



## Position Paper

# Criminalising illicit enrichment to curb grand corruption

## Introduction

Criminalising the offence of illicit enrichment is a matter of urgency in the Maldives. Several studies and surveys undertaken by Transparency Maldives to assess the public perception of corruption in the Maldives indicate the prevalence of grand corruption<sup>1</sup> by officials at the upper echelons of the state. The Global Corruption Barometer Survey undertaken in 2013 indicate that while 97 per cent of respondents believe that corruption is a problem at the public sector, the Parliament—followed closely by political parties and the judiciary—is perceived to be the most corrupt institution in the country.<sup>2</sup> This finding corroborates with the Democracy Survey conducted in 2014, which found that representative institutions such as the Parliament are where the public have the least confidence.<sup>3</sup> Allegations and speculations of corruption in the public sphere is common, particularly with regards to illicit enrichment in

parliamentary floor crossing and Cabinet Ministers' sudden increase in significant wealth. In fact, a survey conducted in 2015 found that majority of respondents perceive floor crossing as an act connected to corruption and believe that floor crossing happens because parliamentarians receive money or some sort of material gain from another party by voting against own party line or switching parties.<sup>4</sup>

However, despite the public perception that grand corruption is high and widespread media coverage of high profile public officials under serious allegations of illicit enrichment, this is not reflected in the number of investigations, prosecutions and convictions carried out by the relevant state bodies. In fact, according to records<sup>5</sup> from the Prosecutor General's Office, only 3 cases of bribery have been prosecuted between 2010-2014, out of which only 1 case ended in a conviction. During the same period, 37 cases were prosecuted for the offence of undue advantage by government employees but to date only a

<sup>1</sup> Grand corruption refers to acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good.

<sup>2</sup> See: <http://transparency.mv/wp-content/uploads/2013/12/FINAL-TM-POSTER-ENG-pdf>

<sup>3</sup> See: <http://transparency.mv/files/download/e8f3d2774a2df995ea1481b01d361330.pdf>

<sup>4</sup> See: <http://transparency.mv/en/news/news/baseline-research-on-floor-crossing-in-the-maldives-2415447d8c0d3287bb6db95455f99729>

<sup>5</sup> Records were obtained under the Right to Information (RTI) Act via an RTI application submitted to the Prosecutor General's Office.

single case<sup>6</sup> has gone through the complete process of appeal. The accused in the case—former MP Ismail Abdul Hameed of Kaashidhoo constituency—was convicted and sentenced to 1-year banishment and as a result he lost his seat in the Parliament.

Successful convictions are low and have not been forthcoming largely because proving ill-gotten wealth through bribery and other corrupt means is currently difficult in the Maldives as there is no legal provision criminalising illicit enrichment.

## Defining illicit enrichment

Illicit enrichment specifically targets public officials and holds them under scrutiny for any increase in unjustified wealth. The United Nations Convention Against Corruption (UNCAC), to which the Maldives acceded to in 2007, defines illicit enrichment as “a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income”.<sup>7</sup> Such provisions are typically coupled with laws requiring disclosure of income, assets, and liabilities by public officials. As a signatory state to the UNCAC, Maldives is recommended to criminalise illicit enrichment as an anti-corruption measure.

## Efforts to criminalise illicit enrichment in the Maldives

Curbing corruption requires commitment of all branches of the state. The Parliament, in particular, has a greater legislative role in enacting the necessary legal framework to prevent and curb all forms of corruption. However, there is currently no real and sincere political will to push for illicit enrichment legislation. Presumably, this lack of political will stems from the fact illicit enrichment legislation specifically targets public officials and threatens the absolute impunity they currently enjoy. In fact, the only state institution that has made illicit enrichment a priority is the Anti-Corruption Commission (ACC). In March 2015, the ACC submitted to the Attorney General’s Office (AGO) 13 amendments, including the criminalisation of illicit enrichment, to the new Penal Code. Although the amendment on illicit enrichment was not included in the list submitted to the Parliament at the time, at present, discussions are underway between the ACC and the AGO regarding the criminalisation of illicit

<sup>6</sup> This information was provided by the Anti-Corruption Commission.

<sup>7</sup> UNCAC, Article 20.

enrichment.

## Advantages of criminalising illicit enrichment

Attempts to curb illicit enrichment in the Maldives and internationally show that without legislation in place, it is extremely challenging to prove ill-gotten wealth through corrupt means. Corrupt acts, as well as the money trail connected with it, are always either hidden or obscured. Illicit enrichment laws remove such barriers and provide a mechanism for successful prosecution.

A World Bank study shows that recovery of ill-gotten wealth is successful in a number of countries where legislation on illicit enrichment exists.<sup>8</sup> In Pakistan, for example, out of 280 cases of illicit enrichment filed before the courts, 127 cases have ended in convictions.<sup>9</sup> In France allegations of illicit enrichment have been used to levy money laundering charges against Equatorial Guinea’s minister of agriculture, who also happens to be the president’s son.<sup>10</sup> In Greece, the purchase of a pricey home has led to the conviction of a former defence minister on corruption charges.<sup>11</sup>

However, illicit enrichment legislation alone is not sufficient to curb corruption. A comprehensive asset declaration regime that serves the dual purpose of preventing and detecting corruptly accumulated wealth must be in place to result in successful prosecution for the crime of illicit enrichment. An effective asset declaration regime is one in which asset declarations of public officials are disclosed to the public and a verification mechanism is established to detect cases of conflict of interest, misappropriation of funds, and undue advantage. While asset declarations can identify cases of illicit enrichment and serve as evidence to file corruption charges, it is ultimately the criminalisation of illicit enrichment that maximise the chances of such cases being successfully prosecuted.

Since grand corruption is perceived to be very high and public officials continue to enjoy a long legacy of unchecked impunity, strong and effective implementation of asset disclosure and criminalisation of illicit enrichment is much needed in the Maldives.

<sup>8</sup> See: [http://star-worldbank.org/star/sites/star/files/on\\_the\\_take\\_-\\_criminalizing\\_illicit\\_enrichment\\_to\\_fight\\_corruption.pdf](http://star-worldbank.org/star/sites/star/files/on_the_take_-_criminalizing_illicit_enrichment_to_fight_corruption.pdf)

<sup>9</sup> Ibid., p. 57.

<sup>10</sup> See: <http://www-bbc-com/news/world-africa-26666871>

<sup>11</sup> See: <http://greece-greekreporter-com/2012/04/11/former-socialist-minister-akis-tsochatzopoulos-arrested-for-money-laundering/#sthash-CVxyBZyx-dpuf>