
PARTICIPANTS' PAPERS

STRENGTHENING PREVENTION, DETECTION AND PROSECUTION OF CORRUPTION, AND PUBLIC-PRIVATE PARTNERSHIP

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I. INTRODUCTION

Corruption is one of the major problems that undermine societies worldwide. Just as it does globally, it is also widespread in the Maldives, and severely impedes the nation's development, negatively impacts the well-being of its people and obstructs access to basic necessities.

The scale of corruption in the Maldives can be understood through the famous scandal involving the state-owned Maldives Marketing and Public Relations Corporation (MMPRC) that occurred during 2014 and 2015. The investigation into the MMPRC scandal revealed that the state lost more than \$79 million, and the case is still being investigated jointly by the Anti-Corruption Commission of Maldives and the Maldives Police Service. Since most of the funds related to the scandal have been processed through the national bank, they have, therefore, taken steps to strengthen the whole system such as:

- Discontinuation of acceptance of endorsed checks;
- Yearly update of KYC for businesses;
- Reviewed their current process and procedures in accordance with international standards.

Additionally, reforms brought to law enforcement agencies include carrying out investigations based on in-depth financial analysis specially for the cases which involve financial related crimes. Thus, to combat corruption effectively, Maldives must undertake several actions, including raising awareness about the negative impact of corruption, investigating corruption allegations and holding those responsible accountable. Officially, this responsibility is entrusted to the Anti-Corruption Commission of Maldives.

Since corruption is a major problem affecting the entire country including the private and public sectors, both sectors must take crucial measures to combat it. For example, as mentioned in UNCAC,¹ a Convention to which Maldives also is a party,² each State Party should implement measures in accordance with the fundamental principles of its domestic law to prevent corruption involving the private sector. This includes enhancing accounting and auditing standards in the private sector, and, where appropriate, enforcing effective, proportionate and dissuasive civil, administrative or criminal penalties for non-compliance with these measures.

This paper will explore the current trends in corruption within the country, including the major awareness initiatives and investigative approaches utilized by the Anti-Corruption Commission of Maldives. Additionally, this paper will highlight the challenges encountered by the Commission in battling corruption and propose potential solutions. Furthermore, strategies for the Commission to collaborate with the private sector to strengthen anti-corruption initiatives will also be covered.

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¹ United Nations Convention against Corruption: Article 12.

² Maldives ratified the United Nations Convention against Corruption (UNCAC) on 22 March 2007.

II. ANTI-CORRUPTION COMMISSION OF MALDIVES

In 2008, a constitutional institution was established to combat corruption in the Maldives.³ The Anti-Corruption Commission of Maldives (hereinafter referred to as ACC or the Commission) is an independent legal entity, possessing power to sue and suit against and to make undertakings in its own capacity.⁴

The ACC consists of five members, appointed by the President of the Maldives with the approval of the Parliament from those who apply for the position. The President of the Commission is the primary head and is responsible for overseeing and delegation of tasks to Commission members, the Secretary General and the staff.

The key responsibilities entrusted to the ACC are as follows⁵:

- To investigate offences of corruption and, accordingly, to investigate any complaint filed alleging that an individual has engaged in, is presently engaged in, or is on the verge of engaging in an act of corruption.
- To derive necessary findings and conduct investigations on own initiative, without a case being filed by an individual, without being notified by an individual, without receiving information from an individual, if the Commission receives information that an offence of corruption has been committed, is being committed, or is about to be committed, or if there is suspicion that such an offence has been committed or is being committed or is about to be committed.
- To formally request additional clarifications from governmental entities, non-governmental entities and private parties in connection with the investigations of the Commission. To formally serve notice upon an individual within the Commission's jurisdiction in relation to a matter under investigation by the Commission.
- Following the completion of investigation by the Commission, in instances where the Commission is of the opinion that there is sufficient evidence to prosecute, refer the case to the Prosecutor General for prosecution.
- To raise awareness among public servants, personnel employed by government entities and state-affiliated corporations concerning the injurious consequences and ramifications stemming from corrupt practices and to take necessary action to promote honesty and integrity in the administration of the State.
- To promote public integrity by raising public awareness of the devastating consequences and ramifications stemming from corrupt practices.
- Conduct necessary research to prevent corruption, recommend measures to be taken by public agencies and issue relevant notices to such agencies.
- Promote public awareness on prevention and prohibition of corrupt practice through seminars, workshops and other programmes.
- Collect, prepare and maintain statistics on the prevention and prohibition of corruption, conduct research and findings on the modus operandi, nature, types, causes and changes in corruption practices, disclose and publish such findings and take necessary action based on the findings.
- To publicly disclose matters relating to the prevention and prohibition of corruption and to publish pertinent statements.

³ The Constitution of Maldives 2008: Article 199.

⁴ Act No 13/2008, The Anti-Corruption Commission Act: Article 2.

⁵ Ibid.

PARTICIPANTS' PAPERS

- Develop, review, revise and implement anti-corruption policies at national level.
- To scrutinize the execution of plans, projects, rules and regulations to be devised and executed by governmental entities for the purpose of carrying out the policies stipulated in section (f) of this Article. This includes conveying notifications, overseeing adherence and appraising outcomes. Continuously evaluate and monitor the implementation and effectiveness.
- Investigate any suspected abnormal change in the wealth of public officials that does not correspond to their income and to probe illicit enrichment and take necessary action.
- Establish relationships with civil society organizations to raise awareness about corruption, acquaint people with integrity and prevent corruption.
- Investigate corruption offences in collaboration with law enforcement agencies and take necessary safeguards to prevent corruption in coordination with state agencies.
- Identify and submit to the relevant State authorities any amendments to the laws relating to the prevention and prohibition of corruption to further strengthen the investigation of corruption offences and the prevention and prohibition of corruption.
- Establishing relations with foreign governments, foreign relevant agencies, regional and international organizations in the fight against corruption, reaching an agreement on the issues that must be agreed upon and providing the necessary cooperation and seeking assistance in matters of mutual benefit to the Maldives.
- Develop policies, practices and systems to be adhered to prevent corruption in state agencies and private businesses, assess the degree of compliance therewith, make necessary amendments to the systems and enforce compliance.
- Refer complaints submitted to the Commission that do not fall within the jurisdiction of the Commission to the relevant institution and to refer the matter to that institution if it identifies a matter being investigated by the Commission that requires investigation by another agency.

III. RECENT TRENDS OF CORRUPTION IN MALDIVES

According to the 2023 Annual Report of the ACC, the Commission registered a total of 742 complaints. The types of cases are as follows⁶:

Type of Complaint	Number of Complaints
Job related	65
Procurement related	155
Housing related	216
Land related	56
License/Permit related	9
Island rent related	6
Training/Scholarship related	4
Loan scheme related	2
Election related	64
Salary/Remuneration related	20

⁶ Annual Report of Anti-Corruption Commission 2023.

Using Public Funds related	112
Other	33

From the table above, it is evident that the most concerning areas are housing and procurement-related issues, as most of the complaints are related to these areas. In this regard, it is apparent that the most frequently occurring type of corruption offence involves the misuse of positional influence to secure and obtain undue advantages. Additionally, providing such undue advantages can lead to offences such as embezzlement.

With every election, the Commission has also observed a notable rise in complaints related to the electoral process. Specifically, numerous allegations concerning the awarding of major projects and the recruitment of individuals into public companies without justification are received. This trend indicates that election-related issues consistently escalate with each election.

Reviewing the cases concluded by the Commission last year, it is clear that procurement-related issues were the most prevalent. During the year 2023, 220 cases were resolved. Among them 18 cases were sent to the Prosecutor General's Office for prosecution. The table below shows the breakdowns of the categories of cases resolved.

Type of Case	Number of Cases Resolved
Job related	22
Procurement related	84
Housing related	8
Land related	14
License/Permit related	6
Island rent related	2
Training/Scholarship related	1
Loan scheme related	2
Election related	2
Salary/Remuneration related	6
Using Public Funds related	27
Other	46

Out of the 220 cases resolved, 84 were specifically related to procurement.⁷ This highlights that procurement processes are a common avenue for corruption.

A recently⁸ investigated and prosecuted case involving the Procurement Department of the Department of Judicial Administration of Maldives revealed that the department awarded numerous contracts to affiliated private companies at prices significantly higher than market rates. The investigation revealed that private companies were interconnected and submitted quotations collusively. It is evident that the public official was aware of this and due to his connections with these companies, granted them undue advantage. This case alone highlights the extent of corruption within the procurement system of state entities.

Various other procurement-related cases investigated by the ACC also revealed trends such as the use of bogus companies, the sharing of classified information by public officials with related or associated parties before the proposals were opened, and the use of State-Owned Enterprises (hereinafter referred to as SOEs) as vehicles for corruption. SOEs often fail to implement proper governance structures and create their own policies, which frequently contain loopholes.

Although these issues persist, robust public procurement policies have been established in recent years

⁷ Annual Report of Anti-Corruption Commission 2023.

⁸ The Case was referred for prosecution in the year 2023.

to address them. However, enforcement is lacking because most of the SOEs do not adhere to the relevant laws and regulations and face no consequences for non-compliance. The Public Finance Act⁹ (PFA) and Public Finance Regulations¹⁰ (PFR) mandate that all public institutions and offices establish and maintain audit committees.

Furthermore, according to Article 12 of UNCAC, each State Party should implement measures in accordance with the fundamental principles of its domestic law to prevent corruption involving the private sector. Nevertheless, many SOEs lack effective risk assessment functions, and audit functions are often inadequately implemented, as reflected in the rising number of corruption cases involving SOEs.

IV. MAJOR PREVENTION INITIATIVES

Since corruption prevention is mandated for the Commission under the ACC Act,¹¹ these activities are among the Commission's top priorities. Despite various challenges, significant progress is being made in these efforts. Here are some of the initiatives the Commission has undertaken:

- Establishing the Maldives National Anti-Corruption Academy (MNACA) to deliver corruption awareness sessions and training programmes for various target audiences. These include:
 - Conducting regular awareness sessions for public officials through civil service induction programmes.
 - Conducting “Business Integrity” sessions for State Owned Enterprises, Local Authority Companies, and other private businesses in partnership with the Capital Market Development Authority (hereinafter referred to as CMDA).¹²
 - The School Integrity Program which focuses on academic integrity sessions targeted for students, parents and teachers.
- Introducing a corruption risk-self assessment toolkit¹³ through a digitized platform where agencies can easily self-assess corruption risks in both public and private sectors. The toolkit explains the concept and approach of corruption risk self-assessment. The purpose of this toolkit is to identify areas subjected to corruption risks, detect the risks, and formulate mitigation plans and monitoring and evaluation plans in order to attend to identified risks in institutions. The toolkit is designed in such a way as to encourage the implementing institutions to take ownership of the risks and its effective mitigation.
- Conducting focused research and surveys to identify systemic risks of corruption, its trends and causes.
- Development of a social audit toolkit which enables Civil Society Organizations and the public to enhance social accountability through monitoring the progress of government-implemented projects in their communities.
- Developing guidelines, policies and standards of conduct to ensure the correct, honourable and proper performance of public functions, and ensuring electoral integrity.

⁹ Act No 3/2006, The Public Finance Act.

¹⁰ Regulation No R-158/2023, The Public Finance Regulation.

¹¹ Act No 13/2008, The Anti-Corruption Commission Act: Article 21.

¹² An independent institution established under Act 2/2006 (The Maldives Securities Act) for developing and regulating the capital market in the Maldives.

¹³ Corruption Risk Assessment Toolkit published on 7 December 2023.

- Launching of a National Anti-Corruption Policy¹⁴ that promotes participation of the society and reflects on principles of the rule of law, integrity, transparency and accountability within the public sector.

V. INVESTIGATIVE APPROACH

Given that not every complaint submitted to the Commission is within the purview of the Commission's mandate, the Commission has begun screening complaints under the Registrar's authority, by prioritizing those that substantiate allegations of corruption. This change allows the Commission to focus on high-priority cases with significant public interest during the investigation stage.¹⁵

To tackle the substantial backlog of pending cases, a prioritization mechanism has been established within the Commission. Consequently, a case prioritization policy¹⁶ has been gazetted and implemented to determine which cases will be investigated in each quarter annually. Additionally, the Commission has established a dedicated unit within the Commission for financial and wealth analysis to expedite the handling of cases involving complex financial matters.¹⁷

In 2023, the Commission concluded 220 cases. Of these, 40 were forwarded to the Duty Prosecution stage, where Commission investigators collaborate with prosecutors from the Prosecutor General's office to assess whether there is sufficient evidence to proceed with prosecution.¹⁸ This outcome highlights the effectiveness of the Commission's focus on prioritizing significant cases, as previously discussed.

VI. CHALLENGES TO COMBATING CORRUPTION

Combating corruption is a challenging task. It involves confronting numerous individuals, raising awareness about its detrimental effects and seeking support from a wide range of stakeholders. Therefore, significant challenges are unavoidable. The main challenges the Commission faces in this effort include:

- ACC cannot directly investigate money-laundering offences associated with corruption without the initiation and collaboration by the Maldives Police Service.
- ACC does not have the authority to prosecute corruption cases directly in court. Instead, ACC must first present ACC's findings to the Prosecutor General's Office, which holds prosecutorial powers granted by the Constitution. If ACC had prosecutorial authority, as in some other countries, it would be more effective in addressing and taking legal action against those involved in corrupt practices.
- The offence of illicit enrichment of public officials falls under ACC's purview, and the burden of proof lies with the State. However, offences of illicit enrichment of public officials are associated with other criminal offences such as money-laundering, which fall outside the ACC's mandate.
- The majority of financial transactions are processed through banks, which can play a crucial role in preventing corrupt activities. Timely intervention by banks could mitigate the damage to the State. For instance, in the MMPRC scam, illicit funds were channelled through numerous bank accounts. If banks intervened timely, the damage to the State could have been minimized or avoided.
- Most corruption allegations submitted to the ACC involve public officials. However, these corrupt actions often also involve private parties. The ACC, however, lacks the mandate to investigate the part involving private individuals, except for bribery.

¹⁴ National Anti-Corruption Policy published on 13 December 2021.

¹⁵ ACC Regulation No 2020/R-98, Investigation Regulation.

¹⁶ Case Prioritization Policy gazette and published on 25 May 2022.

¹⁷ Organizational structure of Anti-Corruption Commission.

¹⁸ Annual Report of Anti-Corruption Commission 2023.

PARTICIPANTS' PAPERS

- The inadequate punishment of offenders, their continued presence in society and their frequent advancement to high-ranking positions within the state system make the fight against corruption more difficult.
- The lack of an effective asset recovery system in the Maldives is a significant obstacle to combating corruption and recovering state losses.
- Since the Maldives relies heavily on tourism, combating corruption in large-scale tourism projects, such as the development of tourist resorts, is particularly challenging. A notable example is the difficulty in repossessing the islands involved in the MMPRC scam.
- The failure to effectively implement and monitor recommendations provided to public agencies following corruption investigations and research further hinders the fight against corruption. For example, the recommendations from the white paper¹⁹ published regarding the compensation for government projects have yet to be implemented.
- No deterrence when it comes to corruption crimes due to rare and few prosecutions, and inadequate punishment and consequences for the perpetrators. The root cause of this is loopholes in the legislation related to corruption and investigations. The nature of the corruption-related cases is mostly based on circumstantial evidence, and it requires inference and reasoning to prove the perpetrators intention and knowledge.
- There is a general lack of awareness about the widespread nature of corruption and its impact on everyone, especially the private sector.
- The wide distribution of the Maldives' islands makes it challenging to organize awareness sessions that effectively reach every island.
- The lack of a dedicated module, subject or programme within the educational curriculum to educate students about the risks of corruption and the importance of integrity is a major obstacle to raising awareness among the young generation.
- Lastly, a significant challenge in combating corruption is the lack of political will from the State.

VII. COUNTERMEASURES AGAINST CORRUPTION

To fight against corruption there are some countermeasures that must be taken immediately. Some of these are:

- Since we currently lack an asset recovery mechanism, we need to establish legislation outlining the comprehensive mechanism for asset recovery which aims at recovering the money stolen from the public funds.
- Conducting regular awareness sessions specially for private parties regarding integrity as well as business best practices.
- Conducting and publishing specific research reports regularly for areas where corruption-related activities are commonly committed.
- Establishing a mechanism where public officials are obliged to declare their financial, assets, conflicts and other interests in accordance with international best practice.

¹⁹ White Paper: Transparency of the Settlement Process of Government Projects published on 2 September 2022.

- Address the loopholes in current legislation related to corruption and financial offences.

VIII. EFFORTS TO COLLABORATE WITH THE PRIVATE SECTOR AND OTHER PARTIES TO STRENGTHEN ANTI-CORRUPTION INITIATIVES

Article 12 of UNCAC states that each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

As per article 12.2b, the State Party shall promote the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.²⁰

The Maldives has established the Institute of Chartered Accountants of Maldives (hereinafter referred to as CA Maldives) under the Chartered Accountants Act.²¹ CA Maldives is responsible for setting regulations and standards for both the public and private sectors, including guidelines for accounting, auditing and ethical practices. Therefore, CA Maldives plays a crucial role in maintaining the integrity of the private sector as the regulatory body for accountants and auditors.

The ACC is currently not given the mandate to investigate corruption crimes related to the private sector, other than bribery. This limitation has led to a low level of engagement from the private sector in the fight against corruption. As a result, the ACC has requested the Attorney General to amend the law to broaden the scope of investigations and enhance effectiveness.

As outlined by Transparency Maldives,²² to enhance effective business integrity practices within the private sector, the ACC regularly raises awareness about integrity and provides training to the governing boards and management of private and public organizations on conducting corruption risk assessments, in collaboration with CMDA,²³ each month.

Private companies are not compelled by law to provide information for corruption-related investigations; however, in many cases, they do cooperate and provide required information. For instance, during the investigation of allegations relating to the purchase of old dump trucks at a rate of higher than market rate by the Waste Management Corporation Limited, an SOE established for management of waste, private companies provided necessary and relevant information to the investigation, such as market rates of dump trucks.

Cooperation among countries is also essential to combat corruption effectively. To facilitate this, the Commission is signing Memorandums of Understanding (MOUs) with anti-corruption institutions in various countries. These agreements aim to enhance assistance and collaboration. So far, the Commission has signed MOUs with the Corruption Eradication Commission of Indonesia (KPK), the National Anti-Corruption Commission of Saudi Arabia (NAZAHA), Malaysian Anti-Corruption Commission (MACC) and the International Criminal Police Organization (INTERPOL).

²⁰ UNCAC, Article:12.

²¹ Act no 13/2020, Chartered Accountants Act: Article 1 (a).

²² Transparency Maldives, Anti-Corruption Agenda for Clean Governance 2023.

²³ An independent institution established under Act 2/2006 (The Maldives Securities Act) for developing and regulating the capital market in the Maldives.

IX. CONCLUSION

The expected results in the fight against corruption cannot be achieved unless the aforementioned challenges are addressed. Therefore, changes must be made through the legal system, and mechanisms to close avenues for corruption must be implemented. For instance, amending the elements related to corruption offences such as amending the offence of illicit enrichment of public officials which are associated with other criminal offences fall outside the ACC's mandate.

Additionally, everyone at all levels of government must be committed to combating corruption. Both the private and public sectors should contribute to the effort against corruption to the best of their ability, such as by ensuring the participation of both public and private parties in the awareness session conducted specially for the private parties regarding the integrity and business best practices.

Simultaneously, it is crucial to introduce mechanisms to educate and raise awareness among the rising generation about the harmful effects of corruption and its pervasive impact on all aspects of society. Additionally, robust international cooperation is essential for effectively combating corruption. Strong and effective relations between countries are necessary because corruption negatively affects the entire world.