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MALDIVES INSTITUTE OF LOCAL GOVERNANCE



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Local Government Authority

DECENTRALIZATION FRAMEWORK IN THE MALDIVES

POLICY BRIEF

Decentralization Framework in the Maldives – Policy Brief, MILG, 2023

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Thank you all for your remarkable contributions.

DECENTRALIZATION FRAMEWORK IN THE MALDIVES

The eighth amendment¹ to the Decentralization Act 2010 was crucial in shaping a legislative framework that supports a fiscal decentralization system in the Maldives. The roles and responsibilities of Island Councils were redesigned to grant more access to community resources and to drive local community development. However, to carry out the Councils' legal mandate, a conducive work environment with no policy constraints or practical impediments are essential conditions.

The aim of this policy brief is to highlight some of the key challenges that the Councils face in carrying out their core functions and set the stage for recommendations that can potentially pave the way to resolve the challenges. The ideas presented in this brief are a culmination of consultation with the Councils and key national stakeholders on the areas explored in this brief.

There is need for more constructive consultation with Councils in areas explored in this brief for further policy actions and legislative proposals that cater to the unique community contexts and resource deficiencies. The discourse on diverse community contexts and capacity constraints need to be given more consideration in the decision-making domains. It is hoped this brief will generate more dialogue and interaction between political actors in shaping the decentralization landscape of the Maldives.

¹ Law No: 24/2019, 8th Amendment to the Decentralization Act 2010



1 LAND USE PLANS

To fiscally empower the Councils in the current framework, Councils are afforded the right to utilize the land under the Council's jurisdiction subject to an approved land use plan.² The Decentralization Act states that the Island Councils must formulate a land use plan within three months after assuming office.³ However, due to massive capacity constraints within the Councils and lack of a coherent legal framework in the land use planning context, a great number of Councils were not able to develop and approve their land use plans within the time frame stipulated in the law. Therefore, Councils were faced with legal restrictions in utilizing Council's land in revenue generation. Land being an essential natural resource which needs to be mobilized for the prosperity of the local communities, it is imperative that the Councils have an enabling environment to formulate and execute their land use plans as per the priorities of the local communities.

CHALLENGES

- **Shortage of technical experts and firms qualified to undertake land use plan assignments.** Only a limited number of qualified experts and firms registered in the Maldives can undertake the task of formulating land use plans as per the required laws. Although Atoll Councils are mandated by law to provide technical assistance to the Island Councils, often they do not have the required technical capacity to provide such technical guidance. Therefore, Island Councils face severe technical constraints in trying to procure the expertise required to formulate the land use plans.
- **Lack of a comprehensive legal and a regulatory framework in land use planning.** Currently the basic procedures of land use plans are set out in the Decentralization Act and the Land Act of the Maldives. However, for more specific details, the Councils still refer to the Land Use Planning Regulations 2008

RECOMMENDATIONS

- **Establish a mechanism of providing academic scholarships and/or providing more incentives for individuals who pursue careers in land use planning.** This would help to reduce the current shortage of technical experts in the market to undertake land use planning. This can also be conducted in coordination with Secondary Schools by providing more career guidance opportunities for students.
- **Enacting the Land Use Plan Bill currently in the Decentralization Committee Stage of the Parliament.** The Land Use Plan Bill also requires wider consultation with the Councils in rephrasing its provisions. The Consultations can shape the bill in providing a more coherent and a comprehensive legal framework that strengthens the land use planning functions of the Councils with adequate development controls required for sustainable local development of land.

² The Decentralization Act 2010, 22 (a)

³ The Decentralization Act 2010, 107 -2 (b)

which pre-dates all the current changes in the current decentralized system. This results in a lack of a coherent legal framework in formulating land use plans. The rules on the development controls of the land are scattered over several laws and regulations which makes the planning function tedious and complex.

• **Limited legal assistance in the Councils in the implementation of approved land use plans.** Once a land use plan has been approved, the Councils are bound to enter into a web of contracts to carry out procurement processes required for legal compliance. Lack of legal experts in the Councils causes considerable delays in concluding transactions related to the land. Some of the Atoll Councils do provide legal assistance to Island Councils, however in most of the cases, the Atoll Councils are not able to cater to the requests for legal services in the whole administrative division.

• **More guidance from the Ministry of Planning on the land use plan approval process and its key considerations.** If clear guidance on different stages of approval process and its considerations are published and accessible to Councils, it would be easier for the Councils to match Ministry's expectations in the land use plan approval process. This would reduce potential bottlenecks and delays due to the lack of information and guidance.

• **More pro-active transfer of technical resources which aids in the formulation of land use plans from the Ministry to the Councils.** Technical resources that have been gathered by the central government in management of the land related to the Councils can be pro-actively shared with the Councils. For instance, the base maps of the islands formulated by the central government. This would potentially help to reduce costs to the Councils and better allocate their resources for more productive needs.

• **Facilitating the required legal assistance and technical expertise to the Councils.** This would enable the Councils to comply with the required laws in concluding the contracting process such as producing bid documents and terms of reference while engaging in transactions with the land.

2



COMMUNITY DEVELOPMENT PLANS

Local Councils are now empowered in driving local community development initiatives through their community development plans (CDPs). CDPs are formulated in consultation with the community members⁴ to reflect local priorities and preferences. However, one of the prevalent issues evident in the islands is low community participation in the local development process. There is also a pressing need to align local development initiatives with central government development plans to achieve greater economies of scale and efficient use of scarce resources. Currently, there lacks a main Planning Act that sets out the basic framework and provides for the key considerations in the planning context which results in a great deficit in mainstreaming planning initiatives. Local Councils also require adequate administrative space to source and build internal competencies to effectively execute, monitor and evaluate CDPs.

CHALLENGES

- **Central level plans such as the 'Spatial Plan' and 'Regional Plan' not published or accessible through a public domain.** This creates inconsistencies and complexities in planning efforts by the central government and Local Councils.
- **Lack of an inter-governmental mechanism or an independent third party to solve disputes relating to central and local level planning.** Currently, if there is a dispute on a planning decision between the central government and the local government, the only recourse to find legal redress is the Court system. However, this is a long and a-time consuming process which hampers development and planning needs in different spheres of the government.

RECOMMENDATIONS

- **Publishing the central level plans such as 'Spatial Plan' and 'Regional Plan' in a public domain which is accessible to the Councils.** This would enable informed decision making in planning priorities and harmonization of development plans at the central and local level.
- **Enactment of a National Planning Act that lays out the basic framework for central and local level planning.** This would enable to set out the key considerations in planning initiatives and how inter-governmental efforts can be coordinated to harmonize development plans.
- **Assigning the role of a mediator to an independent third party or a tribunal to hear disputes arising from central level and local planning decisions.** This can pave the way forward to an alternative speedy mechanism of dispute resolution.

⁴ The Decentralization Act 2010, 107-1

- **Restrictions in hiring competent staff due to inadequate remuneration packages and promotion guidelines.** The current remuneration packages and promotion guidelines of the Council staff do not enable the Council to incentivise and retain competent staff in the Councils.

- **Low community participation in the islands.** Community participation in the planning and decision-making processes are noted to be relatively low in many islands. This disengages the community actors from the development process and holds back the Councils from capturing local community needs.

- **Revising the current remuneration package and promotion guidelines for Council Staff to afford them with better pay and incentives in employment.** Pay Commission and Civil Service Commission can be key stakeholders in the required revisions.

- **Introduction of a community consultation guideline to be followed in community gatherings.** Currently the law is silent on the minimum number of community members to be consulted before formulating planning decisions. The law also does not state specific procedures to be followed in steering a community consultation.



3



PUBLIC SECTOR INVESTMENT PROGRAMS (PSIP)

Under PSIPs central government delivers central level development initiatives nationwide to augment national capabilities and bolster economic development. PSIPs establishes essential infrastructure and services in island and atoll communities such as harbours, transport services, water and sanitation systems, reclamation projects etc. This is vital especially in the context of small and resource deficient island communities who are unable to source local solutions in the provision of basic services. Since the local communities are the beneficiaries of a significant number of the PSIPs, Local Councils have a pivotal role to play in the roll out of the PSIPs. As per the Decentralization Act, PSIP projects under the value of five million Maldivian Rufiyaa must be executed through the island Councils.⁵ If the value of the PSIP project exceeds five million Maldivian Rufiyaa, it is at the discretion of the respective Ministry to assign the Council to implement the PSIP project in the island community.⁶ This requires careful positioning of the PSIP functions under the purview of the Councils in a way that it does not constrain the already limited human and technical resources of the Local Councils.

CHALLENGES

- **Assigning monitoring functions of the PSIP projects to the Local Councils without allocating a budget.** This depletes the Council's resources in having to allocate funds and resources for the required PSIP monitoring functions.
- **When PSIP projects are selected by the central government, it is not aligned, or it does not reflect the local level priorities.** This often leads to distrust in the local community towards the Councils. This often happens when there are inadequate consultations with the Councils before placing PSIP projects in the island communities.

RECOMMENDATIONS

- **When PSIP project functions are assigned to the Councils, allocating sufficient funds under an agreement to the Councils.**
- **Proposal to include the payments of PSIP projects under MVR 5 million in the respective Council's budget or grant a payment guarantee through a financial institution with a payment schedule for the ease of execution of the required transactions.**
- **Amending the Decentralization Act 2010 to incorporate a redress mechanism that the Councils can avail from when environmental standards are breached in the local communities by PSIP implementation.**

⁵ The Decentralization Act 2010, 69 (↵)

⁶ The Decentralization Act 2010, 69 (↵)

- **Payment delays from the central government when Councils requests the funds required to execute the PSIP projects.**

This impacts the execution and cash flow of the projects. It creates uncertainties in concluding transactions with third parties and hampers sound business decision making by the Councils.

- **Lack of a redress mechanism for the Councils when PSIP projects are undertaken in the local communities in breach of Environmental Impact Assessments and standards.**

Some Councils noted that there is no clear procedure or a mechanism to lobby for adequate action within the central government on breaches on environmental standards in project execution.

- **More proactive disclosure of information and consultations by the Ministries with the Councils on projects implemented by the central government to align central government planning strategies with local level priorities.**





INTER-GOVERNMENTAL COORDINATION

The functional assignments between the central government and the Local Councils requires a collaborative inter-governmental mechanism to effectively deliver the comprehensive package of services to the citizens. The current law states that if a central government delegates a function in the central mandate to a Local Council, it should be done by virtue of an agreement.⁷ The existence of an agreement gives space for clarity in negotiations on the terms and conditions of Local Councils' engagement. However, Councils have expressed concerns that in practice Councils continue to deliver essential services which are delegated to the Councils by the central government without the basis of an agreement. Councils have also noted that using multiple digital programs to coordinate with Ministries has been challenging and time-consuming. Broader consultation on effective solutions needs to be sought to reduce the inefficiencies in the chain of communication and coordination between the Ministries and the Councils in carrying out the interlinked functions.

CHALLENGES

- **Lack of timely responses by the Ministries on inquiries and clarifications by the Councils.** This results in delays to the Councils in executing important functions.
- **Ministries assigning essential functions and services to the Councils that needs to be delivered to the community without an agreement.** In such situations, the Council still feels obliged to carry out the functions because it usually involves essential services to the community. For instance, ID Card services shall be provided by central government, however most of the Councils facilitate this service through their budget as it is an essential service required by the island communities.

RECOMMENDATIONS

- **Proposal to adopt a standard operating procedure (SOP) by the Ministries in providing timely responses to the Councils.**
- **Establishing recourse mechanisms to the Councils when Ministries do not comply with the provisions in the Decentralization Act 2010 in assigning tasks and functions to the Councils.**
- **Defining the term 'consultation with the Councils' in the Decentralization Act 2010.** This will give more clarity and specify official mediums of communications and correspondences with the Councils that will be equivalent to consultation with the Council in concluding important matters.

⁷ The Decentralization Act 2010, 65 (س)

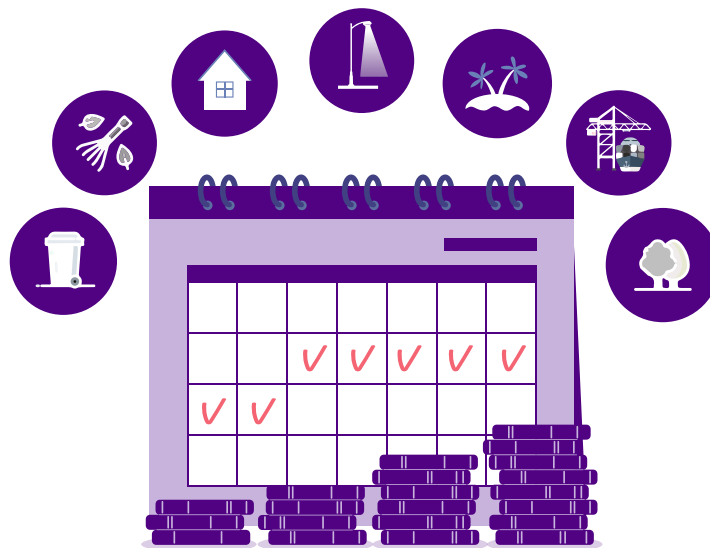
- **Central Government Officials not following the proper procedure on consultation with the Councils.** Consultation with the Councils are required at its entity level, however when central government officials adopt informal ways of communicating with the Councils and equates it to 'consultation with Councils' on important matters, it impedes the decision-making process of the Councils at an entity level.

- **Councils are required to use too many online applications to coordinate with the Ministries and it increases administrative control over the Councils.** Sometimes Councils are also required to input the same information in two different online applications managed by different Ministries. This leads to duplication of work which constraints the staff time of the Councils.

- **Better internal coordination with the Ministries to reduce the number of online applications that the Councils are required to use to coordinate with the Ministries.**



5



BASIC UTILITY SERVICE PROVISION BY THE COUNCILS

As per the Decentralization Act, Local Councils are mandated to provide and ensure basic utility services such as electricity, water and sanitation as well as sewerage systems to the island communities.⁸ However, in practice Councils do not have the technical resources and capacity to provide such services. Most of the utility services in the islands have been traditionally provided by State Owned Enterprises (SOEs) operating in the island. Even when the law was amended to entrust Councils with basic utility service provision, SOEs remained as the service providers in the island communities. The law also states that if the Councils assigns a third party in the provision of services it shall be done by virtue of an agreement.⁹ However up to date, there has been no agreements concluded between the Councils and SOEs in an arrangement for basic utility service provision. This impedes the ability of the Council to effectively monitor the quality and breaches in utility service provision in the island communities.

CHALLENGES

- **Lack of written service agreements between the Councils and the State-Owned Enterprises (SOEs) regarding basic utility service provision.** While the law prescribes that the Councils must ensure that basic utility services are provided to the community, lack of agreements hinders the Councils from regulating the quality of the services provided by the SOEs.
- **Complaints by the Councils that the SOEs operate free of rent in many island communities on significantly large plots of land which is a considerable loss of rental income to the Councils.** Councils have also expressed concerns that the SOEs provide the services on a commercial rate to the Councils which absorbs a significant portion of the Council's budget in delivering municipal services such as street lighting, etc.

RECOMMENDATIONS

- **Comprehensive written agreements between the Councils and the State-Owned Enterprises (SOEs) about the roles and responsibilities of the Council as the regulator and the SOEs as the service provider.** This will help to ensure that the Council has a pathway to fulfil their regulatory obligations in the basic service provision which is stipulated by the law. This will also help the Councils to incorporate provisions to determine the fees charged in provision of the services.
- **Negotiating agreements with SOEs to pay rent in island communities or provide utility services at subsidized rates.**

⁸ The Decentralization Act 2010, 69-1 (-)

⁹ The Decentralization Act 2010, 69-2 (-)

• Even though the Decentralization Act stipulates that the Councils must consult with the community on levying basic service provision fees provided by the Council, lack of agreements with the SOEs leaves Councils with no room for such negotiations or agreements on the actual fees levied. Therefore, the Councils are not able to leverage or negotiate the fees that are charged to their community by the SOEs.





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