

## [Reprisals | Groundbreaking legal proceedings filed against the Maldives](#)

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In what is the first case filed with the UN on behalf of former members of a national human rights institution, ISHR has asked the UN Human Rights Committee to authoritatively rule that there is a legal right to submit information, evidence and reports to the UN and that restrictions on this right, or reprisals for exercising this right, amount to serious breaches of international law.

The case could have wide-ranging implications, as a number of countries seek to criminalise or prosecute people to prevent them from exposing human rights violations at the UN.

Assisted by ISHR, Ahmed Tholal and Jeehan Mahmood, former Commissioners of the Human Rights Commission of the Maldives (HRCM), have filed a communication with the UN's Human Rights Committee to highlight the Maldives' failure to ensure their right to share information freely with the UN without reprisal.

The HRCM was prosecuted in 2015 by the Supreme Court in the Maldives following a submission made by the HRCM on human rights in the Maldives to the UN's Universal Periodic Review.

The report focused on prominent human rights issues faced by the Maldives, including access to justice and the independence of the judiciary. In particular, the report criticised the Supreme Court of the Maldives' growing powers, suggesting that the Supreme Court controls the judicial system and has weakened judicial powers vested in other superior and lower courts.

The Court ruled that the HRCM's report was unlawful, biased and undermined judicial independence, and ordered the HRCM to follow a set of guidelines designed to restrict the HRCM's work and its ability to communicate with the UN.

Ahmed Tholal and Jeehan Mahmood said they were seeking a ruling from the Committee because they want the HRCM's right to freely communicate with international human rights mechanisms to be firmly preserved in law and practice. 'If the HRCM is not able to communicate freely with the UN, its ability to carry out its mandate is severely undermined. This case isn't just about the HRCM of 2010. Rather it's about the far reaching implications such reprisals will have on the independence and integrity of NHRI's everywhere,' they said.

ISHR's Legal Counsel, Madeleine Sinclair, said the charges and guidelines issued against the Commissioners constitute a reprisal for accessing and communicating with the UN and violate the right to free expression protected under international law.

'The decision of the Supreme Court to restrict the activities and independence of the Commission is incompatible with the right of safe and unhindered communication with UN bodies, and the prohibition against

reprisals for exercising that right. Such a decision by an arm of government is a clear breach of international law,' Ms Sinclair said.

She added, 'NHRIs have the role and the right to submit information to the United Nations, including for the purposes of the Universal Periodic Review. It is imperative that the various arms of government of the Maldives respect and uphold this right and safeguard the independence of the national human rights institution and their role as constructive critics of the State.'

A resolution on national human rights institutions, tabled by Australia, was unanimously adopted by the Human Rights Council last week. The resolution contains provisions stressing that NHRIs should not face any form of reprisal or intimidation for their work and calling upon States to promptly and thoroughly investigate any such cases and bring perpetrators to justice.

'The situation in the Maldives demonstrates the necessity and urgency of the Council adopting a resolution on national human rights institutions with strong language condemning and calling for accountability for reprisals against NHRIs and those who cooperate with them,' Ms Sinclair said.

The communication prepared for Ahmed Tholal and Jeehan Mahmood by ISHR outlines the case for the Committee to find that the Maldives is in breach of its obligation to uphold the right to free expression by prosecuting the HRCM for the content of its communications to the UN and by limiting future communication between the HRCM and the UN. ISHR further submitted that the restrictions constitute a reprisal for accessing and communicating with the UN and fall short of the requirements for permissible restrictions on freedom of expression in international law.

The former Commissioners and ISHR hope that a ruling from the UN Human Rights Committee that communication with the UN is protected will lead to renewed, meaningful engagement by the HRCM with the UN in the future.

Background to the case can be found [here](#).

A copy of the Communication can be found [here](#).

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