



International Covenant on Civil and Political Rights

Distr.: General
16 August 2019

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2785/2016*, **

<i>Communication submitted by:</i>	Ahmed Khaleel (represented by counsel, Mr. Ahmed Shaheed)
<i>Alleged victim:</i>	Hussain Humaam Ahmed
<i>State party:</i>	Maldives
<i>Date of communication:</i>	11 July 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 92 and 97 of the Committee's rules of procedure, transmitted to the State party on 12 July 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	27 July 2018
<i>Subject matters:</i>	Death penalty sentence after an unfair trial
<i>Procedural issues:</i>	Exhaustion of domestic remedies, consideration by another international procedure
<i>Substantive issues:</i>	Right to life; fair trial
<i>Articles of the Covenant:</i>	6, 7 and 14
<i>Articles of the Optional Protocol:</i>	2 and 5

1.1 The author of the communication, received on 11 July 2016, is Ahmed Khaleel, a national of Maldives. He submits the communication on behalf of his son, Humaam Ahmed, also a Maldivian national, who is currently detained in prison, having been sentenced to the death penalty. Mr. Humaam's death sentence was confirmed by the Supreme Court of Maldives on 24 June 2016, with the penalty to be carried out within 30 days of the decision. The author claims that the State party would violate Mr. Humaam's rights under articles 6, 7 and 14 of the Covenant if the execution were carried out. The Optional Protocol entered into force for the State party on 19 September 2006. The author is represented by counsel.

1.2 When submitting the communication, the author requested that the Committee issue a request for interim measures of protection asking the State party not to carry out Mr. Humaam's death sentence pending the consideration of the present case by the Committee.

* Adopted by the Committee at its 123rd session (2–27 July 2018).

** The following members of the Committee participated in the examination of the communication:
Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V. J. Kran, Duncan Laki Muhumza, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.



On 12 July 2016, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested that the State party not carry out the execution. On 12 September 2016, the State party agreed not to carry out the execution pending the Committee's consideration.

1.3 On 12 September 2016, the State party challenged the admissibility of the communication. On 19 November 2016, the Committee, acting through its Special Rapporteur, decided to consider jointly the admissibility and merits of the case.

The facts as submitted by the author

2.1 On 2 October 2012, the body of Afrasheem Ali, a member of parliament, was discovered by his wife in their apartment in Male'. A few minutes later, the police arrested Mr. Humaam, who was nearby. The police initially declared that the murder was politically motivated and also arrested four other people. However, all were released except Mr. Humaam.

2.2 Mr. Humaam was convicted of murder by the Male' Criminal Court on 16 January 2014 and sentenced to death. His lawyer appealed the decision to the High Court, which upheld the lower court's decision on 7 September 2015. On 24 June 2016, the Supreme Court upheld the High Court's decision.

2.3 The author claims that the investigation of the murder was not properly conducted, because the authorities never identified Mr. Humaam's motive for killing Mr. Ali and have never clarified why they initially announced that the killing was politically motivated. The police initially claimed publicly that vast sums of money had been paid for the murder, and those claims have neither been refuted nor explained. Therefore, no motive for the murder has been established. Mr. Ali's family even requested that the Supreme Court decision confirming the death sentence of 24 June 2016 not be implemented until a proper investigation of the murder had been conducted. However, the court refused to consider the request, as it was presented outside working hours.

2.4 The author submits that there were several irregularities during Mr. Humaam's trial. Firstly, his lawyer was not present when he confessed to the crime. He subsequently retracted the confession indicating that he had confessed because threats had been made against his family, but the court did not accept the retraction. No investigation was carried out into the claim of duress.

2.5 Mr. Humaam was also not allowed to present witnesses to support his defence. A key witness, Ahmed Nazeef Shaukath, who was with Mr. Humaam when he was arrested, was found dead on 7 February 2013, before he could testify in court. Another witness, Azlif Rauf, with whom Mr. Humaam was alleged to have planned the murder, was allowed to leave the country in January 2015, despite having had his passport confiscated.

2.6 Mr. Humaam's family requested an independent medical and psychiatric assessment of Mr. Humaam's mental state, as he increasingly displayed signs of being mentally unstable, including erratic behaviour and the changing back and forth of his plea. This also impeded the ability of his lawyer to provide effective counsel. No assessment was ever carried out.

2.7 Furthermore, the current law on clemency gives the President the power to pardon or commute sentences in all cases, including murder cases. However, after the trial of Mr. Humaam, the judiciary interpreted the Clemency Act as stating that, when exercising clemency, the President must take into account factors including sharia law, especially the right of the family of the deceased to *qisas*,¹ and that clemency therefore could not be subject to presidential discretion. This, the author alleges, targeted Mr. Humaam and impinged upon his right to clemency.

¹ The "right of *qisas*" means the right of a victim's nearest relative to, if the Court approves, take the life of the individual deemed responsible for the crime of murder.

The complaint

3.1 The author claims that the State party would violate Mr. Humaam's rights under article 6 of the Covenant if his death sentence were carried out, in the light of the alleged violations of his rights under article 14 of the Covenant.

3.2 The author also claims that the repeated statements by the authorities and recent legislative changes aimed at the resumption of the execution have caused an enormous amount of distress to Mr. Humaam, contrary to the prohibition on cruel, inhuman or degrading treatment or punishment under article 7 of the Covenant.

State party's observations on admissibility

4.1 In a note verbale dated 12 September 2016, the State party submitted its observations on the communication and challenged its admissibility. It asserts that the admissibility criteria have not been met and that the communication thus constitutes an abuse of the right to petition the Committee.

4.2 In its observations dated 12 September 2016, the State party submits that, prior to the present communication, the same claim was submitted to the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Therefore, the State party contends that the matter is already being considered under another procedure of international investigation and ought to be rejected under article 5 (2) (a) of the Optional Protocol. The State party further argues that domestic remedies have not been exhausted under article 5 (2) (b) of the Optional Protocol. The State party submits that, at the current stage of the proceedings, there is a mandatory mediation process between Mr. Ali's family and Mr. Humaam, whereby the family is allowed to either exercise or relinquish the right of *qisas*. Since the author asserts that the family members have already written a letter stating that they will not seek to exercise their right, it is likely that they will not enforce the right. The State party contends, however, that this means this avenue is not exhausted at this point. Mediation under the regulation is mandatory, and the death penalty cannot be imposed without mediation being undertaken.

4.3 The claims regarding an unfair trial are insufficiently substantiated. With respect to the claim of a coerced confession, the State party contends that the author has presented no evidence upon which an allegation of coercion could be based. The confession was given in a public trial; therefore, it seems illogical to suggest that the confession was coerced.

4.4 Regarding the allegation that Mr. Humaam showed signs of mental illness and should have been given a psychiatric assessment, no evidence or clarification was provided to support that claim, and is therefore not substantiated. The issue of Mr. Humaam's mental health was not raised until very late in the proceedings, and he was deemed lucid by the trial judge.²

4.5 With respect to the claim regarding an inadequate investigation, the author's assertion that the police claimed publicly that vast sums of money had been paid for the murder and that those claims had never been refuted nor explained lacks sufficient clarity or factual support and does not establish that the investigation was incomplete. Even if a person was ordered to carry out a certain criminal act, it does not lessen the degree of his or her criminal responsibility if it is established, through a judicial process and beyond reasonable doubt, that he or she carried out the criminal act in question. In this case, it was established in a court trial, and confirmed by two levels of appeal, that Mr. Humaam was guilty of murder, and he was sentenced to death. No credible evidence was put before the

² The mental health of Mr. Humaam is not mentioned in the judgments of the High Court or of the Supreme Court. The Criminal Court judgment of 16 January 2014 alludes to the matter only in one paragraph, stating: "Even though the defense attorney had stated that the defendant had a mental impairment since his adolescence. Subsequent to the statement by the defendant's father, the defense of insanity has never been brought up in any of the various offences he has been charged with. Considering this, taking up the said defense in the current case makes it questionable. The defense attorney had been unable to prove to the court that the defendant suffered from mental impairment."

court that would cast any doubt on Mr. Humaam's criminal responsibility. This matter was fully and comprehensively investigated, and the proceedings were carried out in accordance with the highest investigative standards. The authorities complied fully at all stages of the investigation with their professional duties of disclosure. Accordingly, these allegations have not been substantiated.

4.6 The State party further objects that, under rule 96 (b) of the Committee's rules of procedure, a petition is ordinarily to be submitted by the victim or his or her appointed representative. In this case, no evidence has been adduced or explanation given as to why the communication could not be submitted by Mr. Humaam himself or by his appointed representative. The fact that Mr. Humaam is a serving prisoner does not make him unable to submit the communication or prevent it from being submitted by an appointed representative. The State party accordingly asserts that the communication should be dismissed as inadmissible.

Author's comments on the State party's observations on admissibility

5.1 On 13 November 2016, the author submitted his comments on the State party's observations on admissibility.

5.2 The author states that the same matter is not being considered by another international procedure of investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol. The Committee has already concluded that extra-conventional procedures established by the Human Rights Council do not generally constitute such an investigation or settlement.³ In addition, the petition to the special procedures was prepared by a human rights organization and not by the victim or his family.

5.3 Regarding the exhaustion of domestic remedies, such remedies must be effective, while the existing procedures in Maldives do not guarantee the meaningful exercise of the right to seek a pardon for the purposes of article 6 (4) of the Covenant or the fair trial guarantees under article 14 of the Covenant.

5.4 The adoption in 2014 of Regulation 2014/R-33 on the Investigation of Murder and Implementation of the Death Penalty revoked the presidential power to grant pardons to or reduce the sentences of persons convicted of intentional murder who have no further right of appeal.⁴ Under section 13 of Regulation R-33, the heirs of a murder victim have the discretion to pardon the person facing execution. If the pardon is granted, the sentence still can be commuted only if the Supreme Court does not issue an order to the contrary. During the Supreme Court appeal process, the court's registrar refused to accept a letter submitted by Mr. Ali's family requesting a reprieve for Mr. Humaam until a proper murder investigation had been completed.⁵ Furthermore, although the Supreme Court issued its final decision on 24 June 2016, the State party has failed to facilitate the mediation process pursuant to article 9 of Regulation R-33. The State party did not ensure that the mediation process would be completed without unreasonable delay after the death penalty was imposed (five months having elapsed at the time the State party's observations were submitted).⁶ The Regulation also does not clearly state the process by which the Supreme Court may refuse to commute the death sentence in cases where the victim's family pardons the convicted person. The process also discriminates on the basis of the offence committed,⁷ since the High Court held in December 2015 that the President could not commute a death sentence or pardon a defendant who was accused of first-degree murder.

³ See, for example, *Shikhmuradova v. Turkmenistan* (CCPR/C/112/D/2069/2011) and *Djebrouni and Berzig v. Algeria* (CCPR/C/103/D/1781/2008).

⁴ As guaranteed under article 115 (s) of the Constitution.

⁵ Letter not provided.

⁶ In this connection, the author refers to the comment by the Special Rapporteur on extrajudicial, summary or arbitrary executions that, in cases where the *diyah* pardon is available, it must be supplemented by a separate, public system for seeking an official pardon or commutation, or else "international law will be violated" (see A/61/311, para. 61).

⁷ See High Court of Maldives Judgment No. 2012-dm-08 (December 2015), accessible at www.highcourt.gov.mv/dhi/mediamanager/2012-dm-08.pdf.

5.5 The forced confession was made at a remand hearing on 7 December 2011, but, at the trial, Mr. Humaam later retracted the confession on the ground that it was made under threats to his family. This was dismissed by the State party, which argued that his confession was corroborated by witness statements. Mr. Humaam confessed to other crimes at the trial, but he always categorically denied the murder of Mr. Ali.

5.6 The reintroduction of the death penalty in April 2014 was a campaign pledge during the 2013 presidential elections. The State party and judiciary appear to have colluded to expedite Mr. Humaam's case, despite the fact that he was sentenced to death in 2014, before Regulation 2014/R-33 had been proclaimed. The President and the Home Affairs Minister have consistently and publicly stated that the death sentence will be implemented.

5.7 Before the Supreme Court upheld the death sentence, Mr. Ali's family had appealed for a temporary reprieve for Mr. Humaam, but this was ignored by the Supreme Court. Despite the public claims by the police, there has been no investigation of other persons allegedly involved in the murder. Mr. Ali's family members have publicly stated that they do not believe the people who masterminded the murder have been investigated. This in part motivated their letter requesting a reprieve.⁸

5.8 Regarding Mr. Humaam's mental state, during the High Court appeal process, which occurred between 21 October 2014 and 7 September 2015, Mr. Humaam was referred to a psychiatrist by a penitentiary medical doctor. Moreover, Mr. Humaam's conduct at trial, manifestly acting against his own interests by constantly changing his plea, backed by behavioural signs observed during family visits and his history of mental illness, clearly pointed to the need for an independent psychiatric evaluation, especially in the light of the capital crime with which he had been charged. However, no evaluation was carried out.

5.9 Regarding the submission by someone other than Mr. Humaam or his duly authorized representative, the communication was drafted with assistance from Mr. Humaam's lawyer, but, owing to the urgency of the situation, fear of delays and the fear of attorney-client privilege being breached by police surveillance in politically motivated cases,⁹ the author felt it necessary to proceed himself. All relevant powers of attorney were submitted. The Committee should therefore find the communication admissible and proceed with its examination on the merits.

State party's observations on the merits

6.1 In a note verbal dated 12 January 2017, the State party reiterated its prior arguments on admissibility and submitted its observations on the merits of the author's complaint.

6.2 In its observations dated 12 January 2017, the State party submits that a defendant before the court would ordinarily have had the opportunity to call evidence in his defence. However, Mr. Humaam fully admitted to the offence before the court both on 7 December 2012 and on 22 May 2013. On 22 May 2013, he was asked to confirm his plea on more than one occasion and did so. On both 7 December 2012 and 22 May 2013, an admission was made, and a guilty plea was entered. He therefore also chose not to avail himself of the opportunity to present any witnesses or to adduce any evidence. Mr. Humaam only sought to retract his initial confession much later in the proceedings, at which time his request to call witnesses was refused. As recorded by both the High Court and the Supreme Court, he was unable to demonstrate that an alleged danger to himself or his family had motivated his confession. Consequently, the confession could not be withdrawn. Furthermore, it is established jurisprudence that, in cases involving the right of *qisas*, such as this one, an individual cannot retract a confession of murder. This is constitutional since, pursuant to article 142 of the Constitution, a judge must consider Islamic sharia when deciding matters upon which the Constitution or the law is silent. Further, it is settled in domestic law that principles of sharia are to be applied in matters concerning *qisas*, including on issues relating to any retraction of a confession.

⁸ In this regard, the author refers to the report published by the Maldivian Democracy Network regarding the flawed trial, titled *Republic of Maldives v. Mr. Hussein Humaam Ahmed: Reprieve death row prisoner*.

⁹ "Maldives accused of spying on imprisoned Mohammad Nasheed", *Guardian*, 10 September 2015.

6.3 As a result of Mr. Humaam's confession, it was entirely proper that the judge refused to allow him to call any witnesses. Moreover, the author's claim regarding witnesses appears to be based on the fact that one witness was discovered dead on 7 February 2013, before he could testify. This is an issue entirely out of the control of the court and therefore must be ignored.

6.4 A further witness was purportedly allowed to leave the country and travel abroad. It is unclear how this demonstrates that the defendant was prevented from presenting his case. The author does not clarify whether the individual was identified to the court as a witness prior to his departure from Maldives, or whether there was any procedural wrongdoing in allowing that witness to travel out of the country. Furthermore, the author does not suggest that the witness could have been compelled to give evidence on Mr. Humaam's behalf even if he had remained in Maldives. The defence is responsible for securing the attendance of those they wish to call as witnesses, and failure to do so does not in any way infringe on the fair trial rights of a defendant. Whether a defence witness travels out of the country, or attends the trial or not, is out of the hands of the court. It is not for the court, the prosecution or the Government to dictate terms or to control which witnesses the defence calls. That is a matter entirely for the defence, and issue can only be taken if unsurmountable hurdles are placed in the way of the defence that constitute interference with the administration of justice. There is nothing to suggest that any disproportionate obstacles were placed in the way of the defence in this case. In addition, it is established law that a presiding judge has discretion about whether to allow witnesses or other evidence.¹⁰ The question of relevance applies to all witnesses.

6.5 Although the prosecution redacted the names of certain witnesses, including two policemen whose identities were concealed in order to protect them from being influenced and to prevent any harm that might come to them, the judge had access to the real names of the witnesses and could confirm that their identities and testimonies were consistent, which ensured the credibility of their testimony. In the case *Doorson v. the Netherlands*, the European Court of Human Rights found that the decision not to disclose the identity of certain witnesses to the defence "was inspired by the need, as assessed by [the Amsterdam Court of Appeal], to obtain evidence from them while at the same time protecting them against the possibility of reprisals [...] This is certainly a relevant reason to allow them anonymity". The European Court of Human Rights also added that "although, as the applicant has stated, there has been no suggestion that [the anonymous witnesses] were ever threatened by the applicant himself, the decision to maintain their anonymity cannot be regarded as unreasonable per se". In addition, although the testimony of these witnesses was important, they were not the sole deciding factor in the court's decision. Their testimony was not essential in convicting Mr. Humaam but was corroboration of his twice-made confession.

6.6 The decisions of the Criminal Court, the High Court and the Supreme Court were not based solely on anonymous witnesses' testimonies. There was also documentary evidence, testimony from non-anonymous witnesses and a confession. Deoxyribonucleic acid (DNA) from Mr. Ali was also found during the tests conducted on Mr. Humaam's jeans, and the defence team had the opportunity to cross-examine the DNA report. Finally, Mr. Humaam's legal team was given the opportunity to question and cross-examine all witnesses during all the trial hearings in which the witnesses testified. Although the members of the defence team were unaware of the exact name of some of the witnesses, they were informed of all the relevant details of the investigation and were able to openly question the witnesses to verify the reliability and consistency of their testimony.

¹⁰ See *Wright v. Jamaica* (CCPR/C/45/D/349/1989), para. 8.4, in which the Human Rights Committee observed that, "with respect to the alleged violation of article 14, paragraph 3 (e), it is uncontested that the trial judge refused a request from counsel to call a witness on Mr. Wright's behalf. It is not apparent, however, that the testimony sought from this witness would have buttressed the defence in respect of the charge of murder, as it merely concerned the nature of the inquiries allegedly inflicted on the author by a mob outside the Waterford police station. In the circumstances, the Committee finds no violation of this provision."

6.7 Moreover, Mr. Humaam voluntarily and intelligently entered a guilty plea with full knowledge that his right to submit defence witnesses would be waived. The author of the complaint alleges that the confession was obtained under duress, but no specific information is provided to substantiate this claim. Under article 52 of the Constitution, a confession obtained under duress must not be admitted. However, the defendant must raise this issue and thereafter show that the confession was obtained under duress. Once the defendant confesses of his own free will before a judge, the confession will be considered valid unless there is evidence to prove that the person was forced to confess. In this case, there was no evidence that the defendant had any mental illness or that he was forced to confess. Hence, the judge in the court of first instance correctly ruled that his confession was admissible under article 52 of the Constitution. The High Court also held that the defendant had confessed to murdering the victim of his own free will in a sound state of mind, in front of the judge and thus in accordance with the law. The High Court concluded that, when the confession is allowed to stand at trial, the trial judge is justified in not allowing the defence to submit witness evidence to prove his innocence.

6.8 The suggestion that the ability to have the sentence commuted has somehow been curtailed is wrong. The author's interpretation of the Clemency Act is that the President must take into account principles of sharia, including the right of *qisas*, and that the President's discretion is thus removed. The issue concerning the President's right to pardon an offender was addressed in an entirely separate and distinct case. Moreover, because the regulatory procedure concerning the imposition of the sentence is governed by the Regulation on the Investigation of Murder and Implementation of the Death Penalty, the family members of Mr. Ali will be explicitly asked whether they wish to pardon the offender. Regardless of whether the victim's family wants to pardon the offender, the Ministry of Islamic Affairs must initiate the mediation process, the whole purpose of which is to explain to the victim's family the importance and the role assigned to a pardon in Islam. The regulation absolutely requires that the victim's family be consulted, even on the day of execution, and there is thus ample opportunity for the family members of the victim to communicate their wishes.

6.9 In addition, in its decision on the appeal, the High Court notes that all relevant heirs wanted the death penalty for the person or persons responsible for Mr. Ali's murder. Thus, the family signalled an intent that the execution ought to be carried out.

6.10 The Supreme Court decision offers further guidance on and analysis of the issue of *qisas* and offers a position contrary to that advanced by the author concerning heirs. There is still ample opportunity for the family of the victim to request that the execution be commuted, rendering this particular objection baseless.

6.11 Regarding Mr. Humaam's reported mental illness, the fact that a report is requested does not mean that an assessment must be undertaken. Mr. Humaam failed to provide any supporting evidence regarding his mental incapacity. Further, if an "independent" report is requested, it should not be the court's responsibility or that of the prosecution to commission such a report. Finally, the issue of mental health was not raised in these proceedings until Mr. Humaam changed his legal team at a late stage, suggesting that this was a last ditch argument before conviction.

Author's comments on the State party's observations on the merits

7.1 On 12 March 2017, the author submitted the following comments on the State party's observations on the merits.

7.2 The author states that, according to the police report appended to the State party's observations on the merits,¹¹ on 13 October 2012 Mr. Humaam was interviewed in Feydhoofoinlhu, an island that is far away from any police detention facility and that has never been a detention facility. Nor was it used by the Maldives Police Service to conduct investigations or interviews of suspects. No explanation has been provided as to why this was deemed appropriate.

¹¹ Maldives Police Service, Case Report [Redacted Version] LC2012/15547, 15 December 2016.

7.3 Regarding the observation that Mr. Humaam was transferred to Villimale' police station on 30 October 2012,¹² it is unclear where Mr. Humaam was held prior to this transfer. Furthermore, it is highly unusual for the police to transfer any detained person from Male' to Villimale', which is a separate island from Male'. Normally, persons detained by the police are held either in police detention facilities in Male' or on Dhoonidhoo Island until the end of their trial. The author wishes to have an explanation.

7.4 A lawyer was appointed for Mr. Humaam on 2 November 2012, and on 16 November 2012 Mr. Humaam signed a statement denying the offence. On 7 December 2012, Mr. Humaam was taken to the police headquarters in Male' and made the alleged confession there. It is not clear why he had to be brought all the way from Villimale' to the police headquarters in Male', where he suddenly confessed to the crime that he had earlier denied and signed a statement to that effect. Immediately thereafter, he was brought before a judge, and he repeated his confession. The records of the investigation, trial and appeal do not show that the legal counsel for Mr. Humaam was present when the alleged confession was made to the police on 7 December 2012 and before the judge the following day. This is a clear violation of articles 51 (f) and 53 of the Constitution, which include the right to consult with and be represented by a lawyer of the defendant's choice. Mr. Humaam's lawyer departed Maldives to study. As Mr. Humaam couldn't afford a lawyer, he was appointed a public defender. However, Mr. Humaam refused the services of that public defender because he did not trust the criminal justice system. His lack of access to his retained counsel and access to any counsel at certain times indicates that the alleged "confession" was not made voluntarily.

7.5 Furthermore, the absence of video footage of the alleged "confession" at the police headquarters on 7 December 2012 violates section 6 of the Police Powers Regulation (dated 2 November 2008), which requires video recording of all police investigation interrogations. Lastly, according to the court records, Mr. Humaam was charged on 30 January 2013. It is not ordinary criminal procedure in Maldives to record a confession of a suspect in court before the suspect is charged with a crime.

7.6 On 6 May 2013, when the trial commenced, without a lawyer for the defence, Mr. Humaam denied having committed the offence. However, at a hearing on 22 May 2013, without being represented by a lawyer, Mr. Humaam "confessed" to the crime. On 31 May 2013, when he was represented by counsel, Mr. Humaam retracted his "confession".

7.7 The author further refutes the State party's observation that there was no evidence suggesting that Mr. Humaam had any mental illness or that he was forced to confess. The courts failed to take into account the fact that Mr. Humaam had a history of mental health issues and had been in State care for treatment only months before his arrest. This fact, coupled with his behaviour from the time of his arrest on 2 October 2012, constitutes a flaw in the entire trial and appeal process. The Case Report of the Maldives Police Service¹³ shows that doctors have prescribed medication to Mr. Humaam for mental issues and that the only professional psychiatrist in the country refused to make a psychological assessment of him due to a conflict of interest. The Human Rights Commission also wrote to the Maldives Police Service regarding psychiatric medication for Mr. Humaam. The Police Case Report also states that the lawyers for Mr. Humaam requested that the trial court assess his psychological condition and that the court refused those requests. Moreover, Mr. Humaam was in State rehabilitation care due to behavioural issues until a few months prior to Mr. Ali's murder. When Mr. Humaam was produced before the Juvenile Court in a previous case, the Juvenile Court directed the authorities to provide psychological counselling to Mr. Humaam. This fact should have been within the knowledge of the trial judge.

¹² In the chronology of events provided by the State party on page 4 of its submission on admissibility.

¹³ Maldives Police Service, Case Report [Redacted Version] LC2012/15547, 15 December 2016. The report indicates that, on 17 February 2013, Mr. Humaam was taken to a psychiatric hospital to see a psychiatrist at the request of his family and was evaluated and prescribed medication for anxiety, auditory hallucination and "suspiciousness". This is also when the only available clinical psychiatrist refused to perform an evaluation on the ground of conflict of interest.

7.8 The author notes the State party's observation that any witnesses became irrelevant due to Mr. Humaam's confession of 22 May 2013. However, because Mr. Humaam retracted his confession on 31 May 2013, he should have been allowed to call witnesses. Although the High Court and the Supreme Court concluded that Mr. Humaam was unable to demonstrate a danger to either himself or his family, even though he alleged these as reasons for the confession, after withdrawing the confession on 31 May 2013 Mr. Humaam sought to call witnesses to prove that he had been under duress when he made the confession. As he was not allowed to do so, he was denied the opportunity to mount his defence, contrary to article 14 of the Covenant. Hence, the State party's contention that calling witnesses at that stage was "irrelevant" is incorrect.

7.9 The author submits that Mr. Humaam lost two key witnesses. The first one was the police officer who was in charge of monitoring closed-circuit television (CCTV) cameras on the streets in the vicinity of the scene of the murder. Not only did the officer die soon after the incident (his unexplained death was never investigated), but there was also no video footage of the relevant time from any CCTV camera in that vicinity. The second witness, Mr. Azlif Rauf, whose passport was seized by the Maldives Police Service in connection with Mr. Ali's murder, was mysteriously allowed to leave the country and has not returned since. It is clear that a person whose passport was seized by the police and prevented from leaving the country by a court order for a very serious crime could not travel abroad unless senior government officials and the Maldives Police Service had facilitated his departure. The police opened an investigation to determine who was responsible for facilitating his departure, but that investigation has thus far not concluded. The author asserts that the State party misrepresented the facts in its observations by stating that the second witness had left the country of his own volition, thereby suggesting that he was free to leave without the consent of the authorities.

7.10 Maldives does not have a code of criminal procedure or an evidence act. Very few provisions on evidence are contained elsewhere in domestic law. Therefore, criminal procedure relating to the conduct of a trial and appeal is left to the discretion of each judge on a case-by-case basis. Maldivian courts do not have any rules relating to anonymous witnesses. The defendant's right to a fair trial is violated in every case where the prosecution relies on anonymous witnesses. As it is impossible to conduct a cross-examination of an anonymous witness, there are no means available for the defendant to verify the truthfulness of the testimony. Usually, a written statement is taken from anonymous witnesses. However, the prosecution does not share the written statement with the defence. The defence thus cannot be prepared for the cross-examination. Moreover, anonymous witnesses are relied on by the prosecution only in political cases. The identity of a witness is withheld for political reasons rather than to protect individual witnesses.

7.11 The author further refers to a report prepared by the University of Pennsylvania Law School for the Government of Maldives in 2005,¹⁴ which stated that "the Maldivian criminal justice system is inadequate, to the point that it systematically fails to do justice and regularly does injustice". In its report, the University of Pennsylvania Law School recommended wide-ranging reforms and noted that, without dramatic change, the system was likely to deteriorate further. The proposed reforms included making the judiciary an independent branch of government, limiting the police's right to search, establishing defendants' right to legal counsel, and ending the "present practice of relying primarily on confessions as the basis for establishing criminal liability". To date, these recommendations have not been implemented in full, and the author submits that political influence on the judiciary has increased since 2005.

7.12 The author notes that, under article 6 (4) of the Covenant, anyone sentenced to death shall have the right to seek pardon or commutation of the sentence and that amnesty, pardon or commutation of the death sentence may be granted in all cases. A State party must ensure the availability of this right in all cases. Under sharia, the opinions of jurists are divided on whether the State can commute death sentences of those convicted of murder. However, an executive regulation issued by the Government in 2015, known as the

¹⁴ www.unicef.org/maldives/Criminal_Justice_System_in_Maldives.pdf.

Regulation for Execution, takes away the power of the State to commute death sentences. Therefore, the Government has clearly violated article 6 (4) of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee must ascertain that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes the assertion of the State party that the same matters were raised in relation to Mr. Humaam's case before the Human Rights Council special procedure mandate holders. The Committee refers to its jurisprudence¹⁵ in which it has found that extra-conventional procedures or mechanisms established by the Human Rights Council, and whose mandates are to examine and report publicly on human rights situations in specific countries or territories or cases of widespread human rights violations worldwide, do not generally constitute an international procedure of investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol. Accordingly, the Committee considers that it is not precluded from examining the present case under this provision.

8.3 The Committee notes the State party's objection regarding the non-exhaustion of domestic remedies on the ground that the mediation process is effective and available until the day of execution. It also notes the author's reply that, since the court did not take Mr. Ali's family's request to halt the execution into account, the mediation process is rendered ineffective and, in any case, has been unreasonably prolonged, rendering domestic remedies ineffective. The Committee further notes the author's claims that the new rules on clemency are opaque as to the President's discretion and the Supreme Court's powers, and that they are discriminatory and thus ineffective. It further notes the State party's argument that the rules on clemency are clear and are in accordance with sharia.

8.4 The Committee considers that clemency is a discretionary remedy, which does not need to be exhausted for the purposes of the Optional Protocol. It further notes that the clemency process works in tandem with the mandatory mediation procedure under sharia, and notes the lack of clear information about the ability of the President and the Supreme Court to grant or uphold clemency in the face of mediation in cases involving intentional killing, as well as the lack of clear information about the nature of the regulatory changes in this regard. The Committee considers that, under these circumstances, the State party has not demonstrated that the mediation process constitutes an available and effective remedy, and that it is not precluded by article 5 (2) (b) of the Optional Protocol from proceeding to a consideration of the merits of the present communication.

8.5 The Committee takes note of the State party's argument that the communication is inadmissible since it was submitted to the Committee by a third party and not by the alleged victim himself. In this respect, the Committee recalls that rule 96 (b) of its rules of procedure provides that a communication should normally be submitted by the individual personally or by that individual's representative, but that a communication submitted on behalf of any alleged victim may be accepted when it appears that the individual in question is unable to submit the communication personally. In the present case, the Committee notes that the alleged victim was detained on death row, that the communication was submitted on behalf of the alleged victim by his father and his counsel, who have presented a duly signed letter of authorization and a power of attorney from the alleged victim for the

¹⁵ See *Djebrouni and Berzig v. Algeria*, para. 7.2, *Bashasha and Bashasha v. the Libyan Arab Jamahiriya* (CCPR/C/100/D/1776/2008), para. 6.2, and *Celis Laureano v. Peru* (CCPR/C/51/D/540/1993), para. 7.1.

counsel to represent him before the Committee. Accordingly, the Committee is not precluded by article 1 of the Optional Protocol from examining the communication.¹⁶

8.6 With regard to the author's claim of a violation of article 7 of the Covenant, specifically that the repeated statements regarding the imposition of the death penalty have created such a psychological toll on Mr. Humaam as to amount to a violation of the right not to be subjected to cruel, inhuman or degrading treatment or punishment, the Committee notes that the author has failed to provide information in support of this claim, for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8.7 As regards the author's claims under article 14 of the Covenant, the Committee further notes the State party's argument that the claims that Mr. Humaam confessed under duress and regarding Mr. Humaam's mental health are insufficiently substantiated. It also notes the author's assertions that Mr. Humaam's counsel was not present when he made the confession, and that he later attempted to withdraw the confession, but that the court did not allow him to present evidence that his confession was coerced, including witnesses to that effect. Regarding the request for psychiatric assessment, the Committee notes the author's arguments that Mr. Humaam has a history of mental illness, including provision of State care, and that his behaviour during the court proceedings indicated that he needed evaluation, which his family requested. It further notes the State party's assertion that the issue was not raised until late in the proceedings, that an independent assessment was not the responsibility of the State party to arrange, that Mr. Humaam had not raised the issue in criminal proceedings in the past, and that, in any case, no evidence was adduced in court to support the author's claim in this regard, and the court found Mr. Humaam to be lucid. The Committee considers that the author has sufficiently substantiated his claims under article 14 of the Covenant for the purposes of admissibility and therefore considers them admissible under article 2 of the Optional Protocol.

8.8 In the light of the alleged violations of Mr. Humaam's rights under article 14 of the Covenant, the Committee considers the author's claim of a violation of Mr. Humaam's rights under article 6 of the Covenant sufficiently substantiated for the purposes of admissibility. The Committee therefore declares the author's claims under articles 6 and 14 admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

9.2 The Committee notes the author's claims under articles 6 and 14 of the Covenant that Mr. Humaam was subjected to psychological pressure to force him to confess. On 7 December 2012, when he made the confession, he was represented by counsel, but that counsel was not present. Nor was his counsel present the following day in court when he confirmed the confession. No date is given as to when Mr. Humaam's counsel left the country. Mr. Humaam did not have counsel when the trial commenced. It appears that he did not accept State-appointed counsel. He denied having committed the offence on 6 May 2013, without counsel. On 22 May, still unrepresented, he confessed. He retracted his confession on 31 May 2013, at which time he had a lawyer. There is a reference in the timeline of the police report to the fact that he was given 10 days, on 22 April 2013, to obtain counsel of his choosing, as he did not want State-appointed counsel. It appears that he agreed to appear without counsel when the trial started. The Committee also notes that no video recording of the police interrogation and subsequent confession were made available, even though such a recording is required by domestic law; that the confession was made without access to his counsel at the time; that the statement of confession was confirmed in court, again in the absence of counsel, and before charges were officially laid against him; that although Mr. Humaam confessed guilt in court, the author contends that the threats to his family meant that he was still under duress at that time; and that, when Mr. Humaam recanted this confession in the presence of counsel and requested to call witnesses

¹⁶ See *Zhuk v. Belarus* (CCPR/C/109/D/1910/2009), para. 7.3.

to corroborate his claim of duress, he was not allowed to do so. The Committee further notes the State party's arguments that Mr. Humaam made a confession once before the police and twice before a judge; that he only made the claims about duress at a later stage after having changed his team of lawyers; that it is for the defence to substantiate the claim of duress, not the State party; that in any case a confession cannot be retracted under sharia when a defendant is thought to be of sound mind, which the court adjudged Mr. Humaam to be in the absence of evidence to the contrary; and that the confession was not the sole basis upon which Mr. Humaam was convicted, as his confession only corroborated a multitude of other evidence.

9.3 The Committee firstly recalls that, once a complaint about ill-treatment contrary to article 7 of the Covenant has been made, including psychological pressure to make a confession, a State party must investigate it promptly and impartially.¹⁷ It further recalls its general comment No. 32 (2007) on article 14: right to equality before courts and tribunals and to a fair trial, in which it stated that the safeguards set out in article 14 (3) (g) of the Covenant must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt.¹⁸ The Committee notes that, despite numerous claims by Mr. Humaam that he had been forced to confess guilt under duress, the State party did not allow Mr. Humaam to present evidence or call witnesses to support his claims and did not conduct any investigation into those allegations. Regarding the State party's contention that Mr. Humaam bore the burden of proof in establishing that the confession was extracted under duress and was not voluntary, the Committee recalls that it is implicit in article 14 (3) (g) that, once a defendant raises credible claims that a confession was made under duress, the prosecution bears responsibility for establishing that the confession was given voluntarily. The Committee notes in this respect that the failure of the State party to allow Mr. Humaam to present evidence to support the claim or to independently investigate it shows that this obligation was not met, especially since Mr. Humaam was in detention at the time, and that the State party has failed to provide the recording of the interview as required by domestic law. The Committee concludes that, by placing the burden of proof that his confession was made under duress on Mr. Humaam and failing to allow him to present evidence to support this claim, the State party violated article 14 (3) (g). Accordingly, the Committee concludes that the facts before it disclose a violation of Mr. Humaam's rights under article 14 (3) (g) of the Covenant.

9.4 In connection with the author's claim that Mr. Humaam's confession was obtained in the absence of his defence lawyer, the Committee notes the State party's statement that Mr. Humaam refused the services of the lawyer appointed by the authorities to represent him. The Committee recalls its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, in which it states that, in cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings and that the interests of justice may, in the case of a specific trial, require the assignment of a lawyer against the wishes of the accused, particularly in cases of persons facing a grave charge but being unable to act in their own interests.¹⁹ In the present case, the Committee notes the author's claim that the early proceedings were conducted in circumstances that were not conducive to protecting Mr. Humaam's procedural rights, including the author's unrefuted claims that Mr. Humaam's interview was conducted in a distant location, without the video recording that is required by domestic law, and that the State party did not ensure effective access to counsel at the early stages of the proceedings (see paras. 7.2–7.5). It further notes that the State party only gave Mr. Humaam 10 days to obtain private counsel; did not appoint counsel, albeit against his wishes, in the event of his failure to retain private counsel; failed to ensure that Mr. Humaam was capable of acting in his own interests, as concluded in paragraph 9.5, below; and recorded the confession in court without counsel before charges had been laid. Under these circumstances, the Committee concludes that the facts as submitted by the author

¹⁷ See *Amanklychev v. Turkmenistan* (CCPR/C/116/D/2078/2011).

¹⁸ See *Kovaleva et al. v. Belarus* (CCPR/C/106/D/2120/2011).

¹⁹ *Ibid.*, paras. 37–38.

reveal a violation of Mr. Humaam's rights to legal assistance under article 14 (3) (d) of the Covenant.

9.5 Regarding the ability to present witness testimony more generally, the Committee notes the author's claim that Mr. Humaam was not allowed to call defence witnesses, including witnesses to establish that his confession was made under duress. The Committee further notes his claim that one of the witnesses Mr. Humaam wished to call died in still unexplained circumstances, without an investigation ever being carried out, and that the CCTV evidence to which the deceased witness' testimony related was never made available. The Committee further notes that another witness Mr. Humaam wished to call had had his passport retained by authorities after the murder to prevent him from leaving the country, and yet, he still was allowed to leave. The author further claims that the complete discretion of judges in Maldives as to what evidence is presented, including which witnesses, if any, can be called, and the use of anonymous witnesses in the trial, prevented the defence from being able to cross-examine witnesses. The Committee notes the State party's argument that Mr. Humaam was not allowed to call witnesses in his defence due to his confession at the outset; that the complaints regarding witness unavailability were not substantiated; that these matters were not under State control; that, as in other jurisdictions, judges have discretion regarding whether to admit relevant evidence; that Mr. Humaam had been given the opportunity to cross-examine prosecution witnesses as, even though anonymous, all essential information was provided; and that he had been able to cross-examine them regarding the DNA evidence, having had access to the report. The Committee recalls its jurisprudence that the right to obtain the attendance of witnesses requested by the accused or their counsel is not unlimited, but that there should be a proper opportunity to question and challenge witnesses against the accused at some stage of the proceedings.²⁰ The Committee also notes the irregular representation of Mr. Humaam by counsel during his capital trial proceeding. The Committee considers that the failure to allow the defendant an opportunity to present witnesses in his defence in a capital proceeding, including witnesses to corroborate the involuntary nature of his confession, and the failure to provide in a timely manner relevant information that would allow adequate cross-examination of the prosecution's witnesses, violated Mr. Humaam's rights under article 14 (3) (b) and (e) of the Covenant.

9.6 The Committee notes the author's claims that Mr. Humaam's mental health had been called into question by a recent history of psychiatric treatment and by his erratic and inconsistent behaviour from the outset of proceedings, which included rejecting State-appointed counsel and insisting on his own representation, repeatedly changing pleas, and generally acting against his own interests, and that the State party failed to facilitate an independent psychiatric assessment despite requests by the family, the police and a penitentiary medical doctor. It also notes the author's argument that the only professional psychiatrist in the country had refused to make a psychological assessment of Mr. Humaam due to a conflict of interest. It further notes the State party's argument that the court adjudged Mr. Humaam to be fit for trial, that there was no indication of a history of mental illness, that the matter was raised late in the trial proceedings after a change in Mr. Humaam's representation, and that it is for the defence to furnish the supporting evidence. The Committee considers that, particularly in a capital trial, in a context where Mr. Humaam was making inconsistent pleas, was insisting on representing himself and was otherwise irregularly represented by counsel; where a psychiatric assessment had been requested by his family and by a penitentiary doctor; where there was evidence of prior State care for mental health issues and requests for assessment in prior proceedings; and where the State party has not presented evidence of a detailed inquiry into Mr. Humaam's fitness to stand trial, the State party failed to conduct an adequate inquiry into Mr. Humaam's mental health, and thus failed to ensure that Mr. Humaam was capable of standing trial and that he was competent to act in his own best interests. Under these circumstances, the Committee concludes that the State party violated its obligations under article 14 (1) of the Covenant.

²⁰ General comment No. 32, para. 39.

9.7 The author further claims a violation of Mr. Humaam's right to life under article 6 (1) of the Covenant, since he was sentenced to death after an unfair trial in violation of article 14 of the Covenant. The Committee notes that the State party has argued, with reference to article 6 (2) of the Covenant, that Mr. Humaam was sentenced to death for having committed serious crimes following the judgment handed down by the courts, in accordance with the Constitution and laws of Maldives and sharia, and that the imposition of the death penalty was not contrary to the Covenant. The Committee recalls its general comment No. 6 (1982) on article 6 (the right to life), in which it noted that the article 6 provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that the procedural guarantees prescribed by the Covenant must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence and the right to review by a higher tribunal.²¹ It further reiterates its jurisprudence that the imposition of a sentence of death upon conclusion of a trial in which the provisions of article 14 of the Covenant have not been respected constitutes a violation of article 6 of the Covenant.²² In the light of its findings that the State party violated Mr. Humaam's rights under article 14 as set out above, the Committee considers that, in sentencing Mr. Humaam to death following a trial that suffered from such deficiencies, the State party has violated its obligations under article 6 (1) of the Covenant.

9.8 In relation to the exercise of clemency, the Committee notes the author's statement that, despite purported mandatory mediation with the family of the accused, the State party ignored a request by Mr. Ali's family to stop the death penalty being carried out unless and until the murder investigation was properly concluded; that the new rules on clemency have in fact taken away the discretion of the President to grant clemency in the circumstances of this case and do not provide clear rules regarding the basis upon which the Supreme Court is able to stop an execution even if the family so requests; and that this process therefore contravenes Mr. Humaam's rights under article 14 (1) of the Covenant. The Committee notes the State party's arguments in this regard that mediation with the victim's family is mandatory, that the author has misunderstood the provisions on clemency and the interplay with sharia, and that the judicial interpretation referred to by the author was specific to that case and does not affect Mr. Humaam's case.

9.9 The Committee recalls its jurisprudence that States parties are required, pursuant to article 6 (4) of the Covenant, to allow individuals sentenced to death to seek pardon or commutation; to ensure that amnesties, pardons and commutation can be granted to them in appropriate circumstances; and to ensure that sentences are not carried out before requests for pardon or commutation have been meaningfully considered and conclusively decided upon. No category of sentenced persons can be a priori excluded from such measures of relief, nor should the conditions for attainment of relief be ineffective, unnecessarily burdensome, discriminatory in nature or applied in an arbitrary manner. Article 6 (4) does not prescribe a particular procedure for the exercise of the right to seek pardon or commutation, and States parties consequently retain some discretion in spelling out the relevant procedures. Still, such procedures should be specified in domestic legislation. Moreover, clemency procedures must not afford the families of crime victims a preponderant role in determining whether the death sentence should be carried out. Furthermore, pardon or commutation procedures must offer certain essential guarantees, including: certainty about the processes followed and the substantive criteria applied; the right of individuals sentenced to death to initiate pardon or commutation procedures and to make representations about their personal or other relevant circumstances; the right to be informed in advance about when the request will be considered; and the right to be informed promptly about the outcome of the procedure. In the light of the lack of certainty in the law regarding the clemency process and its effectiveness, the Committee considers that the State party has not met its obligations under article 6 (4) of the Covenant. The Committee concludes that the author's claims reveal a violation of article 6 (4) of the Covenant.

²¹ See general comment No. 6 (1982) on article 6 on the right to life, para. 7.

²² *Price v. Jamaica* (CCPR/C/58/D/572/1994).

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of Mr. Humaam's rights under articles 6 (1) and (4), 14 (1) and 14 (3) (b), (d), (e) and (g) of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated to, *inter alia*: take immediate steps to quash Mr. Humaam's conviction and sentence and immediately release him; if appropriate, order a retrial of Mr. Humaam's case, ensuring that the proceedings comply with all fair trial guarantees in accordance with the obligations under articles 6 and 14 of the Covenant, including conducting a psychiatric assessment to ensure that Mr. Humaam is competent to stand trial; and provide Mr. Humaam with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this regard, the Committee reminds the State party that it may not impose the death penalty on an individual with serious psychosocial and intellectual disabilities or execute any individual with a diminished ability to understand the reasons for their sentence.²³

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

²³ See *R.S. v. Trinidad and Tobago* (CCPR/C/74/D/684/1996), para. 7.2., and general comment No. 36 (2018) on article 6 (the right to life), para. 53.