



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3248/2018\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Ahmed Tholal and Jeehan Mahmood (represented by counsel, Madeleine Sinclair, of the International Service for Human Rights)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Maldives
<i>Date of communication:</i>	25 September 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 3 October 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	2 November 2020
<i>Subject matter:</i>	Judicial restrictions imposed on national human rights institution
<i>Procedural issue:</i>	Admissibility – victim status
<i>Substantive issue:</i>	Freedom of expression
<i>Article of the Covenant:</i>	19
<i>Article of the Optional Protocol:</i>	1

1. The authors of the communication are Ahmed Tholal and Jeehan Mahmood, nationals of Maldives. They claim that the State party has violated their rights under article 19 of the Covenant. The Optional Protocol entered into force for the State party on 19 December 2006. The authors are represented by counsel.

#### Facts as submitted by the authors

2.1 The Human Rights Commission of Maldives was first established by Presidential Decree in 2003. On 18 August 2005, upon ratification of the Human Rights Commission Act, the Commission became the first independent and autonomous statutory body in Maldives.

\* Adopted by the Committee at its 130th session (12 October–6 November 2020).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Ahmed Amin Fathalla, Furuya Shuichi, Christof Heyns, David H. Moore, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja and Andreas Zimmermann.

\*\*\* A joint opinion by Committee members Christof Heyns, José Manuel Santos Pais and Andreas Zimmermann (dissenting) is annexed to the present Views.



In August 2006, amendments to the Human Rights Commission Act expanded the mandate and powers of the Commission and brought it into compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Upon the ratification of the Constitution of Maldives in August 2008, the Commission became an independent and autonomous constitutional body. At the time of the submission of the present communication, the Commission held “B status” with the International Coordination Committee of National Human Rights Institutions (now known as the Global Alliance of National Human Rights Institutions).

2.2 The authors were among the five commissioners of the Human Rights Commission, serving from September 2014 through June 2015, the time period relevant to the events at issue in the present communication. In September 2014, the Commission published and submitted a report to be considered during the second universal periodic review of Maldives by the Human Rights Council. The report, which focused on human rights issues in Maldives, was based both on information gathered by the Commission in its own capacity, and information received from government authorities, members of civil society and other relevant stakeholders. During the three months before the publication of its report, the Commission had conducted a series of meetings to facilitate the constructive dialogue on the implementation of the recommendations from the first universal periodic review cycle.

2.3 In the report, the Commission questioned the independence, transparency, impartiality, competence, consistency and accessibility of the judiciary of Maldives. In particular, the Commission suggested that the Supreme Court controlled the judicial system and had weakened the judicial powers vested in other superior and lower courts, including by issuing a circular in which it had ordered all State institutions not to communicate with individual courts regarding any information related to the judiciary, except through the Supreme Court. In the report, the Commission also criticized the Government of Maldives for stating that the Special Rapporteur on the independence of judges and lawyers had tried to undermine the country’s judicial system in her report on the mission to Maldives. Finally, the Commission noted in its report that it had been facing difficulties in gathering information related to the judiciary owing to a lack of cooperation by the Government. In concluding the report, the Commission requested that the Government implement the recommendations of the International Commission of Jurists and the Special Rapporteur on the independence of judges and lawyers; codify and harmonize Sharia law and common law in accordance with the Constitution; and enact laws to increase the consistency of domestic jurisprudence.

2.4 In September 2014, following the publication of the report, the Supreme Court initiated *suo motu* proceedings against the Human Rights Commission. On 22 September 2014, the commissioners were summoned to appear before the Supreme Court, and an initial hearing took place two days later. The Supreme Court rejected the commissioners’ request that the case first be tried by the High Court, which would have offered them an avenue for appeal. During the hearing, the Supreme Court laid out allegations against the Commission, and afforded the commissioners an opportunity to respond. Specifically, the Court alleged that the Commission had committed the following unlawful acts:

- (a) Committing acts against national security and interests, as per the Constitution;
- (b) Unlawfully representing Maldives;
- (c) Unlawfully conducting political relations with international organizations;
- (d) Unlawfully disseminating information and reports in the name of the State to foreign bodies;
- (e) Violating the supremacy of the Constitution (art. 299) and the principle of rule of law;
- (f) Providing false information about legal procedures;
- (g) Contravening article 189 of the Constitution, which states that the Human Rights Commission of Maldives must be independent and impartial and promote respect for human rights impartially without favour and prejudice;
- (h) Interfering with the judiciary’s work and unduly influencing the judiciary;

- (i) Contravening articles 141 (c) and (d) of the Constitution – which require public officials to respect the independence and dignity of the courts – and international norms;
- (j) Violating the independence granted to the judiciary by international laws;
- (k) Showing bias;
- (l) Undermining the credibility of the Human Rights Commission;
- (m) Being wilfully negligent towards the progress that Maldives has made and continues to make in establishing democracy and upholding the rule of law and human rights;
- (n) Being oblivious to those who commit terrorist acts against the people, State institutions and security forces, and to acts that endanger peace and order and undermine the State's independence and sovereignty, and those who commit such acts;
- (o) Overstepping into the jurisdiction of the executive branch, security forces, judiciary and legislature;
- (p) Acting in ways that overlap with the mandate of other State institutions, thus undermining its own mandate;
- (q) Contravening article 145 (c) of the Constitution, which states that the Supreme Court is to be the final authority on the interpretation of the Constitution, the law or any other matter dealt with by a court of law;
- (r) Contravening articles 20 (a) and (b) of Law No. 22/2010 (the Judicature Act), which states that the Government, the parliament and State institutions must obey and abide by the Supreme Court's ruling;
- (s) Contravening article 141 (b) of the Constitution, which states that the highest authority of the administration of justice is the Supreme Court;
- (t) Contravening the provision of the Constitution that states that the Human Rights Commission of Maldives has no obligations other than those mandated by Sharia law, the Constitution and laws of Maldives, and the international covenants to which Maldives is party.

2.5 During the first hearing before the Court, the commissioners provided evidence to support their position that their intention in submitting the report had not been to undermine the Constitution, nor to compromise the sovereignty of the country with malice toward its institutions. The commissioners clarified that, before submitting the report, they had shared it with the Department of Judicial Administration, which functions in accordance with policies set by the Supreme Court and under the direct supervision of a designated justice. The Department had not suggested any edits to the report, and the commissioners argued that that clearly indicated that the information in the report did not violate any laws. The Supreme Court evaluated that new evidence during a recess and ultimately decided to suspend the hearings for the day.

2.6 On 30 September 2014, the Supreme Court held a second hearing, during which the commissioners again denied the charges. The commissioners stated that their findings concerning the judiciary were based on reports by the Special Rapporteur on the independence of judges and lawyers, the International Commission of Jurists and Transparency International. However, the Court stated that the report of the Special Rapporteur was invalid, and that the report by Transparency International was unfounded and biased. The Court also reprimanded the commissioners for having failed to consult it when preparing the report. In response, the President and the Vice-President of the Commission reiterated that their intent was to raise concerns, not false accusations. They stated that those concerns were based on the report of the Special Rapporteur and the Commission's own experience in dealing with the Supreme Court in two instances. In those instances, the Commission had considered that the Court was usurping powers that it did not have, by ordering courts not to cooperate with the Commission in its investigation and evaluation of human rights concerns. In the first instance, the Supreme Court had hindered an investigation by the Commission into a possible human rights violation by a lower court by ordering the lower court not to cooperate with the Commission. In the second instance, the Supreme Court had implicitly ordered lower courts not to cooperate with the

Commission's court monitoring programme to evaluate the protection of human rights within the judicial process. In both of those cases, the Supreme Court considered that the Commission's actions had exceeded the scope of its mandate, and stated that only the Supreme Court had the authority to monitor the judicial system.

2.7 During the second hearing, five of the seven justices stated that the Commission's report was a deliberate attempt to belittle Maldives at the international level. The Court also criticized the Commission's work more generally and posed questions largely unrelated to the charges presented, in an apparent effort to intimidate the commissioners. For example, although the charges related to the section of the report concerning the judiciary, the Court raised concerns with respect to other sections of the report. It also accused the commissioners of breaching the tenets of Islam in a separate case that the Juvenile Court had brought against the Commission in March 2014.<sup>1</sup>

2.8 On 16 June 2015, the Supreme Court summoned the commissioners again and issued its judgment on the case.<sup>2</sup> The Court observed that on page four of the Commission's report for the universal periodic review, under the subheading "access to justice", the Commission stated that the Supreme Court controlled the courts of Maldives. The Court considered that that description contained 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. The Court found that the Commission had acted unlawfully by failing to rely on credible information, preparing a false report and disseminating that report. The Court further stated that, given that the three branches of the Government of Maldives protected and promoted human rights, the members of the Human Rights Commission had shown bias; undermined the Commission's credibility; been wilfully negligent towards the progress the State had made and continued to make in establishing democracy and upholding the rule of law and human rights; and been oblivious to those who committed terrorist acts against the people, State institutions and security forces, and to acts that endangered peace and order and undermined the State's independence and sovereignty, and those who commit such acts. The Court found that the Commission had deliberately attempted to undermine the independence of the judiciary and the Constitution of Maldives, and that it had encouraged acts that damaged the independence, sovereignty, constitutional system, peace and order of Maldives. The Court ruled that the Commission had therefore violated articles 141, 145 (c) and 299 (a) of the Constitution of Maldives, as well as articles 20 (a) and (b) of Law No. 22/2010 (the Judicature Act).

2.9 In the judgment, the Court ordered the Commission to adhere to an 11-point set of guidelines requiring that the Commission:

- (a) Act within the ambit of the Constitution of Maldives and laws to ensure the full protection of the interests of Maldives and its citizens;
- (b) Ensure that it does not in any manner disrupt the unity and homogeneity of citizens of Maldives;
- (c) Ensure that it does not undermine peace, security, order and age-old norms of behaviour;
- (d) Ensure that it does not overlap with and take over the responsibilities and mandate of other State institutions;
- (e) Ensure such activities are permitted in Maldivian society by the Constitution of Maldives and its laws;
- (f) Ensure such activities are in line with the Maldivian faith, accepted societal norms and good behaviour;

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<sup>1</sup> According to the authors, in that case, the Commission had faced contempt of court charges following its publication of a report that the Juvenile Court alleged contained false information. The report related to an appeal of a flogging sentence handed down by the Juvenile Court against a 15-year-old victim of sexual abuse who had been convicted of fornication.

<sup>2</sup> Supreme Court of Maldives, judgment No. 2014/SC-SM/42, 16 June 2015.

(g) Ensure such activities are based on policies compiled in the light of credible research in line with the Maldivian faith, accepted societal norms, good behaviour, the Constitution of Maldives and its laws, and in a manner that protects national security, peace and unity, and with the full cooperation of other institutions of Maldives;

(h) Follow procedures established by the Government and work with the mediation of the relevant State institution in the event that the Commission has to work with foreign bodies;

(i) Uphold the lawful Government, ensure respect for the rule of law and ensure that such activities increase citizens' obedience to the rule of law;

(j) Ensure that such activities are free from political bias and are not intended to further the interests of a specific party or to defame a specific party;

(k) Ensure that such activities do not encourage political, social and religious extremism, do not facilitate hardship for Maldives and do not tarnish the nation's good reputation.

2.10 Many international observers have questioned the impartiality of the judiciary of Maldives, including Amnesty International,<sup>3</sup> the International Commission of Jurists,<sup>4</sup> the Special Rapporteur on the independence of judges and lawyers<sup>5</sup> and the Office of the United Nations High Commissioner for Human Rights (OHCHR).<sup>6</sup> Several observers have also criticized the lack of freedom of expression in Maldives. For example, in its 2014 report on the human rights situation in Maldives, the United States Department of State noted that there had been several occasions where courts had sought to limit free speech by either questioning or initiating prosecutions against individuals who had criticized the courts, including the prosecution of the Human Rights Commission.<sup>7</sup> Journalists and civil society actors in Maldives have faced threats of similar action when criticizing the Government.<sup>8</sup>

2.11 In General Assembly resolution 70/163 and Human Rights Council resolution 27/18, it was stressed that national human rights institutions and their members and staff should not face reprisals or intimidation as a result of their activities, and have called upon States to promptly and thoroughly investigate cases of alleged reprisals or intimidation against members or staff of national human rights institutions or against individuals who cooperate or seek to cooperate with them.<sup>9</sup>

2.12 The authors maintain that they have exhausted domestic remedies because decisions of the Supreme Court are final, and no effective non-judicial remedies are available. Alternatively, the authors argue that if any further judicial remedies exist, they would not be effective. The authors also state that they have not submitted the matter to another body of international investigation or settlement.

## Complaint

3.1 The authors assert that the State party violated their rights under article 19 of the Covenant when the Supreme Court: prosecuted the Human Rights Commission owing to the content of the Commission's report for the universal periodic review; ruled that the Commission's report was unlawful, biased and undermined judicial independence; and

<sup>3</sup> Amnesty International, "Maldives: ignoring human rights obligations", 10 September 2014, p. 6; and *Amnesty International Annual Report 2015/2016*, p. 243.

<sup>4</sup> 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.

<sup>5</sup> A/HRC/23/43/Add.3, para. 30.

<sup>6</sup> OHCHR, "Maldives Supreme Court is subverting the democratic process – Pillay", 30 October 2013; and OHCHR, "Supreme Court judgement gravely undermines Maldives Human Rights Commission – Zeid", 19 June 2015.

<sup>7</sup> United States Department of State, Bureau of Democracy, Human Rights and Labor, "Maldives 2014 human rights report", p. 8.

<sup>8</sup> Amnesty International, "Maldives: assault on civil and political rights", 23 April 2015, p. 12; and A/HRC/WG.6/22/MDV/2, para. 46.

<sup>9</sup> General Assembly resolution 70/163, para. 11; and Human Rights Council resolution 27/18, paras. 9 and 11.

required the Commission to follow guidelines limiting the Commission's ability to work and share information freely with the United Nations. The Court's charges and guidelines constitute restrictions on the authors' protected communication with the United Nations,<sup>10</sup> and represent reprisals against the Commission for its legitimate cooperation with the United Nations human rights system. Those restrictions are not permissible under article 19 (3) of the Covenant. The Committee itself has recognized that communicating freely with it is a form of expression for which defenders must be protected from reprisals.<sup>11</sup>

3.2 Neither the charges nor the guidelines issued by the Supreme Court were necessary measures in pursuit of a legitimate aim. Moreover, neither the charges nor the guidelines were provided for by law within the meaning of article 19 of the Covenant, taking into account the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression. Many of the individual charges, and the charges taken as a whole, were:

- (a) Unduly vague and overbroad – e.g., charges of undermining sovereignty of the State, and showing bias;
- (b) Lacking in clear legal basis or detail – e.g., charges of unlawfully representing Maldives;
- (c) Derived from traditional, religious or customary law – e.g., charges of contravening the provision of the Constitution that states that the Commission has no obligations other than those mandated by Sharia law;
- (d) Incompatible with the provisions, aims and objectives of the Covenant: e.g., charges of unlawfully conducting political relations with international organizations.

3.3 As demonstrated by the Committee's jurisprudence in *Singer v. Canada*, the actions of the Supreme Court violated not only the rights of the Commission but also the authors' own rights as individuals.<sup>12</sup> The right to freedom of expression is by its nature inalienably linked to the person. The authors have the right to impart information to international bodies and, as a result, have been directly and personally affected by the guidelines and charges issued by the Supreme Court.

#### **State party's observations on the merits**

4.1 In its observations dated 4 April 2019, the State party acknowledges the operational adversities faced by the Human Rights Commission of Maldives as a result of the *suo motu* proceedings before the Supreme Court. The State party will take into consideration the effects of the judgment of the Supreme Court. The State party has entered into a new era of democratic rule. The new administration has pledged to reform all State institutions in order to ensure the protection of human rights, reinstate respect for the State's international obligations, and promote the operation of State institutions within their designated ambit of authority. Policies concerning such reforms are being discussed and debated among stakeholders, although the administration led by President Ibrahim Mohamed Solih is still in its very early stages. Nevertheless, work has been done to meet the Government's key pledge of reforming the necessary laws relating to independent commissions so as to enable free and objective execution of their respective functions. In that regard, a bill proposing amendments to Law No. 6/2006 (the Human Rights Commission Act) has been formulated for submission to the parliament. Once enacted, the draft bill will grant the Commission the unfettered authority to:

- (a) Seek assistance from relevant international partners, including bilateral and regional partners and international organizations, in protecting and promoting human rights;
- (b) Submit reports to international organizations, committees, bodies, working groups and other organs, in the Commission's capacity as a national human rights institution,

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<sup>10</sup> CCPR/C/LKA/CO/5, para. 21.

<sup>11</sup> Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression.

<sup>12</sup> *Singer v. Canada* (CCPR/C/51/D/455/1991).

in relation to the obligations imposed on the State by human rights treaties and conventions to which it is a party.

4.2 The *suo motu* judgment of the Supreme Court is, by its nature, a judicial act. Given the complete separation of powers between the executive, judiciary and legislative branches, as envisaged in the Constitution of 2008, the Government cannot override decisions of the Supreme Court. However, such decisions may be remedied through an amendment to the respective legislation, the enactment of which is within the purview of the legislature. Once enacted, the above-mentioned draft bill, proposed by the Government through its 100-day action plan, will serve as a solution to the concerns raised in the present communication.

4.3 The State party affirms its commitment to respecting and upholding convention obligations, especially those relating to fundamental rights and protections, and assures the Committee that work will be done to ensure that the civil rights of those within the State party's jurisdiction are protected at all times.

#### **Authors' comments on the State party's observations on the merits**

5. In their comments dated 4 June 2019, the authors acknowledge and welcome the State party's proposed legislative amendments. However, while those amendments may prevent future violations, they do not provide an effective remedy for past violations. The authors reiterate their claims and, as remedies, request that the Committee:

- (a) Declare a violation of the authors' rights under article 19 of the Covenant;
- (b) Declare that the violations of the authors' right to freedom of expression do not fall under any stipulated restrictions in article 19 (3) of the Covenant, and were not provided for by law;
- (c) Declare that neither the charges nor the guidelines were formulated with sufficient precision to enable an individual to ascertain what is properly restricted and to regulate that individual's conduct accordingly, and conferred unfettered discretion on the Supreme Court;
- (d) Declare that the charges and the guidelines were per se violations of article 19 of the Covenant because they did not pursue a legitimate aim;
- (e) Declare that neither the charges nor the guidelines were necessary in the pursuit of any legitimate aim;
- (f) Declare that the charges and the guidelines constituted reprisals against the authors for communicating with the United Nations, in an expression protected under article 19 of the Covenant;
- (g) Call on the State party to support the proposed bill, and also call on the legislature to pass it.

#### **State party's further observations**

6.1 In its further submission dated 12 September 2019, the State party informed the Committee that it did not wish to submit further observations on the merits of the communication, and provided an update concerning the above-mentioned proposed amendments to Law No. 6/2006 (the Human Rights Commission Act). The initial reading and debate stage of the examination of the bill has been completed. The bill will undergo a final review before it is submitted to the parliament for a vote. The amendments to the bill are sponsored by one of the authors of the present communication, Ms. Mahmood. The amendments feature provisions intended to ensure the integrity of the members of the Human Rights Commission, including a code of conduct and a requirement that the members declare their financial assets. The bill also proposes that broader powers be granted to the Commission, including through the establishment of a compensation mechanism. During the debate on the bill, the importance of aligning the proposed amendments with the guidelines set forth in the Paris Principles was discussed.

6.2 Under section 26 of the draft bill, the Human Rights Commission would have the power to liaise and freely communicate with international human rights organizations, in

conformity with the international conventions to which the State is a party. This will offer a solution to the restrictions imposed on the Commission through the 11-point set of guidelines issued by the Supreme Court.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 Noting that the State party has not contested the admissibility of the communication, or the authors' specific argument that they exhausted all available domestic remedies, the Committee also observes that the contested decision was issued by the Supreme Court, from which there is no appeal. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

7.4 The Committee notes that the allegations and findings by the Supreme Court were directed to the Human Rights Commission of Maldives as an entity. The Committee recalls that individuals may only claim to be victims within the meaning of article 1 of the Optional Protocol if their rights under the Covenant are actually affected by an act or omission attributable to a State party, although it is a matter of degree as to how concretely this requirement should be taken.<sup>13</sup> The Committee also recalls its jurisprudence in which it stated that the right to freedom of expression is by its nature inextricably linked to the person.<sup>14</sup> The Committee observes that the authors were members of the Commission during the relevant time, and that the judgment of the Supreme Court stated that the members of the Commission had shown bias and undermined the credibility of the Commission. The authors, as commissioners, were personally summoned to the Supreme Court, where they faced questions concerning the contents of the report and the Commission's activities. The Committee also notes that the harsh allegations, findings and guidelines restricted the ability of the Commission, including its members, to seek, receive and impart information and ideas, and may have created a chilling effect that would limit the ability of the commissioners to express their professional opinions while carrying out their official functions. The Committee recalls that in the circumstances of public debate concerning public institutions, the value placed by the Covenant on uninhibited expression is particularly high.<sup>15</sup> The Committee further observes that the authors, in their capacity as members of a national human rights institution, were channelling expressions from and to other members of society, and were seeking to impart to those individuals information on issues of public interest, including the functioning of public institutions. Accordingly, the Committee considers that in addition to the Commission, the authors were actually affected, personally and directly, by the allegations, findings and guidelines pronounced by the Supreme Court. The Committee therefore considers that it is not precluded by article 1 of the Optional Protocol from examining the present communication.

7.5 The Committee considers that there are no further obstacles to the admissibility of the communication, and therefore proceeds to examine it on the merits.

#### *Consideration of the merits*

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

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<sup>13</sup> See, inter alia, *Aumeeruddy-Cziffra v. Mauritius*, communication No. 35/1978, para. 9.2.

<sup>14</sup> *Singer v. Canada* (CCPR/C/51/D/455/1991), para. 11.2.

<sup>15</sup> Human Rights Committee, general comment No. 34, para. 38; *Bodrožić v. Serbia and Montenegro* (CCPR/C/85/D/1180/2003), para. 7.2.

8.2 The issue for the Committee to decide is whether the allegations of unlawful acts and guidelines pronounced against the Human Rights Commission by the Supreme Court fell within the scope of article 19 (3) of the Covenant, which allows certain restrictions on the right to freedom of expression, only as provided for by law, and only as necessary for the respect of the rights and reputation of others and for the protection of national security or public order (*ordre public*) or public health or morals.<sup>16</sup> In this regard, the Committee refers to its general comment No. 34, in which it stated that the freedoms of opinion and expression are indispensable conditions for the full development of the person, are essential for any society, and are the foundation stone for every free and democratic society.<sup>17</sup> Any restriction on the exercise of those freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.<sup>18</sup> The Committee also recalls its jurisprudence indicating that it is for the State party to demonstrate that the restrictions on the authors' rights under article 19 of the Covenant were necessary and proportionate.<sup>19</sup>

8.3 The Committee notes that the Supreme Court alleged that the Human Rights Commission had committed 20 unlawful acts by stating in its 2014 report for the universal periodic review that the judiciary of Maldives was controlled by the Supreme Court. The allegations against the Commission included committing acts against national security and interests, and unlawfully disseminating information and reports in the name of the State to foreign bodies. The Supreme Court found that the Commission had violated three articles of the Constitution and a provision of the Judicature Act, which together enshrine the supremacy of the Supreme Court and the Constitution within the Government. The Supreme Court also required the Commission to abide by 11 guidelines, according to which it must, inter alia, refrain from undermining peace, security, order and age-old norms of behaviour.

8.4 The Committee observes that while the State party provided welcome information concerning proposed legislation, it did not explain how the actions of the Supreme Court, which sanctioned the Commission for its criticism of the judiciary and impaired the ability of the Commission and its members to exchange information with relevant stakeholders, were provided by law, necessary and proportionate to any legitimate aim under article 19 (3) of the Covenant. The Committee therefore looks to the reasoning of the Supreme Court, which considered that the impugned statement by the Commission was false and baseless and therefore violated various provisions of the Constitution and domestic law. The Court considered that the Commission had not cited any official sources to substantiate the impugned statement. In contrast, the Committee takes note of the authors' assertion that the impugned statement was based on the Commission's past encounters with the Supreme Court, on a circular issued by the Court and addressed to lower courts, and on a report by the Special Rapporteur on the independence of judges and lawyers. The Committee notes that it is not within its purview, in the context of the present Views, to assess the veracity of the Commission's statement regarding the control of the judiciary by the Supreme Court.

8.5 The Committee observes that even if it were assumed that the allegations, findings and guidelines pronounced by the Court against the Commission were grounded in law and pursued a legitimate aim, the State party would be required to demonstrate that a trial-like process directed against the Human Rights Commission, involving 20 alleged violations of domestic law and resulting in an 11-point set of guidelines to control its future operations, were necessary to achieve such an aim. In its analysis of the necessity of the speech-restricting measures taken, the Committee acknowledges that civil servants may be expected to exhibit restraint in exercising their freedom of expression in cases where the authority and the impartiality of the bodies they serve are likely to be called in question. However, it considers that the unique mandate of a national human rights institution, which seeks to conform with the Paris Principles, affords the officials of that institution greater freedom to

<sup>16</sup> *Severinets v. Belarus* (CCPR/C/123/D/2230/2012), para. 8.4.

<sup>17</sup> Human Rights Committee, general comment No. 34, para. 2.

<sup>18</sup> *Ibid.*, para. 22.

<sup>19</sup> See, inter alia, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3.

express criticism of public bodies, with a view to improving the human rights situation in the country.

8.6 The requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect.<sup>20</sup> In evaluating the proportionality of the alleged unlawful acts and guidelines issued by the Supreme Court, the Committee recalls that an essential element of free and democratic societies is that their citizens be allowed to criticize or openly and publicly evaluate the various branches of their governments without fear of interference or punishment, within the limits set by article 19 (3) of the Covenant.<sup>21</sup> Article 19 (3) of the Covenant may never be invoked as a justification for the muzzling of any advocacy of democratic tenets and human rights.<sup>22</sup>

8.7 In this regard, in accordance with article 19 (3) of the Covenant, the Committee has regard to the particular situation of the Commission as a national human rights institution and to the duties and responsibilities that are incumbent upon it by reason of that situation, including with regard to protecting freedom of expression. The Committee observes that independent national human rights institutions, in order to fulfill their duty to promote and protect human rights, must have the freedom to responsibly comment in good faith on the compliance of Governments with human rights principles and obligations. The Committee further notes the context and forum in which the criticism was made – i.e., in a written report submitted for the universal periodic review, the goal of which is to improve the human rights situation in every country through a constructive process that includes the submission of reports by States, national human rights institutions, civil society organizations and other relevant stakeholders.<sup>23</sup>

8.8 The Committee considers that by claiming that the Commission had committed unlawful acts, including acting in ways that overlap with the mandate of other State institutions and thus undermining its own mandate, and by requiring the Commission to ensure that its work does not tarnish the State party's good reputation, and does not in any manner disrupt the unity and homogeneity of citizens of Maldives, the Supreme Court's guidelines may be construed as effectively preventing the Commission from raising concerns regarding any public or private figure, body, institution or organization within the State party's territory. The Committee thus observes that the Court's allegations, findings and guidelines affected the ability of the Commission to freely express itself on matters of public importance, including the functioning of the Government and respect for human rights in the State party's territory.

8.9 Thus, taking into account the nature of the impugned statement, the functions of the Commission, the constructive context in which the impugned statement was made, the serious nature of the *suo motu* proceedings brought against the Commission, the large number and breadth of the alleged unlawful acts and guidelines, and their inhibitive effect on future expressions by the Commission, the Committee considers that the allegations, findings and guidelines constituted disproportionate limitations on the authors' freedom of expression, as they did not represent the least-intrusive instrument among those which might achieve their function of protecting peace and security.<sup>24</sup> Accordingly, the Committee considers that the allegations and findings of unlawful acts and guidelines issued by the Court were not necessary to achieve a legitimate aim within the meaning of article 19 (3) of the Covenant.

8.10 Accordingly, the Committee concludes that the allegations, findings of unlawful acts and guidelines issued by the Supreme Court against the Human Rights Commission of Maldives amounted to a violation of the authors' rights under article 19 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of article 19 of the Covenant.

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<sup>20</sup> *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.8.

<sup>21</sup> *Aduayom et al. v. Togo*, communication Nos. 422/1990, 423/1990 and 424/1990, para. 7.4.

<sup>22</sup> Human Rights Committee, general comment No. 34, para. 23. See also *Cacho Ribeiro v. Mexico* (CCPR/C/123/D/2767/2016), para. 10.7.

<sup>23</sup> See Human Rights Council resolution 5/1 and decision 17/119.

<sup>24</sup> Human Rights Committee, general comment No. 34, para. 34.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. The Committee is of the view that in the present case, its Views on the merits of the claim constitute sufficient remedy for the violation found. The State party is under an obligation to take all necessary steps to prevent the occurrence of similar violations in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.

## Annex

### **Joint opinion of Committee members Christof Heyns, José Manuel Santos Pais and Andreas Zimmermann (dissenting)**

1. We regret not being able to agree with the finding of the majority of the Committee that there was a violation of the authors' rights under article 19 of the International Covenant on Civil and Political Rights in the present case. While there can be no doubt that the Supreme Court acted in a manner that can raise justified criticism, by having resorted to the institution of *suo motu* proceedings against the Human Rights Commission of Maldives and issuing a formal judgment on circumstances relating to the right of expression and of criticism of the Supreme Court itself, the facts before the Committee do not show that the authors have experienced personal detriment as a result. In our view, they are therefore not to be regarded as "victims", as required by article 1 of the Optional Protocol for a complaint to be admissible. Alternatively, if the case were to be admitted, the authors did not show that their right of freedom of expression had been infringed.

2. It is undisputed that juridical persons do not have legal standing to submit complaints to the Committee with regards to the rights protected in the Covenant. The Optional Protocol poses a victim requirement when authors lodge individual complaints to the Committee (arts. 1 and 2). Before considering the merits of a claim of a violation, the Committee must thus be satisfied that the alleged violation has led to detrimental personal consequences for the authors individually.<sup>1</sup>

3. The Human Rights Commission of Maldives is a juridical person and, as a result, it lacks the standing to bring a case to the Committee. Even if the case is brought formally in the name of the individual commissioners, the Committee must seek to "pierce the veil" and see whether the real victim was indeed the Commission. If that is the case, the complaint should not have been considered admissible as regards the authors themselves.<sup>2</sup>

4. A further question to consider then is whether the authors have experienced personal detriment to the point that they can be considered victims. Although it can readily be assumed that the authors would – justifiably – have felt highly frustrated and indeed restrained in their professional capacities by the actions of the Supreme Court, the facts before us do not present evidence that they have been personally affected by the Court's decision.

5. It must first be emphasized that the *suo motu* proceedings instituted by the Supreme Court are not to be considered a criminal case, and no penal sanctions were attached to it. Moreover, while the Court had issued an "order", there is no evidence provided of any possible consequences, either for the Commission or for the authors, that could be attached to its non-compliance – for instance, an action for contempt of court.

6. The authors had drafted the report and submitted it to be considered during the second universal periodic review of Maldives by the Human Rights Council, and this was done not in their personal but rather in their official capacities. They were also summoned to appear in the Supreme Court in their capacities as officials of the Human Rights Commission of Maldives. The Court's order and guidelines applied directly to the Commission, not to the authors personally. It further appears that the Commission and the commissioners continued with their work unabated after the ruling by the court. At the very least, they have not provided the Committee with any example of reprisal or intimidation following the Court's judgment. The evidence before the Committee therefore does not point to any impediment being imposed by the Court on the authors expressing in their personal capacities exactly what they wanted to say as individual members of the Commission.

7. It may, however, be asked whether the authors' ability to express themselves personally was indirectly affected to the extent that they could be considered to be victims. This could conceivably happen when their work as commissioners is so closely intertwined

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<sup>1</sup> *Andersen v. Denmark* (CCPR/C/99/D/1868/2009), paras. 6.4–6.5.

<sup>2</sup> *S.M. v. Barbados*, communication No. 502/1992, para. 3.

with their personal expression that the restrictions on the Human Rights Commission would have had a sufficiently far-reaching impact on their personal expression to establish victimhood. Again, it is hard to find evidence, at least presented by the authors, that this is what happened in the present case to substantiate such a claim.

8. No claim is made, for example, that the Commission faced the risk of having its budget cut or that it would be stopped from further engaging with international bodies, or that other similar steps were taken with significant consequences for the authors, even assuming such steps would have then interfered with the individual rights of the authors. As for the guidelines issued by the court, problematic as they are, it ought to be noted that they are couched in general terms, such as that the Commission must follow the Constitution and the laws of Maldives; base its findings on the facts; be unbiased; and uphold the rule of law (para. 2.9). While this would clearly constitute unwarranted interference with the work of any national human rights institution, and it would raise alarm bells – for example, under the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) – it does not mean that the authors themselves, in their personal capacity, were thereby rendered victims, as the term is used in the Optional Protocol.<sup>3</sup>

9. Even if the case were to be deemed admissible, the same issues outlined above would affect the question of whether there was an infringement of the rights of the authors. Clearly, the members of the Commission have the right to freedom of expression, but to find a violation under the Covenant, the Committee must be satisfied that that right was unduly limited. For the same reasons as those outlined above, we do not believe that the authors' right to freedom of expression was indeed infringed, and as a result, the question of whether the limitations were justifiable does not arise.

10. As a result, we believe that the case should not have been admitted, and that if it were admitted, that there was no violation of the authors' rights under article 19 of the Covenant.

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<sup>3</sup> The authors (para. 3.3) and the majority (footnote 15) cite the Committee's views in *Singer v. Canada* (CCPR/C/51/D 455/1991) in support of their position that the case must be admitted. However, the facts in *Singer v. Canada* differ in material respects from those in the present case. *Singer* concerned a prohibition on the author to use his language to advertise his business, as the owner of the business and in his own capacity, with clear financial and personal consequences. His personal and professional position was thus inextricably intertwined.