



A number of commentators and observers working in the area of judicial reform, including special rapporteurs on the independence of judges, ICJ commissions and local Non Government Organizations that have the judiciary within their ambit of concern have conducted surveys and appraisals of the Maldivian judiciary and have found numerous issues meriting serious attention. The purpose of this governance update is to provide the general public with a primer on some of the most important of these issues so that they are better informed and thus equipped to contribute to this important discussion.

Before delving into these issues, for the sake of fairness, it is important to highlight that some progress has been made in terms of strengthening the Maldivian court system and putting our judiciary en route to becoming a more mature institution. Most notably, when the former special rapporteur on the independence of judges and lawyers, Leandro Despouy visited the Maldives in 2007, the Maldives' legislative framework was undergirded by the constitution of 1997, under which the judicial system was simply an extension of the executive – with the president possessing ultimate authority on all matters relating to the dispensation of justice. Furthermore, oversight mechanisms that could adequately monitor judges or ensure that only qualified individuals could be appointed to judicial posts were severely lacking.

Following the promulgation of the 2008 constitution however, as noted by the current Special Rapporteur Ms. Gabriella Knowles, a separation of powers was mandated between the executive, legislative and judicial branches of government, all of which were to function independently under a system of checks and balances. The Supreme Court (SC), not the President, would henceforth be the ultimate authority on judicial matters. Furthermore as stated in Chapter 6 of the Maldivian Constitution – which pertain to all constitutional provisions relating to the judiciary - judges were henceforth to be held to standards and criteria that would theoretically guarantee that only those individuals who were adequately qualified and abided by certain ethical and professional standards would remain on or be appointed to judicial benches.

Nonetheless, bridging the gap between what was theoretically envisioned under the constitution and the existing reality has been problematic. Consequently, serious issues persist in the judiciary. These include an extremely flawed selection and monitoring process; abuse of power, partly due to misinterpretations of the concept of judicial independence; that the institution mandated with holding the judiciary accountable to ethical and professional standards - chiefly, the Judicial Services Commission (JSC), is itself a highly compromised body; a lack of supplementing legislation to ensure that investigations and trials

abide by internationally acceptable standards; the lack of women in the judiciary; and finally, a lack of public trust in the judiciary.

The rest of this bulletin will elaborate on these key issues. It will be stated at the outset that this piece is not intended to be a comprehensive review of the entire Maldivian judiciary but – to reiterate – a primer on some of the important issues that merit concern.

FLAWED APPOINTMENT AND MONITORING PROCESS

As previously stated, it was envisaged that following the promulgation of the 2008 constitution that the composition of the judiciary would be overhauled in such a manner that only adequately qualified and experienced individuals would retain judicial posts. This is pursuant to Article 149 (a) of the current Maldivian constitution, which stipulates that ‘a person appointed as a Judge...must possess the educational qualifications, experience and recognized competence necessary to discharge the duties and responsibilities of a Judge, and must be of high moral character’.

Furthermore, article 258 of the constitution mandates that the JSC would be the screening body tasked with ensuring that judges’ qualifications accorded with the criteria set in Article 149; furthermore the JSC is also tasked with monitoring all instances of corruption relating to the judiciary.

Nonetheless, in practice the criteria in appointing judges as delineated by the constitution has largely been ignored. There was to be a two year period – from 2008 to 2010 - during which the JSC was to carry out its screening procedures. While it is not within the scope of this bulletin to provide a detailed summary of the events that took place during this period, suffice it to state that numerous criminal allegations against sitting judges were not investigated and ultimately all but six sitting judges were re-instated into their positions. Due to the flaws inherent in this process it has been argued that a number of sitting judges on the Supreme and High Court benches are unqualified to hold such prominent positions.

It should also be noted that the JSC has itself been noted to be a highly compromised body due to the fact that its members hold political affiliations, and are thus unable to carry out their duties in an im-

partial manner. This has the consequence that the main institution mandated with overseeing the conduct of the judiciary cannot effectively fulfill its task of ensuring that the judiciary is held to account for any potential transgressions.

ABUSE OF POWER

While it must be praised that there are constitutional safeguards to ensure that the judiciary is now an independent body, the judiciary has interpreted the concept of its own independence in such a manner that puts it above oversight and criticism.

The SC has on a number of occasions threatened to punish individuals and bodies that are critical of its decisions. For instance, in February 2014 the SC initiated proceedings against members of the Election Commission (EC) for criticizing a SC ruling that had taken place the previous year; as a consequence the president and vice president of the EC were dismissed from their posts.

In a similar incident the SC also initiated proceedings against the Human Rights Commission of the Maldives (HRCM) for having submitted documents to the Universal Periodic Review (UPR) criticizing the undue influence of the SC on the lower courts. As a consequence individual members of the HRCM were summoned for questioning, and the following year, the court published guidelines effectively barring the HRCM from communicating with foreign organizations.

As Gabriella Knowles notes, ‘the concept of judicial independence is not aimed at benefitting judges, but rather the court users, as part of their inalienable right to a fair trial’ rather than as a tool to stifle the discussion and criticism pertaining to the conduct of the judiciary.

LACK OF SUPPLEMENTING LEGISLATION

Despite the constitutional attempt to bring the Maldivian judiciary in line with modern standards, there has been a lack of supplementing legislation to ensure that the processes relevant to investigations and trials are suited to the modern day.

While it is to be positively noted that a revised Penal Code was put into effect on the 16th of July 2015, the Maldives is still lacking a proper Criminal Procedure Code, Sentencing Act and Civil Procedure Code; furthermore, the existing Evidence Act is out-dated.

This has the cumulative effect that investigations and trials are not always carried out in such a manner that abides by international standards on practices.

LACK OF FEMALE REPRESENTATION IN THE JUDICIARY

The gender balance in the judiciary is concerning, with very few women judges sitting on court benches. Currently no woman sits on the SC bench and only one woman sits on the High Court. Furthermore, when the number of women judges sitting on the High Court, the Superior Courts and the magistrate's courts are totaled, the number is only eight.

It should be noted that this is illustrative of a wider trend relevant to the entire country whereby women are consistently underrepresented in professional and public life. Further note should be made that the Maldives is a signatory to the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) and thus, concomitantly, the Maldives is bound by international law to remedy this situation.

LOW LEVEL OF PUBLIC TRUST IN THE JUDICIARY

Public trust in the judiciary has persistently been extremely low - a statement that can be corroborated by the results of the Democracy Survey of 2013 according to which the Maldives judiciary enjoys very little public confidence. Furthermore according to the Global Corruption Barometer of 2013 within the Maldives, the dominant perception within the public is that corruption is extremely widespread within the judiciary.

Regardless of the substantive merits of such perceptions this lack of confidence in the judiciary has serious consequences. As noted in the Bangalore principles Judicial Conduct, justice must not only be done it 'must be seen to be done' - as a public that lacks faith in the integrity of the judiciary are unlikely to be respectful of its decisions or turn to the court system as a recourse to have their disputes resolved. A lack of trust in the judiciary undermines one of the three pillars of a democratic society, and it is essential that steps are taken to increase the public's confidence in the courts.