

---

# Advance Unedited Version

Distr.: General  
20 January 2017

Original: English

---

## 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 Mr. 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);
  - (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. Colonel **Mohamed Nazim** (hereinafter Col. Nazim) is the former Minister of Defence and National Security of the Republic of Maldives and a well-known political figure in the country. He first became the Defence Minister on 8 February 2012 under the presidency of Mohammed Waheed Hassan. He was later re-appointed to the position on 17 November 2013 by President Abdulla Yameen Abdul Gayoom.

5. According to the information received, on 18 January 2015, in the city of Malé, at around 03.30 hours, a number of masked police officers entered the apartment belonging to Col. Nazim's wife. The source informs that officers went to the bedroom, forced Col. Nazim to kneel down at gun point, 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. Col. 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 further informs that after a while, some masked officers left and more officers in plain clothes together with some forensic officers entered their apartment without identifying themselves. However, Col. Nazim agreed to let them carry out a search after they showed a relevant warrant. Allegedly, officers went directly to a drawer on a side table at the far end of the bedroom, opened it, and took out a black bag. They asked if it belonged to Col. Nazim. He denied it and called his wife to ask her whether it was hers, and she denied it too. The officers then opened the bag and brought out a pistol, three bullets, and a magazine. More than a week later, the police forces publicly said they had found two other items—an explosive device and a pen drive in the same bag. The state prosecution later stated that the police had informed it that the pen drive contained documents outlining plans to physically harm "senior honourable state officials".

7. Col. Nazim has consistently stated that these 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 Col. 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 Maldives' Police Regulations, such as videotaping the search and providing the list of items being taken away from the premises.

8. Col. Nazim was accused of "bringing weapons into the Maldives and possessing weapons" under Law No. 4/75 (Items Prohibited from being brought into the Maldives). His legal counsel argues that this 1955 law is out-dated and that the prosecution should have instead used Law No. 17/2010 (Prohibition of Threatening Behaviour and the Possession of Dangerous Weapons and Sharp Objects), which places a higher burden of proof on the police for bringing charges.

9. Col. Nazim was initially charged under Section 13(a) of the Import Prohibition Act (Law No. 4/75) read in reference to section 2(a). However, judges made reference also to other sections of the Act under which Col. Nazim had not been charged. After charges were presented, the Trial Court gave the defence team three days to prepare. Following a request

for more time to prepare made by Col. Nazim's defence, the Court granted two additional days. The source sustains that the time given to the defence team was not sufficient, given the serious nature of the charges.

10. The source informs that some of the documents provided by the prosecution to the Court 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 were 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 defence query about the missing documents, the Court said the other documents were "secret" and would not be disclosed to the defence.

11. The source sustains that during the trial the prosecution did not prove beyond reasonable doubt that the weapon belonged to Col. Nazim. In particular, the Fingerprint Evidence Report carried out by the Maldives Police Service, dated 20 January 2015, allegedly was not submitted to the Court by the Prosecution. Neither was it given sufficient weight by the judges when it was presented to the Court by the Defence. Purportedly, this report is significant because it rules out the possibility that finger prints found on items inside the black bag retrieved from Col. Nazim's house belonged to Col. Nazim or any of his family. Furthermore, the burden of proof was put on Col. 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 Col. Nazim's defence, the Court allowed testimony from only three. The right of the defence to cross-examine witnesses presented by the prosecution was also cut short. Of the six prosecution witnesses, three testified anonymously and restrictions were imposed during cross-examination.

13. On 26 March 2015, Col. 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, Col. Nazim is held in solitary confinement and 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 sustains that authorities have hindered Col. Nazim's right to appeal. The appeal deadline was set at 14.00 hours on 12 April 2015, but the defence lawyers had not received from the Trial Court the documents they needed 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 to hear Col. Nazim's appeal on 22 June 2015. However, the composition of the appeal bench was revised one day before this 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 High Court Branch for the South. No information was given to Col. Nazim or his lawyers about the status of his appeal. In mid-August 2015, Col. Nazim's lawyers petitioned the Supreme Court for an order to expedite Col. Nazim's High Court appeal, which was not granted. Furthermore, on 29 October 2015, the judge presiding over Col. Nazim's case was also transferred to the High Court Branch for the South.

16. The source sustains that these transfers have brought a considerable degree of confusion about the status of the appeal. Allegedly, the authorities have not explained to the defence team what would happen next. As a result, Col. 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 informs that on 15 March 2016, the High Court upheld his conviction, despite serious concerns for the lack of fair trial and the questions around the evidence against Col. Nazim. Col. Nazim's legal counsel has raised several concerns about the irregularities in the High Court's decision that upheld his conviction. These include the denial of Col. Nazim's rights to question some of the witnesses against him and continued inconsistencies in some witness testimonies.

17. On 19 May 2016, Col. Nazim's lawyers submitted an appeal to the Supreme Court, and are awaiting a decision on whether the appeal will be admitted. The next hearing is set on 21 June 2016, as the Supreme Court is currently hearing statement from both the defence and the prosecution.

18. The source informs that there are serious concerns about deteriorating health of Col. Nazim in detention. Col. Nazim's eyesight is deteriorating; 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 the Maldives. He was told that he had to seek an agreement from the Trial Court for this. Col. Nazim duly petitioned the court but the judges rejected his petition. In the meanwhile, his health deteriorated even further. His family was then compelled to seek authorization directly from the Government for Col. Nazim's medical treatment abroad.

19. On 10 April 2015, the authorities agreed to allow him to travel to Singapore for treatment for a period of 45 days. After his return, Col. Nazim 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. Col. Nazim's family was also not informed that such visits to the hospital were taking place, making it difficult for them to know about the diagnosis of his illness and the medicines he was getting, including the doctor's recommendations and prescriptions. In August 2015, his family received news that doctors have warned Col. Nazim that he might lose his eyesight if he does not receive further treatment abroad.

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

21. The source sustains that Col. Nazim's arrest and imprisonment are politically motivated and stem from his opposing political stance to the Government. It cites several other prominent political figures that are currently held in detention or have fled the country. It therefore submits that the detention of Col. Nazim constitutes arbitrary detention according to category III of the categories adopted and applied by the Working Group on Arbitrary Detention. His detention violates his right to a fair trial as provided in articles 10 and 11 of the Universal Declaration of Human Rights (UDHR), and article 14 of the International Covenant on Civil and Political Rights (ICCPR), particularly: (i) the right to the presumption of innocence (article 11(1) UDHR, article 14(2) ICCPR); (ii) the right to a fair and public hearing (article 10 UDHR, article 14(1) ICCPR); (iii) the right to adequate time and facilities to prepare a defence (article 11(1) UDHR; article 14(3)(b) ICCPR); (iv) the right to examine prosecution witnesses and call and examine witnesses for the defence

(article 11(1) UDHR, article 14(3)(e) ICCPR); and (v) the right to appeal (article 14(5) ICCPR).

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 Col. Nazim's house by failing to videotape the search and to provide a list of items being taken away from the premises;
- (b) The Trial Court only granted Col. Nazim's defence team a total of five days to prepare their defence;
- (c) The right of the defence to present witnesses and the right of the defence to cross-examine witnesses were 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 these would not be disclosed to the defence because of their secret nature;
- (f) The burden of proof was put on Col. Nazim to demonstrate that the items 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 Col. Nazim.

23. Finally, the source attains that the authorities' lack of sufficient attention to Col. Nazim's physical health violates Article 25(1) of the UDHR and Article 10 of the ICCPR. It also contravenes the Maldivian Anti-Torture Act, which stipulates under article 19(b) that 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 the current situation of Col. Nazim, and any comment on the source's allegations. The Working Group also requested the Government to clarify the factual and legal grounds justifying his 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 of the Republic of Maldives under the human rights treaties that it has ratified.

25. On 16 August 2016, the Government sought an extension of time to submit its response by one and half months to 6 October 2016. On 1 September 2016, the Working Group granted an extension by one month 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 Col. Nazim is that he has not been the victim of a politicised process but has been properly charged and faced a trial for a serious offence and one 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 a mischaracterisation of the position, and therefore his detention is

justified, in accordance with domestic and international law, following the lawful conviction for serious criminal offences and hence cannot be considered arbitrary.

28. The Government states that none of the criticisms that have been levelled against the trial process were so serious either individually or cumulatively so as to render the entirety of the proceedings a flagrant denial of justice that would render Col. Nazim's detention arbitrary. The alleged irregularities were considered and dismissed by the Criminal Court (First Instance), High Court (Second Instance) and Supreme Court (Third Instance). The burden of proof rests with the source to demonstrate a complete nullification of Col. 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 Col. Nazim's detention was in accordance with domestic law and therefore it should only be measured against relevant international standards. The case against Col. Nazim is specifically related to allegations of an individual criminal act of unlawful possession of a firearm, ammunition and explosive device for which he was convicted under section 13(a) of the Import Prohibition Act (Law No. 4/75) 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 discrimination on the basis of his political opinion or membership in any particular group (paras. 41-43).

30. In relation to category III, the Government reminds the Working Group that that the latter 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 Col. Nazim.<sup>1</sup>

31. The Government argues that it is also beyond the mandate of the Working Group to consider the conditions in which Col. Nazim is detained.<sup>2</sup> However, in relation to Col. Nazim's alleged solitary confinement, the Government notes that incommunicado detention is permitted in exceptional circumstances for "a matter of days".<sup>3</sup> 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 Col. 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 attendances with several specialists regarding the issues he raises within his petition. He is also now under house arrest.<sup>4</sup>

33. The Government refers to the "double threshold" of to render detention arbitrary under category III: (i) violation of due process and (ii) the gravity of the violation warranting nullification or a "flagrant denial of justice"

---

<sup>1</sup> The Government cites Fact Sheet No. 26 ("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 Nos. 12/2007 (Ecuador) and 40/2005 (France).

<sup>2</sup> The Government cites Fact Sheet No. 26 ("[I]t 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 Nos. 41/1996 (Lebanon), 7/2007 (Australia), 28/2007 (Algeria) and 12/2007 (Ecuador).

<sup>3</sup> See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted by General Assembly resolution 43/173 of 9 December 1988), principles 15, 16(4) and 18 (3).

<sup>4</sup> Submission to the United Nations Working Group on Arbitrary Detention by the Government of the Republic of Maldives (para. 49). The Government also states, however, that Col. Nazim's house arrest from 21 April 2016 is due to the renovation of the prison (para. 8).

34. In relation to the allegation that the items seized and used in evidence from the police search of Col. Nazim's wife's apartment on 18 January 2015 were planted, the Government states that the confinement of Col. 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 UK, 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. According to the Government, the police report showed that none of the items contained a fingerprint or DNA profile that matched with anyone who took part in the search. Concerning the alleged violations of the Maldives Police Regulations, the Government acknowledges the failure to provide a list of seized items which "will be addressed internally" (para. 110) but that there is no requirement for the search to be video-recorded in the regulations or case-law (paras. 111-113).

35. The Government submits that Col. 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 which "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, Col. Nazim's legal team knew of the content of the investigation and the case lacked complex nature, Col. Nazim had adequate time to prepare the defence. It also contends that Col. Nazim also failed to explain how the alleged insufficient time negatively affected his right to a defence.

36. In regard to the right to present and to cross-examine witnesses, the Government states that the right to present and cross-examine witnesses is subjected 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. The Government views that the court has an inherent discretion to hear evidence that is relevant to the proceedings and the Criminal Court's admission of 3 of 50 witnesses requested by Col. Nazim and 11 additional witnesses on appeal to the High Court that outnumbers 4 witnesses produced by the prosecution was not arbitrary but adequate and proportional. The Government adds that Col. Nazim called 4 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 Col. Nazim failed to show how it prejudiced his defence and that the anonymity of 3 of 6 prosecution witnesses was necessary, did not impede procedural safeguards including cross-examination and it was not the sole or decisive evidence.

37. The Government also 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 also contends, since the court confirmed the national security concerns for nondisclosure and the undisclosed evidence was not determinant or essential in establishing Col. Nazim's guilt, it was consistent with the international standards.

38. In regard to the presumption of innocence in determining the possession of the items in question, the Government submits that Col. 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 and 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 Col. Nazim's right to appeal by not providing the necessary documents in time to his lawyers. 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 their 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 to run from the time the defence receives the trial record and Col. Nazim's lawyers could have requested an extension of the appeal period which they failed to do; in any case, since the appeal court allowed Col. 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 the law reforms that did not affect Col. Nazim's right to a fair trial and the proceedings were completed within a reasonable time; and the admission of 11 defence witnesses against one prosecution witness by the High Court negates Col. Nazim's claims of irregularities or inconsistencies.

40. The Government informs the Working Group that Col. 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 this case. In fact, the Government adds, the trial court announced at the start of the proceedings that it may hold *in camera* hearings if rumours on social media could have potential influence.

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

*Further comments from the source*

42. The Government's response was sent to the source on 30 September 2016 for comment to which the source replied on 9 November 2016. The source reiterates that Col. Nazim has been sentenced to 11 years in prison in a grossly unfair trial that violates various principles of the UDHR and provisions of the ICCPR and falls under category III of the criteria adopted by the Working Group on Arbitrary Detention to determine whether a deprivation of liberty is arbitrary.

43. The source states that Police Commissioner Hussain Waheed claimed in the press briefing following the search of Col. Nazim's residence on 18 January 2015 that the police were initially unaware that Col. Nazim resided in the premise even though the operation was personally directed by Police Commissioner Waheed who was Col. Nazim's close associate. Such action against the incumbent defence minister can be executed only with the president's knowledge and shows that no citizen of Maldives is safe from the Government intrusion.

44. In regard to the right to a fair trial, the source submits that Col. 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 he was framed by the Government for political reasons. The dispute over the police claim of the items found in the apartment bedroom is

borne out by the prosecution's omission of the pen drive and IED from the charge and the statement that the police only found a pistol and three bullets.

45. According to the source, in addition, the police received DNA test results confirming that the DNA present on the pistol matched the DNA of former Vice President Ahmed Adeeb<sup>5</sup> while the appeal was pending in the Supreme Court. 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 met with Police Commissioner Ahmed Areef and Prosecutor General Aishath Bisham to instruct the latter to sit on the evidence until the President made a decision on whether to send them to the Supreme Court. On the same day, Home Minister 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 finger print found from the weapon matched neither that of Col. Nazim nor anyone of his household. The source also mentions that the police also failed to explain to the court how Col. Nazim would have kept the small leather pouch which contained the pistol, without leaving his fingerprints on it.

47. The source submits that while there is no "requirement" under written regulations, the Standard Operating Procedure adopted and acted upon 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, Col. Nazim's legal team had no opportunity to prove through these 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 order of Police Commissioner Hussain Waheed who was collaborating with former Vice President Ahmed Adeeb, had obtained the search warrant from a judge on 17 January 2015 at midnight based on non-existing intelligence report. Nor did the court summon former Vice President Adeeb and Police Commissioner Waheed to clarify why they were with the Prosecutor General in a police car on the same street when the police entered Col. Nazim's residence.

49. Col Nazim's appeal to the High Court was marked by several unexplained delays in between hearings. Furthermore, the prosecution submitted a confidential army report and the court heard from its author Captain Ali Ihsan that the pistol allegedly found by the police had been stolen from a military armoury not imported casting doubt on Col. Nazim's guilt. The source argues that those who planted the firearms and framed Col. Nazim are the very people who stole the pistol. Four months after the official conclusion of the appeal hearings, the High Court without prior notice summoned all parties and gave each party five minutes to cross-examine six witnesses called on its own initiative. The court said they were officers who had searched Col. Nazim's residence and the appeal was rejected the next day based on their simple denial of planting the pistol.

50. During the appeal proceedings before the Supreme Court, Col. Nazim's lawyers discovered that the DNA samples collected from the pistol matched former Vice President Adeeb's DNA and the following day, the police confirmed this at a press briefing. On 26

---

<sup>5</sup> Mr. Adeeb had been the influential tourism minister in President Yameen's administration before his appointment as Vice President in July 2015. Following an explosion of the presidential speedboat which President Yameen escaped unhurt but injured his wife and staff on 28 September 2015, Vice President Adeeb and top military officials were arrested for attempted assassination and a large cache of arms stolen from the military armoury was discovered.

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 reasons for its decision.

51. The source reiterates its concerns about the Government's imprisonment of political opponents following unfair, politicised trials in the recent years. Col. Nazim's case is another such example of the specific targeting of political leaders with opposing views to President Abdulla Yameen Abdul Gayoom's Government. The issue of fairness in the judiciary was one of the reasons that the Commonwealth Ministerial Action Group (CMAG) decided in September 2016 to place Maldives on its formal agenda, a decision which led to Maldives withdrawing from the Commonwealth.

### Discussion

52. The Working Group wishes to thank the source and the Government for their extensive submissions in relation to Col. Nazim's legal proceedings. The Working Group considers each of the categories applied by it in turn below, 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.<sup>6</sup> The Working Group also notes that, as a matter of international law and especially that on state responsibility, the states are under the duty to make sure that each and every of their institutions respect the obligations arising from international law.

53. The Working Group first considers whether the current case may correspond to categories II and V of the categories applicable in the consideration of the cases by the Working Group. In this regard, the Working Group considers that there are several important factors, which require specific attention and these, include:

(a) There has been a pattern of criminal proceedings brought against the real or perceived political opponents of the Government in the past years in the Maldives<sup>7</sup>. The current case is an additional instance indicating the presence of such type of persecution.

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

(c) The fact that Col. Nazim's removal from the position of the Minister of Defence and National Security was followed by the elevation of the then-Tourism Minister Adeeb to Vice Presidency and his alleged assassination attempt against the President;

(d) The High Court's rejection of appeal despite the submission of a confidential army report and the testimony of its author in the military that the pistol was stolen from the armoury rather than being imported from abroad; and

---

<sup>6</sup> See Opinion No. 40/2005.

<sup>7</sup> See, e.g., Opinion No. 33/2015 (Maldives). See also European Parliament resolution of 17 December 2015 on the situation in the Maldives (2015/3017(RSP)) <http://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)) [HYPERLINK](#) "http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0180&language=EN" <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0180&language=EN> Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaut: Addendum: Mission to Maldives (A/HRC/23/43/Add.3, 21 May 2013), para. 51 <https://documents-dds-y.un.org/doc/UNDOC/GEN/G13/137/66/PDF/G1313766.pdf?OpenElement> See also Concluding observations on the initial periodic report of the Maldives (CCPR/C/MDV/CO/1, adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, para. 20)\_

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

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

55. In relation to category III, the Working Group notes that Col. Nazim's trial has been the subject of a high level of attention and scrutiny, both within and outside the Maldives. The Working Group takes note of the wide range of international human rights experts who are familiar with Col. Nazim's case and have noted that his trial did not meet international human rights standards. These experts include the United Nations High Commissioner for Human Rights<sup>8</sup>, the International Commission of Jurists (ICJ) and the South Asians for Human Rights (SAHR)<sup>9</sup>, the Asian Centre for Human Rights (ACHR)<sup>10</sup> and the Commonwealth Human Rights Initiative (CHRI)<sup>11</sup>

56. The Working Group also wishes to refer to the following conclusion in the report of a joint delegation of the International Commission of Jurists (ICJ) and the South Asians for Human Rights (SAHR) which conducted a fact-finding mission to the Maldives from 5 to 13 May 2015 and met with a broad cross-section of stakeholders from the Maldivian 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 with President Nasheed's case, there appears to be significant procedural irregularities that amount to a failure to ensure fairness and equality of arms in the treatment of Col. Nazim's defense team. The Court apparently refused to allow the defense to present important rebuttal evidence purporting to show that key prosecution evidence had been fabricated, including: alleged evidence that the latent prints lifted from the items of evidence confiscated from his apartment did not match the fingerprints of Col. Nazim, and alleged evidence that the content of the confiscated USB drive allegedly containing details of a plot to overthrow the Government was fabricated.<sup>12</sup>

58. The European Parliament, in its two resolutions on the situation in the Maldives, criticized the conduct of Col. Nazim's trial as well as those of other political figures such as former president Mohamed Nasheed and former Deputy Speaker of the Majlis Ahmed

---

<sup>8</sup> Press briefing note on: Maldives, Burundi and CAR investigations (1 May 2015)

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15915>

<sup>9</sup> Justice Adrift: Rule of Law and the Political Crisis in the Maldives (Report of the ICJ-SAHR Joint Fact-Finding Mission to the Republic of the Maldives on 5-13 May 2015, August 2015)

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

<sup>10</sup> Maldives: The case for a resolution at the 29th session of the UN Human Rights Council (ACHR Weekly Review 245/15, Embargoed for: 15 June 2015) <http://www.achrweb.org/Review/2015/245-15.html>

<sup>11</sup> Submission to the Commonwealth Ministerial Action Group: Maldives (18 September 2016) <http://www.humanrightsinitiative.org/download/1474271150CMAG%20Final%20submission%20-%20Maldives%20-%20CHRI%2018%20September%202016.pdf>

<sup>12</sup> Justice Adrift: Rule of Law and the Political Crisis in the Maldives (Report of the ICJ-SAHR Joint Fact-Finding Mission to the Republic of the Maldives on 5-13 May 2015, August 2015)

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

Nazim and, noting Opinion No. 33/2015, 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 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”.<sup>13</sup>

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”<sup>14</sup>, have been documented by the United Nations in recent years. The Special Rapporteur on the independence of judges and lawyers identified the root cause as follows:

60. The 2008 Constitution completely overturned the structure of the judiciary, yet the same people who were in place and in charge, conditioned under a system of patronage, remained in their positions. The Special Rapporteur considers that such an abrupt transformation of the justice system requires time, careful management, revised legislation, and training, in order to successfully change mindsets and culture. In addition, many believe that some judges who are currently sitting lack the proper education and training.<sup>15</sup>

61. These reports point to the presence of systemic problems in the Maldives involving the arrest of political opposition leaders, the lack of independence of the judiciary and prosecutors and procedural defects in providing a fair trial. It is noteworthy that similar concerns have been raised by the Inter-Parliamentary Union (IPU)’s Committee on the Human Rights of Parliamentarians.<sup>16</sup>

62. While this information from multiple sources does not bind the Working Group, it is difficult for the Government to credibly contend that Col. Nazim’s trial met international standards despite overwhelming evidence from this wide variety of international sources to the contrary. 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

---

<sup>13</sup> European Parliament resolution of 17 December 2015 on the situation in the Maldives (2015/3017(RSP)) <http://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)) <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0180&language=EN>

<sup>14</sup> Maldives Supreme Court is subverting the democratic process – Pillay (30 October 2013) <http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13917&LangID=E> The Supreme Court’s excessive interference in the 2013 presidential election so alarmed the then-High Commissioner for Human Rights that she implored the judges to “act in accordance with the principles of impartiality, propriety, equality and due diligence, as reflected in the UN Basic Principles on the Independence of Judiciary, the Bangalore Principles of Judicial Conduct, and Maldives’ own judicial code of conduct” adding that she is “normally the first to defend the independence of the judiciary, but this also carries responsibilities.”

<sup>15</sup> Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul: Addendum: Mission to Maldives (A/HRC/23/43/Add.3, 21 May 2013), para. 51 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/137/66/PDF/G1313766.pdf?OpenElement> See also Concluding observations on the initial periodic report of the Maldives (CCPR/C/MDV/CO/1, adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, para. 20)

<sup>16</sup> IPU Committee on the Human Rights of Parliamentarians Case Nos. MLD/16, MLD/28, MLD/29, MLD/30, MLD/31, MLD/32, MLD/33, MLD/34, MLD/35, MLD/36, MLD/37, MLD/38, MLD/39, MLD/40, MLD/41, MLD/42, MLD/43, MLD/44, MLD/45, MLD/46, MLD/47, MLD/48, MLD/49, MLD/50, MLD/51, MLD/52, MLD/53, MLD/54, MLD/55, MLD/56 <http://www.ipu.org/hr-e/196/MLD16.pdf>

appellate tribunal, but considered whether the facts in Col. 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 wishes to reiterate its well-established jurisprudence that it has consistently refrained from taking the place of judicial authorities or acting as a kind of supranational tribunal.<sup>1761</sup> The Working Group has also in its jurisprudence 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 this 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 s/he was entitled to, 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.<sup>18</sup>

63. In the view of the Working Group, there were several serious due process violations which, taken together, demonstrate that Col. Nazim did not receive a fair trial. These violations have not been sufficiently rebutted by the Government, including through documentary evidence of the trial proceedings and the judgement. 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 one involved in the search is found to have left either fingerprints or DNA profile, it has failed to provide sufficient answers to the question whether the pistol was planted in the first place and why the DNA present on the pistol matched the DNA of former Vice President Ahmed Adeeb. Furthermore, the Working Group is not convinced by the contentions of the Government that since "the offense itself is 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 wishes to emphasize that, in its own submissions, the Government characterised the offence as 'serious' and 'one that constitutes an abuse of the high political office with which he was entrusted' (see para 27 above). Moreover, the Working Group also cannot accept that the court acted in accordance with the international standards when it confirmed non-disclosure of evidences, which the contesting party believes to be of significance in the exercise of right to defence, due to national security concerns.

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

(a) The planting of the gun and bullets in Col. Nazim's wife's apartment by the police which necessitated the violation of standard police procedures and the continued detention and prosecution despite knowing the fingerprints on the gun, suggesting that the arrest and detention was fabricated;

(b) The Trial Court's granting of mere five days for Col. Nazim's lawyers to prepare a legal defence against serious criminal charge for which he would eventually receive an 11-year sentence;

(c) The limits placed on Col. Nazim's presentation of witnesses and on his cross-examination of prosecution witnesses by the Trial Court and High Court;

<sup>17</sup> See Opinion No. 40/2005, para. 22.

<sup>18</sup> See Opinion No. 41/2013, para. 27.

(d) Limited provision of evidence to the defence team, including 26 of 51 documents submitted by the prosecution to the Court citing “secret” nature and the Fingerprint Evidence Report;

(e) Placing the burden of proof on Col. Nazim to demonstrate that the items inside the black bag retrieved from Col. Nazim’s house did not belong to him;

(f) The Trial Court’s failure to provide Col. 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; and

(g) The High Court’s five-month delay in hearing Col. Nazim’s appeal due to the transfer of the presiding judge and the Supreme Court’s rejection of the petition to expedite the appeal.

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

(a) The right against arbitrary arrest and detention (articles 3 and 9 of the UDHR, article 9(1) of the ICCPR and articles 21 and 45 of the Maldives’ Constitution);

(b) The right to adequate time and facilities to prepare a defence (article 11(1) of the Universal Declaration, article 14(3)(b) of the ICCPR and article 51(e) of the Constitution);

(c) The right to examine prosecution witnesses and call and examine witnesses for the defence (article 11(1) of the UDHR, article 14(3)(e) of the ICCPR and article 51(g) of the Constitution);

(d) The right to a fair and public hearing (article 10 of the Universal Declaration, article 14(1) of the ICCPR and article 42(a) and (b) of the Constitution);

(e) The right to the presumption of innocence (article 11(1) of the Universal Declaration, article 14(2) of the ICCPR and article 51(h) of the Constitution);

(f) The right to appeal (article 11(1) of the Universal Declaration, article 14(5) of the ICCPR and article 56 of the Constitution);

(g) The right to speedy trial (article 11(1) of the UDHR and article 14(3)(c) of the ICCPR, articles 42(a) and 51(b) of the Constitution).

66. The Working Group concludes that the breaches of articles 3, 9, 10 and 11 of the UDHR and articles 9 and 14 of the ICCPR as well as the corresponding provisions in the Constitution of the Republic of Maldives in Col. Nazim’s case are of such gravity as to render his deprivation of liberty arbitrary, thus falling within category III of the categories applied by the Working Group.

67. The Working Group wishes to record its concern about Col. 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 Col. 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 Col. 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 Col. Nazim to seek less expensive treatment in India or Malaysia as well as its rejection of his application for extension of medical leave in Singapore also raises concerns.

68. The Working Group recalls that efforts addressed to the abolition of solitary confinement as a punishment or to the restriction of its use should be undertaken and

encouraged. In this regard, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the Maldives acceded to in 2004, obliges each State Party to undertake to prevent cruel, inhuman or degrading treatment or punishment (art. 16). More specifically, the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) adopted by the General Assembly resolution 70/175 of 17 December 2015 bans unlimited or unrequired prohibition of family contact (rule 43, para. 3) and prolonged or indefinite solitary confinement (rule 43, para. 1(a) and (b)) where solitary confinement is defined as “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).

69. The Republic of Maldives is a signatory to the SAARC (South Asian Association for Regional Cooperation) Charter of Democracy<sup>19</sup> that commits the 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 UN Charter and other international instruments to which the Member States are parties. The rule of law ought not to be confused with the 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 to deviation from justice. The case of Col. Nazim’s arrest, detention and imprisonment appears to fit this pattern of rule by law.

70. Finally the Working Group wishes to refer to its statement in its annual report (A/HRC/19/57, 26 December 2011, para. 69) that arbitrary deprivations of liberty constitute a violation of peremptory norms (*jus cogens*) of international law which are non-derogable, a position which echoes that of the Human Rights Committee in paragraph 11 of its general comment No. 29 (2001) on derogation during a state of emergency.

### **Disposition**

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

The deprivation of liberty of Col. Nazim, being in contravention of articles 3, 9, 10, 11 and 21 of the UDHR and of articles 9, 14 and 25 of the ICCPR, is arbitrary and falls within categories II and III.

72. Consequent upon the Opinion rendered, the Working Group requests the Government of Maldives to take the necessary steps to remedy the situation of Col. Nazim without delay and bring it into conformity with the standards and principles set forth in the international norms on detention, including the UDHR and the ICCPR.

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

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

### **Follow-up procedure**

75. 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 Col. Nazim has been released and, if so, on what date;

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

- (b) Whether compensation or other reparations have been made to Col. Nazim;
- (c) Whether an investigation has been conducted into the violation of Col. 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.

76. 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.

77. 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.

78. 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.<sup>20</sup>

*[Adopted on 25 November 2016]*

---

<sup>20</sup> See Human Rights Council resolution 24/7, paras. 3 and 7.