

MALDIVIAN LEGAL SYSTEM: CORRUPTION CONTROL MECHANISMS AND CODES OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS

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I. CONSTITUTIONAL BACKGROUND

The political scenario of the Maldives has been characterized by drastic changes and democratization of the country in the past few years. A custodial death of an inmate in Maafushi Prison facility in September 2003 sparked a riot in the streets of the capital city Male'. Following these totally alien scenes in Male', both government and the opposition united to bring about democratic reforms by giving more direct power to the people and recognizing a need for clear separation of powers. Subsequently, the reform movement got off the ground with massive reforms targeted at the legal system.

I call this the "Big Bang" theory of reforms. Much research has been conducted and reports written about the functionality and efficiency of the Maldivian legal system; hence many changes have been proposed. Among which, the most noticeable report was the report by Professor Paul Robinson, Colin S. Diver, Distinguished Professor of Law at the University of Pennsylvania Law School, which recommended a host of changes to the legal system to achieve further transparency and efficiency.

As the reform movement began in 2003, the Constitution of 1997 (hereinafter referred to as the 'Old Constitution' or 'Repealed Constitution') was in place, under which the judicial powers and the executive powers were concentrated in the President. Along with other defects, concentration of powers with the president and the need of the people for more reforms and democratic changes in the society led to the Constitution of 2008 (hereinafter referred to as "the New Constitution"). Little wonder then that the new Constitution paves the way for democratic reforms, and enshrines fundamental rights and freedoms in chapter II and elsewhere. Throughout the Constitution there is reference to rights and freedoms and requirements of justice institutions and others to protect and safeguard human rights to such an extent that it is often referred to as the "Human Rights Constitution" (it enumerates 52 fundamental rights).

This New Constitution was adopted on 7 August 2009 and replaced the Old Constitution of 1997. The new Constitution prescribes a clear separation of powers and introduces a presidential governance system with a multi-party system, a parliament with strong oversight powers, a system of local governance, and establishes a number of independent oversight bodies, such as the Civil Service Commission and the Human Rights Commission. The ratification of the new Constitution marks the culmination of one of the three tracks of the Reform Agenda introduced by the then President of the Country in June 2004.

The new Constitution also established five independent institutions. These are:

1. The Auditor General
2. The Prosecutor General
3. The Human Rights Commission
4. The Elections Commission
5. The Anti-Corruption Commission
6. The Judicial Service Commission.

II. MEASURES FOR CORRUPTION CONTROL IN THE MALDIVES

A. The Prevention and Prohibition of Corruption Act (2/2000)¹

The Prevention and Prohibition of Corruption Act (hereinafter referred to in this section as "the Act") of 2000 (2/2000) codified the various corruption control provisions and offences relating to corruption that

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¹ <http://www.agoffice.gov.mv/pdf/sublawe/Corruption.pdf>

existed in five different pieces of legislation dating from 1968 to 1978, namely the following;

1. Section 2 of Law No. 2/68 (General Laws);
2. Law No. 10/78 (Law on requesting things from those who request for things from the State or related to the State and those who undertake tasks in partnership or jointly with the government and, regarding things received from such persons);
3. Law No. 12/78 (Law on conducting business with a foreigner who has either requested something from the State or related to the State or who has undertaken tasks in partnership or jointly with the government);
4. Law No. 97/78 (Law on offences committed by government employees using position);
5. Law No. 98/78 (Law on government senior officials disobeying the laws and, acting in a manner that denies benefits to the public or the government where there is an advantage).

The Act takes a holistic approach and criminalized all the means of corrupt activities by government officials, government ventures, and public office bearers such as the members of the parliament and cabinet ministers. The Act criminalized the following:

- (a) The offence of offering and accepting bribery in relation to a task undertaken by the government;
- (b) The offence of offering and accepting bribery by members of the Parliament;
- (c) The offence of offering and accepting bribery in the judicial sector;
- (d) The offence of offering and accepting bribery in relation to a task undertaken by a member of the public;
- (e) The offence of offering bribery to a person without powers to fulfill the purpose for which bribery was offered;
- (f) Committing or attempting to commit a bribery offence through a person or group;
- (g) Bribing to exert influence;
- (h) In the event that the purpose of the bribe is not served, the act constitutes a crime;
- (i) The offence of obtaining undue advantage by government employees;
- (j) The offence of acting in a manner which precludes an advantage to the public or the State where a benefit exists;
- (k) The offence of assigning work, procuring for the government and using government property for personal gain;
- (l) Offence of hiding information and destroying evidence and documents;
- (m) Offence of giving wrong information;
- (n) Failure to appear for investigation;
- (o) Obstructing responsibility of the investigator;
- (p) Attempting to commit a crime stipulated in the Act.

The Act further states the manner of business dealings by the Chief Justice, Speaker of the Parliament and Ministers of the State and Employees of the Government. Furthermore, it stipulates the manner in which the government official shall react in the event he or she is given a gift by a person who requests something from the government.

In addition to the above, the Act gives special powers to the investigative agency to check and withhold bank accounts of the suspected person pending investigation. The Act also deals with the proceeds of corruption related crimes and states that property and money received through the commission of an offence stated in this Act and property obtained through such, whether with the person, with someone else, and where ever it is, whether sold or given to a person shall be confiscated.

B. The Anti-Corruption Commission (ACC)

The Anti-Corruption Commission (hereinafter referred to ACC) derives its powers from Article 199 (b) of the Constitution which says that “The Anti-Corruption Commission is an independent and impartial institution. It shall perform its duties and responsibilities in accordance with the Constitution and any laws enacted by the People’s Majlis. The Anti-Corruption Commission shall work to prevent and combat corruption within all activities of the State without fear”.

Interestingly, the Constitution mandated the ACC to provide a definition for corruption.

The five members of the ACC are presidential appointees, approved by a majority of the total membership of the Parliament from names submitted to it by the President. Members are appointed for a five year term renewable for a further term of five more years.

The responsibilities and powers of the ACC are contained in Article 202 of the Constitution. In addition, there is an Anti-Corruption Commission Act which further explains the powers and responsibilities of the ACC. ACC's main function are:

- (a) to inquire into and investigate all allegations of corruption; any complaints, information, or suspicion of corruption must be investigated;
- (b) to recommend further inquiries and investigations by other investigatory bodies, and to recommend prosecution of alleged offences to the Prosecutor General, where warranted;
- (c) to carry out research on the prevention of corruption and to submit recommendations for improvement to relevant authorities regarding actions to be taken;
- (d) to promote the values of honesty and integrity in the operations of the State, and to promote public awareness of the dangers of corruption;
- (e) to perform any additional duties or functions specifically provided by law for the prevention of corruption.

C. Code of Conduct

1. Members of the Independent Institutions and the PG

Following the ratification of the New Constitution, the parliament enacted enabling legislations for the independent institutions which the Constitution created, for which there is no enabling legislations, namely:

- The Anti Corruption Commission Act
- The Judicial Service Commission Act
- The Prosecutor General's Act
- The Elections Commissions Act.

Interestingly enough, the above mentioned acts specified codes of conducts or, rather, rules relating to the code of conduct for the members of the commissions and the Prosecutor General. However, it did not make note of the officers, staff and employees working in those institutions or who falls under the ambit of such institutions. In this regard, the Prosecutor General's Act introduced matters relating to the code of conduct of the Prosecutor General but does not make reference to the code of conduct for the officers, prosecutors and staff of the Prosecutor General's Office. Similarly, the Acts relating to the Elections Commission, Judicial Service Commission and the Anti-Corruption Commissions made reference to the code of conduct for the members of such institutes, however it does not make any reference to the code of conduct of judicial officers or officers of these institutions.

In the absence of any reference to code of conducts of the officers of the independent institutions in the Constitution or relevant acts of parliament, different institutions took different measures to regulate the ethics of the officers of the respective institutions.

It should also be noted here that, even in the absence of the said codes of conduct, prosecuting an official found to be involved in an unethical behavior, which falls under the criminal provisions stipulated in the Prevention and Prohibition of Corruption Act 2000, is technically, not too problematic. However, the question arises when the official clearly acts unethically but his or her act does not constitute an offence stated in the said Act. In such events, the code of conducts could be used as a basis for administrative and/or disciplinary measures to be taken against such officials.

The members of the independent institutions as stipulated in the Constitution are selected by the President among the applicants who apply directly to the President's Office, pursuant to a public announcement. The names are then sent to the parliament for approval. Upon approval from the parliament, the president appoints the members for a five year term, except for the Auditor General who is appointed for a term of seven years.

Except from being incapacitated to serve as a member of the independent institution, pursuant to relevant Constitutional article, an appointed member of such an institution can only be removed by following the below-mentioned rule;

A member of an independent institution can be removed from office during the tenure of his term, only for the reasons specified in article (a) and in the manner specified in article (b):

- (a) on the ground of misconduct, incapacity or incompetence; and
- (b) a finding to that effect by a committee of the People’s Majlis pursuant to article (a), and upon the approval of such finding by the People’s Majlis by a majority of those present and voting, calling for the member’s removal from office, such member shall be deemed removed from office.

2. The Maldives Police Service

The Maldives Police Service as the chief law enforcement agency derives its powers from the Police Act 2008. Under the Police Act, the police force is recognized as a civilian force. The Maldives Police Service has published a Code of Conduct for Police Officers.² Furthermore, under the Police Act 2008, the President has appointed a Police Integrity Commission, with the appointees being approved by the Parliament. The PIC consists of five members and has the jurisdiction to look into matters relating to misconduct of police officers. The Police Integrity Commission is vested with the powers to monitor the code of conduct of the police and take measures to curb any conduct that could pave way to corruption and/or misconduct. The PIC also has the power to test the integrity of the police officers, review any internal rules, regulations and procedures of the Police which may lead to corruption and/or police abuse of power and advice the Minister of Home Affairs accordingly. It also can review the disciplinary decisions and measures taken by the police internal disciplinary boards, for accordance with human rights values, good governance and best practices. The PIC is appointed for a five year term with possible renewal subject to approval from the Parliament.

The PIC was newly constituted in July 2009 and is yet to process any criminal cases for the Prosecutor General for criminal prosecution.

3. The Prosecutor General’s Office

Prior to September 2008 all prosecutions were conducted from the Attorney General’s Office (AGO). Lawyers from the AGO represented State in court proceedings, including all prosecutions. The PGO, as an institution was created by the Constitution and came into being from 7 September 2008. The Prosecutor General (PG) himself was appointed on 4 September 2008. The PGO derives its Constitutional independence from Article 220 that declares: “There shall be an independent and impartial Prosecutor General of the Maldives”. The responsibilities and powers of the PG are contained in Articles 223 to 229, inclusive. In addition, there is a PGO’s Act of Parliament.

According to Article 133(g) of the Constitution, the AG is mandated to *issue general directives to the PG on the conduct of the prosecutions*. However, article 220(c) restates the independence and the impartiality of the PG who shall be free from direction or control of any person or authority in carrying out his functions. This independence and impartiality is *subject only to the general policy directives of the AG* (noting that Article 133(g) uses the phrase “general directives” whereas article 220(c) refers to the *general policy directions*).

Under Article 223(a), the PG’s responsibilities and powers include supervision of prosecution of *all* criminal offences in the Maldives. Article 224 states that: “The responsibilities and powers of the PG maybe assigned with his express instructions, to any person working under his *mandate* or to any other person”. This language used in the Constitution proved problematic as it is unclear what meaning the word ‘*mandate*’ is referring to. Historically, when the prosecution powers were exercised by the AG, the island chiefs and other government officials at the island offices were instructed by the AG to appear as prosecutors in the hearings at island courts. The island ‘prosecutors’, who were the island chief or other government officials, did not have any legal background. Perhaps, it is only safe to assume that the legislative intention of the word ‘*mandate*’ may have been to stop this practice and ensure that a person with a legal background pursued criminal prosecutions in all parts of the country. Furthermore, the PG’s Act mandated the PG to establish island (regional) PGOs. In spite of that, it appears neither necessary (looking at the small number of cases arising from some of these regions), desirable nor financially feasible to set up PGOs in all regions. It was seen financially feasible and more practical to have mobile prosecutors who would travel around a region periodically to attend to cases in the island while the prosecutor remained stationed in the central office.

² <http://www.police.gov.mv/download/18b593d1394b8eded8ca459005b67233.pdf>

The PGO (or the prosecution service of former AGO) has been long considered as a stepping stone for fresh graduates to enter the legal field. Almost about 75% of private lawyers have had, at some time of their careers worked as a prosecutor. Currently, there are 43 prosecutors at the PGO.

D. Corruption and/or Ethical Violations at PGO

There has not been any report of corruption, abuse of power/discretion or ethical misconduct by a prosecutor in the past. This may be because of the following reasons.

1. **Close monitoring:** the prosecutors have a daily briefing session every morning for about 30-45 minutes, where every prosecutor will have to brief about their scheduled hearings for the day and the about the court hearings of the day before, to either the PG or the Deputy PG. At the daily briefings, prosecutors and their supervisors have fruitful discussions about complex cases scheduled for the day. This also gives the superiors an opportunity to be on top of matters as it happens.
2. **Duty Officer:** A senior prosecutor is appointed during the court hours, for prosecutors who appear to courts to discuss if an emergency situation arises where the prosecutor needs to make a decision. Prosecutors are given specific and very limited discretionary powers to make certain decisions.
3. **Daily reporting:** apart from the daily briefings, prosecutors have to report acquittal decisions made by the court to the Duty Officer upon their arrival back to office from court.

As mentioned before, Prosecutor General's Office does not have a Code of Conduct for prosecutors or the members of the secretariat of the PGO. Prosecutor General's Office has not been seen in the eyes of the public as a corrupt organization. In fact, after the 'independence' from the government, PGO or rather, the prosecution service has earned a rather unique position in the society. I believe it is time for PGO to gain visibility in the communities it serve and seize the moment to establish itself as the leading institution in delivering real change. I also believe it is important to have a code of conduct for officers of the PGO, not only to educate and inform the officers of their duties and dos and don'ts, but also to boost public confidence in the PGO and the criminal justice system as a whole.

III. THE JUDICIARY

The aforementioned Report on The Criminal Justice System of the Republic of Maldives: Proposals for Reform, by Professor Paul H Robinson, reads: "4.6 Published ethics rules and standards and procedures for impeachment – to insure that the judicial branch has the credibility with litigants and the public that is needed, it must be clear to all that the judges are beyond corruption and political influence. This cannot be done without public rules on judicial ethics and impeachment and removal that will avoid not only the judicial impropriety but also the appearance of impropriety".

A Judicial Service Commission (JSC) has been established under the New Constitution. The JSC consists of the following;

- (a) the Speaker of the People's Majlis (Parliament);
- (b) a Judge of the Supreme Court other than the Chief Justice, elected by the Judges of the Supreme Court;
- (c) a Judge of the High Court, elected by the Judges of the High Court;
- (d) a Judge of the Trial Courts, elected by the Judges of the Trial Court;
- (e) a member of the People's Majlis appointed by it;
- (f) a member of the general public appointed by the People's Majlis;
- (g) the Chair of the Civil Service Commission;
- (h) a person appointed by the President;
- (i) the Attorney General;
- (j) a lawyer elected from among the lawyers licensed to practice in the Maldives by themselves.

Pursuant to Article 159 of the New Constitution, the JSC is entrusted with (among other things) the responsibility and power to make rules on ethical standards of the judges. The current JSC inherited a draft Code of Conduct for Judges initially drafted by the transitional (first year of the ratification of the Constitution) Judicial Service Commission. The draft Code of Conduct is based on the Bangalore Principles on Judicial Conduct 2001.³ The Code is in the draft stage and not being implemented country wide. Nevertheless, the

³ http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

document has been circulated for consultation and judges are encouraged to act accordingly. Furthermore, the JSC Act lays down an elaborate procedure for administrative actions and measures against judges behaving in an unethical manner. However, in the absence of a full fledged Code of Conduct and clear boundaries and in the event the JSC decides to proceed with the procedure laid out in JSC Act against a judge, one may argue that it would create an infringement of a constitutional right of the judge in question as the judge may argue to be in a situation where he faces disciplinary measures for actions he never knew constituted infringements. Article 61 (b) of the Constitution states that “No person may be subjected to any punishment except pursuant to a statute or pursuant to a regulation made under authority of a statute, which has been made available to the public and which defines the criminal offence and the punishment for commission of the offence”.

Article 151 of the Constitution states that; “Every Judge shall devote his full time to the performance of the responsibilities of a Judge. A Judge shall perform other work only in accordance with and as specified by the statute relating to Judges”.

The Constitution further states in article 152 that; “Judges shall be paid such salary and allowances in keeping with the stature of their office as determined by the People’s Majlis”.

Article 153 of the Constitution reads; “Every Judge shall annually submit to the Judicial Service Commission a statement of all property and monies owned by him, business interests and all assets and liabilities”.

IV. EDUCATION AND TRAINING OF CRIMINAL JUSTICE PERSONNEL IN THE MALDIVES

In Maldives, there is no certain examination or training one has to go through to get listed as a lawyer. After a law degree or similar qualification, an application to the AGO is made for a practicing certificate, which if granted allows the lawyer to practice in court ‘for life’. A judge does not have to go through any specific training to be nominated and appointed as a judge. Therefore, some judges and lawyers lack basic training on ethics or professional behavior for numerous reasons. On the job training is conducted for judges and prosecutors but these trainings are mostly focused on the daily functions or administration of the technical work that will be assigned to them in the future, rather than focused training on ethics or the likes.

V. PROCEDURAL REGULATIONS IN THE MALDIVES

There is no written rule in the Maldivian legal system as to recusal of judges. However, an unwritten practice is maintained by the judiciary that a judge voluntarily resign from handling the case in question if he finds that he cannot conduct a fair hearing, given the relationship he has with a person involved in the case. As for removal or impeachment of a judge, Article 154 of the Constitution states:

- (a) A Judge shall not be removed from office during good behaviour and compliance with *judicial ethics*.
- (b) A Judge may be removed from office only if the Judicial Service Commission finds that the person is grossly incompetent, or that the Judge is guilty of gross misconduct, and submits to the People’s Majlis a resolution supporting the removal of the Judge, which is passed by a two thirds majority of the members of the People’s Majlis (Parliament) present and voting.

No such procedures or a guideline has been set to disqualify prosecutors on ethical grounds.

Internally, judiciary, prosecution and the police have unwritten rules whereby a conflict of interest or possible biasness is reported as soon as the case is handed over to the official.

The prosecutors are obliged by their employment contract to register their affiliations, allegiances and/or relationships that could affect their work as prosecutors.

IV. DEFENCE LAWYERS/THE LAW SOCIETY OF THE MALDIVES?

The lawyer’s community in the Maldives is represented by the Law Society of Maldives, a profession-based NGO aspiring to become a bar association. The LSM has a member base of about 80% of the lawyers in the country and also has a Disciplinary Committee to oversee the conduct of its members with regard to

their ethics and professional behaviour. However, the lack of recognition and legislative status for the LSM has resulted in LSM being unable to take disciplinary measures against its members who act unethically. In spite of that LSM has acted in an advisory role for the Attorney General in his functions as the regulator of legal profession in the Maldives. Furthermore, the ethics code for lawyers is a rudimentary document lacking proper mechanisms for effective implementation.⁴ Perhaps, the LSM can play a major role in the awareness of judicial ethics to judges, prosecutors, legal community and the general public.

VII. RECENT DEVELOPMENTS

A. Auditor General's Reports

Over the past year or so, the Auditor General has produced reports and findings of his audits of some very important government ministries and government owned companies, where he has reported to have observed "*systematic, wide spread corruption and misappropriation of public funds*". These government organizations include the former Presidential Palace, the Ministry of Atolls Development, the State Trading Organization, and the Bank Of Maldives Plc. Hence, the President has ordered the police to investigate the allegations of corruption referred to by the Auditor General in his reports. Some of these cases involves monies worth at least five million Maldivian Rufiyaa (approximately 400,000 USD) at the police minimum estimate. Furthermore, most of the alleged suspects are the top brass of politicians, the Minister of Atolls Development himself, and two politicians who won the recent parliamentary elections and are now sitting MPs with one holding the vice presidency of the Parliament.

Additionally, there are cases relating to five sitting MPs in the investigation stage and if successfully prosecuted and found guilty, may unseat them at the parliament. With the opposition holding an unstable majority at the Parliament, few seats in the parliament looks too attractive to all political parties in order to gain political ground inside the parliament.

B. Island Magistrate's Corruption Case

At the island courts of the Maldives, magistrates usually head the administration and financial sections of the courts along with the technical services of the courts. The Anti-Corruption Commission (ACC) is investigating a case involving three magistrates who alleged to have misappropriated public funds and are alleged to have paid monies to individuals for boat hiring charges for trips that he never travelled. We are yet to know the extent of this alleged corruption. However, ACC reported that the courts in question refused to provide information and co-operate with the ACC. This, I believe is a serious setback for the ACC and the fight against corruption. We are yet to know what twists this case might take, but the relevant authorities need to interfere and settle the matter sooner.

C. Presidential Commission to Investigate alleged Corruption of the Former Government

The Maldives voted in a new government in November 2008 and the new president, using his powers under Article 115 of the Constitution, established a Presidential Commission (PC) to investigate the alleged corruption of the former government. The Commission collects relevant information and forwards it to police for further investigation and finalization before submitting to the PGO for possible prosecution. The former president and his brother (an MP) and some other notable figures are under investigation by this Presidential Commission.

VIII. ISSUES/SETBACKS IN THE FIGHT AGAINST CORRUPTION

It is safe to say that the conviction rate of corruption cases is relatively high in the Maldives. However, I must note that the punishment the courts impose on the convicts are far too lenient and therefore do not serve as a deterrent for the general public. There may be two reasons for this lenient direction taken by the courts.

A. Sentencing Guidelines

Professor Paul Robinson, in his report on Maldivian Criminal Justice System, says: "the sentencing of criminal offenders ought to be guided in some way to insure uniformity in application (the sentence ought to depend upon the crime and the offender, not upon the selection of sentencing judge)".

⁴ <http://www.judiciary.gov.mv/Admin/Regulations/Vakaalaathu-kurumaabehey-gavaaid.pdf>

There are no sentencing guidelines in the Maldives, therefore, different judges may differ in their sentences and hardly any consistency is maintained. Sensitizing the judges on the issue of corruption and the costs of it to the state may help solve some of the current problems in the sentencing.

B. The Punishments prescribed in the Prevention and Prohibition of Corruption Act 2000

The Prevention and Prohibition of Corruption Act 2000 prescribes different lengths of the following punishments:

1. Imprisonment
2. House Arrest
3. Banishment.

The courts, for some reason, have preferred banishment for the island chiefs and atoll chiefs who were prosecuted for misappropriation of public funds and other crimes relating to corruption. In addition, while ordering repayment of the monies embezzled, the court orders the payment to be made after completing his punishment, and on installment basis. There is no, or very little, effort made by the relevant authorities to recover this money once due. This practice did have a deterring effect on the general public and hence, the purpose of the Prevention and Prohibition of the Corruption Act may not have been fulfilled. Subsequently, this puts the public confidence in the criminal justice system in jeopardy.

IX. CONCLUSION

In conclusion, in the Maldives, with the ever-changing political situation and the potential pressure from the government on the criminal justice system, it is important for the criminal justice service providers to remain impartial and provide justice for the community. Hence, the importance of championing ethics is vital to attract and maintain the public confidence in the criminal justice system. Additionally, in today's globalized world, there is ample experience in other countries to learn from. We should not try to reinvent the wheel. We must learn from other countries' experiences and sharing such experiences can make a lot of difference to the way we approach whatever problems we may face in the future.