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MALDIVES RULE OF LAW ASSESSMENT

June 2019

This publication was produced at the request of the United States Agency for International Development (USAID). It was prepared independently by Integra LLC under Asia Emerging Opportunities (AEO).

MALDIVES RULE OF LAW ASSESSMENT

Asia Emerging Opportunities – Final Report

Contract Title: Asia Emerging Opportunities
Contract Number: GS-10F-083CA / 7200AA18M00015
Activity Number: AEO – 1011.1002
Submitted: June 25, 2019
Contractor: Integra Government Services International LLC
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Washington, DC 20005
USAID Office: Asia Bureau

This publication was produced for review by the United States Agency for International Development (USAID). It was prepared by Integra Government Services International.

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ACRONYMS

ADR	Alternative Dispute Resolution Systems
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
DJA	Department of Judicial Administration
DRG	Democracy, Human Rights, and Governance
ICITAP	International Criminal Investigation and Training Assistance Program
ICJ	International Commission of Jurists
IFES	International Foundation for Electoral Systems
IMF	International Monetary Fund
JSC	Judicial Service Commission
LLB	Bachelor of Laws
MDN	Maldivian Democratic Network
MDP	Maldivian Democratic Party
MMPRC	Maldives Marketing and Public Relations Corporation
MPS	Maldivian Police Service
OPDAT	Office of Prosecutorial Development, Assistance and Training
TM	Transparency Maldives
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Program
USG	United States Government
USAID	United States Agency for International Development

I. EXECUTIVE SUMMARY

This report reviews challenges and opportunities for advancing the rule of law in the Republic of the Maldives and proposes a possible strategy and programming approach for USAID support.

BACKGROUND

Historically a Muslim sultanate and a British protectorate, the Maldives was governed by a series of authoritarian leaders following its independence in 1965. In 2008, the country adopted an impressive new constitution that provided clear separation of executive, legislative, and judicial powers, created several independent commissions intended to provide safeguards against political interference, and established an extensive enumeration of individual rights and freedoms. However, sharp political differences and determined resistance frustrated implementation of the new charter. In particular, a planned evolution and renewal of the judiciary was blocked, and the reformist President, who had been elected in 2008 in the country's first multi-party election, left office and was later jailed.

In the following decade, the status of the rule of law continued to deteriorate. Up until the November 2018 inauguration of the present government under the leadership of President Ibrahim Mohamed Solih, the Maldivian justice system was characterized by political interference, pervasive inefficiency and corruption, and diminishing access to reliable justice. Major studies of the administration of justice in the Maldives during this period were highly critical of the politicization of the judiciary, including the government's interference with the courts as well as the use by the courts of their asserted powers for apparently political reasons and to stifle dissent.

THE CURRENT SITUATION

The elected government that took office in November 2018 has committed itself to a new course toward a democratic future, including through reform of the justice system. A landslide victory for the governing Maldivian Democratic Party (MDP) in April 2019 parliamentary elections has considerably strengthened the hand of reform proponents within the government. With a solid two-thirds majority, the government will be able to move necessary legislation, remove unfit judges, and consider constitutional amendments.

New justice reform proposals have been circulated by the MDP, the elected government, and the Supreme Court. While these proposals represent largely competing notions of reform, they include some compatible ideas. For example, they all include a public defender system, expanded court presence in the atolls, improvements to the body of legislation, and increased and better use of modern technology. Thus far, civil society has not had a significant role in the debate and its ideas and concerns have not been heard.

US relations with the Maldives have warmed since the inauguration of the Solih government, and the US Government budget for outreach and assistance has broadened and increased. A Development Objectives Assistance Agreement with USAID contemplates cooperation to strengthen the rule of law. In addition, the Departments of State, Justice, and the Treasury are considering activities in the Maldives relevant to justice reform. In addition to the United States, the United Nations Development Program has a program to support democratic governance, the rule of law, and human rights. Germany also appears to be beginning a program on strengthening the rule of law in the Maldives.

THE MALDIVIAN JUSTICE SYSTEM

The Maldivian justice system is based on the Constitution and a body of statutes, treaties, regulations, and judicial precedent. The Constitution instructs the courts to "promote the values that underlie an open and democratic society based on human dignity, equality and freedom." Principal sources of law are the English common law and Sharia. There is an unresolved tension between these different jurisprudential views.

In the three-tier court system, the Supreme Court and the High Court mainly hear appeals. The first instance courts are the superior courts located in the capital, Malé, and magistrate courts located on the

populated islands. In total, there are about 200 judges.

If the courts find that a statute is contrary to a “tenet of Islam,” the statute is void. However, the Constitution defines this term narrowly to mean only universally agreed principles. In interpreting statutes and regulations, courts are required to give effect to the constitutional mandate that they must consider Sharia, but they may also consider other sources of guidance, such as foreign and international judicial decisions. In criminal cases, the Constitution requires that any punishment be pursuant to a statute or regulation and the penal code includes Sharia offenses. However, the Supreme Court has rejected efforts by lower courts to apply severe historic punishments derived from Sharia (such as by overturning sentences of death by stoning).

The Maldives has a low level of crime. The Police Service regards the potential for extremist violence and terrorism to be the greatest threat to public order and safety. The greatest volume of work for the police and the prosecution service is attributable to the illicit distribution and use of drugs. Street gangs, some with connections to radical groups, are also a concern.

CHALLENGES AND OPPORTUNITIES

Advancing the rule of law will face formidable challenges, which include the following:

- A)** The inability to implement desired reforms following the 2008 Constitution caused frustration and created competition and contention among the branches of government. This competition has involved a lack of mutual respect for each other’s roles and responsibilities.
- B)** The weak institutions that make up the justice system lack the needed technical capacity and familiarity with established standards to carry out a far reaching and complex reform.
- C)** An expectation of corruption permeates the justice system.
- D)** There has not been a mutually respectful, balanced accommodation of the two principal sources of Maldivian law – common law and Sharia. There is tension between the liberal human rights orientation of the Constitution and conservative historic beliefs and practices.
- E)** There is low public trust and confidence in the justice system. This is aggravated by the absence of educational or outreach efforts by the government, the courts, or the legal community.

Recent developments have created an opening to address weaknesses in the rule of law. But contending factions have differing reform agendas, and there is a real risk that reforms will be attempted without the benefit of inclusive dialogue, adequate implementation capacity, or expert knowledge. In this context, USAID can play an important role by providing access to needed international expertise and by promoting inclusive dialogue that enables all local stakeholders to contribute their ideas and efforts to the reform process. Time is of the essence, given the Maldivian political calendar.

For the medium term, USAID might provide a technical advisor who could facilitate the timely introduction of international expertise and discuss with Maldivian partners how USAID might support locally owned reform priorities. Consideration of USAID programming to address specific topics should be deferred until locally owned priorities are identified and a coherent strategy begins to emerge from the process. However, USAID will need to be prepared to deal with the likelihood that progress will not be made in an orderly way and is likely to involve unilateral action on some issues, dialogue about others, and simultaneous action and dialogue about still other aspects of reform. Ultimately, priorities and strategies will emerge from the judgments of local actors based on their knowledge of local conditions.

2. INTRODUCTION

There has been a warming of relations between the United States and the Republic of the Maldives since the inauguration of a new Maldivian government in November 2018. The new government, headed by President Ibrahim Mohamed Solih, is committed to a reform agenda to strengthen democratic governance and the rule of law.

Following a February 2019 meeting between Foreign Minister Abdulla Shahid and Secretary of State Mike Pompeo, the Department of State announced an expanded program of outreach and assistance to the Maldives. The announcement included current and planned cooperation activities relating to governance, development, security, the rule of law, and education. Since then, cooperation has expanded further, including the signing of a Development Objectives Agreement with USAID in March.

Reform of the justice sector has been a priority for the Solih administration from the outset. The existing situation reflects a long history of political interference with the judiciary, disregard by the judiciary of the separation of powers in its relations with other constitutional bodies, pervasive corruption, inefficiency, and limited access to justice for most Maldivians.

The adoption of the 2008 Constitution was accompanied by high expectation of reform of the justice system. That expectation was frustrated by bitter political disputes and resistance to change. Since then, the system has remained politicized. Leaders of the current government see the present time as an opportunity to achieve the fundamental change that eluded them in 2008. Those who resist change appear to be preparing for renewed conflict.

Against this background, USAID commissioned an assessment to examine the primary opportunities and constraints for advancing the rule of law in the Maldives and to help identify a proposed strategy and programming approach for USAID. Through an activity authorization to Integra under the Learning, Evaluation, and Analysis Project III, the assessment began on April 1, 2019.

The assessment was led by James Michel, a former State Department and USAID official with extensive experience in conducting rule of law assessments. He was supported in the field work from April 13-25 by Hussain Siraj, a Maldivian attorney with the firm of Suood and Anwar. Shirani Narayana from USAID/Sri Lanka participated in the first week of field work.

Just before the field work began, an important development brought further change to the political environment in the Maldives. Parliamentary elections on April 6 resulted in a landslide victory for President Solih's MDP. When the new People's Majlis (parliament) convened at the end of May the MDP held 65 of the 87 seats in this unicameral body. This political development heightens the enthusiasm – and the public expectation – that justice reform will be an early legislative priority.

This assessment has confirmed that achieving a thoughtfully planned, coherently designed, and skillfully executed reform of the deeply flawed Maldivian justice system will face formidable challenges. Ongoing conflict between government branches and institutions has made the separation of powers an area of competition without boundaries. The MDP, the Solih government, and the Supreme Court have all advanced ideas for specific reforms. Reforms proposed to date are not embodied in an overall strategy. They are neither comprehensive nor informed by full understanding of established principles, recognized values, and best practices. The current legal framework for implementation contains important gaps and omissions. Institutions to carry out reforms are weak and tend to operate independently rather than as interdependent parts of a system. The voice of civil society has not been heard in the deliberations. There is little public trust or confidence in the system.

This report describes the historical background, the roots of the legal system, and current developments and political dynamics. It continues with a thorough review of the justice system of the Maldives – how it is supposed to work and how it works in practice. It then calls attention to current programs of international cooperation that USAID should consider.

The report concludes with an in-depth analysis of challenges and opportunities for advancing the rule of law in the Maldives. It recommends that USAID concentrate on the immediate need to ensure that proposed reforms are coherent, that they benefit from expert knowledge, and that policy choices be exposed to transparent and inclusive dialogue involving all stakeholders, with a strong voice for civil society. Programming to address important specific needs identified in the report should be deferred until locally owned priorities and a coherent strategy begin to emerge from the broad dialogue, providing evidence that local capacity and commitment will be sufficient to warrant investment by USAID.

The report benefited from the contributions of team members Hussain Siraj and Shirani Narayana, as well as by the leader of the Suood and Anwar law firm, Husnu al Suood, who offered valuable insights based on his experience as a senior judge, Attorney General, and practicing attorney. In addition, Mizna Ahmed of the firm provided helpful research assistance; the Governance and Vulnerable Persons team at USAID/Sri Lanka and the Integrated Country Strategy team at US Embassy Colombo provided valuable background and insights; and Ambassador to Sri Lanka and the Maldives Alaina Teplitz offered important guidance about the relationship of justice reform to US policy interests in our relations with the Maldives.

3. THE CONTEXT FOR RULE OF LAW DEVELOPMENT IN THE MALDIVES

THE COUNTRY, ITS PEOPLE AND ITS POLITICS

The Republic of the Maldives is the smallest country in Asia, with a territory of approximately 115 square miles and a population of about 430,000. It is located in the Indian Ocean on a chain of 26 atolls that span the equator to the southwest of Sri Lanka. About 200 of its more than 1,200 islands are inhabited. The Maldives is one of the world’s most environmentally challenged countries. It has an average ground level of less than five feet above a rising sea level.



The population is almost entirely of the same local ethnic group. The national language, *Dhivehi*, is not spoken outside of the Maldives. English is widely spoken. Islam is the state religion and it dominates politics, law, and culture. The Constitution specifies that the state is “based on the principles of Islam.” All citizens are Sunni Muslims and non-Muslim cannot become citizens or hold public office. No other religion is permitted.

The Maldives has experienced strong economic growth, largely driven by its increased popularity as a tourism destination. It is an upper-middle income country with low levels of unemployment and poverty. The World Bank’s Worldwide Bureaucracy Indicators report that the public sector accounts for more than 58 percent of paid employment.¹ The country has also had impressive improvements in human development. The population benefits from high adult literacy and the availability of health care and education services. The significant advances in human development are summarized in Table I.

Table I – Human Development Trends in the Maldives

Year	Life Expectancy at birth	Expected Years of schooling	Mean years of schooling	GNI per capital (2011 PPP\$)
1990	61.4	8.5	4.0	5,326
2000	69.9	11.8	3.1	8,561
2010	76.1	11.9	4.9	10,753
2017	77.6	12.6	6.3	13,567

Source: UNDP Human Development Indices and Indicators: 2018 Statistical Update

The absence of ethnic or religious differences and continued development progress have not been enough to achieve social and political harmony. Sharp divisions, sometimes leading to communal violence, have been common and continue to the present time.

After existing as a Buddhist kingdom for 1,400 years, the Maldives became a Muslim sultanate in the 12th century. It came under European influence beginning in the 16th century as first Portugal, then the Netherlands, and then Great Britain took power in nearby Ceylon. Only the last of these European “protectors” had a lasting influence on internal governance. An 1887 agreement formally established the status of the Maldives as a British protectorate – a self-governing sultanate rather than a colony. Thereafter, Great Britain frequently became involved in differences among contending political factions. The protectorate formally ended, and independence was declared in 1965. However, a British air base on the southern island of Gan remained until 1976.

¹ <https://datacatalog.worldbank.org/dataset/worldwide-bureaucracy-indicators>

In 1930, the Sultan sought British assistance in dealing with a powerful Prime Minister who had assumed independent power. This led to the adoption of the country's first constitution in 1932. However, political divisions and unrest continued. During the next seven decades, a total of 11 constitutions shifted the form of government from sultanate to republic, back to sultanate, and then to several different forms of republican government.

The Maldives established a republic shortly after gaining independence from Great Britain in 1965. Ibrahim Nasir, who had served for 10 years as Prime Minister, was elected as the first President in 1968 and served in that capacity for 10 years (two full five-year terms). While often criticized for his authoritarian tendencies, Nasir is credited with modernizing the fishing and tourism industries which are the foundation of the nation's economy and introducing English into the educational system.

Nasir was succeeded in 1978 by Maumoon Abdul Gayoom, a university lecturer and ambassador to the United Nations. Gayoom served until 2008. His government was accused of corruption, thwarting free elections, and human rights violations and was subjected to several coup attempts and violent protests. At the same time, economic and social progress continued at an accelerated pace.

In 2004, the country suffered a major natural disaster, a devastating tsunami which took a significant toll on the national economy. This experience has deepened national awareness of the threat of climate change and provided inspiration for the Maldives' prominent international advocacy on this issue.

In 2008, the Maldives adopted its present constitution, which was intended to launch a new era of democratic governance, with explicit rights of the people, clear rules for the separation of powers, and a structure of checks and balances. However, implementation of this new charter encountered sharp political differences, vested interests, and inexperience with the democratic principles set forth in the new constitution. Mohamed Nasheed was elected President in the country's first multi-party national election. However, his party lost its majority in parliamentary elections the following year, giving rise to a period of civil unrest and partisan division that severely complicated and ultimately distorted the transition to the new constitution's democratic regime.

President Nasheed resigned in 2012 and criminal charges were filed against him relating to his attempted arrest of a sitting judge. Vice President Mohammed Waheed Hassan Manik took office as President until a new presidential election was held in 2013. The 2013 election was twice delayed by legal challenges. When it was finally allowed to proceed, Nasheed was narrowly defeated by Abdulla Yameen, half-brother of former President Gayoom.

Criminal charges against Nasheed had been deferred until after the 2013 election. He was subsequently convicted on a charge of terrorism and sentenced to serve 13 years in prison. In December 2015, he was allowed to leave the country for medical care in the United Kingdom, where the government granted him asylum as a refugee.

Yameen's period in office was marked by broad international condemnation of the government's disregard for democracy, human rights and the rule of law. The Maldives had joined the Commonwealth of Nations in 1982 but withdrew in 2016 in the face of those criticisms.

The continuing political turmoil since the adoption of the 2008 Constitution has impeded the full and timely implementation of this admirable charter for democratic governance. As illustrated in Table 2, the relative standing of the Maldives under most of the Worldwide Governance Indicators stagnated or declined during this period.

Table 2 – Maldives Percentile Rankings under Worldwide Governance Indicators

Year	Voice/ Accountability	Political Stability/Violence	Gov't Effectiveness	Regulatory Quality	Rule of Law	Control Corruption
2007	22.12	45.89	54.85	55.83	49.28	19.90
2012	33.80	36.02	47.87	38.39	36.15	27.96
2017	25.62	57.14	35.58	35.58	30.77	21.63

Source: World Bank Worldwide Governance Indicators, 2018

In September 2018, opposition leader Ibrahim Mohamed Solih, an ally of former President Nasheed, achieved an upset electoral victory over the incumbent President Yameen. In announcing his plan for the first 100 days, President Solih emphasized that judicial independence, integrity, and reform would be a key focus of his government. He also announced that the Maldives would return to the Commonwealth, a process that is now underway.

ROOTS OF THE LEGAL SYSTEM

Even prior to the arrival of Islam in the 12th century the Maldives had a system for resolving disputes and a body of customary law to guide that system under the ultimate authority of the king.

From the beginning of the Islamic law period judges were also guardians of Islam. As judges began to apply Islamic law along with the existing customary law conflicts in jurisprudence were identified. Over time, Islamic law came to supersede customary laws. Often, legally trained Arab visitors were recruited to serve as senior judges.

Historic records indicate that judges had substantial independence and that their decisions were respected. Judges in 13 provinces throughout the islands reported to a senior judge residing in Malé, the capital. In most cases neither the pleadings nor the judgments were recorded in writing. Appeals could be brought to the king, who retained final authority.

This informal and uncomplicated justice system continued with little change until early in the 20th century. The creation of a collegial judicial management body (the *Mahkamatul-Sharuiyya*) in 1909 was a beginning step toward recognizing a distinct identity for the judicial branch of government.

The introduction of constitutional government in 1932 signaled the formalization of the administration of justice in the Maldives. The 1932 Constitution alluded to the historic independence of judges and declared: “Judges are independent unless they have acted in contravention to a law. No-one has the power to interfere with the judicial proceedings conducted by them.” However, implementation of the constitution quickly demonstrated a gap between the declared principle of judicial independence and actual practice.

The government placed the judicial management body (the *Mahkamatul-Sharuiyya*) under the mandate of the Minister of Justice and made the Minister responsible for the administration of justice in the Maldives. Thus, the structure and administration of the courts was placed under the direct control of the executive in disregard of the constitution’s declaration of judicial independence.

In 1969, President Ibrahim Nasir transferred judicial management directly to the Ministry of Justice and established courts reporting to that ministry. Then, in 1980, in a further setback to judicial independence, President Gayoom established a “High Court of the Maldives” that reported to him, making the President the chief judicial authority.

Thus, until 2008 the judiciary had been, for all practical purposes, an extension of the government and responsible to the President and the Ministry of Justice. Moreover, educational qualifications for judicial

appointees were minimal. As one report described the situation “the judiciary under the prior system had neither the requisite capacity nor independence required to function competently.”²

Recognizing these deficiencies, the framers of the 2008 Constitution provided a two-year transition period during which an interim Supreme Court would serve on a temporary basis and the new management body, the Judicial Service Commission (JSC), would undertake a vetting of all sitting judges. The expectation was that by the end of the two-year transition a newly appointed Supreme Court and new judges, all selected on the basis of merit, would replace judges found in the vetting process to be corrupt, incompetent, or otherwise unqualified for office.

However, the reform was frustrated by political resistance. Mohamed Nasheed, having won the country’s first multiparty presidential election in October 2008, was prepared to carry out the implementation of the new Constitution. But his authority was weakened when his Maldivian Democratic Party (MDP) was narrowly defeated in the parliamentary elections in March 2009.

The JSC was expected to undertake its constitutionally mandated review of the performance of sitting judges in this polarized context in which opponents of a reformist President had regained their prior dominance in the People’s Majlis. The JSC, in accordance with the Constitution, was made up of 10 members: three judges, two members of the Majlis, two executive branch officials, two private citizens appointed by the political branches, and one lawyer elected by his or her peers. This composition enabled the sitting judges (all of whom had been appointed by the previous regime) and the political opposition to join in distorting the intended judicial reform. In its vetting of all sitting judges, amidst allegations of political interference, the JSC reinstated 191 of the 197 judges in office and found only six to be unqualified. Only those six lost their positions.

As an additional act of resistance to the new Constitution’s plan for judicial reform, the five members of the interim Supreme Court (all holdovers from the previous regime) informed the President that they intended to remain permanently on the bench. Ultimately, in order to obtain passage of essential legislation, a weakened President Nasheed included all five of these interim justices among his seven nominees for the Supreme Court in 2010. Their appointments were quickly confirmed by the opposition-controlled People’s Majlis.

As summarized by the United Nations Special Rapporteur on the independence of judges and lawyers in an illuminating 2013 report:

The 2008 Constitution completely overturned the structure of the judiciary, yet the same people who were in place and in charge, conditioned under a system of patronage, remained in their positions. [. . .] This created a disconnection between the promises of the Constitution and people’s expectations and how justice is delivered, and the separation of powers implemented. The perception that the justice system is a remnant of the old regime, equally authoritarian, archaic and corrupt, should be overturned by concrete actions based on the democratic concepts and values introduced by the Maldivian Constitution.³

The Special Rapporteur’s report identified incidents where both the executive and legislative powers had interfered with the independence of the judiciary, including actions that disregarded provisions of applicable legislation. Her enumeration of identified shortcomings was disturbing for both its length and the importance of the issues identified.

² International Commission of Jurists and South Asians for Human Rights, *Justice Adrift: Rule of Law and Political Crisis in the Maldives*, 2015, p. 11.

³ Gabriela Knaul, *Report of the Special Rapporteur on the independence of judges and lawyers on her mission to the Maldives*, 2013, p.13.

Specifically, she cited inadequacies in the legal framework, misapplication of judicial ethics principles, irregularities in judicial appointments, inadequate financial resources for both courts and prosecutors, irregularities in case management, limited public availability of information, threats and attacks against judges, limited representation of women in the justice system, impunity for violators of human rights, lack of professional standards for the practice of law, and a lack of legal education or legal literature.

Additional studies in recent years have documented continuing concerns with the administration of justice, treatment of courts and judges, the competence, independence, impartiality, integrity, and accountability of the judiciary, and access to justice. Examples of critical reports include the following:

- A)** In 2014, an international team, joined by Maldivian legal experts, undertook a major legal and justice sector baseline study under the auspices of the Attorney General’s Office and the United Nations Development Program (UNDP). The study documented numerous deficiencies, including inconsistencies of data collected by various justice organizations; a lack of systematic procedural rules and guidance; low levels of public confidence in the independence, integrity, and efficiency of justice delivery; excessive delays in delivering justice, attributable in part to the absence of an alternative dispute resolution system or established procedures to enforce civil judgments; limited public awareness and understanding of the operation of the justice system or constitutional rights; and excessive costs for litigants as well as for the government due to inefficiencies.⁴
- B)** In 2015, the International Commission of Jurists (ICJ) and South Asians for Human Rights (a regional human rights organization) collaborated on a study entitled *Justice Adrift: Rule of Law and Political Crisis in the Maldives*. Their report cited failures to carry out institutional and legal reforms called for in the two-year transition period after the 2008 Constitution took effect and the related politicization of the judiciary and other institutions of democratic governance. The report made extensive recommendations on these challenges for the Maldivian executive branch, parliament (People’s Majlis), and Supreme Court, as well as for the international community. In summary, the report described the situation as a “stalled transition to democracy” and called for “a serious dialogue to restart the democratic process begun in 2008.”⁵
- C)** In a February 2018 statement the ICJ condemned the Maldivian government’s assault on the Supreme Court, arrest of judges and suspension of human rights protections. These events also produced a statement of condemnation from the Office of the UN High Commissioner for Human Rights.
- D)** The US Department of State’s human rights reports for 2017 and 2018 cited “numerous allegations of judicial impropriety and abuse of power,” including findings of departure from important norms such as the following:
 - There were numerous allegations of judicial impropriety and abuse of power, with large numbers of judicial officials, prosecutors, and attorneys reportedly intimidated or bribed.
 - Many judges, appointed for life, held only a certificate in sharia, not a law degree.
 - Most magistrate judges could not interpret common law or sharia because they lacked adequate English or Arabic language skills.
 - An estimated one-quarter of the country’s 183 judges had criminal records.
- E)** A 2018 report by Human Rights Watch, *An All-Out Assault on Democracy: Crushing Dissent in the Maldives*, includes an entire chapter on threats to the judiciary. This chapter recounts the difficulties in implementing the 2008 Constitution and subsequent challenges up to the present

⁴ Attorney General’s Office and the United Nations Development Program in the Maldives, *Legal and Justice Sector Baseline Study 2014, 2015*.

⁵ ICJ and South Asians for Human Rights, *Op. Cit*, note 1, pp. 9-14, 32.

time. Principal topics included politicization of the Judicial Service Commission, intimidation of judges and lawyers, the February 2018 arrests of Supreme Court judges, and judicial constraints imposed by the Supreme Court on the Human Rights Commission of the Maldives and others.⁶

Obviously, the roots of the justice system in the Maldives have become badly tangled, to the detriment of the system's performance and development. Untangling them may be the first necessary step toward establishing the rule of law as a foundation and safeguard of democratic governance.

CURRENT TRENDS, ROLES OF MAJOR STAKEHOLDERS, AND POLITICAL DYNAMICS

The elected government that took office in November 2018 under the leadership of President Ibrahim Mohamed Solih has expressed major aspirations to set a new course toward a stable, productive and democratic future for the Maldives. Priorities relating to rule of law development are featured prominently in this agenda. They include investigations of past corruption, remedies for victims of past injustice, reform of anticorruption law and practice, and police and judicial reform.

Former President Nasheed returned from exile at the time of President Solih's inauguration in November 2018. The Supreme Court had stayed and then reversed his controversial terrorism conviction following the election. The history of overlap of electoral results with judicial proceedings has continued with the arrest of former President Abdulla Yameen on money laundering charges in February 2019. He was subsequently released on bail, pending resolution of the charges against him.

In parliamentary elections held in April 2019, the Maldivian Democratic Party (MDP) won 65 of the 87 seats in the People's Majlis. MDP President Nasheed has been elected Speaker. This victory has secured an opportunity for President Solih's government to initiate long-deferred reforms that were contemplated by the 2008 Constitution, including reforms to the justice system. The government's control of more than two-thirds of the votes is sufficient to enact new legislation and even to remove judges found to be grossly incompetent or guilty of gross misconduct. It also makes conceivable the possibility of amending the Constitution, which, under Article 261 of the Constitution, requires Presidential approval of a bill passed "by a three quarters majority of the total membership of the People's Majlis."

Ideas on justice reform have begun to crystalize. Initial proposals made by the Maldivian Democratic Party (MDP) during the 2018 presidential election campaign have now been largely endorsed by the Solih government. The Supreme Court has issued its own set of ideas. These differing approaches are expected to provide important input for the national justice reform agenda.

The MDP campaign document known as Agenda 19 included a section on justice with three components:

- A) Transitional justice.** Establish a transitional justice regime under which an ombudsman would review complaints of violations of human rights committed between 2012 and 2018. The ombudsman would foster revealing of truth and achieving forgiveness. In addition, this nonjudicial official would award compensation and would refer unresolved cases to the Prosecutor General for consideration of criminal prosecution. (The proposal does not make explicit reference to possible resort to civil remedies.) Also, the ombudsman would refer to the Attorney General recommendations for modifying laws or regulations relied upon by human rights violators as justification for their acts.
- B) Structural reforms to the judiciary.** A series of possible changes to the existing structure, many of which appear to be responses to perceived abuses and questionable practices:
 - Remove the Department of Judicial Administration (DJA) from the supervision of the Supreme Court and place it under the supervision of the Parliamentary Select Committee on

⁶ Human Rights Watch, *An All-Out Assault on Democracy, Crushing Dissent in the Maldives*, 2018, pp. 41-48.

Independent Institutions. (Giving a legislative body authority over judicial administration would seem to increase the vulnerability of the DJA to political manipulation.)

- Require the Judicial Service Commission (JSC), an independent constitutional body, to facilitate anonymous complaints from the public about judges, evaluate the performance of judges, and link the compensation of individual judges to their performance. (More extensive possible changes to the JSC are under discussion but were not included in Agenda 19. The JSC has been shown to be vulnerable to political manipulation in its decisions on judicial candidate selection, performance evaluation, investigation of misconduct, and removal of grossly incompetent or misbehaving judges. Operational improvements without change to the composition of the JSC could be made by statute or regulation. A change in composition would require a constitutional amendment.)
- Reduce times for appeal of court decisions and expand the mechanisms for filing documents, including e-filing.
- Require the Supreme Court to hold open hearings in cases involving constitutional matters or questioning the validity of a statute.
- Prohibit the Supreme Court from initiating cases on its own (*suo moto* cases) or taking over cases pending in the lower courts. (Those practices had been used in ways that appeared to expand the power of the Supreme Court beyond that granted by law. For example, the Supreme Court has brought treason charges against members of the Human Rights Commission, required the abolition of the Bar Association, and removed a judge by a process not consistent with the procedure specified in the Constitution.)
- Close the underutilized northern and southern branches of the High Court; allow the High Court to hold proceedings in periodic visits to islands where it would use the facilities of other courts; and establish superior courts (to be renamed “District Courts”) on all capital islands of atolls, replacing magistrate courts in those places. (These changes are intended to increase access to justice outside the capital.)
- Ensure the integrity of judges by expanding the meaning of “conduct” and discipline”; reinvigorate the requirement that judges declare their assets, broadly defined, and those of their spouses and minor children to the Auditor General; require the Auditor General to refer for investigation evidence that a judge may have acquired wealth by illegal means.

C) New institutions. Create the following new institutions:

- Public Defender’s Office, as a semi-autonomous unit under the Attorney General, to provide timely legal defense to indigent defendants charged with major offenses.
- New Law Commission to draft laws, inform the parliament of mistakes, errors, and inconsistencies, monitor new laws and regulations, and ensure timely public access to all laws and regulations in effect.

In preparation for a partnership forum in June 2019, the Maldives government has produced a briefing package that includes a section on governance and justice, largely based on the MDP’s Agenda 19.

At the opening of a February 2019 conference on judicial independence and reform, the Chief Justice condemned the MDP proposals as “efforts to render the Supreme Court of the Maldives powerless and rob it of its status as the highest authority of the judiciary in order to achieve a political purpose in the name of reforming the judiciary.”

The Supreme Court presented its own reform agenda, Roadmap of Judicial Reform, 2019-2023, at a public ceremony on May 1, 2019. This Roadmap, based in part on the February judicial independence conference,

makes recommendations under 19 topics. While very general at this point, several of them address themes similar to those included in the MDP and Government proposals. However, there appear to be strong differences in content.

The topics summarized in the Roadmap are as follows:

- Reform the JSC by amending the Constitution and statutes in order to enhance its independence, integrity, and freedom from political and other undue influences.
- Amend existing laws to update them and enact new laws to fill gaps in the present structure (such as civil and commercial procedural laws).
- Strengthen the system for appointment and dismissal of judges.
- Ensure the judiciary is free from corruption, contention, and undue influence.
- Strengthen the system of holding judges accountable by maintaining the independence of the judiciary.
- Establish a system for lodging complaints by citizens about the judiciary.
- Strengthen the system for performance assessment of judges and improve its implementation, taking into account productivity, case management, standards of judgments, and completion of continuing legal education requirements.
- Ensure access to justice and strengthened enforcement of judgments.
- Modernize and make uniform the case management system for all courts.
- Establish superior courts on all islands that are classified as cities in order to accelerate the delivery of justice.
- Strengthen and modernize judicial administration.
- Increase the use of computer technology, including for audio-video conferencing, and establish an e-filing system.
- Ensure financial independence and resources by granting the judiciary budgetary independence and financial control.
- Provide continuing judicial and legal education through a continuing skills development program and strengthen the Judicial Academy to help achieve this purpose.
- Require all judges to complete 20-30 hours of in-service judicial and legal education each year.
- Strengthen the legal and Sharia education system so that people will be properly prepared to take positions as judges, lawyers, and legal staffs of the courts.
- Strengthen the legal profession through a strong and independent bar association that will have a close relationship with the judiciary.
- Establish a public defender's office to facilitate legal assistance and services to those who cannot pay, including in civil, family, and other legal matters.

The approaches by the MDP, the government, and the Supreme Court all recognize that it will take a lengthy, sustained effort and substantial investments to overcome well-known weaknesses in the administration of Maldivian justice and to strengthen the rule of law. At the same time, the proponents of reform may well feel compelled to move quickly on visible and effective measures that will demonstrate their responsiveness to political demand and their commitment to the rule of law as a core principle of Maldivian democracy. Excerpts from the MDP, government, and Supreme Court proposals are collected in Annex 4.

Political opponents view the government's proposed reforms with suspicion, as do some, but not all, members of the judiciary who were appointed while the opposition party was in power. Many view the Supreme Court's proposals as being primarily intended to preserve the power the Court has accumulated over the years through a pattern of controversial practices. Moreover, prominent individuals who may be implicated in past corruption and human rights violations, some of whom may currently hold government, judicial, or law enforcement positions, are sure to resist any reforms that might cause them to be held accountable.

A related, and obviously sensitive factor is the influence of conservative Islam in Maldivian society, including within the judiciary. Many judges (including all current members of the Supreme Court) received their legal education at Islamic institutions. There is a need to find a balanced accommodation of jurisprudential views that is respectful of both the common law and Islamic legal traditions that have contributed to the law of the Maldives.

It is noteworthy that of the five members of the interim Supreme Court whose tenure began in September 2008 only Justice Uz Abdulla Areef remains on the present Supreme Court. The other current members of the Supreme Court include Chief Justice Ahmed Abdulla Didi and Justices Abdul Ghanee Mohamed and Abdulla Didi, all appointed by President Yameen in 2018, and Justice Uz Adam Mohamed Abdulla, who was appointed by President Nasheed in 2010. Two other justices, Uz Abdulla Saeed, who had served on the Supreme Court from 2008 until 2018 (including as Chief Justice from 2008 to 2010 and again from 2014 to 2018) and Justice Ali Hameed were arrested in February 2018. Both were later convicted on a charge of obstructing a state function. Their convictions automatically removed them from office under a law adopted subsequent to their original arrest. Even though that law is inconsistent with the express terms of the Constitution, it was upheld by the reconstituted Supreme Court.

The government has taken several measures in response to the widely perceived need for prompt action. The President immediately established in November 2018 two investigative commissions, which are expected to produce results in a few months. (The President has authority under the Article 115 of the Constitution "to appoint temporary commissions to advise the President on national issues and conduct investigations.")

A Commission on Murders and Disappearances is looking into cases of reported murders and disappearances that occurred between January 1, 2012 and November 17, 2018. Commission members expect some cases will be referred for prosecution, some will require further investigation, and some may be closed in the absence of a basis for recommending further action.

A Commission on Corruption and Asset Recovery is simultaneously looking into how to recover state assets lost during this same period, including in a major scandal implicating many individuals and organizations of both the state and the private sector. The Commission is charged "to ensure that all responsible authorities carry out their legal duties in investigating the corruption and abuse of power within State institutions."

The creation of these temporary commissions necessarily implies a lack of confidence in existing constitutional bodies, namely the Human Rights Commission and the Anticorruption Commission. The conclusions of the current investigations may have implications for the reinvigoration of these permanent bodies.

Another consideration is that President Solih received election support from a coalition of four political parties that have exhibited ideological differences in the past. The President's political allies will expect to have their voices heard in the government's formulation of policies and programs. Their expectations may well be diminished after the MDP's success in achieving a supermajority in the April 2019 parliamentary elections. Nevertheless, allies cannot be simply ignored.

Finally, the objective of improving the justice system will need to compete with many other priorities and will encounter significant economic constraints. The Maldives is deeply in debt, in part due to large loans

from China to finance infrastructure projects. The IMF has identified significant weaknesses in the country's management of public investment, especially with regard to budget credibility and budget execution. As noted by the IMF in January 2019, "Maldives remains at a high risk of debt distress. The high and increasing level of public and publicly guaranteed debt needs to be managed carefully to reduce fiscal sustainability risks."

Ideally, the reform of the justice system should be developed through highly inclusive and participatory deliberations which take into account the major policy concerns of the government, the parliament, the judiciary, and other stakeholders and in which civil society has a prominent voice. It should be possible to arrive at a path that will lead to a sufficiently shared understanding of and commitment to the rule of law in the Maldives, despite differences on specific policies and structures to give effect to that commitment. However, it remains uncertain whether the principal actors will be prepared to search for such a path. If they do, it should be possible for Maldivians to rebuild their justice system as one that serves the public interest with integrity, independence, accountability, and professional competence. If they do not, they may lose their present exceptional opportunity to realize the promise of the 2008 Constitution for a democratic society based on the rule of law.

4. THE JUSTICE SYSTEM

THE NORMATIVE FRAMEWORK

THE CONSTITUTION

The 2008 Constitution is a detailed charter of 14 chapters with 301 articles. It vests executive power in the President, grants legislative power to a parliamentary body (People’s Majlis), and places judicial power in the courts. It also establishes several independent bodies to deal with anticorruption, elections, human rights, and judicial selection, performance, and removal. It devotes an entire chapter to an enumeration of fundamental rights and freedoms and makes those rights and freedoms enforceable in the courts. The Constitution expressly provides that it is the supreme law of the land and that laws or actions contrary to its provisions are invalid. It expressly grants to the courts the power of judicial review to enforce this constitutional supremacy.

The Constitution specifies that the nation is “based on the principles of Islam,” that the Islamic religion is a source of law for the Maldives, and that no law contrary to an established tenet of Islam may be enacted. It requires consideration of Sharia in cases where the law is silent. But the Constitution does not prevent consideration of additional sources of law, such as judicial precedent or general principles of law widely recognized in international practice.

The Constitution provides an impressive, thoughtful, normative basis for democratic governance and the rule of law. The foreword to the 2014 baseline study of the legal and justice sector described the ratification of the Constitution as “a defining point” in the history of the Maldives. At the same time, as discussed in the preceding chapter of this report, fully implementing that foundational charter has remained a challenge for Maldivian society.

STATUTES AND TREATIES

Since 1932, statutes have gradually replaced the earlier customary law. Only laws that have been written and published are enforceable. Many Maldivian laws were enacted prior to the adoption of the 2008 Constitution. In addition, many have been adapted from foreign sources or prepared in consultation with foreign experts, often based on common law traditions. Other statutes reflect Islamic traditions and no statute may be contrary to a tenet of Islam (defined in the Constitution as a fundamental principle whose provenance is not in dispute). A continuing issue is the need to update and fill gaps in current legislation.

Treaties entered into by the executive become part of domestic law only upon the enactment of an enabling act of the People’s Majlis. The Maldives is party to many bilateral and multilateral treaties, including the major United Nations human rights and anticorruption treaties. There is an unresolved, conflict between the values expressed in some of the human rights treaties to which the Maldives is a party which commit the parties to freedom of religion and the legal monopoly of Islam.

REGULATIONS

Article 94 of the Constitution authorizes the People’s Majlis to delegate power to make regulations. As in other jurisdictions, the use of regulations allows experts in government departments and agencies to fill in the details of parliamentary directives and to adapt those details to changing circumstances without the need for recurring and time-consuming legislative processes. However, this desirable flexibility has caused difficulty in some cases. In part, this is because, unlike legislation, mandatory procedures do not exist for public notice of proposed regulations, public participation in the rule-making process, or even assured public knowledge of the final regulations (or subsequent amendments) that are adopted.

JUDICIAL PRECEDENT AND DECISIONS

Judicial precedents form a part of the Maldivian justice system. According to Article 143 of the Constitution, courts have jurisdiction to overturn decisions of a lower court and lower courts are obliged to follow the decisions of a higher court.

It is up to the courts to decide if a statute is contrary to any “tenet of Islam,” in which case the statute is void. However, the Constitution’s narrow definition of this term as a principle whose provenance is not in dispute limits the possibility that contested points of Sharia might undermine parliamentary determination of Maldivian law. Although, in principle, a court might find a law to be contrary to a tenet of Islam, that possibility has not been an impediment to the application of Maldivian statutes enacted by constitutional procedures.

In interpreting statutes and regulations, courts are required to give effect to the constitutional mandate that Sharia shall be a primary source of the law. When the court does not find guidance in the Constitution or a statute it must consider Sharia as one possible source where the court might find relevant guidance. But it may also consider other sources of guidance, such as foreign and international judicial decisions and international instruments. The decisions of foreign courts are particularly relevant to cases involving the meaning of statutes that have been adapted from other countries, mainly common law jurisdictions. In the absence of other law, the courts will consider general principles of law widely recognized in international practice.

In criminal cases, an offense under Sharia can be given effect through the penal code enacted in 2015. The code provides for the application of some Sharia punishments in *hudud* offenses (murder, assault, fornication, theft, apostasy, drinking alcohol, and damage to private property). This satisfies the constitutional requirement that any punishment be pursuant to a statute or a regulation. Supreme Court decisions have rejected efforts by lower courts to apply extreme historic punishments, as in two cases in which the court blocked the stoning to death of a woman convicted of adultery.

The courts can impose the death penalty in cases where it is authorized by law. President Yameen had planned to restore its use in 2017 after the Supreme Court had declined to stay a proposed execution. Three people remained on death row at the end of 2018. However, no death penalty sentence has been carried out in the Maldives since 1954 and the Solih government has committed to maintain that policy.⁷

The constitution encourages the courts to give special attention to the protection of human rights. Article 68 provides:

When interpreting and applying the rights and freedoms contained within this Chapter, a court or tribunal shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom, and shall consider international treaties to which the Maldives is a party.

How the courts apply that constitutional admonition will depend upon the evolution of the rule of law and the orientations of those responsible for the administration of justice. Legislation can be applied in a manner that is more retributive or more humanitarian. Different judges have differing ideas about the attributes of human dignity, equality, and freedom. The decisions on

⁷ Cornell Law School Center on the Death Penalty Worldwide, Death Penalty Database, <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Maldives>; Amnesty International, *Death Sentences and Executions 2018* (London: Amnesty International, 2019), <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF>; Statement of Minister Ahmed Naseem on the Maldives’ Initial Report under Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, November 27, 2018, pp. 6-7, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/MDV/INT_CAT_STA_MDV_33106_E.pdf.

justice policy made in the coming months and years and the selection of individuals to give effect to those policy decisions will have profound and long-lasting effects on this fundamental question.

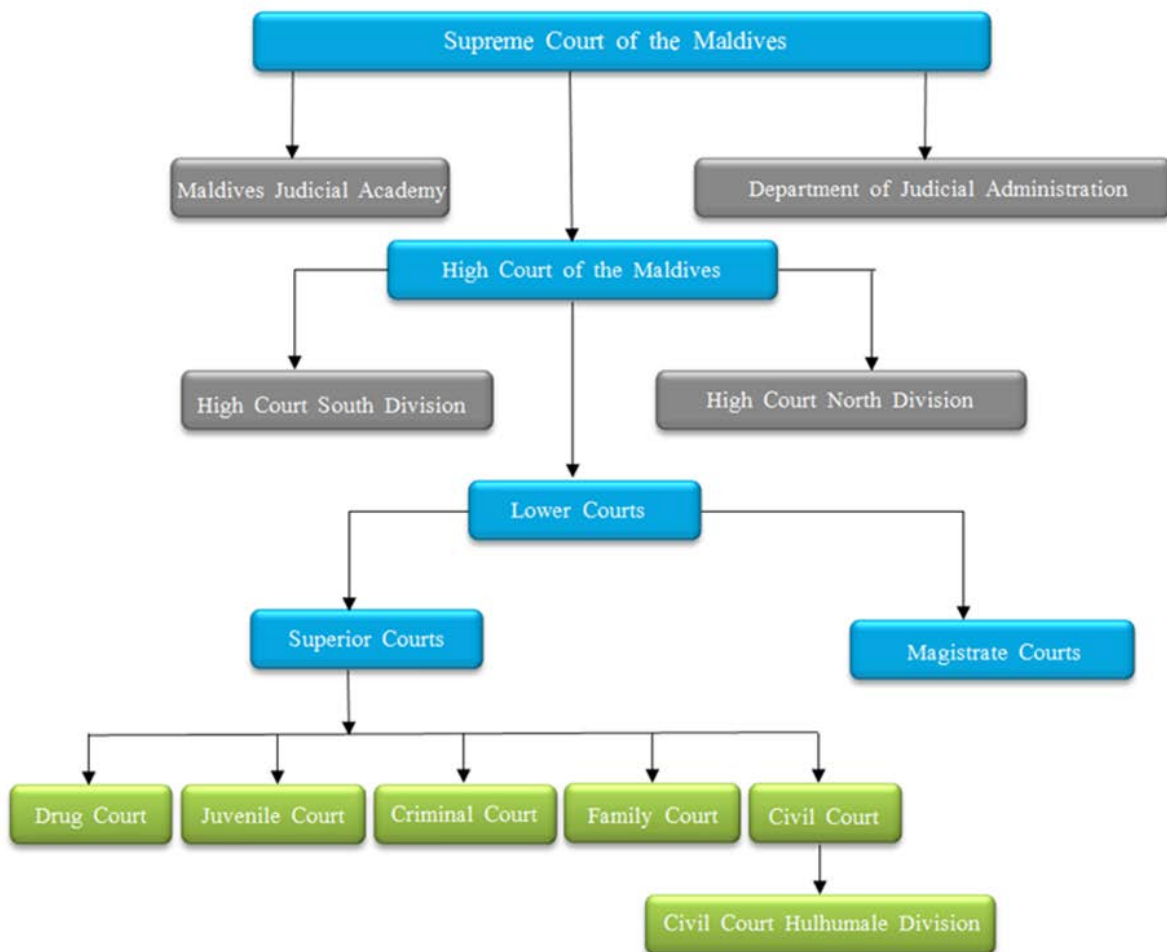
THE INSTITUTIONAL FRAMEWORK

THE COURTS

The constitutional foundation for the justice system emphasizes the importance of judicial independence. Article 142 declares that judges “are independent, and subject only to the Constitution and the law.” Judges serve during good behavior and compliance with judicial ethics. Prior to mandatory retirement at age 70, they may be removed from office only upon a finding of gross incompetence or gross misconduct by the Judicial Service Commission and passage of a supporting resolution by a two-thirds majority vote in the People’s Majlis.

The Maldives has a three-tier court system based on a model found in many countries that follow British legal traditions. The Constitution vests the judicial power of the state in the Supreme Court, the High Court, and such trial courts as are established by law. The trial courts established by law are the superior courts and the magistrate courts. This judicial structure of the Maldivian courts is summarized below in Figure I.

Figure I - Courts of the Maldives



Source: Supreme Court of the Maldives.

The Judicial Services Commission (JSC) is not included in this organigram because it is not within the judiciary. However, the JSC is fundamental to the quality of the personnel who serve in the courts. Therefore, a description of that body is set out immediately after the following description of the Maldivian courts.

Article 149 of the Constitution requires generally that a judge must possess the educational qualifications, experience, and recognized competence necessary to discharge judicial responsibilities and must be of high moral character. In addition, a judge must be a Sunni Muslim, be 25 years of age, never have been convicted of a *hadd* offense or of a criminal breach of trust or bribery, and be of sound mind. The Judges' Act further provides that judges must hold at least a first degree in Sharia or law.

Prior to the adoption of the 2008 Constitution, a Ministry of Justice had been responsible for administration of the courts. However, Article 156 of the new constitution declared that the courts have "the inherent power to protect and regulate their own process, in accordance with law and the interests of justice." To implement this mandate, the responsibilities of the former Ministry of Justice for court administration were transferred to a new Department of Judicial Administration. Reporting to the Supreme Court, the Department provides administrative support relating to the judiciary's archives, budget, equipment, physical infrastructure, staff support, statistics, supplies, technology, and other needs.

The Supreme Court established the Maldives Judicial Academy in 2015. Its broad mandate is to provide entry level orientation and continuing education to judges, the staff of the courts and other institutions of the judiciary and, in addition, the members of the Maldives Bar. The Academy has adopted a strategic plan and is building the capabilities it will need to carry out its responsibilities. However, at present it relies entirely on donations from international entities to finance its training activities. A current issue is the extent to which responsibility for the continuing education of lawyers will be shared between the Academy and other institutions.

The Supreme Court, composed of a Chief Justice and four associate justices, has exclusive jurisdiction for several types of constitutional disputes. It also has original, but not exclusive, jurisdiction to rule on the constitutionality of a statute as well as advisory jurisdiction over questions of law raised by Parliament. However, the Supreme Court's principal role is to hear appeals from decisions of the High Court.

A Supreme Court justice must be at least 30 years of age, have at least seven years of experience as a judge or practicing lawyer.

In its capacity as the nation's highest judicial authority, and as recognized in legislation, the Supreme Court possesses inherent power to regulate the administration of the judicial system. In the exercise of this power, the Supreme Court prescribes rules to guide the lower courts. These rules confirm the Supreme Court's authority to issue directions to the lower courts through the traditional common law writs of certiorari, habeas corpus, mandamus, or prohibition. In some cases, Supreme Court orders and circulars have raised serious questions about whether they exceed the limits of judicial authority. Another controversial Supreme Court practice has been to take over selective cases while they are still pending in lower courts rather than through the appellate process.

The High Court consists of a Chief Judge and eight additional judges. Cases are normally heard by panels of three judges. There are two divisions outside the capital, one in the north and one in the south of the Maldives, intended to bring the courts closer to the people. However, these regional venues have not been used significantly and they are being considered for abolition.

The High Court hears appeals from the subordinate courts (superior and magistrate courts) and appeals from quasi-judicial bodies. In addition, it shares with the Supreme Court original jurisdiction over constitutional cases. The division of original jurisdiction between the High Court and the Supreme Court is set out in legislation. A High Court judge must have five years of experience as a judge or lawyer.

First instance courts are of two types: **superior courts** and **magistrate courts**. The superior courts are divided into five categories handling different kinds of cases: civil, criminal, family, juvenile, and drug cases. The civil court includes a recently established mercantile division. Cases are normally heard by a single judge. At present, all the superior courts are situated in Malé. Generally, the superior courts have nation-wide jurisdiction and any case that could be heard in a magistrate court could alternatively be heard in a superior court. In those cases where jurisdiction is concurrent, litigants tend to select the more convenient forum, taking into account factors such as availability of witnesses, complexity of the facts or law, cost, and risk of significant delay. The Judiciary Act specifies rules for determining regional jurisdiction in cases where two courts of the same category (superior or magistrate) both have jurisdiction over the subject matter.

There is a magistrate court in almost all the 200 inhabited islands with a population of 500 or more. (Islands with smaller populations rely on a designated magistrate residing on an island in the same area.) These courts act only within their assigned geographic areas. They are more numerous than the superior courts and hear more civil and criminal cases. A schedule in the Judicature Act sets out the jurisdiction of the magistrate courts, including specified exclusions based on the amount in controversy in civil cases (\$330,000 or more) and the gravity of the offense in criminal cases (e.g., murder, terrorism, narcotics, rape, thefts of more than \$6,500). The larger civil cases and more serious criminal cases excluded from the jurisdiction of magistrates must be pursued in the appropriate superior court. Magistrates also have authority to register contracts, powers of attorney, agreements on mortgages and wills and handle other civil matters. The Judicature Act also authorizes the Chief Justice to introduce changes in the jurisdiction of the subordinate courts with the approval of the JSC.

When the Judges Act became law in 2010, many of the then-sitting judges and magistrates did not meet the law's educational requirement of a diploma in Sharia or law. The law provided an exception, allowing them to remain in service for seven years during which they would be required to obtain the necessary degree or certificate. Local academic institutions established programs for this purpose, which were not considered very rigorous. As a result, judges and magistrates with only limited legal education and training have remained on the bench.

The 2014 baseline report estimated the annual budget of the courts to be around \$21.5 million in 2013.

The number of first instance judges could not be readily determined. The current State Department Human Rights report states that there are 183 judges. Excluding the five Supreme Court and nine High Court judges, that would mean 169 superior court judges and magistrates. The Department of Judicial Administration website says there are 187 magistrate courts and that 132 were staffed at the time the information was posted. A knowledgeable observer estimated there are 40-60 judges in the superior courts. Therefore, it appears that the total number of judges in the entire system probably approximates 200.

Similarly, it was impossible to determine the number of cases received, finalized, and carried over in each level of the courts. The Department of Judicial Administration (DJA) reported that for 2016 a total of 15,658 cases were filed in the magistrate courts and 12,617 were concluded. For all other courts combined (superior courts, High Court, Supreme Court) the total number of cases filed was 12,918 and the number concluded was 8,604. The DJA also reported that the number of cases pending at the end of 2016 in superior and magistrate courts was 6,668, a reduction from the total of 7,177 cases pending in those courts at the end of 2015.

According to the 2014 baseline study of the justice system, the average caseload of a trial judge in the criminal or civil court in Malé in 2013 was about 200 cases. (Compared to other jurisdictions, this is not a large workload.) The volume of cases in the magistrate courts on the atolls varied considerably.

The baseline study says that in 2013 about 5,200 criminal cases were filed and about 2,700 concluded. The completion time for criminal cases during an unspecified period was less than one year for about 1,800 cases, one to three years for about 1,200, and three to five years for about 400.

For civil cases, about 9,200 were filed and 7,800 completed in 2013. The duration of civil cases, also during an unspecified period, was less than one year for about 3,100 cases, one to three years for about 1,000 cases, and three to five years for less than 100 cases.

These less than precise and somewhat dated statistics suggest that there is a significant backlog in the courts, especially in criminal cases.

The Judicial Service Commission (JSC) is established by the constitution as “an independent and impartial institution” with 10 members. As described in the preceding chapter, the members consist of three judges and seven individuals who represent the President, the People’s Majlis, and the legal community. A Supreme Court Justice chairs this important body as presently constituted.

The Constitution empowers the Commission to “appoint, promote and transfer Judges,” other than members of the Supreme Court, and to recommend Supreme Court appointments to the President. The President must consult with the Judicial Services Commission on appointments to the Supreme Court and those appointments must also be confirmed by majority vote of the People’s Majlis. The Commission also is supposed to investigate complaints about the judiciary and take disciplinary action, including, where warranted, making findings of gross incompetence or gross misconduct with accompanying recommendations to the People’s Majlis that such unqualified judges be removed. (Removal requires a two-thirds majority vote in the Majlis.)

In its early days under the 2008 Constitution, the JSC was subjected to political maneuvering to shape the judiciary. More recently, the Supreme Court has asserted itself through orders and regulations that limit the ability of the Commission to perform its independent constitutional role. For example, it has not been allowed to put in force a system for evaluating judicial performance. An effective, independent JSC will be essential to the competence and integrity of judiciary. Understandably, the future of this entity is a major theme of current debate about judicial reform.

SPECIALIZED TRIBUNALS

Maldivian law has established several mechanisms to address issues requiring specialized knowledge. These are not a part of the judicial branch.

The Employment Tribunal hears disputes between employers and individual employees. Cases are heard by panels that include both legally trained experts and lay members. The Tribunal’s decisions can be enforced by the civil courts and can be appealed to the High Court.

The Tax Appeal Tribunal hears appeals by taxpayers from final administrative decisions of the Inland Revenue and the Commissioner General of Taxation. Like the other administrative tribunals, its decisions can be appealed to the High Court.

Arbitration Tribunals can be established under Maldivian legislation based on the widely followed UNCITRAL model law. Parties can agree to resolve virtually any dispute by arbitration. Exceptions exist for matters where public policy has established an exclusive remedy (such as employment disputes, matrimonial disputes, or criminal charges). There are plans to establish an international arbitration center in the Maldives. This would avoid the existing need to rely on arbitration centers in other countries, such as Singapore.

The Arbitration Act authorizes third party mediation of commercial disputes. In addition, it makes foreign arbitration awards enforceable by the High Court in a manner that gives effect to the 1958 New York Convention on Recognition and Enforcement of Foreign Awards. However, the Maldives is not a party to the New York Convention and enforcement in Maldivian courts of foreign arbitral awards remains difficult.

PUBLIC SECTOR LEGAL AGENCIES AND AUTONOMOUS BODIES

The Attorney General is appointed by the President, according to Article 133 of the Constitution, from among persons “with distinguished education and experience in the legal field.” Under the Constitution, the Attorney General has the duty to “promote, protect, uphold and defend the rule of law, the public safety, the freedoms of the public and the public interest [...] subject only to the Constitution and the law.”

The Attorney General’s duties include advising the Government on legal matters and representing it before the courts. The Attorney General chairs the Law Revision Commission (responsible for legislative drafting) as well as the Clemency Board and is a member of the Judicial Service Commission. The Attorney General’s Office publishes many Maldivian laws and regulations on its website, including some in English.

The baseline report estimates the annual budget of the Attorney General to be \$4.15 million in 2013.

Prior to 2008 the Attorney General had served as the chief prosecutor. The 2008 Constitution created the office of the Prosecutor General, who carries out the prosecution function independently, although subject to the Attorney General’s general policy directives. Since then, the only active role of the Attorney General in the criminal justice field has been to provide legal aid to indigent defendants. Article 53 (b) of the Constitution requires the state to provide legal aid to indigents who are charged with serious criminal offenses. The Attorney General employs several attorneys in private practice on retainer to provide criminal defense to those in need. However, the scope of this activity is limited by financial constraints. There is a backlog of cases in the criminal court in Malé involving defendants who have made applications for legal aid. Legislation to create a Public Defender office is included in the reform proposals of the government and the Supreme Court.

The Prosecutor General is “independent and impartial” and not “under the direction or control of any person or authority.” The President appoints this officer under Article 220 of the Constitution to a five-year term, subject to confirmation by the People’s Majlis and the appointment can be renewed once, again subject to confirmation. The Prosecutor General has broad powers to initiate and to supervise criminal prosecutions (or decline to prosecute), to review pretrial detention, to investigate complaints of criminal activity, and to appeal judgments and decisions. It is noteworthy that, while the Attorney General’s office is established in the chapter of the Constitution dealing with the President’s cabinet, the Prosecutor General is established in the chapter dealing with independent commissions and offices.

The Prosecutor General has a staff of about 100 lawyers, many of them recently admitted to the bar and having little courtroom experience. The 2014 baseline report indicated that the average caseload of a prosecutor was around 60 to 70 cases in 2013. The Prosecutor General’s annual report for 2018 indicates that in the previous year the office handled more than 2,000 cases in the superior courts. However, it did not report the disposition of those cases. The distribution of those cases by gender and age of defendants is shown in Table 3.

Table 3 – Prosecutor General Cases Presented to the Courts, 2017

COURT	Gender		Age		Total
	Male	Female	Over 18	Under 18	
Criminal Court	938	42	980	0	980
Drug Court	938	35	962	11	973
Juvenile Court	51	0	0	51	51
TOTAL	1927	77	1942	62	2004

Source: Prosecutor General Annual Report, 2018

A significant feature of these statistics is that the number of cases filed in the drug court is comparable to the number filed in the criminal court, indicating the major contribution of drug offenses to the total workload.

The 2014 baseline report on the justice system estimated the annual budget of the Prosecutor General to be around \$1.65 million in 2013.

The Constitution provides for several **independent commissions** that have the authority to take acts having legal significance. These include the Elections Commission, the Civil Service Commission, the Human Rights Commission, and the Anticorruption Commission. Their decisions may be challenged by petition to the High Court.

The Constitution also provides for an independent **Auditor General**, who has jurisdiction with respect to investigations of corruption in the government. The Auditor General has issued several reports of observed “systematic, widespread corruption and misappropriation of public funds.” Those reports are referred to the Prosecutor General, but they have only rarely led to prosecution of those accused of wrongdoing.

THE LEGAL PROFESSION AND LEGAL EDUCATION

According to the 2014 baseline study of the justice system, there were 760 registered lawyers in 2013, almost all of them based in the nation’s capital. Members of the legal community believe that the number of registered lawyers who are actively engaged in the practice of law is much smaller, perhaps 400. The concentration of lawyers in Malé means that the availability of legal representation is extremely limited and expensive in the outer islands of the Maldives. The impact of this lack of access to legal assistance outside the capital is made even greater by the absence of an available system of alternative dispute resolution.

The legal profession is regulated by the Attorney General through a regulation issued in 2010 and by the Supreme Court, which issued additional regulation in 2012 on who is authorized to appear as an advocate before the various courts. A bar association, which a group of Maldivian lawyers had organized as a nongovernment organization (NGO), was deregistered in 2014 at the direction of the Supreme Court. The court found that this private organization could not call itself a bar association in the absence of legislation authorizing it to represent the bar. The Supreme Court issued its directive one day after the bar association had called for the suspension of a Supreme Court Justice who was under investigation.

Legislation on the legal profession is currently pending in the People’s Majlis and early enactment is expected. The proposed legislation would establish a Bar Council and shift the oversight of bar membership and the professional conduct and continuing legal education of lawyers to a self-regulating model managed by the bar.

There is no bar examination to determine whether a lawyer is professionally qualified. An individual must obtain a Bachelor of Laws degree (LLB) or complete a degree based on certain prescribed modules of instruction. Acceptable alternatives to a Bachelor of Law degree include a diploma in Sharia and Law, or a graduate certificate in Sharia. The principal law school, the Maldives National University, offers an LLB program that combines common law and Sharia content. The university graduates about 80 lawyers annually under this program. In recent years several other Maldivian academic institutions have initiated LLB and certificate programs. However, the preparation of students in the Maldives for legal or judicial careers is generally considered inadequate. Many lawyers and judges have foreign law degrees or Sharia certificates.

LAW ENFORCEMENT

The principal law enforcement agency is the Maldives Police Service (MPS). The Police Service is directed by the Constitution to operate independently of the Military Service and is answerable to the President

and the People’s Majlis. Subject to law, the police have the power to investigate offenses, interview witnesses, arrest individuals, and find and preserve evidence.

The MPS has about 4,200 officers and staff. It maintains a police presence on about one-half of the approximately 200 inhabited islands. With a policy of decentralization, there is increased delegation to local stations and to the local community.

Women officers now constitute about 10 percent of the workforce. The only woman in a command position is an Inspector. The MPS is seeking to emphasize gender considerations in the composition of its various internal management committees and the government is encouraging this effort.

There is a relatively low volume of crime in the Maldives. The MPS regards the greatest risk to public order and safety to be potential terrorism. They attribute the greatest volume of their work to the illicit distribution and use of drugs. Also of concern are street gangs which are said to have ties to radical groups and corrupt politicians. Table 4 provides a summary of crime statistics for recent years.

Table 4 – Crime Statistics – Selected Offenses, 2015-2018

Offense	2015	2016	2017	2018
Assault	944	783	770	752
Domestic Violence	347	305	280	240
Theft	4,008	3,617	3,503	3,270
Counterfeit/Forgery	91	97	86	71
Drugs	2,080	2,379	2,036	2,229
Robbery	546	716	662	537
Sexual Violence	539	465	417	362
Totals	8,555	8,362	7,754	7,461

Source: Maldives Police Service

A 2019 Transparency Maldives report indicates that the MPS is widely perceived to be corrupt. The report calls for a commitment to address this issue. The recently adopted MPS 2019-2024 action plan seeks to address corruption concerns through an emphasis on partnership and working with communities. The plan was prepared on a widely consultative basis with assistance from the Western Australia Police.

The problem of numerous drug offenses is recognized as being far more than a law enforcement matter. The National Drug Council is developing a national strategy to deal with drug addiction as a public health issue and to develop needed rehabilitation facilities, reduce backlogs in the criminal court and the drug court, and relieve prison congestion.

Several other public organizations have the authority to carry out investigations within their particular areas of expertise and to present evidence of criminal conduct to the Prosecutor General. These include, for example, the Anticorruption Commission, the Human Rights Commission, and the Ministry of Finance. However, their investigations do not result in many prosecutions. (In 2015, the last year for which it published statistics, the Anticorruption Commission received 944 complaints and forwarded 21 cases to the Prosecutor General.) A major scandal involving the state-owned Maldives Marketing and Public Relations Corporation (MMPRC) has resulted in losses estimated to exceed \$90 million and implicated many public officials and state-owned enterprises. This matter, now under investigation by a special

Presidential commission, illustrates the limitations of local institutions in dealing with complex economic crimes.

CIVIL SOCIETY PARTICIPATION AND OVERSIGHT

Generalized dissatisfaction with the administration of justice is evident in public opinion surveys and interviews. The 2014 baseline study of the justice system found that more than 70 percent of those surveyed expressed a low level of confidence in the justice sector and a preference for settling disputes outside the courts. A more recent unpublished survey of practicing attorneys suggests that those who know the system best are also the most critical.

This popular dissatisfaction is not mobilized into organized advocacy for specific reforms. The principal NGOs that are active in the area are Transparency Maldives (TM), an affiliate of Transparency International, and the independent Maldivian Democracy Network (MDN). Both these organizations have undertaken investigations, conducted surveys, engaged in research, and published reports. They do valuable work of good quality. For example, MDN recently initiated a program of trial observation in the criminal court, which USAID supported with a small grant through the American Bar Association. In addition, MDN has been eliciting opinions and suggestions of citizens about reforms that have been proposed. The two organizations sometimes collaborate on activities of shared interest.

These small organizations do not have the stature or the capacity to lead a major public advocacy campaign or convene a large conference of stakeholders in support of justice reform. However, they have the skill and credibility to engage with broad segments of the population and to be heard by the government and the judiciary.

ACCESS TO JUSTICE AND LEGAL ASSISTANCE

As previously mentioned, the Attorney General is responsible for ensuring the right to counsel for defendants charged with serious criminal offenses. However, funding for this purpose is very limited and defendants can wait for months, often in pretrial detention, before an appointed attorney can be made available. The creation of a public defender's office is one of the government's current reform proposals.

With respect to civil disputes, there is no alternative dispute resolution system in effect (other than commercial arbitration) and parties have no forum available to them other than the courts. The courts have adopted a helpful practice of pretrial counseling and mediation to encourage settlement. However, this procedure does not avoid the cost and delay of bringing and responding to a lawsuit. There is no public legal aid system to assist indigents in civil matters.

For the inhabitants of islands away from the capital, the only readily available access to justice is represented by the local magistrate, who is likely to have little preparation or training in the performance of judicial responsibilities. For major disputes and offenses, the superior courts are available only in the capital, involving considerable time and expense for those on distant islands. The geographic dispersal of the islands also complicates the conduct of trials in the capital. Trials are often not continuous and are interrupted repeatedly in order to enable witnesses, including those from other islands, to be present and give testimony. As previously discussed, the geographic dispersal of superior courts is under consideration.

According to the above-mentioned 2014 baseline study, people did not seek help from justice agencies because they had a low level of confidence. The three major reasons for this lack of confidence related to timeliness, fairness, and their own limited awareness of those agencies. Respondents stated that the major challenge in seeking justice was corruption. The baseline study concluded with a devastating observation that its "findings demonstrate that the general public has a low level of trust with respect to the quality of justice, and the independence, integrity and efficiency of justice service delivery."⁸

⁸ Attorney General's Office and the United Nations Development Program in the Maldives, *Legal and Justice Sector Baseline Study 2014*, 2015, p. 38.

The recommendations set out in the baseline study for increasing access to justice in the Maldives remain worthy of consideration today. They included the following:

SHORT-TERM RECOMMENDATIONS

- **Increase public awareness of alternative dispute resolution (ADR) systems.**
- **Carry out a pilot ADR project in Malé with a view to establishing a national informal ADR system.**
- **Conduct an audit of training needs assessments by each of the justice agencies.**
- **Develop training plans that allow the agencies to fund and provide their staff with regular and relevant training appropriate to their functions.**
- **Ensure that information about laws, regulations and court decisions are available to all stakeholders in the justice process, especially magistrates.**
- **Conduct frequent, written performance evaluations of judges.**
- **Set internal deadlines by the courts to conclude cases.**
- **Review current procedures to ensure reduction of delays in delivering justice.**
- **Increase the role of prosecuting officers in police investigations.**

LONG-TERM RECOMMENDATIONS

- **Build case management systems, which will allow each justice agency to develop an integrated case management system over the longer term.**
- **Develop a central legal resources library, including court decisions and legislation, accessible to the entire sector.**
- **Appoint a case manager to every court with power to transfer inactive cases.**
- **Establish a separate judgment enforcement office with necessary tools for speedy enforcement of judgments of all courts and decisions of all tribunals.**
- **Divert less serious criminal cases from criminal justice system.**

5. CURRENT PROGRAMS OF INTERNATIONAL COOPERATION

The United States is engaging in an expanded range of cooperative activities with the Maldives within the framework of current US strategy for the Indo-Pacific region. This regional approach is manifested in economic, governance, and security cooperation. In particular, the strategy includes US support for “transparency, openness, rule of law, and the protection of human rights and fundamental freedoms.”

US relations have warmed since the inauguration of the Solih government. Foreign Minister Shahid met with Secretary of State Pompeo in February 2019, at which time the Secretary explicitly welcomed “the Government of Maldives’ commitment to judicial reform, transparency, and rule of law.” Following that visit, the Department of State issued a press release welcoming the opportunity to deepen engagement with the Maldives and announcing the intention to increase funding for assistance in public financial management, rule of law, governance, civil society strengthening, and vocational training.

USAID PROGRAMS

Until recently, USAID activities in the Maldives had focused on management of coral reef ecosystems and the quality of potable water. Warming relations since the inauguration of the present government have included a significant broadening of USAID’s portfolio. For example, USAID approved several small activities to respond to requests from the Solih government relating to anticorruption training, elections support, and trial observation.

In March 2019, USAID entered into a Development Objectives Assistance Agreement with the Maldives to support improved public financial management, strengthening the rule of law, and improving “the resilience of individuals and communities to drive sustainable development” according to press reports. Press reports describe the agreement as contemplating a USAID investment of \$20 million over five years. Programming relating to governance and the rule of law within this framework is in the process of development.

OTHER USG PROGRAMS

The **Department of State’s Bureau of International Narcotics and Law Enforcement Affairs** led a fact-finding mission to the Maldives in December 2018. Department of Justice and Colombo-based Embassy and USAID staff participated in the visit. The mission recognized that comprehensive, rather than piecemeal, criminal justice reform was needed and raised the possibility of supporting such reform through long-term training for policy leaders and deploying an advisor who could support capacity building for the investigation and prosecution of sophisticated financial crimes. In addition, the **Department of State Bureau for Educational and Cultural Affairs** is planning for up to 10 International Visitor Leadership Program exchanges in the next year. International Visitor exchanges with other countries in the past have included visits relating to cooperation in rule of law development as an integral part of US programs.

The **Department of Justice Office of Prosecutorial Development, Assistance and Training (OPDAT)** is expected to deploy a short-term legal advisor to support capacity building at Maldivian criminal justice institutions (apparently related to the Department of State fact-finding mission described above). In addition, the **Department of Justice International Criminal Investigative Training and Assistance Program (ICITAP)** has conducted an assessment of the Maldives Correctional Service which could be a useful resource for future planning. The Maldives has established a Prisons Reform Monitoring Committee following a recent audit that was highly critical of existing prison conditions.

The **Department of the Treasury Office of Technical Assistance** undertook an assessment of anti-money laundering and counter-terrorist financing capabilities in March 2019. The Economic Crimes Team that conducted the assessment concluded that there was both a need for and an interest in obtaining technical assistance. They suggested that consideration be given to support for strengthening the processes, tools and skills, and development of analytical expertise of the Financial Intelligence Unit of the

Maldivian Monetary Authority and that support for enforcement stakeholders on investigative techniques and criminal asset recovery also be considered.

OTHER INTERNATIONAL PROGRAMS

The United Nations Development Program (UNDP) has long been working on rule-of-law issues in the Maldives. The 2014 legal and justice sector baseline study remains a landmark source of information about the operation of justice organizations, public perceptions of the justice system, and potential reforms. Currently, UNDP is implementing a five-year program on strengthening democratic governance, rule of law and human rights in the Maldives that is scheduled to end in December 2020. The program's results areas are:

1. Increased voice and citizen participation for strengthened government systems;
2. Enhanced access to justice and protection of human rights.

Activities in the second results area include a wide range of subject matter, including legislative reform, alternative dispute resolution, data collection and case management, and capacity development of justice sector agencies to address gender-based violence. The budget for these activities is stated as \$2,098,000.

Germany is beginning a program⁹ on strengthening the rule of law in the Maldives, implemented by the Max Planck Foundation for International Peace and the Rule of Law. The Foundation published terms of reference for such a project in April 2019. According to those terms of reference, the project's specific objective is "to support legislative and judicial reform by providing technical legal expertise on legislative review and legislative drafting, as well as to increase the capacity of the judiciary to ensure that they can fulfill their respective responsibilities in a comprehensive legal framework."

The Maldives government has not yet established a coordination system to manage the various international initiatives in the justice sector. However, the Attorney General has appointed a senior attorney as a liaison point for communication with international actors. In addition, a retired South African jurist has joined the Attorney General's staff to conduct assessments. If, as expected, a broader range of international programs become available, a more formal arrangement may be needed to ensure that the reform efforts are locally owned and are managed efficiently within a coherent policy framework.

⁹ A general description of the project is available at <http://www.mpfpr.de/projects/country-based-projects/maldives>. The terms of reference, which are no longer posted on the internet, identify as a point of contact Imogen Canavan, Head of Projects Country Manager Sri Lanka and Research Fellow, Asia, canavan@mpfpr.de. It appears that this project is likely to have significant overlap with possible USAID activities.

6. CHALLENGES AND OPPORTUNITIES FOR ADVANCING THE RULE OF LAW

Most stakeholders share broad hopes for reform of the Maldivian justice system. Common objectives can be described as follows:

- A)** to reach a widely shared understanding of and commitment to the rule of law;
- B)** to build on that basis a justice system with integrity, competence, independence, and accountability that enjoys broad public trust and confidence; and
- C)** to provide through that system timely access to impartial and effective justice and legal services.

The principal protagonists are acutely aware that the promise of democratic governance under the rule of law envisaged by the 2008 Constitution was not fulfilled. They recognize that the present situation may provide a unique opportunity to try again. But there are strong differences among them about specific measures and how to achieve the desired results. Successful and sustained reform will require that the stakeholders in government, the judiciary, and civil society address a host of substantial challenges and find enough common ground to enable them to identify and implement practical solutions.

PRINCIPAL CHALLENGES

The restructuring of the judiciary envisioned by the 2008 Constitution was frustrated by political resistance and controversy. As a result, the separation of powers has become an area of competition without clear boundaries. The political branches of government have not respected the independence of the judiciary. At the same time, the judicial leaders have sought to expand their powers beyond the scope of their constitutional role and have impeded the operation of independent institutions established by the Constitution. (The 2015 “Justice Adrift” report discussed above in Chapter 3 specifically urged the Supreme Court to “respect the role and mandate of independent constitutional commissions...and allow them to carry out their constitutional functions without undue or unlawful interference.”)

The institutions that make up the justice system are not prepared to undertake a far reaching and complex reform. They have only limited technical capacity and little familiarity with international standards or, in many cases, fundamental democratic values and principles. Moreover, they tend to operate independently rather than as interdependent components within a coherent system. For example, prosecutors and investigators only rarely collaborate on compiling evidence for presentation to the courts. The 2014 baseline study found that there was not even consistency among the legal and justice agencies in recording and maintaining data.

An expectation of routine corruption permeates the justice system. Some attribute this to inadequate salaries in the public sector. But the problem runs deeper. There is a need for clear policy that corruption will not be tolerated, combined with effective measures to prevent, deter, and punish wrongdoing and, at the same time, to build a culture of lawfulness and integrity in public institutions as well as in the broader society.

Even as some unlawful and corrupt acts appear to be free from legal consequences, minor offenses are creating backlogs in the courts. Hundreds of (mainly young) accused individuals languish in pretrial detention for months. The drug court, created to divert offenders to rehabilitation and remediation, is itself backlogged and lacks the necessary facilities to which it can refer otherwise eligible defendants.

On most of the almost 200 inhabited islands that make up the country, the only access to justice is to a single magistrate, often one with little education or training. There is no alternative dispute resolution system that could provide timely access to justice at low cost, help to preserve harmony in communities, and relieve some of the congestion in the courts.

There has not been a balanced accommodation of the two sources of Maldivian law: the common law in the British tradition and Sharia. Legal education in the Maldives attempts to include both traditions in the curriculum. Some members of the bar and the judiciary obtain their legal degrees in western universities and others attend Middle Eastern institutions. There are claims of preference for one or the other legal perspective in judicial and legal appointments.

The tension between these two legal traditions often parallels the tension between the liberal human rights orientation of the Constitution and conservative historic beliefs and practices. For example, a 2014 IFES Report recommended efforts to promote greater understanding of women's rights according to Islam in light of frequent expressions of concern by interviewees about "increasing dominance of conservative views about Islam (e.g., that women belong in the home) at the present time in the Maldives."¹⁰ Finding a mutually respectful balance is an underlying issue in addressing many of the above-described structural challenges.

There is low public trust and confidence in the justice system. Most people would prefer to avoid the courts. Many express unfamiliarity with the roles of the various justice sector organizations or how to use the system. Public distrust and lack of knowledge is aggravated by the absence of educational or outreach efforts by the government, the courts, or the legal community. Public monitoring and oversight of the operation of the justice system is limited by restrictions on public access to ongoing proceedings, delays in making information available to the public, and threats that criticisms will lead to contempt of court citations or other retaliation. The idea of justice reform is politically popular, but civil society has not had a significant voice in ongoing deliberations about its content or how to achieve it.

Beyond these fundamental challenges, there are numerous important issues that need to be addressed over time. Examples include the following:

- A)** Women are severely underrepresented in public life, including throughout the justice system. Only four women candidates were elected to the People's Majlis this year and only six women are currently serving as judges. This limited presence necessarily has implications for how well the justice system, in practice, acts as a guarantor of respect for women's legally protected rights.
- B)** Human capacities in justice sector organizations are weak and the organizations lack adequate systems to provide recruitment and performance standards, career development opportunities, or training and experience that could increase professional integrity and competence. Maldivian academic preparation and continuing legal education are also insufficient.
- C)** There are gaps in the body of basic laws for the administration of justice. For example, there is no code of civil procedure or evidence code. These omissions are a cause of uncertainty and inconsistency in how similar issues are dealt with in different courts or even by different individual judges.
- D)** Enforcement of judgments is complicated, time consuming, and expensive. Enforcement of foreign judgments and arbitral awards is even more difficult.
- E)** If a new model for regulating the legal profession is enacted, as expected, the development of effectively functioning bar institutions and operations will make unprecedented demands on a nascent organized bar.

¹⁰ Megan Ritchie, Terry Ann Rogers and Lauren Sauer, *Women's Empowerment in Political Processes in the Maldives* (Washington, DC: IFES, 2014), p. 36.
https://www.ifes.org/sites/default/files/ifes_womens_empowerment_in_political_processes_final_0.pdf. See also US Department of State, *2018 Report on International Religious Freedom: Maldives* (Washington, DC: Department of State, 2019), <https://www.state.gov/reports/2018-report-on-international-religious-freedom/maldives>.

F) Financing for the justice system is inadequate and available resources are not used efficiently.

POTENTIAL RESPONSES

There is a risk that the government will seek enactment of its own reform legislation early in the new session of the People's Majlis that convened on May 28, 2019. The judiciary may well initiate an independent and largely incompatible competing program.

The government might prevail for the moment in a political confrontation between factions that do not communicate with each other. However, such a confrontation would seem likely to perpetuate differences and resistance and could frustrate efforts to arrive at shared understandings, at least on some issues, as a basis for necessarily long-term efforts to advance the rule of law.

Moreover, because local institutions are weak and have only limited knowledge of sound principles, international standards, and best practices, unilateral reform proposals could be deficient in various ways. In some cases, the deficiencies might cause the intended reforms to fail to achieve their purpose. For example, if the Department of Judicial Administration has become an instrument for an expansive Supreme Court to infringe on other branches of government, the solution should not be to place the DJA under the supervision of the People's Majlis, a political body. Yet that suggested interference with the judiciary's administrative autonomy is what the initial version of the MDP reform agenda proposed.

Instead of acting unilaterally, the government could begin an inclusive examination of priority issues in which stakeholders could express their concerns, propose solutions, and benefit from disinterested international expertise to inform the shaping of specific reforms within an overall strategic approach. Transparent, inclusive dialogue involving the government, the parliament, the judiciary, the legal community, political parties, and other stakeholders, including a strong role for civil society, could make progress toward a way forward. Encouraging participation by an informed civil society in this context could provide a good example of how values of moderation, mutual respect, and public accountability that are inherent in building a democratic society could be nurtured more broadly.

Specific outcomes would be expected to reflect the government's impressive political strength. But openness to other ideas, awareness of international standards and best practices, and the active participation of civil society should significantly improve the likelihood that the resulting reforms will be broadly accepted, more readily put in place, and more capable of establishing a solid foundation for a long-term, iterative process of continuing improvement.

The sequencing of issues should be an early decision for the government's reform team. They might begin with issues that do not confront core interests. For example, a restructuring of the courts to improve access to justice has been raised by various actors. Closing the underutilized High Court divisions in the northern and southern islands while opening multi-purpose superior courts in atoll capitals and consolidating criminal trials in those courts could be attractive to a broad range of stakeholders.

Similarly, legislation might be fashioned to enable the Judicial Service Commission to perform its independent constitutional responsibilities free of crippling regulatory constraints that have been imposed by the Supreme Court without changing the structure of the JSC. That would avoid the certain controversy that would be engendered by proposing an immediate amendment to the Constitution to change the JSC's structure. New appointments to the JSC, such as those made in recent months, can also improve the Commission's effectiveness.

The shaping and initial implementation of a coherent program of broad policy and structural reforms is clearly the highest priority at this time. The Maldives is not ready to undertake the typical kinds of specific improvements to case management practices or training for judicial personnel, prosecutors and public defenders, or other similar topics that are often the subject of international cooperation projects. Instead, the most important contribution for international cooperation is to enable the government and other

stakeholders to gain access to disinterested expertise to inform its deliberations and proposals and, at the same time, to promote inclusive dialogue on justice reform with broad participation.

OPPORTUNITIES FOR EFFECTIVE USAID ENGAGEMENT

In this politically sensitive and challenging context, USAID has a present opportunity to engage in two ways that can substantially improve the prospects for successful reform. Time is of the essence, given the Maldivian political calendar.

- A)** First, USAID can connect Maldivian reformers with unbiased international expertise that can inform deliberations on the form, content, and sequencing of a coherent justice reform agenda.

The optimum approach for providing access to impartial international expertise might be for USAID to rely upon an existing arrangement with an implementing partner that has good contacts with appropriate international groups and could quickly arrange for international experts to be available to advise Maldivian reformers on the wide array of issues they will confront. Presumably, this would require a sole-source justification, which would seem feasible in these circumstances.

According to the Office of the President, the Attorney General is the responsible point of contact for the Maldivian government on justice reform and should be the starting point for USAID discussions. However, there should be an understanding that international experts will also be free to engage the judiciary, civil society organizations, and other stakeholders. An offer based on a US model, rather than one presented as impartial and unbiased international expertise, would be unduly risky, given the intense differences in political and jurisprudential orientations among local stakeholders. US experts should certainly be included in the mix. But the overall initiative should have an international character.

The following organizations illustrate potential sources of international expertise:

- Commonwealth Secretariat (provides legislative drafting and other assistance from Commonwealth experts and also is a store of expertise on the Latimer House principles on the separation of governmental powers), <http://thecommonwealth.org/office-civil-and-criminal-justice-reform> and <http://www.cpahq.org/cpahq/cpadocs/Latimer%20House%20Principles.pdf>
- International Association of Court Administration (promotes “professional court administration and management in emerging democracies and other countries pursuing the rule of law,” is co-located with the National Center for State Courts), <https://www.iaca.ws>;
- International Bar Association (professional association with expertise in regulation of the legal profession, judicial integrity, and other topics), <https://www.ibanet.org>;
- International Commission of Jurists (group of 60 distinguished jurists that provides “unique legal expertise to develop and strengthen national and international justice systems; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession”), <https://www.icj.org>;
- International Consortium for Court Excellence (organization of judicial bodies, including several in Asia, that promotes a widely-used framework of all-encompassing values to seven basic areas of court activity – leadership and management, planning and policies, human, material and financial resources, proceedings and processes, client needs and satisfaction, affordable and accessible court services, and public trust and confidence – to achieving court excellence), <http://www.courtexcellence.com>;
- United Nations (global organization with expertise in the relationship of the rule of law to development, human rights, and peace and security, with special offices dealing with the independence of judges and lawyers and with drugs and crime), <https://www.un.org/ruleoflaw>;

- World Justice Project (international civil society organization with the stated mission of "working to advance the rule of law around the world"; publisher of the Rule of Law Index, which measures performance of covered countries (the Maldives is not currently included) on key aspects of the rule of law), <https://worldjusticeproject.org>.
- B)** Second, USAID can promote transparent, inclusive processes whereby the various local stakeholders can be encouraged to contribute their ideas to the formulation of the reform agenda.

With respect to inclusive dialogue, it would be desirable to work at several levels. To begin, as the government develops its proposals, it should be encouraged to take the lead in preliminary, quiet dialogue with key stakeholders. At the same time, Maldivian civil society organizations could begin to familiarize the public with the main issues and elicit public opinion about those issues.

At a second stage, reform proposals could be addressed in broadly attended public workshops and conferences at which representatives of different stakeholder groups would offer ideas for discussion. For example, panels with representatives from the executive, judicial, and legislative branches as well as from the Judicial Service Commission, civil society groups, and international experts might offer perspectives on standards for the selection and performance of judges.

It is doubtful that any single Maldivian institution would be accepted by all stakeholders as a trustworthy and influential convening authority for multi-party dialogue. For outreach to civil society, the two leading Maldivian NGOs on this topic, Transparency Maldives and the Maldivian Democracy Network, would be capable interlocutors. But they would not be able to organize and preside over large events. For the convening of conferences and workshops, it would seem advisable for USAID to explore collaboration with UNDP. That organization has a long history of support for democratic governance and the rule of law in the Maldives and enjoys the trust and confidence of Maldivian actors in the justice sector.

In addition to UNDP, Germany is about to begin a project intended to strengthen the rule of law in the Maldives "by supporting the development of the legislative framework and judiciary with technical legal assistance and capacity building to key actors." It would be important to coordinate with any such donor project that might be considered or initiated in order to avoid unnecessary duplication or counterproductive conflicts. This would seem a useful addition to the agenda of the donor coordination group in Colombo, Sri Lanka.

Coordination among US agencies is equally important. Broad support for shaping the reform agenda should take into account knowledge gained from technical assistance to strengthen criminal prosecutions through a Justice Department advisor or to strengthen through the Department of Treasury the ability of Maldivian financial institutions to detect and respond to economic crimes. Allocating an International Visitor opening through the Department of State to a justice sector candidate could provide experience that would enrich the reform process. These activities should provide important insights to inform the policy dialogue and at the same time expose Maldivian actors to additional knowledge and ideas.

FOLLOW-ON USAID ACTIVITIES

At this time, it is not recommended that USAID initiate focused projects and activities to address as discrete matters any of the numerous specific challenges identified at the beginning of this chapter – pervasive corruption, inadequate access to justice and the lack of an alternative dispute resolution system, underrepresentation of women, weak human capacities, gaps in basic laws, incarceration of youthful and minor offenders, poor justice sector financial management, lack of public awareness, knowledge and oversight, and others.

All of these important issues need to be considered in the shaping of a national justice reform agenda. However, none of them is likely to be addressed successfully in isolation. The better approach is to concentrate for now on the basic policy and structural issues that will be addressed in the coming months, while encouraging local actors to consider how best to address individual challenges in a strategic context.

USAID should then remain alert to the priorities that local actors identify in this process as areas for potential follow-on programming.

For the medium term, should a positive relationship be developed and momentum for justice reform maintained, USAID might consider assigning a technical advisor to the government's reform team, perhaps in the Office of the Attorney General. This could facilitate the timely introduction of international expertise to support Maldivian reforms. In addition, the presence of a USAID advisor could provide an opportunity for dialogue on how USAID might support specific reform priorities.

For example, should the government wish to invest in strengthening the drug court and related facilities for diversion of offenders into rehabilitation, there might be a good fit with a USAID workforce development program for vulnerable populations. Similarly, if the government and the courts were open to strengthened civil society monitoring and oversight of judicial performance, there might be complementarity with USAID support for civic participation at the local community level.

THE NEED FOR FLEXIBILITY

It must be recognized that the government will not want to suspend all action until the proposals have been thoroughly addressed in inclusive stakeholder dialogue and adapted to take into account international best practices and local implementation capacity. Also, the government is not the only actor with a reform agenda, and it will need to consider how to deal with the reform proposals of others. Progress is likely to involve unilateral action on some issues, dialogue about others, and simultaneous action and dialogue about still other aspects of reform.

USAID encouragement will probably have some influence on Maldivian prioritization and sequencing of reform initiatives and the degree to which Maldivian actors value technical soundness, consistency with international best practices, openness to the ideas of others, implementation capacity, and building public awareness, understanding, and support. Ultimately, however, decisions on priorities, strategies, and timing will emerge from the judgments of local actors based on their knowledge of local conditions and their sense of when and how particular actions should be taken. As those decisions are made, USAID will need to consider the feasibility of programmatic support for specific proposals within its own overall approach of promoting informed deliberations, inclusive dialogue, and coherent locally owned reform strategies.

ANNEX I – STATEMENT OF WORK

The purpose of this assessment is to provide USAID with an analysis of the primary challenges in advancing the rule of law in order to develop a strategy for programming. It includes two main tasks:

- 1) An analysis of the primary challenges and opportunities in advancing the rule of law, including an assessment of political will for reform;
- 2) A proposed strategy for programming, including prioritized areas of intervention and program recommendations.

The contractor shall conduct a background review of key documents, as well as on-site research and interviews to develop a report that addresses these areas. The assessment will be consistent with the *Rule of Law Strategic Framework*, which is designed to synchronize with the mission's broader DG strategy.

The report will include the following components:

I) ANALYSIS OF PRIMARY CHALLENGES AND OPPORTUNITIES IN ADVANCING THE RULE OF LAW

This section of the report will analyze the current state of the justice sector as a basis for deriving strategic recommendations. Consistent with the draft *Rule of Law Strategic Framework*, the analysis will include the following four steps:

First, the assessment will take into account the political and historic context, including current events. It will briefly outline the political, governance and legal structure of the country as it relates to the current state of the legal framework and justice sector institutions and identify recent changes that help frame the rule of law problems to be addressed. This section is intended to succinctly situate the rule of law in the broader political economy of the country.

The second step will be to evaluate the roles and interests of the major political actors and assess the political will for judicial reform. The purpose of this part of the analysis will be to identify who is likely to “win” and “lose” from the enactment of reforms to the rule of law system. Identifying the winners and losers in light of their potential power will be instructive in terms of assessing the level of political will for various types of interventions.

Step three will examine program options beyond the justice sector that might have a bearing on the rule of law. Such considerations will include issues such as lack of consensus over governance, lack of competition in political processes, inadequate inclusion of members of society, and inability to govern effectively. The purpose of this section will be to identify other corollary impediments to democratic transition outside the justice sector that condition potential progress in the justice sector.

Step four will assess the justice sector itself. This will include examination of the five key elements that comprise the rule of law, namely: 1) order and security, 2) legitimacy, 3) checks and balances, 4) fairness, 5) effective application. Each of these five elements must be present for rule of law to prevail. This section will focus on how these elements are embodied and enacted within the legal framework and justice sector institutions and actors. This section should outline the key features of the justice system, including the framework of laws and the justice sector institutions. The analysis should also address key challenges and opportunities for promoting the essential elements of the rule of law within the legal framework and justice sector institutions. The purpose of this section will be to identify potential points of intervention within the justice system itself that are in need of reform and amenable to change.

In addition, the assessment will review existing USG and other donor programs in the justice sector, to determine what progress has been made so far, and where opportunities and entry points might exist for programming.

2) PROGRAMMING STRATEGY

The assessment will inform development of a strategy and programmatic options for rule of law interventions. This will be based on the findings from the preceding sections as well as additional considerations such as Mission priorities, USG policy, availability of resources, and activities of other donors. It will be designed to focus rule of law activities around the primary challenges in promoting the rule of law in light of the current state of political will, opportunities and constraints for reform, and past successes.

The strategy should include the following components:

- Primary rule of law problem(s) framed in terms of the essential element(s) of the rule of law that are most critical to establishing the rule of law in The Maldives;
- Opportunities for intervention, including the specific institutions and laws for which opportunities exist for reform.
- Program recommendations including intended results that should be achieved through follow-on programs to address the primary rule of law problem. Recommendations should be prioritized in order of importance.

Methodology

The contractor shall provide a three-person team to work directly with USAID/Sri Lanka and Maldives staff to conduct the work in three stages.

Preparation phase: The first phase of the assessment will involve reviewing background materials and key documents and producing a literature review; developing an assessment and evaluation methodology that includes primary research questions and interview protocols; and preparing a schedule of interviews for the subsequent field work stage. A pre-trip conversation with relevant USAID/Sri Lanka and Maldives staff is required during the preparation to discuss background and assessment schedule. Five working days per team-member are authorized for the preparation phase.

Field-work phase: The team will conduct two weeks of field research, including gathering and reviewing documents and data, and conducting structured interviews with key informants (and focus groups, if appropriate) and beneficiaries, including the Judiciary, Government personnel, international and donor personnel, USAID partners, members of Parliament, lawyers, judges, court administrators, mediators, civil society organizations, citizens groups, the media, and other relevant stakeholders. The team will present a list of interviewees to USAID for approval prior to conducting interviews. The contractor will be responsible for developing the list of interviewees and arranging meetings, as well as transportation to the meetings. USAID will provide one or two staff members to participate in the field-work phase of the assessment.

Report-writing Phase: The Contractor will draft the assessment report, which will include all of the components outlined above. The draft report shall be submitted for formal USAID review within ten working days after departure of the Contractor from the country. USAID will have ten working days to provide comments to the Contractor. The final report shall be submitted no more than ten working days thereafter. A total of eight working days per team member are authorized for the report-writing phase.

Deliverables

The contractor shall provide the following deliverables to USAID.

I) Literature Review and Evaluation/Assessment Methodology

Prior to beginning the interview process, the contractor shall prepare for the assessment by reviewing key documents on the justice sector; background material on the political situation; and applicable sections of USAID and project documentation. The contractor will also prepare a methodology plan including

primary research questions, interview protocols to structure the interviews, and a list of proposed individuals to be interviewed. The methodology plan, interview schedules and interview protocol will be presented to USAID staff prior to departure for the field-research phase.

2) Oral Briefing

The contractor will provide an oral exit briefing presenting the team's findings and recommendations to USAID prior to departure from country.

3) Draft Report.

The assessment team will present a draft report in English of its findings and recommendations to USAID within ten working days from the time of departure. The draft report will be no more than 40 pages. The report will include all of the components outlined above, although not necessarily in the order specified above.

4) Final Report. The Final Report will be provided to USAID in electronic format in MS Word and Adobe PDF, within 10 calendar days following receipt of comments from USAID. The report shall also include an executive summary and not exceed 40 pages (excluding appendices). Appendices should at a minimum include the scope of work for the evaluation; a list of individuals interviewed; a complete description of the methodology used for the evaluation; and any questionnaires used.

Team Composition and Qualifications

The assessment will be carried out by a three-person team. The team shall include:

A team leader (Expatriate) with a professional background in international development work, including rule of law development. This person shall be responsible for coordinating and directing the overall assessment effort, including preparation and submission of the draft and final assessment reports. He/she should have a minimum of 10 years of experience in the design, implementation, and/or evaluation of foreign assistance programs including USAID-related rule of law programs. As assessment team leader, the incumbent should be thoroughly familiar with techniques of program impact appraisals and possess good organization and team-building skills. The team leader should have excellent written and oral communication skills in English. Previous overseas experience in the region and knowledge of the language is desirable.

A team member with at least 5 years of relevant experience in rule of law development and/or democracy and governance assistance, possessing strong background knowledge of the region and experience in the design, implementation and/or evaluation of foreign assistance programs. Strong writing and word processing skills are a requirement. Previous overseas experience in the region and knowledge of the language is desirable.

A Team Member (local): A lawyer, political scientist, public sector management specialist, or researcher. Minimum degree BA in Law or related field. Good understanding of political dynamics, the legal framework, justice institutions, Rule of Law actors and political actors in the country is essential. At least three years' work experience required. Knowledge of USAID and other donors is preferable.

USAID will appoint one USAID/Sri Lanka and Maldives staff member to participate in the assessment, including in all meetings during the field research stage.

Period of Performance

The work called for in this scope will start on 1 April and will be completed approximately 10 weeks later. The field work will start on 8 April.

Logistical support

All logistical support will be provided by the Contractor including travel, transportation, secretarial and office support, interpretation.

Workweek

A 6-day work week is authorized in the field with no premium pay.

Technical Direction

Technical direction during the performance of this delivery order will be provided by USAID/Sri Lanka and Maldives Governance and Vulnerable Populations Office.

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ANNEX 3 – PERSONS INTERVIEWED

MALDIVES PUBLIC SECTOR

Ibrahim Aiman, Assistant Auditor General

Ahmed As-Ad, President, Presidential Commission on Corruption and Asset Recovery

Ahmed Abdullah Didi, Chief Justice, Supreme Court (accompanied by Supreme Court judges Abdullah Areef, Adam Mohamed Abdulla, Abdullah Didi, and Abdul Ghanee Mohamed)

Hussain Faiz, Secretary General, Supreme Court

Mohamed Hameed, Commissioner, Maldives Police Service

Masthoor Husnee, Representative of the President, Judicial Service Commission

Hissan Hussain, Member of People's Majlis

Rauf Ibrahim, High Court Justice

Moosa Ali Kaleyfoon, Commissioner, Human Rights Commission

Ahmed, Chancellor, Judicial Academy

Aminath Minna, Member, Anti-Corruption Commission

Mohamed Nasheed, Speaker of People's Majlis, President of Maldivian Democratic Party

Abdulla Nazeer, Judicial Administrator, Department of Judicial Administration

Mauviz Rashi, Vice-Chair, Anti-Corruption Commission

Ibrahim Riffath, Attorney General

Mahmood Saleem, Assistant Prosecutor General

Aminath Shauna, Secretary for Policy, Office of the President

Husnu Suood, President, Presidential Commission on Murders and Disappearances

Mohamed Zahid, Commissioner, Human Rights Commission

MALDIVES PRIVATE SECTOR, CIVIL SOCIETY

Fataimat Saya Ahmed, Reporter, Maldives Independent

Mohamed Ali Janah, President, Maldives Association of Construction Industry (accompanied by Executive Board members Adnan Haleem, Abdul Majeed, Abdulla Mohamed, Mohamed Nazim, and Ibrahim Shikuree)

Moosa Latheef, Editor, Mihaaru News

Mushfiq Mohamed, Senior Legal Officer, Maldivian Democracy Network

Rafil Mohamed, Executive Director, Maldives Association of Tourism Industry

Abdulla Muiz, Attorney

Ahmed Muizzu, Attorney

Ahmen Naif, Project Coordinator, Maldivian Democracy Network

Ahmed Ahid Rasheed, Senior Project Coordinator, Advocacy and Legal Advice Center, Transparency

Maldives

Mazlan Rasheed, Attorney

Ahmed Shaheed, Dean of Research, Villa College

Ali Fawaz Shareef, Vice Chancellor, Maldives National University

Iyaz Waheed, Executive Board Member, Maldives Association of Tourism Industry

Azmiralda Zahir, Attorney

UNITED STATES GOVERNMENT

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Benjamin Baughman, Assistant Press and Information Officer, US Embassy Colombo

Matthew Escarcega, Information Support Director, US Embassy Colombo

Jason Evans, Maldives Desk Officer, Bureau of South and Central Asian Affairs, Department of State

Travis Hall, Political Officer, US Embassy Colombo

Jacqueline Homann, Program Officer, Bureau of South and Central Asian Affairs, Department of State

Rachel Irmen, Senior Advisor, Economic Crime Team, Office of Technical Assistance, Department of the Treasury

Daryl Martyris, Maldives Desk Officer, Asia Bureau, USAID Washington

Badar Nasreen, Bureau of Democracy, Human Rights and Labor, Department of State

Gerardo Porta, Democracy, Human Rights and Governance Officer, USAID Sri Lanka

Andrew Solomon, Senior Rule of Law Advisor, USAID Washington

Alaina Teplitz, Ambassador to Sri Lanka and the Maldives

Kevin Whelan, Resident Advisor in Sri Lanka, Economic Crime Team, Office of Technical Assistance, Department of the Treasury

INTERNATIONAL PARTNERS AND IMPLEMENTERS

Waris Husain, Attorney, American Bar Association Center for Human Rights

John Kachtik, International Republican Institute Resident Program Director in Maldives

Aisath Rizna, United Nations Development Program Maldives Office

Brianne Stuart, Deputy Director, Asia Division, American Bar Association Rule of Law Initiative

ANNEX 4 – EXCERPTS FROM EARLY REFORM PROPOSALS

I. MALDOVIAN DEMOCRATIC PARTY

1. Justice

1.1 Transitional justice

The purpose and intended result of establishing a transitional justice mechanism is to facilitate victims to overcome their trauma and seek redress, heal the divisions, resentment and spirit of vengeance amongst the people and in general, to establish peace and harmony in society.

Transitional justice mechanism shall be established to find, investigate and understand, through judicial and non-judicial mechanisms, the actions committed in violation of human rights, dignity and sanctity, by the previous regime. In this manner, complaints of human rights violations and degrading and dehumanizing treatment resulting from actions or inaction of state institutions or an official in Maldives, between 2012-2018 shall be gathered, investigated and reprimanded, under the following mechanisms:

1. Solutions offered by the Ombudsman's office

- Revealing the truth and forgiveness
- Compensation
- Cases that cannot be resolved by the Ombudsman's office shall be submitted to courts.

2. Solution offered through the courts

- Cases which cannot be resolved by the Ombudsman's office shall be submitted to the courts.

Process

- Victims shall be identified and listed in a database in the first stage.
- The process of transitional justice shall involve the participation and voice of as many people as possible and in a manner that shall ensure the realization and security of justice having been served.
- An awareness program shall be conducted across the country in the aim of familiarizing the public with the transitional justice mechanism and to revitalize the spirit of acknowledging the truth and reconciliation.

Gathering complaints

Each complaint shall be individually assessed and one of the following decisions shall be made regarding the complaint:

- Review the complaint to decide if it is a matter that can be resolved by the transitional justice mechanism.
- Forwarding the complaint to relevant institutions, if possible.
- Forwarding the case to the Prosecutor General's office, if the matter cannot be resolved by the Ombudsman's office.
- Submitting to the Attorney General's office for review and amendment, laws or regulations or procedural rules and codes that may have served as a rationale for the human rights violations.

Unresolvable complaints

Prosecutor General is obliged to make a decision on prosecuting and to lodge the case at Criminal Court within a 15 day period, on cases submitted by the Ombudsman's office for criminal prosecution. The Criminal Court shall conclude the case within a 60 day period from the day of submission.

Rights to appeal

- Parties involved have the right to file an appeal at High Court within 10 days of Criminal Court having ruled on the matter. High Court shall adjudicate on the matter within a 30-day period.
- Parties involved reserve the right to file an appeal at Supreme Court within 10 days of Criminal Court having ruled on the matter. Supreme Court shall adjudicate on the matter within a 30-day period.

1.2 Structural reforms of the judiciary

Delivery of justice and bearing witness to justice being served is the most basic element of establishing justice. It is important that decisions by courts of law are accepted by the people. It is essential to reform the administrative mechanism of the judiciary to make justice accessible to the people.

Therefore, the following reforms to judiciary have been proposed:

Department of Judicial Administration

- Establishing Department of Judicial Administration (DJA) as a separate body run by the Chief Judicial Administrator.
- Parliamentary standing Committee on Independent Institutions shall bear responsibility for the appointment and removal of Chief Judicial Administrator, and he/she shall only be answerable to the committee.
- The Chief Judicial Administrator shall bear the responsibility of appointing and removing Registrars of law courts.

Registrar

- Making decision on accepting a case, without any involvement of judges
- Allowing for the submitting party to appeal to the court's judges, the registrar's decision to reject a case, in a preliminary hearing.
- Managing a case allocation schedule, assigning cases to judges accordingly and to make available to public the case queue order.
- Carrying out all administrative work.

Appeal

- To submit an intent of appeal at superior court, within 10 days of the verdict, and to submit appeal form and documents within 30 days.
- To directly submit to High Court, cases for appeal from Malé and to allow appeal case forms and documents from atolls to be sent electronically, through post or via Magistrate Courts or District Courts.

Supreme Court

- Prohibit issuing any decisions or orders, or adjudicate on constitutional matters or annul/suspend any law or section/s of a law without holding open hearings.
- Prohibiting Supreme Court from adopting suo motu cases and taking over cases being adjudicated in lower courts.

High Court

- Closing down High Court's northern and southern branch.
- Holding hearings and trial proceedings of cases selected by High Court, in Magistrate Court or District Court buildings.

Forming District Courts

- Changing superior court's of Malé to District Courts, and establishing on all capital islands of atolls, District Courts which have the same jurisdiction as Malé District Courts.
- Magistrate Courts on islands where District Courts are established shall be closed down. The jurisdiction of Magistrate Courts shall be revised in accordance with the maturation of the District Courts.

AGENDA19

Judicial Service Commission

- Establishing mechanisms through which complaints regarding judges can be lodged anonymously, without hassle.
- Testing the capacity and competency of all judges and to tie a judges salary and allowances to his/her performance.

Ensuring the integrity of judges

- Widening the scope of article 149 of the Constitution of the Republic of Maldives through amendments to the Judges Act, in a manner which gives broader meaning to what is meant by conduct and discipline.
- Making mandatory for judges to declare their assets along with that of their spouses and children under the age of 18, to the Auditor General.
- Listing everything under their ownership including cash, bank accounts, land, lease agreements, family businesses, shares, bonds, stocks, special permits, jewelry, vessels /vehicles and flora.
- Criminalizing failure to declare assets.
- Making mandatory for the Auditor General to submit to relevant authorities for investigation if a judge's assets declaration makes any hint of him/her having acquired wealth via illegal means.

1.3 Establishing the Public Defender's Office

Aim

To provide legal representation to individuals who face serious criminal charges and are unable to financially afford legal representation, and to remove obstacles to the right to legal representation.

National Public Defender's Office

The Public Defender's Office shall be established as a semi-autonomous office under the Attorney General's office.

The office shall be run by the Public Defender. Public defenders shall only be answerable to the client regarding a case. The office shall create and maintain a Public Defenders Registry. The registry must be made available to all institutions conducting criminal investigations and courts of law, from which cases must be assigned to lawyers on the registry in list order.

The National Public Defender must possess the necessary academic qualifications and experience in the field of criminal law to discharge his/her responsibilities.

Criteria to assess an individual's capacity to afford legal representation.

The single criteria to be met in assessing the individual's capacity to afford legal representation, is not being employed and not receiving any other income.

List of offenses that are entitled legal representation

Murder,
Organized and serious crimes,
Terrorism,
Money laundering and financing terrorism,
Human trafficking,
Drug trafficking,
Robbery, fraud, mugging, stealing involving more than MVR 100,000,
Corruption,
Gang crimes,
Causing bodily harm / aggravated assault,
Committing acts that jeopardize independence national security.

1.4 Building an accountable state

The reason why state institutions did not function as envisioned by the constitution is the lack of accountability mechanisms.

Reviewing and reforming the administrative mechanisms and structures of state institutions and to institute reform in a sustainable manner is absolutely essential for the rule of law to be upheld.

Making institutions formed under the constitution and laws accountable

A mechanism shall be established by amending the Parliamentary Privileges and Authority Act, to hold institutions formed under the constitution and laws, accountable. The following courses of action shall be (1 to the parliament under the aforementioned act:

Authority to conduct administrative audits

Conducting an audit of administrative mechanisms of independent institutions every two years, instructing them to bring necessary changes and ensuring implementation of recommendations.

Authority to conduct performance audits

Conducting performance audits of independent institutions and instructing them to bring necessary changes.

Making obligatory on parliament's standing Committee on Independent Institutions to forward cases of abuse of power/negligence by independent institutions or its officials either by action or inaction, to relevant investigate authorities.

Making the submission of case reports mandatory

Making submission of reports lodged at independent institutions to parliament's standing Committee on Independent Institutions, obligatory.

Submitting detailed reports in the format provided by the parliament's standing Committee on Independent Institutions, on how complaints [lodged at independent institutions by public] were dealt with.

Making accountability mandatory

Making it obligatory for independent institutions and offices to comply with instructions from the parliament's standing Committee on Independent Institutions and prescribing punitive measures for non-compliance.

Establishing a Law Commission

A Law Commission shall be established to draft laws, inform the parliament of mistakes, errors and inconsistencies in laws, review gazetted laws and regulations and make them accessible and available to public. The Law Commission shall also monitor if necessary regulations are drafted and ensure all regulations drawn up by government ministries, courts and institutions are gazetted and publicly available on the commission's website. The Commission also shall, annually in the month of January, publish and make available to public, printed copies of the entire archive of laws and regulations in effect.

2. BRIEFING MATERIALS FOR THE PLANNED MALDIVES GOVERNMENT PARTNERSHIP FORUM - 2019¹¹

GOVERNANCE AND JUSTICE



¹¹ “Investing in a Resilient and Sustainable Maldives: Jazeera Raaje.” Maldives Partnership Forum 2019. *Policy Agenda*. Government of Maldives.

Addressing the Issue of Corruption

Main policies towards this goal are:

- *Eliminating all avenues for corruption within the state*
- *Foster greater accountability, transparency and integrity of state institutions*
- *Increase integrity of all public officials*
- *Reform all key institutions mandated with the investigation and prosecution of all cases of corruption and bribery*

Accountable State

As stated in Article 4 of the Constitution: “All the powers of the State of the Maldives are derived from and remain with the citizens.”

GOM’s policies to ensure citizens participation are:

- a) Strengthen the oversight function of the Parliament*
- b) Implement an open data policy to increase transparency in functioning of the state, accountability and responsiveness to citizens*
- c) Promote the right to exercising freedom of expression and media in line with international best practices*

Reform of the Legal and Justice Sector

One of the major obstacles to the efficient functioning of the Maldivian governance system is the lack of necessary laws.

a) Legislative reform is being undertaken in two tracks.

Introducing new legislation

Some key bills presented to Parliament:

1. Legal Professions Bill
2. Legislation relating to illicit enrichment
3. Whistle Blower Protection Bill
4. Juvenile Justice Bill
5. Revisions to the Decentralisation Act

Key new legislation to be presented:

1. Civil Procedure Code
2. Evidence Bill
3. Amendments to Criminal Procedure Act
4. Legal Aid Bill

Legislative Review

Stage 1: Amending targeted laws, laws relating to independent institutions, judiciary and decentralisation

Stage 2: Law Reform; long term task to review laws from human rights and state obligations perspective

Reform of the Legal and Justice Sector

b) Judicial Reform

Allegations of partiality, corruption and political influence continue to tarnish the reputation of the Maldivian Judiciary. In order to change the current perspective, ensure that the justice is served in a timely, impartial and fair manner, establishing a just judicial system is of utmost importance.



i. Structural Reforms of the Judiciary

- *Restructuring the Department of Judicial Administration*
- *Empowering Registrars of the Courts*
- *Streamlining hearings of the Supreme Court*
- *Establishing District Courts*
- *Streamlining appellate processes at the Appellate Courts*
- *Restructuring the High Court*

ii. Reforms relating to accountability, integrity and qualifications of Judges

a) Reform of the Judicial Service Commission (JSC)

- *Establishing simple mechanisms through which complaints regarding judges can be lodged anonymously.*
- *The Commission will further develop systems within which capacity and competency of the judges will continuously be evaluated. These systems will also determine the salaries and allowances of judges based on their performance rating.*
- *JSC will take measures to enforce the code of conduct of judges and disciplinary proceedings undertaken by the commission will be harmonized in line with international law and best practices.*

b) Ensuring the integrity of judges

- *Reform to this end will include widening the scope of Article 149 of the Maldivian constitution through amendments to the Judges Act, which would place emphasis on their conduct and discipline.*
- *The accountability regime for judges will be further strengthened through mandatory declaration of their assets along with that of their spouses and children under the age of 18, to the Auditor General.*
- *The Auditor General, shall flag suspicious accounts to the relevant authorities and pursue measures to reprimand the individuals.*

c) Continuous legal education and training

- *Sensitisation of judges to prevailing human rights issues, state obligations under international covenants and treaties, women's rights and gender equality are vital to establish a modern judiciary.*
- *The Government of Maldives aims to source continuous training and capacity-building opportunities for the judges.*

c) Establishing a Bar Council

- *Article 53(a) of the Maldivian constitution states that all citizens have the right to retain and instruct legal counsel at any instance where legal assistance is required, and subsection (b) creates an obligation over the state to provide legal assistance for each person accused of serious criminal offences if they cannot afford to engage a lawyer.*
- *The primary objective of the Office is to provide legal representation to individuals who are unable to financially afford legal representation.*
- *The Public Defender's Office will resolve numerous hurdles in realising the right to legal representation.*

d) Establishing Public Defenders Office

- *Article 53(a) of the Maldivian constitution states that all citizens have the right to retain and instruct legal counsel at any instance where legal assistance is required, and subsection (b) creates an obligation over the state to provide legal assistance for each person accused of serious criminal offences if they cannot afford to engage a lawyer.*
- *The primary objective of the Office is to provide legal representation to individuals who are unable to financially afford legal representation.*
- *The Public Defender's Office will resolve numerous hurdles in realising the right to legal representation.*

e) Establishing a Law Commission

- *The Law Commission will be mandated to draft laws, inform the parliament of mistakes, errors and inconsistencies in laws, review gazetted laws and regulations and make them accessible and available to public.*
- *The Law Commission shall also monitor the formulation of necessary regulations by government ministries, courts and other institutions and ensure that these regulations are duly adopted and publicly available on the Commission's website.*

f) Establishing Alternative Dispute Resolution Mechanisms

- *The Maldives International Arbitration Centre lacks the necessary infrastructure, by-laws and the technical capacity to commence their work.*
- *Priority areas include infrastructure both in terms of physical space and software for efficient case management, capacity building and training of personnel in administrative and technical fields.*
- *Awareness campaigns would be required to attract clients and build a culture of arbitration, mediation and reconciliation.*

Strengthening Local Governance

The Decentralisation Act (2010) aimed to develop the decentralised system visualised in the constitution. However, the essence of true decentralisation is yet to be achieved.

Amendments to the Decentralisation Act have been submitted to Parliament.

These amendments will address:

- *Lack of fiscal decentralisation*
- *Increasing women's participation and representation in local governance processes*
- *Strengthening service delivery at the local level*
- *Development of regional hubs for effective and efficient service delivery and equitable development*

3. SUPREME COURT

ROAD MAP OF JUDICIAL REFORM 2019-2023

The five-year road map consists of 20 main areas of reform.¹²

1. Conference on Judicial Independence and Reform

One of the important aspects of the process of judicial reform was the Conference on Judicial Independence and Reform which took place over two days, from 19-20 February 2019. The Conference was attended by the relevant authorities of the Maldives and international experts, and they provided well-informed recommendations.

2. Reform the Judicial Service Commission

The Judicial Service Commission bears the constitutional responsibility of appointments, dismissals and disciplining of judges. Reconstituting that Commission by amending the Constitution and statutory laws to allow it to function independently and with integrity, without political and other undue influences, is one of the most essential requirements for the establishment of a judiciary in which the public has confidence.

3. Amendment of laws

To meet the needs of the present circumstances, many of the statutory laws currently in effect must be amended, while several important laws such as civil and commercial procedural laws are yet to be made. One of the major challenges facing the judiciary is that the legal framework is not up-to-date. Reforming the framework is essential in ensuring easy access to justice.

4. Strengthening the system of appointment and dismissal of judges

Along with reform of the Judicial Service Commission, it is necessary to strengthen the vetting process of judges. Without judges who are capable, and responsible in conduct, justice cannot be delivered.

5. Ensuring that the judiciary is free from corruption, contention and undue influence

Within the action plan of reforming the judiciary and by ensuring the judiciary is safe from the epidemic of corruption, the system of implementing a code of conduct of judges and staff of the judiciary is to be reformed in line with the international standards.

6. Strengthening the system of holding judges accountable by maintaining the independence of the judiciary

Constitutional separation of powers within the system of constitutional checks and balances holding judges accountable is very important. Hence, a system will be established to ensure that the judges perform their responsibilities and abide by the code of conduct.

7. Establishing a system for lodging complaints by citizens

A system for citizens to lodge complaints about the judiciary needs to be established. That system will be easily available to everyone, and reasonable prompt action will be taken in the event of a complaint.

¹² This is a translation of the text published at: <http://www.supremecourt.gov.mv/1556776089.html> and <http://www.judiciary.gov.mv/news/sc/676-26103.html> (accessed 4 May 2019)

8. Strengthening and implementation of the system of performance assessment of judges

It is an essential element of the reform plan to include the modern system of performance assessment such as time taken to conclude trials, case management methods, the standard of judgments delivered, and frequency of completion of continuing education programs.

9. Establishment of system for the promotion of judges

A judicial career for judges can be facilitated by having a substantial system providing promotion for those judges who score well in a performance assessment that is fair, transparent and of substance. As a consequence, the standard of performance of courts will progress.

10. Ensuring access to justice and strengthening enforcement of judgments

Ensuring protection of citizens' rights need ensuring of easy access to justice and proper enforcement of judgments of the courts. One of the main pillars of the judicial action plan is providing access to justice to vulnerable groups and otherwise powerless people, and the establishment of an effective system to enforce judgments.

11. Modernizing case management system

In order to deliver justice properly, there must be a modern system of case management in each court to best utilize budget and other resources and complete cases speedily. Through the reform plan, all courts in the Maldives will have a uniform system of case management.

12. Establishment of superior courts in all cities

It is important that the services provided by the superior courts in Male' are provided in islands and areas classified as cities. It would speed up the delivery of justice and facilitate speedy resolution of major cases that come into the court system.

13. Strengthening and modernizing judicial administration

By observing international standards and practices in the developed jurisdictions, strengthening the system of judicial administration is the fundamental basis of the efforts in reforming the judiciary. For this reason, strengthening administration within the courts and the department of judicial administration will be a priority.

14. Increasing the use of computer technology and establishing an e-filing system

Modernizing service provision under the reform plan includes making the best use of technology such as court procedures for using audio-video conferencing systems, e-filing for swift record keeping, and the online ability to file cases at the court.

15. Ensuring financial independence and resources

In accordance with modern practices to establish an independent and capable judiciary, one of the most important things is to grant the judiciary its budgetary independence and financial control. Reforms such as ensuring a certain proportion of national budget be allocated to the judiciary, and for the judiciary to be allowed to spend its budget, must be legislated.

16. Continuing judicial and legal education, and strengthening training system

One of the main principles of a solid judiciary is the provision of opportunities for skills and specialist capacity development opportunities through a continuing judicial and legal education

system and establishing a platform for the judges to share knowledge and experience. The judicial academy of Maldives will be strengthened to achieve these objectives.

17. Compulsory 20 hours in service training per year for judges

To make the judges familiar with new laws and regulations, multidisciplinary knowledge, and familiar with new research in legal and shariah, it will be required for each judge to complete a minimum of 30 hours of continued judicial and legal education a year.

18. Strengthening the shariah and legal training system

Until the legal and shariah education system has the capacity to properly train people to take positions as judges, lawyers and legal staff of the courts, the Maldivian judiciary and the legal profession cannot be developed. Assisting that part of the education system will help reforming the judiciary.

19. Strengthening the legal profession

Since lawyers are officers of the court, it is one of the top priorities of the reform program to establish a strong and independent bar association to organize the legal profession. The bar association will need a close relationship with the judicial bench to ensure cooperation, respect and trust between them.

20. A strong legal aid system and public defender's office

Establishing a public defenders' office to facilitate legal assistance and services will bring access to justice in civil, family and legal matters to people who have no means of paying. It will also reduce the number of instances where cases are delayed due to unavailability of lawyers.