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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-seventh session, 21-25 November 2016

Opinion No. 59/2016 concerning Mohamed Nazim (Maldives)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/30/69), on 21 June 2016 the Working Group transmitted a communication to the Government of Maldives concerning Mohamed Nazim. The Government replied to the communication on 20 September 2016. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

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(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Mohamed Nazim is the former Minister for Defence and National Security of Maldives and a well-known political figure in the country. He first became the Minister for Defence on 8 February 2012 under the presidency of Mohammed Waheed Hassan. He was reappointed to the position on 17 November 2013 by President Abdulla Yameen Abdul Gayoom.

5. According to the information received, on 18 January 2015 in Male', at around 3.30 a.m., a number of masked police officers entered the apartment belonging to Mr. Nazim's wife. The source indicates that the officers went to the bedroom, forced Mr. Nazim to kneel down at gunpoint and later took him and his spouse to the sitting room, ordering them to stay there. The officers then brought their son and daughter to the sitting room and stayed with the family so that they would not leave the sitting room. The rest of the police contingent stayed in the bedroom for around 10 minutes. Mr. Nazim and his family could hear activity in the bedroom but could not see what the officers were doing there as they were not allowed to move.

6. The source indicates that after a while, some masked officers left and more officers in plain clothes together with some forensic officers entered the apartment without identifying themselves. However, Mr. Nazim agreed to let them carry out a search after they showed him a relevant warrant. Allegedly, officers went directly to a drawer in a side table at the far end of the bedroom, opened it and took out a black bag. They asked if the bag belonged to Mr. Nazim. He said that it did not and called his wife to ask her whether it was hers, and she denied it too. The officers then opened the bag and took out a pistol, three bullets and a magazine. More than a week later, the police publicly announced that they had found two other items, an explosive device and a pen drive, in the same bag. The State prosecution later asserted that the police had informed it that the pen drive contained documents outlining plans to physically harm "senior honourable State officials".

7. Mr. Nazim has consistently stated that those items were planted in the apartment by the police with the connivance of the authorities. It is alleged that the circumstances surrounding the police action appear to give weight to his allegation. The search warrant issued by the Court was meant to search the entire building, but only Mr. Nazim's wife's apartment was actually searched. Furthermore, the allegedly incriminating items were found by the police without following the proper procedures as required under the regulations of the Maldives Police, such as video recording the search and providing the list of items being taken away from the premises.

8. Mr. Nazim was accused of "bringing weapons into Maldives and possessing weapons" under Act No. 4/75 on Prohibited Imports. His legal counsel argues that the 1975 law is outdated and that the prosecution should instead have used Act No. 17/2010 Prohibiting Threatening Behaviour and Possession of Dangerous Weapons and Sharp Objects, which places a higher burden of proof on the police for bringing charges.

9. Mr. Nazim was initially charged under section 13 (a) of Act No. 4/75 on Prohibited Imports, read in reference to section 2 (a). However, judges also made reference to other sections of the Act under which Mr. Nazim had not been charged. After the charges were

presented, the trial court gave the defence team three days to prepare. Following a request from Mr. Nazim's defence for more time to prepare, the Court granted two additional days. The source claims that the time given to the defence team was not sufficient, given the serious nature of the charges.

10. The source indicates that some of the documents provided to the court by the prosecution and used as evidence at the trial were withheld from the defence. The court and the prosecution did not reveal to the defence team the exact number of documents that had been submitted to the court. Those given to the defence team were numbered from 27 to 51, suggesting that at least 26 documents may have been withheld. In response to a query from the defence about the missing documents, the court authorities said the other documents were "secret" and would not be disclosed to the defence.

11. The source claims that during the trial, the prosecution did not prove beyond reasonable doubt that the weapon had belonged to Mr. Nazim. In particular, the fingerprint evidence report compiled by the Maldives Police Service, dated 20 January 2015, was allegedly not submitted to the court by the prosecution. Furthermore, the report was not given sufficient weight by the judges when it was presented to the court by the defence. Purportedly, the report is significant because it rules out the possibility that the fingerprints found on the items inside the black bag retrieved from Mr. Nazim's house belonged to Mr. Nazim or any of his family members. Furthermore, the burden of proof was put on Mr. Nazim to demonstrate that the items did not belong to him, contravening the right to the presumption of innocence.

12. In addition, it is submitted that the right of the defence to present witnesses was severely curtailed by the court. From a list of 50 witnesses submitted by Mr. Nazim's defence, the court allowed testimony from only 3. The right of the defence to cross-examine witnesses presented by the prosecution was also limited; of the six prosecution witnesses, three testified anonymously and restrictions were imposed during cross-examination.

13. On 26 March 2015, Mr. Nazim was sentenced to 11 years in prison. He was initially placed in Asseyri Jail in Himmafushi, subsequently transferred to Maafushi Jail and finally transferred back to Asseyri Jail. According to his family, Mr. Nazim is being held in solitary confinement, under 24-hour surveillance, and the door to his cell has been blocked so that he cannot see outside or interact with anyone except the guards.

14. The source claims that the authorities have hindered Mr. Nazim's right to appeal. The appeal deadline had been set at 2 p.m. on 12 April 2015, but the defence lawyers did not receive the documents they needed from the trial court to mount their appeal by that time. In order not to miss the deadline, they had to mount their appeal based on their own recollection of the judgment when it had been read out in court.

15. The High Court had initially scheduled Mr. Nazim's appeal for 22 June 2015. However, the composition of the appeal bench was revised one day before that date, by the Supreme Court under the amendments made to the Maldives Judicature Act in December 2014. Two out of the five judges hearing the appeal were transferred to the Southern Branch of the High Court. No information was given to Mr. Nazim or his lawyers about the status of his appeal. In mid-August 2015, Mr. Nazim's lawyers petitioned the Supreme Court for an order to expedite Mr. Nazim's High Court appeal, which was not granted. Furthermore, on 29 October 2015, the judge presiding over Mr. Nazim's case was also transferred to the Southern Branch of the High Court.

16. The source claims that those transfers have brought a considerable degree of confusion about the status of the appeal. Allegedly, the authorities did not explain to the defence team what would happen next. As a result, Mr. Nazim's appeal was left unaddressed for five months until 3 December 2015, when the first hearing finally took

place. On 31 December 2015, the High Court allowed six defence witnesses to be presented at court, which increased the number of defence witnesses allowed to testify from three to nine. Closing statements were heard on 5 January 2016. The source indicates that on 15 March 2016, the High Court upheld Mr. Nazim's conviction, despite serious concerns about the lack of a fair trial and the questions around the evidence against Mr. Nazim. Mr. Nazim's legal counsel has raised several concerns about the irregularities in the decision of the High Court upholding his conviction. They include the denial of Mr. Nazim's rights to question some of the witnesses against him and continued inconsistencies in some witness testimonies.

17. On 19 May 2016, Mr. Nazim's lawyers submitted an appeal to the Supreme Court, which was rejected on 26 June 2016.

18. The source indicates that there are serious concerns about Mr. Nazim's deteriorating health in detention. His eyesight is getting worse, he has heart problems and suffers from varicose veins. His family has repeatedly appealed to the authorities to allow him to be seen by a specialist. After many appeals, he was seen by a specialist who recommended medical treatment abroad because the requisite facilities were not available in Maldives. He was told that he had to seek the agreement of the trial court. Mr. Nazim duly petitioned the court but the judges rejected his petition. In the meantime, his health deteriorated even further. His family was then compelled to seek authorization directly from the Government for Mr. Nazim's medical treatment abroad.

19. On 10 April 2015, the authorities agreed to allow Mr. Nazim to travel to Singapore for treatment for a period of 45 days. After his return, he was taken back to prison. He continued to suffer from ill-health and, when he was taken to hospital, he was prescribed and given medication unknown to him with no explanation. Mr. Nazim's family was not informed about those hospital visits, making it difficult for them to know about the diagnosis of his illness and the medication he was taking, including the doctor's recommendations and prescriptions. In August 2015, his family received news that the doctors had warned Mr. Nazim that he might lose his eyesight if he did not receive further treatment abroad.

20. On 15 September 2015, the Government granted permission for Mr. Nazim to travel to Singapore again for a period of seven days in order to receive more extensive urgent treatment, although his family had requested that he be sent to either India or Malaysia, reasoning that the treatment offered in Singapore is very expensive. On 24 March 2016, Mr. Nazim was granted an additional three weeks of medical leave to travel to Singapore for treatment. The doctors had advised that he have surgery for his varicose veins and a recovery period for three weeks after the surgery. He had also been prescribed doctor-supervised physiotherapy for a month for his back pain. In the light of those recommendations, Mr. Nazim applied to extend his medical leave for two weeks. That application was rejected by the Government, which ordered him to return to Maldives immediately. The family will reapply for an extension of medical leave.

21. The source claims that Mr. Nazim's arrest and imprisonment are politically motivated and stem from his political opposition to the Government. It cites several other prominent political figures who are currently held in detention or have fled the country. It therefore submits that Mr. Nazim's detention constitutes arbitrary detention according to category III. His detention violates his right to a fair trial as provided in articles 10 and 11 of the Universal Declaration of Human Rights and article 14 of the Covenant, particularly: (a) the right to the presumption of innocence (art. 11 (1) of the Universal Declaration of Human Rights, art. 14 (2) of the Covenant); (b) the right to a fair and public hearing (art. 10 of the Universal Declaration of Human Rights, art. 14 (1) of the Covenant); (c) the right to adequate time and facilities to prepare a defence (art. 11 (1) of the Universal Declaration of Human Rights, art. 14 (3) (b) of the Covenant); (d) the right to examine prosecution

witnesses and call and examine witnesses for the defence (art. 11 (1) of the Universal Declaration of Human Rights, art. 14 (3) (e) of the Covenant); and (e) the right to appeal (art. 14 (5) of the Covenant).

22. More specifically, the source lists a number of violations, namely:

(a) The Government violated several procedural requirements from the very beginning of the search at Mr. Nazim's house by failing to video record the search and to provide a list of items being taken away from the premises;

(b) The trial court granted Mr. Nazim's defence team a total of only five days to prepare their defence;

(c) The right of the defence to present and cross-examine witnesses was severely limited;

(d) The defence team was allowed to present only a limited amount of supporting evidence to the trial court;

(e) The trial court did not disclose to the defence team some 26 of the documents the prosecution had placed before it as evidence. It was stated that those documents would not be disclosed to the defence because of their secret nature;

(f) The burden of proof was put on Mr. Nazim to demonstrate that the items that were removed from the bag did not belong to him, contravening the right to the presumption of innocence;

(g) The prosecution did not prove beyond reasonable doubt that the weapons found belonged to Mr. Nazim.

23. The source claims that the authorities' lack of sufficient attention to Mr. Nazim's physical health violates article 25 (1) of the Universal Declaration of Human Rights, article 10 of the Covenant and article 19 (b) of the Anti-Torture Act of Maldives, which stipulates that the authorities must facilitate medical assistance within 24 hours of any such request by an inmate or a detainee.

Response from the Government

24. On 21 June 2016, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure, requesting the Government to provide detailed information by 20 August 2016 about Mr. Nazim's current situation and any comment on the source's allegations. The Working Group also requested the Government to clarify the factual and legal grounds justifying Mr. Nazim's continued detention and to provide details regarding the conformity of his deprivation of liberty and apparent lack of fair judicial proceedings with domestic legislation and international human rights norms, including those that constitute legal obligations for Maldives under the human rights treaties that it has ratified.

25. On 16 August 2016, the Government sought an extension of the deadline to submit its response to 6 October 2016. On 1 September 2016, the Working Group granted an extension to 20 September 2016, in accordance with paragraph 16 of its methods of work.

26. In its response dated 20 September 2016, the Government provided the Working Group with the information below.

27. The position of the Government in relation to the petition regarding Mr. Nazim is that he has not been the victim of a politicized process, but has been properly charged and has faced trial for a serious offence that constitutes an abuse of the high political office with which he was entrusted. The allegations contained in the petition are either factually incorrect or are a mischaracterization of the position; his detention is justified and is in

accordance with domestic and international law, following his lawful conviction for serious criminal offences. It cannot therefore be considered arbitrary.

28. The Government states that none of the criticisms that have been levelled against the trial process were sufficiently serious, either individually or cumulatively, to render the entirety of the proceedings a flagrant denial of justice, which would make Mr. Nazim's detention arbitrary. The alleged irregularities were considered and dismissed by the Criminal Court in the first instance, the High Court in the second instance and the Supreme Court in the third instance. The burden of proof rests with the source to demonstrate a complete nullification of Mr. Nazim's rights protected under national and international law or a flagrant denial of justice in his trial and conviction.

29. In relation to the submission by the source, the Government notes that Mr. Nazim's detention was in accordance with domestic law and therefore it should be measured only against relevant international standards. The case against Mr. Nazim is specifically related to allegations of the individual criminal act of unlawful possession of a firearm, ammunition and an explosive device, for which he was convicted under section 13 (a) of Act No. 4/75 on Prohibited Imports, read in conjunction with section 2 (a). It is not related to the exercise of his human rights to freedom of opinion and expression or to discrimination on the basis of his political opinion or membership of any particular group.

30. As regards the accusation that his detention is arbitrary under category III, the Government reminds the Working Group that it has no power to assess the value of any evidence adduced in any trial or to substitute itself for a domestic appellate tribunal, and should not, as the source suggests, enter into any evaluation of the strength of the evidence against Mr. Nazim.¹

31. The Government argues that it is also beyond the mandate of the Working Group to consider the conditions in which Mr. Nazim is detained.² However, in relation to Mr. Nazim's alleged solitary confinement, the Government notes that incommunicado detention is permitted in exceptional circumstances for "a matter of days".³ The Government states that it has submitted a schedule of visits that shows that adequate visitation was subsequently permitted.

32. As for the alleged absence of medical treatment amounting to cruel, inhuman or degrading treatment, the Government recalls that Mr. Nazim has been permitted to travel to Singapore on two separate occasions for medical treatment and has been afforded a total of 16 domestic medical visits, including appointments with several specialists regarding the issues raised in his petition. In addition, he is currently under house arrest.⁴

33. The Government refers to the "double threshold" that must be met in order for a detention to be considered arbitrary under category III, namely: (a) that there has been a

¹ The Government cites the Working Group's fact sheet No. 26, which indicates that it is not for the Group to evaluate the facts and evidence in a particular case or to substitute itself for domestic appellate tribunals, and opinions No. 12/2007 and No. 40/2005.

² The Government cites fact sheet No. 26, which indicates that it is not for the Group to examine complaints about instances of detention and subsequent disappearance of individuals, about alleged torture, or about inhuman conditions of detention, and opinions No. 41/1996, No. 7/2007, No. 28/2007 and No. 12/2007.

³ See the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principles 15, 16 (4) and 18 (3).

⁴ Information contained in the submission from the Government of Maldives to the Working Group. The Government also states, however, that Mr. Nazim's house arrest as of 21 April 2016 was a result of the fact that the prison was being renovated.

violation of due process; and (b) either that the gravity of the violation warrants nullification or that it constitutes a “flagrant denial of justice”.

34. In relation to the allegation that the items seized during the police search of Mr. Nazim’s wife’s apartment on 18 January 2015 and used in evidence were planted, the Government states that the confinement of Mr. Nazim and his family during the search is “common and good practice” to prevent disposal of evidence or interference with the search that is “comparable to any number of other jurisdictions, including that of the United Kingdom of Great Britain and Northern Ireland and other European States”. The Government claims that the initial deployment of masked and armed police before the arrival of plain-clothed officers betrays no foul intent as it was necessary to secure the property for the safety of civilians and law enforcement officials in a case involving possession of firearms in a residential building. The Government submits that the police report showed that none of the items revealed any fingerprints or DNA profiles that matched those of anyone who took part in the search. Concerning the alleged violations of the regulations of the Maldives Police, the Government acknowledges the failure to provide a list of seized items, which it says will be addressed internally, but informs the Working Group that there is no requirement in the regulations or in case law for the search to be video recorded.⁵

35. The Government submits that Mr. Nazim’s legal team had enough time to prepare the defence since the offence itself is very straightforward and the majority of the investigation that they would have sought to undertake had in effect been done for them by the police. In the view of the Government, there is no specific time limit that could be considered “adequate” for criminal cases, as it generally depends on the particular characteristics of the case, including its complexity. The Government submits that, since the Court granted a two-day extension to the initial three-day preparation time, since Mr. Nazim’s legal team knew of the content of the investigation and since the case was not complex in nature, Mr. Nazim had adequate time to prepare the defence. It also contends that Mr. Nazim failed to explain how the alleged insufficient time negatively affected his right to a defence.

36. The Government states that the right to present and cross-examine witnesses is subject to limitations that seek to balance it with the need to reach a judgment without undue delay and to conduct efficient and reasonable judicial process. In the view of the Government, the court has inherent discretion to hear evidence that is relevant to the proceedings, and the Criminal Court’s admission of 3 of 50 witnesses requested by Mr. Nazim and 11 additional witnesses on appeal to the High Court, outnumbering the 4 witnesses produced by the prosecution, was not arbitrary but adequate and proportional. The Government adds that Mr. Nazim called four more witnesses who were noted as prosecution witnesses by the trial court as their attendance was also sought by the prosecution. As to the court’s restriction on cross-examination of prosecution witnesses, the Government submits that Mr. Nazim failed to show how it prejudiced his defence. Moreover, the anonymity of three out of six prosecution witnesses was necessary and did not impede procedural safeguards, including cross-examination. The evidence they provided was not the sole or decisive evidence.

37. The Government states that, of the 26 documents alleged to have been withheld from the defence, only 15 were undisclosed, while the rest were disclosed but had personal information redacted. The Government contends that, since the court confirmed the national security concerns for non-disclosure and the undisclosed evidence was not decisive or essential in establishing Mr. Nazim’s guilt, it was consistent with international standards.

⁵ Information contained in the submission from the Government of Maldives to the Working Group.

38. With regard to the presumption of innocence in determining the possession of the items in question, the Government submits that Mr. Nazim's efforts to adduce evidence that he was not "in possession" of them did not shift the prosecution's obligation to prove the case beyond reasonable doubt. It is a matter for the court to determine whether the circumstances amounted to the appropriate element of the offence being proven beyond all reasonable doubt.

39. The Government argues that the trial court did not hinder Mr. Nazim's right to appeal by not providing his lawyers with the necessary documents in time. The appeal notice, which has to be filed within 10 days, is an application for permission to appeal and not the full argument in support thereof. The Government explains that it is possible to augment the grounds of appeal at a later stage. According to the Government, therefore, the lack of full documentation cannot preclude the notice from being properly filed. Furthermore, the 10-day period starts from the time the defence receives the trial record and Mr. Nazim's lawyers could have requested an extension of the appeal period, but failed to do so. In any case, since the appeal court allowed Mr. Nazim's legal team to supplement and modify the grounds for appeal, there is no violation of the right to appeal. As for the changes in the composition of the appeal bench in the High Court, the Government submits that it was the result of law reforms that did not affect Mr. Nazim's right to a fair trial and the proceedings were completed within a reasonable time. The admission of 11 defence witnesses against 1 prosecution witness by the High Court negates Mr. Nazim's claim of irregularities or inconsistencies.

40. The Government informs the Working Group that Mr. Nazim's appeal was rejected by the Supreme Court on 26 June 2016. Despite the source's allegations of political motivation, the Government argues that there is no reason to question the independence, impartiality and expertise of the courts involved in the case. The Government adds that the trial court announced at the start of the proceedings that it would consider holding in camera hearings if rumours on social media proved likely to influence the outcome.

41. The Government asserts that the allegation of politically motivated proceedings lacks any credible foundation and is contrary to the facts, as Mr. Nazim was one of the first members to be appointed to the cabinet by President Yameen and was one of its most trusted members. Therefore, the Government claims, Mr. Nazim could not have been viewed as a threat to the presidency, or deemed to be in any way seeking to subvert it. The Government argues that any suggestion of malign influence in the matter should be rejected as non-sensical.

Additional comments from the source

42. The response of the Government was sent to the source on 30 September 2016 for comment; the source replied on 9 November 2016. The source reiterates that Mr. Nazim has been sentenced to 11 years in prison in a grossly unfair trial that violates various principles of the Universal Declaration of Human Rights and provisions of the Covenant and falls under category III.

43. The source states that Police Commissioner Hussain Waheed claimed in the press briefing following the search of Mr. Nazim's residence on 18 January 2015 that the police had initially been unaware that Mr. Nazim resided on the premises, despite the fact that the operation was personally directed by Police Commissioner Waheed, who was Mr. Nazim's close associate. Such action against the incumbent Minister for Defence can be executed only with the President's knowledge, which shows that no citizen of Maldives is safe from government intrusion.

44. With regard to the right to a fair trial, the source submits that Mr. Nazim's lawyers did not have adequate time to prepare a case. In addition, the Maldives Police Service and

the Prosecutor General withheld vital information while the court ignored factual evidence that proves beyond reasonable doubt that Mr. Nazim was framed by the Government for political reasons. The dispute over the items the police claimed to have found in the apartment bedroom is borne out by the prosecution's omission of the pen drive and the explosive device from the charge and the statement that the police only found a pistol and three bullets.

45. According to the source, in addition, while the appeal was pending in the Supreme Court, the police received DNA test results confirming that the DNA on the pistol matched that of the former Vice-President, Ahmed Adeeb.⁶ The police then submitted the DNA report to the Prosecutor General. According to the source, the day before the DNA test results were submitted to the Supreme Court, President Yameen had met with Police Commissioner Ahmed Areef and Prosecutor General Aishath Bisham to instruct the latter to suppress the evidence until the President had made a decision about whether to send the results to the Supreme Court. On the same day, Minister of Home Affairs, Umar Naseer, resigned because of President Yameen's interference in the submission of the DNA test results.

46. The source states that the police had also confirmed that the fingerprints found on the weapon did not match those of Mr. Nazim or anyone in his household. The source mentions that, in addition, the police failed to explain to the court how Mr. Nazim could have had the small leather pouch containing the pistol in his possession without leaving his fingerprints on it.

47. The source submits that while there is no requirement to video record searches under written regulations, the standard operating procedure adopted and implemented by the Maldives Police Service requires video recording of all raids and searches conducted by its officers.

48. The source adds that the court arbitrarily restricted the number of witnesses the defence was able to call. As a result, Mr. Nazim's legal team had no opportunity to prove through the witnesses why he could not be held responsible for the incriminating items. Furthermore, the Criminal Court prevented the defence from calling witnesses to consider the allegation that Police Investigating Officer Ahmed Azmath Abdullah, acting on the orders of Police Commissioner Hussain Waheed who was collaborating with former Vice-President Ahmed Adeeb, had obtained the search warrant from a judge at midnight on 17 January 2015 based on a non-existent intelligence report. In addition, the court failed to summon former Vice-President Adeeb or Police Commissioner Waheed to clarify why they had been with the Prosecutor General in a police car on the same street when the police entered Mr. Nazim's residence.

49. Mr. Nazim's appeal to the High Court was marked by several unexplained delays between hearings. Furthermore, the prosecution submitted a confidential army report and the court heard from its author, Ali Ihsan, that the pistol allegedly found by the police had been stolen from a military armoury, not imported, casting doubt on Mr. Nazim's guilt. The source argues that those who planted the firearms and framed Mr. Nazim are the very people who stole the pistol. Four months after the official conclusion of the appeal hearings, without prior notice the High Court summoned all the parties and gave each party

⁶ Mr. Adeeb had been the influential Minister for Tourism in President Yameen's administration before his appointment as Vice-President in July 2015. Following an explosion on 28 September 2015 on the presidential speedboat, from which President Yameen escaped unhurt, but in which his wife and members of his staff were injured, Vice-President Adeeb and top military officials were arrested for attempted assassination, and a large cache of arms that had been stolen from the military armoury was discovered.

five minutes to cross-examine six witnesses it had called on its own initiative. The court said that they were the officers who had searched Mr. Nazim's residence. The appeal was rejected the next day based merely on the officers' denial that they had planted the pistol.

50. During the appeal proceedings before the Supreme Court, Mr. Nazim's lawyers discovered that the DNA samples collected from the pistol matched those of former Vice-President Adeeb, which the police confirmed at a press briefing the following day. On 26 June 2016, the Prosecutor General sent the DNA report received from the police to the Supreme Court. Nevertheless, the Supreme Court hurriedly dismissed the appeal the next day without considering the new evidence or giving any reasons for its decision.

51. The source reiterates its concerns about the imprisonment by the Government of political opponents following unfair, politicized trials in recent years. Mr. Nazim's case is another example of the specific targeting of political leaders whose views oppose those of the Government of President Abdulla Yameen Abdul Gayoom. Indeed, the issue of fairness in the judiciary was one of the reasons that the Commonwealth Ministerial Action Group decided in September 2016 to place Maldives on its formal agenda, a decision which led Maldives to withdraw from the Commonwealth.

Discussion

52. The Working Group thanks the source and the Government for their extensive submissions in relation to Mr. Nazim's legal proceedings. The Working Group considers in turn each of the categories applied by it, mindful that it is entitled to assess the laws and the proceedings of the court in national jurisdictions seeking only to determine the observance of the relevant rules of international law.⁷ Furthermore, the Working Group notes that, as a matter of international law, especially concerning State responsibility, States have a duty to ensure that all their institutions respect the obligations arising from international law.

53. The Working Group first considers whether the present case falls within categories II and V. In that regard, the Working Group considers that the following factors require specific attention:

(a) There has been a pattern of criminal proceedings brought against the real or perceived political opponents of the Government in recent years in Maldives.⁸ The current case is one more instance indicating the presence of such persecution;

(b) The search for an illegal weapon by the police in the residence of the incumbent Minister for Defence and National Security, whom the Government admitted was the President's most trusted cabinet minister;

(c) The fact that Mr. Nazim's removal from the position of Minister for Defence and National Security was followed by the promotion of the Minister for Tourism, Ahmed Adeeb, to Vice-President and his alleged assassination attempt against the President;

(d) The High Court's rejection of Mr. Nazim's appeal, despite the submission of a confidential army report and the testimony of its author, a member of the military, that the pistol had been stolen from the armoury rather than being imported from abroad;

⁷ See opinion No. 40/2005.

⁸ See, for example, opinion No. 33/2015. See also European Parliament resolution of 17 December 2015 on the situation in the Maldives (2015/3017(RSP)), available from www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0464&language=EN; European Parliament resolution of 30 April 2015 on the situation in the Maldives (2015/2662(RSP)), available from www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0180&language=EN; A/HRC/23/43/Add.3, para. 51; and CCPR/C/MDV/CO/1, para. 20.

(e) The Supreme Court's summary dismissal of an appeal the day after the prosecution had submitted the police DNA report revealing a match between the DNA samples collected from the pistol in question and former Vice-President Adeeb's DNA.

54. In the light of the above, the Working Group is of the view that there is a violation of Mr. Nazim's right to freedom of political participation under article 21 (1) of the Universal Declaration of Human Rights, article 25 (a) of the International Covenant on Civil and Political Rights and article 26 of the Maldivian Constitution. The case therefore falls within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

55. In relation to category III, the Working Group notes that Mr. Nazim's trial was the subject of a great deal of attention and scrutiny, both within and outside Maldives. The Working Group notes the wide range of international human rights experts who are familiar with Mr. Nazim's case and have observed that his trial did not meet international human rights standards, including the Office of the United Nations High Commissioner for Human Rights,⁹ the International Commission of Jurists and South Asians for Human Rights,¹⁰ Asian Centre for Human Rights¹¹ and Commonwealth Human Rights Initiative.¹²

56. In its considerations, the Working Group made reference to the conclusions contained in the report of the joint delegation of the International Commission of Jurists and South Asians for Human Rights that had conducted a fact-finding mission to Maldives from 5 to 13 May 2015. During the mission, the delegation met with a broad cross section of stakeholders from the Government, the parliament, independent constitutional bodies, the legal community, political parties, civil society, the former Chief Justice of the Maldivian Supreme Court and other former officials from the previous Government.

57. As in the trial against President Nasheed (see opinion No. 33/2015), there appear to have been significant procedural irregularities that amount to a failure to ensure fairness and equality of arms in the treatment of Mr. Nazim's defence team. The court apparently refused to allow the defence to present important rebuttal evidence purporting to show that key prosecution evidence had been fabricated. That included alleged evidence that the fingerprints lifted from the items of evidence confiscated from Mr. Nazim's apartment did not match his fingerprints and that the content of the confiscated pen drive supposedly containing details of a plot to overthrow the Government had been fabricated.¹³

58. The European Parliament, in its two resolutions on the situation in Maldives, criticized the conduct of Mr. Nazim's trial and those of other political figures such as former President Mohamed Nasheed and former Deputy Speaker of the Majlis, Ahmed Nazim. Noting opinion No. 33/2015, it called upon the Government of Maldives to "release, immediately and unconditionally, former president Mohamed Nasheed, former Vice-president Ahmed Adeeb and former defence ministers Tholhath Ibrahim and Mohamed Nazim, together with Sheikh Imran Abdulla and other political prisoners, and to

⁹ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15915.

¹⁰ See <http://icj2.wpengine.com/wp-content/uploads/2015/08/Maldives-Justice-Adrift-Rule-of-Law-Publications-fact-finding-report-2015-ENG.pdf>.

¹¹ See www.achrweb.org/Review/2015/245-15.html.

¹² See www.humanrightsinitiative.org/download/1474271150CMAG%20Final%20submission%20-%20Maldives%20-%20CHRI%2018%20September%202016.pdf.

¹³ See <http://icj2.wpengine.com/wp-content/uploads/2015/08/Maldives-Justice-Adrift-Rule-of-Law-Publications-fact-finding-report-2015-ENG.pdf>.

clear them of all charges” and to “guarantee full impartiality of the judiciary and to respect due process of law and the right to a fair, impartial and independent trial”.¹⁴

59. In addition, the problems associated with the judiciary in Maldives, including its actual and perceived lack of independence and the “reactivation of old cases to arrest opposition members of Parliament or bar them from Parliament”,¹⁵ have been documented by the United Nations in recent years. In her report on her mission to Maldives in 2013, the Special Rapporteur on the independence of judges and lawyers noted that, while the 2008 Constitution had completely overturned the structure of the judiciary, the same people who had been in place and in charge, conditioned under a system of patronage, remained in their positions. In her view, such an abrupt transformation of the justice system required time, careful management, revised legislation and training in order to successfully change mindsets and culture. In addition, many people believed that some judges who were currently sitting lacked the proper education and training (see A/HRC/23/43/Add.3, para. 51, and CCPR/C/MDV/CO/1, para. 20). Those reports point to the presence of systemic problems in Maldives involving the arrest of political opposition leaders, the lack of independence of the judiciary and procedural shortcomings in providing a fair trial. It is noteworthy that the Inter-Parliamentary Union Committee on the Human Rights of Parliamentarians has raised similar concerns.¹⁶

60. While that information from multiple sources does not bind the Working Group, it is difficult for the Government to credibly contend that Mr. Nazim’s trial met international standards despite overwhelming evidence to the contrary from a variety of international sources. The Working Group has considered each of the alleged due process violations. In doing so, the Working Group emphasizes that it did not substitute itself for a domestic appellate tribunal, but considered whether the facts in Mr. Nazim’s case demonstrate a failure by the Government to afford him a fair trial in view of the international standards on the deprivation of liberty. The Working Group reiterates its well-established jurisprudence that it has consistently refrained from taking the place of judicial authorities or acting as a kind of supranational tribunal.¹⁷

61. In its jurisprudence, the Working Group has also established the ways in which it deals with evidentiary issues. Its approach is in line with the ruling of the International Court of Justice in *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, which establishes the evidentiary position for claims to succeed in human rights cases, a position which the Working Group has adopted on previous occasions for its own opinions in individual cases. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). The Working Group recalls that where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he or she was entitled, the burden of proof should rest with the public authority, because the latter is in a better position to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law.¹⁸

62. In the view of the Working Group, there were several serious due process violations that, taken together, demonstrate that Mr. Nazim did not receive a fair trial. Those

¹⁴ See European Parliament resolutions of 30 April 2015 and of 17 December 2015 on the situation in the Maldives (2015/3017(RSP)) and (2015/2662(RSP)).

¹⁵ See <http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13917&LangID=E>.

¹⁶ See www.ipu.org/hr-e/196/MLD16.pdf.

¹⁷ See opinion No. 40/2005, para. 22.

¹⁸ See opinion No. 41/2013, para. 27.

violations have not been sufficiently rebutted by the Government, including through documentary evidence of the trial proceedings and the judgment. The Working Group is not convinced by the contention of the Government that the petition is simply factually incorrect or mischaracterized. Even though the Government states that no fingerprints or DNA from anyone involved in the search have been found, it has failed to provide an adequate answer to the question of whether the pistol was planted in the first place and why the DNA present on the pistol matched that of former Vice-President Ahmed Adeeb. Furthermore, the Working Group is not convinced by the contention of the Government that since “the offence itself is very straightforward”, the time afforded to the defence team of less than one week was sufficient for the proper preparation of the defence. The Working Group emphasizes that, in its own submissions, the Government characterized the offence as “serious” and “one that constitutes an abuse of the high political office with which [Mr. Nazim] was entrusted” (see para. 27 above). Moreover, the Working Group cannot accept that the court acted in accordance with international standards when it confirmed non-disclosure of evidence, which the contesting party believed to be of significance in the exercise of the right to defence, due to national security concerns.

63. More specifically, the serious due process violations include:

- (a) The planting of the pistol and bullets in Mr. Nazim’s wife’s apartment by the police, which necessitated the violation of standard police procedures, and the continued detention and prosecution of Mr. Nazim, despite the revelations about the fingerprints on the pistol, suggesting that the arrest and detention were based on a fabrication;
- (b) The trial court’s granting of only five days for Mr. Nazim’s lawyers to prepare a legal defence against a serious criminal charge for which he would eventually receive an 11-year sentence;
- (c) The limits placed on Mr. Nazim’s presentation of witnesses and on his cross-examination of prosecution witnesses by the trial court and the High Court;
- (d) The limited provision of evidence to the defence team, including the fact that 26 of the 51 documents submitted by the prosecution to the court were “secret” in nature, as was the fingerprint evidence report;
- (e) Placing the burden of proof on Mr. Nazim to demonstrate that the items inside the black bag that was retrieved from his house did not belong to him;
- (f) The trial court’s failure to provide Mr. Nazim’s lawyers with the documents necessary to mount their appeal by the appeal deadline, which forced them to rely on their own recollection of the judgment when it was read out in court;
- (g) The High Court’s five-month delay in hearing Mr. Nazim’s appeal owing to the transfer of the presiding judge and the Supreme Court’s rejection of the petition to expedite the appeal.

64. The Working Group considers that the notable breaches of law, in view of the above-mentioned accounts, include:

- (a) The right not to be subjected to arbitrary arrest and detention (arts. 3 and 9 of the Universal Declaration of Human Rights, art. 9 (1) of the Covenant and arts. 21 and 45 of the Maldivian Constitution);
- (b) The right to have adequate time and facilities for the preparation of one’s defence (art. 11 (1) of the Universal Declaration of Human Rights, art. 14 (3) (b) of the Covenant and art. 51 (e) of the Constitution);

(c) The right to examine prosecution witnesses and call and examine witnesses for the defence (art. 11 (1) of the Universal Declaration of Human Rights, art. 14 (3) (e) of the Covenant and art. 51 (g) of the Constitution);

(d) The right to a fair and public hearing (art. 10 of the Universal Declaration of Human Rights, art. 14 (1) of the Covenant and art. 42 (a) and (b) of the Constitution);

(e) The right to the presumption of innocence (art. 11 (1) of the Universal Declaration of Human Rights, art. 14 (2) of the Covenant and art. 51 (h) of the Constitution);

(f) The right to appeal (art. 11 (1) of the Universal Declaration of Human Rights, art. 14 (5) of the Covenant and art. 56 of the Constitution);

(g) The right to a speedy trial (art. 11 (1) of the Universal Declaration of Human Rights, art. 14 (3) (c) of the Covenant and arts. 42 (a) and 51 (b) of the Constitution).

65. The Working Group concludes that the breaches of articles 3, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant, as well as the corresponding provisions in the Constitution of Maldives are, in Mr. Nazim's case, of such gravity as to render his deprivation of liberty arbitrary, thus falling within category III.

66. The Working Group places on record its concern about Mr. Nazim's physical and psychological integrity from his arrest, detention and imprisonment since January 2015. In particular, the Working Group refers to the allegations made by the source that Mr. Nazim has been held in solitary confinement and not given full access to medical care for the treatment of his deteriorating eyesight, heart conditions, varicose veins and back pain. The trial court's rejection of Mr. Nazim's petition for medical treatment abroad, which was subsequently granted by the Government, provides further reason to doubt the judges' impartiality and interest in the well-being of their defendant. The Government's refusal to allow Mr. Nazim to seek less expensive treatment in India or Malaysia and its rejection of his application for extension of medical leave in Singapore also raise concerns.

67. The Working Group recalls that efforts to abolish solitary confinement as a punishment or to restrict its use should be undertaken and encouraged. In that regard, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Maldives acceded in 2004, obliges each State party to undertake to prevent cruel, inhuman or degrading treatment or punishment (art. 16). More specifically, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) adopted by the General Assembly on 17 December 2015, ban unlimited or unrequired prohibition of family contact (rule 43 (3)) and indefinite or prolonged solitary confinement (rule 43 (1) (a) and (b)) where solitary confinement is defined as the confinement of prisoners for 22 hours or more a day without meaningful human contact, and prolonged solitary confinement as solitary confinement for a time period in excess of 15 consecutive days (rule 44).

68. Maldives is a signatory of the Charter of Democracy of the South Asian Association for Regional Cooperation,¹⁹ which commits member States to continue to strengthen democratic institutions and reinforce democratic practices, to guarantee the independence of the judiciary and primacy of the rule of law, and to adhere to the Charter of the United Nations and other international instruments to which they are parties. The rule of law ought not to be confused with rule by law, the subversion of law as a tool for arbitrary rule by Government in collusion with the judiciary, paving the way for the hatred of anyone to lead

¹⁹ See <http://saarc-sec.org/SAARC-Charter-of-Democracy/88>.

to deviation from justice. The case of Mr. Nazim's arrest, detention and imprisonment appears to fit the pattern of rule by law.

69. The Working Group refers to its statement in its annual report (A/HRC/19/57, para. 69) indicating that arbitrary deprivations of liberty constitute a violation of peremptory norms (*jus cogens*) of international law that are non-derogable, a position that echoes that of the Human Rights Committee in paragraph 11 of its general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency.

Disposition

70. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mohamed Nazim, being in contravention of articles 3, 9, 10, 11 and 21 of the Universal Declaration of Human Rights and of articles 9, 14 and 25 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories II and III.

71. Consequent upon the opinion rendered, the Working Group requests the Government of Maldives to take the necessary steps to remedy the situation of Mr. Nazim without delay and to bring it into conformity with the standards and principles set forth in the international norms on detention, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

72. Taking into account all the circumstances of the case, the Working Group considers that an adequate remedy would be to release Mr. Nazim immediately and accord him an enforceable right to reparations, in accordance with international law.

73. The Working Group requests the Government to provide an invitation to the Working Group for a country visit.

Follow-up procedure

74. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Nazim has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Nazim;
- (c) Whether an investigation has been conducted into the violation of Mr. Nazim's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Government with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

75. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

76. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action

would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

77. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.²⁰

[Adopted on 25 November 2016]

²⁰ See Human Rights Council resolution 33/30, paras. 3 and 7.