



BRIEFING NOTE

The Maldivian Democratic Party (MDP) condemns in the strongest possible terms the Supreme Court's decision, by majority vote of 4 to 3, on 23rd September 2013 to postpone the second round of the presidential elections, which was due to be held this Saturday, 28th September 2013. There is no provision in the Constitution to delay a run-off election beyond three weeks; and no authority is provided to the Supreme Court to amend the Constitution by its jurisprudence. The decision is particularly offensive, as the first round of elections has been certified as free and fair by official Commonwealth Election Monitors.

1. Violation of the Constitution by the Supreme Court

The article of the Constitutionⁱ cited by the Supreme Court in postponing the elections, is Article 144, which so states,

144. When deciding a constitutional matter within its jurisdiction, a court:

(a) may declare that any statute, regulation or part thereof, order, decision or action of any person or body performing a public function that is inconsistent with the Constitution is invalid to the extent of the inconsistency;

However, Article 111 of the Constitution clearly mandates that,

111. The President shall be elected by over fifty percent of the votes. If no candidate obtains such majority, **a run-off election must be held within twenty one (21) days after the first election.**

Also Article 299 (a) of the Constitution requires judiciary to comply with the provisions of the Constitution and thus has no authority to bring any order or judgment that violates any stipulation in the Constitution; or effect an amendment to the constitution.

Article 299 (a) of the Constitution reads,

The Executive, the People’s Majlis, the Judiciary, the Independent Commissions and persons in Independent Offices, all State institutions, all persons in any State post and all citizens shall comply with the provisions of the Constitution upon its commencement.

Therefore we raise our concerns that the Supreme Court in postponing the elections has clearly violated Article 111 of the Constitution of the Maldives.

2. All Local and International Observers declared Free & Fair Elections

All local and international observers, including those from Transparency Maldives,ⁱⁱ the United Nations, the Commonwealth, and India praised the first round of elections as free and fair and without incident.ⁱⁱⁱ

The Commonwealth had sent a 17 member strong Observer Team led by a former Prime Minister of Malta, Dr. Lawrence Gonzi. The team noted,

“The voter register appeared to be accurate and robust. Fears expressed by some political parties regarding possible large numbers of deceased voters and voters registered in the wrong geographic area seem to be unfounded, based on the low incidence of election day complaints”.^{iv}

The Human Rights Commission of Maldives (HRCM) also declared the elections free and fair.

3. Election Commission & MDP Attorneys barred from attending Supreme Court

Following its ruling, the Supreme Court today, has banned the Attorney representing the Elections Commission, the defendant in the case.. The Supreme Court has also barred the Attorneys representing MDP which has joined the case, from the Court.

Further, the Attorney General of Maldives, is advocating on the side of the private party that filed the case, tourism magnate, Gasim Ibrahim, against the Elections Commission, the state institution.

MDP believes that the Maldives is now moving into a phase of autocracy instilled by the very highest court of the land.

MDP would also like to refer to the United Nations Human Rights Committee’s statement in July 2012, which stated, “As 6 of 7 Supreme Court judges are experts in Sharia law and nothing more, this court in particular is in need of radical readjustment. This must be done to guarantee just trials and fair judgments for the people of Maldives.”^v

The Maldivian Democratic Party appeals to all our international partners to use their good offices to ensure that the elections are held in the Maldives swiftly. We believe that if the second round of voting is not held within the 21 days of the first round as stipulated in the constitution, the Maldives will go into a constitutional void.

24 September 2013

ⁱ <http://www.maldivesinfo.gov.mv/home/upload/downloads/Compilation.pdf>

ⁱⁱ <http://transparency.mv/tm-appeals-to-all-actors-to-refrain-from-undermining-the-integrity-of-election-day-processes-without-evidence/>

ⁱⁱⁱ <http://thecommonwealth.org/media/news/maldives-presidential-elections-2013-commonwealth-secretary-general-statement>

^{iv} <http://thecommonwealth.org/media/news/maldives-presidential-elections-2013-interim-statement>

^v http://www.ccprcentre.org/wp-content/uploads/2012/07/MALDIVES-7.13.12_v2.pdf