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Human Rights Council Working Group on Arbitrary Detention

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Opinion No. 15/2017 concerning Ahmed Mahloof (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/33/66), on 16 December 2016 the Working Group transmitted to the Government of Maldives a communication concerning Ahmed Mahloof. The Government replied to the communication on 17 March 2017. 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);

(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. Ahmed Mahloof, born on 26 March 1980, is a Maldivian citizen. The source reports that prior to his arrest and detention, Mr. Mahloof engaged in political activity, being one of the leading figures in establishing the Progressive Party of the Maldives in 2011, together with the former President Maumoon Abdul Gayoom. Mr. Mahloof was also a spokesperson for the coalition of opposition parties, the Maldives United Opposition, which calls on the Government to engage in a dialogue and to establish an interim process, whereby all parties can enact institutional reform and establish a path to democratic elections in 2018.

5. Mr. Mahloof was expelled from the Progressive Party in February 2015, after he became the only member of the People's Majlis (parliament) and one of the first leaders from within the Government to allege large-scale corruption and lack of transparency within the Government. The source notes that Mr. Mahloof stood out as one of the most outspoken critics of the current President. Since his expulsion from the party, Mr. Mahloof has also been at the forefront of anti-Government protests triggered by the imprisonment of former President Mohamed Nasheed in February 2015.

6. The source reports that Mr. Mahloof was first arrested on 25 March 2015 because he allegedly disturbed road barricades installed by the police and trespassed on a cordoned-off area. According to the police, they had installed the barricades as part of security measures taken in response to demonstrations held in Male' by the opposition on 25 March 2015, following the conviction of former President Mohamed Nasheed on terrorism charges on 13 March 2015 and the ongoing trial of former Defence Minister Mohamed Nazim. Mr. Mahloof was formally accused of the offence of obstruction of police duty under section 75 of Law 5/2008 (the police act) with reference to section 72 of the act.

7. Mr. Mahloof was detained in Dhoonidhoo detention centre and on 26 March 2015, the criminal court extended his detention for a period of five days. On 31 March 2015, Mr. Mahloof was again brought before the criminal court and was remanded in custody for a further five days. On that occasion, the court ordered him to be put under house arrest.

8. On 3 April 2015, Mr. Mahloof was again brought before the criminal court where the judge who had convicted former President Nasheed for terrorism was sitting. The judge offered Mr. Mahloof his release on condition that he would not participate in a public assembly consisting of more than four people for the next 30 days. When Mr. Mahloof refused to accept this condition, his detention was extended for a further 15 days.

9. After the remand hearing, the police accused Mr. Mahloof of refusing to get into the police vehicle returning him to Dhoonidhoo detention centre and of attempting to flee. Mr. Mahloof was thus detained in Dhoonidhoo detention centre until 12 April 2015, when the High Court set him free pending a possible trial. The High Court observed that according to article 49 of the Constitution, "no person shall be detained in custody prior to sentencing, unless the danger of the accused absconding or not appearing at trial, the protection of the public, or potential interference with witnesses or evidence dictate otherwise. The release may be subject to conditions of bail or other assurances to appear as required by the court". The High Court ruled that the extension of Mr. Mahloof's detention did not apply to any of the conditions of remand prescribed in the Constitution and therefore his continued detention as a penalty for refusing to avoid assemblies of more than four people was unlawful.

10. More than eight months after the High Court ruling, on 11 January 2016 the Prosecutor General formally charged Mr. Mahloof with the offence of obstruction of police duty under section 75 of the police act, with reference to section 72 of the act, for refusing to get into a police vehicle and for attempting to flee from the police on 3 April 2015.

11. On 28 February 2016, in criminal proceedings against Mr. Mahloof regarding the alleged incident of 3 April 2015, five police officers testified that Mr. Mahloof had tried to escape from the police and had refused to get into the police van after leaving the criminal court. Two defence witnesses testified that Mr. Mahloof was not trying to flee but merely to embrace his wife.

12. On 5 April 2016, the Prosecutor General formally charged Mr. Mahloof with another offence of obstruction of police duty under section 75 of the police act, with reference to section 72 of the act, for crossing police barricades during the demonstration held on 25 March 2015.

13. On 18 May 2016, three police officers testified against Mr. Mahloof regarding the incident that had occurred on 25 March 2015. One officer said that he had witnessed Mr. Mahloof crossing barricades in the road and entering the area cordoned off by the police. The other two officers testified that they had only heard about the misdemeanour through the police radio and had reached the scene after the alleged incident, in order to arrest Mr. Mahloof.

14. The source states that on 19 June 2016, in violation of the criminal procedure, a police officer was allowed to testify against Mr. Mahloof in relation to his first case after all the prosecution and defence testimonies had concluded. The officer testified that on 3 April 2015, he was working at the detainee escort section of Male' custodial facility and that after Mr. Mahloof was brought out from his remand hearing, he had run out of the main gate of the criminal court; that the officer had been the first to apprehend Mr. Mahloof as he ran into the street; that when Mr. Mahloof came out of the door, the police vehicle had been parked just outside the door; that he had run away while he was being requested to get into the vehicle; and that he suspected that Mr. Mahloof had run away to escape from the police.

15. On 10 July 2016, the concluding statements of both the prosecution and the defence were heard regarding the alleged incident on 3 April 2015. On 18 July 2016, Mr. Mahloof was unexpectedly summoned to a closed hearing, summarily convicted of the offence of obstruction of police duty and sentenced to 4 months' and 24 days' imprisonment.

16. The source also states that early on 18 July 2016, before Mr. Mahloof was sentenced for his first case, he was summoned to a hearing on the second case against him. On that occasion, the judge, despite objections from the defence, decided not to allow defence witnesses to testify. According to the judge, this was because under sharia law and legal principles, the prosecution is required to prove any charges and the defence does not generally need to prove that the alleged offence did not take place.

17. On 21 July 2016, defence lawyers representing Mr. Mahloof in the two cases went on television and raised the following concerns regarding his two trials:

(a) Apart from violating the Maldives Constitution, the detention of Mr. Mahloof violated his rights under articles 9, 10, 19, 20 and 21 of the Universal Declaration of Human Rights and 9, 14, 15, 19, 22 and 25 of the Covenant and constituted arbitrary detention;

(b) The violations of Mr. Mahloof's right to a fair trial were of such gravity as to give his detention an arbitrary character. The lawyers noted the haste with which Mr. Mahloof's trials were conducted and the lack of respect for the basic principles of a fair trial and due process during a trial;

(c) In the light of these concerns, the lawyers announced that they would be submitting Mr. Mahloof's case to the Working Group on Arbitrary Detention.

18. Following the press conference held by Mr. Mahloof's legal defence team, on 25 July 2016, the criminal court announced that a lawyer representing Mr. Mahloof in his second case would be barred from representing him in the case. It stated that this was because in his media interview, the lawyer had attempted to create a bad impression among the public regarding the case, thereby attempting to unduly influence the outcome of the case using public media. On the same day, his lawyer having been barred from the case, Mr. Mahloof was again convicted for obstruction of police duty in the second case against him and imprisoned for six months.

19. On 10 August 2016, Mr. Mahloof's second conviction was appealed to the High Court. The appeal was registered at the Court on 22 August 2016 under case number 2016/HC-A/364. The source states that since that date, despite a request made to the High Court on 25 September 2016 to expedite the case and a request made on 27 October 2016 to suspend Mr. Mahloof's second hearing pending appeal, the court has not yet replied. The

written submission by the Prosecutor General's office, dated 2 November 2016, reiterates the decision of the lower court on grounds of the judge's discretion.

20. The source further states that the Department of Corrections gave Mr. Mahloof 10 days' leave to seek medical attention in India, where he is currently undergoing treatment for a skin ailment, accompanied by his family. The 10 days' medical leave will not be deducted from Mr. Mahloof's sentence, which is expected to end on 27 May 2017.

21. The source maintains that the detention of Mr. Mahloof constitutes an arbitrary deprivation of his liberty within categories I, II, III and V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

22. Firstly, the source argues that Mr. Mahloof's detention in both cases is arbitrary under category I, because his alleged actions do not satisfy the criteria for imprisonment set forth in the new Penal Code. The source specifies that under section 1004 of the new Penal Code on the amount of punishment called for in the guideline sentencing table that may be imposed through any authorized punishment method, a sentencing judge may translate some or all of a sentence of imprisonment into an alternative, non-incarcerative form of punishment in lengths or amounts that are the punitive equivalent of the prison term. The table in section 1005 (the punishment method equivalency table) identifies the length or amount of each non-incarcerative method of punishment that is equivalent to a given term of imprisonment. The source notes that the Code therefore encourages the use of non-incarcerative punishment forms, while still assuring the public and victims that offenders are in fact getting the full amount of punishment that they deserve for their offences.

23. The source also notes that section 75 (b) of the police act, under which Mr. Mahloof was convicted in both cases, states that the penalty for obstructing, hindering or attempting to obstruct or hinder the implementation of the role and functions of the police shall be the imposition of a fine not exceeding Rf 12,000 (equivalent to approximately \$780) or imprisonment in jail for a period not exceeding six months.

24. The source further argues that given that Mr. Mahloof allegedly committed the offence before the new Penal Code came into effect on 16 July 2015, the Constitution requires that he receive a lesser punishment. The source specifies that article 59 of the Constitution states that if the punishment for an offence has been reduced between the time of commission and the time of sentencing, the accused is entitled to benefit from the lesser punishment. Section 10 (d) of the Penal Code states that "as a general principle this Code does not apply to offences occurring or committed prior to its effective date. Notwithstanding the aforesaid, in determining a sentence after commencement of this Code, for an offence which has occurred or has been committed prior to the effective date of this Code, where the sentence prescribed for the offence under this Code is less than the sentence prescribed under the previous Act, the penalty for the offence shall be prescribed in accordance with this Code."

25. Under the police act, the maximum penalty for the offence of which Mr. Mahloof is convicted is imprisonment for a period not exceeding six months. The corresponding section in the Penal Code, section 532 (c), grades this offence as a class 1 misdemeanour. Section 1002 (a) of the Penal Code shows that the baseline sentence for this misdemeanour is imprisonment for 4 months and 24 days. In considering the "lesser punishment" as prescribed in article 59 of the Constitution, the maximum penalty would therefore be 4 months and 24 days.

26. According to the punishment equivalency table (section 1005 of the Penal Code), the new prescribed maximum penalty of 4 months and 24 days would be converted into a fine of Rf 26,400 (equivalent to approximately \$1,718). Under section 75 of the police act, the maximum fine is Rf 12,000 (equivalent to approximately \$780). Therefore, according to article 59 of the Constitution, the lesser punishment for Mr. Mahloof would be a fine of Rf 12,000.

27. The source adds that when general adjustments to baseline sentences are applied to the penalty, according to section 1100 of the Penal Code, it becomes evident that contrary to the provisions of section 1101 of the Code, Mr. Mahloof does not qualify for a higher level of culpability than the level required by the offence for which he was convicted. That

is because, contrary to the provisions of section 1102 of the Code, his offence did not cause special harm; he did not commit an offence in a manner displaying great cruelty or gross disregard for human dignity, as specified in section 1103 of the Code; and his offence did not have a victim to compensate, as prescribed in section 1105 of the Code.

28. Finally, the source notes that section 1104 (d) (3) of the Penal Code states that “if the offender has otherwise led a law-abiding life; then the baseline sentence for all offences with which the offender has been charged shall be mitigated one or two levels, as the court finds to be just”. According to the Penal Code, therefore, Mr. Mahloof’s mitigated sentence would be 2 months and 12 days, which would be converted into a fine of Rf 14,400 (equivalent to approximately \$937). That amount is still higher than the Rf 12,000 prescribed by the police act. Mr. Mahloof should therefore have been fined an amount not exceeding Rf 12,000 for the offence.

29. The source concludes that the criminal court failed to observe article 59 of the Constitution and the sections of the Penal Code entitling Mr. Mahloof to the benefit of a lesser punishment. The imprisonment of Mr. Mahloof therefore constitutes arbitrary detention under category I of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

30. In relation to category II, the source claims that Mr. Mahloof’s detention results from his exercising his fundamental rights to freedom of opinion and expression, freedom of association and freedom of political participation, provided for by articles 19, 22 (1) and 25 of the Covenant, to which Maldives acceded on 19 September 2006, as well as by articles 19, 20 (1) and 21 of the Universal Declaration of Human Rights. The source further refers to article 68 of the Constitution, which provides for courts to consider international treaties to which Maldives is a party when interpreting and applying the rights and freedoms contained in the Constitution.

31. The source specifies that freedom of expression includes the right to a dissenting political opinion. It therefore argues that the charge of obstructing police duty brought against Mr. Mahloof was a pretext for the curtailment of his right to freedom of opinion and expression as a political leader. The source recalls that Mr. Mahloof has been an outspoken opponent of the Government of Maldives and has facilitated disclosure to the public of information regarding an alleged large-scale corruption scheme involving the President.

32. The source claims that in response to these and similar comments and actions of Mr. Mahloof, the Government targeted him in an attempt to tarnish his image and silence him. This pattern of the politically-motivated harassment of Mr. Mahloof can be seen in the past and continues with his current conviction and detention. The source specifies that besides Mr. Mahloof’s detentions outlined earlier, he was summoned by the police on 7 February 2016 and 12 February 2016 for questioning over his allegations of the President’s involvement in the corruption scheme. On 11 March 2016, Mr. Mahloof was arrested for participating in the anti-corruption rally. He was released on 17 March 2016.

33. With regard to the alleged violation of the right to freedom of association, the source recalls that Mr. Mahloof was the spokesperson for the newly formed coalition of opposition parties, the Maldives United Opposition. The Government has not yet acknowledged the coalition as a political force in the country.

34. The source also recalls that Mr. Mahloof is in danger of losing his parliamentary seat, according to article 73 (c) (2) of the Constitution, whereby a person is disqualified from standing for election to the People’s Majlis if he or she has been convicted of a criminal offence and is serving a sentence of more than 12 months. The source therefore notes that any further possible politically-motivated convictions and subsequent imprisonment of Mr. Mahloof would be likely to exceed the 12 months.

35. With regard to category III, the source points to a number of alleged irregularities, such as the failure to provide equality before the law, the right to an independent and impartial tribunal, the right to have access to counsel, the right to prepare an adequate defence and the right to a public trial, in contravention of article 14 (1), (2) and (3) of the Covenant.

36. More specifically, the source alleges that Mr. Mahloof was refused the right to present any defence witnesses during the hearings for the second case against him. In not allowing Mr. Mahloof to present defence witnesses, the court argued that sharia law and legal principles stipulate that the prosecution is required to prove any charges and that the defence generally does not need to prove that the alleged offence did not take place. The source argues that this decision violated the principle of equality of arms, as well as article 14 (2) (e) of the Covenant, which explicitly provides defendants in a criminal trial with the right to obtain the attendance and examination of defence witnesses under the same conditions as witnesses for the prosecution.

37. The source further points to the unjustifiable haste of the court proceedings. At first, the two cases were conducted by the criminal court at a typical pace, with a hearing once a month, on average. However, on 19 June 2016, in violation of normal criminal procedure, a police officer was allowed to testify against Mr. Mahloof in relation to the first case against him, after all the prosecution and defence testimonies had concluded. On 10 July 2016, the concluding statements of both the prosecution and the defence were heard regarding the incident involving Mr. Mahloof's alleged flight from the police. On 18 July 2016, Mr. Mahloof was summoned to a closed hearing, convicted for the offence of obstruction of police duty and given a prison sentence of 4 months and 24 days. Before that sentence was pronounced on the afternoon of 18 July 2016, he had been summoned for a hearing of his second case that same day. During that hearing, the judge announced that the concluding statements would be heard the next day and, despite objections from the defence, decided not to allow defence witnesses to testify. On 25 July 2016, his lawyer having been barred from taking part in the proceedings, Mr. Mahloof was brought to the criminal court from Maafushi prison, again convicted for obstruction of police duty in the second case against him and imprisoned for six additional months.

38. It is further argued that there is no credible evidence to prove that Mr. Mahloof crossed police barricades, as alleged during the hearings on his second case. Two of the witness testimonies at his second trial were based on hearsay, which is a purported violation of international standards of due process, sharia law and the requirements of offence liability, as set out in chapter 20 of the Penal Code. Furthermore, given that only one witness testified that Mr. Mahloof had crossed the barricades, the standard of adequate evidence was not met, as the sharia law applicable in such circumstances stipulates that two witnesses are required to prove a case.

39. Moreover, the source alleges that the criminal court interfered with the right to access legal counsel, in contravention of article 14 (3) of the Covenant and article 48 (b) of the Constitution. The source recalls that following the press conference held by Mr. Mahloof's lawyers on 25 July 2016, the criminal court announced that the lawyer representing Mr. Mahloof in his second case would be barred from representing him because he had attempted to unduly influence the outcome of the case using public media.

40. In addition to being deprived of access to legal counsel, Mr. Mahloof was allegedly deprived of his due process rights to produce his own evidence and witnesses. At the hearing held on 18 July 2016, the judge decided not to allow defence witnesses to testify, as under sharia law and legal principles, the prosecution is required to prove any charges and the defence generally does not need to prove that the alleged offence did not take place. The source recalls that in matters of criminal evidence, the Maldivian courts follow sharia evidence principles, which stipulate that when the plaintiff fails to produce two witnesses to prove the case, the defendant must be given the opportunity to produce witnesses in his or her defence. The source therefore argues that as only one policeman testified that Mr. Mahloof had crossed the barricades, the defence should have been given an opportunity to rebut the charge by producing witnesses. That opportunity was denied to the defence.

41. The source further alleges that the criminal court failed to ensure a public trial, contrary to article 14 (1) of the Covenant, article 10 of the Universal Declaration of Human Rights, article 42 (a) and (b) of the Constitution of Maldives and article 71 of the Judicature Act of Maldives. The source notes that the Government denied Mr. Mahloof's request for open and public hearings by summoning him to a closed hearing on 18 July 2016 and by refusing to allow Maldivian and international observers access to the trial. The source alleges that this constitutes a further violation of international law.

42. In addition, the source claims that the Government has violated Mr. Mahloof's right to be free of cruel, inhuman, or degrading treatment or punishment, in contravention of article 7 of the Covenant, article 5 of the Universal Declaration of Human Rights, articles 1-2 and 4-7 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Maldives acceded on 20 April 2004, as well as of article 54 of the Constitution of Maldives. The source recalls that following his first conviction on 18 July 2016, Mr. Mahloof was incarcerated in Maafushi prison in solitary confinement and had limited interactions with his family and legal team. The source also recalls that the new Maldives act against torture prohibits solitary confinement.

43. Finally, the source submits that Mr. Mahloof was arrested, detained and convicted because of his political opinions, which were critical of and in opposition to the Government, and his detention falls within category V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

Response from the Government

44. On 16 December 2016, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group invited the Government to provide any information regarding the case and in particular, on the allegations made by the source, both in respect of the facts and the applicable legislation. The Working Group requested the Government to provide its reply by 16 February 2017. On 6 February 2017, the Government requested an extension, which was granted. The Government responded by 17 March 2017, as requested.

45. The Government submits that the allegations are either factually incorrect or constitute a mischaracterization of the position. The detention of Mr. Mahloof is justified, in accordance with domestic and international law, following his lawful conviction for criminal offences. His detention therefore does not satisfy the criteria of categories I, II, III and V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

46. Regarding category I, the Government refers to resolution 1997/50 of the Commission on Human Rights, in which detention is considered not to be arbitrary if it results from a final decision taken by a domestic court "in conformity with domestic law, with the relevant international standards set forth in the Universal Declaration of Human Rights and with the relevant international instruments accepted by the States concerned".

47. Mr. Mahloof was convicted by a Maldivian court and in accordance with Maldivian law. This fact precludes the case from being argued within category I. In both cases, Mr. Mahloof was convicted under sections 72 and 75 of Law No. 5/2008 (police act), for obstructing police duty.

48. It is a well-established principle under Maldivian law that it is at the discretion of the judge to determine the proper form of punishment from the various forms of punishment provided by the law. In that respect, the judge is bound by article 59 of the Constitution and section 10 (d) of the Penal Code, in that he or she must give due regard to the lesser punishment the judge using his or her discretion chooses to be the proper and meaningful form of punishment. Mr. Mahloof was given the lesser punishment, as required by the Constitution, as he was sentenced to 4 months and 24 days.

49. The Government notes that the assumption by the source that the judge should have converted the baseline sentence of 4 months' and 24 days' imprisonment under the Penal Code into a fine under sections 1004 and 1005 of the Penal Code is a misinterpretation of the law. The conversion of the incarceration term provided in the guideline sentence table in section 1002 of the Code is at the discretion of the judge, as is inherently evident from the specific language of section 1004 of the Code.

50. With regard to category II, the Government submits that when Mr. Mahloof was arrested on 25 March 2015, his actions were not peaceful. More specifically, it is submitted that Mr. Mahloof, while leading a public rally, had pushed the barricades aside and entered a cordoned-off area. Such a "green zone" area, cordoned off by the Maldives Police Service pursuant to section 24 (c) of the act on the freedom of peaceful assembly, contains key

government institutions and security services headquarters, including the Office of the President, the headquarters of the Maldives National Defence Force and the police headquarters. These actions therefore fail to satisfy the definition of “peacefulness”, as provided in section 9 of the act on the freedom of peaceful assembly.

51. The Government also submits that the charge against Mr. Mahloof relates specifically to the allegation of the individual offence committed by him, namely obstructing police duty by pushing aside the barricades set up by the police pursuant to the law for security purposes and by subsequently unlawfully entering an area that had been cordoned off by the police. The Government therefore concludes that the aforementioned facts preclude the case from being argued under category II.

52. According to the Government, in reference to category V, there is no evidence to suggest that persons sharing the political opinion of Mr. Mahloof are treated in a discriminatory manner within the Maldivian judicial system. The political opinions of Mr. Mahloof were not taken into account during the trial. Furthermore, persons in addition to Mr. Mahloof were charged, convicted and subsequently sentenced for obstruction of police duty.

53. The Government rejects the allegations that Mr. Mahloof had been subject to politically motivated harassment in the past, noting that his summons by the police on 7 and 12 February 2016 was carried out following a complaint that he had made allegations regarding money in the bank account of the current President and his wife. The police subsequently filed this complaint, as there was no evidence that Mr. Mahloof had committed any offence. Mr. Mahloof was arrested on 11 March 2016 for disobeying police orders and obstructing police duty during a public rally, as he assisted a person who had pushed and assaulted a police officer. He also attempted to flee from the police. Mr. Mahloof was released on 18 March 2016. The Prosecutor General decided not to file charges after reviewing the case.

54. The Government also maintains that the detention of Mr. Mahloof does not fulfil the criteria under category III. The existence of due process violations does not necessarily render detention arbitrary, provided that the defendant is punished in accordance with domestic law in a process in which he or she was assisted by a lawyer. The Government refers to the “double threshold”, in that to render detention arbitrary, there must first have been a violation of due process rights and thereafter that the violation must be of sufficient importance to declare the entire process null and void.

55. Mr. Mahloof knew of the existence of both cases against him and had legal representation of his choosing. Following statements made by Mr. Mahloof’s lawyers at a press conference on 25 July 2016, the criminal court barred one of them for attempting to unduly influence the outcome of the case by using public media. However, barring one lawyer from the second case did not result in a violation of the right to have access to legal counsel.

56. Mr. Mahloof was given ample opportunity and time to prepare for his defence in relation to the two cases against him. He had 11 days between being informed of the charge in the first case and the subsequent trial hearing on 23 February 2016, and 7 days between being informed of the charge in the second case and the subsequent trial hearing on 3 May 2016. Those periods could be considered sufficient for the preparation of a defence and not necessarily inconsistent with international standards, particularly with article 14 (3) (b) of the Covenant. There is no internationally predetermined time frame that could serve as a reference to assess whether the legal team was granted adequate time to prepare its case. It generally depends on the nature of the proceedings and on the particular characteristics of the case, including its complexity. Moreover, Mr. Mahloof had the ability to seek to challenge the rulings of the court and has already availed himself of that opportunity.

57. With regard to the allegations that Mr. Mahloof was refused the right to present defence witnesses during his second case hearing and that this was a violation of article 14 (3) (e) of the Covenant, the Government observes that the right to present witnesses is subject to limitations that seek to balance it with the need to reach a judgment “without undue delay”. The court ruled that the proposed witnesses would not be allowed to testify because it is the responsibility of the prosecutor to provide witnesses to prove the charge

against the defendant. It is neither the responsibility of the defendant nor a general principle for the defendant to prove his innocence. The court also found that the proposed witnesses at the trial proceedings were not the ones proposed during the investigation stage. Furthermore, the court ruled that it was not acceptable to take witness statements from persons who were charged with offences relating to the same incident as that of the accused. Despite this, the court did not prevent Mr. Mahloof from requesting that additional witnesses be called. However, he failed to do so.

58. The Government rejects the allegation that the evidence relied on by the criminal court failed to meet the offence liability prescribed in chapter 20 of the Penal Code. It submits that the evidentiary standard is in accordance with the rules of evidentiary requirements under Maldivian law.

59. Except for the verdict hearing in the first case, which was held on 18 July 2016 as a closed hearing, all trial hearings of the first case and all hearings of the second case, including the trial hearings and the verdict hearing, were held as public hearings and journalists, media and the public were allowed to enter the court.

60. Mr. Mahloof failed to provide an explanation for the allegation that there was a failure to provide an independent and impartial tribunal.

61. The Government rebuts the allegation that Mr. Mahloof was held in solitary confinement and had limited interaction with his family and legal team, amounting to a violation of the right to due process. It notes that this particular allegation is factually groundless and may exceed the material or substantial mandate of the Working Group.

Discussion

62. The Working Group is grateful to both the source and the Government for their extensive submissions in relation to Mr. Mahloof's legal proceedings. It will proceed to consider in turn each of the categories that the source has alleged apply to the detention of Mr. Mahloof, 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.¹

63. The source firstly argues that Mr. Mahloof's detention is arbitrary within category I. Mr. Mahloof was sentenced on the basis of Law 9/2014 (the Penal Code), which came into force on 16 July 2015. Given that the alleged offence was committed by Mr. Mahloof prior to this law coming into effect, the source contends that article 59 of the Constitution entitled him to a lesser punishment, as the punishment in the new Penal Code was lesser (a maximum term of imprisonment of 4 months and 24 days) than that under the police act (a maximum term of imprisonment of 6 months). The Government argues that Mr. Mahloof was given the lesser punishment, as required by the Constitution, as he was sentenced to 4 months and 24 days.

64. The source goes on to argue that in accordance with section 1005 of the Penal Code (the punishment method equivalency table), the sentence of imprisonment could have been converted into a fine, which did not happen. Since Mr. Mahloof was sentenced to 4 months and 24 days of imprisonment, the source argues that this deprivation of liberty is arbitrary and falls under category I as lacking a legal basis.

65. The Government disputes the premise of this argument, noting that the determination of the applicable punishment rests with the judge, who enjoys discretion to determine the proper and meaningful form of punishment in individual cases. The Government contends that Mr. Mahloof was convicted by a Maldivian court and in accordance with Maldivian law and therefore it is impossible to argue that it falls under category I.

66. The Working Group considers that it is entitled to assess the proceedings of the court and the law itself to determine whether they meet international standards.² However,

¹ See opinions No. 40/2005 and No. 59/2016.

² See opinion No. 33/2015, para. 80.

the Working Group also reiterates that it has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of domestic law by the judiciary.³

67. In the present case, therefore, it falls to the Working Group to ascertain whether there was a legal basis for authorizing the detention of Mr. Mahloof and the Working Group is unable to conclude that there was not. Both the Penal Code and the police act include provisions for the crime for which Mr. Mahloof was arrested, with which he was charged and for which he was subsequently sentenced, and there have been no allegations made that these are vague or lacking in legal certainty. The sentence imposed upon him of 4 months and 24 days is the lesser of the two possible prison terms and therefore cannot be said to contradict either article 56 of the Constitution of Maldives or article 15 of the Covenant. Whether indeed Mr. Mahloof deserved the maximum prison sentence or whether his sentence should have been converted to a fine, is not for the Working Group to assess, as otherwise it would be taking on the role of the national courts. The Working Group therefore concludes that the arrest and subsequent deprivation of liberty of Mr. Mahloof do not fall within category I of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

68. The source further argues that Mr. Mahloof's detention falls within category II, as his detention resulted from the exercise of his fundamental rights to freedom of opinion and expression, freedom of association and freedom of political participation. The Government contests these submissions, arguing that in both instances Mr. Mahloof committed individual criminal acts and neither of the two cases relate to the exercise of his human rights by Mr. Mahloof.

69. The Working Group notes that over the past years it has considered a number of cases from Maldives, which concern individuals expressing opinions that are not in line with those of the ruling political establishment.⁴ In the present case, the Working Group notes that Mr. Mahloof allegedly breached police barriers, but even the Government does not contend that the actions of Mr. Mahloof were violent or led to further violence by others. The Government has only submitted that his actions breached the law and that this in itself meant that his actions were no longer peaceful.

70. The Working Group struggles to accept the line of argumentation proposed by the Government, since merely crossing police barriers does not necessarily mean that the actions of Mr. Mahloof were no longer peaceful. The Working Group notes that the capital of Maldives is not geographically large. The extensive exclusion zone enforced in the capital, the so-called green zone, effectively precludes the general public from approaching the area where most government offices, including the residence of the current President, are located.

71. While it is understandable that there would be restrictions on free movement imposed in areas where key government offices are located, it is also understandable and indeed expected that this would be the prime area where individuals would gather to express their political opinions. The authorities, therefore, need to strike a fair balance between the need to preserve the security and safety of government offices and the right of individuals to express political opinions. The Working Group accepts that political rallies would be expected to occur in such places as the green zone and it would be expected that a breach of police barriers would occur, especially noting the geographical specifics of the capital. The Working Group doubts whether it would be necessary and indeed proportionate to arrest every person who breaches the barriers, provided that their actions are not violent. In the view of the Working Group, a mere breach of barriers in such a place as Male', without any violence, cannot be said to render such an expression of political opinions as no longer peaceful.

72. Moreover, the Working Group must take note of the long-standing and active involvement of Mr. Mahloof in Maldivian politics. It is also notable that according to

³ See opinion No. 40/2005.

⁴ See opinions No. 33/2015 and No. 59/2016.

article 73 (c) (2) of the Constitution, a person is disqualified from standing for election to the national legislature if that person has been convicted of a criminal offence and is serving a sentence of more than 12 months. Mr. Mahloof has received two sentences: one for 4 months and 24 days and the other for 6 months. The cumulative imprisonment time for these two criminal offences is nearly 11 months, bringing him very close to being barred from being an elected representative of the Maldivian people in the national legislature.

73. Although it is not for the Working Group to assess the evidence that was presented to the judges in the two cases against Mr. Mahloof, it notes that for one of those offences, Mr. Mahloof received the harshest possible sentence and a considerable sentence for the other one. This was despite the fact that his actions were never violent and that he had had no prior convictions and was in fact a highly respected member of society, representing the Maldivian people in the legislature as an elected representative. The Government has been unable to show any other plausible explanation for the imposition of the maximum penalties for both offences. The Working Group, therefore, concludes that the arrest and subsequent detention of Mr. Mahloof fall within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

74. The source also alleges that Mr. Mahloof's detention is arbitrary and falls within category III, as he was not allowed to present any defence witnesses in one case, which represents a violation of the equality of arms principle; that the court hearings and sentencing were carried out summarily and hastily; that the testimonies against him were based on hearsay; that he was not afforded a public trial; and that his subsequent imprisonment was in fact solitary confinement and constituted cruel, inhuman or degrading treatment or punishment. The Government rebuts all these submissions by noting that there were no violations of the rights of Mr. Mahloof to a fair trial, or at least these were not of such gravity as to render the detention of Mr. Mahloof arbitrary. To that end, the Government specifically points to what it calls the double threshold implemented by the Working Group, whereby there must first be a violation of due process rights and thereafter it must be of sufficient importance as to declare the entire process null and void.

75. The Working Group notes the numerous alleged breaches of due process rights listed by the source. However, it reiterates that it does not fall within its mandate to assess the sufficiency of the evidence or to deal with errors of law allegedly committed by a domestic court, unless there is a *prima facie* breach of international law. The allegations made by the source that Mr. Mahloof was convicted on the basis of evidence that was hearsay, or that the judge excluded some of the witnesses presented by the defence, is not for the Working Group to assess, as it is not in a position to assess the content of all witness statements.

76. The Working Group notes that Mr. Mahloof was precluded from calling witnesses to testify, as the judge had declared that under sharia law and legal principles the prosecution was required to prove any charges and the defence generally did not need to prove that the alleged offence had not taken place. The Government argues that the right to call witnesses is not an absolute right and that the court has an inherent discretion to hear evidence that is relevant to the proceedings and to refuse to hear witnesses who are not capable of providing evidence that goes to a relevant matter at issue.

77. It is true that the right to call witnesses is not an absolute right. However, as the Human Rights Committee stated in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, there is a strict obligation to respect the "right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings" (para. 39). In the present case, the request by Mr. Mahloof's lawyer to call witnesses was denied and such a blanket refusal to allow any witnesses to be called on behalf of the defence bears the hallmarks of a serious denial of equality of arms in the proceedings and is in fact a violation of article 14 (3) (e) of the Covenant.

78. Moreover, the Working Group is particularly concerned about the fact that Mr. Mahloof actually did not receive a public trial, as on 18 July 2016 he was summoned to a closed hearing and summarily convicted. As the Human Rights Committee stated in its

general comment No. 32: “Article 14, paragraph 1, acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons.”

79. The case of Mr. Mahloof clearly did not fall into any of the prescribed exceptions to the general obligation to hold public trials under article 14 (1) of the Covenant. The Working Group notes the submission made by the Government that it was only the hearing on 18 July 2016 which was held behind closed doors. However, the Government has provided no legitimate explanation as to why the final hearing on 18 July 2016 was closed. The Working Group notes that the right to a public hearing extends to the whole duration of the proceedings and is especially important for the conclusion of a trial, as it is at this stage that justice is seen to be done. To conclude a trial behind closed doors is to undermine the transparency of the whole hearing and constitutes a violation of article 14 (1) of the Covenant.

80. The source also alleges that Mr. Mahloof’s lawyer was barred from the proceedings on 25 July 2016, when Mr. Mahloof was convicted for obstruction of police barriers and sentenced to a further six months’ imprisonment. The source also alleges that the right of Mr. Mahloof to adequate time to prepare a defence was violated, as on 18 July 2016 when Mr. Mahloof was summarily sentenced in a closed hearing to a prison term of 4 months and 24 days, a hearing regarding his other conviction also took place. During that hearing, the judge announced that the concluding statements would be made the following day and the trial concluded on 25 July 2016, when Mr. Mahloof was sentenced to a prison term of six months at a hearing which his lawyer was not permitted to attend.

81. The Government argues that throughout both proceedings Mr. Mahloof had the benefit of legal representation of his own choice and that his lawyers were kept continually informed from the initial stages of the investigations of both cases. The Working Group, however, notes that there is a significant difference between being informed of the proceedings and being afforded sufficient time to prepare a defence. The defence team was given one day’s notice to prepare the concluding statements and were barred from the final hearing on 25 July 2016. While there is no set time period prescribed by international law as to what constitutes “adequate” time to prepare a defence, the Working Group also notes that this generally depends on the nature of the proceedings and on the particular characteristics of the case, including its complexity.

82. In the present case, Mr. Mahloof had just been sentenced for one crime and on the same day he and his legal team were informed that the concluding statements in the other case would be heard the following day. That gave Mr. Mahloof and his lawyer a maximum of 24 hours to prepare the final statement. The Working Group notes that the case involved a member of the national legislature as the accused, which necessarily attracted a high level of public interest and had political undertones. To allow the defence a mere 24 hours to prepare the final statement in such circumstances is to ignore the nature of the proceedings and the specific characteristics of the case. Moreover, the Government has presented no legitimate reasons for such an extremely short notice period. The source has also noted what it describes as the “unusual hastiness” with which the case regarding the obstruction of the police barriers suddenly proceeded in June and July 2016, and the Government has not provided any explanation as to what caused the case to proceed with such expediency. That also had an impact upon the ability of the defence team to prepare adequately for the overall proceedings, which unexpectedly and unusually had picked up speed. The Working Group therefore concludes that there has also been a violation of article 14 (3) (b) of the Covenant.

83. As for the source’s allegation that Mr. Mahloof was denied legal representation when his lawyer was barred from the proceedings on 25 July 2016, during which the concluding arguments were presented, the Working Group notes that the Government contests this fact. According to the submissions made by the Government, only one of his

lawyers was barred from the proceedings owing to his statements to the media about the two cases. Mr. Mahloof's other lawyer was allowed to be present, but did not attend.

84. The Working Group notes that the right to a lawyer is the cornerstone of the rights to due process, especially in criminal proceedings, as stipulated by the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court (principle 9). It is essential for the proper adherence to the principle of equality of arms and presumption of innocence.

85. In the present case, it appears to the Working Group that Mr. Mahloof was afforded the right to legal representation, except at the contested hearing on 25 July 2016. It is indeed entirely possible for a court to bar a lawyer from proceedings for conduct incompatible with the proper administration of justice, a point which the Working Group is not examining in the present case. However, this cannot mean that the defendant remains without legal representation. In the present case, one of the lawyers of Mr. Mahloof was barred and the other lawyer failed to appear at the hearing, leaving Mr. Mahloof without any legal representation at the concluding hearing of his trial, when he was sentenced to six months' imprisonment. The Government presented no explanation of the efforts that were undertaken to bring Mr. Mahloof's other lawyer to the hearing, or indeed why the hearing could not have been adjourned to allow the requisite legal representation or ensure that he had legal aid. In fact, it appears that the court simply did nothing to preserve the right of Mr. Mahloof to legal representation. The Working Group therefore concludes that there has been a violation of article 14 (3) (d) of the Covenant.

86. The source has suggested that Mr. Mahloof was not tried by an independent and impartial tribunal, but has not provided any details regarding this allegation. The Working Group is therefore unable to make any comments on the issue.

87. The source also alleges that the subsequent holding of Mr. Mahloof in solitary confinement is tantamount to cruel, inhuman or degrading treatment or punishment, which bears absolute prohibition in international law. The Government disputes the allegation by noting that Mr. Mahloof was not held in solitary confinement, but in a single cell, and that he has not been subjected to the stringent regime applicable to those in solitary confinement. Mr. Mahloof has been allowed contact with his lawyers and family and he has been allowed medical treatment abroad. The Government has even submitted visual evidence of Mr. Mahloof's cell and a list of his contacts with family and lawyers.

88. The Working Group is grateful to the Government for the detailed information about the allegations made. However, it does appear to the Working Group that aside from contacts with his lawyers and family, on the frequency of which the source and the Government disagree, Mr. Mahloof has no interaction with any other detainees. By the Government's own admission, all but one of the cells adjacent to Mr. Mahloof's cell are unoccupied. The Working Group therefore concludes that as a minimum, Mr. Mahloof is isolated from the general prison population which, according to rule 37 of the Standard Minimum Rules for the Treatment of Prisoners, is a form of punishment and must therefore be subject to appropriate legal safeguards and regular review. The Working Group has no information as to whether the safeguards have been observed or if there has been a review of Mr. Mahloof's isolation.

89. Moreover, although the mandate of the Working Group does not cover conditions of detention or the treatment of prisoners per se, it must consider to what extent detention conditions can negatively affect the ability of detainees to prepare their defence and their chances of a fair trial.⁵ In the present case, the source has argued that the conditions of detention of Mr. Mahloof are aimed at inflicting pain and breaking his spirit to fight the wrongful conviction. However, the source has not shown that there are adverse effects upon the ability of Mr. Mahloof to challenge his convictions. The Working Group is therefore unable to establish convincingly that his detention in such isolated conditions has had an impact upon his chances for a fair trial. The Working Group wishes to place on record its concern for the isolated conditions of detention of Mr. Mahloof and refers the present case

⁵ See E/CN.4/2004/3/Add.3, para. 33, and opinion No. 1/2017.

to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for further consideration.

90. As noted by the Government, not every irregularity regarding the observance of due process rights renders the subsequent detention of the person in question arbitrary under category III. Indeed, as is stated in para. 8 (c) of the Working Group's methods of work, to fall within category III, the denial of due process rights must be of such gravity as to give the deprivation of liberty an arbitrary character. The Government contends that the present case does not satisfy this high threshold. However, the Working Group is concerned that although Mr. Mahloof was allowed legal representation, this did not extend to the entirety of the proceedings against him and he was in fact sentenced without his lawyer being present. The Government has presented no explanation as to why the hearing could not have been postponed to allow legal representation to be available. Mr. Mahloof's lawyers were given only 24 hours to present the final submissions in one case and Mr. Mahloof was not allowed to present any witnesses in his defence in the other case. The Working Group notes that these violations seriously affected the observance of the principle of equality of arms. In addition, in one case Mr. Mahloof was denied a public hearing without any legal justification being invoked. The Working Group therefore concludes that all such violations of due process rights are of such gravity that the detention of Mr. Mahloof falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

91. The fourth submission from the source is that the detention of Mr. Mahloof falls within category V, as his detention is discriminatory on the basis of his political opinions. The Government contests this allegation, noting that Mr. Mahloof was convicted for individual criminal acts and not because of his political or other views.

92. The Working Group has already established that the detention of Mr. Mahloof resulted from his exercise of his right to freedom of expression and assembly. The Working Group also notes that Mr. Mahloof was summoned by the police on two further occasions for questioning over allegations he had made about the President's involvement in a corrupt scheme and that he was arrested for participating in an anti-corruption rally. The Government does not dispute these facts, but emphasizes that Mr. Mahloof was only questioned upon the receipt of complaints by the police and promptly released. In relation to the two criminal offences with which Mr. Mahloof was charged, the Government also argues that there is no discriminatory attitude towards Mr. Mahloof, since others who similarly obstructed police duty in the same incident were also charged, convicted and sentenced for obstruction of police duty.

93. The Working Group considers that the instances of Mr. Mahloof being summoned for questioning and arrested for participation in the anti-corruption rally, coupled with the two criminal charges that lie at the heart of the present case, are very indicative of the attitude of the authorities towards Mr. Mahloof. His political views are clearly at the centre of the present case and the Working Group cannot help but notice that the authorities have displayed an attitude towards Mr. Mahloof, which can only be characterized as discriminatory. In reaching that conclusion, the Working Group takes special note that Mr. Mahloof is an elected member of the parliament, a position which necessarily attracts respect. All of his convictions are directly linked to his expression of his political views and all his interactions with the police in terms of being arrested and summoned for questioning have also been directly linked to his political views. The two prison terms to which he has been sentenced bring him very close to being barred from standing in the forthcoming elections. The Working Group is mindful that this is not the first case it has considered that has involved persons in Maldives who have expressed views that are different to those of the governing political establishment.⁶

94. The Working Group is, therefore, convinced that Mr. Mahloof did not receive equal protection before the national law on the basis of his political views and concludes that the detention of Mr. Mahloof falls within category V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

⁶ See opinion No. 33/2015.

95. Finally, the Working Group would welcome the opportunity to conduct a country visit to Maldives, so that it can engage with the Government constructively and offer assistance in addressing its serious concerns relating to the arbitrary deprivation of liberty. The Working Group notes that Maldives have issued a standing invitation to all special procedure mandate holders and looks forward to an invitation to visit the country.

Disposition

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

The deprivation of liberty of Ahmed Mahloof, being in contravention of articles 7, 9, 10, 19, 20 and 21 of the Universal Declaration of Human Rights and of articles 3 (b), (d) and (e), 14 (1), 19, 22, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories II, III and V.

97. The Working Group requests the Government of Maldives to take the steps necessary to remedy the situation of Ahmed Mahloof without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

98. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ahmed Mahloof immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

99. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Follow-up procedure

100. 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. Mahloof has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Mahloof;
- (c) Whether an investigation has been conducted into the violation of Mr. Mahloof'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 Maldives with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

101. 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.

102. 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.

103. 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.⁷

[Adopted on 21 April 2017]

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