

Policy Note 16

Reform of the Legal and Justice Sector



Maldives
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Investing in a Resilient & Sustainable Maldives

Reform of the legal and justice sector will undoubtedly be one of the most important areas of work to be undertaken by the Government. While lack of necessary laws, and incompleteness of the legislation in force continues to hinder effectiveness of state institutions, enforcement of these laws within a judiciary tainted with allegations of incompetence, corruption and political influence, continue to deter democracy consolidation in the Maldives.

Issues such as low levels of public confidence, lack of uniform procedures, delays in delivering justice, affordability and cost to the State, hinder effectiveness and efficiency of the justice sector in Maldives. Commitments to reform are constantly undermined by the slow pace of implementation, inaction, widespread corruption and abuse of power.

The most critical step to strengthen access to justice and instill public confidence in the judiciary is to establish transparent recruitment, disciplinary, promotion and removal procedures for the judiciary. Furthermore, investments need to be directed towards training and qualifications of justice sector personnel. There is also a need to ensure that the court structure is designed in a manner that best caters for the needs of the society.

The Government's vision is to establish an independent judicial system that is free from undue influence and build a justice system that is accessible and protects human rights in accordance with the Constitution, Maldivian law and the international obligations of the state.

Reforms in this area will be implemented through the following policy directives.

I. Legislative Reforms

Legislative reform will be undertaken in two main tracks. The first track will consist of formulating new laws necessary to enhance the legal framework. The second track will encompass a legislative review including a long-term plan to undertake a review of laws for its compliance with the constitutional and international obligations of the state.

In that regard, important bills were submitted to the Parliament within the first 100 days of the Government. Transitional Justice Bill, Juvenile Justice Bill, Child Rights Bill, Bill allowing legislative authority to the Presidential Commissions, Legal Professions Bill, Whistle Blower Protection Bill and the Bill amending the Penal Code to criminalise illicit enrichment, are some of the key bills that have been presented to the Parliament.

In addition to the above, Legal Aid Bill, Foreign Investment Bill, Environmental Protection Bill are some key legislation awaiting formulation. A Legislative Agenda has been formulated, which identifies new laws as well as amendments to be introduced within the current five-year term of the Government.

Within the second track for legislative reform, laws were reviewed

to identify and amend pieces of legislation that were purposefully enacted to disadvantage a certain group of people, laws that hindered proper functioning of the independent institutions and legislation relating to the decentralised system of governance in Maldives. A long-term legislative review will aim to assess all primary and secondary legislation in Maldives, to ensure its compliance with human rights protections, constitutional and international obligations of the state. This involves revising outdated laws and harmonizing existing legislation. The Government plans to establish a Law Commission, which will undertake the said legislative review work.

II. Judicial reforms:

Government proposes the following reforms to the judiciary.

a) Reforms relating to Court Administration and Court Structure

i. Establishing the Office of Court Management: Proposed reforms will focus on establishing an administrative body, headed by the Chief Judicial Administrator. The Parliamentary Standing Committee on Independent Institutions shall bear responsibility for the appointment and removal of the Chief Judicial Administrator, who will be accountable to the same parliamentary committee.

ii. Expanding the role of Registrars: Broadening the mandate of the Registrar is a significant component of reforming internal court administration. Registrars will be empowered to make decisions on the admissibility of a case without any involvement of the Judges. Registrars will be expected to handle case management and scheduling, at the same time be responsible for all administrative functions across all tiers of the judiciary. The Chief Judicial Administrator will appoint and remove Registrars.

iii. Redefining the authority and jurisdiction of the Supreme Court: Government plans to introduce legislative amendments to ensure that the Supreme Court functions within the ambit envisaged by the Constitution. As such through said amendments, the Supreme Court will be prevented from assuming suo-moto jurisdiction to issue court orders, rulings or adjudicate on constitutional matters or annul any law or parts thereof without conducting open hearings. Such legislative measures will also put an end to the Judiciary's encroachment on the other powers of the State.

iv. Establishing District Courts: To increase efficiency, legislative amendments will be proposed to restructure the current court system to introduce District Courts in identified regions, with each court having a combined jurisdiction similar to that of the current Superior Courts in Male'. Male' as the Capital will retain its separate superior courts (Civil Court, Criminal Court, Drug Court, Juvenile Court, Family Court) and specialized courts established by law (eg: Drug Court). It is also envisaged that enactment of the Juvenile Justice Act will introduce District level Juvenile Courts. Magistrates' courts, with limited jurisdiction, will remain in most islands to ensure access to justice.

v. Restructuring of the High Court: As per the Government's plan, the

High Court of Maldives will be restructured to dissolve the northern and southern divisions. It is proposed that High Court Judges will sit as circuit judges in other regions when required. Where High Court hearings are to be held outside of Male', arrangements could be made to utilize the District Court buildings to conduct High Court proceedings.

b) Reforms relating to accountability and integrity of the judiciary

i. Reforms to the Judicial Service Commission (JSC): It is widely accepted that the current composition of the JSC is inadequate and politicized. Because of this politicization, the Commission faces serious allegations of corruption, external influence and has consequently been unable to function properly. The Government plans to introduce legislative reforms to revamp the composition of the Commission and adopt a model that would be free of political representation, preferably with judges (either sitting or retired), legal practitioners and non-legal academics. It is also important that the Commission be comprised of members who can dedicate their time to the Commission's work. Reform to Judicial Service Commission will also encompass establishing simple mechanisms through which complaints against judges could be submitted anonymously. The Commission will further develop systems to ensure timely evaluation of judges' competencies and devise a mechanism whereby judges' allowances are tied to their performance.

ii. Appointment of Judges and conducting Disciplinary Proceedings:

The Government believes that a transparent merit-based process for the selection and appointment of judges constitutes an important step towards regaining the public confidence. Amendments will be proposed to the Judges Act and the Judicial Service Commission Act to effect these changes. The Government also aims to propose legislative amendments to introduce rules of conduct relating to judges based on international best practice. To improve the criteria used to initiate disciplinary proceedings and the conduct of proceedings, the Government plans to propose amendments to the law to require the adoption of transparent rules of procedures for disciplinary proceedings, to avoid selectivity in the management of cases.

iii. Re-evaluating the Competence and Qualification of Judges

The Government aims to ensure that justice is administered by qualified and competent judges by re-evaluating their current qualification criteria. The proposed reforms will also aim to increase the current requirement of experience in the legal profession, so that more experienced legal practitioners would be appointed as judges. To address gender balance and representation, Government aims to effect changes to increase the number of women employed in the justice sector.

iv. Continuous judicial and legal education is another key area which needs immediate and urgent attention. Quality education, in-profession training and capacity-building programmes for all actors of the judicial system are essential to ensure the independence and impartiality of the judiciary and the smooth administration of justice.

III. Establishing a Bar Council

The Legal Profession in Maldives needs a self-regulating independent bar association that can oversee the admission of candidates to the legal profession, administer a uniform code of ethics and conduct, and enforce disciplinary measures.

The Government envisages to introduce a Bar Council (to be established by the Legal Professions Act) which would contribute to the betterment of the justice system. Establishing a Bar Council will ensure that all matters relating to lawyers are governed by an independent statutory body.

The Legal Professions Bill was submitted to the Parliament in the last quarter of 2018.

IV. Establishing a Public Defender's Office

While the Constitution of the Republic of Maldives obliges the state to provide legal representation to individuals who cannot afford it in serious criminal cases, limited resources hinder effective provision of legal service to those in need. The primary objective of establishing a Public Defender's Office is to provide legal representation to individuals who are unable afford it due to financial constraints. The Government envisages that the Public Defender's Office will facilitate maximum realization of the right to legal representation.

V. Establishing a Law Commission

Government plans to establish a Law Commission, to draft laws, inform the Parliament of errors and inconsistencies in laws, review laws and regulations published on the Government Gazette and make them accessible and available to public. The Law Commission will also be mandated to monitor the formulation of necessary regulations and ensure that all regulations formulated by Government ministries, courts and institutions are made available to the public in a timely manner.

VI. Establishing Alternative Dispute Resolution (ADR) Mechanisms

The Maldives is in immediate need of ADR mechanisms. The Government wishes to work towards introducing ADR mechanisms including mediation and conciliation. A particularly important priority for the Government is to commence work to strengthen the Maldives International Arbitration Centre established through Law Number 10/2013 (Arbitration Act). The Maldives International Arbitration Centre requires assistance towards acquiring necessary infrastructure, by-laws and the technical know-how to commence their work.