

## **Pre Election Assessment: Summary Paper**

### Introduction

Transparency Maldives has fielded nationwide domestic election observation efforts for all the presidential and parliamentary elections since the first multi-party democratic elections in 2008. The observation effort serves to empower citizens to participate in democratic processes, and to bolster public confidence in elections. Prior to fielding the observation effort, TM seeks to understand the electoral environment to design advocacy efforts that reflect the concerns of key stakeholders, including the public, Elections Commission, and political parties. To this end, TM conducts a pre-election assessment prior to each election cycle.

This paper is a summary of the Pre-Election Assessment 2018 published in May this year.

The main objectives of the assessment are:

- Review the international best practices in relation to elections and to assess the level of conformity of Maldivian practices to international standards.
- Assess the existing and future challenges to holding a free, fair and inclusive election in 2018.
- Provide recommendations to mitigate the impact of threats to holding a free, fair and credible election.

Information for the assessment was obtained by conducting a desk review, and through interviews and focus group discussions. Interviews were conducted with state institutions and political parties, while focus group discussions were intended to gather public opinion about the electoral environment. Focus group discussions were carried in 5 different areas of the country. They included Kaafu Maafushi, Laamu Fonadhoo, Laamu Gan, Addu City and Haa Dhaalu Kulhudhuffishi. The islands were selected to reflect population demographics of Maldives so as to represent the diverse political opinions across different age groups.

One of the key challenges in conducting the assessment was the lack of cooperation by some of the key state institutions. These included the Attorney General's Office, Prosecutor General's Office, Maldives Police Service, Anti-Corruption Commission, Human Rights Commission of the Maldives as well as the Public Service Media.

While Elections Commission did not entertain an interview with Transparency Maldives, brief written answers to pre-prepared questions were provided. The Commission were unavailable to provide further clarifications to their responses.

Of the political parties, the Progressive Party of Maldives and Maldives Development Alliance also refused to cooperate with the assessment.

## SUMMARY

The previous presidential elections in 2008 and 2013 were deemed credible by both domestic and international observers, despite several challenges. However, as the 2018 elections approach, dwindling public confidence in state institutions has resulted in uncertainty in two key dimensions of the electoral environment. This uncertainty threatens the possibility of a credible election.

Firstly, there is doubt about the government's intention to hold an election. Respondents to the assessment have reiterated their concern as to whether an election will take place within the legally stipulated time frame. Others are doubtful that an election will take place at all. Some respondents also expressed fear of the possibility of the government amending the Constitution to extend the presidential term. Additionally, respondents also expressed concern that even if an election does take place, it is very unlikely for it to be free, fair and inclusive. They point out to the fact that most opposition leaders are in prison or exile and thus, have no possibility to contest in the election. Also of note is that many opposition politicians are already charged with a variety of offences, increasing the possibility of nullifying their candidacy prior to the election. The government systematically impeding opposition political activities and government control of key state institutions is viewed as evidence of the the low likelihood of a free, fair and inclusive election.

Secondly, problems in the electoral legal framework and state institutions acting outside the bounds of the law were discussed as challenges to a credible election. A weak complaints mechanism, misuse of state resources, and lack of provisions to ensure political financing transparency, as well as state institutions acting in contravention with the legal mechanisms are examples of such issues.

Some of the key findings of the assessment include:

### 1. Absence of a competitive political environment

Respondents to the interview are of the opinion that the opposition are deprived of space to conduct political activities in contrast to the ruling party, who are able conduct political activities unhindered. While the opposition require prior permission to hold peaceful gatherings, the ruling party does not. And opposition efforts to acquire permission to conduct political activities have been categorically denied. Participants of the focus group discussions also noted that equipment used for opposition gatherings such as megaphones have been seized by the police. Repeated harassment of opposition individuals by authorities was also raised as a concern.

### 2. Nullifying the Candidacy of the Opposition

None of the opposition leaders are able to meet the criteria to contest in the presidential election as of the publishing of the assessment. The opposition leaders are prevented from contesting either through constitutional amendments that resulted in the disqualification of candidates older than 65 years, and as opposition leaders are currently serving sentences exceeding 12 months. Article 109 of the Constitution prevents individuals serving sentences 12 months or longer from contesting presidential elections.

While government supporters claim that loss of candidacy is through legitimate legal processes, the opposition has constantly questioned the legality and due process of the court proceedings. Opposition leaders who have lost their candidacy through questionable judicial processes include:

- Mohamed Nasheed - Maldivian Democratic Party
- Gasim Ibrahim - Jumhooree Party
- Imran Abdullah - Adhalath Party
- Maumoon Abdul Gayoom, former leader of the Progressive Party of Maldives

The UN Working Group on Arbitrary Detention found the detention of Mohamed Nasheed and Imran Abdulla to be unlawful and called for their immediate release. The working group also called for the release of two other opposition leaders, Ahmed Mahloof and Colonel Nazim, as their cases were found to be in contravention of several articles of UDHR and ICCPR.

Although opposition have expressed interest to field a single candidate, respondents to the survey are concerned of the possibility of nullification of the candidacy of any competitive candidate fielded against President Yameen.

### 3. Misuse of State Resources

Reported misuse of state resources by respondents include the use of state vehicles and buildings, and preference for employing government supporters to state companies. Respondents to the assessment noted that the government coerces state employees to engage in pro-government campaign activities by threatening job termination.

The respondents also noted that the government amended laws such as the Freedom of Assembly Act and the Anti Defamation Act, in order to impede the opposition from campaigning. They also expressed concern that the government could use confidential personal information of the citizens stored at state authorities such as the Department of National Registration to influence the outcome of the election. For example, respondents expressed fear that the government could use the information to include names of deceased people in the voters list and make fake identity cards to cast votes in place of the deceased.

### 4. Vote Buying and Campaign Financing

Vote buying has been a key issue raised by international and local observers in the previous elections. A research conducted by International Foundation for Electoral Systems (IFES) in 2014 found that one third of the voting population were offered money or other incentives to influence their votes. Special markings on ballots are used to ensure that those who took money voted accordingly.

Some respondents also insinuated that the government's social housing schemes are a front to influence voters. For example, the ruling party campaign office called people who submit forms for social housing and inquired as to how they intended to vote during the election. This conversation is allegedly phrased to imply that supporters of the government are more likely to be awarded social housing.

Most respondents believe that the key reasons for succumbing to vote buying was a lack of confidence in the political system as well as the deteriorating socio-economic situation of the people.

#### 5. Elections Commission

The Elections Commission has announced that the election is to be held during early September and stressed that barring a court order, the elections will not be postponed. However many of the respondents indicated that they do not see active preparation for the election by the Elections Commission. They also mentioned that the Elections Commission is yet to consult the local councils -which maintain records of resident populations in islands- regarding the voters list.

In addition, many of the respondents have raised serious concerns about the impartiality of the Elections Commission. Specific concerns were raised about the appointment of the current chair of the Commission, Ahmed Shareef. They point out to the fact that Shareef was involved within the ruling party and was actively campaigning for President Yameen up until the moment of his appointment. He previously held the position of the Managing Director of the main utilities company FENAKA, a political position. While supporters of the government point out that previous Chair of the Election Commission was also an active member of the opposition, it must be noted that the then commission also represented other political ideologies.

#### 6. Situation of the Media

Maldives was ranked 117 out of 180 in the 2017 assessment of media freedom by Reporters Without Borders, which is a staggering regression from the 51st rank in 2008. The Anti Defamation Act has been an impediment to the freedom of media as the Act was used to fine opposition media several times, including an MVR 1 million (USD 65,000). The journalists and media personnel who provided information to the assessment highlighted that the biggest threat to the freedom of media in Maldives was the lack of independence of the Maldives Broadcasting Commission. They noted the discriminatory stance of the Commission in penalizing media critical of the government. In addition the journalists also raised concerns about the environment of harassment the media face. As an example, they cited that the police treat media as protestors during their coverage of opposition protests.

Respondents also pointed out to the lack of independence of the Public Service Media, which is funded via public money. They highlight that PSM is used as a propaganda machine for the government. Opposition parties interviewed during the assessment expressed concern due to the lack of airtime opportunities from PSM for the opposition.

#### 7. Women's Participation in the Elections

Article 17 of the Constitution prohibits discrimination and also allows for special measures to ensure equality, however, women's political participation remains dismal. The percentage of women in the Parliament is a mere six per cent. There has not been a female presidential candidate. Reasons for the low female participation in politics include the lack of political support to increase women's participation. The absence of a structural support mechanism to allow for women to actively participate in politics also exacerbates the issue. In addition,

continuous religious narratives that downplay the importance of women in politics also seem to be a key factor.

Some of the political parties interviewed for the assessment have stated that progressive measures are implemented to increase women's participation in politics. And although some of the women have corroborated these claims, one female candidate claimed that in the 2017 local council elections, male members of her party have actively campaigned against her. As a result, she has now resigned from her party.

## 8. Challenges Faced By People with Special Needs

Respondents of the assessment reiterated that people with hearing and visual impairments are deprived from voter education programs because voter educators do not use sign language or braille in their programs. Secondly they also highlight the absence of a national level disability register. The lack of such a register forces each voter with special needs to be individually tested at the polling station, presenting a challenge to voting on election day.

The most conspicuous concern was in relation to people influencing the voters who are incapable of marking the ballot paper on their own. The legal framework allows for an individual to accompany the voter who is unable to mark own ballot due to a disability.

## 9. Voter Education

Timely civic and voter education is key to an informed citizenry. Most respondents agreed that there was adequate information on the process of voting. This included information about voter registration and the voting day processes. However, respondents noted the unavailability of information on the details of the campaign financing by candidates to be a serious concern. They opined that lack of information on relevant laws on rights and responsibilities of voters as contributing to exacerbation of the issue of vote buying.

Another concern raised was the absence of voter education programs by the Elections Commission, political parties and civil society despite the approaching election day.

## 10. Electoral Violence

Electoral violence refers to extra-judicial conflicts or violence, threats or encouragement of violence emerging in relation to an election. The likelihood of such violence taking place during the upcoming election is high. Previous incidences of violence include arson attacks on TV stations, vandalising political party offices as well as candidates being physically preventing from accessing islands.

However most respondents agreed that election day violence is not likely. Should there be a credible, free and fair election, the likelihood of electoral violence would reduce even further.

## 11. Electoral Legal Framework

The primary legal and regulatory framework guiding the conduct of Presidential Elections comprises the following:

1. The Constitution of the Republic of Maldives (2008)
2. The Presidential Elections Act (2008)
3. The General Elections Act (2008)
4. The Presidential Elections Regulation (2013)
5. The Political Parties Act (2013)

In addition to these documents, the Supreme Court of the Maldives, in its annulment of the first round of the Presidential Elections in 2013, issued a 16-point guideline in relation to the elections..

Also important to note is that there are constitutional provisions that contribute for a free and fair election. These include the provisions on freedom of movement, expression, assembly, and association and the integrity of the judiciary. Maldives is party to the International Covenant on Civil and Political Rights (ICCPR), Convention Eliminating Discrimination Against Women (CEDAW), International Covenant on Eliminating Racial Discrimination (ICERD) and the SAARC Democracy Charter, which contain provisions that promote aspects of credible elections.

As we approach the 2018 elections, there are concerns regarding the legal and constitutional provisions. Such concerns relate to the lack of legal provisions to ensure independence of the Elections Commission, lack of political financing transparency, and misuse of state resources. The law is also not clear on how to deal with ethical issues relating to members of the Elections Commission, further contributing to the loss of confidence in institutions.

The role and legal responsibilities of the Election Advisory Committee for Elections, a key transparency and advocacy mechanism during elections is also ambiguous. There is no clear guideline on who the members should be and what the responsibility of the Committee should be before, during and after the election. This creates inconsistencies in the functioning of the Committee during different elections.

The law is also unclear about the mandates of the Elections Commission and other state institutions, especially in regards to addressing campaign finance, corruption and abuse of state resources . The legal shortcomings also preclude a proper mechanism to ensure a check on vote buying and improper campaign financing. A combination of issues noted above, and weak legal mechanisms allows the continued misuse of state resources and coercion of employees.

Ensuring the fundamental rights enshrined in the Constitution and the international covenants that Maldives is party to, is a prerequisite for the fairness, freedom and integrity of elections. However, the curtailment of civil and political liberties is unprecedented. For example, freedom of assembly, expression and media have been curtailed to prevent opposition activities. And while an independent judiciary is a prerequisite for a free and fair election, the events following the 1 February ruling by the Supreme Court saw the jailing of the Chief Justice and a Justice of the Supreme Court, via a contentious state of emergency. Changes to the legal framework that bypassed Constitutional safeguards for tenure of judges serves to further challenge judicial integrity and independence.

## 12. Recommendations

- All state institutions must uphold the rule of law with an insistence to hold a free, fair and inclusive election.
- Political parties and the civil society must continue the pressure on the state and government to respect and uphold democratic principles.
- The 2013 Supreme Court guidelines on holding elections must be withdrawn by the Supreme Court or repealed by the Parliament, and the election must be guided by the constitution and the legal mechanisms.
- Elections Commission must facilitate individuals and organisations to observe the elections without hindrance.
- Elections Commission must allow the full participation of the civil society in the Elections Advisory Committee for Elections.
- Civil Society, political parties and the Human Rights Commission of the Maldives must proactively work to ensure equal participation of women in politics.
- Elections Commission, civil society organisations and political parties must commence voter education programs as soon as possible.
- Parliament, Elections Commission and the Attorney General's Office must amend the electoral legal framework to address integrity and confidence issues regarding the commission and its members.
- Parliament, Human Rights Commission of the Maldives, Elections Commission and the Attorney General's Office must ensure a conducive environment for the full realisation of the civil and political rights.
- Individuals who have been precluded from competing in the elections due to dubious judicial processes must be afforded a fair and transparent trial to allow for the necessary legal redress.