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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3011/2017*, **, ***

<i>Communication submitted by:</i>	A.K. (represented by counsel, Mandivavarira Mudarikwa of Amnesty International)
<i>Alleged victim:</i>	Mohamed Nabeel
<i>State party:</i>	Maldives
<i>Date of communication:</i>	24 July 2017 (initial submission)
<i>Document references:</i>	Decisions taken pursuant to rules 92 and 94 of the Committee's rules of procedure, transmitted to the State party on 24 July 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	18 March 2024
<i>Subject matter:</i>	Arbitrary deprivation of life
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Death penalty; torture, cruel, inhuman or degrading treatment or punishment; right to fair trial
<i>Articles of the Covenant:</i>	6 (1), (4) and (6), 7 and 14 (3)
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is A.K. He is submitting the communication on behalf of his brother, Mohamed Nabeel, a national of Maldives born in 1987, who is currently detained in prison, having been sentenced to the death penalty. The sentence was confirmed by the Supreme Court of Maldives on 27 July 2016. The author claims a violation of his brother's rights under article 6 (1), read alone and in conjunction with article 14, article 6 (4), article 6 (6), read in conjunction with article 7, and article 14, read in conjunction with article 7, of the Covenant. The Optional Protocol entered into force for the State party on 19 December 2006. The author is represented by counsel.

* Adopted by the Committee at its 140th session (4–28 March 2024).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobaujah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

*** A joint opinion by Committee members José Manuel Santos Pais, Carlos Gómez Martínez, Kobauyah Tchamdja Kpatcha and Teraya Koji (partially dissenting) is annexed to the present Views.



1.2 On 24 July 2017, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to ensure that the death sentence against the alleged victim was not carried out while his case was under consideration by the Committee.

Facts as submitted by the author

2.1 On 10 March 2009, the alleged victim was arrested in connection with a murder. On 8 April 2009, during the police investigation, he gave a self-incriminating statement to the police.

2.2 On 8 December 2009, the case was submitted to the Criminal Court. On 22 November 2010, the alleged victim was convicted by the Criminal Court on the charge of “intentional murder” and sentenced to death.

2.3 The alleged victim appealed the judgment of the Criminal Court to the High Court of Maldives. On 25 November 2015, the High Court upheld the conviction and the death sentence imposed. The judgment was upheld by final judgment by the Supreme Court on 27 July 2016.¹ The author notes that, at the time of his submission of the complaint, a mediation process between the alleged victim and the murder victim’s family had not been initiated, a practice provided for under domestic law. He submits however that, in line with the Committee’s jurisprudence, such pardon procedures are considered to be an extraordinary remedy and do not constitute an effective remedy for the purposes of article 5 (2) (b) of the Optional Protocol.²

2.4 The author claims that there were serious concerns about the fairness of the trial and other proceedings through which the alleged victim’s conviction and death sentence were imposed, and he argues that the alleged victim provided his statement to the police without the assistance of a legal representative. He later withdrew the statement at trial, stating that he had provided it out of fear; nevertheless, the statement was taken into consideration by the court and used to convict him. Similarly, the alleged victim’s sister, who was a witness in the case, also retracted her previous testimony against the alleged victim, but that was not taken into consideration by the court.

Complaint

3.1 The author claims a violation of the alleged victim’s rights under article 6 (1), read in conjunction with article 14, of the Covenant and argues that the imposition of the death penalty upon the conclusion of a trial, in which the provisions of article 14 were not respected, also constitutes a violation of the right to life.

3.2 The author also claims a violation of the alleged victim’s rights under article 6 (4) of the Covenant. He notes that, prior to 2014, the President of Maldives had the power to commute death sentences under articles 5 (1) and 21 of the Clemency Act (No. 2/2010). However, on 27 April 2014, Regulation No. R-33/2014, on the procedure of investigating the crime of committing international murder and enforcing the sentence, came into force, which, together with a decision of the High Court of 29 November 2015 in related litigation,³ resulted in the removal of the power of the President to grant clemency in cases of intentional murder and placed it instead with the family of the victim. As a result, those facing the death penalty in the State party for intentional murder, such as the alleged victim, are denied the possibility

¹ The author notes that the most recent execution carried out in Maldives was in 1953. However, in 2014, the then-Government announced that executions would resume, and regulations were put in place for the implementation of death sentences. In 2017, the author received credible reports that executions could imminently take place, starting from 21 July 2017. The alleged victim was singled out as being among the death row prisoners at particular risk. In its observations on the complaint, the State party notes the statements made by the previous Administration, but states that said statements should not be attributed to the current Government, which is committed to upholding the moratorium on the death penalty.

² *Nallaratnam v. Sri Lanka* (CCPR/C/81/D/1033/2001), para. 6.4; *Chisanga v. Zambia* (CCPR/C/85/D/1132/2002), para. 6.3; *Kovaleva et al. v. Belarus* (CCPR/C/106/D/2120/2011), para. 10.4; and *Khalilov v. Tajikistan* (CCPR/C/83/D/973/2001), para. 7.6.

³ Decision 2012/HC-DM-08 of 29 November 2015.

of exercising their right to seek pardon or commutation of their sentence, in violation of article 6 (4) of the Covenant. The author argues that the system introduced under Regulation No. R-33/2014 results in an arbitrary exercise of power of pardon. The regulation does not indicate the grounds on which the Supreme Court might refuse to commute a death sentence, should the victim's family decide to pardon the offender. The regulation also makes the commutation of a death sentence dependent on factors such as the socioeconomic background of the convicted person's family, external to his or her personal circumstances or the circumstances of the crime.⁴ The author also argues that the system is discriminatory based on the type of offence committed, does not provide procedural guidance as to the time frame for the negotiations and is not transparent in relation to the appointment of mediators by the Ministry of Islamic Affairs.

3.3 The author claims a violation of the alleged victim's rights under article 6 (6), read in conjunction with article 7, of the Covenant. He argues that the move,⁵ at the time of the submission of his complaint, to resume executions in the State party after decades without executions having been carried out is inconsistent with article 6 (6) of the Covenant, which sets out the desirability of the abolition of the death penalty as goal for States parties to the Covenant. He argues that the fact that the State party has had a policy for six decades of not implementing death sentences has created a legitimate expectation that no further executions would be carried out. The author also claims that the repeated statements by the authorities and legislative changes aimed at the resumption of executions, coupled with the lack of transparency in relation to the timing of scheduled executions, have caused the alleged victim and his family enormous distress, in violation of their rights under article 7 of the Covenant.⁶

3.4 The author claims a violation of the alleged victim's rights under article 14, read in conjunction with article 7, of the Covenant. He claims that there were serious concerns about the fairness of the trial and other proceedings through which the alleged victim's conviction and death sentence were imposed and upheld, and he argues that the alleged victim provided his statement to the police in circumstances which may have amounted to cruel, inhuman or degrading treatment or punishment. Despite the alleged victim's request to receive legal counsel, he did not have the assistance of a legal representative during the police interrogation and "confessed" to the crime, only to later retract said statement at trial, stating that he had signed the statement without thoroughly reading it because he felt fearful, thus raising concerns under article 7 of the Covenant. Nevertheless, the statement was taken into consideration by the courts and used to convict him. Similarly, the alleged victim's sister's retraction (para. 2.4) was not considered by the court, which referred to the video tape of her interrogation at the police station as evidence. The author notes that, in line with articles 7 and 14 (3) of the Covenant, statements elicited as a result of torture or other ill-treatment must be excluded as evidence in criminal proceedings.⁷

3.5 The author requests the Committee to recommend that the State party grant the alleged victim a retrial that fully complies with the fair trial provisions set out in the Covenant and which does not resort to the death penalty, reinstate procedures for executive clemency, which must be fair and transparent, ensure that, pending the abolition of the death penalty, all persons under sentence of death can exercise their right to seek pardon or commutation of their death sentences, halt all executions and grant those in similar circumstances as the alleged victim the opportunity and the means to request interim measures from the Committee.

State party's observations on admissibility and the merits

4.1 On 15 July 2019, the State party submitted its observations on the admissibility and the merits of the communication. It submits that the claims should be found inadmissible as insufficiently substantiated.

⁴ The author refers to [A/HRC/8/3](#), paras. 59–67.

⁵ *Nallaratnam v. Sri Lanka*, para. 6.4; *Chisanga v. Zambia*, para. 6.3; *Kovaleva et al. v. Belarus*, para. 10.4; and *Khalilov v. Tajikistan*, para. 7.6.

⁶ The author refers to [A/69/265](#), paras. 105 and 106.

⁷ The author notes that article 52 of the Constitution explicitly stipulates that: "No confession shall be admissible in evidence unless made in court by an accused who is in a sound state of mind."

4.2 The State party notes that the alleged victim was arrested in March 2009 on suspicion of participating in a gang fight. During the fight he was observed beating the murder victim and throwing an approximately 6-inch-long knife-like weapon at the victim, which lodged into the victim's back, slashing through major arteries and causing the victim's lung to collapse, resulting in his death in hospital on 9 March 2009.

4.3 The State party asserts that, at the time of the arrest, the alleged victim was informed of his rights under the Constitution, the reason for his arrest, where he was being taken and that he had the right to remain silent and the right to seek legal representation. He was charged with murder by the Criminal Court on the date of arrest. On 14 March 2009, he was provided with all documents relating to the charges. On 20 December 2009, a hearing was held at which the charges were presented by the prosecution and refuted by the alleged victim. The alleged victim was represented by a defence attorney appointed by him during the hearing. Additional time for the preparation of the defence was requested during the hearing, which was granted by the Criminal Court. Following the hearing, the appointed defence attorney withdrew from the case. On 12 January 2010, a new defence attorney was appointed by the alleged victim to represent him at the next hearing, held on 17 March 2010, and the trial concluded on 22 November 2010.

4.4 During the hearings, five witnesses were heard, as well as a medical expert who attested to the cause of death. In the interest of protecting the witnesses, their testimonies were heard through live videoconference. The alleged victim and his counsel did not object to that measure. The defence had the opportunity to cross-examine the witnesses, however, the defence did not pose any questions to the witnesses. During the hearings, the alleged victim refuted the statement that he had given to the police during the investigation, citing fear as the reason for giving his statement during the investigation stage. The State party notes that the alleged victim was informed of his right to legal counsel during the investigation. However, according to case file documents, he declined this right on 8 April 2009 and consented to interrogation without the presence of counsel. On 22 November 2010, the Criminal Court found the alleged victim guilty of intentional murder and sentenced him to death under section 88 (d) of the Penal Code of Maldives (Law No. 1/66).⁸ In its assessment, the Court found that witness statements, as well as the alleged victim's statement in the course of the police investigation, had established that the murder victim had died as a result of the alleged victim throwing a sharp object at the murder victim, which caused him severe injuries resulting in his death.

4.5 On 23 February 2011, the alleged victim appealed the judgment of the Criminal Court to the High Court of Maldives. On 25 November 2015, the High Court upheld the judgment of the Criminal Court. On 21 February 2016, the Prosecutor General appealed the judgment to the Supreme Court to confirm the sentence. The Supreme Court confirmed the sentence on 27 July 2016 and upheld the judgment of the Criminal Court.

4.6 The State party notes that the infliction of the death penalty is arbitrary where it lacks legal basis and fails to adhere to procedural guarantees and safeguards. The death penalty can only be imposed in relation to the most serious of offences and in a manner that is not in contravention of articles 7 and 14 of the Covenant. In the present case, the sentence was imposed on the alleged victim in accordance with law, namely, section 88 (a) and (d) of the then-applicable Penal Code. It notes that, while the Penal Code has since been amended, the authority to prescribe punishments such as the death penalty, is retained in section 1205 of the Penal Code.

4.7 The State party takes note of author's claims under articles 6, 7 and 14 (3) of the Covenant. The State party argues that the author's claims are unfounded, as it submits that the police investigation and court hearings in the alleged victim's case adhered to domestic law, international standards and fundamental safeguards inherent to the Covenant. It argues that the domestic courts' adverse findings against the alleged victim resulted from careful scrutiny of the evidence presented before the courts. It submits that, contrary to the author's claims, the alleged victim was offered the opportunity to appoint legal representation during the investigation, which he refused, and it notes that he was represented during the court

⁸ Law No. 1/66 has since been repealed and replaced by Law No. 9/2014.

hearings at first instance and on appeal. It submits that there are no grounds to conclude that an arbitrary sentence was issued against the alleged victim.

4.8 The State party notes that, notwithstanding its observations on the claims raised by the author, it has, since 1954, observed a moratorium on the implementation of death penalty sentences. Even though death penalty sentences have been imposed after 1954, such sentences have not been implemented. It notes that it is proud of this moratorium and committed to upholding it. While amending and re-enacting laws concerning tenets of Islamic sharia will require larger consensus and public dialogue, the threshold for prescribing the death penalty is rendered almost dormant by the high evidentiary threshold required to warrant such a penalty as, under Islamic sharia, guilt needs to be established beyond any doubt to necessitate the imposition of the death penalty. Islamic sharia also awards the final say to the victim's family by affording them the opportunity to forgive the accused, even if the death penalty has already been imposed by the competent courts.

4.9 The State party notes the author's submission that the interpretation of sections 5 and 21 of the Clemency Act by the High Court and Regulation No. R-33/2014 negatively impacts the power afforded to the President of Maldives to grant an executive pardon or clemency. It notes that, under the Clemency Act, the President has the discretionary power to commute a sentence of a convicted person, on the basis of the person's age, health and personal circumstances and for humanitarian reasons. On 8 August 2012, the constitutionality of sections 5 and 21 of the Clemency Act was challenged before the High Court on the grounds that a pardon or commutation of sentence for a person convicted of intentional murder were in contravention of the principles of Islamic sharia. In that respect, the State party notes that, under article 10 (b) of the Constitution, no law contrary to any tenet of Islam is to be enacted in the State party. While sections 5 and 21 were not struck down or declared unconstitutional by the High Court, as this could have affected death sentences issued in cases other than intentional murder, the Court ruled that, based on the principles of Islamic sharia, the right to pardon lies with the victim's family, not the Executive. The State party argues, however, that, in the present case, its domestic courts conducted a free and fair trial and the wishes of the murder victim's family were not the singular factor in the decision to impose the death penalty on the alleged victim.

4.10 The State party notes the author's claims under article 6 (6) of the Covenant that the legislative changes undertaken by the previous Administration of the State party and assertions made by the previous Government breached the alleged victim's legitimate expectations that the death penalty imposed in his case would not be enforced and his claims that the distress caused by these legislative changes and statements amounted to ill-treatment under article 7 of the Covenant. The State party submits that these statements on the resumption of capital punishment should be attributable to the previous Administration in the State party and that, since the presidential election in 2018, the current Government has highlighted the long-standing moratorium on the death penalty and expressed its wish to maintain it. While the death penalty as a sentence is retained under domestic law, judicial reform and the strengthening of the legal framework is of the utmost priority to the State party.

4.11 Regarding the author's claims under article 14 (3), the State party argues that the alleged victim was informed of his rights under the Constitution upon arrest, promptly informed of the charges against him and informed of his right to request legal representation at the time of arrest. The same information was conveyed to him in writing within 24 hours of arrest. These factors were also taken into account by the Criminal Court in its judgment. The State party reiterates its argument that the alleged victim declined legal representation on 8 April 2009 and its argument that, during the hearings, the alleged victim was represented by counsel. It refers to its observations on the facts of the complaint and submits that the timeline of the hearings substantiate that the alleged victim had sufficient time to prepare his defence and analyse documentation and evidence submitted by the State party authorities. The State party therefore submits that the requirements under article 14 have been fulfilled.

4.12 The State party notes the author's claims that the admission of the alleged victim's statement in the course of the police investigation amounted to a violation of articles 7 and 14 of the Covenant. It also notes the author's argument that the Criminal Court failed to take into account that one of the witnesses retracted a statement that she had made to the police in

the course of the investigation during the trial hearing. The State party argues that the admission of the statements was in accordance with domestic and international law. It notes that, in the admission of the alleged victim's statement as evidence, it is important to note that the Court, in addition to his statement, also considered statements from three witnesses present at the incident, the medical report of the victim and video recordings of the police interrogations. It notes that, under article 52 of the Constitution, no confession is to be admissible in evidence unless made in court by an accused who is in a sound state of mind, that no statement must be obtained by compulsion or by unlawful means and that any such statement is inadmissible. In the present case, the State party notes that the Criminal Court, in finding the alleged victim's statement to the police to be admissible, noted the following: (a) when questioned about the statement during trial, the alleged victim stated that he had given the statement freely at his own discretion; (b) while the alleged victim claims that the statement during the investigation was induced by fear, video recordings of the interrogation show him spending a good amount of time reading the statement; (c) the alleged victim was aware of the fate of the murder victim when he gave the police statement; (d) the alleged victim's statement matched the statements of witnesses as to the facts of the case; and (e) the alleged victim was unable to establish reasonable grounds as to why he would have made a false statement during the investigation. The State party therefore submits that the claim that the alleged victim gave a statement to the police under duress is unfounded.

4.13 Regarding the author's argument that one witness had retracted her statement to the police during the trial, the State party notes that, as said witness was a minor at the time of the incident, appropriate procedures were followed in obtaining her statement. As such, her father was present during the questioning, and the statement was recorded on video. In deciding to admit her statement, the Criminal Court noted the following: (a) the witness in question is the alleged victim's sister; (b) the witness had read the statement before signing it, and her father admitted to the same during the hearing; (c) the video recording of the statement shows the witness narrating the facts of the case; (d) the statement matched that of the other witnesses; (e) the statement was obtained soon after the incident, and the witness was aware of the victim's fate at the time of the statement; (f) the witness' father was present when the statement was given; and (g) the witness failed to establish reasonable grounds as to why she would have given a false statement during the investigation. The State party concludes by noting that the judgment of the Criminal Court was upheld on appeal and that, in the appeal submitted to the High Court, 21 points of appeal were raised by the alleged victim concerning both the facts of the case and the application of law. All the points raised were addressed by the High Court in its judgment and subsequently upheld by the Supreme Court.

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

5.1 In its submissions of 21 August and 3 October 2022, the author maintained that the communication was admissible.

5.2 The author welcomes the State party's expressed commitment to uphold the moratorium on executions. However, he notes that, until the death penalty is fully abolished in law and all existing death sentences commuted, the risk of causing irreparable harm through execution remains in place for the alleged victim, as well as others under sentence of death in the State party. He notes the observations by the State party that steps taken by the authorities towards resuming executions should be attributed to the previous Administration. The author argues that, while the change in position by the current Administration is positively noted, the statements further emphasize the volatile nature of non-binding policies on moratorium on executions, which can involve an additional element of arbitrariness when executions are carried out as a result of a change in policy that is linked to extraneous developments not relating to the crime or the individual offender. In this connection, the author refers to general comment No. 36 (2018) on the right to life.⁹

5.3 The author notes that, as domestic legal avenues have been exhausted, and, even if a moratorium on executions is in place, the alleged victim remains in limbo on death row, still

⁹ General comment No. 36 (2018) on the right to life, para. 50. The author also refers to [A/69/265](#), paras. 102 and 103.

facing the prospect of execution. The uncertainty and anxiety that he and his family members must endure amount to a violation of their right not to be subjected to cruel, inhuman or degrading treatment or punishment, as guaranteed under article 7 of the Covenant.¹⁰

5.4 The author submits that the information provided by the State party in its observations fails to address concerns of human rights violations committed against the alleged victim, which contributed to and resulted in the imposition of a death sentence, in violation of article 6 (1), read in conjunction with articles 7 and 14, of the Covenant. Regarding the right to access to effective legal representation from the time of arrest, the observations by the State party make it unequivocal that the alleged victim was unrepresented between the time of his arrest, on 10 March 2009, and the beginning of the criminal trial in December 2009. This period includes 8 April 2009, when a self-incriminating statement, later retracted at trial, was taken. The author stresses that legal representation is an important safeguard against torture and other ill-treatment and against coerced confessions or other self-incriminating statements. He notes the State party's submission that the alleged victim had abandoned his right to be represented by a lawyer from March to December 2009. He highlights however that, in the case report of the Criminal Court, it is noted, based on official documents, that the alleged victim had indicated that he wanted legal counsel, but eventually consented to be interrogated without the presence of a lawyer on 8 April 2009.¹¹ He argues that no information on file suggests that the courts duly examined this claim or the reasons why a lawyer was not present during the police interrogation. The statements of the police officials appear to have been taken at face value. He also argues that it is also relevant to take into account that the case report of the Criminal Court further highlights that previous self-incriminating statements by the alleged victim were taken during police interrogation, without a lawyer present, and used as basis to extend police custody beyond the first 24 hours. He argues that, while the State party makes no reference to these statements in its observations, these prior statements should have led the judiciary to examine the reasons behind the alleged victim's lack of legal representation up until the first hearing in December 2009 and of his subsequent retraction of the self-incriminating statement of April 2009.

5.5 The author argues that of further concern is the fact that the lawyer first appointed to represent the alleged victim at the hearing on 20 December 2009, at which he pled not guilty, told the court that there were "small components of the assault" that could be admitted to. The lawyer withdrew from the case immediately after the first hearing, but nonetheless the court gave weight to his statement, including to dismiss the alleged victim's retraction of his self-incriminating statement.¹² The author further highlights that, after the first counsel withdrew from the case, the alleged victim appointed a second lawyer on 12 January 2010, who had under two months to prepare for the trial ahead of the second hearing on 8 March 2010. The author submits that two months is an inadequate period to become acquainted with the case and ensure effective legal representation in a capital trial.¹³

5.6 The author argues that, as concerns the admission into evidence of the self-incriminating statement by the alleged victim, the observations by the State party offer no information to show that his claim of having signed it out of fear was thoroughly examined by the courts or other independent authorities. The State party rejects that the statement was coerced, on the basis that it was as captured on video by the police, ignoring the possibility that the statement could have been the result of ill-treatment and coaching by police before the recording, after the alleged victim had been kept in police custody for approximately one month with no legal representation. He reiterates his argument that, even if no coercion is alleged in a case, article 52 of the Constitution deems inadmissible confessions made outside of court. The alleged victim's statement should thus have been excluded from evidence,

¹⁰ General comment No. 36 (2018), para. 40.

¹¹ The author refers to the case report of the Criminal Court, case No. 585/Cr-C/2010, p. 18, which he notes reads (author's unofficial translation): "Even though Nabeel had said that he wanted legal counsel, it should be noted that Mohamed Nabeel had given his consent to carrying out the interrogation process without the presence of a lawyer and had given his statement stating so, on 8 April 2009."

¹² The author refers to the case report of the Criminal Court, case No. 585/Cr-C/2010, p. 13.

¹³ General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 32.

regardless of any claims of coercion – and more so given that coercion was alleged. The author argues that, in the case report of the Criminal Court, it does not appear to suggest that the Court made any enquiries into the alleged victim’s claim. The Court accepted the confession as not having been made under coercion, based on the analysis of the video and questioning of the defendant, but it did not give weight to his claim that he had signed the confession out of fear and his rejection of the contents of the statements. The Court turned to Islamic law to determine the circumstances in which a confession made without coercion could be retracted, concluding that, in a murder case, it would not be possible.¹⁴

5.7 Regarding the witness statement by the alleged victim’s sister, which she later retracted at trial, the author argues that the presence of a parent does not guarantee the same level of effective legal counsel as that of a qualified legal representative, which would have been critical for a key witness in a murder case. He argues that, in the report of the Criminal Court, it indicates that the witness’ father claimed at trial that it had come to his knowledge that his daughter had been interrogated by the police, also without his presence, and that he had read the statement taken after her interrogation, but not thoroughly, and therefore did not know the full extent of what was written in that statement. In response to the State party’s information that the police statement was video recorded, the author reiterates his argument that, while video recordings of police interrogations enhance safeguards against torture or other ill-treatment, they do not fully remove the possibility that statements are made as a result of coercion. He argues that the retraction of the statement at trial should have led to the exclusion of the statement from evidence. He stresses that, with the retraction of these two statements, the evidence against the alleged victim is constituted primarily by the statements of three other witnesses. Those facing the death penalty must be presumed innocent until their guilt has been proven based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.¹⁵

5.8 Regarding the claims raised under article 6 (4) of the Covenant, the author argues that the observations by the State party make it clear that sections 5 and 21 of the Clemency Act remain the applicable procedure in cases involving offences other than intentional murder and that, for intentional murder, the authority of pardon rests with the family of the murder victim, contrary to the Committee’s jurisprudence.¹⁶

5.9 The author submits that of further concern is the fact that, under Regulation No. 2014/R-33, the punishment for intentional murder is a mandatory death penalty sentence, which is in violation of the rights guaranteed under articles 6 (1), 7 and 26 of the Covenant. This is because the mandatory death penalty does not allow any possibility of taking into account the defendant’s personal circumstances or the circumstances of the particular offence.¹⁷

State party’s further observations

6.1 On 26 December 2022, the State party reiterated its previous submission about guarantees offered to the alleged victim.

6.2 The State party notes the author’s claims under articles 6 (1), (4) and (6) and 7 of the Covenant and it reiterates its submission that the legislation and regulations of the State party adhere to its obligations under the Covenant, ensuring that the imposition of the death penalty is not arbitrary in nature. It reaffirms its position on the informal moratorium on the death penalty, but states however that the abolishment of the death penalty would be in contradiction with the Constitution and principles of Islamic shariah. The State party argues that, with the enactment of the Evidence Act (Law No. 11/2022), the current procedure for cases involving the death penalty have been made more stringent. To that end, in accordance with article 140 (a) of the Act, in order to convict and impose the death penalty on a defendant, guilt must be established “beyond any doubt”. Furthermore, in accordance with article 140 (c)

¹⁴ Case Report of the Criminal Court, case No. 585/Cr-C/2010, pp. 13 and 18.

¹⁵ Safeguards guaranteeing protection of the rights of those facing the death penalty, safeguard No. 5.

¹⁶ General comment No. 36 (2018), para. 47; and *Humaam Ahmed v. Maldives* (CCPR/C/123/D/2785/2016), para. 9.9.

¹⁷ General comment No. 36 (2018), para. 37.

of the Act, the offence must be proven by the testimony of two male eyewitnesses or by a confession.

6.3 Regarding articles 7 and 14 of the Covenant, the State party reiterates its submission that the alleged victim was afforded the right to legal representation in accordance with the provisions of the Criminal Procedure Code. The State party argues that, throughout the hearing conducted in the Criminal Court, the alleged victim did not retract his confession for physical assault. It notes the argument that the alleged victim's previous counsel's statement was attributed to him but argues that said statement was deemed as a valid confession, as there was no retraction by either the alleged victim or his second counsel during the course of the trial. Regarding the claim that the alleged victim was not afforded adequate time for the preparation of his defence, the State party argues that neither he nor his counsel submitted any complaint about the alleged inadequacy of time to prepare the defence. It notes that an extension of time is granted on a case-by-case basis, if reasonable grounds to that end are presented by a defendant or his or her counsel.

Author's further comments

7.1 In his submission of 3 April 2023, the author emphasizes the need for the Committee to request the commutation of the alleged victim's sentence, as the State party's observations provide no assurances that the execution might not be carried out. He reiterates that non-binding policies on a moratorium on executions are volatile and argues that the position of the State party highlights the informality of the position and fails to take into account the fact that, in 2016 and 2017, the then-Government made repeated public announcements indicating that executions would resume. He argues that the observations by the State party offer no information on the modalities that guide or inform the decision-making on the informal moratorium policy, nor on how it is being enforced across State institutions. He argues that, without this information, the policy appears to be entirely discretionary and informal and therefore continuously at risk of being reverted, including because of changes in Government.

7.2 The author challenges the State party's submission that, with the enactment of the Evidence Act, the procedure for cases involving the death penalty has been made more stringent. The proceedings against the alleged victim predate the adoption of the Act, so its relevance to the communication appears limited. He claims that, in its observations, the State party has failed to address the claims raised under article 6 (4) and (1), read in conjunction with articles 7 and 14, of the Covenant.

7.3 The author concludes by submitting that, in its observations, the State party has not addressed his claim that that under Regulation No. 2014/R-33, the punishment for intentional murder is a mandatory death penalty sentence.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

8.3 The Committee notes the author's claim that all effective domestic remedies available have been exhausted. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 The Committee notes the author's claims that the alleged victim's rights under article 14, read in conjunction with article 7, of the Covenant have been violated, as he claims that procedural safeguards were not observed during the domestic proceedings and as the alleged victim provided his statement in the course of the police investigations in circumstances

which may have amounted to cruel, inhuman or degrading treatment or punishment, as well as his claim that the informal moratorium on executions in the State party causes the alleged victim to endure uncertainty and anxiety. The Committee notes that the author has not specified the provisions of article 14 which he claims have been violated, but it notes his claims that: (a) the alleged victim did not have the assistance of a legal representative during the police interrogation and investigation; (b) a statement made by the alleged victim during the police investigation, at a time when he was not provided with legal assistance, was admitted as evidence against him, despite him retracting the statement at trial stating that he gave the self-incriminating statement under duress; (c) a statement made by a witness in the course of the police investigation was also admitted as evidence, despite the statement being retracted at trial; and (d) the alleged victim did not have adequate time for the preparation of his defence.

8.5 With respect to the author's claims that the alleged victim did not have adequate time for the preparation of his defence, the Committee notes the author's information that counsel had under two months to prepare for the trial ahead of the second hearing of 8 March 2010 and the submission that two months is an inadequate period to become acquainted with the case and mount an effective legal representation in a capital trial. The Committee also notes the State party's information that neither the alleged victim nor his counsel requested the hearing to be postponed, as well as its information that an extension of time is granted on a case-by-case basis, if there are reasonable grounds presented in a case. In view of this information, the Committee considers that the author has not sufficiently substantiated his claim under article 14 (3) (b) for the purposes of admissibility under article 2 of the Optional Protocol.

8.6 With regard to the author's claim that the retracted witness statement should not have been admitted as evidence in his case, the Committee notes the State party's information that the courts took several factors into consideration in admitting the statement, including that the statement was recorded on video, that the witness' father was present when the statement was taken, that the statement matched that of other witnesses and that the witness read the statement before signing it, as did her father. The Committee recalls its jurisprudence according to which it is for the organs of States parties to evaluate the facts and the evidence or the application of domestic legislation in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice or that the court otherwise violated its obligation of independence and impartiality.¹⁸ In the present case, the Committee finds that the author has not presented any information to substantiate that the admission into evidence of the witness statement against the alleged victim was clearly arbitrary or amounted to a manifest error or denial of justice or that the court otherwise violated its obligation of independence and impartiality, and it therefore finds this claim inadmissible for lack of substantiation under article 2 of the Optional Protocol.

8.7 The Committee notes the author's claims that he did not have access to legal representation during the police investigation as well as his claim that he gave a self-incriminating statement under duress, which was subsequently admitted as evidence against him by the domestic courts, despite his having withdrawn it at trial, and it considers that the author has sufficiently substantiated these claims under article 14 (3) (d) and (g) for the purposes of admissibility.¹⁹

8.8 Regarding the author's claims under article 7 of the Covenant, the Committee observes that the author has not provided any specific information as to his article 7 claims, such as any specific alleged ill-treatment or any specific information on conditions of imprisonment, nor any specific information substantiating his claim that the statements by the previous Government on the resumption of executions in the State party would have created such a psychological toll as to amount to a violation of article 7 of the Covenant.²⁰ It

¹⁸ See, inter alia, *Riedl-Riedenstein et al. v. Germany* (CCPR/C/82/D/1188/2003), para. 7.3; *Arenz et al. v. Germany* (CCPR/C/80/D/1138/2002), para. 8.6; and *Tyan v. Kazakhstan* (CCPR/C/119/D/2125/2011), para. 8.10. See also the Committee's general comment No. 32 (2007), para. 26.

¹⁹ See, e.g., *Humaam Ahmed v. Maldives*, para. 8.7.

²⁰ *Humaam Ahmed v. Maldives*, para. 8.6.

therefore finds these claims insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

8.9. The Committee notes the author's argument that the move by the previous Government in the State party to take steps to resume executions amounts to a violation of his rights under article 6 (6) of the Covenant. However, taking into account the State party's observations on its position on a moratorium on executions, the Committee considers that the author has failed to substantiate this claim for the purpose of admissibility and finds it inadmissible under article 2 of the Optional Protocol.

8.10 The Committee notes the author's claims that the imposition of a death sentence following a trial in which procedural safeguards were not observed amounts to a violation of the alleged victim's rights under article 6 (1), read in conjunction with article 14, of the Covenant, as well as his further claims under articles 6 (1) and (4) of the Covenant. The Committee considers that the author has sufficiently substantiated these claims for the purposes of admissibility. Accordingly, the Committee declares the communication admissible as concerns the claims under article 6 (1), read alone and in conjunction with article 14, article 6 (4), and article 14 (3) (d) and (g) of the Covenant and proceeds to its examination of the merits.

Consideration of the merits

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

9.2 The Committee notes the author's claims under article 14 of the Covenant that there were serious concerns about the fairness of the trial and other proceedings through which the alleged victim's conviction and death sentence were imposed and upheld. It notes his claim that, despite the alleged victim's request to receive legal counsel, he did not have the assistance of a legal representative during the police interrogation during which he gave a self-incriminating statement that he later retracted at trial and his claim that the alleged victim had signed the statement without thoroughly reading it due to fear. It also notes the author's argument that no information on file suggests that the domestic courts duly examined the alleged victim's claim that he made the self-incriminating statement under duress, as well as his argument that a statement made by the counsel first appointed to represent the alleged victim at a hearing on 20 December 2009, and who subsequently immediately withdrew from the case, was used against the alleged victim in order to dismiss his retraction of the self-incriminating statement. The Committee further notes the argument that the admission of alleged victim's statement as evidence was also contrary to article 52 of the Constitution, which explicitly stipulates that no confession is to be admissible as evidence unless made in court by an accused who is in a sound state of mind.

9.3 The Committee recalls that, once a complaint about ill-treatment, such as psychological pressure to make a confession, has been made, a State party must investigate it promptly and impartially.²¹ It also recalls that the safeguard 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.²² The Committee notes that, despite the claims made by the alleged victim that he gave the self-incriminating statement due to fear, the State party did not conduct any investigation into those allegations, but, on the contrary, attributed a statement made by the alleged victim's previous counsel to him in order to establish his confession in the case. In this connection, 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.²³ The Committee concludes that, by failing to investigate the alleged victim's claim that he gave the self-incriminating statement involuntarily and under duress,

²¹ See for example, *Amanklychev v. Turkmenistan* (CCPR/C/116/D/2078/2011), para 7.2; *Humaam Ahmed v. Maldives*, para. 9.3; and the Committee's general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14.

²² General comment No. 32 (2007), para. 41.

²³ *Humaam Ahmed v. Maldives*, para. 9.3.

the State party violated his rights under article 14 (3) (g) of the Covenant. Accordingly, the Committee concludes that the facts before it disclose a violation of the alleged victim's rights under article 14 (3) (g) of the Covenant.

9.4 The Committee notes the author's allegation that, during the pretrial investigation stage, the alleged victim was not afforded effective and continuous assistance of a lawyer, in violation of his rights under article 14 (3) (d). The Committee notes that it is undisputed that the alleged victim was unrepresented between the time of his arrest on 10 March 2009 until the beginning of the criminal trial in December 2009, including on 8 April 2009, when the self-incriminating statement was recorded. The Committee notes the State party's argument that the alleged victim had declined the right to be represented by counsel during that period. 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 stated 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.²⁴ In this connection, the Committee notes the author's information that it is documented in the case report of the Criminal Court that, before the interrogation was carried out, the alleged victim had requested legal counsel, but eventually consented to be interrogated without the presence of counsel on 8 April 2009. In these circumstances, the Committee concludes that the facts as submitted reveal a violation of the alleged victim's rights under article 14 (3) (d) of the Covenant.

9.5 The Committee notes the author's claim that the alleged victim's right to life under article 6 (1) of the Covenant was violated, given that he was sentenced to death after an unfair trial. The Committee notes the State party's argument that the police investigation and court hearings in the alleged victim's case adhered to domestic law, international standards and fundamental safeguards inherent to the Covenant.

9.6 The Committee notes the statement by the State party that the death penalty is not prohibited under article 6 (2) of the Covenant when imposed for the most serious crimes. The Committee recalls that the term "most serious crimes" must be read restrictively and appertain only to crimes of extreme gravity involving intentional killing.²⁵ In the present case, the alleged victim was sentenced to death after a conviction for murder, which qualifies as a most serious crime. However, the Committee also recalls that stringent fair trial requirements must be met before the death penalty may be imposed, to comply with article 6 of the Covenant.²⁶

9.7 The Committee recalls its jurisprudence, according to which the imposition of a sentence of death upon the 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.²⁷ The Committee also recalls that, in cases of trials leading to the imposition of the death penalty, scrupulous respect of the guarantees of fair trial is particularly important.²⁸ In addition, the Committee further recalls that a violation of the fair trial guarantees provided for in article 14 of the Covenant in proceedings resulting in the imposition of the death penalty renders the sentence arbitrary in nature and in violation of article 6 of the Covenant. Such violations might involve the use of forced confessions or lack of effective legal representation during all stages of the criminal proceedings, including criminal interrogation.²⁹ In the light of the Committee's findings of a violation of article 14 (3) (d) and (g) of the Covenant, the Committee concludes that, in sentencing the alleged victim to death following a trial that

²⁴ General comment No. 32 (2007), para. 38.

²⁵ General comment No. 36 (2018), para. 35.

²⁶ *Ibid.*, para. 41.

²⁷ General comment No. 32 (2007), para. 59. See also, for example, *Levy v. Jamaica* (CCPR/C/64/D/719/1996), para. 7.3; *Kurbanov v. Tajikistan* (CCPR/C/79/D/1096/2002), para. 7.7; *Shukurova v. Tajikistan* (CCPR/C/86/D/1044/2002), para. 8.6; *Khoroshenko v. Russian Federation* (CCPR/C/101/D/1304/2004), para. 9.11; *Gunan v. Kyrgyzstan* (CCPR/C/102/D/1545/2007), para. 6.5; and *Grunov and Grunova v. Belarus* (CCPR/C/123/D/2375/2014-CCPR/C/123/D/2690/2015), para. 8.6.

²⁸ General comment No. 32 (2007), para. 59.

²⁹ General comment No. 36 (2018), para. 41.

suffered from procedural deficiencies, the State party has violated its obligations under article 6 (1) of the Covenant.

9.8 The Committee notes the author's claim that, under Regulation No. 2014/R-33, the punishment for intentional murder is a mandatory death penalty sentence, amounting to a violation of article 6 (1) of the Covenant. It notes that the State party has not refuted the author's submission that the mandatory sentence for murder under said regulation is the death penalty. It also notes the author's argument that the current informal moratorium on the death penalty in the State party does not guarantee that the sentence will not be carried out at a later point. The Committee recalls that, in all cases involving the application of the death penalty, the personal circumstances of the offender and the particular circumstances of the offence, including its specific attenuating elements, must be considered by the sentencing court. Mandatory death sentences that leave domestic courts with no discretion as to whether to designate the offence as a crime warranting the death penalty, and whether to issue the death sentence in the particular circumstances of the offender, are therefore arbitrary in nature.³⁰ The existence of a de facto moratorium on the death penalty is not sufficient to make a mandatory death sentence consistent with the Covenant.³¹ In the absence of any further observations by the State party as to the author's claims under article 6 (1), the Committee concludes that the mandatory imposition of the death penalty in the present case, without allowing for any assessment of the alleged victim's personal circumstances and the particular circumstances of the offence, are in violation of the alleged victim's rights under article 6 (1) of the Covenant.

9.9 The Committee notes the author's claim that the alleged victim's inability under domestic law to seek a pardon or commutation of the death sentence amounts to a violation of his rights under article 6 (4) of the Covenant.

9.10 The Committee notes the information submitted by the parties that, following the enactment of Regulation No. R-33/2014 and the decision of the High Court of 29 November 2015,³² the power of the President to grant clemency in cases of intentional murder was removed and placed instead with the family of the victim. The Committee also notes the author's argument that the newly enacted regulation makes the commutation of a death sentence dependent on factors such as the socioeconomic background of the convicted person's family and thus external to his or her personal circumstances or the circumstances of the crime. The Committee recalls that States parties are required pursuant to article 6 (4) to allow for 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 according to applicable procedures.³³ No category of sentenced person 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.³⁴ The Committee recalls that, while article 6 (4) does not prescribe a particular procedure for the exercise of the right to seek pardon or commutation, such procedures should be specified in domestic legislation and they should not afford the families of victims of crime a preponderant role in determining whether the death sentence should be carried out.³⁵ Furthermore, pardon or commutation procedures must offer certain essential guarantees, including certainty about the processes followed and the substantive criteria applied and the rights for individuals sentenced to death to initiate pardon or commutation procedures, to present information about their personal or other relevant circumstances, to be informed in advance when the request will be considered and to be informed promptly about the outcome of the procedure.³⁶ Taking into account the information that the current regulation in the State party prevents the alleged

³⁰ Ibid., para. 37.

³¹ *Johnson v. Ghana* (CCPR/C/110/D/2177/2012), para. 7.3; and *Weerawansa v. Sri Lanka* (CCPR/C/95/D/1406/2005), para. 7.2.

³² Decision No. 2012/HC-DM-08 of 29 November 2015.

³³ General comment No. 36 (2018), para. 47.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

victim from initiating a pardon or commutation procedure and the fact that the preponderant role in determining whether the death sentence is to be carried out is placed with the victim's family, the Committee considers that the State party has not met its obligations under article 6 (4) of the Covenant.

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 the alleged victim's rights under articles 6 (1) and (4), read alone and in conjunction with article 14 (3) (d) 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 alleged victim 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 take immediate steps to quash the alleged victim's conviction and sentence and immediately order a retrial of his case, ensuring that the proceedings comply with all fair trial guarantees in accordance with its obligations under articles 6 and 14 of the Covenant, and provide the alleged victim 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, including by ensuring that an assessment of a defendant's personal circumstances and the particular circumstances of the offence are taken into account in sentencing for the offence of murder, in accordance with its obligations under article 6 (1) of the Covenant, as well as ensuring that all persons under sentence of death in the State party are able to exercise their right to seek pardon or commutation of their sentences, as guaranteed by article 6 (4) of the Covenant.

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.

Annex

Joint opinion by Committee members José Manuel Santos Pais, Carlos Gómez Martínez, Kobauyah Tchamdja Kpatcha and Teraya Koji (partially dissenting)

1. We concur with the finding by the Committee of a violation of the alleged victim's rights under articles 6 (1) and (4), read alone and in conjunction with article 14 (3) (d), of the Covenant. We regret however not being able to concur with the violation of article 14 (3) (g) of the Covenant.

2. Article 14 (3) (g) of the Covenant reads:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

[...]

(g) Not be compelled to testify against himself or to confess guilt.

The question therefore is whether the alleged victim was compelled to testify against himself or to confess guilt.

3. In the present case, the alleged victim was arrested in connection with a murder. During the police investigation, he gave a self-incriminating statement to the police (para. 2.1). He was later convicted by the Criminal Court on the charge of "intentional murder" and sentenced to death (para. 2.2). The alleged victim appealed the judgment to the High Court of Maldives, which upheld the conviction and the death sentence imposed. The judgment was upheld by final judgment by the Supreme Court (para. 2.3).

4. The alleged victim later withdrew the statement at trial stating that he had signed the statement without thoroughly reading it because he felt fearful. The statement was however allegedly taken into consideration by the courts and used to convict him (paras. 2.4 and 3.4). From such state of fearfulness, the conclusion is drawn that statements elicited as a result of torture or other ill-treatment must be excluded as evidence in criminal proceedings. A state of fearfulness is however something much different than a situation of torture, and the consequences of both situations should not be the same.

5. The State party notes that the alleged victim was arrested on suspicion of participating in a gang fight. During the fight, he was observed beating the murder victim and throwing an approximately 6-inch-long knife-like weapon into the victim's back, resulting in his death in hospital (para. 4.2). The defendant enjoyed due process guarantees during the trial, was able to refute the charges presented by the prosecution, was represented by counsel throughout the whole trial and granted additional time to prepare his defence (paras. 4.3, 4.7, 4.11 and 6.3).

6. During the hearings, five witnesses were heard, as well as a medical expert who attested to the cause of death. In the interest of protecting the witnesses, their testimonies were heard through live videoconference. The alleged victim and his counsel did not object to this measure. The defence had the opportunity to cross-examine the witnesses, however, the defence did not pose any questions to them. Regarding the statement that the alleged victim had given during the investigation phase, he was informed of his right to legal counsel during the investigation, but he declined this right and consented to interrogation without the presence of counsel. In its assessment, the Court found that witness statements, as well as the alleged victim's statement in the course of the police investigation, had established that the murder victim had died as a result of the alleged victim throwing a sharp object at the murder victim, which caused him severe injuries resulting in his death (paras. 4.4 and 4.11). Therefore, according to the State party, the domestic courts' adverse findings against the alleged victim resulted from careful scrutiny of the evidence presented before the courts (para. 4.7).

7. We note that the Court, in addition to the alleged victim's statement, considered statements from three witnesses present at the incident, the medical report of the victim and

video recordings of the police interrogations. We also find reasonable the Court's findings that, when questioned about the statement during trial, the alleged victim stated that he had given the statement freely at his own discretion, that video recordings of the interrogation show him spending a good amount of time reading the statement, that the alleged victim was aware of the fate of the murder victim when he gave the police statement, that the alleged victim's statement matched the statements of witnesses as to the facts of the case and that the alleged victim was unable to establish reasonable grounds as to why he would have made a false statement during the investigation (para. 4.12).

8. Contrary to the conclusion of the majority in the present Views (para. 9.3), we therefore do not find any reason to suspect that the alleged victim's statement was given under duress, thus entailing an obligation for the State party to launch an investigation into such allegations. Otherwise, the threshold for launching an investigation would be unattainable by most criminal jurisdictions, since alleging statements under duress are the most frequent line of defence by defendants in criminal proceedings. It is further doubtful if and to what extent domestic courts relied on the alleged victim's statement for determining his conviction. In any event, should such statement have been excluded for having been given under duress, the courts still had other decisive available evidence to rely on to convict him. In particular, throughout the hearing conducted in the Criminal Court, the alleged victim did not retract his confession for physical assault (para. 6.3). We would therefore not have concluded that there was a violation of article 14 (3) (g) of the Covenant in the present case.
