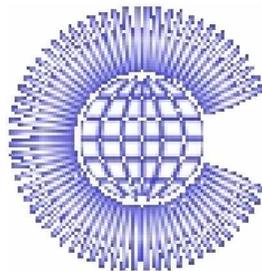


Report following a review of the  
Maldives' electoral laws, regulations  
and other related legislation,  
procedures and administrative  
mechanisms

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Commonwealth Secretariat

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# REPORT OF JOHN TURNER, COMMONWEALTH ELECTORAL ADVISER

## REPUBLIC OF MALDIVES

NOVEMBER/DECEMBER 2004

### 1. Executive Summary

1.1 This report has been prepared as a result of an assessment visit and review of the legal framework for elections in the Republic of Maldives. It has been prepared against the backdrop of constitutional and other reforms proposed by the President, His Excellency Mr. Maumoon Abdul Gayoom, during 2004. There is undoubtedly an appetite within the country for reforms embracing most elements of society.

1.2 The desire for reform necessarily goes wider than issues relating to the electoral process or the work of the Commissioner of Elections. For that reason, it proved impossible to restrict the assessment and review to the original terms of reference. In particular, this report also deals with issues relating to political parties, campaigning, corruption, voter education, proportionate representation and local governance.

1.3 The major recommendations within the report can be summarised as follows:

- The establishment of an independent electoral commission
- The creation of a new electoral law to deal with the technical issues identified by the review
- Within the new law to ensure the adoption of international standards of good democratic practice and the provisions of the Harare Commonwealth Declaration – in particular, to ensure the protection and promotion of basic democratic rights such as freedom of association and expression and the right to vote and stand for office irrespective of race, colour, creed, political belief or gender
- A review of a number of issues relating to the franchise, eligibility of candidates and the role of the civil service
- The creation of a formal complaints and petitioning system
- The introduction of stricter controls on use of money within the electoral system
- The creation of election offences particularly relating to corrupt practices
- The organisation of a public information campaign about the changes and reforms
- Proposals for improving campaigning

- The creation of a new law to deal with the introduction of registered political parties
- A review of the allocation of parliamentary seats
- A review of the existing arrangements for local governance at Atoll and Island level.

## 2. Background

2.1 In July 2004, the Commonwealth Secretary General advised the President of the Republic of Maldives that assistance could be provided in the constitutional reform process initiated by the President under the auspices of the Commonwealth Fund for Technical Co-operation. As a result, Mr. Fathulla Jameel, the Minister of Foreign Affairs, wrote to the Secretary General on 5 September requesting that technical assistance be provided to the Government of Maldives in respect of the "institutional strengthening of the Commissioner of Elections".

2.2 In response to this request, I was engaged to provide that technical assistance. The terms of the reference for the assignment are set out at Appendix 1A. I accordingly made an initial visit to the Maldives from 21<sup>st</sup> November to 2<sup>nd</sup> December 2004. Following the visit, the terms of reference were expanded and the revised terms are set out at Appendix 1B.

2.3 During that visit, I met with a wide cross section of Ministers, the Speaker, Deputy Speaker and members of the Majlis, the President, Vice-President and members of the Special Majlis, government officials, the Commissioner for Elections, the High Commissioners of India and Pakistan, prospective and former candidates for election to the Majlis, representatives of commerce, tourism and other business interests, members of professional bodies, representatives of the media and a number of detainees awaiting the outcome of investigations arising from incidents at a public meeting in August 2004. I also made a field trip to two atolls and a number of islands within those atolls. A full schedule of engagements is attached at Appendix 2.

2.4 At the start of the assignment, I was supported by Nishana Jayawickrama of the Commonwealth Secretariat who was in Male' to make preliminary arrangements for the visit of a Commonwealth Observer team to the General Election scheduled for 31 December 2004. I was also provided with considerable logistical help and support by staff of the Attorney General's Office and, in particular, by Hassan Latheef and Mohamed Nasheed.

## 3. Constitutional and Electoral Arrangements in the Maldives

3.1 The Republic of Maldives has a presidential system of government with ministers being selected by the President. The President is elected

for a five year term of office by way of a referendum on a single candidate selected by the Majlis. The nominations to be considered by the Majlis are not restricted to any number provided that the candidates all meet the nomination requirements.

3.2 The People's Majlis comprises 50 members. Two members are returned by each of the 20 atolls, two from Male', the capital, and the remaining eight are appointed by the President. The members of the Majlis (which is unicameral) are elected for a five year term of office. Ministers can stand as candidates in the election as can civil servants. If successful, neither category is required to resign from their existing positions.

3.3 The People's Special Majlis is specifically elected to consider proposals to amend the Constitution. Members are elected on the same basis and in the same numbers as to the Majlis. The composition of the Special Majlis is the existing members of the Majlis, those specifically appointed or elected to the Special Majlis and members of the Cabinet.

3.4 All elections are organised by the Commissioner of Elections. The Commissioner is appointed by the President under section 130 of the Constitution and is responsible for organising and conducting the various elections outlined above together with any public referendums. The Commissioner is answerable to the President and may be removed from office by the President. Grievances and complaints about elections may only be made by way of an election petition to a court appointed by the President.

3.5 The register of electors is compiled specially for each election. It is based on the registers maintained by the Island Chiefs and by the municipality of Male'. It is in the process of being made available electronically by the Department of National Registration which combines the individual registers into a national register.

#### 4. Scope of the Assignment

4.1 Although the Terms of Reference for the assignment were widely drawn (see Appendix 1A), it soon became apparent that the exercise could not be properly carried out in isolation from or outside the context of a wider constitutional reform exercise that is underway in the Maldives. The background to this exercise is set out in the following paragraphs.

4.2 During the Presidential address at the State Opening of the Majlis on 26 February 2004, His Excellency Mr. Maumoon Abdul Gayoom, President of the Republic of Maldives, announced that he had decided to convene the People's Special Majlis in order to further consolidate democratic governance of the country and the fundamental rights of the people.

4.3 Later, he briefed the Cabinet on the formulation of the constitutional amendments that he was planning to submit to the People's Special Majlis. The President said that the proposed amendments will widen avenues for greater participation of the people, enhance checks and balances, increase decentralisation, reinforce democratic institutions, strengthen the judiciary and sustain peace, social harmony and national productivity

4.4 The People's Special Majlis to consider the required changes to the Constitution was duly elected on 28 May 2004 and convened on 19 July 2004. Among the changes proposed by the Government are:

- greater separation of powers
- establishment of the Supreme Court
- limiting the powers of the President
- greater and more proportional representation in Parliament including abolition of the practice of appointing members
- establishment of political parties
- strengthening the system of Government
- making the Commissioner of Elections more independent.

4.5 At the time of this report, the Special Majlis is considering various procedural matters relating to how its business will be conducted. In the meantime, work has already progressed on various related measures such as the establishment of a human rights commission and of an anti-corruption board, the modernisation of the criminal justice system and the penal system and other specific measures aimed at strengthening fundamental rights.

4.6 The issue relating to the greater separation of powers is particularly important in the context of this report and the final bullet point in paragraph 4.4 above. It also has implications for matters relating to the qualification of candidates for election to the Majlis and the Special Majlis. These points are dealt with in more detail in the appropriate sections of the report below.

4.7 Two particular issues which emerged in early meetings with the Attorney General related to the political parties question and ways in which Parliament could be made more representative of the electorate which it serves. Both of these matters link firmly to the role and authority of the Commissioner of Elections. The Government recognises that a strong and independent Commissioner is crucial in a democratic system. It is further envisaged that the Commissioner would play a large role in a multi-party system and that effective laws and transparent mechanisms are needed to ensure that a strong structural base is provided. The powers of the Commissioner need to be strengthened and new laws and enforcement mechanisms need to be put in place to address public complaints and issues of alleged corruption.

4.8 As part of this overall process, the Attorney General has commissioned, through the UNDP, the National Democratic Institute (NDI) to advise the Government on the legal, procedural and administrative aspects in establishing a multi-party system in the Maldives. The NDI has recently published its report which contains a series of recommendations to achieve the above aims. Details of the report are contained in the list of reference materials set out at Appendix 3.

4.9 This report does not seek to repeat that work. However, there is a critical link between the establishment of such a system and the role of the Commissioner of Elections. In that respect, therefore, this report deals with the new systems and legislation which would need to be put into place to regulate the activities of political parties and others involved in the electoral process within this new environment.

4.10 There is one further issue that also needs to be considered in the overall context of electoral reform, namely, the process for election petitions. The law relating to election petitions is contained within Article 135 of the Constitution. It simply provides for grievances and complaints to be dealt with by way of an election petition. However, there is no secondary law which details the process to be followed. Given that it is the only existing means of registering a grievance or complaint about the election process, it seems essential that a formal process is developed and embedded within any new law produced as part of the overall constitutional reform package or within the electoral law in particular. This matter is dealt with in more detail in the section below relating to the hearing of complaints.

## 5. Methodology

5.1 The methodology employed in undertaking the assignment was to:

- work closely with the Attorney General and his staff together with the Commissioner of Elections
- hold a series of detailed interviews with a wide number of interested parties (see the schedule of engagements at Appendix 2)
- make a field visit to Haa Alifu and Haa Dhaalu atolls and some of the islands within them, notably, Dhidhdhoo, Maarandhoo, Kulhudhuffushi and Hanmaadhoo
- review a number of key documents – a list of reference materials is set out at Appendix 3
- take account of the NDI report on political parties.

## 6. Field visit to Haa Alifu and Haa Dhaalu atolls

6.1 On 25 to 27 November, I visited islands in the Haa Alifu and Haa Dhaalu atolls. I was accompanied by Hassan Latheef from the Attorney

General's office. Logistical arrangements within the atolls were made by staff from the respective Atoll Offices.

6.2 During the course of the visit, arrangements were made for me to meet with and interview a wide range of officials, representatives of the community and members of the public. An indicative list of those met is included in the schedule of engagements at Appendix 2.

6.3 In terms of the former, I largely discussed with them their official involvement or otherwise in previous elections and the election due to be held on 31 December. In terms of the latter two groups, I sought their opinions and experiences in relation to all aspects of the election and campaigning process together with their views on such matters as formation of political parties, the relationship between MPs and their constituents and concerns about local governance arrangements.

6.4 Unsurprisingly, there was no general agreement across the group in terms of the above matters. Largely, the interviewees either took a pro-Government or neutral stance in terms of selecting candidates for whom to vote and there was little complaint about the election process. Generally, all those I spoke to felt that elections are fair, the secrecy of the ballot was respected and that they could trust those responsible for conducting the election.

6.5 A number of interesting points did emerge and these are outlined below.

- *Selection of candidates* – Most people said that they would select candidates on the basis of who they believed could or would do the most for the atoll. On that basis, previous performance, local or family connections or present standing in regional or national situations would always be an advantage.
- *Local presence during campaign* – Almost without exception, people felt it essential that candidates visited the atoll during the campaign. The vast majority said that they would not vote for a candidate who had not visited.
- *Public meetings* – The majority were in favour of changing the law to permit candidates to address public meetings. They felt that this would save time for the candidates, allow the voters to hear the same message, reduce the possibility of individual bribes and oblige candidates to have a meaningful manifesto in terms of what they would do for the constituency. Some would want to see certain safeguards including a prohibition on disparaging other candidates and the requirement to only deal with issues relating to the election in question.

- *MPs - visits/local residence* – The vast majority were extremely critical of the fact that MPs tend not to visit their constituencies after they have been elected. Most would prefer some system which would force MPs to visit on a regular basis (minimum of once a year) and to provide the opportunity for constituents to raise matters of concern, problems, complaints etc. with the MP. In addition, most would want MPs to act as their advocate in terms of the interface with the Government in Male’.
- *Influence of family, friends, clubs etc.* – Most said that they discussed the candidates within the family or in wider circles. However, it was discussion only and, for the vast majority, they would make their own decisions. Most of those who held some position of authority or responsibility in the community said that they were often approached for advice. In a limited number of family cases, it was admitted that the head of the household (generally the economically active male) would decide which candidates to support and would “instruct” other family members to vote for those candidates. Although this instruction would be followed by the wife, it was obvious that some younger members might passively accede to the instruction but then do something different in the privacy of the polling booth.
- *Offers of works, donation, bribes* – In a small number of cases, there was a ready acceptance that candidates at past elections had offered to pay for or procure through their positions, works within local communities or to make donations to clubs, associations etc. These offers were in return for a tacit understanding that certain numbers of votes would be ensured for that candidate in return for the offers. There was a certain amount of resentment over candidates who failed to keep their word about such “agreements”. There was also the suggestion made that some candidates make arrangements for individual benefits such as air tickets, medical treatment etc. Although most felt that such activities should not happen and that the law should be changed to completely outlaw such practices, some people made the point that this was a way of ensuring direct community benefit at least once in every five years.
- *Political parties* – Everybody had heard of the proposition that the registration of political parties might be permitted as part of the current reform proposals. There was no consensus of view on the desirability of this. Some thought that it would be a good thing as it would remove the money issue from the campaign and instead make it more issue based. Others felt that it would make MPs more accountable and Parliament more powerful. On the other hand, some were strongly opposed to the idea largely on the basis that they were happy with the status quo, that it could remove the peaceful basis of politics from the country and that the example of what happens in

other countries in the region where there are active parties is not a good model to follow.

- *Local governance* – In several of the discussions, the topic of local governance was raised. It was generally felt that it would be better if a local system of electing Atoll and/or Island Chiefs was introduced in the place of the current appointments system. It was recognised that the candidates would need to possess certain necessary qualifications but that it would improve the situation in the local communities if a mayoral system was in place so that those responsible for local administration were accountable and answerable to their communities on a regular basis, say, every five years.

## 7. General Principles relating to Electoral arrangements

7.1 In order to provide efficient and effective electoral administration, it is necessary to follow certain fundamental principles. In essence, these are:

- the adoption of accepted international standards for good democratic practice including the provisions of the Harare Declaration – in particular, to ensure the protection and promotion of basic democratic rights such as freedom of association and expression and the right to vote and stand for office irrespective of race, colour, creed, political belief or gender
- an accurate and regularly updated register of electors
- assured independence for the election management body
- proper resourcing of the election management body in terms of personnel, finance and equipment
- appropriate use of information technology
- effective training for full time and election staff
- methodology for testing and refining practice against internationally accepted standards
- legislation which is understood, transparent and which provides appropriate mechanisms for the redress of grievances.

7.2 If these principles are followed, it is likely to inspire public confidence in the overall election management process and the results which arise. It is against these principles that the following commentaries on each of the terms of reference are made and which, in turn, lead to the recommendations made in this report.

## 8. The administration of elections

### *Commentary*

8.1 The law relating to elections is contained within the Constitution and two separate Laws relating to Presidential and General Elections (nos.

1/98 and 5/81 AH). Power to make Regulations for the conduct of such elections is vested in the Commissioner of Elections. Regulations are published for both types of election. As outlined above, the Commissioner is appointed by the President.

8.2 The law generally follows accepted international practice for the conduct of a secret ballot and fair elections. However, it is deficient in two senses. Firstly, the law in some areas is not complete and/or is unclear in terms of definition or eventuality. Secondly, large elements of the “rules” covering the conduct of the election are not contained within the law but are provided for by administrative practice which may or may not be written down in any publicly available document. This means that there is little clarity or preciseness in the totality of the law. Some examples of these deficiencies are outlined below:

*The franchise* – The right to vote in an election is contained within Article 134 of the Constitution. This extends the franchise to any person who is a Muslim, a citizen of the Maldives and who is 21 or over. So far as the franchise is concerned, it is crucial that the law in the Maldives conforms to generally accepted international principles such as the principle that all adults of sound mind have the right to vote. In considering the franchise, therefore, it is vitally important to ensure compliance with the normal international standards (including those of the Commonwealth enshrined in the Harare Declaration) of basic human rights relating to such matters as gender, race, colour, creed or political belief.

The only disqualifications apply to those who are not of sound mind, are serving a sentence passed by a court or are under lawful detention. None of these three categories are more clearly defined and I could not find any legal precedent that would assist in clarification. In terms of the first, it would be appropriate to introduce the criteria by which that judgement is made (e.g. by way of a certificate from a suitably qualified doctor or practitioner). In terms of the last two, there needs to be a similar clarity of definition as to what is meant by “serving a sentence” and by “lawful detention” given the current changes being made to the criminal justice system and the penal code.

A further issue relates to those serving in the security forces. They are not proscribed by law from being registered or from voting in elections. However, as a matter of historical practice, they are not permitted to vote. I understand that the reasoning behind this practice is that it is considered inappropriate for those responsible for maintaining law and order, particularly on election day, to be involved in any way in the electoral process. It is common practice in mature democracies to permit members of the armed forces and the police to vote and, indeed, it could be argued that it is a breach of

their fundamental human rights to not allow them to do so. In discussions with the Minister of Defence and National Security, a suggestion has emerged that an anonymous survey be carried out among members of the armed forces, police etc. to ascertain their personal view of this matter. Given that the number involved is approximately 5,000 or some 3% of the total electorate, it would seem appropriate to at least take this step.

A wider issue relates to the minimum age for voting. Given the proportion of young people in the country and the common international trend to move to 18 as the appropriate age to permit voting rights, this review could be used as a tool for at least debating whether the minimum voting age should be reduced from 21 to 18. Such a change would need to have regard to other issues relating to the age of maturity within the country.

*Prisoners* – Some countries permit detained prisoners to vote in elections (e.g. South Africa). For those who do not, there are serious arguments put forward that the basic human rights of these prisoners are being denied by this practice (e.g. the British Government is currently being challenged in the courts on this issue with particular regard to the Human Rights Act and the European Convention on Human Rights).

It is a matter of debate as to whether such rights should exist and, essentially, the final decision will rest with the Government. However, it is important that the topic is debated and a conscious decision taken as to whether such prisoners should be permitted to vote.

*Advisory Committee* – Section 4 of the law on General Elections provides that the President shall appoint a committee of five people to advise the Commissioner of Elections on matters pertaining to the election. I understand from the Commissioner that this is a helpful practice for him. However, the proposal that an independent electoral commission should be established removes the need for this body as the commission itself would be responsible for the administration, conduct and management of elections. This provision, therefore, should be removed from the law.

*Objections to nominations* – There are no provisions in the law which permit another candidate or an interested third party to inspect and possibly object to the nomination of a candidate. The ability to inspect and object ensures that all candidates comply with the law relating to nominations and their own qualifications or risk the consequences if they do not. Additionally, the penalties prescribed for candidates who make false declarations or provide false particulars on their nomination papers should be strengthened by the possibility of disqualification from contesting the election in question and/or

from holding public office for a specified term. I would recommend that suitable provisions are included within the law to:

- a) permit the inspection of nomination papers;
- b) allow objections to be lodged to nominations;
- c) provide for due process to deal with objections;
- d) prescribe penalties for any candidate submitting a nomination containing false information or making a false declaration including the possibility of disqualification from contesting the election in question and/or from holding public office for a specified term.

*Grievances/complaints* – As mentioned above in relation to election petitions, there is no express provision within the law for dealing with grievances or complaints that occur during the campaign or on Election Day itself. This has led to the introduction of an ad hoc arrangement for the General Election. This matter is dealt with in more detail in the section below relating to the hearing of complaints.

*Candidates* – The right to be a candidate in an election to the Majlis is contained within Article 66 of the Constitution. A person is qualified if he/she is a Muslim, a citizen of the Maldives, is capable of reading and writing Arabic and Dhivehi script and numerals and who is 25 or over. The disqualifications apply to those who are not of sound mind, have not during the past five years been convicted of an offence for which a hadd is prescribed in Islam or of a criminal breach of trust and is not a citizen of a foreign country.

At the moment women are prevented from standing for the highest office in the Maldives, that of President. The law needs to be changed to reflect the position that men and women are equally free to stand for all elected offices. Given this discrimination against women in the past and the need to ensure the fullest possible participation of women in the future, the law will need to place a specific responsibility on the election management body to take positive steps to encourage the involvement of women.

There is no prohibition on any person standing for election to the Majlis provided that they meet the general requirements outlined above and are not disqualified. In effect, this means that any member of the Executive, senior civil servants who support the Executive and who are responsible for the implementation of Government policy and members of the judiciary can stand for election. The effect of this is that members of the Cabinet and senior civil servants obtain seats in parliament and work as parliamentarians. Given that one of the primary roles of parliament in a presidential system of government is to scrutinise the activities of the executive and to hold it to account, it is difficult to reconcile the

potential for conflicts of interest which might arise during some if not all the business of parliament. It is not common for such an arrangement to be in place within systems similar to that practised in the Maldives. In addition, in my view, it is not healthy or effective in parliamentary terms and, by definition, could lead one to the view that the Majlis is not truly independent of the Executive. This situation is compounded by the fact that the President also appoints 8 members to the Majlis which equates to 16% or nearly one-sixth of the total membership.

There is a complication in relation to the status of civil servants including the definition of what constitutes a "senior post". There is, as I understand it, no equivalent of a Civil Service Act which means that the role and establishment of the civil service is not protected or defined under the law. To achieve that protection and clarity, it might be necessary to consider whether such provisions should be made. Although it is outside the scope of this paper, the issue needs to be investigated and an effective resolution provided. If that was the case, the law would presumably define the varying grades or status of the civil service and that could be used to determine whether a civil servant met the "senior" definition and was therefore debarred from being elected as a MP.

If the Majlis is to properly perform its role as a body of scrutiny, the current arrangement relating to the three categories mentioned above needs to be changed. I would recommend that ministers, senior civil servants and persons holding judicial appointments should be debarred from standing for election to the Majlis.

*Length of campaign* – The law relating to the length of the campaign is contained within regulation 9 of the Regulations on General Elections. It provides that canvassing for votes can only begin once the notification of candidates has been made. This provision is contained within section 9 (a) of the law and requires the Commissioner of Elections to make such public notification one month prior to polling day. In essence, this means that the length of the campaign is no more than one month.

Given the size or geographical nature of every constituency and the restrictions placed on the method of campaigning, it is virtually impossible for candidates to conduct an effective campaign in terms of gaining access to all voters. For example, a candidate for Male' who I met pointed out that if he wanted to speak to each elector on a one to one basis and only in the restricted 30 day period, he would need to speak to 1000 electors each day during that period. Clearly, this would be impossible to do.

I would recommend that the length of campaign be extended to not less than two months. To achieve this and, at the same time, maintain appropriate controls over campaigning activities, the campaign for each candidate could be linked to the point when the candidate lodges their application papers with the Commissioner of Elections. This would have the added benefit of encouraging early deposit of application papers.

*Expenses* – The law relating to expenses incurred by candidates in the process of the campaign is contained within section 11 of the law. It provides that the expenses shall not exceed Rf100 for every elector plus 10% of that sum for every uninhabited island of the constituency where the constituency has more than one uninhabited island. Section 11(b) further provides that every candidate has to submit a return to the Commissioner of Elections showing details of how the funds were raised and expended.

The law contained within regulation 4(c) is not comprehensive as to what should be included in the return (e.g. are the costs of travelling within and from the constituency or for the use of telephony covered by this requirement?) Equally, the law does not appear to provide for any action to be taken if a candidate fails to submit the return by the due date or at all. It could be argued that a catch all provision within section 27(a) provides a remedy although this is questionable because of the wording of that section.

In addition, there is no provision to allow public inspection of the returns. Such a provision would ensure greater transparency within the electoral process and act as a deterrent against candidates either failing to submit a return at all or submitting a return containing false information. I understand that the current practice is that some candidates simply fail to submit a return, those returns which are submitted are simply "filed away" by the Commissioner of Elections without any examination and that no action is taken to pursue outstanding returns.

I would recommend that the law on expenses be revised to:

- a) provide clearer definitions of what constitutes an election expense;
- b) prescribe specific penalties for failing to submit a return and for making false or inaccurate returns including the possibility of disqualification from holding public office for a specified term;
- c) permit public inspection of the returns.

*Secrecy* - It is normal practice to insist on secrecy of the ballot at all times. Although there are some general provisions relating to the requirement for secrecy (see sections 13 and 26 of the law), most relate only to a 36 hour period between 6 p.m. on the day before poll until 6 a.m. on the day after polling day. The particular offence within section 26(a) (14) only relates to the period up to the close of poll. It

follows, therefore, that it is currently not an offence to disclose how a person has voted after 6 a.m. on the day following polling day or for a person present at the count to reveal any information that they have learned at the count. It is normal practice to require any persons having an involvement with the election to maintain secrecy and to provide serious penalties for failing to do so. I would recommend that similar provisions are introduced into the election law to ensure the secrecy of the ballot.

*The count/Verification/ Recounts/Retention of papers* – The provisions relating to the count are contained within section 21 of the law and Regulations 18-20. In total, these represent a fairly basic summary of the count procedure. In my view, the law needs considerable strengthening in this area to prescribe a more robust procedure which is easily understood by all parties concerned. In particular, there needs to be specific provisions to deal with:

- a) who may attend the counting of the votes
- b) verification of ballot papers
- c) the possibility of recounts
- d) the retention of papers after the count

The law is silent on all these issues. It is important that those who have an interest in the result of the elections, mainly, candidates and/or their agents should have the legal right to be present at the count to scrutinise the proceedings and to request a recount in cases where the result is close. In terms of the process to be followed at the count, there is no specific provision in the law requiring that the papers in the ballot box and the unused ballot papers are verified against the report that has to be completed by the officer in charge of each polling station. I am told that this happens in practice. However, the formal requirement should be included in the law together with a requirement that a "verification statement" is produced for each ballot box and provided to any candidate who requests a copy.

In addition, given that the result of an election can be contested, there should be detailed provisions as to how long papers relating to the election should be retained, how they should be retained and when they should be destroyed.

*Number of votes* – The law relating to the number of votes to be cast appears to be contradictory. There are two MPs to be elected in each constituency. Section 24(b) states that a ballot paper will be declared void if it does not contain the required number of marks equal to the number to be elected. However, section 16(a) and (b) states that a voter can vote "from among the candidates, for a person or persons of his choice" and that voting is completed upon

placing "an affirmation mark opposite the name or names of the candidate or candidates".

It is normal practice to allow votes up to the number to be elected and this would be consistent with the wording of section 16. The law should be amended to ensure that papers with only one vote are counted.

*Void votes* – Section 24 of the law deals with void votes generally. In particular, sub-section (d) states that votes which are known to have been given in violation of the law shall be void. However, there is no guidance or greater definition as to what this means or what test of evidence needs to be applied before such a conclusion can be made. Equally, the law is silent on what should happen if such a situation were to arise. The law should be amended to provide clarity as to the precise meaning of this sub-section and the consequential steps that should be taken in such circumstances.

*Speeches in public places* - Section 10 of the law permits candidates to canvass for votes by meeting and speaking with electors, by writing letters and distributing election material, by advertising through the media and by the use and display of symbols. However, Regulation 4(a) which underlines the first of the above rights also prohibits speeches in public places. It is common practice in other countries for candidates to address public meetings in an effort to persuade voters to support them and it does mean that campaigning in large constituencies (either by size or by geography) can be made considerably more effective by using this technique. In all the interviews which I conducted, nobody supported this prohibition and, indeed, the vast majority were strongly in favour of its removal. I would accordingly recommend that this prohibition be removed.

*Campaign materials – approval method* - As mentioned in the previous section, candidates may use various materials as part of their campaign. However, section 10(b) of the law requires that any letters, photographs, stickers, placards, advertisements and symbols must prior to their use be submitted to and approved by the Commissioner. All of these items have to be submitted at the same time as the application to become a candidate is submitted. The Commissioner is then required to complete the process of approval before the notification as to the names of the candidates is published. The law is silent on the process to be followed by the Commissioner, what criteria should be used in terms of granting approval and what rights of appeal together with the appeal procedure are available to any candidate who is aggrieved by the Commissioner's decision.

All of this appears to be unwieldy and unnecessarily bureaucratic and places the Commissioner in an impossible position at a time when the resources of his office are fully stretched in terms of dealing with nominations and the arrangements for the conduct of the elections. A more effective approach would be to remove this requirement completely and instead to introduce clear guidelines in the electoral law as to what constitutes acceptable material and the penalties which would be applied for contravention of those provisions. It would then be for each candidate to ensure that their design and use of printed materials and other forms of advertising complied with the law.

*Absent voting arrangements* – There are no provisions within the law to permit votes to be cast other than at polling stations on election day. This means that, if a person is absent from his/her constituency or abroad, they are effectively disenfranchised. For the General Election in December, the Commissioner has introduced a system whereby a voter can register in advance (30 days) and then vote for candidates from their own constituency but physically in a different constituency. However, this system relies on people knowing what they are doing or where they are going to be at least one month in advance. In addition, there is no express provision for this within the law.

Given the extensive network of Atoll and Island Offices, it seems to me that it would not be a difficult task to organise early voting stations at these venues in advance of polling day. Voters would be allowed to cast their vote in the form of an absentee ballot secured in a sealed envelope for return to the Commissioner or other designated official.

Clearly, anybody who voted in this way would be excluded from the printed register to be used on polling day. Similarly, for those out of the country on polling day, it should be possible to devise a postal voting system either using direct mail or through diplomatic missions to provide absent voting facilities. Although it is recognised that postal voting systems can be open to abuse, it should not be difficult to provide a secure postal facility for the relatively small number of citizens likely to be abroad during an election period.

*Diaspora voting* – There is no provision for Maldivian citizens living or working abroad to vote. This effectively excludes amongst others those serving abroad on Government business together with the large number of students who have to leave the country to pursue higher education courses. If the voting age were to be reduced to 18 (see page 12 above), this would further exacerbate the problem. I would recommend therefore that a similar provision to that outlined

in the previous section be introduced for all those living or working abroad.

*Observation of voting* – The law does not permit observation of voting in any form. In fact, the rigorous provisions contained within the law and the Regulations would appear to prevent any person other than voters entering the polling station. Section 13(b) certainly appears to prohibit any candidate or any person who has already voted from being inside the polling station. Although it is permitted by the Commissioner of Elections in terms of international observers, he relies on ad hoc arrangements through his general powers to achieve this.

The ability of international and domestic observers to have access to all polling activities is a considerable advantage in ensuring transparency, fairness and to deter electoral malpractice. I would recommend, therefore, that specific provision is made in the electoral law to permit duly accredited observers to be admitted to polling stations and to the count.

*Media controls* - In a democracy, the law (and other mechanisms, such as Codes of Conduct) can help to ensure equitable access to the media by political parties and independent candidates together with a fair balance in terms of news coverage. There are no controls within the present law on the media's involvement in the campaign as to what they can and cannot do in respect of either reporting positively or negatively on offering support for particular candidates. Clearly, the media is in a unique position of power to influence the possible result of an election and given the expansion of electronic media, that position becomes ever more powerful. It is essential to provide a level playing field in terms of the permitted activities of the media. I would recommend, therefore, that suitable and appropriate controls are built into the electoral law to ensure that such an environment exists within the Maldives.

8.3 As noted above, the office of Commissioner of Elections is an appointed post. Equally, the Commissioner can be removed by the President. There is no separate electoral management body and the only support available to the Commissioner is by an advisory committee appointed by the President at the time of elections. The resources available to the Commissioner are provided through the President's Office. The authority, duties, powers, role and responsibilities of the Commissioner are not prescribed by statute in terms of the overall administration of electoral matters.

8.4 Given that the Commissioner is responsible for all elections and referendums in the Maldives including those to the Presidency, it would be appropriate to remove any responsibility for the appointment, work or

removal of the Commissioner from the Executive. Equally, given the tasks to be performed and the additional duties which would transfer to or be created within my recommendations, it would be appropriate to strengthen the control and management of all matters electoral by the appointment of a separate commission. This would be headed by a chairperson or chief commissioner with each of the other commissioners assuming responsibility for a particular aspect of the work of the commission. The commission should be:

- established under a provision of the Constitution
- appointed for a fixed term of office by Parliament
- composed of independent persons not connected to political parties
- answerable to Parliament through an annual report
- properly resourced through an annual budget provision approved by Parliament
- provided with sufficient powers and resources to ensure efficient and effective administration of all matters pertaining to the electoral process.

### *Recommendations*

That the existing laws be replaced by a composite law to take account of the issues outlined above and, in particular, those relating to:

- the franchise ensuring compliance with international standards relating to basic human rights
- objections to nominations
- secrecy of the ballot
- the count including verification procedures
- recounts
- retention of election papers
- void votes
- campaign materials
- absent voting provisions
- diaspora voting
- observation of voting
- media controls.

That a survey be undertaken of members of the uniformed services to ascertain their views on whether they should be permitted to vote.

That consideration be given to the minimum age for voting.

That consideration be given to the voting rights of prisoners.

That consideration be given as to whether certain categories of persons should be debarred from standing for election to the Majlis.

That consideration be given to the status of and the need for specific statutory provision for the civil service.

That an independent electoral commission be established under the Constitution to be answerable to Parliament.

## 9. Transparency and voter confidence

### *Commentary*

9.1 Most of the complaints that were made to me in terms of the transparency of the process related to the security of the ballot box and possible ballot rigging. One of the major allegations about these issues that was repeated to me in several interviews was that it was possible to introduce and/or remove ballot papers from the ballot boxes while they are outside the direct control of the Commissioner of Elections. In particular, it was alleged that local officials could use a padlock different to that provided by the Commissioner at the time of initial sealing and then remove that padlock at some time during polling day (e.g. at the suspension to take account of Friday prayers). Once removed, it would be possible to introduce further papers, amend papers already in the box or remove papers. The box could then be resealed with the replacement padlock to allow the same process at the close of polling. At that point, the official padlock would be applied before the ballot box was returned to the Commissioner in Male'.

9.2 To prevent these activities, I would suggest the use of transparent ballot boxes (constructed of clear plastic material) that are locked and sealed at the point of despatch in Male'. It would then be obvious that the box was empty at the opening of the poll and if the lock and/or numbered seals had been interfered with in any way. The construction of the boxes should be such as not to allow papers to be removed through the opening.

9.3 A further complaint was that candidates are prevented from observing what happens within polling stations and cannot therefore verify that the election is conducted according to the law and without malpractice. It is common in other systems to permit candidates or agents appointed by them to be present during polling to ensure "fair play". Their role is one of passive observation and they are not permitted to interfere with the conduct of the election or attempt to influence voters.

9.4 A final possibility for interference with the ballot box was recognised as the period between the box being sealed at the close of the poll and

before arrival back in Male' for the count. An effective way of overcoming this problem would be to conduct a local count at Island level immediately at the close of the poll. The count would be conducted by the independent staff employed by the Commissioner for the purpose of taking the poll and in the presence of the candidates or their duly appointed agents (see previous paragraph). This would allow proper verification of the process and prevent any unlawful interference with the contents of the ballot box. Once a provisional result for the Island had been obtained, it would be known to all parties with an interest in the election and that result would then be conveyed to the Commissioner ahead of the arrival of the actual ballot box and all the other election materials. Once received in Male', the ballot papers could then be recounted to confirm the provisional result and to be amalgamated with the results from the remainder of the constituency.

#### *Recommendations*

That the design of and arrangements for the sealing and locking of ballot boxes be altered as suggested above.

That candidates or their duly appointed agents be permitted to be present at polling stations subject to appropriate restrictions as to their activities.

That the initial count at elections be held on a local basis at Island level.

### 10. Hearing of complaints - campaigning and the voting process

#### *Commentary*

10.1 The only provision within the law relating to grievances and complaints about elections stipulates that they must be made by way of an election petition presented to a court determined by the President. Other than this, there is no provision within the law to deal with the situation of complaints made during the election campaign or about the voting process on the day of poll.

10.2 To deal with this situation, the Commissioner has put in place an arrangement for the General Election in December whereby local committees will consider complaints and submit a report on their findings to the Commissioner. If the complaint is substantiated, it will be referred to the court in accordance with the legal procedure outlined above. This is another example of an ad-hoc administrative practice. Equally, it is an unsatisfactory position to rely on an ad-hoc arrangement for such an important part of the election process.

10.3 A formal complaints system needs to be put in place which is well understood, publicised and capable of being implemented speedily. It needs to have the following characteristics:

- time limited to the nature of the complaint
- resolved at local level but outside the constituency concerned
- penalties for vexatious or frivolous complaints
- a suitable range of penalties
- the ability for referral to the independent electoral commission of any case in which action is recommended against a candidate
- an appeals process
- a mechanism for referral to the election court
- suitable powers for the election court including the possibility of disqualification from contesting the election in question and/or from holding public office for a specified term.

10.4 In addition, the process to be followed for an election petition (see paragraph 10.1 above) needs to be developed and included within the law and to follow, as appropriate, the above principles.

#### *Recommendations*

That a formal complaints system be designed and introduced within the election law.

That the process for lodging and hearing election petitions be developed and included within the election law.

11. Controls to avoid corruption and the role of money in the electoral process

#### *Commentary*

11.1 The use of money by candidates within election campaigns to provide "favours" in return for votes is widely recognised by voters (see the above section on my field visit), by the candidates themselves and by the authorities. It also appears to be widely accepted that this approach to elections and to campaigning needs to be changed. Although there are limits on campaign expenditure, this process appears to be considered to be outside the present controls and, so far as I could tell, no candidate includes details of such payments in their returns if, indeed, they make any return at all.

11.2 The issue of expenses is dealt with in some detail in the section above "The administration of elections". In my view, the changes

proposed in that section should be sufficient to deal with the whole issue of the improper use of money and other questionable practices. In essence, a comprehensive definition of what constitutes an election expense, an absolute requirement for any expense to be included in the statutory return coupled with specific penalties for failing to submit a return and for making false or inaccurate returns should provide sufficient deterrent to deal with the current problems. Key to all of this will be the need to include the possibility of disqualification from holding public office for a specified term for candidates or others found guilty of such offences.

11.3 The law makes no provision with regard to third party expenses incurred in terms of campaigning or otherwise supporting candidates. Equally, there is no provision to prohibit or control "single issue" campaigning. Both of these matters need to be regulated as part of the overall approach to the control of money within the election environment. In terms of the former, it is essential to regulate the provision of finance to candidates by third parties to ensure "a level playing field" for the conduct of the campaign. This can most easily be achieved by requiring:

- a) candidates to include the source of all the money used to finance their campaign in their return; and
- b) any third party (individual or corporate body) to make a return of all money provided within the same time limits as apply to candidates.

11.4 In terms of "single issue" campaigning, it is important that money spent on supporting or opposing a single issue should not distort the campaign to the advantage or disadvantage of any particular candidate. It is necessary, therefore, to determine whether such campaigning should be permitted at all during an election campaign and, if it is, to place suitable controls and limits on what is permissible and how much can be expended. In addition, if it is permitted, it will be necessary to require returns in the same way as suggested in b) above.

11.5 In terms of dealing with possible corruption, I am suggesting that a general offence of "committing a corrupt practice" be included within the electoral law. The definition of what constitutes such a practice needs to be widely drawn and the penalties for being found guilty of such an offence need to be sufficiently strong to provide an effective deterrent. The types of offence which I would propose including in the definition would include:

- bribery
- providing goods or services in return for votes
- intimidating or attempting to unduly influence voters
- committing or procuring personation of voters
- making false statements in election documents
- making false statements about candidates
- making false or inaccurate election expense returns

11.6 In terms of penalties, they need to be sufficiently severe to deter people from committing such offences. For that reason, the penalties need to include severe fines, the possibility of imprisonment and the possibility of disqualification from holding public office for a specified term.

### *Recommendations*

That the law on candidate's expenses be amended to:

- provide clearer definitions of what constitutes an election expense;
- prescribe specific penalties for failing to submit a return and for making false or inaccurate returns including the possibility of disqualification from holding public office for a specified term;
- permit public inspection of the returns.

That provision be made within the law to prohibit third party expenditure within campaigns, including that on single issues, either absolutely or within exempted circumstances up to prescribed amounts.

That a general offence of "committing a corrupt practice" be included within the electoral law with clear definitions of the practices that would fall under that heading and the penalties that such offences would attract.

## 12. Voter education

### *Commentary*

12.1 Although it is fairly clear that most voters understand the principles behind elections, it is not so clear that all have an understanding of democratic principles and the role and effect of the organisations of state on their lives. For example, it appears that many islanders consider that the only way to achieve improvements for themselves or the community in which they live is to use the money politics culture that has developed during election campaigns as a means towards obtaining those improvements.

12.2 Conversely, they do not appear to understand or appreciate that the power of the ballot box can be an effective tool in achieving the improvements to their lives that they desire and need. To an extent, the lack of issue based campaigns contributes to this situation and the introduction of political parties (which would presumably contest elections on the basis of issues and with clear manifestoes) would assist greatly.

12.3 It would be naïve to assume that such a transition from the present system and culture to a new issue based form of campaigning and the necessary changes to governance for the country would be easily understood and embraced by all voters. Instead, it will be necessary to conduct a careful and well planned information campaign ahead of the changes to advise, inform and educate the electorate.

12.4 The opportunities presented by the current range of constitutional and structural reforms could form the basis of a comprehensive campaign and the state owned television and radio services could provide the appropriate media for launching and reinforcing a national campaign at the appropriate time and well in advance of the next planned election. In addition, the advances made in providing educational establishments within all communities can be used as the focal centres for such a campaign at local level. I understand that a nationwide campaign was delivered in person at local level to explain the “Population and Development consolidation strategy” and was extremely successful. This could be replicated for an information campaign on electoral and democratic change.

#### *Recommendation*

That a public information campaign be organised and executed to advise voters of the changes to the electoral system and the effect on the democratic organisations of the state.

### 13. Effective campaigning

#### *Commentary*

13.1 Election campaigning in the future needs to be seen in the light of the expenditure controls that will be introduced as a result of this report and the possible registration of political parties. These changes will so alter the dynamics of campaigning that it is difficult to deal with the issue in the context of this report and before the recommendations in this report and the NDI report have been adopted and implemented.

13.2 In view of this, I have not dealt in any detail with political campaigning issues and practices. It seems to me that this matter cannot be dealt with in isolation or in advance of the necessary reforms. I would suggest, therefore, that it would become a secondary matter for consideration and implementation by the new independent electoral commission.

13.3 Once the commission comes to consider these matters, it will be important to recognise the international practice of adopting a code of conduct to regulate the behaviour of candidates and political parties during the campaign and how this could be adopted in the Maldives. It is widely accepted one of the main responsibilities of election management bodies is to ensure that candidates and parties have the freedom to campaign. This must be reflected in the law alongside the regulatory controls over the activities of the parties.

13.4 Once the independent electoral commission has been established, it will be possible to determine the best means of advising candidates and parties on effective campaigning. It may well be that the Commission should not itself be involved in this, but that it should make arrangements for an independent third party to advise on campaigning issues and methods. In the formative years, it could be sensible to ask an international organisation to provide that expertise.

13.5 A further important responsibility of the independent electoral commission will be that of maintaining an active dialogue with the political parties and civil society to ensure the active involvement of all interested parties at every key stage of the electoral process.

13.6 As a side issue, I received many complaints that MPs do not visit their constituencies between elections. Although outside the context of effective campaigning, in a representative democracy, it is important that there is the opportunity for regular contact between MPs and their constituents. I would suggest, therefore, that consideration be given to how the role of MPs as representatives can be strengthened and the necessary support given to MPs to allow them to make regular visits to their constituencies.

*Recommendation*

That, following the introduction of the new legislation on campaigning, the independent electoral commission:

- a) be charged with the responsibility of determining how best to provide advice and support to candidates and/or political parties in terms of conducting effective campaigns based on best practice from the international experience;
- b) be asked to consider the question of the role of MPs as representatives and to make suitable recommendations about strengthening that role.

## 14. Control of political parties

### *Commentary*

14.1 Freedom of association is a fundamental democratic right. This right needs to be reflected in the law particularly in relation to the issue of the formation and activities of political parties. As mentioned in paragraph 4.8 above, the NDI has recently published its report on the "Assessment of the opportunities and challenges to the development of political parties in the Maldives". The report is a very thorough exposition of the current political situation in the Maldives. It contains a number of key recommendations in terms of the steps necessary to move to a structure where political parties in the Maldives are permitted and regulated by law. These recommendations are contained within five distinct categories, namely:

- confidence building
- legal framework
- other necessary legal changes
- improved mechanisms to protect constitutional and political rights
- capacity building

The full summary of the recommendations are set out at Appendix 5.

14.2 It is impossible to argue with the conclusions and recommendations contained within the NDI report. The relevant recommendations are totally consistent with the approach proposed in this report and their implementation would be essential in terms of delivering the revised terms of reference for this assignment set out in Appendix 1B.

14.3 I have not sought to repeat the findings and reasoning of the NDI report because of the complementary nature of the report to my own findings. Consequently, I have taken the relevant recommendations as given and included them within the recommendations set out below. I firmly believe that a political parties system created on the basis of these recommendations will strengthen the democratic process within the Maldives.

### *Recommendations*

That the necessary legislation be introduced to provide for the creation, registration, control and regulation of political parties.

That the wider principles identified in the NDI report be used as a framework for introducing and developing the necessary changes to the electoral law, the law on political parties and the other structural and organisational changes necessary to induce the appropriate environment for the proper functioning of political parties.

## 15. Proportionate representation

### *Commentary*

15.1 The constituency electorates for the General Election clearly demonstrate a considerable imbalance between constituencies (see Appendix 4). These range from Male' with an electorate of nearly 30,000 to Felidhe Atoll with just over 1,000. The general principle in allocating seats in a representative electoral system is that every vote should be of equal weight. This means that, once a decision has been taken on the size of the representative assembly, it is possible to calculate the number of votes required to elect one representative. This figure is known as the electoral factor. For this purpose, the electoral factor in the Maldives would be 3139.

15.2 Having determined the electoral factor, it can then be used to allocate the seats between constituencies either by redrawing constituency boundaries or by allocating seats to existing constituencies by a simple mathematical formula whereby the electorate is divided by the electoral factor. Clearly, because of geographical considerations, it would be difficult to achieve the former. For illustration purposes, I have therefore applied the latter principle to the existing electorates on the basis of creating the Majlis with the same number of members as at present (50) but with all members being elected.

15.3 The table at Appendix 4 displays the results of this exercise. By applying the formula together with a simple rounding up/down rule, it is possible to achieve a Majlis of 50 members. However, the number of MPs for each constituency will vary considerably according to the size of the appropriate electorate. As can be seen from the table, applying this principle creates:

- six constituencies with one MP
- nine constituencies with two MPs
- four constituencies with three MPs
- one constituency with five MPs
- one constituency with nine MPs

15.4 It would, of course, be possible to further sub-divide the constituencies now returning a large number of MPs so that they returned a smaller number of MPs similar to the vast majority of constituencies.

15.5 Using this system (or one similar to it) would achieve a far more proportionate representation in terms of the membership of the Majlis. It would also generally follow the principle that every vote should be of equal weight. I would recommend therefore that, before the next General Election, a comprehensive review of parliamentary seats be undertaken on the basis of the principles outlined above. In addition, it would be essential for periodic reviews to then be carried out to ensure that, as the total electorate and the individual electorates changed, the allocation of seats changed accordingly. Once the independent electoral commission has been established, it could be charged with the responsibility of carrying out the periodic reviews between elections.

#### *Recommendations*

That the allocation of parliamentary seats be reviewed with a view to ensuring that seats are allocated to constituencies on the broad principle that every vote should be of equal weight.

That, following the above review, the independent electoral commission be required to carry out periodic reviews to ensure that the representative system continues to reflect the principles adopted for that review.

## 16. Local governance

### *Commentary*

16.1 As mentioned in paragraph 6.5 above, whilst I was on my field visit to the two northern atolls, the issue of local governance was raised with me. In those discussions, those in favour of change argued that it would be better if a local system of electing Atoll and/or Island Chiefs was introduced in the place of the current appointments system.

16.2 Upon my return to Male', I raised this issue in a number of interviews with appropriate people. I learnt that the current appointments system is relatively recent and that, prior to it being introduced, local Chiefs were elected/appointed from within their own communities. Most people interviewed were also in favour of reverting to the former system. Generally, it was felt that this would strengthen local communities, devolve power to the appropriate level, reduce centralisation and dependency on the state and enhance democratic process.

16.3 It is difficult to disagree with these conclusions. For that reason, I would recommend that a review of the appointments system for local governance be undertaken.

*Recommendation*

That a review of the existing arrangements for local governance at both Atoll and Island levels be undertaken with a view to introducing a system which provides for the direct election of those charged with local administration.

## 17. Strategic Plan

17.1 The final part of the Terms of Reference required me to “prepare a strategic plan for the reform of the laws and regulations as above, leading to an improved structure for the work of the Commissioner of Elections”.

17.2 In preparing the plan, I have taken each of the above recommendations and identified the key tasks for each. Those tasks have then been built into the plan with an indicative timescale for each. In addition, the plan identifies the person(s) or organisations responsible for delivering the activities and the required outputs. In appropriate cases, this includes my assessment of areas where further technical assistance might be required to support the timely completion of the task. In assessing the timescales, I have been conscious of the need to move as quickly as is sensible and practicable with a view to having the new arrangements in place in time for the next scheduled election in 2008.

17.3 The strategic plan is attached at Appendix 6.

John Turner

January 2005

## LIST OF APPENDICES

Appendix 1A	Terms of Reference
Appendix 1B	Terms of Reference - Revised
Appendix 2	Schedule of engagements
Appendix 3	List of Reference Materials

Appendix 4	Constituency electorates
Appendix 5	Summary of Recommendations from NDI Report
Appendix 6	Strategic Plan

TERMS OF REFERENCE

To review the electoral laws and regulations as well as other related laws, procedures and administrative mechanisms in the light of the existing socio-economic conditions and recommend action to the Government relating to: -

- a) administrative set-up for carrying out elections
- b) mechanisms to ensure transparency and voter confidence
- c) complaints-hearing concerning campaigning and voting process
- d) mechanisms to reduce money politics and possible corruption
- e) voter education
- f) effective campaigning

The adviser will prepare a strategic plan for the reform of the election laws and regulations, leading to a strengthened governance structure for the Commissioner of Elections.

TERMS OF REFERENCE - REVISED

To review the Maldives' electoral laws, regulations and other related legislation, procedures and administrative mechanisms and to make recommendations to the Government regarding:

- a) administrative arrangements for elections;
- b) mechanisms to ensure transparency and voter confidence;
- c) arrangements for complaints concerning campaigning, voting and the results processes;
- d) mechanisms to eliminate corruption and regulate the role of money in the electoral process;
- e) voter education;
- f) the campaign;
- g) the regulation of and freedom for political parties;
- h) the electoral system;
- i) arrangements for local democracy.

The adviser will:

- 1) prepare a strategic plan for the reform of the laws and regulations as above, leading to an improved structure for the work of the Commissioner of Elections;
- 2) assist the Government by drafting legislation, including the required changes to the Constitution, and the electoral law and, specifically, new statutory provisions for the regulation of and freedom for political parties.

Drafted by John Turner - 14 December 2004  
Approved by Comm. Secretariat - 20 December 2004

SCHEDULE OF ENGAGEMENTS

Tuesday, 23 November 2004

Dr. Hassan Saeed, Attorney General  
Mr. Ahmed Zahir, Speaker of the People's Majlis  
Mr. Abdul Rasheed Hussain, Deputy Speaker of the People's Majlis  
Mr. Abdulla Hameed, Minister of Atolls Development  
H.E. Shashishekar M. Gavai, High Commissioner of India  
Mr. Abbas Ibrahim, President of the Special People's Majlis  
Mr. Shaaheen Hameed, Vice-President of the Special People's Majlis  
H.E. Said Akbar Afridi, High Commissioner of Pakistan

Wednesday, 24 November 2004

Dr. Hassan Saeed, Attorney General  
Ms. Aaishath Azima Shakoor, Deputy Director, Legal Affairs, Attorney  
General's Office  
Mr. Ibrahim Rashaad, Commissioner of Elections

Thursday, 25 November 2004

Mr. Ahmed Muizzu, Law Society of the Maldives: Member of the Special  
People's Majlis

Travel to and meetings in Dhidhdhoo island <sup>1</sup>, Haa Alifu atoll

Friday, 26 November 2004

Meetings in Maaranddhoo island <sup>2</sup>, Haa Alifu atoll and Kulhudhuffushi  
island <sup>3</sup>, Haa Dhaalu atoll

Saturday, 27 November 2004

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<sup>1</sup> Meetings with Acting Atoll Chief and his staff, Island Chief and his staff, Headmaster of school, family group, mother and daughter, businessman and son, businessman and wife.

<sup>2</sup> Meetings with Island Chief and his staff, former Island Chief, Teacher, Leader of Island Club, male and female voters, Headmaster/School supervisor.

<sup>3</sup> Meetings with Acting Atoll Chief, Assistant Atoll Chief, female Imam, businessman/ member of Island Development Committee, Island Chief, owner of fishing boat, family group of 12, representatives of Women's Development Committee, Leader of Youth Club and contractor/ member of Island Development Committee.

Meetings in Kulhudhuffushi island <sup>4</sup> and Hanmaadhoo island <sup>5</sup>, Haa Dhaalu atoll

Return from Haa Dhaalu atoll

Sunday, 28 November 2004

Mr. Hassan Afeef, Member of the People's Majlis  
Mr. Mohamed Shihab, Member of the People's Majlis  
Mr. Ahmed Zahir, Managing Editor of Haveeru Daily

Monday, 29 November 2004

Ms. Aminath Didi, Assistant Director General, Department of External Resources  
Mr. Mohamed Shahudy, Assistant Director, Department of External Resources  
Mr. Ahmed Mujuthaba, Chairperson, Human Rights Commission  
Mr. Ibrahim Shareef, Member of the Special People's Majlis  
Ms. Maria Ahmed Didi, Assistant Executive Director, Attorney General's Office

Tuesday, 30 November 2004

Dr. Mohamed Munavvar, Member of the People's Majlis, former Attorney General  
Mr. Ibrahim Hussain Zaki, Member of the People's Majlis, former Secretary General of SAARC and Minister of Tourism and of Planning and Development  
Mr. Qasim Ibrahim, Member of the Special People's Majlis, Chairman of Villa Hotels  
Mr. Ibrahim Ismail, Member of the Special People's Majlis

(Note – All of the above are currently under house arrest following detention after the August 2004 demonstrations)

Mr. Abdulla Shahid, Executive Secretary to the President, Member of the People's Majlis  
Ms. Aaishath Azima Shakoor, Deputy Director, Legal Affairs, Attorney General's Office

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<sup>4</sup> Meeting with former Island Chief.

<sup>5</sup> Meeting with Headmaster and Teacher (responsible for training polling staff within the Atoll).

Wednesday, 1 December 2004

Mr. Ibrahim Rashaad, Commissioner of Elections  
Mr. Ismail Shafeeu, Minister of Defence and National Security  
Mr. Hamdum A. Hameed, Minister of Planning and National Development  
Mr. Moez Doraid, Officer in Charge of UNDP  
Mr. Abdul Bari Abdulla, Programme Coordinator, UNDP  
Ms. Nashida Sattar, Programme Officer, UNDP  
Dr. Hassan Saeed, Attorney General

Mr. Abdul Sattar Hassan        )  
Mr. Mohamed Shahid            ) Director/Assistant Directors for wards in  
Mr. Abdul Shakoor             ) the Municipality of Male'  
Mr. Zahir Abdullah            )  
Mr. Ahmed Manik              )

Ms. Aaishath Azima Shakoor, Deputy Director, Legal Affairs, Attorney  
General's Office

LIST OF REFERENCE MATERIALS

Constitution of the Republic of Maldives

Laws and Regulations on Presidential Elections in the Maldives

Laws and Regulations on Parliamentary Elections in the Maldives

Report of the Observer Group of Eminent Persons – People’s Special Majlis elections – May 2004

Opinion of former Attorney General on the question of the registration of political parties – June 2001

Paper provided by Attorney General “Strengthening criminal justice and fundamental rights”

Details of electorates for 2004 General Election

Training materials for 2004 General Election

Statistical Yearbook of the Maldives 2004

National Development Plan, Republic of Maldives 2001-2005

Report of National Democratic Institute

Various press and website articles

## CONSTITUENCY ELECTORATES - 2004

Code	Atoll	Electorate	Notional MPs	No. of MPs
A	North Thiladhunmathi	9448	3.01	3
B	South Thiladhunmathi	10700	3.41	3
C	North Miladhunmadulu	6975	2.22	2
D	South Miladhunmadulu	6946	2.21	2
E	North Maalhosmadulu	9059	2.89	3
F	South Maalhosmadulu	6306	2.01	2
G	Faadhippolhu	5985	1.91	2
H	Male' Atoll	4720	1.50	2
U	North Ari Atoll	2942	0.94	1
I	South Ari Atoll	4334	1.38	1
J	Felidhe Atoll	1179	0.38	1
K	Mulaku Atoll	3484	1.11	1
L	North Nilhande Atoll	2220	0.71	1
M	South Nilhande Atoll	3389	1.08	1
N	Kolhumadulu	7149	2.28	2
O	Hadhdhunmathi	6718	2.14	2
P	North Huvadhu Atoll	5606	1.79	2
Q	South Huvadhu Atoll	9064	2.89	3
R	Fuah'mullah	5098	1.62	2
S	Addu Atoll	15870	5.06	5
T	Male'	29766	9.48	9
		156958	50	50
	Electors per MP	3139.16		
	Majlis members	50		

## Rule for rounding up/down

- 1) Decimal points of 0.5 or above will be rounded up.
- 2) Decimal points of less than 0.5 will be rounded down except where that would fail to allocate at least one seat

## SUMMARY OF RECOMMENDATIONS FROM NDI REPORT

The President's reform agenda should be commended. However, if the government wishes to demonstrate its sincerity and restore a degree of confidence in the reform process, it will need to take prompt, bold and concrete actions. In particular, the assessment team has grouped its recommendations into five main areas:

- *Confidence Building*. If the government is to regain public trust with respect to reform, it must proceed quickly and aggressively with reforms that are viewed as genuine, rather than merely cosmetic. Treatment of the detainees has been one factor that has affected public confidence in the government's reform agenda. There is a perception among those interviewed that these detentions are politically motivated. Perceptions that detentions and threats of prosecution have been used to dissuade individuals from competing in the elections, or to silence opposition, only serves to undermine the credibility of the reform process. Individuals must be able to act politically without fear of reprisal for political engagement. Members of the special *Majlis* who are under house arrest should be allowed to participate fully in the Special *Majlis* deliberations on constitutional reform. Similarly, if prosecutorial discretion is used to proceed against opposition leaders on corruption issues, and there is no similar action taken against government figures for corruption, such actions are likely to be perceived in the current environment as politically motivated. Other actions, such as the failure of the government to license opposition-oriented media, will also limit the credibility of the reform process in the eyes of the public. Further judicial and penal system reforms are urgently needed to guarantee compliance with requirements of the Constitution and international practice, including due process, access to legal counsel and news while in detention, and further protections against the possibility of physical and mental abuse.

Specifying a clear timetable for the enactment of specific reforms would also begin to restore a degree of confidence in the reform process. The sincerity of the government's reform efforts will be judged both in terms of their speed and their inclusiveness. The proposed timetable should include a timeframe for early multi-party elections as soon as necessary constitutional reforms are enacted. Given the public skepticism of the genuineness of the government's reform initiatives, Maldivians may also wish to request greater involvement of the international community in monitoring elections and the political reform process. For example, the government may

wish to involve the international community in cases where political rights are alleged to have been abridged by the creation of a temporary international tribunal for protecting political rights during the transition process.

- *Legal Framework for the Development of Political Parties.* De facto political parties or groupings already exist in the Maldives. As a result, the question faced by the assessment team was not whether political parties should exist, but what legal framework should be used to legitimize and regulate their existence. There are a number of factors that should be considered in legalizing political parties: 1) the commitments that political parties must make in their registration (renunciation of violence, support for the constitution, etc.); 2) registration criteria (number of members, national reach, etc.); 3) a democratic internal structure (party bylaws, election of party leaders, etc.); and 4) transparency of political party funding and financial disclosure requirements. Given the history in the Maldives of using technical registration requirements to limit political dissent—particularly with respect to the media, the delegation generally recommends a minimalist approach with respect to regulation of political parties. Moreover, while there are a number of important issues that need to be considered in the design of a political party law, the assessment team determined that many of these issues were subordinate to the larger issue of political freedom.
- *Other Changes in the Legal Environment Necessary for Effective Parties.* An effective multi-party system is impossible if people fear reprisal for speaking out against the government. As a result, a number of legal framework issues must be addressed for the development of an effective multi-party system, including: 1) creating of a civil service system that allows government employees (below the level of ministers or other defined political appointees) to be dismissed only for “cause” and protects them from dismissal on the basis of political affiliation; 2) creating a media environment that is accessible by all segments of political opinion, by licensing media outlets that represent the full range of public opinion in the Maldives; and 3) ensuring a fair pre-election environment and fair elections. Other concerns relate to the police force and the local governance structures. The delegation understands that a limited amount of time will be available to implement these types of changes; however, failure to institute these types of reforms may further limit the credibility of the reform process with Maldivian citizens and the international community.
- *Improved Mechanisms for the Enforcement of Constitutional and Political Rights.* The inability to effectively and impartially

enforce constitutional rights is a significant threat to the credibility of the reform process. Separation of the judiciary from the executive is essential. Steps must also be taken to prevent the use of politically-motivated prosecutions. It was reported to the delegation that judges, in practice, require approval from the Ministry of Justice to acquit a defendant. Interviewees noted that, since the Maldives recognizes Shari'a and since Shari'a is not codified, judges are given a wide range of discretion that has the potential for abuse. Currently, constitution lacks self-implementing provisions. Many political rights are subject to further definition by law, which can significantly limit the rights granted under the constitution. The appointment, tenure and salary of High Court judges should also be reviewed with a view to providing for greater independence from the executive and greater representation of lawyers with advanced training in positive law. Lastly, given the fact that many people view the court system as having limited credibility with respect to the protection of political rights, Maldivians may wish to strengthen the credibility of these bodies by providing for international or UN engagement or observation, particularly in cases involving political rights.

- Capacity Building. Given the Maldives' limited experience with political movements and grassroots democratic participation, capacity building will be required to ensure an effective and ordered transition to a more open democratic and pluralist multi-party system. With respect to political parties, capacity building is required both among the citizen population and within political party leadership. With respect to civic education, there will need to be greater education for citizens on the role of political parties in a democratic system, as well as citizens' rights to engage politically and how these rights can be protected. One way to achieve this result could be to incorporate units on political and civil rights within the national curriculum.

Capacity building will also be required of party leadership. Current political movements will need assistance in transforming into democratic political parties; this applies to both government and opposition groups. In addition, a number of new parties are expected to be established, each of which would also require training. Pending steps towards the genuine application of the principles stated in the President's June 9 speech, organizations like NDI would be willing to assist the government in creating a party structure or structures, on the condition that NDI is permitted to provide the same range of assistance to parties within the full political spectrum. Topics for which parties may wish to request training include: 1) party organization and structure; 2)

membership recruitment; 3) fundraising; 4) ensuring party integrity and anti-corruption mechanisms; 5) platform development; 6) strategic communications; and 7) coalition-building (particularly if many parties are registered).

# STRATEGIC PLAN

STRATEGIC PLAN FOR THE REFORM OF THE APPROPRIATE LAWS AND REGULATIONS LEADING TO AN IMPROVED STRUCTURE FOR THE WORK OF THE COMMISSIONER OF ELECTIONS, REPUBLIC OF MALDIVES

PERIOD OF PLAN – 2005 TO 2007

Topic & recommendation	Key task	Timescale	Responsible
1. Administration of Elections			
a) Composite electoral law	Draft necessary legislation	June 2005	JT
b) Draft electoral law	Consider draft	August 2005	AG
c) Final draft of electoral law	Consider final draft	February 2006	AG/JT
d) Survey uniformed services	Conduct survey	April 2005	MoD/JT
e) Minimum age for voting	Consider issue	May 2005	AG/Govt.
f) Voting rights for prisoners	Consider issue	May 2005	AG/Govt.
g) Restrictions on candidates	Consider issue	May 2005	AG/Govt.
h) Civil Service	Consider issue	December 2005	AG/Govt.
i) Creation of Electoral Commission	Agree principle	June 2005	AG/Govt.
j) Electoral Commission	Draft necessary legislation	October 2005	JT
k) Electoral Commission	Consider draft	January 2006	AG
l) Electoral Commission	Consider final draft	March 2006	AG/JT
2. Transparency/ Voter confidence			
a) Ballot boxes	Include in draft electoral law	June 2005	JT
b) Candidates/ agents	Include in draft electoral law	June 2005	JT
c) Local count	Include in draft	June 2005	JT

	electoral law		
3. Hearing of complaints			
a) Complaints system	Include in draft electoral law	June 2005	JT
b) Election petitions	Include in draft electoral law	June 2005	JT
4. Controls to avoid corruption			
a) Candidates' expenses	Include in draft electoral law	June 2005	JT
b) Third party expenditure	Include in draft electoral law	June 2005	JT
c) Corrupt practices	Include in draft electoral law	June 2005	JT
5. Voter education			
a) Public information campaign	Agree principle	December 2005	AG/Govt.
b) Public information campaign	Plan campaign	June 2006	Govt.
c) Public information campaign	Deliver campaign	December 2006	Govt.
6. Effective campaigning			
a) Electoral Comm. to provide support/ advice	Identify external source to provide best practice	March 2006	TA
b) Electoral Comm. to provide support/ advice	Produce guidance and plan training	July 2006	TA
c) Electoral Comm. to provide support/ advice	Deliver training	December 2006	TA
7. Control of Political Parties			
a) New political parties law	Draft necessary legislation	October 2005	JT
b) Draft political parties law	Consider draft	December 2005	AG
c) Final draft of political parties law	Consider final draft	February 2006	AG/JT
8. Proportionate representation			
a) Review of seats	Agree principle	December 2005	AG/Govt.
b) Review of seats	Carry out review	June 2006	Govt.
9. Local			

Governance			
a) Review of existing arrangements	Agree principle	December 2005	AG/Govt.
b) Review of existing arrangements	Carry out review	June 2006	Govt.
c) Prepare new legislation	Draft legislation	December 2006	JT/TA
10. Project review			
a) Interim reviews	Undertake reviews of progress against strategic plan	Quarterly from March 2006 to March 2007	AG/JT
b) Final review	Identify and complete outstanding issues	March to June 2007	AG/JT
c) Final review/sign off	Conduct project review and agree sign off	September 2007	AG/JT

#### Key

AG - Attorney General  
Govt. - Maldives Government  
JT - John Turner  
MoD - Ministry of Defence  
TA - Technical assistance