

Mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

REFERENCE:
UA MDV 4/2018

29 June 2018

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolution 33/9.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the alleged lack of adequate health care for Mr. **Maumoon Abdul Gayoom**, who is currently detained in the Maafushi Prison.

Mr. Maumoon Abdul Gayoom, 80-year old, was President of the Republic of Maldives for 30 years until the 2008 elections.

According to the information received:

On 1 February 2018, the Supreme Court of the Maldives issued Order No. 2018/SC-SJ/01, instructing the release and retrial of key opposition politicians found to have been subject to unfair trials that did not meet international standards.

As a response, on 5 February 2018, the Maldivian Government declared a 45-day long state of emergency that suspended several constitutional provisions, including protections for the right to freedom of assembly and basic safeguards around the security forces' powers to arrest, detain, seize and search property. The state of emergency was reportedly justified under the argument that above mentioned Supreme Court's order which "if implemented would potentially lead to an undermining of the supremacy of the Constitution of the Republic of Maldives."

On the night of 5 February, Mr. Maumoon Abdul Gayoom was arrested and held in a police detention facility on an island near his home city Malé, facing trial on charges of attempted terrorism and obstruction of justice.

Mr. Gayoom suffers from Benign Paroxysmal Positional Vertigo (BPPV) and since December 2017 has been under medical advice to, inter alia, be accompanied by a caregiver at all times, due to the risk of falling and suffering

serious injury if affected by an episode of BPPV-triggered vertigo. Until his detention Mr. Gayoom's wife was his primary caregiver.

From 2 May 2018 until present, Mr. Gayoom has reportedly suffered five episodes of BPPV-triggered vertigo in custody. His doctor has repeatedly advised that, immediately after each episode, extreme care and attention must be exercised for at least the next 48 hours, and that he must not be unaccompanied during this period.

It has been reported that the disorienting effects of BPPV-triggered episodes have led to police notifications to court's hearings indicating that due to Mr. Gayoom's weakened state, they are unable to present him at court. Two court hearings have been cancelled as a result, and each cancellation has allegedly been followed by the imposition of sanctions in the form of restriction of family visits and telephone calls.

On 22 May 2018, Mr. Gayoom suffered a fifth episode of BPPV-triggered vertigo while he was preparing to attend a court hearing. While he is reported to have notified custodial officers of the episode and his consequent weaken and disoriented state, custodial officers are reported to have insisted on bringing him to court. In fear that sanctions in the form of family contact suspension would again be imposed, Mr. Gayoom complied with appearing in court. Allegedly, he was able to inform his lawyers of his physical condition only in the courtroom and the subsequent lawyers' request for a continuance of the proceeding was rejected by the judge.

Following the last episode of BPPV-triggered vertigo, Mr. Gayoom was examined by his doctor who noted that his medical condition remained unresolved despite treatment. The doctor further recommended that Mr. Maumoon be provided home-based therapy, including the therapy "Epley's Manoeuvre" which was prescribed to be conducted by his primary caretaker every night.

Different requests to transfer Mr. Gayoom to house arrest to facilitate continuous care by his family have been rejected. Instead, the custodial Maldives Police Service informed Mr. Gayoom's family in writing that he would be held at Dhoonidhoo Custodial Centre. It has been reported that this Custodial Centre is close to Malé and this would facilitate Mr. Gayoom's transfer to receive healthcare from doctors and facilities based in Malé, as necessary.

On 29 May, the Criminal Court held a hearing with the presence of Mr. Gayoom from 21:30 until after midnight, with no breaks for rest or food. Another hearing was scheduled for 30 May.

On 30 May, Mr. Gayoom requested the custodial authorities to ask for the postponement of that night court hearing, due to his weakened physical condition. Custodial authorities allegedly threatened Mr. Gayoom that failure to attend the court hearing would result in withdrawal of all privileges, including a total denial of visits by his wife who is also his primary caregiver.

It is reported that continued court proceedings until midnight prevented Mr. Gayoom's primary caregiver from visiting the detention centre and conduct the prescribed daily therapy, further impacting on Mr. Gayoom's health state.

On 13 June, Mr. Gayoom was convicted under the charge of obstructing justice and sentenced to 1 year 7 months and 6 days in jail, pending the proceeding for the charge of attempting to orchestrate an act of terrorism.

On 14 June, Mr. Gayoom was reportedly transferred to Maafushi Prison, more than 40 minutes away from Malé, which represents an obstacle for Mr. Gayoom's access to potential urgent life-saving treatment that are allegedly available in Malé only.

While I do not wish to prejudge the accuracy of these allegations, I would like to express my deep concern about the physical and mental integrity of 80-year old Mr. Maumoon Abdul Gayoom while in detention. I am further concerned about his current detention in Maafushi Prison which has reportedly no access to timely and adequate healthcare, including adequate treatment and therapy to treat Mr. Gayoom's BPPV condition. I am further concerned at the sanctions imposed in the form of suspension of family visits and phone calls when hearings have been cancelled due to Mr. Gayoom's disoriented and weakened state.

In this connection, I would like to bring to the attention of your Excellency's Government article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) acceded to by the Maldives on 19 September 2006, which establishes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health as well as relevant States' obligations. Inter alia, State's must refrain from denying or limiting equal access for prisoners or detainees to preventive, curative and palliative health services (Committee on Economic, Social and Cultural Rights, General Comment 14, para.34).

Furthermore, the "Mandela Rules" (A/RES/70/175) establish that the provision of health care for prisoners is a State responsibility and elaborates on it. All prisoners shall have prompt access to medical attention in urgent cases and be transferred to specialized institutions or to civil hospitals when specialized treatment or surgery is required (Rule 27.1). Finally, the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, indicates on its Principle 9 that all

prisoners should have access to the health services available in the country without discrimination on the grounds of their legal situation.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

I urge your Excellency's Government to take all necessary measures to guarantee the right to physical and mental health of Mr. Gayoom, including due consideration for granting house arrest, in order for him to receive the daily prescribed therapy he requires.

As it is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the measures taken by your Excellency's Government to ensure the enjoyment of the right to physical and mental health of Mr. Gayoom while in detention and his access to timely and adequate health care, including access to the prescribed therapy Epley's Manoeuvre.
3. Please, kindly explain the manner in which the transfer of Mr. Gayoom to Maafushi Prison will ensure timely and adequate access to medical facilities that are reportedly available in Malé only.
4. Please provide information on the measures taken at Maafushi State Prison to enable Mr. Gayoom to be supervised at all time, as recommended by his doctor.
5. Please provide information about the measures taken to consider the transfer of Mr. Gayoom to house arrest and detail the reasons why relevant requests have been denied in the past.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Dainius Pūras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health