



III) Executive Agency and Administration Process:

1) Unclear or Overlapping Competencies of Different Institutions:

In this part of the draft law which covers the competences of the law implementation authorities several problems can occur:

One of them is that the law text may cause unclear or overlapping responsibilities and competencies of different government institutions. The reason may be that the competency of an already existing body has simply been left unnoticed by the lawmaker. But the reason may also be that the lawmaker wants to avoid taking sides in an already existing conflict between two institutions.

Example:

- The Fishery Draft Law authorizes the Fisheries Administration to grant titles to fishery domains but this may conflict with the authority of the Ministry of Land Management to issue titles of property.
- Articles 9 and 13 of the Weapon Draft Law regulate competencies of the Ministry of Interior and of the Ministry of Defense on the same subject (registration of arms/evacuation orders) without providing clear distinctions or priority rules for the case that both ministries exercise their competency at the same time or get in conflict with their activities.

2) Granting of Extreme Powers:

a) Unconstitutional and Unnecessary powers:

Another problem might be that the draft law grants extreme powers to the authority. That means the law authorizes the authority to act in a way which violates constitutional rights of a due process or the criminal law provisions.

Example:

Chapter 14 of the Fishery Draft Law contains a lot of provisions that seem to give too much power to the fishery administration officials, including the right to carry weapons, to seize evidence, to assess fines and to search suspected offenders. Even if the fishery officers may be regarded as “judiciary police” officers according to Articles 35 - 48 of the Criminal Procedure Code their powers must be restricted by the Criminal Procedure Code as well and can not just be extended by the Fishery Law²⁶.

b) Judicial Powers and/or Exclusion of Judicial Review:

To grant the authority quasi judicial power and/or to exclude judicial review of authority acts would violate the principle of separation of power.

Example:

- Article 93 of the Fishery Draft Law provides judicial power to investigate, to fine offenses and to drop charges against violators. This multiplication of powers not only violates Article 129 CC which stipulates that only judges have the power to adjudicate but also violates the principle of separation of power as enshrined in Articles 51 IV and 130 CC²⁷.

²⁶ See the Oxfam Report on the Fishery Law Consultation Process, comments related to Article 83, 86 on page 37

²⁷ See Oxfam Report on the Fishery Consultation Process, comments by the COHCHR on page 43