



POLITICALLY MOTIVATED TRIALS?

Transparency Maldives will be publishing a series of monthly governance updates that currently focuses upon the theme of our judiciary. It is our hope that the information shared in these bulletins will increase public awareness - and subsequently, engagement - on issues that have a direct bearing on the rights and quality of governance afforded to the wider citizenry.

This month's bulletin will focus on legal proceedings conducted against Defence Minister Colonel (Retired) Nazim and Adhaalath Party leader, Sheikh Imran Abdulla. Both these cases are rife with issues warranting attention and concern. However, due to the fact that Sheikh Imran's case has been given relatively little media coverage, it was felt appropriate that the section pertaining to him should be more extensive. TM was fortunate to be able to meet with a member of Sheikh Imran's legal team to discuss the details of his detention and would like to thank them for their assistance.

COLONEL NAZIM

Summary of case

Former Defence Minister, Colonel Nazim, was arrested on 10th February 2015 on charges of possession of illegal weapons, formally under section 2 (a) of Law no. 4/75 (prohibited items act). This followed the entry of special operations officers into his residence at 3 am on 18th January 2015, during which they allegedly found and confiscated a handgun, 3 bullets, a gun cartridge, an improvised explosive device and a USB drive allegedly containing a plot to carry out a coup. On the 27th March, Nazim was sentenced to eleven years in prison for the aforementioned charges.¹

Issues

It has been argued by the defence that the prosecution failed to prove that the firearms at Col. Na-

zim's residence were in fact purchased by him or that they were his possessions (as pointed out by the defence, no documentary footage of the raid against Col.Nazim's residence were provided) or that Col.Nazim was seriously entertaining a plot to topple the current government.²

Furthermore Col.Nazim's legal team were not accorded the opportunity to dispute the evidence presented against him. Chiefly they were denied the opportunity to make the case that the fingerprints found on the weapon items did not belong to Col. Nazim, and that the alleged plans to carry out treasonous activities that were found on his USB drive were inauthentic. It should also be highlighted that the contents of this USB drive were leaked to the media despite the trial being closed to the public.³

1. Ibid

2. http://www.haveeru.com.mv/colonel_nazim/58980

3. It should further be noted that Col.Nazim had requested that his trial be open to the public and was denied.

Arguably, the prosecution had not proved beyond reasonable doubt that Nazim is guilty of the aforementioned accusations. Furthermore it is worth noting that the burden of proof in determining guilt rests with the prosecution. The reasoning behind the final verdict of guilty - that the defendant could not prove that he was innocent - is in complete contravention to fair trial practice.

SHEIKH IMRAN

Summary of case

Sheikh Imran was originally arrested whilst participating in a mass anti government protest held on 1st May 2015 on allegations that the speeches he had made during this demonstration were responsible for inciting the violence that ensued during the demonstration – particularly violence towards police officers. While not convicted the Criminal Court ruled it appropriate that Sheikh Imran be kept in detention in light of the potential threat that he might express views that would contribute to further public disorder.

On the 14th of May the High Court ruled against his legal team's efforts to appeal the decision to keep him in detention. On the 27th of that month he was released from detention on the condition that he was not allowed to travel abroad for a one-month period. On the 28th of May, Sheikh Imran participated in another anti-government rally and on the 29th President Yameen Abdul Qayoom declared that Sheikh Imran would be prosecuted on criminal charges (this is despite the constitutional provisions that only the Prosecutor General may initiate criminal proceedings).

Sheikh Imran was subsequently charged with terrorism under the 1990 Terrorism Act by the Prosecutor General. On the 1st of June, the Criminal Court ordered him to be brought to court under police custody, with hearings scheduled for the next day. If convicted of the charge, he faces a sentence of between 10-15 years in prison.

Following the initial hearings, however Sheikh Imran was held without trial for a period in excess of 150 days. Prior to August 5th he had been held in

Dhoonidhoo, which is a prison for convicts rather than a remand centre. He was subsequently transferred to house arrest for a period of time before being transferred to Himmafushi, (which, while not a high-security institution such as Dhoonidhoo – is a prison nonetheless), and then retransferred to house arrest where he currently remains. As of October 12th his trial has resumed and two hearings have occurred since that date.

Issues

The issues with Imran's case are manifold. Perhaps most concerning is that Imran was held without trial for a very significant amount of time following the charges of terrorism – to iterate, for a period in excess of 150 days. This is in contravention to fair trial procedures according to which any individual accused of a crime has the right to have the matter looked into and arbitrated upon in a timely manner. The reason that was provided to justify this long delay – that a new courtroom was under construction - is especially dubious in light of the fact that once the trial was resumed, it took place inside of an old courtroom.

Furthermore the evidence brought against Sheikh Imran during the court hearings was weak. Prosecutors alleged for instance that Sheikh Imran's allegation that the Maldivian authorities knew and were not being forthcoming with the details of the circumstances surrounding the disappearance of journalist Ahmed Rilwan was responsible for the violence that ensued against police officers, on the basis that such statements elicited antagonism towards the state on the part of demonstrators. Ultimately however, there has been no direct link established between Imran's statements during the demonstration and the violence that occurred.

Finally, it is highly important to note that Sheikh Imran has not been convicted of the crime that he has been accused of but that nonetheless, in material terms he is being treated as someone whose guilt has already been determined. While currently under house arrest, he has on multiple occasions been taken back to and held inside of a prison (as opposed to a remand center, it should be noted). Exacerbating this is that Imran has numerous med-

ical conditions and he has been subject to very poor conditions in prison, as the cell in which he resided in Dhoonidhoo lacks proper ventilation and has a high temperature.

It is important to emphasize that the problematic issues surrounding the cases above are in contravention to fair trial standards as embodied in article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which the Maldives acceded to in September 2006. For instance 14(2) of the ICCPR guarantees the right of anyone accused of a crime to be presumed innocent unless they are proven guilty - a provision that has not been abided by in the cases pertaining to either Sheikh Imran or Col.Nazim. Furthermore according to 14(3) of the ICCPR, the accused is to be tried without undue delay, which is a provision that has most certainly not been respected in the legal proceedings against Sheikh Imran. Failure to abide by these and similar provisions not only weakens our justice system and increases the likelihood of unfair trials occurring, but also dishonor our international legal obligations.