

CRIMINAL JUSTICE IN MALDIVES

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I. INTRODUCTION

The Maldives is well known as paradise on earth and a tourist haven for its enormous natural beauty, safety, and peace loving and friendly people, even though the crime rate has increased considerably in recent years. Until the enactment of the Constitution on 7 August 2008, the criminal justice system of the Maldives heavily relied on the use of confessions. There was a lack of other forms of evidence gathering, including the development of forensic and other scientific investigative skills. More than 90 per cent of convictions are said to have been based on confessions made during investigation. According to the Criminal Court, in 2002-2003, 97 per cent of cases were confession based.¹ In 2004, 64 per cent of cases relied on confessional statements.² However, with the Constitutional reform in 2008, the Maldives is moving from a confession-based to an evidence-based system, which is in line with international standards and thus strengthening the rights of the accused.

II. THE LEGAL SYSTEM

The legal system of the Maldives, due to minimal commercial activity and a low crime rate evolved at a slow pace and remained greatly underdeveloped. In addition, the Maldives did not receive English common law culture, although it remained a British Protectorate during the period 1887 to 1965. However, due to the Islamic *shari'ah* and British influence, the Maldivian legal system is based on *shari'ah* law and codified common law.

The Report of the Special Rapporteur on the independence of judges and lawyers stated that the legal system still falls short of international standards including in criminal justice.³ According to the Draft Discussion paper by the Hon. Justice Marcus R. Einfeld,⁴ it is generally recognized that the Maldivian legal system has been struggling to keep abreast with recent socio-economic developments associated with rapid economic development, a boom in tourism, increased international trade and investment, fast population growth and changing living standards and lifestyle.⁵

The Draft Discussion Paper also identified a number of weaknesses in the legal framework including weak procedural structures and a lack of laws governing legal procedures, the absence of a formal law reporting system which is inhibiting the establishment of a strong doctrine of legal precedent, uncertainty regarding the respective standards of proof in criminal matters, and unclear principles regulating the admission of evidence.⁶

However, following the incidents in 2003 including the brutal murder of 19-year-old inmate Hassan Evan Naseem, three of his fellow inmates who were also shot to death in *Maafushi* prison and riots in Male' as well as local and international demand,⁷ the Maldives had put greater effort into the development and reform of its criminal justice system.

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¹Bendic Rogers, A Report on a visit to the Maldives (2006) at 7.

²Ibid.

³Leandro Despouy, Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/4/25/Add.2 (2 May 2007).

⁴Hon. Justice Marcus R. Einfeld AO QC PhD, Strengthening the Maldivian Judicial System, Draft Discussion Paper, Sydney, Australia, (June 2005).

⁵Ibid.

⁶Ibid.

III. CRIMINAL LAW

The Penal Code of the Maldives was enacted in response to civil unrest in certain regions of the country in 1967. Whereas this current Code was enacted due to a specific uprising in certain regions of the country and lack of reform to date it is not comprehensive and is in principal unable to address current crime patterns and escalation of crime in the Maldives.

According to the former Attorney General, Dr. Mohamed Munavver, the current Penal Code, which was put together in a haphazard manner from extracts of the Sri Lankan Penal Code, is long since outmoded. Apart from this, the Criminal Procedure and comprehensive Evidence Act are non-existent.⁸

In 2006, a new Penal Code was drafted. However the draft Penal Code is still pending in the Parliament's committee stage.⁹ Former Attorney General, Husnu Suood, said that a revised Penal Code was very much the need of the hour as the current Penal Code has been in place for about half a century and does not serve its need as certain punishments are not appropriate for the offence or certain punishments are not even implemented in the country. Mr. Suood also stated that the current Penal Code does not suit the present day needs, and if the draft Penal Code gets enacted, the criminal justice system will be more effective.¹⁰

IV. OVERVIEW OF CRIME TRENDS, THE CURRENT SITUATION AND CHALLENGES

A. Crime Trends

There is no comprehensive study of crime in Maldives. According to the Statistical Report 2010 of the Maldives Police Service (MPS), 4,567 criminal cases were reported to the MPS in 2000. In 2007, 11,452 cases were reported to the police. This report shows that the number of cases filed with the police fell 11 per cent from 19,259 cases in 2009 to 16,995 cases in 2010. However this drop in the crime rate is still very high compared to the statistics of the year 2007 and 2000.¹¹ According to the Statistical Report 2011-2012 of the Maldives Police Service, 17,804 cases were reported to the MPS in 2011. This report shows that the number of cases filed with the MPS rose 15.2 per cent from 17,804 cases in 2011 to 20,512 cases in 2012.¹² The Crime rate is extremely high when taken as a percentage of the total population of the country. The Maldivian population numbers approximately 300,000 people.¹³

B. The Current Situation

In a Press Statement on 21 March 2010, human rights Non-Governmental Organizations (NGOs) stated that serious crimes such as assault with sharp weapons, drug trafficking, sexual abuse of women and children, and murder have become common in Maldivian society, and they condemn this increase in serious crime and also the failure of the State and responsible authorities to convict those responsible for these crimes.¹⁴ According to the Human Rights Commission of the Maldives (HRCM), in recent times gang violence, burglary, mugging, sexual abuse of children and murders are increasing to levels of alarming concern in the society.¹⁵

⁷Hussain Shameem, MALDIVIAN LEGAL SYSTEM: CORRUPTION CONTROL MECHANISMS AND CODES OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS at 305 <<http://www.unafei.or.jp>>.

⁸Asian Human Rights Commission, MALDIVES: The Human Rights Situation in 2006 <<http://material.ahrchk.net/hrreport/2006/Maldives2006.pdf>>.

⁹"Penal Code draft bill sent to Majlis committee" *Miadhu* (online ed, Maldives, 15 October 2009) <<http://www.miadhu.com/2009/10/local-news/penal-code-draft-bill-sent-to-majlis-committee/>>.

¹⁰ Ibid.

¹¹ MPS, Statistical Report 2010, (27 April 2011) <<http://police.gov.mv/>>, MDN, Maldives Police Service in 2010: A Snapshot <www.mvdemocracynetwork.org/maldives-police-service-in-2010-a-snapshot/>.

¹² MPS, Statistical Report 2011-2012, (2013) <<http://police.gov.mv/>>.

¹³ Maldives, *National Adaptation Programme of Action* (NAPA) (2006).

¹⁴ Maldivian Democracy Network, Press Release — Escalation of crime (23 March 2010) <www.mvdemocracynetwork.org/press-release-escalation-of-crime/>.

¹⁵ HRCM, ISSUES FOR CONSIDERATION WHEN COMPILING THE LIST OF ISSUES on the Initial Report of Maldives under the International Covenant on Civil and Political Rights (May 2011) at 8.

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Since 2008, the courts of the Maldives have not admitted confessions made to the police by the defendants if they withdraw the confession at the trial except in *PGO v Mohamed Nabeel*.¹⁶ Similarly, courts are also reluctant to admit witness statements made during police investigation if they retract the statements or the witnesses prefers to keep silent at the trial. This is one of the major reasons for the low conviction rate that the Maldives is currently experiencing. Many people blame the rise in crime and low conviction rate on the new democratic system and human rights guaranteed under the new Constitution of the Maldives.

Article 52 of the Constitution stipulates that “No confession shall be admissible in evidence unless made in court by an accused who is in a sound state of mind. No statement or evidence must be obtained from any source by compulsion or by unlawful means and such statement or evidence is inadmissible in evidence.”¹⁷

Torture during investigation was very common until recently. This was the major reason why the new Constitution does not allow confessions as evidence unless made in court. Whilst there was a very high conviction rate prior to 2008, there were no safeguards to ensure that the confessions were fairly and lawfully obtained.

Nevertheless, now it has become a trend for the offenders to make confessions to the police and get leniency from any possible remand or detention. The police also take their investigation easy when an offender has made a confession during investigation. However they simply withdraw the confessions at the trial and escape from the conviction.

It has to be noted that as several facilities and services provided by the police are inactive or suffer from shortages of resources and capacity in most serious cases, the police also fail to collect evidence other than a mere confession. Therefore the Maldives needs to establish an effective mechanism on crime investigation to improve the police's capacity in effective collection of evidence in criminal cases such that it inspires confidence in the criminal justice.

C. The Causes

According to the HRCM, the increase in the crime rate has been aggravated due to a number of direct and indirect factors. It noted some of the direct factors including, inadequate legislation pertaining to the criminal justice system, such as a Penal Code that does not reflect the spirit of the present Constitution as it has many parts which are not relevant to the present context, inadequate legislation pertaining to evidence and witnesses, dismissal of forensic evidence by the courts, and the absence of a witness protection programmes.¹⁸

D. The Challenges

1. Low Conviction Rate

As mentioned before until recently, the Maldives' criminal justice system depended heavily on confessions. There was lot of criticism of this high confession rate. However, after the adoption of the present Constitution in August 2008, the Maldives criminal justice system changed from being confession-based to evidence-based, thus strengthening of the rights of the accused.¹⁹ This is one of the major reasons for the low conviction rate that the Maldives is experiencing now. The recent statistics released by the MPS show a significant decrease in the proportion of criminal cases which reach the courts leading to a conviction. As noted by the MDN, the most worrying figures come from the number of cases that reach the courts and end in convictions. There were 3,323 cases sent to the Prosecutor General's Office (PGO) in 2010 by the MPS. From the cases filed in 2010, only 75 convictions were recorded.²⁰ Many human rights NGOs in the country, have noted that the conviction rates are alarming

¹⁶ “Nabeel's execution order appealed in Maldives' High Court” *Haveeru Online* (online ed, Maldives, 21 March 2011) <www.haveeru.com.mv/news/34905>.

¹⁷ Constitution 2008 (MV), at 52.

¹⁸ HRCM, ISSUES FOR CONSIDERATION WHEN COMPILING THE LIST OF ISSUES on the Initial Report of Maldives under the International Covenant on Civil and Political Rights, above n 15, at para 19.

¹⁹ United Nations Development Programme in the Maldives and the Government of Maldives, Prison Assessment and Proposed Rehabilitation and Reintegration of Offenders Report (2011) at 19 <www.undp.org.mv/v2/publication_files/4e649d60b9b4a.pdf>.

and, called upon all relevant State authorities to improve relations and communications among the various institutions as these relationships are vital for the effective collection and utilization of evidence in criminal cases.

However, the Maldives is moving to an evidence-based system, and there is no evidence-related or other relevant legislation, rules or procedures. The police, prosecution and other relevant institutions need capacity building, proper training, resources and facilities to work in an evidence-based system.

2. Lack of Coordination

Lack of understanding and coordination among relevant institutions including the MPS, the PGO, the Executive and the Judiciary is one of major challenges. Inadequate communication and corroboration between relevant institutions is another major cause of concern caused by the lack of policies and procedures. Dangerous offenders often appear to have withdrawn from the penal system and are seen to be living in the community as free citizens.²¹ The MDN highlighted that while courts point their fingers at the police and the prosecution for not presenting enough evidence, the police have gone on record very publicly saying that courts were obstructing their investigations. The MDN further noted that this apparent breakdown in the relationship between the judiciary and the police is certainly cause for great concern.²²

3. The Intimidation of Witnesses

According to the Report on Capacity Development Needs Assessment of the Prosecutor General's Office of the Republic of Maldives, yet to be published, the intimidation of witnesses is a growing problem in the administration of justice in the Maldives.²³ The Prosecutor General Mr. Ahmed Muizzu stated that reluctance of witnesses to testify at trial is a growing concern during criminal trials. Mr. Muizzu said that "*there are witnesses reluctant to testify at the Court due to intimidation and also there are witnesses [who] do not want to testify at the Court due to various influences.*"²⁴ Likewise, the Criminal Court also has great concern on the same issue stating that large number of serious assault and murder cases end acquittals due to witnesses refusing to give evidence in the Court.²⁵

4. Lack of Capacity

The main function of the MPS is to investigate criminal cases. They do this by collecting evidence. The police will send the investigation case file to the PGO who will decide what action should be taken next. The PGO also provides assistance during investigation mostly if the police so request. If the prosecution decides there is enough evidence and grounds for charging the offender, then the case will be sent to the court for adjudication.

The Capacity Development Needs Assessment of the Prosecutor General's Office of the Republic of Maldives Report 2008 stated that at the time of the assessment advocacy skills of prosecutors were at basic levels and preparation was not always thorough. This Report also noted that confidence in the way in which cases are handled will grow when greater experience and expertise is demonstrated in court.²⁶

Many locals as well as some members of the Parliament have been criticizing the performance of the PGO due to losing serious criminal cases. However this research showed that the higher number of acquittals is not only due to the ineffectiveness of the prosecution but also due to weak investigation and delaying trial and the way the trial is conducted in the Criminal Court.

²⁰ Maldives Police Service in 2010: A Snapshot.

²¹ United Nations Development Programme in the Maldives and the Government of Maldives, Prison Assessment and Proposed Rehabilitation and Reintegration of Offenders Report, above n 19.

²² Maldives Police Service in 2010: A Snapshot, above n 20.

²³ Capacity Development Needs Assessment of the Prosecutor General's Office of the Republic of Maldives (2008), para 24.1.

²⁴ *Ibid.*

²⁵ Adam Haleem, "*Jinaaee bodethi massala thakuge sharuee maruhalaagai hekibas nulibeythee varah kan boduvey: PG [We are deeply concerned over the lack of evidence presented during trials over serious criminal offences: PG]*" *Haveeru Online* (2 February 2010) <www.haveeru.com.mv/dhivehi/news/86164>.

²⁶ Capacity Development Needs Assessment of the Prosecutor General's Office, above n. 23, at para 21.1.

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It has to be noted that the MPS's Forensic Science Department has now been awarded an International Standard of Organization (ISO) certificate and this will help the shift in reliance on confessional evidence to that of establishing an evidence-based system of criminal investigation. Further, in July 2010 the MPS established a separate forensics building, which houses modern technologies for forensic investigations. On the other hand, as the MDN noted there remains room for skepticism about the MPS's ability to effectively deploy their new forensic tools and the judiciary's capacity to engage with forensic evidence.²⁷

5. Inadequate Evidence Act

The Evidence Act²⁸ is inadequate to deal with evidence issues. This Act comprises only the basic provisions and does not address many of the requisites in this area including the issue of admissibility, the probative value of evidence from different sources and the concept of illegally obtained evidence.²⁹

V. POSSIBLE SOLUTIONS

- (1) Enact the new draft Penal Code pending before the Parliament without further delay and ensure that the new Penal Code is fully consistent with international standards;
- (2) Amend the Police Act, as it came into force before the current Constitution;
- (3) Expedite efforts to enact the Criminal Procedure Bill, the Witness Protection Bill and the Juvenile Justice Act;
- (4) Provide further legal and practical training and education for judges and prosecutors and provide judges and prosecutors with the possibility to observe how trials are conducted in other common law countries;
- (5) Amend and enact a uniform Evidence Bill adding a provision which allows and regulates admissibility of confessions and provision on effective collection and utilization of evidence in criminal cases. The Bill also needs to add a provision on the basis for excluding involuntary or improperly obtained confessions;
- (6) Reform investigation practices by reviewing and adopting interrogation rules and make video recordings of interrogations mandatory and introduce safeguards to the legal rights of suspects and the integrity of the process. In addition, all custodial interviews and interrogations of suspects should be videotaped with an equal focus on suspects and interrogators;
- (7) Develop procedures for crime scene examination, collection and protection of evidence;
- (8) As effective utilization of evidence at trial can help to convict the offender it is therefore very important that police know how to manage crime scenes and collect evidence effectively. Such evidence should be protected and preserved.

VI. CONCLUSION

According to the police reports many serious criminal cases, even when investigated by the senior police officers, are only capable of being solved by means of a confession from the accused. As noted before, serious criminals abuse the right given in art 52 and purposefully admit to the police during investigation to escape convictions as they know the courts do not admit confessions unless made before the court. As the Maldives is concerned about the recent rise in crime and the inability to successfully prosecute criminals, the Maldives needs to limit art 52 of the Constitution.

In general, some very important steps have been taken over the recent years to reform criminal

²⁷ Maldives Police Service in 2010: A Snapshot, above n. 20.

²⁸ Evidence Act (Law Number 24/76) (MV).

²⁹ Attorney General's Office, Maldives, National Criminal Justice Action Plan 2004-2008 (2004) at 12.

justice in the Maldives. However specific steps have not been taken to move to an evidence-based system. As a result, so far very few suspects have been convicted among those involved in serious cases, most notably homicide cases. This can only be achieved by reforming the country's existing legislation, strengthening relevant institutions and enacting important bills aimed to respond to crime. Especially, as the Maldives is moving from a confession-based to an evidence-based system, it is therefore vital that the Maldives have an Evidence Act without further delay.

To address the low conviction rate and the issue of offenders abusing art 52 as a way to escape conviction, it is therefore vital to narrow the right stipulated under art 52. It is also a responsibility of the police, working along with the prosecution and judiciary, to protect the people, to investigate criminal offences and collect evidence that may be later utilized at trial.