APPLICATION OF EFFECTIVE LEGAL MECHANISMS TO STRENGTHEN CURRENT ANTI-CORRUPTION SYSTEM OF THE MALDIVES

MEEFAU MOHAMED NASEEM

Kulliyah of Sharia and Law, The Islamic University of Maldives, Male', Republic of Maldives
E-mail: meefau.naseem@gmail.com

Abstract - Corruption is a harmful plague that causes detrimental effects to the political and economic stability of a country. Corruption has turned into a major catastrophe for the Maldives, as the country has lost billions of assets and has caused adverse damages to the nation. This qualitative study gives an extensive insight into contemporary anti-corruption related legislations of the Maldives. These legislations are thoroughly analyzed and evaluated for its compliance with the provisions of the United Nations Convection Against Corruption. Experts who work in the field of combating corruption in Maldives were interviewed to identify the challenges in the current legal framework. The anti-corruption legal framework established in Hongkong and Singapore were reviewed to identify the controls that have developed in their systems. The data gathered were analyzed, using thematic analysis method to identify the issues within the legal framework of the Maldives. Findings of this research illustrates that; there are gaps in the legal framework, which requires enactment of new laws and amending existing legislation to align with UNCAC. Furthermore, the current system lacks implementation due to political influence. Therefore, it is crucial to give importance to implement the existing statues and mechanisms to enhance the anti-corruption efforts. Lastly, this research recommends timely action plan to strengthen the current anti-corruption system of the Maldives.

Keywords - Corruption, United Nations Convention Against Anti-Corruption (UNCAC), Anti-corruption legislations, Anti-Corruption Commission (ACC), investigation, prosecution, Maldives, Hongkong, Singapore

I. INTRODUCTION

The issue of corruption is a pervasive and pernicious issue that has been affecting the nations globally. The detrimental effect of corruption undermines democratic principles, negates rule of law and destabilizes the economy of a country. The Maldives is a country with strong economy relative its population, which is less than 530,000 people. However, the development of the country is slow, comparing the GDP of the country. Corruption a is primary factor that slows down development of the country.Objectives of this research are to evaluate the compliance of the existing legislations of the Maldives with UNCAC provisions to understand the gaps in the current system and to understand the challenges in the current legal framework. Furthermore, to analyze the legal frame work of Hongkong and Singapore to understand the mechanisms they have established to combat corruption and application of such mechanisms in the Maldivian anti-corruption system.

II. MATERIALS AND METHODS

This research adopts a qualitative approach as it the most suitable approach for legal research because it enables the researcher to analyze texts of legal instruments deeply rather than quantified data. Data for this research was collected by conducting document analysis on research papers and available legal instruments. The Anti-Corruption Commission Act, Criminal Procedure Code, Elections (General) Act, Maldivian Civil Service Act, Penal Code of Maldives, Prevention and Prohibition of Corruption Act, Prohibition of Money Laundering and Terrorism Financing Act and the Whistleblower Protection Act were analyzed for the its compliance with provisions of prevention, criminalization and law enforcement and asset recovery chapter of the UNCAC. To understand the challenges in the current system from a technical aspect investigator from ACC were interviewed using a semi-structured interview guide. To explore the mechanisms that can be obtained in to the Maldivian system from the legal frame work of Hongkong and Singapore, the Drug Trafficking (Recovery of Proceed) Ordinance 1995 (Cap.405), Independent Commission Against Corruption Ordinance 1974 (Cap.204), Organized and Serious Crimes Ordinance 1995 (Cap.455), The Prevention of Bribery Ordinance, 1971 (Cap.201), Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefit) Act 1992 and Prevention of Corruption Act 1960 were analyzed.

III. RESULTS AND DISCUSSION

- The UNCAC urges the state parties to consider illicit enrichment as a crime under provision 20. The Maldivian legal system recognized illicit enrichment as an offence in 2021, with the fourth amendment brought to the Penal Code 2014. The definition under section 515 of the Penal Code, does not align with the definition provided in UNCAC. The current definition in this section mandates the property or money or standard of living established by a public should be in relation to "proceeds of a serious criminal

offence" in order for the elements of the crime to be established. However, the definition provided in the UNCAC does not mandate illicit enrichment to be in regard to proceeds of a serious offence. With this element, it diverts crime from the purpose of criminalization of the offence, because illicit enrichment can arise from commitment of offences that does not constitute as "serious criminal offence" in the Penal Code.

- The UNCAC recognizes two types of embezzlement as criminal offences. Article 17 of UNCAC illustrates embezzlement as misappropriation or other division of property by a public official. Article 22 of the convection states the offence of embezzlement of property in the private sector should be criminalized. The offence of embezzlement has been criminalized in Maldives since the beginning. Prior to 2021, the embezzlement of property in public sector and private sector was not differentiated. In the fourth amendment brought to the Maldivian Penal code, section 516 was introduced, criminalizing the offence of embezzlement of property in public sector. With the fourth amendment brought to Anti-Corruption Commission Act 2008, the act of embezzlement of property in public sector is labeled as a corruption crime.
- Asset Recovery is a fundamental principle in combating corruption. Hence, chapter five of the UNCAC is dedicated to asset recovery, where it outlines mechanisms to prevent and detect transfer of proceeds of crime, measures for direct recovery of the asset lost due to corruption, mechanisms to confiscate property through international cooperation and mechanisms to return and dispose of assets. The Maldives does not have a legislation in regard to Asset Recovery. The Prevention of Money Laundering and Terrorism Financing Act provides several mechanisms to recover the lost asset, when a conviction is made. However, it is very important to enact a specific legislation that would establish a mechanism to recover the asset lost due to proceeds of corruption crimes, without the need for a conviction of the crime. Asset recovery bill is currently under drafting.
- Private sector corruption needs to be criminalized in the Maldivian legal system as it harms the economy of the country as much as public sector corruption. When private sector corruption is not criminalized, it opens a window for people to abuse the system and get away with the crime.
- Power to conduct surveillance; Section 74 of the Criminal Procedure code states the offences, where surveillance can be conducted under a court warrant. Nevertheless, offences of corruption are not listed in this provision. Therefore, a court warrant cannot be obtained to surveillance the acts of corruption offenders. The power to surveillance is vital to gather strong evidence in the investigation of corruption crimes as offences of corruption are committed in secrecy and by highly powerful people. Surveillance and undercover operations are tools used to conduct intelligence-based investigations. Using Intelligence based investigation methods to investigate corruption crime is considered a good practice by international bodies like United Nations Office on Drug and Crime (UNODC). CPIB of Singapore and ICAC of Hongkong also uses the intelligence as an investigative strategy to collect information and to conduct successful investigations. Therefore, Criminal Procedure Code requires amendment to allow ACC to conduct surveillance on corruption crimes to conduct effective investigations.
- Investigatory powers of a Police Officer; Data collected from the interviews shows that investigations of ACC are highly dependent on Maldives Police Services. It is preposterous that ACC has to rely on Maldives Police Services, while ACC has the jurisdiction to investigate allegations of corruption that happens within the Maldives Police Services. This can cause internal resistance to cooperate and can influence the investigations conducted by the ACC. It is reasonable to believe that ACC must have all the investigatory powers that the Maldives Police Services has, to ensure the true independence of corruption investigations. It is evident from the legal system of the countries which have establish effective mechanisms to combat corruption that anti-corruption bodies must be given the required powers to conduct their investigations independently and effectively.

According to the data collected from the interviews, the main legislations that govern the anti-corruption system of the Maldives has gaps, which are required to be filled to create an effective system. In the Maldivian Penal Code, some offences are needed to be redefined and new offences are required to be introduced. The Criminal Procedure Code, requires amendments to grant more investigatory powers to ACC to conduct the investigations more effectively. In addition, some amendments are required to be brought to the Anti-Corruption Commission Act to redefine the definition of corruption and re-evaluate the composition of the commission. In addition, amendment is required to be brought to other relevant legislations and some new legislations are mandated to be enacted.

IV. RECOMMENDATIONS

- Enact Asset Recovery legislation
- Amed Maldivian Penal Code to criminalize private sector corruption, illicit enrichment

according to UNCAC and to criminalize concealment of corrupt acts

- Criminal Procedure Code needs to be amended to allow surveillance to be conducted in corruption investigations, to give ACC the power to arrest people search places, people, and seize items from a person when required.
- Amend the Prevention of Money Laundering and Terrorism Financing Act to give ACC the jurisdiction to investigate money laundering where the predicate offense is an offense of corruption.
- Create new strategies to create awareness with the public effectively.
- Establish effective corruption deterrence strategies
- Establish effective good governance
- Adopt strategies to improve the performance of ACC
- Effectively implement the existing legislations and mechanisms
- Promote unreeving political will

V. CONCLUSION

In summary, this paper has examined the issues in the current legal framework of the anti-corruption system of the Maldives and suggest reforms the legislations require to strengthen the current anti-corruption system of the Maldives.

The key findings of the research include the discovery of need of enacting a specific law for asset recovery and the amendments that need to be brought to the relevant legislations to make the system more efficient.

To conclude, this research contributes to structure the legal framework of the anti-corruption system of Maldives in a more effective manner.

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