY RECOMMENDATIONS¹

To the Elections Commission (EC)

- Should immediately convene regular stakeholder consultations for the upcoming Presidential Elections so that inclusiveness, transparency and confidence in electoral administration and processes are increased
- Should resolve any existing staff issues through open and regular communications, so that delays in decision-making and coordination bottlenecks are minimized and public confidence in the institution is maintained
- Should engage with relevant state institutions towards addressing inter-agency coordination issues with regard to election dispute resolution and effective enforcement of laws and regulations against electoral violations.
- Should prioritize voter education and information.
- Should move forward to bring timely reforms to the legal framework, especially adopting recommendations by the Commonwealth Elections Observer Group in 2008, international standards in the areas of election complaints resolution such as by the IFES, Transparency Maldives' Presidential Election Observation Report 2008, and recommendations in this report
- Should review Strategic Plan implementation process and commit to full implementation of the recommendations therein
- Should consider publication of the voter registry as soon as possible without sticking to the last possible date stipulated in law

To the People's Majlis

- Should bring immediate reforms to the electoral legal framework in the areas of:
 - i Campaign finance
 - ii Electoral dispute resolution mechanism
 - iii Further clarification of the roles and responsibilities of state institutions *vis-a-vis* the EC during elections
- Should ensure the availability of adequate budget for the EC

¹ A more comprehensive list of recommendations can be found in the body of the report and in Appendix I

To the Government

- Should stop misuse of state resources for campaign purposes
- Should ensure effective security for the upcoming elections
- Should ensure and make available adequate financial resources for the EC

To the State (including the government, the judiciary, and independent state institutions)

- Should ensure fully inclusive elections, a level playing field for campaigning, and processes of high integrity to deal with issues of electoral rights so that, among others, no potential presidential candidate is prevented from contesting the Presidential Elections through any questionable judicial or vetting processes
- Should proactively engage in dialogue with all political actors

To the Political Parties

- Should refrain from violence at all times and encourage non-violence among supporters
- Should embrace dialogue and cooperation on areas of national interest and increase trust between parties
- Should refrain from radical negative framing of one another and abusing religion for campaign

To the International Community (e.g. the Commonwealth, the EU, the UN, and bilateral partners)

- Should deploy a high profile international observation team for the upcoming Presidential Elections. In this respect, a long-term observer team is also recommended.
- Should continue to provide immediate and long-term technical and training assistance to the EC and other state institutions and the judiciary
- Should continue to encourage dialogue among political parties and stakeholders
- Should provide further assistance towards capacity building of civil society and the media

To the Maldives Broadcasting Commission

- Should strengthen the implementation of the broadcasting regulatory framework and conduct media monitoring to effectively enforce the regulations
- Should coordinate with the EC on resolution and enforcement of complaints with regard to fair access to broadcasters during elections
- Should encourage all broadcasters to adopt a mutually agreed code of conduct for elections coverage

To the Broadcasters

- Should air programs that promote constructive debate on electoral issues and extend opportunity for alternative voices, so as to facilitate informed choice by voters
- Should refrain from spreading disinformation and fueling political polarization
- Should publicize and adhere to policies on fair access to media, including airtime allotment policies, to all political parties and candidates

To the civil society

- Should organize independent forums for debating electoral policies and manifestos offered by candidates
- Should organize targeted voter education nationally and in their respective communities
- Should monitor political violence and encourage non-violence in addressing disputes and differences

1

AN OVERVIEW OF THE CONTEXT

1 AN OVERVIEW OF THE CONTEXT

Democratic transition

Following the first-ever multiparty, multi-candidate Presidential Elections in 2008 and parliamentary elections in 2009, Freedom House designated the Maldives as an electoral democracy.² The peaceful democratic transition provided an opportunity for consolidation of democracy in the Maldives for the first time. Thus, in the wake of the Arab Spring, a comment piece in *The Economist* labeled the Maldives as a "modest model in the Arabian Sea".³ In 2011, a Harvard University professor identified it as the only "religious democracy" in the world.⁴ For the year 2011 too, Freedom House continued to designate the Maldives as an electoral democracy.⁵

Transition challenged

Such judgments, however, belie the political crises, including cracks within the government's coalition, which befell soon after the transfer of power. The smooth democratic transition quickly gave way to a politics that continues to be fought as a bitter zero-sum struggle. This also blocked the emergence of a much-needed political ethics of transitional justice based on compromise and reconciliation with regard to past injustices.⁶

Bad governance everywhere

Such judgments also belie bad governance in all sectors of the polity. Among other issues, corruption is cited as a main culprit for failures in key areas: judiciary, law enforcement, prison systems, parliament, and democratic reforms as a whole.⁷ Similarly, several executive actions such as the arbitrary arrest

2 Freedom House (2010). *Freedom in the World 2010*. Retrieved from <http://www.freedomhouse.org/report/freedom-world/2010/maldives>

3 The Economist (26 February 2011). A Modest Model in the Arabian Sea. Retrieved from http://www.economist.com/blogs/banqan/2011/02/democracy_maldives

4 Pippa Norris (2011). Muslim Support for Secular Democracy. *Spirited Voices from the Muslim World: Islam, Democracy and Gender Rights*. University of Sydney, Sydney

5 Freedom House (2011). *Freedom in the World 2011*. Retrieved from <http://www.freedomhouse.org/report/freedom-world/2011/maldives>

6 The then government instead created a highly politicized commission through a presidential decree to look into past corruption cases.

7 HRCM (2012). *Rights Side of Life: Second Baseline Human Rights Survey*. Retrieved from <http://www.hrcm.org.mv/publications/otherreports/TheRightSideOfLife10122012Eng.pdf>. Similarly, Transparency International survey on Maldivian public opinion about their institutions show they believed the parliament and political parties are the most corrupt institutions. See TI (2011). *Daily Lives and Corruption: Public Opinion in the Maldives*. p. 5

of a judge and opposition MPs showed executive habituation to rule of law had not taken place..

Weak civil society

Governance and capacity of the nascent civil society too is extremely weak.⁸ As a result, political participation has often been mobilized from above, with minimal or ineffectual civil society-led civic political engagement. In the absence of independent think tanks and research institutes and a culture of independent policy criticism and proposals, public political discourse has been largely steered by politicians directly or through power-ridden media.⁹

Outcome of bad governance

To be sure, bad governance has been an outcome of the interplay of multiple factors including past legacies, structural constraints, institutional weaknesses, and, crucially, human behavioral and strategic failings.

If bad governance is "the fundamental problem" for democracy rollbacks¹⁰, the fate of democracy in the Maldives was at best uncertain between 2009 and 2012. Come 7 February 2012, there was an abrupt and unexpected change of power almost two years before the end of the electoral cycle that started in 2008.

Legitimation crisis

Unlike 2008, the legitimacy of the 7 February power transfer - in which the Vice President replaced the President following protests involving elements of the security forces - continues to be bitterly contested. Some of the ensuing protests resulted in violence, destruction to property, and police brutality.¹¹

An inquiry commissioned by President Waheed, and supported by the UN and the Commonwealth, into 7 February did not go a long way in resolving the outright rejection of the very legitimacy of his government by a substantial segment of the polity. The country was also dropped from Freedom House's list of electoral democracies.¹²

8 UNDP (2011). *Comprehensive Study of the Maldivian Civil Society*. Retrieved from <http://homeaffairs.gov.mv/files/Comprehensive-Study-of-the-Maldivian-Civil-Society.pdf>

9 Transparency Maldives (2011). *Media Monitoring: Maldives*

10 Larry Diamond. The Democratic Rollback. Retrieved from <<http://www.foreignaffairs.com/articles/63218/larry-diamond/the-democratic-rollback>>

11 See, for example, *Report of the Commission of National Inquiry*, p. 2

12 Freedom House (2013). *Freedom in the World 2013*. Retrieved from <http://www.freedomhouse.org/report/freedom-world/freedom-world-2013>

Discouraging context, hopeful elections

The upcoming Presidential Elections are currently headed to unfold against this political context of crises of legitimacy, uncertainty of democratic transition, existing polarizations and other challenges that have been aggravated by the controversial transfer of power on 7 February 2012.

The overall political background is therefore discouraging, but not without hope. The many by-elections since 7 February, some of which were hotly contested, showed Maldivians continue to respect the outcomes of free, fair and inclusive elections as they did following the landmark Presidential Elections in 2008.

2

ASSESSMENT FINDINGS AND RECOMMENDATIONS

2 ASSESSMENT FINDINGS AND RECOMMENDATIONS

2.1 Political and Electoral Environment

2.1.1 Radical Polarizations and Mistrust

Most of the interlocutors that Transparency Maldives met highlighted political polarization as a major challenge for the upcoming Presidential Elections.

Political polarization is characterized by mutual mistrust and radical negative categorization of people, politicians, political parties and, sometimes, entire institutions. It's characterized by the lack of self-reflective criticism, by the failures to hold one's own self and party to account, and the inability to listen to and compromise for the callings of the other side. It's also characterized by an apparent struggle for political power as a bitter zero-sum game. Thus, the loss of power or losing elections could amount to losing everything.

To be sure, the radical polarization post-7 February is underpinned by already existing mistrust and politics of confrontation among parties. It also follows already divided public opinions. A 2011 survey by Human Rights Commission of the Maldives, for example, shows that the public were nearly equally divided with their views on whether democratic reforms were successful or not. Those who saw democratic reforms were not successful cited mistrust among political parties as one of the main reasons.¹³

The decision makers on the main sides on the political divide seem to have so strongly entrenched positions and negative framing of one another that none seems to be willing to compromise for principled national interest. The failure of the political party talks in the wake of 7 February attests to this "selfish politics". The upshot is that political and civic space for political dialogue and informed public debate has ever narrowed and has excluded alternative voices.

Similarly, what to accept as the truth about issues of common interest - be it privatization of an airport or a murder of an MP - has been a major casualty of radical polarization. What people accept as truth depends on the trust they have in the people or institutions that make those claims. In an environment

¹³ HRCM (2012). *Rights Side of Life: Second Baseline Human Rights Survey*, pp. 1 & 20. Retrieved from <http://www.hrcm.org.mv/publications/otherreports/TheRightSideOfLife10122012Eng.pdf>

where mistrust of institutions and mistrust among political parties reign, what the public accept as the reality now very much depends on to which political side they belong.

Challenges for the elections

- a With the ever-constricting civic space for public debate, urgent public policies and programs that really matter might not receive the necessary informed attention by the public in the run up to the elections. Instead public debate might continue to be colonized by demagogic appeals to religio-nationalist sentiments, empty motifs, and outlandish electoral promises never intended to be delivered. Similarly, as the polarization is symbolized by political personalities, political debate is likely to center on personalities as opposed to issue-based discourse.
- b Lack of cooperation and dialogue among major political parties open up space for intolerance and violence impacting on the electoral environment, and could delay reforms to areas such as the electoral legal framework.
- c With so much mistrust among parties, radical negative framings, and weak institutions, as some interlocutors expressed, there is a possibility of contestation of elections results, especially if the victory is through a narrow margin.
- d With so much polarization, even if elections results are respected, a significant segment of the polity might reject the incoming president as the representative for all the people in the true democratic spirit required in defeat.

Recommendations

- Political parties should engage in dialogue to promote public interest and refrain from categorization of one another in radically negative terms
- Political parties should encourage non-violent means in resolving disputes and any differences
- Civil society should facilitate forums for dialogue to promote non-violent dispute resolution and increase inter-personal trust
- Civil society and the media, especially public broadcasters, should organize policy debates independently and among political parties and candidates to facilitate informed choice by voters
- International community should deploy high-profile international observation team for the upcoming Presidential Elections. International long-term observation will also ameliorate issues in the electoral environment in the run up to and following the elections.
- NGOs/citizen groups should conduct credible and effective elections observation

2.1.2. Former President Nasheed's candidacy

The issue

In January 2012, Criminal Court Judge Abdulla Mohamed was arrested and subsequently detained in violation of court orders for approximately three weeks by the then government.

President Nasheed is now being prosecuted under section 81 of the Penal Code on the charge that he arrested a person who has not committed an offence in violation of law. If President Nasheed is convicted, his candidacy for the Presidential Elections will be based on the nature and length of the punishment given.

The discretion given to the judges under the relevant provision of the Penal Code is wide as it can be only a fine or it can also be imprisonment or banishment not exceeding 3 years.¹⁴ If the court imposes a penalty exceeding twelve months, then President Nasheed will be barred from contesting the Presidential Election as per the Constitution.¹⁵ However, a jail or exile sentence short of one year could also negatively impact on his campaigning or engagement with supporters.

Disqualification: a major challenge for elections

Irrespective of their political affiliations, most of the interlocutors Transparency Maldives met saw disqualification of President Mohamed Nasheed from the presidential race through the ongoing court trial, is going to be a major challenge for the upcoming Presidential Elections. The uncertainty itself around the case was highlighted as a challenge for preparing for elections.

None of the major political actors Transparency Maldives met was eager for disqualification of President Nasheed, although some qualified their position saying that rule of law must apply equally for all and he must face justice. A few major stakeholders believed it was politically motivated. A politician of a major political party saw any election victory for them without President Nasheed as a rival candidate as just "hollow victory". Several also saw, while the arrest is illegal, the trial involves public interest.

Consequences of disqualification

Possible scenarios if President Nasheed is prevented from the Presidential Elections that several of

¹⁴ Penal Code, s81

¹⁵ Constitution, s109(f)

our interlocutors explained include:

- a Political violence in the run up to the elections marring the electoral environment
- b Widespread disruptions to the elections, including violence. Transparency Maldives heard suggestions it would be altogether impossible to hold elections in some parts of the country,
- c Boycott of the elections by the MDP
- d Outright rejection of elections results and the incoming president by the MDP

Calls for inclusive elections

As an elections observing NGO, Transparency Maldives is of the view that if any potential presidential candidate is prevented from the Presidential Elections through a controversial process, the credibility and democratic representativeness of the elections will be called into question.

Several international bodies, including most recently the UN Special Rapporteur on Independence of Judges and Lawyers, have criticized the state of the judiciary.¹⁶ There are deep disagreements as to the legitimacy of the Hulhumale Magistrate Court and the special bench of judges appointed to oversee President Nasheed's trial.¹⁷ Some of the members of the Judicial Service Commission have openly questioned the legality of appointing a special bench.¹⁸ All these reasons give room to doubt the judicial processes.

As was seen following the recent arrest of President Nasheed, if he is prevented from running, violence will likely break out distorting the electoral environment if not making it inhospitable for democratic elections. We also heard suggestions that there would be active disruptions of the elections.

More crucially, even if elections can be held, the incoming president will face immense legitimacy challenges, as is the case with the current government. Democracy consolidation is impossible under a context where legitimacy is contested by a substantial segment of the population.¹⁹ Thus, key to successfully addressing the ongoing legitimization crisis is holding elections in which candidates of all

16 OHCHR (24 February 2013). *Preliminary observations of the UN Special Rapporteur on the independence of judges and lawyers on her official visit to the Republic of Maldives*. Retrieved from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13037&LangID=E>

17 Also, Supreme Court's ruling on the legitimacy of the HMC was made under circumstances lacking proper management of conflict of interest.

18 Minivan News (14 March 2013). *JSC Acted Unconstitutionally in Assigning Panel of Judges to Hulhumale Court*. Retrieved from <http://minivannews.com/politics/jsc-acted-unconstitutionally-in-assigning-panel-of-judges-to-hulhumale%E2%80%99-court-speaker-shahid-54505>. Also see Minivan News (6 March 2013). *"JSC Politicised, Trying to Eliminate Nasheed and MDP from Elections"*. Retrieved from <http://minivannews.com/politics/jsc-politicised-trying-to-eliminate-nasheed-and-mdp-from-elections-jsc-member-shuaib-54149>

19 Juan J Linz and Alfred Stepan (1996) *Toward Consolidated Democracies*. Retrieved from <http://adpm.pbworks.com/f/Democratic%2BConsolidation-Linz%2Band%2BStepan-1996.pdf>

major political parties are free to contest.

Echoing similar concerns, the international opinion on the issue has also been calling for guaranteeing the participation of the nominated candidates of all political parties in the upcoming polls.

Recommendations

- On cases with potential negative implications for electoral rights, the EC and the judiciary should function through processes and mechanisms of high integrity, accountability, and transparency
- State actors, including the government, EC, the PG, the JSC, the judiciary, and the HRCM should ensure that no potential presidential candidates is prevented from contesting the upcoming elections through any questionable judicial or vetting process
- Political parties should, at all times, refrain from encouraging violence that could mar the electoral environment and refrain from calls for disruptions to elections

2.1.3 Media

Media landscape

Media landscape underwent transformation following liberalization of print media in 2005 and permission to operate private broadcasters since 2007. This brought an end to years of government monopoly on the media.²⁰ With the adoption of measures to ensure media freedom and the adoption of a new Constitution in 2008, media freedom in the Maldives improved significantly.

At the time of the Presidential Elections in 2008, government-run Television Maldives (TVM) and Voice of Maldives dominated the media landscape.²¹ There were two newly established TV stations and a few private radios. Currently there are at least 31 licensed broadcasters in the Maldives, including three private TV stations in competition with each other and the public broadcaster TVM currently operating.²²

A Broadcasting Act establishing the independent regulator, Maldives Broadcasting Commission, and

20 For a brief history see Transparency Maldives (2011) *Media Monitoring Report: Maldives*, pp. 7-8; and Toby Mendel (May 2009), *Assessment of the Media Development in the Maldives*, pp. 1-2. Retrieved from <://portal.unesco.org/ci/fr/files/29319/12592323673maldives-assessment-of-media-developmhttpent.pdf/maldives-assessment-of-media-development.pdf>

21 *Report of the Commonwealth Observer Group*, p. 17. Retrieved from <http://www.thecommonwealth.org/files/185267/FileName/FINALREPORTMALDIVESCOG2008PRINTVERSION.pdf>

22 <http://www.broadcom.org.mv/dh/f/page.php?id=86&menu=3>

Maldives Media Council Act establishing the Maldives Media Council, have been in force since 2010. State broadcaster, which operated under a government-owned company, has now been brought under an independent statutory body, Maldives Broadcasting Corporation, following the transfer of power on 7 February 2012. However, the crucial Bill on Right to Information has still not been passed.

Main issues

Proliferation of the media outlets hasn't gone hand-in-hand with media professionalism and journalistic ethics as a Media Monitoring Report by Transparency Maldives suggests.²³

The main two reasons, as several interlocutors also said, for this include the following:

- All the private broadcasters are either owned by political players or associated with significant political interests.²⁴ The devotion of most of the content to politics also shows this fact.²⁵ Coming into existence as they did during the time of introduction of multiparty politics in the country, this was perhaps expected.
- There is a genuine lack of trained and experienced journalists. While several have received some training, we were told overall training was a major shortcoming resulting in unprofessional coverage. Likewise, the lack of a culture of journalism means the young and upcoming journalists have nowhere to look for shared journalistic ethics, professionalism, and ideologies.

Most of the interlocutors therefore found the broadcast media as doing a vicious job in the current political environment. Irrespective of their political leanings, several of our interlocutors thought the three private TV stations - RaajjeTV, DhiTV and VTV - were spreading "lies," "propaganda," or "disinformation," and creating discord in the society.

The media fuel political polarizations in two ways: first, they relay to the public the narratives by politicians associated with them without any critical analysis. This allows politicians to set the public agenda and steer narratives. Second, the media outlets proactively aggravate political tensions.

Several interlocutors stated that TVM's coverage had been more balanced since becoming a public broadcaster after the change of power on 7 February. However, several interlocutors, including the

23 Transparency Maldives (2011). *Media Monitoring: Maldives*

24 See, for example, Transparency Maldives (2011). *Media Monitoring: Maldives* for a profiling of VTV, DhiTV MNBC One (now TVM). RaajjeTV is decidedly biased in favor of the Maldivian Democratic Party

25 Transparency Maldives (2011). *Media Monitoring: Maldives*

councils, believed TVM was unable to attract a significant audience compared with the private broadcasters. Effectiveness and relevance of TVM's political programs were cited as possible reasons

Media security

The security context for media has deteriorated with the liberalization of media. As one journalist Transparency Maldives met put it, before 2005, there was systematic self-censorship out of fear of sanction and harassment mainly by the government.

However, this sort of fear and insecurity has now morphed into life-threatening physical violence, as the recent attacks on media personnel show. Likewise, the actors who perpetrate such violence have multiplied, which now include members of the public or possibly activists of political parties, with apparent impunity prevailing.

Preparations for elections

Transparency Maldives was told that the Maldives Broadcast Commission and the EC were discussing reforms to the legal framework. A code of conduct for broadcasters was being drafted for elections coverage. Maldives Broadcast Commission has also held training for journalists on elections coverage, attended by journalists from both private broadcasters and print media.

Maldives Broadcast Corporation has also come up with guidelines and policies for their coverage of and programming on the upcoming elections, which include their policies on allotting free and bought time for political parties and candidates.

While these are welcome moves, there is concern that especially the private broadcasters were not prepared to change their existing mode of operation, and even worsen in the run up to the elections.

Recommendations

- Maldives Broadcasting Commission and Elections Commission should come to a clear understanding on their respective roles for the elections to ensure fair access to the broadcast media by the candidates as stipulated in the legal framework.
- Maldives Broadcasting Commission and NGOs should conduct media monitoring for the elections
- Maldives Broadcasting Commission should facilitate the adoption of a mutually agreed code of conduct for elections and create incentives for broadcasters to adhere to the code

- The government should do all possible to ensure a conducive security environment for the media to operate free from intimidation
- Broadcasters, especially the public broadcasters, should organize debates among candidates and organize programs for independent discussions of electoral policies and manifestos
- International community should assist in capacity building of journalists and towards cultivating a self-organizing professional culture of journalism such as through forming a press club and a journalist grading system

2.1.4 Vote-buying

There is no clear and comprehensive definition of vote buying in the electoral legal framework. However, the Maldivian Penal Code of 1961 stipulates²⁶:

It is an offence to induce the inclination of the exercise of an electoral right for the benefit of a certain party or to offer anything as a gesture of gratitude or gratification or reward for having exercised the electoral right in a certain manner.

It is an offence for a person to accept anything given as provided above.

Where a candidate declares the service he would perform for the benefit of the general public or the burden he would suffer for the benefit of the general public shall not be regarded as offering bribes. However, where there is a promise to fulfill a private right or to do any good for the benefit of a certain person or a group of persons (where it is not intended for the general good of the people) it may be considered as an offence.

The issues of vote buying and influencing voters through patronage seem to have had a long history in the country. There is though mostly anecdotal evidence on the issue, with no serious research.

As part of this assessment, Transparency Maldives conducted a small-scale study based on focus groups in the islands of Fuvahmulah, K. Kaashidhoo and R. Hulhudhuffaar to further understand the issue of vote buying. The focus groups provided some insights into the methods of vote buying and the main reasons behind vote buying.

²⁶ Penal code, s120(a) (b) (d). Also see General Elections Act, s65(a)(2)

Reasons for vote buying

- A crisis of confidence in candidates' sincerity to deliver on their electoral promises could be one of the main reasons why many people take offers. Almost all the participants in the discussions thought the candidates would not bother about them or their community post-elections or after winning the elections. "They would not even answer their phones" was a common retort.²⁷
- There are particularly vulnerable groups of people who are targets of vote buying. Youth groups who are victims of drug addiction, for example, could be offered drugs, money to buy drugs, or drugs at discounted rates, in exchange of their votes. Similarly, the less disadvantaged people, people in need of medical treatment, or the more elderly, seem to be particularly vulnerable to vote buying.
- A weak elections complaints system and loopholes in the electoral legal framework mean there is no effective deterrence against vote buying. Criminalization of taking bribery in exchange of votes in the Penal Code also hinders reporting.²⁸
- Finally, civil society or the EC has so far failed to even successfully thematize and problematize vote buying in the public sphere, and therefore there is a need for greater awareness on the issue among the people.

Forms and methods of vote buying

Vote buying in the Maldives involves a range of types from offers of money to even sexual favors in exchange of votes. Drugs, medical trips abroad, home appliances such as washing machines, or even fish, could be offered in exchange of votes.

In the island of Kaashidhoo during the 2012 parliamentary by-elections, vote buying took a new high: vote buying was like an auction where, we were told, whatever the voters asked for were offered. And, it was openly done and known. We were told by campaign agents involved in the respective campaigns that the two main candidates spent more than MVR7 million, an amount double the total spending limit under the law for Kaashidhoo constituency of 2231 voters.

In contrast, the much less populated Hulhufuhaar, vote buying took place more sparingly and discreetly. In Fuvahmulah, we were told, one candidate did not even have to campaign, but visited the island a week or so before the election and just distributed cash to his constituency.

27 In fact, a recent survey report shows only 19% of those responded in the survey discussed the issues debated in the parliament with their respective Members of the Parliament. Transparency Maldives (2013). *Baseline Study on Right to Information. Forthcoming*

28 Penal Code, s120 (b)

Another popular form of vote buying took place through island CBOs or clubs, which get offered money, equipment they need, or even infrastructures for social purposes.

Candidates' campaign managers, activists, agents, and sometimes candidates themselves, are directly involved in vote buying

How vote buying distorts elections

Most of the focus group participants, and mostly female participants in Fuvahmulah (a fact requiring further study), believed people do not necessarily vote for the candidates from whom they take offers.²⁹

There are two possible reasons why people might not vote for the candidates even if they receive offers from them: there is a general confidence in the secrecy of vote since 2008 Presidential Elections, and there is little or no fear of post-election reprisals from candidates. Some of the few people, who thought people vote as they take offers, ironically cited religious reasons in keeping a promise.

However, some participants reported that candidates/agents influence people to show proof of their vote. Thus, some smuggle mobile phones with cameras into voting booths to take photos of their voted ballot papers or some even showed their ballot papers to representatives of candidates at the polling stations. Another serious issue, which might intensify in the upcoming elections, is the confiscation of National Identification Cards required for voting in exchange of offers so that parties or candidates could make sure vote buying is effective.

Recommendations³⁰

- EC and NGOs should conduct voter education around the issue of vote buying.
- EC, domestic and international observers should conduct monitoring of vote buying
- EC and other relevant authorities should prioritize investigation and prosecution of cases of vote buying through establishing an inter-agency task force
- People's Majlis should bring reforms to the General Elections Act to better regulate vote buying
- People's Majlis should consider decriminalizing of acceptance offers in the Penal Code to incentivize reporting of vote buying

29 The anecdotal evidence on the emerging practice of parties withholding ID cards in exchange of offers seems to be to neutralize this.

30 Please also see section 3.1 below for further recommendations

2.1.5 Misuse of public resources

The issue

All interlocutors who commented on the issue - including the three major political parties - cited misuse of state resources for campaigning as a common issue in the Maldives.

Most believed the trips by incumbent presidents to islands on the pretext of meeting with the people using government boats and vehicles, accompanied by members of their party, were a common form of misuse of state resources. The local councils that Transparency Maldives met told that such trips sometimes involved open campaigning by government officials. Several interlocutors were of the view that the current President's ongoing visits to islands also involved misuse of state resources.

Announcements of new projects or launching new projects closer to elections, as often has been the case, could also amount to abusing the power of incumbency to their electoral advantage.

Other forms³¹

Besides the obvious type of misuse of "financial resources" for campaigning by the incumbent politicians, misuse of state resources for campaigning could also take the following forms in the Maldives:

- Misuse of "institutional resources": Transparency Maldives heard complaints from all councils that polling workers hired by EC campaigned for or acted to the advantage of certain candidates or parties. One council complained that such campaigning involved conversing with voters inside and outside the polling stations. Another council told us that some polling workers would call up party agents to give them an update of the people who had not voted so that the agents could approach those voters.

Transparency Maldives also heard complaints that the incumbency misused government employees for their campaigning and/or forced staff to sign onto a particular political party. Similarly, complaints about the misuse of local councils and civil service positions to the advantage of certain political parties were heard. The latter issue is compounded by a

31 see Magnus Ohman (2011), *Misuse of State Resources*, pp. 1-2. Retrieved from http://www.ifes.org/~media/Files/Publications/Papers/2011/Georgia_Abuse_of_state_resources_July_2011.pdf. Also see Open Society Institute (2005) *Monitoring Election Campaign Finance*, pp. 99-101. Retrieved from http://www.opensocietyfoundations.org/sites/default/files/Handbook_in_full.pdf

Supreme Court ruling in 2011 annulling the stipulation in the Civil Service Act which prohibits civil servants from participating in political activities.³²

- Misuse of "regulatory resources": misuse of state resources for elections could also take the form of misuse of regulatory resources, for example, by the parliament. The intention behind the recently passed Political Parties Act (2013) with 10,000-membership requirement to form a political party appeared to be to disadvantage the smaller parties. Political parties receive public funding and even land for their offices. Moreover, independent presidential candidates are required to submit 1500 signatures to have ballot access..
- Misuse of "enforcement resources": there were also complaints that enforcement personnel, including the police, were sometimes involved in campaigning or were misused for campaigning. Such misuse of "enforcement resources" also involved inaction on the part of police to enforce electoral rules and regulations. One council, for example, complained that the police in their island failed to take any action against individuals of a certain political party despite they were openly campaigning during the silent period

Reasons behind the issues

The main reason why misuse of state resources takes place openly includes non-existence of regulations on election campaigning by the incumbents.

However, even now the following provision of the Prohibition and Prevention of Corruption Act could be applied to misuse of state resources in the context of elections:

It is an offence for anyone to use any government property in contravention of government regulations to get an income or for personal gain. It is also an offence for a government employee to compel another government employee to work or undertake a task during official working hours of the employee, in contravention of government regulations to get an income or for personal gain.³³

Additionally, both the ACC and the Auditor General had submitted some recommendations in the past in this respect. Notwithstanding, because of weak electoral complaints system and enforcement mechanisms mean the issue has continued unabated. We were also told the ACC's draft regulations,

32 Civil Service Act, s53

33 The Prohibition and Prevention of Corruption Act 2000, s14(a); Also see Political Parties Act, ss45: 46

submitted to the EC, included recommendations on such as matters as announcement of projects by the government closer to elections.

Finally, the non-existence of national laws does not mean there were no norms that the incumbency could adopt.

Recommendations³⁴

- The EC and other relevant authorities, including the MPS and the ACC, should prioritize investigation and prosecution of cases of misuse of state resources through establishing an inter-agency task force
- The Anti-Corruption Commission should proactively monitor and investigate cases of misuse of state resources for campaigning
- The Auditor General and ACC should propose comprehensive guidelines on the use of state resources in campaigning by incumbent president
- The ACC, EC, and NGOs should conduct awareness programs on misuse of public resources
- People's Majlis should bring comprehensive reforms to the electoral legal framework to regulate use of State resources and entrusted power by State officials and civil servants during campaigning. Such amendments should include provisions for prohibition of announcement of new projects by incumbency following announcement of candidates by the EC.
- EC should also move forward towards adoption of recommendations by the ACC in this respect in the past.

2.1.6 Religion

In their Report, the Commonwealth Observer Group for the Presidential Election in 2008 noted the negative role for which religion was used during the Presidential Elections as a major electoral issue.³⁵

In 2008, President Gayoom was accused of not being a Sunni Muslim - an accusation he was cleared of by the Supreme Court - and DRP was accused of opening Christian chapels in the country. The MDP was, and continues to be, accused of proselytizing for other faiths or being *ladini*. Similarly, the more religiously oriented Adalat Party has been accused of promoting Islamic "extremism", militancy, and terrorism.

There are already suggestions that narrow instrumentalization of religion will be an issue for the

³⁴ Please also see section 3.1 below for further recommendations

³⁵ Commonwealth Secretariat (2008). *Report of the Commonwealth Observer Group*, p. 36

upcoming elections. A government minister, for instance, recently stated prevention of Mr. Nasheed from presidential race as a "religious obligation".³⁶

Such instrumentalization for personal denigration of one another not only runs counter to values such as mutual respect, but also takes away a lot of energy best used for serious campaign debates on crucial social, political and economic issues.

Recommendations

- Political parties should refrain from instrumentalizing religion for personal denigration and promote mutual respect and tolerance.

2.2 Electoral Processes and Administration

2.2.1 Elections Commission

Structure

EC established in 2008 is the first independent and impartial EMB in the Maldives. Under the new Constitution's transitional arrangements, the EC was an interim commission from 6 September 2008 until 23 November 2009. The five members are appointed for a five-year term by the President upon approval by the People's Majlis as per the Constitution and Elections Commission Act.³⁷

Other structures for elections

For Presidential Elections, the Regulation on Presidential Elections requires establishment of a National Coordinating Committee and Atoll Coordinating Committees. The Regulation on Presidential Elections provides for minimal details for their exact roles, responsibilities and powers. Unless their roles, responsibilities and powers are clearly determined in detail, the smooth and transparent coordination of the electoral process can be potentially seriously affected.

However, the EC is considering different coordinating structures including permanent units based throughout the country for the upcoming elections. With less than six months for the Presidential Elections, recruitment, orientation, training of the staff for these units would likely pose challenges

36 Minivan News (10 March 2013). Religious Obligation to Bar Nasheed from the Upcoming Elections. Retrieved from <http://minivannews.com/politics/religious-obligation-to-bar-nasheed-from-upcoming-election-home-minister-dr-jameel-54318>

37 Constitution, s173.

for the EC.

The Presidential Elections Regulations also requires establishing a National Advisory Committee. Members to the advisory committee include a representative of the Human Rights Commission of the Maldives, a representative from the civil society, and a representative from each presidential candidate.³⁸

However, there are no provisions for:

- Timeframes for formation and dissolution of the advisory committee.
- Transparent criteria, qualifications, and procedures for nominations and appointment of members
- Any by-laws for the committee and codes of conduct for the members

Similarly the inclusion of a representative from each candidate as such has delayed convening the committee in a timely manner.

Tenure

The tenure of a member of the EC is five years, and the People's Majlis could renew the term for another five years.

Members of the EC can be removed from office on the grounds of misconduct, incapacity or incompetence, after a finding by a Parliamentary Committee, by majority of those present and voting of the People's Majlis.³⁹

However, especially the ground of "misconduct" for removal of a member can be wide-ranging through the code of conduct in Elections Commission Act, several provisions of which are very vague.⁴⁰

Internal issues

On 20 March 2012, 45 out of 49 the Elections Commission's staff staged a sit-down strike alleging:

- 1 Commission members were not impartial
- 2 Staff were being intimidated by Commission members

38 Presidential Elections Regulation, s5(a)(b)

39 Constitution, s177.

40 These include, for example, Elections Commission's Act, s17 (a). Also see Elections Commission's Act, s14(a) on removal

- 3 Staff work was not appreciated by Commission members
- 4 Baseless accusations were laid against staff by Commission members
- 5 Commission members were working in violation of laws and regulations for their own self-interest⁴¹

Following this, the relations between administrative staff and EC members continued to deteriorate. For instance, in June 2012, 43 of the 46 staff of EC petitioned to Parliamentary Oversight Committee on Independent Institutions, questioning the independence and impartiality of three of the Commission members.⁴²

To date, at least three experienced staffs have been dismissed for various reasons. The Employment Tribunal ruled to reinstate one of those staffs, who was dismissed on the grounds that there was no budget. The ACC recently cleared another staff who was accused of corruption by the EC of those allegations. Whatever the cases with the staffs may have been, with a major electoral cycle coming up, finding experienced staffs when required would be a challenge.

One year on after the strike, we were told that there was still no conducive environment for open communications between some of the staff and the members. Several interlocutors alleged that with the new commission coming, staff access to EC members and their meetings were limited, which did not help improve the relations.

While some of the staff complaints might be due to their dissatisfaction with changes such as cost-cutting measures, we were told by some interlocutors that issues of open communication still existed.

These issues have resulted in delays in the decision-making process and barriers in coordination with potentially serious consequences for the preparations for upcoming elections. Most of the outside interlocutors also raised concerns about the issues within the EC. These internal issues have therefore negatively affected stakeholder confidence in the institution.

Transparency

The success of the Presidential Elections in 2008 in spite of the extremely truncated timeline was in large measure to the unprecedented levels of transparency and accessibility standards of the interim EC. Excellent stakeholder relations existed, increasing public confidence in the EC.

⁴¹ Minivan News (20 March 2012). EC Employees Strike Over Pay, Demand Resignation of 3 Members. Retrieved from <http://minivan-news.com/politics/ec-employees-strike-over-pay-demands-resignation-of-3-members-33841>

⁴² Haveeru (25 June 2012). Staff Submits petition to Majlis (in Divehi). Retrieved from http://www.haveeru.com.mv/dhivehi/elections_commission/123243

During the 2011 Local Council Elections observed by Transparency Maldives, the current Elections Commission was seen to have backtracked on the transparency and accessibility standards shown by the previous interim Elections Commission.⁴³ Transparency Maldives noted the delay in the establishment of the National Advisory Committee for the Local Council Elections as symptomatic of this backtracking. The removal of audited financial reports submitted by candidates from the website also negatively impacted on transparency.

However, the EC maintains and regularly updates its website which contains a range of information, including laws and regulations, several election reports (but not parliamentary and local council), portals for checking voter registries, and media releases. The EC has already made several media interventions on the upcoming Presidential Elections.

Nonetheless, there are concerns by several of the interlocutors that stakeholders were not "on board" so far, while important decisions were being made by the EC. Some stakeholders also raised concerns the EC so far failed to proactively engage with them.

Independence and impartiality

No major political party or key stakeholder questioned the independence or impartiality of the EC as an institution. No such allegation was also made against any Commission members with regard to any election.⁴⁴ A few interlocutors, however, questioned the impartiality of some of the members of the EC and some staff, and cited instances. Several interlocutors also expressed concern there existed such allegations, especially made by the staff, against some members.

There could be challenges to the EC to act impartially and independently in a highly polarized political environment, as members are likely subjected to external pressures. This could be aggravated by the fact that a simple majority of those present and voting in a parliamentary sitting could remove a member of the EC.

⁴³ Transparency Maldives (2011). *Observation Report: Local Council Elections*, p. 19

⁴⁴ However, several stakeholders raised concerns there was a serious instance of conflict of interest by a staff during a by-election 2012

Integrity

Election Commission's 2011 Audit Report cites several instances of alleged violations of law, including the Public Finance Act, including potential corruption cases such as misuse of phone credits. We were told there were cases of corruption against some of the EC members currently being investigated by the ACC. However, no major political party raised integrity concerns against the EC members. While some interlocutors believed there was a possibility of removal of some members in the run up to the elections, the fact that no political party has a majority in the People's Majlis means that removal requires cross-party cooperation, which might not be forthcoming.

Budget

The EC has also not been so far provided with adequate budget for the upcoming elections. The government has promised to provide for any shortfalls. The law explicitly stipulates that the People's Majlis shall provide adequate budget in the state budget for the functioning of the Election Commission.⁴⁵

Technical competence

Transparency Maldives observed the EC improved the administrative conduct of the Local Council Election 2011 compared to the parliamentary and Presidential Elections 2009 and 2008, respectively. The new EC has also conducted over 30 by-elections, including deeply contested by-elections since the Local Council Elections in 2011.

Without exception, all interlocutors agreed EC's conduct of elections as far as Election Day is concerned was generally good. The focus group participants also agreed EC did a good job in the Local Council Elections in 2011. However, a few key stakeholders questioned EC's competence, one suggesting "EC is in need of putting their house in order".

In 2011, the EC received technical assistance from International Foundation for Electoral Systems (IFES) to develop EC's strategic plan. The strategic plan had a number of policies and specific actions to ensure that the EC's capacity to conduct elections is enhanced. The EC has been unable to implement it satisfactorily. The many by-elections since late 2011 were cited by the EC as a reason for lack of progress as EC staffs were preoccupied by elections work.

EC has publicly claimed they were ready for any election at any time.⁴⁶

⁴⁵ Elections Commission's Act, s27(a) & (b)

⁴⁶ Minivan News (8 April 2012). We are ready for any election : Elections Commission. Retrieved from <http://minivannews.com/politics/%E2%80%9Cwe-are-ready-for-any-election%E2%80%9D-elections-commission-34920>

With technical human resources limitations or delays in such services to the EC, with delays in recruitment and training of thousands of polling workers and voter education, registrations and constituency delimitations not finalized, and the complaints resolution system not overhauled - all of which are also compounded by internal decision-making and coordination bottlenecks - it is clear there are challenges ahead for the EC.

Recommendations

- EC should immediately hold regular stakeholder meetings to seek their opinions on all aspects of the preparations for the upcoming elections so that transparency, inclusiveness and confidence in electoral administration and process are increased
- EC should convene the National Advisory Committee as soon as possible
- EC should ensure a work environment of open and regular communication, timely decision-making, and effective and smooth coordination. Without such a working environment, key staff will continue to be demoralized.
- State, including the government and the People's Majlis, should immediately make available adequate budget to the EC
- EC should seek, and should be provided with by the international community, external technical assistance, especially for training and capacity building

2.2.2 Polling workers recruitment and training

The EC has told media there will be 556 ballot boxes for the upcoming Presidential Elections for over 240,000 eligible voters.⁴⁷ Nonetheless, Transparency Maldives was told by some interlocutors within the EC that they were yet to finalize delineations of constituency and get population figures right. Transparency Maldives was told there were going to be over 5,000 polling workers recruited and trained.

Status and challenges

Recruitment of polling workers is a painstakingly time-consuming task. We were told recruitment process was facing delays and out of schedule due to bottlenecks in coordination and decision-making processes within the EC. The process was so out of track that one interlocutor conjectured if the process continued as it did, there might not be Presidential Elections on 7 September.

⁴⁷ SunOnline (2013). Additional 100 ballot boxes required for presidential elections this year: Elections Commission. Retrieved from <http://sun.mv/english/10106>

We were told training preparations for polling workers were better than the last elections. However, some interlocutors raised concerns of shortage of administrative staff in the relevant section of the EC. There are only three staffs in the relevant section. In addition to training, the section also oversees voter education.

A real concern with regard to training was the loss of information because of four layers of polling staff trainings. This means most polling workers will not be well trained if the current mode of training is not changed. In fact, we were told, most of the administrative issues on Election Day were related to or because of polling workers.

Another common concern by several of the interlocutors we met was that some polling workers acted in partisan manner. Transparency Maldives' own observation, however, found polling workers were largely unbiased in the last Local Council, Parliamentary and the Presidential Elections.

Nonetheless, with the current levels of political polarization and shortcomings of the legal framework that allows politicization of civil servants, the EC will find it extremely challenging to recruit non-partisan polling staff for the upcoming elections.

Recommendations

- EC should hold immediate consultations with stakeholders, including political parties, to seek their opinions on the recruitment of polling staff. Transparency Maldives believes it will be a challenge to find impartial polling staff in the current context of polarization
- EC should expedite the process of recruitment and ensure adequate training of polling staff
- EC should ensure training section is adequately staffed and resourced

2.2.3 Voter education

Elections Commission is constitutionally mandated to "to educate and create awareness among the general public on the electoral process and its purpose".⁴⁸

Voter education is, however, one of the weakest areas of the EC, with most interlocutors also criticizing there was less than a satisfactory voter education by the EC in the past.

There was, for example, a much belated voter education attempt by the EC for the Local Council

⁴⁸ Constitution, s170(q)

Elections in 2011. One council told Transparency Maldives they still had the posters stored in their office sent by the EC for the Local Council Elections because they only received them on the Election Day!

Status and challenges

However, we were told by the EC that it was more prepared this time for voter education. But there are some delays, as voter education was originally planned to start in January 2013. The plan was to conduct targeted voter education for various constituencies to focus on issues more prominent in those areas. However, due to delays the EC would only be able to conduct general voter education.

Budgetary constraints and administrative staff shortage were also cited as reasons for delays in voter education for the upcoming elections. EC is already in discussion with public broadcasters to conduct voter education.

Another challenge that EC will face would be that there are going to be about 30,000 new voters for the upcoming Presidential Elections, who have had no voting experience in the past.⁴⁹

Transparency Maldives also received complaints that some of the very elderly required assistance in voting even if they had no disability. One way to address this issue would be targeted voter education for them.

Other recurring themes Transparency Maldives heard included lack of awareness on registration process, awareness on ID card requirements (such as ensuring IDs were not expired) and civic responsibilities to ensure informed choice of representatives..

Recommendations

- EC should immediately launch a voter education program, including on issues of a) voter registration, b) vote buying, c) assisted voting, d) identification requirements for voting
- All broadcasters should consider providing free airtime for voter education by the EC and other institutions. The public broadcaster should provide free airtime.
- NGOs/CBOs, HRCM and ACC should conduct targeted voter education at both national and community levels

⁴⁹ Minivan News (10 February 2013). 31,000 New Voters Eligible in the Upcoming Presidential Elections. Retrieved from <http://minivannews.com/politics/31000-new-voters-eligible-their-vote-in-the-upcoming-presidential-elections-elections-commission-52643>

2.2.4 Voter registration

Elections Commission is constitutionally required to maintain a voter registry.⁵⁰ The General Elections Act provides for both passive and active voter registration. Elections Commission Regulation stipulates that the Secretary General of the EC shall brief the Commission members on the updates to the registry every three months.⁵¹ Election Commission itself has the powers to proactively seek all necessary information to update the voter registry.⁵² General Elections Act also has adequate provisions for voters to ensure their names are registered.

EC is required to publish voter registry at least 45 days before an election in the government Gazette and make available on the website and all inhabited islands.⁵³ EC is also required to facilitate anyone requesting to see the voter lists once published.⁵⁴ Finally, EC should also make public announcements about the places where the lists will be available for viewing.

Any citizen or a political party could file complaints about voter registry within 10 days of publication of the voter registry.⁵⁵ There are provisions for challenging EC decisions through the High Court within 5 days after EC's decision. The High Court is required to adjudicate within 15 days after filing a complaint.⁵⁶

Main issues: legal framework

A major legal defect in ensuring accurate and up to date voter registry is that no election law requires any state body to keep a comprehensive and accurate civil registry. In the absence of such a mandate, EC's work to keep a fully accurate and up to date voter registry becomes a task of its own. This is aggravated by the fact that authorities that maintain data have differing data as past elections show.⁵⁷

Voter lists contain voter details according to permanent house addresses, name and sex, making it easy for perusal in a Maldivian context where everyone is assigned to a house name.⁵⁸

An issue with de fault registration on permanent address basis is that there are thousands of people

50 Constitution, s170(d). Also see General Elections Act, s8(a), Elections Commission Regulation, s39(a)

51 Elections Commission Regulation, s39(b)

52 General Elections Act, s8(f)

53 General Elections Act, s9(a)(b)

54 General Elections Act, s9 (c)

55 General Elections Act, s10 (c)

56 General Elections Act, s10(e)

57 See, for example, Transparency Maldives (2009), *Domestic Observation of the Parliamentary Elections*, p. 44.

58 General Elections Act, s9(a)

who have moved from their permanent residences to live in Male and there are thousands of people who are registered in the special residency registry - *daftaru* - in Male⁵⁹.

There are also no provisions in the legal framework on how to assign constituencies for people on the *daftaru*.

Situation

Voter registration was a major issue during the Presidential Elections in 2008.⁶⁰ Transparency Maldives observed the voter registry had become cleaner in the Parliamentary Elections in 2009 and was not a significant issue during the Local Council Elections.

The EC regularly coordinates with several government bodies to update its voter registry, including the Department of National Registration and councils. The DNR sends monthly updates to the EC. The EC has identified focal points at local council offices to receive regular updates on deaths.

In October 2012, the EC started a campaign to update the voter registry for the upcoming Presidential Elections by sending out voter lists for verification to households in Male. The verified voter lists can be sent back to the EC either via email or fax. The EC had also arranged for the Post Office to collect back the voter lists.⁶¹ In addition to setting up a help desk with a toll free number at the EC, a help desk was also set up at Male City Council for this campaign.⁶²

Transparency Maldives was told that the "door-to-door registration" had not taken place according to the schedule, and there had been a lot of delays for various reasons. Nevertheless, Transparency Maldives was told by the EC that it was largely on track with voter registration.

Recurring issues

Transparency Maldives was told by several interlocutors that a number of issues still existed, including existence of names of dead people on the list, lack of awareness about voter registry verification, and the closure of re-registration too early.

59 Over 50,000 registered as voters outside the place of permanent residence in parliamentary elections

60 Commonwealth Secretariat (2008). *Report of the Commonwealth Observer Group*. Retrieved from <http://www.thecommonwealth.org/files/185267/FileName/FINALREPORTMALDIVESCOG2008PRINTVERSION.pdf>

61 Elections Commission (27 October 2012). Press Release. Retrieved from http://elections.gov.mv/index.php?option=com_content&view=article&id=196:2012-10-27-10-54-44&catid=8:2011-07-06-10-30-13&Itemid=35.

62 Minivan News (28 October 2012). Elections Commission Begins Preparations for 2013 Presidential Elections. Retrieved from <http://minivannews.com/news-in-brief/elections-commission-begins-preparations-for-2013-presidential-elections-46253>

One council told Transparency Maldives that people were so unaware of the verification process, that they received only one complaint on the voter registry, while the council had found a number of inaccuracies.

All the councils that Transparency Maldives met pointed out that EC failed to update the voter lists in the final registry even after the councils had sent feedback on time, resulting in disenfranchisement and/or other inaccuracies.

Recommendations

- EC should make the voter registry publicly available as soon as possible
- EC should conduct voter information around registrations immediately
- NGOs/CBOs/Local Councils should conduct voter information on registration for their respective communities
- People's Majlis should bring reforms to the legal framework to address issues such as giving a clear mandate for maintenance of a civil registry, alternative voting, assisted voting, and absentee voting
- EC should move to adopt recommendations by the IFES on voter registration in the EC's strategic plan
- For the long term, EC should consider bringing reforms to registration process to base it on active registration

2.2.5 Elections dispute resolution⁶³

Situation

Almost all of the interlocutors who commented on the issues believed complaints system has largely failed to deliver its purpose. Several interlocutors told it was an "utter failure".

Both international observers of past elections and Transparency Maldives' own observation show that a major area of electoral weakness is elections dispute resolution.⁶⁴

Some interlocutors also complained that there was no independence of the National Election Bureau with the EC members directly interfering in the process. This would be a serious issue when complaints

⁶³ Please see section 3.2 below for an analysis of the issues in the legal framework for complaints system and further recommendations

⁶⁴ Commonwealth Secretariat (2009). *Maldives People's Majlis (parliamentary) elections: Report of the Commonwealth Expert Group*, p. 29

are about the EC and EC members.

Transparency Maldives was told there was very slow forward movement by the EC on reviewing the electoral dispute mechanisms as recommended by the IFES in the EC's strategic plan.

Challenges

Some of the main challenges for effective complaints mechanisms include lack of clear authority of complaints bureaus, inter-institutional jurisdictional confusions, lack of trained officials, lack of clarification on roles and responsibilities of bureaus, and procedures, and lack of public awareness on how the complaints mechanisms work.

The upcoming Presidential Elections are projected to be contested under a context of unprecedented levels of political polarization and politicization of individuals and institutions. It is also likely the elections are going to be a close race with potential contestation of individual results. Similarly, there are concerns about political violence, vote buying and misuse of state resources.

Thus, an effective complaints resolution system is extremely crucial for the upcoming elections.

Recommendations

- EC should proactively engage with relevant state institutions towards addressing inter-agency coordination issues with regard to election dispute resolutions and effective enforcement of electoral violations, by establishing an inter-agency task force. Prioritized issues could be vote-buying, misuse of state resources, enforcement of laws on campaign finance, and violence
- EC should move forward with adopting recommendations by the IFES in the Strategic Plan⁶⁵
- People's Majlis should reform the legal framework in this respect by adoption of recommendations in section 3.2 below
- EC should conduct timely voter education on electoral complaints mechanisms

2.2.6 Electoral security context

Role of Maldives Police Service (MPS)

The electoral legal framework has no provisions for the role of police in maintaining security in the elections, which is a major shortfall. In the past, the EC and MPS signed a memorandum of

⁶⁵ Elections Commission (2011). *Strategic Plan of the Elections Commission*

understanding for security matters related to elections.

In practice, therefore, there were obstacles for both the MPS and the EC to do their jobs because of lack of clarity on exact roles, responsibilities and authority. Nonetheless, Transparency Maldives observed that the MPS generally professionally maintained electoral security in the past.

Preparations

The MPS has already been in discussion with the EC to prepare for the upcoming elections. Security for the elections is also one of the operational priorities of the MPS for the current year.

Transparency Maldives was told security preparations were on track, although some expressed concern the EC was not proactive on the matter.

Challenges and concerns

1. Politicization and mistrust: Transparency Maldives received mixed responses from the interlocutors on the role of security personnel in the upcoming elections, ranging from remarks such as "their credibility is on the line" to "they are very professional".

It was however clear there was a crisis of confidence and mistrust in the security services among a substantial segment of the population, especially following the transfer of power on 7 February. Some interlocutors expressed fear that security services would interfere in the electoral process either through campaigning for a particular candidate or through direct interference.

The attempt by an ex-policeman, who was involved in the process of the transfer of power on 7 February, to form a political party was cited by a few as indicative of further politicization of security services.

Transparency Maldives also heard allegations that the police in plainclothes were already involved in campaigning, taking part in rallies of certain political parties at island levels, misusing state resources such as vehicles for the benefit of certain political parties and individuals.

2. Electoral and political violence: Elections in the past, including in the 2008 Presidential Elections, have generally been peaceful with only a few major cases of violence.⁶⁶

⁶⁶ There was a particularly serious incident involving security forces in the constituency of HA, Kela in 2011's Local Council Elections, where the ballot box was taken to another island for counting by the army after clashes broke out after ballot boxes were closed while half of the population were yet to vote. This was in violation of the constitutional stipulation to count at the polling station the ballot papers of that station.

However, political violence was cited by most of the interlocutors Transparency Maldives met as a major challenge for the upcoming elections. Political violence sharply increased since February 2012 for at least the first half of 2012.⁶⁷ There have since been outbreaks of violence in connection to the ongoing trial of President Nasheed, including in March 2013.

3. Deadly forms of violence: Several interlocutors expressed serious concern that more brutal forms of violence (such as the murder of MP Afrasheem Ali in 2012) against politicians and candidates could not be ruled out or are in fact possible in the run up to the elections.

In this regard, several key interlocutors expressed grave concern about the professionalism of MPS in their handling of the case of Dr Afrasheem Ali. They doubted the motive behind the murder of Dr Ali was successfully determined despite allegations by the President, the Home Minister and the Commissioner of Police that it was politically motivated. MPS has so far failed to identify the alleged financiers for the murder.

We were told that there was a "market" in which gangs were paid to commit such attacks on behalf of politicians.⁶⁸ A key interlocutor acknowledged relevant institutions, such as the MPS, have so far failed to address the issue.

The law provides for personal security of presidential candidates but is unclear on the level of such security. Transparency Maldives was told that because of insufficient security, and non-existence of professional private security, some candidates were having to arrange their own security personnel who happen to be members of gangs.

Recommendations

- The MPS should continue to build on security experiences in the past elections and maintain effective security for the upcoming elections through consultations and as required by the EC
- EC should proactively engage with MPS to sign an MoU which includes, among others, provisions for EC's authority to request MPS to conduct investigations into allegations of electoral infractions and to enforce electoral laws and regulations
- People's Majlis should bring reforms to the General Elections Act to clarify the roles and responsibilities of the MPS during elections
- MPS should engage in confidence building activities such as consultations with all stakeholders

67 Retrieved from <http://www.ifes.org/Content/Publications/Articles/2012/Maldives-Political-Violence-Watch.aspx>

68 For the connection of political parties to gangs please see Asia Foundation (2012). *Rapid Situation Assessment of Gangs in Male*, pp. 18-19. Retrieved from <http://asiafoundation.org/resources/pdfs/GangViolenceReportFINAL.pdf>

in bringing internal reforms to address issues of mistrust, holding itself to greater account, and preventing politicization

- Security Services should ensure adequate security for the presidential candidates

VOTE
ELECTION

3

THE LEGAL FRAMEWORK FOR ELECTIONS

3 THE LEGAL FRAMEWORK FOR ELECTIONS⁶⁹

The current laws and regulations for the Presidential Elections were all made within a highly compressed timeline in the run up to the Presidential Elections in 2008. The legal framework, however, provides for minimum standards required for democratic Presidential Elections, including universal adult and secret suffrage, right to be elected and participate in public affairs, prerequisite freedoms, and reasonable access to the media.

However, there are a number of loopholes and defects in several areas. The EC and the government have recently started work on amending the legal framework. A Commonwealth electoral expert has been helping in the process.

While there are much needed reforms to the legal framework, any change to the electoral legal framework must be timely. *The Venice Commission's Code of Good Practices on Electoral Matters*, for instance, suggests that fundamental aspects of electoral laws should not be open for changes less than one year before the elections.⁷⁰ Similarly another electoral expert told Transparency Maldives that at a minimum there must be six months before the elections.

The EC and the government have had ample time to reform the legal framework based on recommendations by several bodies, including the Commonwealth, the European Union, the International Foundation of Electoral Systems, and Transparency Maldives' reports.

Particularly weak areas in the electoral legal framework include:

- 1 Loopholes and vagueness in campaign finance and the use of state resources in elections (3.1)
- 2 Loopholes in the electoral complaints and enforcement mechanisms (3.2)
- 3 Loopholes, vagueness and shortcomings in defining the roles and responsibilities of other state institutions *vis-a-vis* the Elections (3.3).

⁶⁹ Please see Appendix I for an analysis and a full list of general recommendations to the legal framework.

⁷⁰ Venice Commission (2002). *Code of Good Practices on Electoral Matters*, p. 10. Retrieved from <http://www.venice.coe.int/web-forms/documents/CDL-AD%282002%29023rev-e.aspx>

3.1 Campaign Finance

The legal framework regulates campaign finance and expenditures but contains several defects and loopholes.

Lack of clarity of aims

A fundamental issue is the provisions on campaign finance are not informed by clearly expressed, legitimate aims of regulating campaign finance. General Comment 25 under Article 25 of the ICCPR clarifies these aims: "to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party".⁷¹

Thus, uncontrolled campaign finance could mean a few wealthy people can have a disproportionate influence in the election of a candidate and subsequent politics and policies, discouraging candidates to rely on a broad-based participatory politics. Uncontrolled expenditure could also mean that only a wealthy few have a chance to genuinely contest elections, thereby limiting the right for all people to seek public office on general terms of equality.

Limiting Donations

The legal framework does have some good provisions for limiting donations, such as prohibition on anonymous donations in the General Elections Act. However, overall, there are no effective limitations on donations and no effective provisions for objective enforcement of donation limitations.

Section 67 of the General Elections Act stipulates that all candidates must establish a special bank account for campaign finances and expenditures. All monies must be deposited and expended through this account. An individual can donate up to 0.5 per cent and a legal entity 2% of the total spending limit.

However, the law does not regulate in-kind assistance from donors.

Section 70 of the General Elections Act states the sources from whom private funding cannot be received: foreign nationals, actors, governments, organizations, international organizations, anonymous sources, Maldivian government sources other than funding under Political Parties Act, and companies

71 General Comment 25 to ICCPR

with government shares.⁷²

However, there are no provisions for objective enforcement of this stipulation, as the law does not require keeping a detailed paper trail of donations with official identifications.

The issue has been worsened by the recently passed Political Parties Act which could allow anonymous donations and funding from foreign sources.⁷³

Limiting Expenditure

A major loophole is that the legal framework does not provide a clear definition of campaign expenditure and thus fails to effectively control elections related expenditure.

The per voter campaign expenditure by a candidate for elections is MVR1500.⁷⁴ There should be a legitimate aim and proportionate basis for setting this as the limit on expenditure, but there are no rules on the basis for this particular limit. Proportionately, for instance, might mean per voter expenditure in different geographical areas could differ, as logistics, travelling and costs of campaigning will differ in different areas. Similarly, as it is based on per voter, total spending could be potentially exponentially high in the parliamentary or local council elections.

Expenditure provisions do not cover expenditure incurred by third parties to campaign for the candidates, nor do they provide for a clear line between promotion of a candidate for election and promotion of policies of a party. In effect, there is no legal limit of elections expenditure.

Even limiting the definition of expenditure to that of a candidate, the law is not clear on how this money must be spent, and does not define what constitute campaign expenditure, and does not draw clear lines between campaign expenditure, social activities, or humanitarian assistance. In effect, a lot of leeway is given to the candidates on how to spend the money whereby legal framework is rendered inadequate on controlling bribery and vote buying.

The situation is aggravated by the fact that the existing Penal Code criminalizes acceptance of bribery hindering reporting of cases of bribe giving.

⁷² General Elections Act, s70.

⁷³ Political Parties Act, s37

⁷⁴ General Elections Act, s69

Reporting and Public Disclosure

A major defect is there are no provisions for periodic reporting and disclosure of campaign contributions and expenditures, thereby limiting transparency and public scrutiny of campaign contributions and expenditure before elections.

The General Elections Act and Presidential Elections stipulate submission of reports only to the EC, and only after the elections.⁷⁵

While section 73(d) of the General Elections Act and section 16 of Presidential Elections Act require the EC to disclose these reports to the public, there are no provisions for candidates or political parties for public disclosure of these reports.

Finally, crucially, there is no timeframe for even the EC for public disclosure of reports submitted by the candidates.

Without effective public disclosure rules, transparency and accountability of campaign finance, and hence, the integrity of the whole electoral process, cannot be legally ensured.

Public funding

There is no direct public finance except free airtime from public broadcasters for campaigning. However, the Political Parties Act 2013 requires allocation of 0.1 to 0.2 percent of the government budget for political parties.⁷⁶ Public funding is distributed proportionate to the size of the membership of political parties.⁷⁷ Political parties could utilize this money for campaigning.

Recommendations⁷⁸

People's Majlis should amend electoral legal framework so that, among other things, the law

- Clearly expresses the aims of regulating campaign finance. General Comment 25 under Article 25 of the ICCPR clarifies these aims: "to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on

75 Within 30 days as per section 73. Ibid. Within 60 days as per section 16. Presidential Elections Act

76 Political Parties Act. s34

77 Political Parties Act. s35(a)

78 Also see Transparency Maldives (2011). *Transparency in Political Financing in Maldives*

behalf of any candidate or party".⁷⁹

- Includes provisions for regulating in-kind assistance from donors
- Includes provisions for objective enforcement by requiring candidates and parties to keep and provide a detailed paper trail of donations with official identifications of donors and vendors
- Rationalizes existing donation limits with clear aims as provided in Article 25 of the ICCPR.
- Includes provisions for "free donations" such as free airtime by broadcasters.
- Provides a clear definition of "campaign expenditure" and categorizes campaign expenditure to cover expenditure by candidates, their parties if any, and third parties.
- Has a legitimate aim and proportionate basis for setting a certain per voter spending limit
- Includes provisions for a clear line between promotion of a candidate for election and promotion of policies of a party.
- Has detailed provisions how campaign expenditure must be spent and draw clear lines between campaign expenditure and social activities or humanitarian assistance. The latter could constitute expenditure during campaign period. This is necessary to prevent vote buying.
- Includes provisions for periodic reporting and public disclosure of campaign contributions and expenditures by candidates/parties during campaigning and elections, a manner accessible to the public
- Includes provisions for public disclosure of final audited reports of the candidates in a timely manner
- People's Majlis should bring amendments to the Political Parties Act to enhance transparency of political finance, including proscription on anonymous donations and foreign donations

3.2 Enforcement of Electoral Rights

The legal framework generally provides for mechanisms and remedies for the enforcement of electoral rights. However, several challenges remain.

Complaints mechanisms and their effectiveness

General Elections Act requires EC to establish convenient, efficient and effective mechanisms for addressing complaints. Regulations on Presidential Election stipulates establishment of multi-level elections complaints bureaus prior to 7 days of the Election Day and until 9 days after the voting. These include island level, atoll level, and national level elections complaints bureaus.⁸⁰

⁷⁹ General Comment 25 to the ICCPR

⁸⁰ Presidential Elections Regulation, s24

As per the Regulation on Presidential Elections, Island Election Complaints Bureaus consist of 3 members: a male and female member from the Island Development Committee and a senior staff person from the Civil Service.⁸¹

However, Island Development Committees no longer exist. The Atoll Election Complaints Bureaus consists of 3 members and the National Election Complaints Bureau consists of 5 members.⁸²

These bureaus have independence in adjudication of complaints but administratively assisted by the EC.⁸³

The effectiveness of these complaints mechanisms is not guaranteed, as there are no:

- 1 Clear and detailed roles and responsibilities
- 2 Clear and detailed code of procedures for filing and adjudication of complaints
- 3 Clear and detailed operational procedures
- 4 Provisions for training of officials
- 5 Provisions for guaranteeing sufficient resources (including technological resources) for effective functioning

Similarly, without provisions in the legal framework for early voter information on these bureaus and how they work, public access to and use of them in a coherent way can be hindered. Finally, the several loopholes and defects in the legal framework can compound their ineffectiveness.

The law provides for filing complaints with the EC and other relevant judicial authorities - High Court and Supreme Court. While there should be a hierarchy of complaints resolution mechanisms, allowance of concurrent filing and adjudication to all these authorities can result in incoherence, confusion and ineffectiveness.

The law provides for a speedy resolution of complaints. Any complaint filed with the bureaus must be adjudicated within 2 days.⁸⁴ Complaints can be filed by any eligible voter, any candidate, political party or accredited observer or monitor.⁸⁵ Regulation on Presidential Elections outlines the procedure for filing complaints.⁸⁶ All decisions of the Election Commission can be challenged at the High Court.

81 Presidential Elections Regulation. s25(b)

82 Presidential Elections Regulation. s26(3)

83 Presidential Elections Regulation. s24(b)

84 Presidential Election Regulations. s28 (c)

85 General Elections Act. s63

86 Presidential Elections Regulations. s28 (c)

The legal framework, however, does not always provide reasonable deadlines for the consideration and determination of complaints. General Elections Act stipulates that High Court must adjudicate on any complaint within 30 days of its filing.⁸⁷ This deadline is problematic for especially the Presidential Elections, as any subsequent round of the presidential election must be conducted within 21 days of the previous round.⁸⁸

Infractions and punishments

The General Elections Act stipulates a number of specific infractions (section 74) and in section 75 has a very general provision stipulating that any person found in violation of any injunction in the General Elections Act or any special election Act can be punished.

There are only two forms of penalties for elections related infractions. For violations under section 74, a person can be jailed for 1 to 4 years or fined for MVR 12,000 to MVR 48,000 depending on the magnitude of the violation. For violations under 75, a person can be jailed for 6 months to 2 years or fined for MVR 6,000 to MVR 24,000 depending on the magnitude of the violation.

There are no provisions for determining the magnitude of the violation.

A major lack here is action against any violation by the candidates themselves. With wide discretion given to the adjudicating authority, there is room for even disqualification of candidacy.

Recommendations

- People's Majlis should consider amending the legal framework to establish an independent tribunal on electoral dispute resolution
- In the absence of reforms to the General Elections Act, EC should amend the Presidential Elections Regulation to include provisions for:
 - Clear and detailed roles, responsibilities and powers of each complaints bureaus so that there is no duplication, concurrent, complaints adjudication
 - Clear and detailed code of procedures for filing and adjudication of complaints;
 - Clear and detailed operational procedures;
 - Training of officials of the bureaus;
 - Guaranteeing sufficient resources (including technological resources) for effective functioning;
- EC should conduct timely voter information on these bureaus and how they work

87 General Elections Act, s65(b).

88 Presidential Elections Act, s19 (a)(e)

- People's Majlis should amend the General Elections Act to include provisions for reasonable deadlines for the consideration and determination of complaints. E.g. General Elections Act stipulates that High Court must adjudicate on any complaint within 30 days of its filing.⁸⁹ This deadline is problematic for especially the Presidential Elections, as any subsequent round of the presidential election must be conducted within 21 days of the previous round.⁹⁰
- People's Majlis should enact a separate law on electoral violations by rationalizing electoral infractions and punishments, including provisions for criteria determining the magnitude of electoral violations, and including provisions for any violation by the candidates themselves so that disqualification of candidacy is not arbitrary.

3.3 Inter-institutional relations

The legal framework does not adequately provide for relations between Elections Commission and other state institutions.

These include areas with regard to especially detection, prevention and sanctioning of wrongdoings related to campaign finances and expenditures, vote buying, bribery, and violations of rights with regard to access to media.

The relevant institutions include Maldives Police Service, the Anti-Corruption Commission, the Auditor General, the Prosecutor General, and the Maldives Broadcasting Commission.

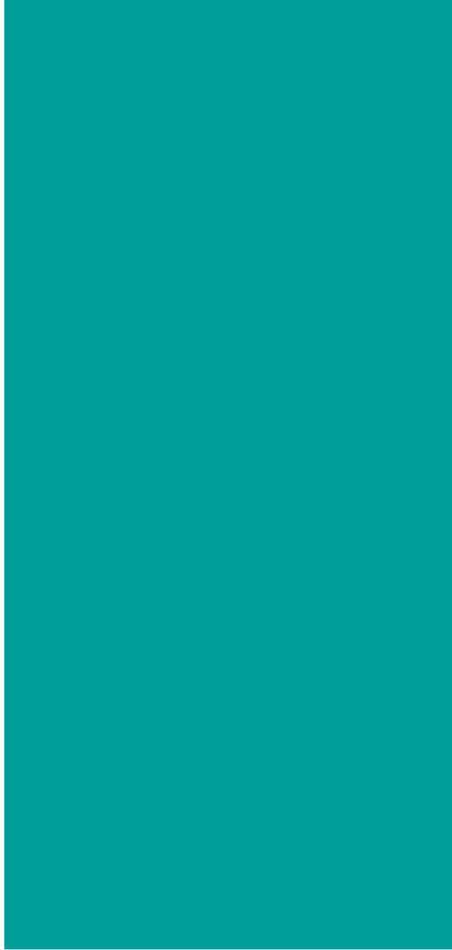
Recommendations

- EC should take initiative, in the absence of amendments to legal framework, in signing memorandums of understanding with the MPS on security and vote buying issues, Maldives Broadcasting Commission on violations with regard to access to media, and ACC and AG on prevention of misuse of public resources. An inter-agency task force is recommended.
- People's Majlis to include provisions in the General Elections Act for clear and detailed roles and responsibilities of the Maldives Police Service (MPS) in providing security and investigation and enforcement with regard to electoral violations.
- People's Majlis to include clear and detailed provisions in the General Elections Act for roles and responsibilities of Anti-Corruption Commission, Auditor General, Maldives Broadcasting Commission, Maldives Media Council, and other relevant institutions with regard to electoral

89 General Elections Act, s65(b).

90 Presidential Elections Act, s19 (a) (e)

violations. Include especially provisions for clear mandates for detection, prevention and sanctioning of wrongdoings related to campaign finances and expenditures, vote buying, bribery, and violations of rights with regard to access to media.



APPENDIX I

LEGAL FRAMEWORK: AN ANALYSIS
OF OTHER AREAS



APPENDIX I: LEGAL FRAMEWORK: AN ANALYSIS OF OTHER AREAS

1. Structure

The legal framework provides for minimum standards required for democratic Presidential Elections, including universal adult suffrage, right to be elected and participate in public affairs, prerequisite freedoms, and reasonable access to the media. However, there are loopholes and defects in several areas. The relevant laws and rule and regulations for conducting the Presidential Election consist of the following:

- 1 The Constitution, 2008
- 2 Elections Commission Act, 2008
- 3 General Elections Act - Act No: 11/2008
- 4 Presidential Elections Act, 2008
- 5 Presidential Election Rules and Regulations, 2008
- 6 Political Parties Act, 2013

2. Prerequisite Freedoms

The Maldives is also party to the International Covenant on Civil and Political Rights (ICCPR) without any reservations to the key Article 25 on the rights to participation in public affairs and to any prerequisite freedoms to conduct free and fair elections according to international standards.⁹¹ General Comment 25 of the UN Human Rights Committee provides an authoritative interpretation for State Parties on the provisions for free and fair and genuine elections under Article 25.⁹²

The Constitution provides for an independent judiciary, and all the prerequisite freedoms to conduct free and fair elections are enshrined in it. These freedoms are, however, subject to non-contravention

91 For an overview of these standards see UN (1994), *UN Handbook on the Legal, Technical and Human Rights Aspect of Elections*. Retrieved from <http://www.ohchr.org/Documents/Publications/training2en.pdf>

92 General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25) : . 07/12/1996. CCPR/C/21/Rev.1/Add.7. General Comment No. 25. (General Comments)

of "tenets of Islam".⁹³ They include:

- a Freedom of assembly (art. 32)
- b Freedom of association (art. 30)
- c Freedom of opinion and expression (art. 27)
- d Freedom of the media (art. 28)

Several pieces of legislation have been passed to elaborate on these rights. Of these, legislation on freedom of assembly and association are particularly concerning.

a - Freedom of Assembly

The Right to Peaceful Assembly Act ratified in 2013 limits freedom of assembly provided in the Constitution by unduly restricting the places where peaceful assemblies could be held in the capital. The Act also empowers dispersal even if a small number of participants in an assembly act in a violent manner, and it does not distinguish between *agents provocateurs* and other peaceful protesters.⁹⁴ These provisions go against international best practices and limit the right to peaceful assembly.⁹⁵

b - Freedom of Association

The recently passed Political Parties Act unduly limits right to association by requiring a 10,000 membership to form a political party. With that the fate of 11 political parties are uncertain. The Act has been challenged at the Supreme Court. The five political parties that have 10,000 members include:

- 1 The Maldivian Democratic Party
- 2 The Progressive Party of the Maldives
- 3 Divehi Rayjithunge Party
- 4 Jumhooree Party
- 5 Adalat Party

93 Constitution, s16

94 See, for example, Freedom of Assembly Act, s24 (c): s44(b)(6)

95 See, for example, *Guidelines on Peaceful Assembly*, p. 63. Retrieved from t: <http://www.osce.org/odihr/24523>

Recommendations

- People's Majlis should amend the Act on Political Parties so that there is no requirement to have 10,000 members to form a political party. A reasonable membership requirement based on governance requirement to form and maintain a political party may be required
- People's Majlis should amend the Act on Right to Peaceful Assembly in line with best practices contained in OSCE's *Guidelines on Peaceful Assembly*.⁹⁶

3. The Right to Vote and the Electoral System

Suffrage

The Constitution provides for multi-candidate democratic Presidential Election in which the President is to be directly elected by the people by universal adult, secret suffrage.⁹⁷

Electoral system

The Presidential Election is under a majority-runoff electoral system, which is clearly laid out in the Constitution and laws.

A candidate obtaining an absolute majority of votes (50 percent+) in the first round is declared elected. If this is not the case, a runoff election must be held within 21 days between the two candidates who got the highest number of votes in the first round.⁹⁸

The normal periodicity of Presidential Elections is every 5 years.⁹⁹

Recommendation

- The government should consider fulfilling its obligations under the ICCPR by bringing the Constitution in line with ICCPR's standard

⁹⁶ See OSCE/ODHR (2007) *Guidelines on Peaceful Assembly*, p. 63. Retrieved from t: <http://www.osce.org/odihr/24523>

⁹⁷ Constitution, s108

⁹⁸ Constitution, s111

⁹⁹ Constitution, s107

4. Elections Commission

Independence and impartiality

The Constitution stipulates that Elections Commission is an independent and impartial body.¹⁰⁰ The five members to the Election Commission are to be nominated by the President and approved by the People's Majlis with a majority.¹⁰¹

Elections Commission Act stipulates a comprehensive code of conduct for the members to ensure their impartiality and independence in exercising duties and responsibilities.¹⁰² However, some elements in the code are very vague.

Transparency

There are several provisions to promote transparency of the EC in many areas, especially in the actual conduct of elections. Thus, there are provisions for:

- Establishment of Election Advisory Committee consisting of a representative from the Human Rights Commission, a representative from the civil society, and a nominee from each presidential candidate
- Publication of voter registry and lists at least before 45 days of Presidential Elections¹⁰³
- Monitoring and observation of all aspects of the actual electoral process by both international and domestic observers¹⁰⁴
- Speedy announcement of preliminary results and publication of official results within 7 days of elections¹⁰⁵
- Publication of report on the conduct of elections within 30 days of elections¹⁰⁶
- Disclosure of financial statements submitted by candidates¹⁰⁷

For transparency in administration, the ECs Act requires an Annual Report to be submitted to the

100 Constitution, s167(b)

101 Constitution, s168

102 General Elections Act, s17, see especially s17(4-7)

103 General Elections Act, s9.

104 General Elections Act, s40

105 Presidential Elections Act 2008, s15.

106 Regulation on Presidential Elections, s29.

107 Presidential Elections Act, s17

President and People's Majlis before 28 February of each year.¹⁰⁸ The annual report must be made public within 14 days of the submission to the People's Majlis and the President.¹⁰⁹

However, there are no provisions requiring the Elections Commission of regular pro-active disclosure of its decisions, operations, procedures and policies. There are also no clear provisions requiring Elections Commission to provide timely information on its decisions, operations, procedures and policies to the public or media if requested. The existing Right to Information Regulation (itself falls behind international standards) does not even apply to non-executive institutions.

Overall responsibilities

Responsibilities and powers of EC are wide-ranging. They include ensuring the proper exercise of the right to vote, and ensuring that all elections and public referendums are conducted freely and fairly, without intimidation, aggression, undue influence or corruption.¹¹⁰

While the EC has these powers, the Constitution and relevant laws provide for seeking reversal of any elections related decision of the EC through an appeal to the High Court.¹¹¹

Administrative staff

The Elections Commission's Act does not provide for a code of conduct for the administrative and technical staff of the EC and does not stipulate the operational and administrative relations between the members and the staff of the Election's Commission. These aspects are regulated under Elections Commission's Rules and Regulations. This means wide discretion is given in the Act to the EC members to regulate all aspects of the staff and staff relations under regulations made by the EC.¹¹²

In this regard, it is noteworthy that the EC in May 2012 made an amendment to the EC Regulation authorizing the dismissal of any staff without prior notice who the EC has found to have committed an act of "obstruction", "hindrance" or "influence" against an election.¹¹³ None of these terms is defined in the Regulations allowing wide discretion in interpretation risking arbitrary dismissals.

¹⁰⁸ Election Commission's Act, s28(a).

¹⁰⁹ Election Commission's Act, s28(c)

¹¹⁰ See Constitution, s170 and Elections Commission's Act, s21 for a full list.

¹¹¹ See for instance Constitution, s172; For appeals on registration issues, see General Elections Act, s10(d); For appeals on elections related complaints see General Elections Act, s64(a)

¹¹² Elections Commission Act, s32

¹¹³ Elections Commission Regulation, s15(ii)

Voter information/education

Elections Commission is constitutionally mandated to "to educate and create awareness among the general public on the electoral process and its purpose".¹¹⁴

However, the legal framework has no timeframes and clear scopes for voter education.

Recommendations

- People's Majlis to amend the Act on Elections Commission requiring the Election Commission of regular pro-active disclosure of its decisions, operations, procedures and policies.
- People's Majlis to amend the Act on Elections Commission to clarify more precisely the grounds of "misconduct" for removal of a member in the code of conduct in the Elections Commission's Act.¹¹⁵
- People's Majlis should include detailed provisions for accountability relations between Elections Commission members and EC staff in the Elections Commission's Act including grounds for dismissals of EC staff that now exist in the regulations. (e.g. Elections Commission Regulation authorizing the dismissal of any staff without prior notice who the EC has found to have committed an act of "obstruction", "hindrance" or "influence", against an election are now vague.)
- EC to amend the Regulations on Presidential Elections so that the Advisory Committee is established in a timely manner

5. Political parties and candidates

The right to be elected

The legal framework ensures the right to contesting Presidential Elections as either a candidate of a political party or as an independent¹¹⁶ with the requirement, among others, for candidates to be Sunni Muslims.¹¹⁷

¹¹⁴ Constitution, s70(q)

¹¹⁵ Vague provisions include requirement for "protection of rights and freedoms of the citizens"; and, the requirement, "when discharging duties and responsibilities, advancing national responsibility, people's interest". See Elections Commission's Act, s17 (a) (2) (3).

¹¹⁶ General Elections Act, ss15:16

¹¹⁷ Constitution, s109(b)

Challenge to equal treatment before law

All candidates are required to pay a deposit of MVR40,000 with the Commission. In addition to the deposit money, independent candidates are also required to collect at least 1500 valid voter signatures as endorsements.¹¹⁸

Having to pay a monetary deposit and providing a minimum number of validated signatures to have ballot access are both internationally acceptable practices. However, the requirement for only independent candidates to collect at least 1500 signatures impede their right to compete in elections on the basis of equal treatment before the law.

Changing party affiliations and forming coalitions

There are no provisions in the legal framework for what happens if a candidate changes political party affiliation once on the ballot, and there is no protection of an elected candidate's mandate from premature termination due to a change in political party affiliation.

Similarly, the legal framework does not provide for coalition campaigns and coalition governments.

Application

The law provides for speedy processing of all applications. And all applicants could challenge a decision of the Elections Commission with regard to their application either with the Supreme Court (if it is about qualifications) or with the High Court (on all other issues).¹¹⁹

Code of conduct for campaigning

The General Elections Act and Regulation on Presidential Elections generally provide for active and open campaigning free from interference for candidates and supporters with comprehensive codes of conduct.¹²⁰

However, the codes of conduct for candidates and parties contain several vague phrasings such as limitation of speech by not talking about "private affairs" and "personal life" of other candidates, that could legally hinder freedom for candidates to state their views and opinions during election

118 Presidential Elections Act, s9(c)

119 General Elections Act, s21(e)

120 Presidential Elections Regulation, s11; General Elections Act, ss28, 29;

campaign.¹²¹

Recommendations

- People's Majlis to bring amendment to the Presidential Elections Act to ensure equitable treatment of all presidential candidates for ballot access.
- The ECs should amend the code of conduct for candidates and parties in the Presidential Elections Regulations (e.g. Limitation of speech by "private affairs" and "personal life" of other candidates is vague).

6. Access to the Media

General provisions

The General Elections Act and Presidential Elections Act ensure that all candidates are provided with access to the broadcast media and equitable and non-discriminatory treatment in broadcast media of the state. All broadcast media are required to allot airtime for campaign ads and programs for candidates and parties backing them from the day election date is announced until 6pm of the day before the Election Day.

If airtime is to be sold, the prices should be publicly announced. Airtime is to be distributed equitably and no one candidate could get more than 10% of the time allocated for another candidate.¹²²

State Broadcaster

Section 13 of the Presidential Elections Act stipulates State Broadcasters must allocate free airtime to all presidential candidates on an equitable manner as decided by the State Broadcasters.

Challenges to access to media

However, neither Acts requires the broadcasters to disclose the criteria they set for allocation of airtime, thereby limiting action for non-compliance.

The law is also not fully clear which authority has mandate for media related election complaints. The

¹²¹ For example, "private affairs", "personal life", "disrespect to Islam" in the code are vague . See Ibid.

¹²² General Elections Act, s30.

issue of clarity of jurisdiction is especially significant given there is a new commission on broadcast media.

Section 31 of the General Elections Act stipulates that: "In campaigning to get support, use of broadcasting stations operating outside the Maldives is prohibited." This provision is very vague and can include interviews with foreign broadcasters, which can be interpreted as a campaign tactic.¹²³

Non-broadcast media

The law does not require candidates' access to non-broadcast media, nor does it require treatment of candidates in an equitable manner by non-broadcast media.

Recommendations

- People's Majlis should unify provisions in the electoral legal framework for media in one document, so that there is greater accessibility. Such a law should:
 - Include clear definitions for key concepts such as "free airtime", "equal access", etc.
 - Include requirements for all broadcasters for public disclosure of the criteria they set for allocation of airtime.
 - Include provisions for regulation of access to media by political parties and third parties campaigning for a candidate. Currently these distinctions are not made.
 - Include provisions for right of reply by opposition parties/other candidates on issues highlighted in covering the incumbents.
 - Include provisions for regulating "free airtime" given to candidates, parties, by private broadcasters. The issue is especially important as broadcasters are owned by politicians or persons directly or indirectly related to politicians
- Remove the provision section 31 of the General Elections Act which says: "In campaigning to get support, use of broadcasting stations operating outside the Maldives is prohibited".
- Include provisions for archiving of footage for a specific period of time and be available to the regulatory body/EC upon request

7. Observers

The legal framework provides for observers, including domestic and international and representatives of the media, political parties, and candidates, which could enhance the transparency and credibility

¹²³ Commonwealth Secretariat (2008) *Report of the Commonwealth Observer Group*, p. 18

of all electoral processes on the Election Day.¹²⁴

Observers are required to sign a pledge with the EC, the contents of which are not provided in the legal framework. However, no law clearly provides for how observer status can be revoked, leaving possibility of arbitrary revocation.

The legal framework does not provide for clear timeframes for Elections Commission to open for accreditation, deadlines for application for accreditation, and timeframe for decision on accreditation of observers.

The Code of Conduct for observers, representatives of candidates and the media are not sufficiently distinguished in the legal framework.¹²⁵

Recommendations

- People's Majlis should bring amendments to the General Elections Act to include a separate code of conduct in line with international best practices (e.g. *Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations and the Code of Conduct for Non-Partisan Citizen Election Observers and Monitors*) for independent citizen observers
- EC should amend the Presidential Elections Regulations to bring the above reforms
- EC should also amend the Presidential Elections Regulations to include clear timeframes for accreditation of observers

8. Balloting Procedures

The vote

The legal framework generally ensures the secrecy of the vote. Ballot must be cast by the voter him/herself. The only exceptions are disabled people who can't cast the ballot. In that case, assisted voting is allowed.¹²⁶

The legal framework, however, does not have provisions for alternative voting, for example, mobile

124 General Elections Act, ss40: 41, 42 and also see Presidential Election Regulation, ss12: 13, 14.

125 Presidential Election Regulation, s15

126 General Elections Act, s45: Regulations on Presidential Election, s20

voting and voting in places such as hospitals. Transparency Maldives also heard complaints the guidelines on assisted voting were ad hoc and not sufficiently comprehensive.

Prevention of fraudulent voting

The law requires that voters be adequately identified prior to receiving a ballot through presentation of official identification.¹²⁷ In addition to official identification, marking fingers with indelible ink is used to minimize fraudulent and multiple voting.

Invalid votes

There are rules determining the validity of ballots. However, section 21 (d) of the Regulation on Presidential Elections seriously violates the paramount principle under international standards that if the intention of the voter is clear, the ballot must be accepted as valid.

Security of ballots and voting materials

The legal framework does not elaborate on security of ballots and voting materials before, during, and after voting. However, all ballots and voting materials once sent to the polling stations are under the security of the official in charge of the polling station. All ballots and voting materials after voting are to be sent to the central counting location in Male under the security of three persons appointed by the EC.¹²⁸

We were told the security at the EC is not at a satisfactory level.

Recommendations

- People's Majlis to include provisions in the General Elections Act to ensure security of ballots and voting materials before, during, and after voting
- People's Majlis to include provisions in the legal framework for clear, transparent, and comprehensive guidelines for assisted voting
- EC should publicize such guidelines well before elections and conduct voter information on them
- EC should amend Presidential Elections Regulation's section 21(d) so that if the intention of the voter is clear in the ballot paper, it should be accepted as valid

¹²⁷ General Elections Act, s50(a)

¹²⁸ General Elections Act, s59(c)

9. Transparency in Counting and Tabulation of Votes

Transparency of the process

The legal framework has several provisions for ensuring that all votes are counted and tabulated transparently and fairly.

There is a comprehensive code of conduct for observers in the Presidential Elections Regulation. Among other provisions, observers could enter polling stations and be present and observe when counting takes place and inquire any matters from the official in charge of polling stations.¹²⁹ Similarly, General Elections Act requires the provision of opportunity for such observation.¹³⁰

However, the legal framework does not require that all tabulation worksheets be available in a format that allows observers to trace the results of each polling station through all levels of aggregation to the final results. Tabulation worksheet formats are determined by the EC.

Announcement of results

Section 55 (a) of the General Elections Act requires announcement of preliminary results at the polling stations and to be displayed at the polling stations. The results are to be sent to the central counting center in Male where a preliminary aggregate result of the constituencies are to be announced.¹³¹ Final results must be announced within 7 days after voting.¹³²

Procedures for certification and recounting

The legal framework does not clearly specify detailed processes for final certification of election results, nor does it specify the requirements and procedures for a recount of ballots. This is especially important given there can be very close results.

¹²⁹ Presidential Elections Regulation, s15; General Elections Act, s55 (c)

¹³⁰ General Elections Act, s55(c)

¹³¹ General Elections Act, s57 (b)

¹³² General Elections Act, s61.

Invalid election

Section 65 of the General Elections Act stipulates the requirements for declaration of an election invalid, including:

- 1 Use of undue influence during the election.
- 2 Give bribes to gain an electoral right, in favor of a person or a group of persons.
- 3 Act in contravention of the General Elections Act or regulations made thereunder, or the specific law pertaining to the election or regulations made thereunder.

Such ruling must be made by the High Court within 30 days after a complaint is lodged.¹³³ Any complaint to the High Court should be lodged within 14 days of final results.¹³⁴

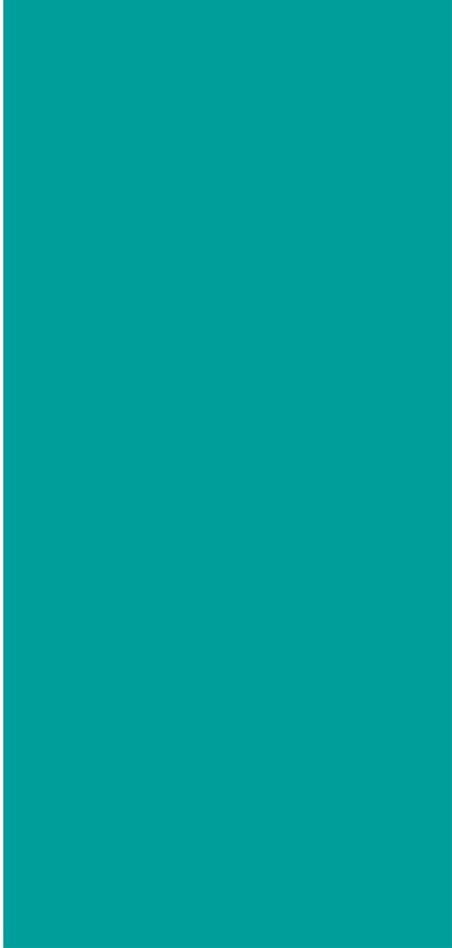
However, section 28 (c) of Regulations on Presidential Election stipulates all complaints on Presidential Election must be lodged within 7 days of voting. It is not therefore clear which of these dates prevails.

Recommendation

- People's Majlis to include provisions in the General Elections Act on situations and procedures on recounting of a ballot box.
- People's Majlis to bring amendments to the General Elections Act to rationalize deadlines for complaints

¹³³ General Elections Act, s65b

¹³⁴ General Elections Act, s64(c) . Presidential Elections Act 2008, s15.



APPENDIX II

A NOTE ON METHODOLOGY



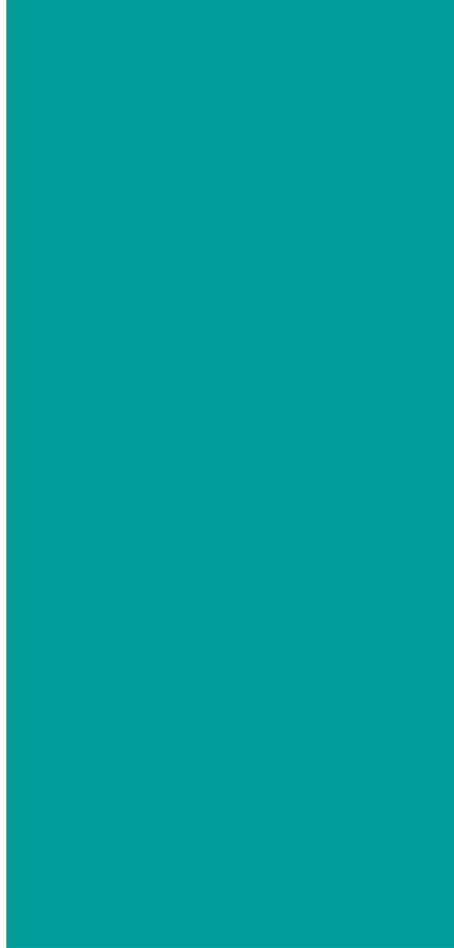
APPENDIX II: A NOTE ON METHODOLOGY

From February 6 till March 14, a team¹³⁵ from Transparency Maldives met with key stakeholders to seek their opinions on the political and electoral environment, Elections Commission, and the legal framework. Melissa Estok, as an NDI electoral expert, assisted through providing technical advice in conducting these meetings. The primary objective of these meetings was to come to a better and more objective understanding of the main challenges for the upcoming Presidential Elections.

Transparency Maldives also decided to conduct a small-scale study on the issue of vote buying as part of the assessment. Fuvahmulah, K. Kashidhoo and R. Hulhudhuffaar were chosen for the purpose based on 1) population, 2) urbanization, 3) recent experience of elections, 4) availability of partners to conduct such a study in a very compressed timeframe. The methodology is based on focus groups of approximately 14 participants of mixed gender, different ages, and of different political affiliations.

There were difficulties and limitations in recruiting participants in all these categories as planned. The questionnaire used is close-ended, and the researchers took account of the effects of social desirability in responses. The main objective of the study was to have an objective understanding of whether voting buying exists and if so the main reasons behind it. Another objective of the study was to use its insights for Transparency Maldives's voter education project.

135 The team members included Executive Director Ilham Mohamed, Communications and Advocacy Manager Aiman Rasheed, Program Manager Mohamed Thoriq Hamid, Senior Project Coordinator for Elections Program Azim Zahir, Coordinators Ibrahim Thayyib and Naushan Abdul Muhaimin



APPENDIX III

LIST OF STAKEHOLDERS TRANSPARENCY
MALDIVES MET FOR THE ASSESSMENT



APPENDIX III: LIST OF STAKEHOLDERS TRANSPARENCY MALDIVES MET FOR THE ASSESSMENT¹³⁶

- 1 Hon Abdullah Shahid, Speaker of the People's Majlis
- 2 Hon Ahmed Faiz, Chief Justice
- 3 HE Mohamed Nasheed, Former President, Maldivian Democratic Party (MDP)
- 4 Hon Ahmed Thasmeen Ali, Leader of Dhivehi Rayjithunge Party (DRP)
- 5 Dr Hassan Saeed, Advisor to the President (as a representative of the President)
- 6 Mr Faris Maumoon, Member of the Council of Progressive Party of the Maldives (PPM)
- 7 Mr Fuad Thaufeeq, President, and 3 other members, of the EC
- 8 Technical Staff of the EC, heading voter-education, recruitment and training, elections coordination, and voter registration
- 9 Two senior ex-staff of the EC
- 10 Commissioner of Police Abdulla Riyaz
- 11 Uz. Ahmed Muiz, the Prosecutor General
- 12 Members of the Anti-Corruption Commission
- 13 Mr Niyaz Ibrahim, the Auditor General
- 14 Members of the Maldives Broadcasting Commission
- 15 Maldives Broadcasting Corporation
- 16 Dr Aly Shameem, Member of the Human Rights Commission of the Maldives
- 17 Mr Ismail Naseer, Haveeru
- 18 Mr Amed Zahir, Editor, Sun.mv
- 19 Mr JJ Robinson, Editor, Minivan News
- 20 HE DM Mulay, High Commissioner of India to the Maldives
- 21 Mr Craig Collins, Peace and Development Advisor, UNDP
- 22 Uz. Mohamed Anil, Chairperson, Democracy House
- 23 Hon. Ahmed Mujuthaba
- 24 Fuvahmulah Atoll Council
- 25 Kaashidhoo Island Council
- 26 Hulhuthuffaar Island Council

¹³⁶ Transparency Maldives sent meeting requests to Hon Gasim Ibrahim, Jumhooree Party; Sheikh Imran Abdullah, President of Adalat Party; Dr Hassan Saeed, Leader of DQP. In addition to this list, Transparency Maldives had discussions with Women's Development Committee of Kaashidhoo, several members of the public of the islands of Kaashidhoo, Fuvahmulah and Hulhuthuffaar, and several CBOs based in these islands. Meetings with a number of diplomats and other electoral experts, including Commonwealth's expert, Mr John Turner and Dr Alok Shukla, Deputy Elections Commissioner of India, also helped towards the assessment.