



LEGISLATIVE GAPS

INTRODUCTION

This governance update intends to highlight the problematic issues arising from the existence of serious gaps in the Maldivian legislative framework. The aforementioned gaps chiefly refer to the lack of procedural legislation that would serve as a guide to all relevant officials with regard to the technical and administrative substance of dispensing justice, whilst also delineating the rights that any person accused of a crime is to be entitled to.

At the time that this governance update is being written there is currently no Criminal Procedure Code, Civil Procedure Code or an up to date Evidence Act in operation in the Maldives. As will be expounded in the following sections, the existence of these gaps are severely problematic as it leaves proper procedure to be interpreted at the discretion of individual judges, leaving considerable scope for inconsistency in how justice is applied.

This update will focus separately on each of the above mentioned elements and, after explaining what each of these are, provide some detail with regard to why the lack of each has a detrimental impact on the quality of justice available in Maldives. It is hoped that this update can shine a light on why ameliorating this issue should be treated as a matter of urgency in terms of strengthening the efficiency and integrity of the Maldivian justice system.

CIVIL PROCEDURE CODE

Civil Procedure – to be distinguished from Criminal Procedure – is a set of rules and standards governing how courts should proceed in adjudicating civil disputes that occur between individual persons or groups.

Current convention with regard to Civil Procedure is based on a combination of circulars by the Supreme Court and Court Precedents – that is deci-

sions made in the past by courts, which serve as a guideline to future decisions regarding proper legal conduct.

There are several issues with current practice. First and foremost is, to iterate, that the lack of a properly defined code of procedure leaves its interpretation up to the discretion of individual judges.

Secondly, though according to secondary literature on the Maldivian judiciary¹, court precedents are in fact referred to in subsequent cases, the doctrine of legal precedent is not particularly well-established in the Maldives and occurs by dint of convention rather than it being explicitly defined as a source of reference by law.

Finally though Supreme Court circulars with regard to such procedure have more binding force than vague allusions to court-precedents, such practice is in contravention to the separation of powers as lawmaking is the prerogative of the legislature (Majlis) rather than of the judiciary.

CRIMINAL PROCEDURE CODE

A criminal procedure code is a set of guidelines delineating how criminal procedure is to be conducted from the investigative stage to the sentencing of an individual or group alleged to have committed a crime. It encompasses everything from instructions regarding how a crime should be investigated to those regarding the final sentencing of an alleged criminal offender.

Though a Criminal Procedure Code has been pending in parliament since 2010 no legislation currently exists specifying proper practice. As has been noted in previous bulletins, and similar to Civil Procedure, current practice with regard to Criminal Procedure is predicated on a combination of Supreme Court Circulars, Court Precedent, and rules and regulations promulgated by the now defunct Ministry of Justice predating the 2008 Constitution.

The issues with current practice with regards to Criminal Procedure are also similar to those relevant to Civil Procedure, in that far too much is left to the discretion of individual judges and in that transient circulars are not an adequate substitute for clearly defined acts passed by parliament.

Furthermore, as Criminal Procedure is very comprehensive, the lack of proper guidelines effects several steps involved in prosecuting a criminal case against an alleged offender, including investigation, witness statements and sentencing.

EVIDENCE ACT

An Evidence Act, as its name would suggest provides detail with reference to the kind of evidence that is, and is not, admissible in court in prosecuting a trial.

Though an Evidence Act is currently operational in the Maldives the act it self is very outdated and hence limited in scope and applicability to the current legal system. Furthermore it is very lacking in detail. The current act in operation is a two-page document from 1976 - predating not only the 2008 Constitution but the 1997 Constitution as well. (This document can be accessed via the following link: <http://www.mvlaw.gov.mv/pdf/ganoon/chapterVIII/24-76.pdf>)

Similar to Civil and Criminal Procedure Codes the lack of an adequate Evidence Bill constitutes a serious gap in the Maldivian legislative framework. The currently extant – and inadequate and outdated – Evidence Act not only lacks comprehensiveness and detail but effectively leaves the interpretation of what is to be defined as admissible evidence to be decided by individual judges presiding over a case.

Though the following are by no means exhaustive, notable issues inherent in the current Evidence Act include that it fails to distinguish between evidence obtained through illegal mechanisms (for example, through forced confessions) and that obtained through means in accord with international standards of justice; that the act does not provide any uniform method of how probative value should be assigned to different kinds of evidence; and it does not provide guidelines with regard to how various kinds of written and oral testimony should be evaluated.

1. Husnoo Al Suood, The Maldivian Legal System P.221