Individual Communication to the United Nations Human Rights Committee

Submitted by: Ahmed Tholal and Jeehan Mahmood

State party: Republic of Maldives

Date of submission: June 4, 2019

Claim: The Republic of the Maldives has violated its human rights obligations under Article 19(2) and (3) of the International Covenant on Civil and Political Rights

Application: To the United Nations Human Rights Committee under Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights

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Table of Contents

[Introduction 3](#_Toc10540854)

[Summary of the Communication 3](#_Toc10540855)

[Submissions on law and merits of claim 4](#_Toc10540856)

[Conclusion 5](#_Toc10540857)

# Introduction

1. On 4 April 2019, the authors received a copy of the State party’s observations concerning the merits of Communication No. 3248/2018 dated 25 September 2016 (the Communication), which the author submitted to the Human Rights Committee (Committee) for consideration under the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). The authors provide the following comments in reply to the State party’s observations.

# Summary of the Communication

1. Ahmed Tholal and Jeehan Mahmood were members of the Human Rights Commission of the Maldives (HRCM) from 2010-2015 (the Authors).
2. In September 2014, the HRCM published and submitted a report as part of the second Universal Periodic Review (UPR) of the Maldives by the United Nations (UN) Human Rights Council (the Report).[[1]](#footnote-1)
3. The Report focused on prominent human rights issues faced in the Maldives, including access to justice. The Report questioned the functioning of the judiciary on grounds of independence, transparency, interference, influence, competency, consistency, and accessibility. 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 courts, including both superior and lower courts.
4. In September 2014, the Supreme Court of the Maldives initiated *suo motu* proceedings against the HRCM, charging it with: Unlawfully spreading false information and misleading the public about the Supreme Court’s jurisdiction, the constitutional and legal procedures followed by the courts of the Maldivian judiciary in conducting trials and ensuring justice, and the procedures followed by the courts in releasing information; Deliberately attempting to undermine the independence of the judiciary; Damaging the Maldives’ independence and sovereignty; and Deliberately attempting to undermine the Constitution (the Charges).
5. Following two hearings on 24 and 30 September 2014, the Supreme Court issued its verdict on 16 June 2015, ruling that the Report was unlawful, biased and undermined judicial independence, and ordering the HRCM to follow an 11-point set of guidelines (the Guidelines).
6. The Guidelines require, inter alia, that any communication with international bodies take place through relevant government institutions, and that the HRCM work in a manner that “does not create divisions in society” and “will not affect the discipline, culture and traditions of the Maldivian people and will not affect peace and harmony”. The Guidelines also warn against causing damage to the reputation of the Maldives.
7. The Charges and Guidelines restrict the HRCM’s work and its right to share information freely with the UN and as such are an act of reprisal against the HRCM for its legitimate cooperation with the UN human rights system and its mechanisms. The Authors further submit that by prosecuting the HRCM for the content of its communications to the UN and by limiting future communication between the HRCM and the UN through the Guidelines, the Maldives violated article 19 (freedom of expression) of the ICCPR.
8. Specifically, in the Communication the Authors submit that the HRCM’s communication with the UN— in the form of the Report submitted to the Human Rights Council in the context of the Maldives’ UPR—is an expression protected under Article 19(2) of the ICCPR. The Authors further submit that the restrictions on that expression, i.e. the Charges and Guidelines, constitute a reprisal for accessing and communicating with the UN and fall short of the requirements for permissible restrictions under Article 19(3) of the ICCPR.
9. The HRCM’s right to freely communicate with international human rights mechanisms should be firmly preserved in law and practice.

# Submissions on law and merits of claim

1. The authors maintain that the State party has breached Article 19 (freedom of expression) of the ICCPR, as set out in detail in section 6 of the Communication.
2. In its observations, the State party ‘notes the concerns and allegations’ raised by the authors and ‘acknowledges the subsequent operational adversities’ faced by the HRCM. Furthermore, the State party seeks to assure the Committee that the effects of the Supreme Court judgment ‘will be taken into consideration’, that the Maldives have entered a ‘new era of democratic rule’, and that the new administration pledges to reform, reconstitute and transform all State institutions to, inter alia, reinstate respect for international obligations and promote operation of State institutions within the designated ambit of authority.
3. In its observations, the State party states that it cannot override the decision of the Supreme Court but can remedy it through a legislative amendment. In that regard, the State party cites a bill proposing amendments to Law Number 6/2006 (Human Rights Commission Act), which contains a section that would afford the HRCM unfettered authority to (a) seek assistance from relevant international parties (including bilateral and regional partners and international organisations); and (b) submit reports to international organisations, committees, bodies, working groups and other organs (the Bill).
4. The Authors acknowledge and welcome the proposed legislative amendments. However, the Authors submit that, while the proposed amendments may prevent future violations, these do not provide an effective remedy for past violations. Thus, the declaratory relief the Authors seek remains imperative.

# Conclusion

1. For the reasons set out in the Communication and specifically section 6 of the Communication, and these comments in reply to the State party’s observations, the Authors maintain that the State party has breached Article 19 of the ICCPR by prosecuting the HRCM for the content of its communications to the UN and by limiting future communication between the HRCM and the UN. The authors reiterate that the HRCM’s communication with the UN is an expression protected under Article 19(2) and that the restrictions on that expression constitute a reprisal for accessing and communicating with the UN and fall short of the requirements for permissible restrictions under Article 19(3) of the ICCPR.
2. The authors reiterate that the following would provide an effective remedy for this breach and hereby request that the Committee:
	1. Declare a violation of the Authors’ rights under Article 19 of the ICCPR;
	2. Declare specifically that:
		1. the violations of the Authors’ right to freedom of expression do not fall under any stipulated restrictions in Article 19(3) of the ICCPR, specifically they were not “provided for by law”. As neither the Charges nor the Guidelines were formulated with sufficient precision to enable an individual to ascertain what is properly restricted and regulate his or her conduct accordingly, and conferred unfettered discretion on the Court, which is in turn charged with their execution;
		2. the Charges and Guidelines were per se violations of Article 19 because they did not pursue a legitimate aim;
		3. neither the Charges nor the Guidelines were necessary in the pursuit of any legitimate aim;
		4. the Charges and Guidelines were reprisals against the Authors for communicating with the UN, which is expression protected under Article 19;
3. In light of the State party’s observations, the authors furthermore request that the Committee call on the State party to support, and the legislature to pass, the proposed Bill.
1. Human Rights Commission of the Maldives (HRCM) Submission to the Universal Periodic Review of the Maldives, April–May 2015 (22nd session), September 2014, available at:

<http://www.hrcm.org.mv/Publications/otherdocuments/UPR_submission_Sept_2014.pdf>.

The UPR process provides for the participation of all relevant stakeholders, including non-governmental organizations (NGOs) and national human rights institutions (NHRIs). NGOs and NHRIs can submit information that can be added to the “other stakeholders” report which is considered during the review. Information they provide can be referred to by any of the States taking part in the interactive discussion during the review at the Working Group meeting. See UN Human Rights Council, Institution-building of the United Nations Human Rights Council, 18 June 2007, A/HRC/RES/5/1 at Annex para 3(m)., available at: <http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc> [↑](#footnote-ref-1)