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I. EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. INTRODUCTION

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