

Individual Communication to the United Nations Human Rights Committee

Submitted by: Ahmed Tholal and Jeehan Mahmood

State party: Republic of Maldives

Date of submission: September 25, 2016

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

Residence: Ahmed Tholal and Jeehan Mahmood were at all material times residents of the Republic of the Maldives

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1. Glossary of Defined Terms

<i>APF</i>	Asia-Pacific Forum of National Human Rights Institutions
<i>Authors</i>	The two commissioners of the Human Rights Commission of the Maldives (HRCM) submitting the present communication: Ahmed Tholal, and Jeehan Mahmood
<i>Commissioners</i>	The five commissioners serving five year terms from 2010-2015: President Mariyam Azra Ahmed, Vice-President Ahmed Tholal, Jeehan Mahmood, Dr. Aly Shameem and Shaikh Ahmed Abdul Kareem
<i>Committee</i>	United Nations Human Rights Committee
<i>DJA</i>	Department of Judicial Administration (Maldives)
<i>First Optional Protocol</i>	<i>Optional Protocol to the International Covenant on Civil and Political Rights</i>
<i>HRC A</i>	Human Rights Commission Act
<i>HRCM</i>	Human Rights Commission of the Maldives
<i>ICC</i>	International Co-ordination Committee of National Human Rights Institutions
<i>ICCPR</i>	<i>International Covenant on Civil and Political Rights</i>
<i>ICJ</i>	International Commission of Jurists
<i>ISHR</i>	International Service for Human Rights
<i>JSC</i>	Judicial Services Commission (Maldives)
<i>Maldives</i>	Republic of Maldives
<i>Report</i>	The report submitted in September 2014 by the Human Rights Commission of the Maldives to the Human Rights Council in the context of the Universal Periodic Review of the Maldives
<i>UN</i>	United Nations
<i>UPR</i>	Universal Periodic Review

2. Summary

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
3. The Report focused on prominent human rights issues faced by 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 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

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

HRCM and the UN through the Guidelines, the Maldives violated article 19 (freedom of expression) of the International Covenant on Civil and Political Rights (the “ICCPR” or “Covenant”).

8. Specifically, 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). 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.

3. Facts of the claim

1. The Human Rights Commission of the Maldives

10. The Human Rights Commission of the Maldives (HRCM) currently holds ‘B’ status with the International Co-ordination Committee of National Human Rights Institutions (ICC)² and is an Associate Member of the Asia-Pacific Forum of National Human Rights Institutions (APF).³
11. At the material time, i.e. September 2014 through June 2015, the HRCM was composed of five commissioners serving five year terms from 2010-2015. This included the two authors of this complaint, Vice-President Ahmed Tholal and Jeehan Mahmood (the Authors), as well as President Mariyam Azra Ahmed, Dr. Aly Shameem and Shaikh Ahmed Abdul Kareem (together, the Commissioners).⁴ All five Commissioners have since been replaced.⁵

² Chart of the Status of National Institutions Accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), Accreditation status as of 26 January 2016 <http://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart.pdf>.

The Principles relating to the Status of National Institutions (The Paris Principles), adopted by General Assembly resolution 48/134 of 20 December 1993, available at undocs.org/a/RES/48/134, provide the international benchmarks against which national human rights institutions (NHRIs) can be accredited by the ICC. In line with its key mission to support the establishment and strengthening of NHRIs, the ICC through its Sub Committee on Accreditation reviews and accredits NHRIs in compliance with the Paris Principles. There are currently three levels of accreditation: “A” Voting member: complies fully with the Paris Principles; “B” Observer member: does not fully comply with the Paris Principles or has not yet submitted sufficient documentation to make that determination; and “C” Non-member: does not comply with the Paris Principles.

³ The APF is a coalition of 22 NHRIs from across the Asia Pacific. To be admitted as a full member, an NHRI must fully comply with the Paris Principles. NHRIs that partially comply with the Paris Principles are granted associate membership. More information regarding the APF is available at <http://www.asiapacificforum.net/>.

⁴ <http://www.hrcm.org.mv/aboutus/Commissioners2010-2015.aspx>

⁵ <http://www.hrcm.org.mv/aboutus/Commissioners.aspx>

2. Report by the HRCM to the Universal Periodic Review (UPR)

12. In September 2014, the HRCM published and submitted a report in the context of the second Universal Periodic Review (UPR) of the Maldives by the Human Rights Council (the Report).⁶ The national report submitted on behalf of the government was published on 17 April 2015⁷ and the review took place on Wednesday 6 May 2015. The report of the outcome of the review was adopted by the Human Rights Council in September 2015.
13. The Report focused on prominent human rights issues faced by the Maldives, including the implementation of the recommendations from the Maldives' first UPR in 2010. The Report focused on 18 thematic areas and included recommendations in each area.
14. The Report was compiled based on information received from relevant stakeholders including government authorities and institutions, civil society, as well as information and data gathered by the HRCM in its own capacity. In addition, the HRCM conducted a series of meetings in the three months prior to the publication of the Report to facilitate constructive dialogue on the implementation of the recommendations from the first UPR.

Access to justice issues in the Report

15. The Report questioned the functioning of the judiciary on grounds of independence, transparency, interference, influence, competency, consistency, and accessibility. The Report criticised the Supreme Court of the Maldives' growing powers. The Report suggested that the Supreme Court controls the judicial system and has weakened judicial powers vested in other superior and lower courts, inter alia by issuing a circular ordering all state institutions not to communicate to individual courts regarding any information related to the judiciary except through the Supreme Court.
16. The Report also criticised the State for characterizing the UN Special Rapporteur on the Independence of Judges and Lawyers' report on her mission to the Maldives as trying to undermine the country's court system.⁸

⁶ 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

⁷ National report of the Maldives submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* Maldives, 17 April 2015, available at undocs.org/A/HRC/WG.6/22/MDV/1

⁸ Statement of the Permanent Representative of the Republic of Maldives to the 23rd session of the Human Rights Council during the interactive dialogue with the Special Rapporteur on the independence of judges and lawyers, Geneva, 28 May 2013, available at https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/23rdSession/OralStatements/Maldives_Concerned_08.pdf

17. In addition, the Report cited recommendations by the International Commission of Jurists (ICJ) to build the competency of the judiciary which the State has not made progress on, and Transparency Maldives' findings that a majority of the public lack confidence in the justice system.
18. Finally, the Report noted that the HRCM was facing difficulties gathering information related to the judiciary due to lack of cooperation.
19. The HRCM concluded with a call that the government implement the recommendations issued by the ICJ as well as the Special Rapporteur on the Independence of Judges and Lawyers, codify and harmonize Shari'ah Law and common law in accordance with the Constitution, and enact laws to decrease inconsistencies in judicial decision making.

3. Response by the Supreme Court to the HRCM's Report

20. In September 2014, the Supreme Court of the Maldives initiated *suo motu* proceedings against the HRCM.
21. In the case summary, the Court appears to summarize the charges as follows: 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.
22. In the body of the judgment, the Court appears to expand on the charges as follows (hereinafter, the Charges):
 - Committing acts against national security and interests, as per the Constitution;
 - Unlawfully representing the Maldivian state;
 - Unlawfully conducting political relations with international organizations;
 - Unlawfully disseminating information and reports in the name of the state to foreign bodies;
 - Violating the supremacy of the Constitution (art. 299) and the principle of rule of law;
 - Providing false information about legal procedures;
 - Contravening art. 189 of the Constitution that states that the HRCM must be independent and impartial and promote respect for human rights impartially without favour and prejudice;
 - Contravening the Human Rights Commission Act that states that the HRCM must promote human rights in line with the Constitution;
 - Interfering with the judiciary's work and unduly influencing the judiciary;
 - Contravening art. 141(c) and (d) of the Constitution and international norms;
 - Violating the independence granted to the judiciary by international laws;

- Showing bias;
- Undermining the HRCM's credibility;
- Being wilfully negligent towards the progress the Maldives has made and continues to make in establishing democracy and upholding the rule of law and human rights;
- Being oblivious to those who commit terrorist acts against the people, state institutions and security forces and endanger peace and order and undermine the state's independence and sovereignty and those who commit such acts;
- Overstepping into the jurisdiction of the executive power, security forces, judiciary and legislature;
- Acting in ways that overlap with the mandate of other state institutions and thus undermining its own mandate;
- Contravening 145 (c) of the Constitution that states that the Supreme Court shall be the final authority on the interpretation of the Constitution, the law, or any other matter dealt with by a court of law;
- Contravening article 29 (a) and (b) of Law no 22/2010 (Judicature Act) that states that the government, the parliament and the state institutions must obey and abide by the Supreme Court's ruling;
- Contravening art 141 (b) of the Constitution that states that the highest authority of the administration of justice is the Supreme Court; and
- Contravening art 189 (a) of the Constitution that states that the HRCM has no obligations other than those mandated by the Islamic Sharia, the Constitution and laws of the Maldives, and the international covenants the Maldives is party to.

The first hearing

23. On 22 September, the Commissioners were summoned to appear before the Supreme Court.
24. A first hearing took place on 24 September 2014. At this hearing the Supreme Court laid out the charges and afforded the Commissioners an opportunity to respond.
25. The Commissioners requested that the case instead be heard first by the High Court. This would have given the Commissioners the right to appeal a High Court judgment whereas having the initial hearing at the Supreme Court would negate any opportunity for appeal. The Commissioners also pointed out that the Supreme Court has the authority to order the High Court to try the case based on the principle of parental jurisdiction as opposed to initiate its own *suo motu* case.
26. The Chief Justice of the Supreme Court refused to entertain any further discussion relating to the legality of the Supreme Court hearing the case. When the legal team for the Commissioners clarified that they were not contesting the legality or the authority of the Court but rather suggesting an appropriate alternative course that would better ensure due process, the argument was struck down by the bench.
27. The first hearing then proceeded. The Commissioners provided evidence to support their position that their intention in submitting the Report was not to undermine the Constitution nor compromise the

sovereignty of the country with malice to its institutions. The Commissioners clarified that the Report submitted to the UPR was shared with the Department of Judicial Administration (DJA), which functions in accordance with policies set by the Supreme Court and under the direct supervision of a designated justice. The DJA did not suggest any edits to the Report, which was a clear indication that there was no information in the Report that violated any laws. The Supreme Court evaluated this new evidence during a recess and ultimately decided to suspend the hearings for the day and to hold a second hearing in the future.

The second hearing

28. A second hearing took place on 30 September 2014. The Commissioners denied the Charges and said that the HRCM's observations on the judiciary were based on reports by the UN Special Rapporteur on the Independence of Judges and Lawyers, the ICJ and the national chapter of Transparency International.
29. The Court claimed the report of the Special Rapporteur for the Independence of Judges and Lawyers was invalid. The Court also referred to the report by Transparency Maldives as unfounded, biased and demonstrating little understanding of the Maldivian judiciary.
30. The Court also reprimanded the Commissioners for failing to consult the Supreme Court when writing the UPR submission.
31. In response the President and the Vice President of the HRCM explained that the intention was never to falsely accuse anyone but to raise concerns, based on the Special Rapporteur's report as well as the HRCM's experience dealing with the Supreme Court in two instances, that the Supreme Court was usurping powers it didn't have.
32. The first involved the Supreme Court hindering an HRCM investigation into a possible human rights violation by a magistrate court by ordering that court not to cooperate with the HRCM. The second involved the Supreme Court implicitly ordering lower courts not to cooperate with the HRCM in conducting a court monitoring program to evaluate the protection of human rights within the judicial process.
33. The Court considered the HRCM's actions in both cases to be beyond the scope of its mandate and clarified that no institution other than the Supreme Court has the authority to monitor the judicial system.
34. Of the seven justices present, all but two (Justice Abdullah Areef and Justice Mutthasim Adnan) questioned the Commissioners intensively on the Report submitted in the context of the UPR, stating that it was a deliberate attempt to belittle the country at the international level.
35. The Supreme Court also criticized the HRCM's work more generally and posed questions largely unrelated to the charges that were framed in an apparent effort to intimidate the Commissioners. For example, although the Charges alleged that the Report was unlawful because of the section on the judiciary, the Court questioned other parts of the Report and accused the Commissioners of working against the tenets of Islam. These allegations were raised in relation to a case brought against the HRCM by the Juvenile Court in March 2014. In that case the Commissioners were summoned to the Juvenile

Court on contempt of court charges after publishing a report that the Juvenile Court alleged contained false information. The report related to an appeal of a flogging sentence passed by the Juvenile Court on a 15-year-old girl who was a sexual abuse victim convicted of fornication.

The sentencing and verdict

36. The case was stalled after two hearings. The Commissioners initially assumed that the case would be dismissed by the Court. However, the Commissioners were summoned to another hearing on 16 June 2015, which turned out to be the sentencing.
37. The Supreme Court issued its verdict, ordering the HRCM to follow a set of guidelines (the Guidelines):
 1. Act within the ambit of the Maldives Constitution and laws to ensure the full protection of the interests of Maldivian state and its citizens;
 2. Ensure the commission does not in any manner disrupt the Maldivian citizen's unity and homogeneity;
 3. Ensure the commission does not undermine peace, security, order, and age-old norms of behaviour;
 4. Ensure the commission does not overlap with and take over the responsibilities and mandate of other state institutions;
 5. Ensure such activities are permitted in Maldivian society by the Maldives Constitution and its laws;
 6. Ensure such activities are in line with the Maldivian faith, accepted societal norms, and good behaviour;
 7. Ensure such activities are based on policies compiled in light of credible research in line with the Maldivian faith, accepted societal norms, good behaviour, the Maldivian Constitution and laws, and in a manner that protects national security, peace and unity, and with the full cooperation of other institutions of the Maldivian state;
 8. In the event the commission has to work with foreign bodies, the commission, as an organ of the sovereign and independent Maldivian state, must follow procedures established by the state and work with the mediation of the relevant state institution;
 9. Uphold the lawful government, ensure respect for the rule of law, and ensure such activities increase the citizens' obedience to the rule of law;
 10. Ensure such activities are free from political bias, and without the intention of furthering the interests of a specific party or to defame a specific party; and
 11. Ensure such activities do not encourage political, social and religious extremism, and do not facilitate hardship for the Maldives, and do not tarnish the Maldivian nation's good reputation.

4. Admissibility of claim

1. Overview

38. The Authors submit that this communication is admissible for determination by the Human Rights Committee (the Committee) pursuant to the Optional Protocol to the International Covenant on Civil

and Political Rights (the First Optional Protocol)⁹ and in satisfaction of the Rules of Procedure of the Human Rights Committee (Rules of Procedure).¹⁰

2. Compliance with Article 1 of the First Optional Protocol

39. Article 1 of the First Optional Protocol provides:

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

40. This communication concerns the Republic of Maldives. The Republic of Maldives acceded to the ICCPR¹¹ and the First Optional Protocol on 19 September 2006, and is therefore a State party to the ICCPR and a Party to the First Optional Protocol.

41. The violations of the ICCPR that are the subject of this communication concern the Republic of Maldives' conduct in respect of the Authors. The Authors were at all material times residents of the Republic of Maldives and subject to its jurisdiction. The events giving rise to the violations complained of occurred in 2014 and 2015.

42. The Authors submit that they are victims under Article 1 of the ICCPR. The beneficiaries of the rights in the ICCPR are individuals. This includes individuals claiming that actions or omissions that concern legal persons and similar entities amount to a violation of their own rights.¹² The Authors were at all material times members of the HRCM, which was the named defendant in the Court's *suo moto* proceedings. As such, the Authors were summoned by the Court to answer the charges laid in the proceedings against the HRCM.

43. The Authors submit that the actions concerning the HRCM amount to a violation of their own rights. The Authors submit that the Committee's reasoning in *Singer v. Canada* is relevant.¹³ The right at issue in the present communication—the right to freedom of expression—is by its nature inalienably linked to the person. The Authors have the freedom to impart information to international bodies and as such the Authors themselves, and not only the HRCM as an entity, have been directly and personally affected by the Court's actions.

⁹ Opened for signature 16 December 1966, 999 UNTS 302 (entered into force 23 March 1976).

¹⁰ Human Rights Committee, Rules of Procedure of the Human Rights Committee, UN Doc CCPR/C/3/Rev.10 (11 Jan 2012), available at undocs.org/CCPR/C/3/REV.10.

¹¹ Opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

¹² Sarah Joseph & Melissa Castan, *The International Covenant on Civil and Political Rights, Cases, Materials, and Commentary*, § 3.10 (3rd ed. 2013)

¹³ *Singer v. Canada*, Communication No. 455/91, U.N. Doc. No. U.N. Doc. CCPR/C/47/D/455/1991 at 11.2 (1993).

44. Furthermore, the Authors in this case are victims with the same complaint and as such have grouped their cases together into the present communication. There is no objection to a group of individuals who claim to be similarly affected to submit a communication collectively about alleged breaches of their rights.¹⁴

3. Compliance with Article 2 of the First Optional Protocol

45. Article 2 of the First Optional Protocol provides:

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

46. This communication concerns the violation of rights articulated in the ICCPR. The Authors submit that the Republic of Maldives has violated Articles 19 and 2 of the ICCPR as discussed at [6. Submission on law and merits of claim](#), below.
47. The exhaustion of domestic remedies is addressed at [4.5 Compliance with Article 5 of the First Optional Protocol](#), below.

4. Compliance with Article 3 of the First Optional Protocol

48. Article 3 of the First Optional Protocol provides:

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

72. This communication is not made anonymously. It is submitted by the Authors who are themselves the victims of the alleged violations.
73. There is nothing to suggest that this communication is an abuse of the right of submission of communications nor is incompatible with the provisions of the ICCPR.

5. Compliance with Article 5 of the First Optional Protocol

49. Article 5(2) of the First Optional Protocol provides:

¹⁴ Sarah Joseph & Melissa Castan, *The International Covenant on Civil and Political Rights, Cases, Materials, and Commentary*, § 3.11-3.13 (3rd ed. 2013)

The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

50. This matter is not being examined under another international investigation or settlement procedure.

51. The author has exhausted all available remedies.

52. Given that the alleged violations involve the prosecution of the Authors by the country's highest court, there are no further effective judicial remedies available to the Authors and judicial remedies should therefore be considered exhausted for the purpose of Article 5.

53. There are no further effective non-judicial remedies available to the Authors. The Authors submit that for the purpose of Article 5 of the Optional Protocol, non-judicial remedies should therefore also be considered exhausted.

54. The Authors further submit that, in the event that the Committee considers that all available domestic remedies have not been exhausted, given the context of the violations (addressed at 5, below), any domestic remedies that are available are not effective and are therefore not required to be exhausted.

5. Context of the violations:

1. The Maldives

55. In 2008, the Maldives adopted a new constitution, transitioning towards greater democracy, and leading to the country's first multi-party presidential and parliamentary elections.¹⁵ However, in 2013, a new party came to power, stalling the country's democratic progress and creating a fear of regression towards authoritarianism.¹⁶

¹⁵ International Commission of Jurists and South Asians for Human rights "Justice Adrift: Rule of Law and Political Crisis in the Maldives: A Fact-Finding Mission Report," August 2015, p. 2. Available at <http://www.icj.org/wp-content/uploads/2015/08/Maldives-Justice-Adrift-Rule-of-Law-Publications-fact-finding-report-2015-ENG.pdf>

See also United States Department of State, Bureau of Democracy, Human Rights and Labor "Maldives 2014 Human Rights Report," p. 1. Available at <http://www.state.gov/documents/organization/236856.pdf>

¹⁶ International Commission of Jurists and South Asians for Human rights "Justice Adrift: Rule of Law and Political Crisis in the Maldives: A Fact-Finding Mission Report," August 2015, p. 2. Available at <http://www.icj.org/wp-content/uploads/2015/08/Maldives-Justice-Adrift-Rule-of-Law-Publications-fact-finding-report-2015-ENG.pdf>

56. Thus, the events underlying this complaint have taken place in the context of a gradual human rights regression by the current Maldivian government, including the judiciary. Among the areas of concern are the independence of the judiciary, the independence of the HRCM and freedom of expression.
57. According to submissions prepared by Amnesty International in anticipation of the country's 2015 UPR, the situation regarding the protection and promotion of human rights is, in many respects, worse than it was at the time of the previous UPR in 2010.¹⁷

Independence of the Judiciary

58. Currently, there are serious concerns regarding the lack of judicial impartiality in the Maldives. Generally, there is a widespread lack of confidence in the judiciary by the Maldivian public, due in part to perceived lack of fairness.¹⁸
59. Amnesty International stated in its 2015/2016 Annual Report that judicial impartiality, including curtailing the independence of the HRCM, remained a serious concern that the government failed to address. Authorities reportedly claimed they would not address complaints against the judiciary because courts were independent, while also failing to strengthen the Maldivian Judicial Services Commission (JSC) to enable it to effectively address impartiality issues.¹⁹ While it is the responsibility of the JSC to hold judges responsible for the misadministration of justice, the JSC's own impartiality has equally been impugned and the government has not taken any steps to strengthen it.²⁰
60. A recent joint fact-finding mission by the ICJ and South Asians for Human rights found that the justice system was highly politicized and prone to manipulation by the ruling party to further its interests.²¹ In that regard, the UN High Commissioner for Human Rights accused the Supreme Court of interfering with the 2013 presidential election process and undermining democratic progress.²²

¹⁷ Amnesty International, "Maldives: Ignoring human rights obligations," 9 September 2014, ASA 29/0003/2014, p. 4. Available at <https://www.amnesty.org/en/documents/asa29/0003/2014/en/>.

¹⁸ The Attorney General's Office and the United Nations Development Programme in the Maldives, "Legal and Justice Sector: Baseline Study 2014," August 2015, p. 35. Available at <http://www.mv.undp.org/content/dam/maldives/docs/Democratic%20Governance/Legal&JusticeSectorBaselineStudy-web.pdf>

¹⁹ Amnesty International Annual Report 2015/16, p. 243. Available at <https://www.amnesty.org/en/latest/research/2016/02/annual-report-201516/>

²⁰ Amnesty International, "Maldives: Ignoring human rights obligations," 9 September 2014, ASA 29/0003/2014, p. 6. Available at <https://www.amnesty.org/en/documents/asa29/0003/2014/en/>

²¹ International Commission of Jurists and South Asians for Human rights "Justice Adrift: Rule of Law and Political Crisis in the Maldives: A Fact-Finding Mission Report," August 2015, p. 14. Available at <http://www.icj.org/wp-content/uploads/2015/08/Maldives-Justice-Adrift-Rule-of-Law-Publications-fact-finding-report-2015-ENG.pdf>

²² UN Office of the High Commissioner for Human Rights, "Maldives Supreme Court is subverting the democratic process – Pillay", October 30, 2013, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13917&LangID=E#sthash.voGeeyBd.dpuf>

61. The Special Rapporteur on the Independence of Judges and Lawyers expressed the view that the prosecution of the former Maldivian President, in which two of the three judges deciding the case also acted as state witnesses,²³ raised serious fairness concerns.²⁴
62. Several other high profile politicians have also been sentenced in unfair trials, including the former Defense Minister and the Former Deputy Speaker of parliament.²⁵
63. In addition, the Special Rapporteur on the Independence of Judges and Lawyers reported that the Supreme Court appears to have decided on the constitutionality of laws without following proper procedure, leading to the perception that such interventions are arbitrary and improperly motivated by personal interest.²⁶ In its Report to the UPR, the HRCM noted the issues surrounding judicial independence, and further stated that the “Judicial system is controlled and influenced by the Supreme Court weakening judicial powers vested in other superior and lower courts.”²⁷
64. The Charges and Guidelines that are the subject of this complaint, have been widely denounced by human rights experts.²⁸ The Charges and Guidelines seriously undermine the ability of the HRCM to properly perform its functions, as well as its independence. The Supreme Court has effectively “terminated the [HRCM’s] constitutional independence by ruling that it... should now ‘work like a ministry or an extension of the government instead of an independent body.’”²⁹ The UN High Commissioner for Human Rights cited the prosecution and Guidelines as an additional example of the Maldivian Supreme Court overreaching its powers by performing a legislative, rather than judicial, function.³⁰ According to the above-noted joint fact-finding mission by the ICJ and South Asians for Human rights “The Supreme Court’s actions towards the HRCM breached a range of international standards. The Court’s actions flagrantly contradict the UN Paris Principles relating to the status of

²³ Amnesty International, “Maldives: 13 year sentence for former president ‘a travesty of justice,’” 13 march 2015. Available at <https://www.amnesty.org/en/latest/news/2015/03/maldives-mohamed-nasheed-convicted-terrorism/>

²⁴ Report of the UN Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Addendum - Mission to the Maldives, para. 30, available at undocs.org/A/HRC/23/43/Add.3.

²⁵ Amnesty International, “Amnesty International urges Maldives to respect the right to freedom of assembly and ensure that trials are carried out in line with international human rights law,” 24 September 2015, ASA 39/2525/2015, available at <https://www.amnesty.org/en/documents/asa39/2525/2015/en/>.

²⁶ Report of the UN Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Addendum - Mission to the Maldives (21 May 2013), para. 39, available at undocs.org/A/HRC/23/43/Add.3.

²⁷ 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.

²⁸ International Commission of Jurists and South Asians for Human rights “Justice Adrift: Rule of Law and Political Crisis in the Maldives: A Fact-Finding Mission Report,” August 2015, p. 16. Available at <http://www.icj.org/wp-content/uploads/2015/08/Maldives-Justice-Adrift-Rule-of-Law-Publications-fact-finding-report-2015-ENG.pdf>

²⁹ Amnesty International, “Amnesty International urges Maldives to respect the right to freedom of assembly and ensure that trials are carried out in line with international human rights law,” 24 September 2015, ASA 39/2525/2015, p. 1, available at <https://www.amnesty.org/en/documents/asa39/2525/2015/en/>.

³⁰ UN Office of the High Commissioner for Human Rights, “Supreme Court judgement gravely undermines Maldives Human Rights Commission – Zeid”, 19 June 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=16106#sthash.Ejh31NRC.dpuf>

national human rights institutions (NHRIs) and the obligation of the State to ensure their independence, as well as repeated resolutions of the UN General Assembly and Human Rights Council.³¹

Freedom of Expression

65. The situation of freedom of expression in the Maldives has also faced serious hurdles recently, in particular by the Supreme Court. The 2014 US Department of State Human Rights Report on the situation in the Maldives notes that there were “several occasions where courts sought to limit free speech by either questioning or initiating prosecutions against individuals who criticized the courts,” including the prosecution of the HRCM that is the subject of this complaint.³²
66. Several civil society organizations in the Maldives have also been hindered by threats from both governmental agencies and private citizens, without any prosecutions of those responsible.³³
67. Journalists criticizing the government and covering demonstrations have also faced violence and threats to their safety, without any thorough investigation by the authorities³⁴

2. Reprisals and intimidation against those who seek to cooperate, cooperate, or have cooperated with the UN

68. In spite of being clearly proscribed in international law, reprisals and intimidation against individuals and groups seeking to cooperate, cooperating or having cooperated with the UN in the field of human rights remain persistent and widespread,³⁵ and seem to have become more varied and severe over time.³⁶ They are one of the means by which perpetrators of human rights violations and those who

³¹ International Commission of Jurists and South Asians for Human rights “Justice Adrift: Rule of Law and Political Crisis in the Maldives: A Fact-Finding Mission Report,” August 2015, p. 16-17. Available at <http://www.icj.org/wp-content/uploads/2015/08/Maldives-Justice-Adrift-Rule-of-Law-Publications-fact-finding-report-2015-ENG.pdf>

³² United States Department of State, Bureau of Democracy, Human Rights and Labor “Maldives 2014 Human Rights Report,” p. 8. Available at <http://www.state.gov/documents/organization/236856.pdf>

³³ Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 – Maldives, para. 46, available at undocs.org/A/HRC/WG.6/22/MDV/2.

³⁴ Amnesty International, “Maldives: Assault on Civil and Political Rights,” 23 April 2015, ASA 29/1501/2015 p. 12, available at <https://www.amnesty.org/en/documents/ASA29/1501/2015/en/>.

³⁵ Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights (31 July 2013), available at undocs.org/A/HRC/24/29.

³⁶ Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights (17 August 2015), at para 44, available at undocs.org/A/HRC/30/29.

tolerate them seek to avoid accountability³⁷ and can have a very serious deterrent effect on people willing to cooperate with the UN.³⁸

69. No comprehensive study has yet been undertaken on the nature nor extent to which acts of reprisals and intimidation take place. However, it is known from examining reports by the Secretary-General and other UN bodies that reprisals are often carried out by powerful State agents, such as the police, military or security forces, or the judiciary, who act to protect the State from criticism. They are also often carried out by non-State agents, including corporations, private security companies, organised crime, or armed groups, whose links to the State are more or less direct, indirect, or totally absent.³⁹
70. Reprisals and intimidation can take many forms, including but not limited to harassment, threats, warnings, surveillance, defamation and smear campaigns, interrogation, deportation, confiscation of travel documents, refusal to grant exit visas, denial of permits, withdrawal of privileges, disciplinary measures, fines, arrests, civil or criminal prosecutions or sanctions, physical assault, disappearances, torture or even death.⁴⁰ The Secretary-General reported in 2015 that the types of acts reported seem to have become more varied and severe over time, targeting not only the individuals or groups concerned but also their families, legal representatives, non-governmental organizations and anyone linked to them.⁴¹
71. Reprisals often take place in the home country, but can also occur at the very moment an individual or organisation is engaging with a UN mechanism. For example, organisations participating in sessions of the Council in Geneva have faced threats and harassment from members of their country's delegation. These incidents have also been combined in some cases with press campaigns at home in which they are publicly denounced and threatened. Threats have come from high level government officials.⁴²

3. Reprisals and intimidation against NHRIs

72. The Council and the General Assembly recently stressed that NHRIs and their members and staff should not face any form of reprisal or intimidation as a result of their activities, and called upon States

³⁷ Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston (27 May 2009), at para 16, available at undocs.org/A/HRC/11/2.

³⁸ Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights (7 May 2010), para 54, available at undocs.org/A/HRC/14/19.

³⁹ International Service for Human Rights, "Reprisals Handbook" (2013), pg.4, available at http://www.files.ishr.ch/public/ishr_handbook_web.pdf.

⁴⁰ See e.g. Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights (31 July 2013), para. 49, available at undocs.org/A/HRC/24/29.

⁴¹ Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights (17 August 2015), para 44, available at undocs.org/A/HRC/30/29.

⁴² Charles Haviland, "Sri Lanka minister Mervyn Silva threatens journalists," BBC News (23 March 2012), available at <http://www.bbc.com/news/world-asia-17491832>

to promptly and thoroughly investigate cases of alleged reprisal or intimidation against members or staff of NHRIs or against individuals who cooperate or seek to cooperate with them.⁴³

73. At the opening of the 28th Annual Meeting of the ICC, held in Geneva from 12-13 March 2015, then President of the Human Rights Council, Joachim R cker of Germany, spoke of the critical importance of supporting independent and effective NHRIs, saying that reports of reprisals against NHRIs were of "great concern" to the Council. Mr R cker noted that "NHRIs and their respective members and staff should not face any form of reprisal or intimidation, including political pressure, physical intimidation, harassment or unjustifiable budgetary limitations, as a result of activities undertaken in accordance with their respective mandates."⁴⁴

6. Submissions on law and merits of claim

74. The complainants respectfully submit that the State party's actions constitute an unlawful reprisal against the complainants and that, by charging and prosecuting the members of the HRCM for the content of their communications to the Council and by issuing the Guidelines in order to limit future communications between the HRCM and organs of the UN, the State party violated Article 19 (freedom of expression) of the ICCPR.

1. Violation of Article 19: Freedom of Expression:

75. The ICCPR states that:

19(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.⁴⁵

19(3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

76. The Authors submit that the facts outlined above constitute a violation of their right to freedom of expression under the ICCPR. Specifically, the Authors submit that their communication with the UN—

⁴³ General Assembly resolution 70/163, National institutions for the promotion and protection of human rights (17 December 2015), available at undocs.org/A/RES/70/163 at para. 11, Human Rights Council resolution 27/18, National institutions for the promotion and protection of human rights (25 September 2014), available at undocs.org/A/HRC/RES/27/18 at para. 9, 11.

⁴⁴ Speech made at the Opening Ceremony of the International Coordinating Committee of National Institutions for the promotion and protection of Human Rights, 28th General Meeting in Geneva (12 March 2015), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15697&LangID=E>

⁴⁵ International Covenant on Civil and Political Rights, Art. 19(2)

in the form of the report submitted to the Council in the context of the Maldives' UPR—is an expression protected under Article 19(2). 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.

1.1. The scope of the right

77. The Human Rights Committee has clarified that freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, and the expression of every form of idea and opinion capable of transmission to others, including political discourse, commentary on public affairs, and discussion of human rights.⁴⁶ Several cases have confirmed that political expression is protected.⁴⁷
78. Furthermore, the Human Rights Committee has recognized that the right to freedom of expression is an essential element of free and democratic societies,⁴⁸ and that it guarantees a person's right to openly evaluate, discuss, and criticize their country, its government and its branches.⁴⁹ In that respect, the Human Rights Committee has clarified that the entities targeted by the obligation include all branches of the State, including executive, legislative, and judicial.⁵⁰
79. The Human Rights Committee has also recognized that freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.⁵¹

⁴⁶ UN Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression (12 September 2011), para. 11, available at undocs.org/ccpr/c/gc/34.

See also for example UN Human Rights Committee Concluding Observations of the review of Malawi in the absence of a report (2012) at para 16, available at undocs.org/CCPR/C/MWI/CO/1, in which the Committee expressed concern at reports that freedom of expression is threatened insofar as human rights defenders cannot express their views, including by criticizing the authorities, without fear of reprisals.

See also for example the UN Human Rights Committee Concluding Observations of the review of Angola's initial report (2013) at para 21, available at undocs.org/CCPR/C/AGO/CO/1, in which the Committee expressed concern at the existence in legislation of offences that may constitute obstacles to freedom of expression and in particular about threats, intimidation and harassment by security or police forces of journalists, human rights defenders and protesters during political rallies or demonstrations.

⁴⁷ *Nqalula Mpandanjila et al. v. Zaire*, Communication No. 138/1983, U.N. Doc. Supp. No. 40 (A/41/40) at 121 (1986), *Henry Kalenga v. Zambia*, Communication No. 326/1988, U.N. Doc. CCPR/C/48/D/326/1988 (1993), *Monja Jaona v. Madagascar*, Communication No. 132/1982, U.N. Doc. Supp. No. 40 (A/40/40) at 179 (1985), *Kivenmaa v. Finland*, Communication No. 412/1990, U.N. Doc. CCPR/C/50/D/412/1990 (1994), *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*, Communications Nos. 422/1990, 423/1990 and 424/1990, U.N. Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990 (1996), and *Korneenko v. Belarus*, Communication No. 1553/2007, U.N. Doc. CCPR/C/95/D/1553/2007 (2009).

⁴⁸ *Benhadj v. Algeria*, Communication No. 1173/2003, U.N. Doc. No. CCPR/C/90/D/1173/2003 at 8.10 (2007).

⁴⁹ *Benhadj v. Algeria*, Communication No. 1173/2003, U.N. Doc. No. CCPR/C/90/D/1173/2003 at 8.10 (2007).

⁵⁰ Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, at para. 7, available at undocs.org/CCPR/C/GC/34.

⁵¹ Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, at para. 3, available at undocs.org/CCPR/C/GC/34.

80. Freedom of expression encompasses a right to unhindered access to and communication with international bodies.⁵² This right is specifically reaffirmed in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the “Declaration on Human Rights Defenders” or the “Declaration”):

Article 9(4) of the Declaration provides that ‘everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies⁵³ with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms’;

Article 5(c) of the Declaration provides that ‘for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels to communicate with non-governmental or intergovernmental organisations.’

81. The Declaration ‘does not create new rights but instead articulates existing rights in a way that makes it easier to apply them to the practical role and situation of human rights defenders.’⁵⁴
82. The broad formulation in the Declaration must be understood to cover the full range of interaction that may take place between individuals or organisations and international human rights bodies. Such interaction encompasses all procedures that international human rights bodies may have at their disposal, ranging from a mere request for information, to the submission of a report or individual complaint, to participating in trainings and attending meetings, to being interviewed by a fact finding mission.
83. The Committee itself has recognized that communicating freely with it is a form of expression for which defenders must be protected from reprisals.⁵⁵

⁵² Report of the UN Special Rapporteur on the Situation of Human Rights Defenders, “Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” (July 2011), at page 48, available at: <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>.

⁵³ The reference to ‘international bodies’ and ‘intergovernmental organisations’ in this context must be understood to include UN bodies such as the Human Rights Council, its Special Procedures, the Universal Periodic Review, the treaty monitoring bodies, fact-finding missions, commissions of inquiry, and other UN mechanisms with a mandate to protect human rights such as UN peacekeeping missions, UN country teams, and other specialised agencies. This would also include non-UN bodies, for example the African Commission on Human and Peoples Rights or relevant organs of the European Union.

⁵⁴ Office of the High Commissioner for Human Rights <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>

⁵⁵ Human Rights Committee, Concluding observations on the fifth periodic report of Sri Lanka CCPR/C/LKA/CO/5 (2014) at para. 21, available at undocs.org/CCPR/C/LKA/CO/5.

1.2. Permissible limitations:

84. Article 19(3) expressly recognizes that the right of free expression may be restricted for a number of reasons. Specifically, Article 19(3) permits free expression to be limited by measures provided by law and proportionately designed to protect the rights or reputation of others, and/or national security, public order, public health, or morals.⁵⁶
85. The Authors submit that the violations of their right to freedom of expression in this case fell short of the requirements for restrictions under Article 19(3). The prosecution of the complainants and subsequent Guidelines violating their freedom of expression were not prescribed by law and were not for a proper, enumerated, purpose. Rather, they constitute reprisals for the Authors' engagement with the UN.

The restrictions were not provided by law.

86. The Human Rights Committee has clarified that in order for limitations on freedom of expression to meet the requirement that they be 'provided by law', they must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and must be made accessible to the public. Furthermore, the law cannot confer unfettered discretion on those charged with its execution. Finally, laws must provide sufficient guidance to enable those charged with their execution to ascertain what is properly restricted and not.⁵⁷
87. In the case summary, the Court seems to summarize the Charges as follows: 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.
88. In the body of the judgment, the Court appears to expand on the Charges as:
- Committing acts against national security and interests, as per the Constitution;
 - Unlawfully representing the Maldivian state;
 - Unlawfully conducting political relations with international organizations;
 - Unlawfully disseminating information and reports in the name of the state to foreign bodies;
 - Violating the supremacy of the Constitution (art. 299) and the principle of rule of law;

⁵⁶ Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, at para. 22, available at undocs.org/CCPR/C/GC/34

⁵⁷ Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, at para. 25, available at undocs.org/CCPR/C/GC/34

- Providing false information about legal procedures;
- Contravening art. 189 of the Constitution that states that the HRCM must be independent and impartial and promote respect for human rights impartially without favour and prejudice;
- Contravening the Human Rights Commission Act that states that the HRCM must promote human rights in line with the Constitution;
- Interfering with the judiciary's work and unduly influencing the judiciary;
- Contravening art. 141(c) and (d) of the Constitution and international norms;
- Violating the independence granted to the judiciary by international laws;
- Showing bias;
- Undermining the HRCM's credibility;
- Being willfully negligent towards the progress the Maldives has made and continues to make in establishing democracy and upholding the rule of law and human rights;
- Being oblivious to those who commit terrorist acts against the people, state institutions and security forces and endanger peace and order and undermine the state's independence and sovereignty and those who commit such acts;
- Overstepping into the jurisdiction of the executive power, security forces, judiciary and legislature;
- Acting in ways that overlap with the mandate of other state institutions and thus undermining its own mandate;
- Contravening 145 (c) of the Constitution that states that the Supreme Court shall be the final authority on the interpretation of the Constitution, the law, or any other matter dealt with by a court of law;
- Contravening article 29 (a) and (b) of Law no 22/2010 (Judicature Act) that states that the government, the parliament and the state institutions must obey and abide by the Supreme Court's ruling;
- Contravening art 141 (b) of the Constitution that states that the highest authority of the administration of justice is the Supreme Court;
- Contravening art 189 (a) of the Constitution that states that the HRCM has no obligations other than those mandated by the Islamic Sharia, the Constitution and laws of the Maldives, and the international covenants the Maldives is party to.

89. The Authors submit that many of the Charges individually, and the entirety of the Charges read together, are not "provided by law" within the meaning of the ICCPR and as elucidated in General Comment No 34. Many of the Charges individually, and certainly the Charges taken as a whole, were:

- 89.1. Unduly vague and overbroad and provided excessively wide scope for subjective interpretation: e.g. "undermining sovereignty of the state," "showing bias," "providing false information about legal procedures," and "acting against national security and interests". Such

charges were not sufficiently precise so as to enable the Authors to regulate their conduct accordingly, nor were they accessible to the public;

- 89.2. Without clear legal basis or detail: e.g., “unlawfully representing the Maldivian state”, “undermining the HRCM’s credibility” and “being willfully negligent towards the progress the Maldives has made”;
- 89.3. Derived from or enshrined in traditional, religious or other such customary law: e.g., “contravening art 189 (a) of the Constitution that states that the HRCM has no obligations other than those mandated by the Islamic Sharia...”; and
- 89.4. Incompatible with the provisions, aims and objectives of the Covenant, including the fundamental aim and objective of ensuring that persons have the ability to freely cooperate and communicate with international human rights mechanisms such as the Human Rights Council or the Committee itself: e.g., “unlawfully conducting political relations with international organizations” and “unlawfully disseminating information and reports in the name of the state to foreign bodies”.

90. The Guidelines issued by the Court are as follows:

1. Act within the ambit of the Maldives Constitution and laws to ensure the full protection of the interests of the Maldivian state and its citizens;
2. Ensure the commission does not in any manner disrupt the Maldivian citizen’s unity and homogeneity;
3. Ensure the commission does not undermine peace, security, order, and age-old norms of behaviour;
4. Ensure the commission does not overlap with and take over the responsibilities and mandate of other state institutions;
5. Ensure such activities are permitted in Maldivian society by the Maldives Constitution and its laws;
6. Ensure such activities are in line with the Maldivian faith, accepted societal norms, and good behaviour;
7. Ensure such activities are based on policies compiled in light of credible research in line with the Maldivian faith, accepted societal norms, good behavior, the Maldivian Constitution and laws, and in a manner that protects national security, peace and unity, and with the full cooperation of other institutions of the Maldivian state;
8. In the event the commission has to work with foreign bodies, the commission, as an organ of the sovereign and independent Maldivian state, must follow procedures established by the state and work with the mediation of the relevant state institution;
9. Uphold the lawful government, ensure respect for the rule of law, and ensure such activities increase the citizens’ obedience to the rule of law;
10. Ensure such activities are free from political bias, and without the intention of furthering the interests of a specific party or to defame a specific party;
11. Ensure such activities do not encourage political, social and religious extremism, and do not facilitate hardship for the Maldives, and do not tarnish the Maldivian nation’s good reputation.

91. Similarly, the Authors submit that many of the Guidelines individually, and the entirety of the Guidelines read together, are not “provided by law” within the meaning of the ICCPR and as elucidated in General Comment No 34. Many of the Guidelines individually, and certainly the Charges taken as a whole, were:
- 91.1. Unduly vague and overbroad and provided excessively wide scope for subjective interpretation, e.g. “Act within the ambit of the Maldives Constitution and laws to ensure the full protection of the interests of the Maldivian state and its citizens”, “not in any manner disrupt the Maldivian citizen’s unity and homogeny”, “not undermine peace, security, order, and age-old norms of behaviour”, “Ensure such activities are in line with the Maldivian faith, accepted societal norms, and good behaviour”, ensure activities “increase the citizens’ obedience to the rule of law”, ensure activities “not facilitate hardship for the Maldives”. Such Guidelines were not sufficiently precise so as to enable members of the HRCM to regulate their conduct accordingly and appear to have conferred unfettered discretion on the Court, which is in turn charged with their execution;
 - 91.2. Derived from or enshrined in traditional, religious or other such customary law: “Ensure the commission does not in any manner disrupt the Maldivian citizen’s unity and homogeny”, “Ensure such activities are in line with the Maldivian faith, accepted societal norms, and good behaviour”, “Ensure such activities are based on policies compiled in light of credible research in line with the Maldivian faith, accepted societal norms, good behaviour”, “Ensure the commission does not undermine ... age-old norms of behaviour”;
 - 91.3. Incompatible with the provisions, aims and objectives of the Covenant, including the fundamental aim and objective of ensuring that persons have the ability to freely cooperate and communicate with international human rights mechanisms such as the Human Rights Council or the Committee itself: “In the event the commission has to work with foreign bodies, the commission, as an organ of the sovereign and independent Maldivian state, must follow procedures established by the state and work with the mediation of the relevant state institution.”
92. Furthermore, contrary to the requirements laid out by the Committee in General Comment No 34, the Charges and Guidelines:
- 92.1. Appear to have conferred unfettered discretion to restrict freedom of expression on the Court, the very body charged with their execution⁵⁸; and
 - 92.2. Amount to an attack on the Authors, being “persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports”, precisely because of the publication of such a report and “because of the exercise of his or her freedom of opinion or expression.”⁵⁹

⁵⁸ Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, at para. 25, available at undocs.org/CCPR/C/GC/34

⁵⁹ Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, at para. 23, available at undocs.org/CCPR/C/GC/34

The restrictions did not pursue a legitimate aim:

93. The Committee has clarified that restrictions must be legitimate in the particular circumstances in which they are applied. That is, the State party must demonstrate the precise nature of the threat, and the necessity and proportionality of the specific action taken, by establishing a direct and immediate connection between the impugned expression and the threat.⁶⁰
94. The Committee has also clarified that it does not have to defer to the judgment of the State as to whether a restriction on expression complies with article 19(3).⁶¹
95. The ICCPR sets out five legitimate grounds for restriction: (1) Rights of Others, (2) Reputation of Others, (3) National security, (4) Public Order, and (5) Public Health and Morals.
- 95.1. Rights of Others: Article 19(3) recognizes that freedom of expression can be limited by another's exercise of other equally important rights. The Committee has clarified that the 'rights' in question in this context are those recognized in the ICCPR and more generally in international human rights law.⁶² The Committee has also clarified that such restrictions must be construed with care and must not impede political debate.⁶³ The Special Rapporteur has noted that limitations on freedom of expression intended to protect the rights or reputation of others "must not be used to protect the State and its officials from public opinion."⁶⁴
- 95.2. Reputation of Others: Article 19(3) recognizes that restrictions on freedom of expression can be justified by reference to the 'reputations' of others. However, the Committee has clarified that a public interest in the subject matter of the criticism should be recognised as a defence and care should be taken to avoid excessively punitive measures and penalties.⁶⁵ The Committee has specifically recognized that "the right to freedom of expression includes the right to criticize or openly or publicly evaluate their Governments without fear of interference or punishment," and that whether a sanction to protect public order or the honour and reputation of government is proportionate must be evaluated in light of the paramount importance of the right to freedom of

⁶⁰ Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, at para. 35, available at undocs.org/CCPR/C/GC/34. See e.g. *Shin v. Republic of Korea*, Communication No 926/2000, U.N. Doc. CCPR/C/80/D/926/2000 at 7.3 (2004).

⁶¹ Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, at para. 36, available at undocs.org/CCPR/C/GC/34.

⁶² Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, at para. 28, available at undocs.org/CCPR/C/GC/34.

⁶³ *Leonid Svetik v. Belarus*, Communication No. 927/2000, U.N. Doc. CCPR/C/81/D/927/2000 (2004) and *Shchetko v. Belarus*, Communication No. 1009/2001, U.N. Doc. CCPR/C/87/D/1009/2001 (2006).

⁶⁴ Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, at para. 82 (2010), available at undocs.org/A/HRC/14/23.

⁶⁵ Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, at para. 47, available at undocs.org/CCPR/C/GC/34.

expression of expression in a democratic society, and the fact that government by its nature is subject to criticism and opposition.⁶⁶

- 95.3. National security: Article 19(3) recognizes that restrictions on freedom of expression can be justified by reference to national security, i.e. when the political independence or the territorial integrity of the State is at risk. However, the Committee has clarified that treason laws and other similar provisions relating to national security cannot be invoked to prosecute human rights defenders or others for having disseminated information of legitimate public interest.⁶⁷
- 95.4. Public Order: Article 19(3) recognizes that restrictions on freedom of expression can be justified by reference to public order, which is a broader concept than national security and can be defined as the sum of rules that ensure the peaceful and effective functioning of society.⁶⁸ The Committee has further considered that, while safeguarding and strengthening national unity under difficult political circumstances can be a legitimate objective, “it cannot be achieved by attempting to muzzle advocacy of ... democratic tenets and human rights.”⁶⁹
- 95.5. Public Health and Morals: Article 19(3) recognizes that restrictions on freedom of expression can be justified by reference to public health and morals, the former never having been the subject of a complaint before the Committee. With regard to ‘morals’, the Committee has clarified that the concept derives from many social, philosophical and religious traditions and that consequently limitations must be understood in light of the universality of human rights and the principle of non-discrimination.⁷⁰
96. The Special Rapporteur has stated that States must not abuse restrictions or limitations for political ends.⁷¹ Furthermore, the Special Rapporteur noted that no limitations on freedom of expression are acceptable with regards to “[d]iscussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.”⁷²
97. The Special Rapporteur has also commented that criminal defamation laws must not be used to protect abstract or subjective notions or concepts, such as the State, national symbols, or national identity, as

⁶⁶ Rafael Marques de Morais v. Angola, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (2005) at 6.7-6.8.

⁶⁷ Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, at para. 30, available at undocs.org/CCPR/C/GC/34.

⁶⁸ United Nations Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985), para. 22.

⁶⁹ Womah Mukong v. Cameroon, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994) at para. 9.7.

⁷⁰ Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, at para. 32, available at undocs.org/CCPR/C/GC/34, and General Comment No. 22 Article 18: Freedom of Thought, Conscience or Religion, at para. 8, available at undocs.org/CCPR/C/21/Rev.1/Add.4.

⁷¹ Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, at para. 80 (2010), available at undocs.org/A/HRC/14/23.

⁷² Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, at para. 81 (2010), available at undocs.org/A/HRC/14/23.

international human rights law properly protects individuals and groups of people, not abstract notions or institutions that are subject to scrutiny, comment or criticism.⁷³

98. With regard to the aim pursued by the Court, the judgment and Guidelines indicate that the case was initiated by the Court to hold accountable the members of the HRCM for the following: unlawfully spreading false information about the Court's jurisdiction, the constitutional and legal procedures followed by the 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 attempting to undermine the Constitution.
99. The Authors submit that those aims do not meet the requirements for permissible restrictions under Article 19(3).
- 99.1. Rights of Others: There is no evidence that the Court intended to protect the rights of any other individuals or communities in violating the Commissioners' freedom of expression.
- 99.2. Reputation of Others: While the Charges and Guidelines could be characterized as an attempt to protect the reputation of the Court and judiciary, the Authors submit that the Charges and Guidelines cannot be justified under this ground in light of the paramount importance of the right to freedom of expression, which includes the right to criticize or openly or publicly evaluate Government without fear of interference or punishment.
- 99.3. National Security: The Guidelines order the HRCM not to undermine security and to conduct its activities in a manner that protects national security. However, the Authors submit that the State party did not meet the requirements in Article 19(3) as it did not show how the publication of the Report created a risk to national security, nor what the nature and extent of any such risk is. Furthermore, the Court's invocation of national security runs afoul of the Committee's jurisprudence which clarifies that national security cannot be invoked to prosecute human rights defenders or others for having disseminated information of legitimate public interest.
- 99.4. Public Order: The Guidelines ordered the HRCM not to undermine order. However, the Authors submit that the State party did not meet the requirements in Article 19(3) as it did not show how the publication of the Report undermined public order. Rather than protect the rights of the population, the restrictions seem designed to protect the government from criticism.
- 99.5. Public Health and Morals: The Guidelines ordered the HRCM not to undermine "age-old norms of behaviour" and ensure its activities are in line with "accepted societal norms, and good behaviour", which might be interpreted as a call to protect morals. However, the Authors submit that the State party did not meet the requirements in Article 19(3) as it did not show how the publication of the Report undermined morals.
100. Rather than permissible restrictions, the Authors submit that the Charges and Guidelines were reprisals for the HRCM's report to the Human Rights Council and as such were intended to attack the Authors for their engagement with the UN.
101. In that regard, the Special Rapporteur on human rights defenders, in her Commentary to the Declaration on Human Rights Defenders recognized the increasing use of courts, by states, to "harass human rights defenders and hinder their work", including charging defenders with: spying for

⁷³ Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, at para. 84 (2010), available at undocs.org/A/HRC/14/23.

disseminating information abroad; aiming to overthrow the Government and damaging a country's reputation for reporting on the domestic human rights situation at international human rights conferences; with treason, terrorist activities, aiding and abetting an illegal organization, and endangering the integrity of the State for publishing reports about human rights; and with defamation of authorities, spreading false information liable to disturb public order, insulting the security forces, tarnishing the image or reputation of the State and sedition, all of which have been portrayed as damaging national security.⁷⁴

The restrictions were not necessary nor proportionate

102. Finally, even if the violations were provided by law and pursued a legitimate aim, which is strictly denied by the Authors, they did not meet the final element of the test – necessity and proportionality.
103. Restrictions must meet strict tests of justification. Restrictions are only necessary if the (legitimate) purpose could not be achieved in other ways that do not violate freedom of expression.⁷⁵ In order to meet the requirement of proportionality, the Committee has clarified that restrictions must not be overbroad, must be appropriate to achieve the (legitimate) purpose, must be the least intrusive instrument amongst those which might achieve the (legitimate) purpose, and must be proportionate to the (legitimate) purpose. In addition, the principle of proportionality must be respected in both the measure that frames the restriction but also in its application.⁷⁶ Finally, the Committee has said that the principle of proportionality must also consider the form of expression at issue as well as the means of its dissemination, i.e. the ICCPR places particularly high value on free expression in the context of public debate concerning figures in the public and political domain.⁷⁷
104. The Authors submit that the Charges and Guidelines were not necessary nor proportionate to any possible aim. As discussed above, the Charges and Guidelines were vague, overbroad, and provided excessively wide scope for subjective interpretation. In reprisal against the Authors, the Charges and Guidelines effectively put in jeopardy the right itself as virtually any communication to the UN criticising the government would have been captured by the Charges and/or the Guidelines.⁷⁸

⁷⁴ Report of the UN Special Rapporteur on the Situation of Human Rights Defenders, “Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” (July 2011), at page 61, available at <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>.

⁷⁵ Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, at para. 33, available at undocs.org/CCPR/C/GC/34.

⁷⁶ Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, at para. 34, available at undocs.org/CCPR/C/GC/34, and General comment No. 27 Article 12: Freedom of Movement, at para. 14, available at undocs.org/CCPR/C/21/Rev.1/Add.9. See also Rafael Marques de Morais v. Angola, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (2005) and Patrick Coleman v. Australia, Communication No. 1157/2003, U.N. Doc. CCPR/C/87/D/1157/2003 (2006).

⁷⁷ See Mr. Zeljko Bodrožić v. Serbia and Montenegro, Communication No. 1180/2003, U.N. Doc. CCPR/C/85/D/1180/2003 (2006) at para. 7.2.

⁷⁸ Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, at para. 21, available at undocs.org/CCPR/C/GC/34.

7. Effective remedies requested

105. The Authors hereby request that the Committee:

105.1. Declare a violation of the Authors' rights under Article 19 of the ICCPR;

105.2. Declare specifically that:

105.2.1. the violations of the Authors' freedom of expression 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;

105.2.2. the Charges and Guidelines were *per se* violations of Article 19 because they did not pursue a legitimate aim;

105.2.3. neither the Charges nor the Guidelines were necessary in the pursuit of any legitimate aim;

105.2.4. the Charges and Guidelines were reprisals against the Authors for communicating with the UN, which is expression protected under Article 19;

8. Annexures

Annexed to this communication are the following:

- ANNEX 1 - HRCM Submission to the UPR - September 2014
- ANNEX 2 - Judgment - Supreme Court v. HRCM
- ANNEX 3 - Translation - Judgment - Supreme Court v. HRCM

**HRCM Submission to the Universal Periodic Review
of the Maldives, April –May 2015 (22nd session)
September 2014**



Human Rights Commission of the Maldives (HRCM)

The Human Rights Commission of the Maldives (HRCM) was first established under Presidential Decree on December 10, 2003. On August 18, 2005, the Human Rights Commission Act was ratified, thereby making the HRCM the first independent and autonomous statutory body in the Maldives. The amendments brought to the Human Rights Commission Act in August 2006 broadened the mandate and powers of the HRCM, making it compliant with the Paris Principles. With the ratification of the Constitution in August 2008, the HRCM was made an independent and autonomous constitutional body.

The HRCM currently holds 'B' status with the International Co-ordination Committee of National Human Rights Institutions (ICC) and is an Associate Member of the Asia-Pacific Forum of National Human Rights Institutions (APF).

In December 2007, the HRCM was designated by a Presidential Decree as the National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (OPCAT). As prescribed under the OPCAT, the HRCM was designated as the NPM in legislation with the ratification of the Anti-torture Act in December 2013.

The report focuses on prominent human rights issues faced, along with the implementation status of the recommendations from the 1st UPR review. Accordingly report outlines on 18 thematic areas which comprises of civil and political rights as well as economic, social and cultural rights. Each thematic area is concluded by recommendations. Report was compiled based on information received from the relevant stakeholders including government authorities, institutions, civil society in addition to existing in-house monitoring and data. In addition, HRCM also conducted a series of meetings in the past three months to facilitate constructive dialogue on the implementation of the recommendations. HRCM is represented in the steering committee established by the government during the first UPR review. Regrettably, this committee failed to fulfil its intended obligation.

Abbreviations

DV	Domestic Violence
FPA	Family Protection Authority
HPA	Health Protection Agency
HRCM	Human Rights Commission of the Maldives
ICJ	International Commission of Jurists
IDP	Internally Displaced Persons
LRA	Labour Relations Authority
MLG	Ministry of Law and Gender
MoE	Ministry of Education
MPS	Maldives Police Service
PwD	Persons with Disabilities
TM	Transparency Maldives
UN	United Nations

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Right to life

1. In recent years, gang violence and murders have increased at an alarming level (ANNEX 2). A study shows that many of these gang related violence are linked to politicians or business persons who pay gangs to carry out violent acts¹. Yet, state has been unsuccessful in effectively addressing this issue. So far 21 murder cases were recorded since 2010, most of which were gang related.

Take immediate action to eliminate gang related violence. Develop long-term plans to ensure the security of persons.

Human Trafficking

2. Children are involved in commercial sex work.² Many children migrate to Male' from atolls for education, remain vulnerable to domestic servitude and sexual harassment by host families.
3. There are countless reports of exploitation of migrant workers through fraudulent recruitment practices by their agents, withholding of wages and confiscation of passports.³ Shelters to accommodate trafficking victims and support services are not operational. Lack of resources and capacity appear to be a challenge faced by authorities in establishment of institutional mechanisms and to implement the Anti-Human Trafficking Act. Thus efforts to facilitate redress to victims remain disproportionate to a deteriorating situation.

Take concerted efforts to implement Anti-Human Trafficking Act

Torture

4. People are very much concerned about law enforcement officials conducting acts of torture.⁴ A total of 304 torture allegations have been lodged at HRCM of which 74 allegations have been investigated from 2010 to July 2014. However, none of these cases were sent to prosecution due to lack of enough evidence to prove them in a court of law.
 5. The most pressing issues observed in prisons are the lack of categorization, unavailability of rehabilitation and reintegration programs, unnecessary strip-search and disproportionate disciplinary measures towards male prisoners and minors. In custodials, issue of overcrowding, handcuffing for indefinite periods, extended detention for investigation purposes and failure to collate data in a systematic way are areas suggested for improvement over the years. In the only psychiatric institution of State, despite continuous recommendations for change, geriatric patients and patients enduring mental illnesses and PWD are accommodated without proper categorization. Institution for children under State care is heavily under-staffed. Inappropriate disciplinary measures against children under de facto detention persist in most institutions sheltering juveniles.
- Establish mechanisms and procedures protecting the psychological and physical wellbeing of children under state care and those deprived of their liberty.***

Access to justice

6. Enforcement of Penal Code is a positive development towards a better legislative framework. However, due to shortfalls in judicial system, functioning of the judiciary is often questionable on various grounds including independence, transparency, interference, influence, competency, consistency, and accessibility.⁵ State responded to UN Special Rapporteur on the Independence of Judges and Lawyers as trying to undermine the country's court system.⁶ ICJ has issued a number of recommendations to build competency of judiciary with no progressive action by the state.
7. According to TM, majority of public lack confidence in the court system.^{7 8} Majority of cases, both criminal and civil, often get delayed for more than a year, and is prosecuted in capital which forces plaintiffs and defendants from atolls to travel to and stay in capital, which is costly.
8. Judicial system is controlled and influenced by the Supreme Court weakening judicial powers vested in other superior and lower courts. Supreme Court issued a circular ordering all state institutions not to communicate

to individual courts regarding any information related to judiciary except through Supreme Court.⁹ HRCM is facing difficulties in gathering information related to Judiciary due to lack of cooperation.

Adopt recommendations issued by Special Rapporteur and ICJ. Codify and harmonize Shari'ah Law and common law in accordance with the Constitution. Enact important laws leaving no room for inconsistencies in judicial decision making.

Freedom of Expression

9. Although Constitution assures its citizen the freedom of thought and expression, there are no laws which guarantee freedom of expression in the Maldives. Parliament Privileges Act can be used to force journalist to reveal their source, which could undermine the constitutional protection that journalists currently enjoy.
10. There have been many reports of death threats to media persons and parliament members. State is yet to take realistic action to address these threats. The recent disappearance of Ahmed Rizwan Abdullah, a journalist and human rights advocate is of critical concern.¹⁰

Take measures to address issue of threats and intimidation directed to parliamentarians, journalists and civil society activists to ensure their safety.

Freedom of Assembly

11. Political instability in 2012 resulted in a series of intense demonstrations. HRCM observed during dispersal of demonstrations MPS used disproportionate force which was at times discriminatory towards political parties, excessive and disproportionate use of pepper spray at protestors, inconsistency in issuing warnings before dispersal and obstruction of media.¹¹ It was evident that some demonstrators were subjected to torture at the time of arrest.¹²
12. While recently endorsed Freedom of Peaceful Assembly Act encompasses positive developments, HRCM raised concerns over provisions of geographical limitations, lack of guidance on control of counter assemblies and requirement to accredit reporters.¹³

Amend the Act in compliance with ICCPR. Incorporate international best practices and human rights standards into existing public order training. Take action against officers who violate the laws, eliminating room for impunity.

Freedom of Association

13. Some NGO's advocating human rights and democracy have been subjected to intimidation by state actors and their freedom of association and expression have been hindered.¹⁴ In the absence of trade unions, workers' associations undertake their role.¹⁵ An Act on Industrial and Labor Relations is yet to be enacted, thus legal gap remain as an obstacle to functioning of trade unions. Members of trade unions remain intimidated to disclose membership to employers as members face reprisals such as termination of employment. This is common among workers in the areas of tourism and seaports. Lack of transparency in distribution of service charge is a major reason for strike in tourism industry while not receiving full payment of overtime pay is a grave concern raised by Teachers' Association. Union members face numerous difficulties in exercising collective bargaining, tripartite consultations and work stoppage, as proper legal mechanism is not in place for dispute resolution.

Amend legislation on associations and enact law on industrial relations.

Health

14. Health services are not easily accessible and available in atolls and lack healthcare professionals such as gynecologists and pediatricians.¹⁶ Public has no trust in the healthcare system due to many avoidable health incidents and sensitive medical information of patients being leaked.¹⁷

15. Frequent media reports about infanticide and abandonment of infants, plus prevalence of illegal and unsafe abortions indicate that sexual relations among adolescents and unmarried adults are common.^{18 19} Access to contraceptives and contraceptive information is limited to married couples to a certain degree in atolls. Furthermore, age appropriate sex education is not provided in schools and parents are not aware of the importance of such education.²⁰

HIV/AIDS

16. The health system is not ready to address a potential HIV outbreak as it lacks prevention programs and specialized care for population groups at risk. HPA mandated with HIV/AIDS prevention/control is not adequately funded and lacks capacity to lay down such a system. There are no prevention services for high risk groups, increasing the risk of spreading HIV.²¹²² High risk factors including sharing of needles to inject drugs, high sexual activity among adolescents and youth could contribute to an increased prevalence of HIV/AIDS.²³ It is alarming that there is no screening system for HIV/AIDS and STI in the prison system; considering some of the identified HIV patients go in and out of prison as repeated offenders.²⁴

Strengthen existing healthcare system to address current problems in the health services especially emphasizing life-threatening illnesses and incidents. Take necessary actions to address HIV/AIDS related human rights issues, including prevention for high risk groups.

Child Rights

17. Children born out of wedlock face discrimination. Paternity testing is not admissible evidence in court and such a child would be denied father's name, inheritance and child maintenance. Violence against children takes place in all settings. Only a small proportion of reported child abuse victims get justice, and remain re-victimized due to systemic failures. Most prevalent challenges include delays in obtaining evidence and overly strict evidentiary requirements.²⁵ The legal age of consent, along with societal attitudes to treat child abuse as private matter or to force child abuse victim to deny testimony in court to protect family honor as perpetrator is usually a family member providing financial support are factors that cannot be disregarded.²⁶ Moreover, state has fallen short to publish child sexual offender's registry. Additionally, overall functioning of victim support system is effected due to a weak child protection system that is under resourced, with inconsistencies in capacity and coordination. Family Act allows marriage of minors under specific conditions. There are reports of registration of child marriages without counsel of MLG as Shari'ah is basis for defining marriage practices.²⁷
18. There are many reasons as to why youth join gangs which include in search of identity and protection while unemployment remains as a major driving factor.²⁸ The political and business elites exploit gangs in exchange for financing.²⁹ With criminal records or inability to exit gang life makes it difficult for youth to find employment, rehabilitation opportunities and remain stigmatized by society.³⁰ Depending on the nature of crime, implementation of the sentence for a minor can be delayed for a set period of time or until they reach 18 years, on condition of substantial changes in behavior.³¹ Although, human resource, rehabilitation and support programs remain limited for proper functioning of a juvenile justice system; the lack of political will along with resource constraints impacts addressing these issues.
19. Despite existence of a longstanding moratorium, a regulation on procedures for death penalty was recently introduced and its enforcement for minors is delayed until 18 years of age. The age of criminal responsibility is 15 years and minors can be held for *Hadd* offences. Bills such as Criminal Procedure Code, Evidence Bill and Witness Protection needs to be enacted and state is yet to establish an independent forensic institution to provide accurate information to make an impartial decision on matters concerning administration of death penalty.³²

Enact evidence bill, witness protection bill, criminal procedure code and Juvenile Justice Bill. Strengthen coordination amongst stakeholders dealing with child abuse and rehabilitation measures of victims. Abolish child marriages. Improve availability of counseling facilities at educational institutions. Establish independent forensic institution and abolish death penalty for minors.

Women's Rights

20. Absence of requisite procedures, inconsistencies in institutional applications and lack of sensitivity among law enforcement and judiciary towards DV are fundamental issues faced in implementation of DV Act. MPS failed to meet legislative deadline to submit the annual report to FPA. Limited capacity of investigators and their belief that such cases are family matters inhibit victims from getting redress.³³ FPA with a mandate to combat DV is not provided with necessary financial and human resources. Reporting of DV cases remain low as a result of lack of confidence in the system, fear of intimidation by perpetrators, stigmatization and inadequate information on protection measures. There is no proper reintegration mechanism. There are no strict punishments to perpetrators of DV although the state has reported otherwise in the "mid-term assessment of implementation of UPR" on recommendation (100.64).³⁴ However, violation of a protection order is a punishable offense as that of a court order violation.
21. Increase in religious conservatism, cultural norms and stereotypical roles depicted by society inhibit women's equitable participation in public life.³⁵ Women remain under represented in all branches of the state and efforts to secure legislative quotas remain unsuccessful.
22. Government has agreed to remove the reservation for Article 16. 1(a)(b)(e)(g)(h) and 2 of CEDAW, however, no concrete action has been taken.

Take concrete measures to implement DV Act. Introduce appropriate punishments in DV Act. Remove reservations from Article 16 of CEDAW. Introduce legislative quotas for women representation.

Labour

23. Government is yet to establish minimum wage and unemployment benefit. Non-existence of minimum wage has a detrimental effect for employees working in private sector, especially migrant workers. There is an alarming rise in unemployment especially among youth and women.³⁶ Additionally, lack of opportunity is one of the main reasons for being unemployed.³⁷ Sexual harassment at workplace remains a daunting reality.³⁸ The bulk of complaints received by state institutions are related to unfair dismissal, wage claims, breach of contract and violation of employment rights of migrant workers. The monitoring efforts of government are hindered due to budgetary constraints. Implementation of employment Act remains a key issue in realizing employment rights.

Establish minimum wage and unemployment benefit. Strengthen measures to ensure implementation of Employment Act.

Migrant Workers

24. Migrant workers are subjected to inhumane conditions like being accommodated in overcrowded places which lack proper ventilation, adequate sanitary facilities and limited accessibility to water.³⁹ Maltreatment and negative attitudes towards migrant workers are a concern. Accessing services from LRA is a challenge for migrant workers based at atolls due to transportation difficulties as many remain reluctant to seek assistance for fear of deportation due to undocumented status.

Ratify ICMW.

Religious Extremist Ideologies

25. There are reports of unregistered marriages encouraged by some religious scholars claiming that registering marriages with the Courts are un-Islamic and unnecessary.^{40 41} State institutions acknowledge this information and raised concerns that children born to such marriages could face serious legal issues. Similarly women in such marriages are bound to face social and legal consequences.⁴² Conservative beliefs that promote women as inferior to men are being spread at an alarming level. Many women believe that their role in society is to be submissive wives and in raising children.⁴³ There are roughly 400 children being withheld from attending school by their parents due to religious beliefs.⁴⁴

Take appropriate measures to deal with ideologies and practices that lead to cultural and societal problems.

Disability

26. Disability rights are not mainstreamed into government policies and action plans. Many public buildings including HRCM are not accessible for PwDs. The level of education among PwDs remains significantly low, and a high percentage of them are unemployed. The state has so far failed to take effective systemic action to provide employment opportunities to PwDs.

27. For children with severe and multiple disabilities, right to education is yet to be realized in the school system. Children with disabilities do not have equal opportunities, facilities, resources and treatment in educational and healthcare systems compared with those without disabilities and they face ill treatment at schools as well as in the community.⁴⁵

Mainstream disability rights into government policies and action plans. Ensure that PwDs have equal access to education, employment and healthcare without any discrimination.

Education

28. Despite policy initiatives by MoE to establish compulsory education till grade 10, legislative framework on education needs to take effect. Corporal punishment is prohibited in schools, yet 8 percent of students attending secondary schools experienced violence perpetrated by teachers.⁴⁶ The education system lacks capacity to provide psychosocial support for child abuse victims and deal with children with challenging behaviors. There are inconsistencies in availability of educational services. Moreover, opportunities and focus on vocational training remains low. An effective system to improve the performance of teachers needs to be in place. Many schools focus on brighter students and neglect to provide additional support for low performers.⁴⁷ Learning outcomes for primary and secondary levels are modest and examination pass rates are generally poor.⁴⁸ There is no proper system in place to measure indicators such as low attendance and drop-out rates. Lack of financial support to pursue higher education is also a challenge.

Right to education is not provided for children in conflict with the law, in pretrial detention and in prison.

Enact Education bill. Take concrete efforts to eradicate the disparities in the availability of educational services. Improve the quality of education progressively.

Drug Abuse

29. Drug abuse remains a serious concern and studies show that it is predominantly a male phenomenon.⁴⁹ Knowledge of drug use among females remains limited. Prevalence of drug abuse along with increase in crime rate places youth at high risk of deviant behavior.⁵⁰ Minors are targeted and exploited in trafficking of drugs.⁵¹ There are no drug treatment services available during the period of remand and detention. Establishment of a halfway house, drug offender remand center and rehabilitation center for children do not exist although specified in the recent Drugs Act. It is impractical to accommodate the increasing demand for rehabilitation and detoxification services as state has not taken concrete efforts to improve client capacity and services. Concurrently many remain pessimistic about effectiveness of the treatment. Budgetary and human resource

constraints remain the rationale for inadequate capacity, functioning of existing facilities and formulation of regulations.

Formulate an action plan to fully implement Drug Act and accelerate measures to expand the accessibility and availability of drug treatment.

IDPs

30. Since 2004 Tsunami 252 persons are still living as IDPs in 6 islands.

Expedite provision of permanent housing for all IDPs of 2004 Tsunami.

ANNEX 1: Consultation Process

Process

To prepare this report HRCM analyzed the developments detailed in the report prepared by the government of Maldives on “mid-term assessment of implementation of UPR”. Based on this preliminary analysis along existing in-house monitoring data HRCM identified 18 thematic areas to focus. The in-house monitoring data comprises of the internal reports compiled, status of implementation of concluding observations by treaty bodies to the State along with number of atoll monitoring trips conducted during this reporting period.

Accordingly, questionnaires were developed and shared with concerned state authorities with an objective to acquire information on implementation status of the recommendations from the 1st UPR review. The evaluation of the preliminary data obtained from these questionnaires were once gain reviewed with aforementioned in-house monitoring data to outline a set of interview questions for the series of stakeholder consultations planned. Subsequently, the series of meeting with the stakeholders facilitated a constructive dialogue on the implementation of the UPR recommendations and it also provided a better insight into the human rights situation of the country.

In the mean time HRCM also facilitated meetings with number of nongovernmental organizations to identify the key civil society organizations reporting to UPR and their thematic areas. This was following a one day workshop facilitated by UN Maldives Resident Coordinator’s office. Series of consultations were held with civil society organizations with an objective to corroborate the information acquired from the questionnaires and meetings held with state authorities. During these consultations HRCM encouraged the NGOs to make individual or joint submissions for UPR.

Findings from the aforementioned diverse group of consultations held, HRCM compiled the report and it was shared with stakeholders including civil society organizations to ensure maximum participation from all state actors. All stakeholders were given a time frame to comment to this report and HRCM incorporated as many comments possible before circulating with all internal departments of this institution for a final remark.

Advantages

The process helps in addressing the most concerning human rights issues in the country. Thorough the process of reporting HRCM was able to build a rapport with civil society and help and encourage the civil society participate in the UPR process. Furthermore, the workshop facilitated by UN Maldives Resident Coordinator’s office has contributed to the knowledge of the UPR process among HRMC staff as well as civil society.

The HRCM is also represented in the Standing Committee, established by the government to monitor implementation of UPR recommendations.

Setbacks

The information gaps within state institutions; delay in responding to the questionnaires formulated by HRCM to acquire information for this report, along with different levels cooperation from state authorizes can be regarded as challenges faced during this process.

Way forward

The steering committee established by the government to oversee the UPR process needs to be revived with wider representation from all sectors of the state such as the parliament, judiciary and diverse group of civil society organizations. This committee needs to be convened quarterly to maximize the discourse on the implementation of the recommendations.

ANNEX 2

Recorded Murder Cases 2010-2014				
2010	2011	2012	2013	2014
<p>Hussaln Manik Age: 61 Attacked: 27 Sep 2010 Died: 27 Sep 2010 Found dead in an empty house called Seena. Hands were tied behind his back</p>	<p>Ahmed Mirza Ibrahim Age: 25 Attacked: 11 Apr 2011 Died: 14 Apr 2011 Assaulted with iron bars. Declared brain dead and life support switched off on 14/4/2011</p>	<p>Moneerul Islam Age: 25 Attacked: Nov 2012 Died: Nov 2012 Bangladeshi citizen who had been working in the Maldives for about 2 years. Body found on 26 November 2012</p>	<p>Husseln Waheed Age: 21 Attacked: 24 Dec 2013 Died: 24 Dec 2013</p>	<p>Mohamed Mazin Age: 18 Attacked: 2 Aug 2014 Died: 2 Aug 2014 Gang Violence</p>
<p>Mohamed Hussein Age: 17 Attacked: 30 Jul 2010 Died: 30 Jul 2010 Stabbed to death by a group of men during an apparent gang fight. He was with his friends on a lorry and about to leave, when they were attacked by a group of people armed with stones and sticks. Died the following morning of his injuries</p>	<p>Ahusan Basheer Age: 21 Attacked: 17 Mar 2011 Died: 17 Mar 2011 Attacked at the corner of Alikilegefaanu Magu and Majeedhee Magu at 0330. Died of his injuries in IGMH at 0720</p>	<p>Afrashim Ali Age: 46 Attacked: 2 Oct 2012 Died: 2 Oct 2012 Member of Parliament. He was attacked while entering his house at midnight after an appearance on the state TV channel. His murder sparked a fierce political debate with both sides accusing each other of carrying out the attack</p>	<p>Ismail Nizar Age: 31 Attacked: 15 Jul 2013 Died: 15 Jul 2013 Was attacked by a group of masked men on his way home to Thundi from Kadhdhoo. It is alleged that the attackers mistook him for his younger brother.</p>	<p>Ali Shiyam Age: 34 Attacked: 31 Jul 2014 Died: 31 Jul 2014</p>
<p>Hassan Shahid Age: 34 Attacked: 22 Jun 2010 Died: 22 Jun 2010 Allegedly stabbed by his ex wife in her home at 1530. He ran to a nearby shop and was taken to ADK where he died of his injuries</p>		<p>Adam Haleem Age: 26 Attacked: 22 Jul 2012 Died: 22 Jul 2012 Policeman stationed in Kaashidhoo. Attacked and killed while on duty.</p>	<p>Mohamed Hassan Age: 54 Attacked: 13 Mar 2013 Died: 14 Mar 2013 Attacked whilst asleep in the sitting room</p>	<p>Ali Rasheed (Alibe) Age: 79 Attacked: Apr 2014 Died: Apr 2014 Found dead in a house, with wounds on his body.</p>
<p>Abdullah Shuhad Age: 23 Attacked: 27 Jan 2010 Died: 28 Jan 2010</p>		<p>Ahmed Najeeb Age: 65 Attacked: 1 Jul 2012 Died: 1 Jul 2012 Allegedly went to M. Masroora at 2200, was later beaten and bound. Killed and put in a large garbage bin in the middle of the room</p>		
		<p>Mohamed Aruham Age: 16 Attacked: 30 May 2012 Died: 30 May 2012 Was believed to have been stabbed and killed while he was asleep in the park. Body was discovered at 06:15 the next morning</p>		

		<p>Hassan Aboobakuru (Hassanbe) Age: 65 Attacked: 29 May 2012 Died: 29 May 2012 Last seen on 28/05/2012. Was found dead in his home on 30/05/2012. He was gagged, and his feet tied.</p>		
		<p>Fathmath Zakariyya Age: 75 Attacked: Apr 2012 Died: Apr 2012 Found dead in her home at 2100. Initially thought to be of natural causes until her phone etc were found to be missing</p>		
		<p>Ali Shifan (Tholhi Pele') Age: 33 Attacked: 1 Apr 2012 Died: 1 Apr 2012 Attacked and killed by 2 men on a motorbike.</p>		
		<p>Ali Shifan (Tholhi Pele') Age: 33 Attacked: 1 Apr 2012 Died: 1 Apr 2012 Attacked and killed by 2 men on a motorbike.</p>		
		<p>Ali Hassan (Ayyube) Age: 70 Attacked: 8 Jan 2012 Died: 8 Jan 2012 Attacked by a group of men on the road, and taken to an abandoned house where he was killed. His assailants believed that he was responsible for the death of a woman on the island through black magic</p>		
<p>Source: http://mvmurders.com/</p>				

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- ހުށަހަޅުމުގެ ބަޔާނުގެ ތެރޭގައި: ރިޔާސަތުގެ ސަރަޙައްދުގެ ސަލާސަތުގެ ހުށަހަޅުމުގެ ބަޔާނު
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- ހުށަހަޅުމުގެ ނަންބަރު: 16 ސަވަރުދްދުގެ ބަޔާނު 2014
- ހުށަހަޅުމުގެ ނަންބަރު: 16 ޖުލައި 2015
- ހުށަހަޅުމުގެ ނަންބަރު: 18:05
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Translation: Supreme Court v. HRCM
Case number: 2014/SC-SM/42
Defendant: Human Rights Commission of the Maldives
Type: Suomoto

Date trial began: 16 September 2014
Date trial ended: 16 June 2015

Bench: Chief Justice Abdulla Saeed, Abdulla Areef, Ali Hameed Mohamed, Adam Mohamed Abdulla, Dr Ahmed Abdulla Didi

Case summary:

The Human Rights Commission of the Maldives, in the Universal Periodic Review Report, April-May 2014 (session 22), under the subheading access to justice (page 4), unlawfully spread false information 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. The commission has circulated this report in the Maldives and abroad. In the report, the commission described the Supreme Court's mandate – acting in its role as the highest authority for the administration of justice in the Maldives and as per international best practices and the Maldivian Constitution—as controlling the courts of the Maldives. In doing so, the commission has deliberately attempted to undermine the independence of one of the three branches of the Maldivian state, i.e. the independent judiciary. The commission has also damaged the Maldives' independence and sovereignty, and deliberately attempted to undermine the Constitution of the Maldives. This case was initiated by the Supreme Court to hold accountable the members of the Human Rights Commission of the Maldives in a court of law, under powers vested in the Supreme Court as the highest administrator of justice in the Maldives, under Article 141 (b) of the Constitution, Article 9 (f) of the Judicature Act (Law no: 22/2010), and Article 86 of the Supreme Court regulations. The defendant in this case is the Human Rights Commission of the Maldives.

Points of note:

The Supreme Court –with reference to the facts, documents, evidence, testimony provided by the members of the Human Rights Commission of the Maldives in court, the Constitution, the Judicature Act, other relevant laws, and norms accepted in democratic societies – notes the following:

a) First, the most fundamental principle of international law is the principle of non-intervention in the sovereignty and the domestic affairs of another state. This is also the foremost pillar of the Maldivian democratic system. The Maldives has the right, based on the principle of sovereign equality and sovereign immunity, to participate in the international community as an equal to other states. It is unlawful for any party or individual to commit acts against national security and interests, as per the Constitution of the Maldives. Further, similar to other states, it is only the executive function (Sultha – Siyasiyya) that can represent the Maldivian state. According to international law, the Maldivian state is mandated to fulfill the three conditions of statehood i.e. territory, the citizens and the executive function. There is no legal dispute over the fact that the executive function has the sovereign power to conduct its own affairs in accordance with constitutional principles designated by the state within the state's sovereign jurisdiction. Further, Article 2 of the Constitution states that the Maldives is a sovereign, independent, democratic

republic based on the principles of Islam, and is a unitary state. The three branches of the executive function are the legislative branch, the executive branch and the judicial branch. The powers of these three branches are clearly defined in Article 5,6 and 7 of the Constitution.

b) Second, given Article 115 (j) (k) of the Constitution states that it is the president who is authorized to determine, conduct and oversee the foreign policy of the country, to conduct political relations with foreign nations and international organizations, to enter into general treaties and agreements with foreign states and international organizations, which do not impose any obligations on citizens, and to enter into and ratify, with the approval of the People's Majlis, treaties and agreements with foreign states and international organizations, which impose obligations on citizens,

and given that the legal procedures of the sovereign and legal system and international procedures state that acts such as dissemination of information and reports in the name of the state to foreign bodies, to meet international obligations, must be organized within the state,

It is clear that any act committed by any party or institution that contravenes these procedures is unlawful and violates the principle of supremacy of the Constitution laid out in Article 299 of the Constitution and the principle of rule of law.

c) Third, in the preamble to the Universal Declaration of Human Rights (UDHR), it is stated that human rights should be protected by the rule of law. Article 8 and 10 of the UDHR state that everyone has the right to an effective remedy by courts or national tribunals for acts violating the fundamental rights granted to them by the constitution or by law, and that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charges against them. Hence, it is known that the final authority to apply legal principles lies with the courts.

With reference to the principle of the rule of law, and to Article 42 (a) of the Constitution of the Maldives that states that everyone is entitled to a fair and public hearing within a reasonable time by an independent court or tribunal established by law to determine one's civil rights and obligations or of any criminal charge, and with reference to the abovementioned clauses of the UDHR, and with reference to the supervisory role granted to the Supreme Court – in order to uphold the responsibility of protecting individual and communal rights and to strengthen and improve access to justice – by Article 141 (b) of the Maldives Constitution,

and while Article 143 (b) and (d), and Article 144 and Article 145, grant the Maldives Supreme Court, similar to the apex courts in other democratic societies, the power, in its supervisory authority to ensure basic rights, to issue habeas corpus, mandamus, certiorari, writ of prohibition, and quo warranto prerogative writs, and while the procedures to issue such rulings have been decided by the Maldives' legal system and by the Supreme Court's rulings,

the Human Rights Commission of the Maldives has prepared a report that provides false information about these legal procedures, without referring to official sources such as the Constitution, laws and regulations, and court rulings.

It is clear this information is baseless from the confession of the members of the Human Rights Commission in court. Even though members in court said they had provided information in such a manner because the Supreme Court had not responded to requests for information on these procedures, they were unable to prove to any extent that they had made a request for such information. While laws and regulations concerning the courts, and court rulings are made

available to the public, there is no law that allows the Human Rights Commission of the Maldives to write a report containing false information regarding these provisions.

This act by the Human Rights Commission of the Maldives contravenes Article 189 of the Constitution that states that the commission must be an independent and impartial commission that shall promote respect for human rights, impartially without favor and prejudice. It also contravenes the Human Rights Commission Act (Law no: 6/2006) that states the commission must promote human rights in line with the Constitution of the Maldives.

d) Fourth, the preparation of the above-mentioned report was unlawful as it contained information that is false, and information that misleads [the public] about the jurisdiction of the courts. Hence, the preparation and the dissemination of the report by the Human Rights Commission amounts to interference with the judiciary' work and undue influence of the judiciary. It also contravenes Article 141 (c) and (d) of the Constitution and international norms, and clearly violates the independence granted to the judiciary by international laws. It is known from the commission members' testimony in court that the information included in the Human Rights Commission of the Maldives' report is false and based on unreliable sources. It is clearly known from the Constitution, laws and regulations regarding judicial procedures, and from court verdicts, that the Maldivian courts conduct trials, as in other democratic societies, according to legal procedures which are written to ensure fair trial. The Maldivians state is one that maintains respect for obligations under international covenants that it is party to, and on its own initiative, passes laws to protect human rights in line with international standards, and the Maldivian state abides by these laws. The Maldivian state has established the Human Rights Commission of the Maldives as a national body according to the Paris Principles. Given that the three branches of the Maldivian state protect and promote human rights, the members of the Human Rights Commission of the Maldives, have shown bias, undermined the commission's credibility, been willfully negligent towards the progress the state has made and continues to make in [establishing] democracy and upholding the rule of law and human rights, and has been oblivious to those who commit terrorist acts against the people, state institutions and security forces, and acts that endanger peace and order, and undermine the state's independence and sovereignty, and those who commit such acts. It is clear that the commission, by failing to rely on credible information and by preparing a false report and by disseminating this report, has acted unlawfully and encouraged acts that undermine the Maldives' independence, sovereignty, constitutional system, and peace and order.

e) Fifth, state institutions must function according to societal truths and values, and with regard to the state's capabilities and facilities that are available to it, and without spreading unlawful information that endangers the state, and without allowing room for unlawful acts, and by prioritizing prudent and peaceful solutions, and based on principles that bring out the best results. Although there are rights afforded to individuals, one of the most fundamental responsibilities of the national body on human rights (The Human Rights Commission of the Maldives) is to refrain from acts that undermine the nation and public interest. It is clear that the national body on human rights must function impartially and as a national institution according to the UN resolution passed in the 1993 Vienna Conference and according to the Paris Principles. The role of the national body on human rights, established within the state's sovereign system, must be to promote human rights and to advise the government and other authorities on protecting human rights, and conducting awareness programs. Hence, such a national body must not overstep into the jurisdiction of any institution within the executive power or that of the security forces or the judiciary or the legislature. It is not legal to make a law in such a manner or interpret a law in such a manner. The Human Rights Commission of the Maldives is a body

that listens to complaints by the citizens, and works to address such complaints, and interacts directly with the people. It is clear that for such an institution to act in ways that overlap with the mandate of other state institutions, in fact, undermines its own mandate.

f) Sixth, the national body on human rights must work within the sovereign legal system of the state, in the spirit of cooperation with the branches of the state and its institutions, without bias, to provide recommendations on matters concerning human rights and matters violating human rights, to review complaints of violations of human rights and to provide redress, to advise on bills protecting human rights and revisions for such laws, to assess the situation of human rights, to provide advice in such situations, and to conduct educational and awareness programs on human rights, or conduct such programs in association with other state offices, in order to promote and protect human rights.

Verdict

Whereas the Article 141 (b) of the Maldives Constitution clearly states that the highest authority for the administration of justice is the Maldives Supreme Court,

Whereas [the Human Rights Commission of the Maldives] has described steps taken by the Supreme Court, in its role as the guardian of the Maldives Constitution and laws, to uphold the independence and impartiality of the judiciary, and to ensure justice without fear and prejudice, and according to the Islamic Shariah and laws, and to uphold the rule of law, as controlling the judiciary,

Whereas the Human Rights Commission of the Maldives, in the subheading access to Justice in the report, the Universal Periodic Review (UPR), which was made public on September 16, 2014, has misled [the public] on the jurisdiction of the highest authority in the administration of justice, the Supreme Court, and on the legal procedures used by the courts in conducting trials, and on the procedures used by courts in providing information

Whereas the Human Rights Commission of the Maldives has prepared the abovementioned report, shared this report with parties in the Maldives and abroad, and whereas this report contains false information regarding the procedures accepted and followed by the courts,

Given that Article 145 (c) of the Maldives Constitution states that the Supreme Court shall be the final authority on the interpretation of the Constitution, the law, or any other matter dealt with by a court of law, and

Given Article 20 of the Maldives Judicature Act (22/2010) clearly states that the government, the parliament and the state institutions must obey and abide by the Supreme Court's rulings

It is ruled that the statement made by the Human Rights Commission of the Maldives which describes the previous, current and future work of the Supreme Court, acting in its role as the highest authority in the administration of justice, and according to the Maldives Constitution, relevant laws and international best practices, as controlling the judiciary, and disseminating information that is false and undermines trust in the judiciary via the above mentioned report to parties in the Maldives and abroad, is an act that contravenes Article 141, Article 145 (c), Article 299 (a) of the Maldives Constitution, and Article 20 (a) and (b) of Law no 22/2010 (Judicature Act)

Hence, the Human Rights Commission of the Maldives is ordered to respect the Maldives Constitution and not to repeat such an act deliberately.

Further, given that the Human Rights Commission of the Maldives, established under Article 189 (a) of the Maldives Constitution, similar to other state institutions, has no obligations other than those mandated by the Islamic Sharia, the Maldives Constitution and laws, international covenants the Maldives is party to, and part of the international covenants the Maldives is party to,

And given that the Maldives is a sovereign, independent, democratic republic based on the principles of Islam, and is a unitary state,

The Human Rights Commission of the Maldives, in conducting activities to promote and protect human rights, is ordered to:

1. Act within the ambit of the Maldives Constitution and laws to ensure the full protection of the interests of Maldivian state and its citizens
2. Ensure the commission does not in any manner disrupt the Maldivian citizen's unity and homogeneity
3. Ensure the commission does not undermine peace, security, order, and age-old norms of behavior
4. Ensure the commission does not overlap with and take over the responsibilities and mandate of other state institutions
5. Ensure such activities are permitted in Maldivian society by the Maldives Constitution and its laws
6. Ensure such activities are in line with the Maldivian faith, accepted societal norms, and good behavior
7. Ensure such activities are based on policies compiled in light of credible research in line with the Maldivian faith, accepted societal norms, good behavior, the Maldivian Constitution and laws, and in a manner that protects national security, peace and unity, and with the full cooperation of other institutions of the Maldivian state
8. In the event the commission has to work with foreign bodies, the commission, as an organ of the sovereign and independent Maldivian state, must follow procedures established by the state and work with the mediation of the relevant state institution
9. Uphold the lawful government, ensure respect for the rule of law, and ensure such activities increase the citizens' obedience to the rule of law
10. Ensure such activities are free from political bias, and without the intention of furthering the interests of a specific party or to defame a specific party
11. Ensure such activities do not encourage political, social and religious extremism, and do not facilitate hardship for the Maldives, and do not tarnish the Maldivian nation's good reputation.