

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

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**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of
Mohamed Nasheed,
Citizen of the Republic of Maldives

v.

Government of the Republic of Maldives

URGENT ACTION REQUESTED

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16, 24/7¹

Submitted By:

Jared Genser & Maran Turner
Freedom Now
1776 K Street, NW, 8th Floor
Washington, DC 20006
United States
+1.202.466.3069 (phone)
+1 202.478.5162 (fax)
jgenser@perseus-strategies.com
@jaredgenser

Ben Emmerson QC
Matrix Chambers
Griffin Building
Gray's Inn, London
United Kingdom
+44.207.404.3447 (phone)
benemmerson@matrix.co.uk

Amal Clooney
Doughty Street Chambers
54 Doughty Street
London W1CN 2LS
United Kingdom
+44.207.404.1313 (phone)
aclooney@law.columbia.edu

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¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, Mar. 15, 2006, at ¶ 6, has further extended the mandate through Resolutions 6/4, 15/18, 20/16, and 24/7.

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Basis for “Urgent Action” Request

As set forth in the attached Petition, the Government of the Maldives is arbitrarily depriving Mohamed Nasheed of his liberty. Mohamed Nasheed is a renowned journalist, climate change activist, and politician, distinguished for being the first democratically-elected president of the Maldives.

Nasheed is currently being held in maximum security in the “Special Protection Unit” at Maafushi Prison, where he was transferred without notice to his family or counsel on April 27, 2015.² Previously, the Human Rights Commission of Maldives found the facility itself to be unfit for prisoners.³ His “special apartment,” as the Government has absurdly called his cell, is highly unsanitary as it is located immediately adjacent to the prison garbage dump. His cell is full of flies and mosquitos that have been feeding off garbage and his food is barely edible. Prior to this transfer, Nasheed was held in mostly solitary confinement at Dhoonidhoo Island Detention Center from February 22 to April 21, and then Asseyri Jail on Himmafushi Island.

Given the Maldivian authorities mistreatment of Nasheed, there is reason to believe that Nasheed’s health may be at risk. On the first date of his trial, February 22, 2015, Nasheed was brutally manhandled and physically dragged outside the Justice Building by the Maldivian police officials. As a result, he suffered physical injuries that required immediate medical examination, including a suspected fractured arm and finger, and injuries to his shoulder.⁴ However, Nasheed was not given immediate medical care, and no x-ray was taken to determine what injuries he suffered. Nasheed’s repeated pleas for medical assistance during the trial were declined and when a doctor that was provided by the Human Rights Commission of the Maldives went to conduct a medical examination at the prison, he was turned away by the prison authorities. Additionally, Nasheed suffers from chronic back pain, a result of the long years he has spent in prison and the torture he received there. This pain has only intensified as a result of the police manhandling and time spent in detention thus far. Nasheed has also complained of pain in his ribcage and chest, which he believes is related to being abused by the police. Nevertheless, the extent of his injuries is still unknown, as no independent doctor selected by the family has been permitted to examine him. The quality of the medical assistance provided by the prison authorities is highly questionable, and Nasheed’s request to seek independent medical treatment from an outside doctor has been denied.

Since the transfer, visits from Nasheed’s family and counsel have been severely restricted. So far, his family has been able to visit him once at Maafushi Prison. On multiple occasions at Dhoonidhoo and Asseyri Prisons, his family and counsel have been denied entry, even after being previously told that visits would be permitted.

This detention is the most recent act of the Maldivian Government in a long-running campaign to silence Nasheed and impede his political involvement. UN High Commissioner for

² *Nasheed Transferred to Maafushi Penitentiary*, VNEWS, April 28, 2015, available at <http://www.vnews.mv/42662>.

³ *Report on Visit to Maafushi Jail Submitted to Concerned Authorities*, HUMAN RIGHTS COMMISSION OF THE MALDIVES, Feb. 11, 2009.

⁴ Supriya Jha, *Ripped Shirt, Broken Arm: Maldives Ex-Prez Mohamed Nasheed Dragged Into Courtroom*, ZNEWS INDIA, Feb. 24, 2015.

Human Rights Zeid Ra'ad Al Hussein said that it was hard to see how such hasty proceedings complied with the Maldives' obligations to conduct a fair trial under international law, citing "flagrant irregularities."⁵ UN Special Rapporteur on the Independence of Judges and Lawyers Gabriela Knaul observed "Nasheed's trial was not only a clear violation of the Maldives' international human rights obligations under the International Covenant on Civil and Political Rights, but it also made a mockery of the State's own Constitution. The speed of the proceedings combined with the lack of fairness in the procedures lead me to believe the outcome of the trial may have been pre-determined." And Amnesty International labeled it a "travesty of justice."⁶

Accordingly, it is hereby requested that the Working Group consider this petition pursuant to its "Urgent Action" procedure.⁷ In addition, it is requested that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights, as reconfirmed by Resolutions 2000/36, 2003/31, and Human Rights Council Resolutions 6/4, 15/18, 20/16, and 24/7.

⁵ *Conduct of Trial of Maldives Ex-President Raises Serious Concerns – Zeid*, UN HIGH COMMISSIONER FOR HUMAN RIGHTS, Mar. 18, 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15712&LangID=E> [hereinafter *Statement of OHCHR – Zeid*].

⁶ *13 Year Sentence for Former President 'A Travesty of Justice'*, AMNESTY INTERNATIONAL, Mar. 14, 2015, [hereinafter *Statement of Amnesty International*].

⁷ *Report of the Working Group on Arbitrary Detention*, A/HRC/16/47, Annex ¶ 7(b) ("Revised Methods of Work"), Jan. 19, 2011, at ¶ 22–24.

Questionnaire To Be Completed by Persons Alleging Arbitrary Arrest or Detention⁸

I. IDENTITY

1. Family name: Nasheed

2. First name: Mohamed

3. Sex: Male.

4. Birth date: May 17, 1967.

5. Nationality: Maldivian.

6. (a) Identity document (if any): Passport

(b) Issued by: The Government of Maldives

(c) On (date): June 20, 2013

(d) No.: [Redacted]

7. Profession and/or activity (if believed to be relevant to the arrest/ detention):

Mohamed Nasheed is an environmental activist, journalist, and politician, who served as the fourth President of the Maldives from 2008 to 2012.

8. Address of usual residence: M. Yaagoothuge, Muniyaa Magu, Malé, Maldives.

II. ARREST

1. Date of arrest: February 22, 2015.

2. Place of arrest (as detailed as possible): M. Yaagoothuge, Muniyaa Magu, Malé, Maldives.

3. Forces who carried out the arrest or are believed to have carried it out: Maldivian police.

4. Did they show a warrant or other decision by a public authority? Yes.

5. Authority who issued the warrant or decision: Warrant issued by the Criminal Court at the request of Prosecutor General Muhthaz Muhsin.

⁸ *Model Questionnaire To Be Completed By Persons Alleging Arbitrary Arrest or Detention*, UN WORKING GROUP ON ARBITRARY DETENTION, available at <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

6. Reasons for the arrest imputed by the authorities: Terrorism, for his alleged role in the arrest of Judge Abdulla Mohamed, Chief Judge of the Maldives Criminal Court, in 2012.

7. Legal basis for the arrest including relevant legislation (if known): The arrest was based on charges of terrorism under the Prevention of Terrorism Act, Law No. 10/90 (Section 2(b)).

III. DETENTION

1. Date of detention: February 22, 2015 – present.

2. Duration of detention (if not known, probable duration): Approximately two months.

3. Forces holding the detainee under custody: Maldivian Police and prison officials

4. Places of detention (indicate any transfer and present place of detention): Dhoonidhoo Island Detention Center; transferred to Asseyri Jail on April 21, 2015; transferred again to Maafushi Prison on April 27, 2015

5. Authorities that ordered the detention: Three-judge panel of the Maldivian judiciary, composed of Judges Abdulla Didi, Abdul Bari Yoosuf, and Sujau Usman

6. Reasons for the detention imputed by the authorities: Guilty verdict on terrorism charges.

7. Relevant legislation applied (if known): Prevention of Terrorism Act, Law No. 10/1990. According to this law, “2. The acts/activities mentioned hereto shall be construed as acts of terrorism . . . (b) The act or intention of kidnapping or abduction of person(s) or of taking hostages(s).”

Introduction

Twenty years ago, the UN Working Group on Arbitrary Detention decided in Opinion No. 36/1995 that the Government of the Maldives had arbitrarily detained a Maldivian journalist by the name of Mohamed Nasheed in violation of international law. Nasheed had made a name for himself as a dissident journalist, who regularly reported on and challenged the authoritarian ruler of his country, President Maumoon Gayoom. The Working Group found that the Government was only detaining Nasheed because of his dissenting political opinion and public criticism of the Government and thus called for his immediate release.⁹ This was not the first time Nasheed had been arrested — he was a constant target of the Government because of his ongoing criticism of their authoritarian rule. Ultimately, Nasheed was released — only to be arrested at least 20 more times over the next 15 years.

In 2008, however, Nasheed successfully challenged the ruling Government politically and became the first democratically-elected president of the Maldives in the country's first multiparty election. As President, Nasheed used his position as a platform to advocate for increased awareness of and action against global warming, and pledged to set an example by making the country carbon-neutral, transitioning from oil to solar power. His environmental efforts were chronicled in the acclaimed documentary *The Island President*¹⁰ and greatly raised his international profile. In February 2012, Nasheed was forced to resign under threat of personal violence directed against him and unrest fomented by his opponents. In the wake of this coup and the return to authoritarian rule in the Maldives, Nasheed has once again become the target of a new authoritarian regime, led by President Abdulla Yameen, the half-brother of the former dictator President Maumoon Gayoom, under whose rule Nasheed was first imprisoned.

Since February 2015, Nasheed has been unlawfully detained and on March 13, 2015, was sentenced to 13 years in prison for the crime of “terrorism” based on politically-motivated charges. Nasheed was tried before a prejudiced judiciary that failed to provide him an independent and impartial tribunal or respect the presumption of innocence. There was no evidence to support a conviction and he was not even allowed to present any witnesses in his own defense. In a swift and summary trial, that included repeated denials of access to his counsel, Nasheed was not able to prepare or present his defense. These denials of fundamental rights of due process of law guaranteed under the Maldives Constitution, its laws, and international law reaffirm that Nasheed is actually being punished for exercising his basic human rights, including his rights to freedom of opinion and expression, freedom of peaceful assembly, freedom of association, and freedom of participation in public affairs. Through the course of his trial, conviction, and ongoing imprisonment he has also been denied timely medical care and treatment and has largely been held in solitary confinement.

The charges brought against Nasheed—charges he has repeatedly and categorically denied—involve the alleged abduction of Judge Abdulla Mohamed by the Maldives National Defense Force (MNDF). At the time, the Supreme Court of the Maldives, which was strongly aligned against Nasheed, actually attributed the detention to the MNDF and not to Nasheed.

⁹ *Mohamed Nasheed and Mohamed Shafeeq v. Maldives*, WGAD Decision No. 36/1995, Adopted Nov. 24, 1995.

¹⁰ See, e.g., A.O. Scott, *In Paradise, and Closer Than Ever to Disaster*, NEW YORK TIMES, Mar. 27, 2012.

Nevertheless, the authorities manufactured a charge of terrorism over this incident three years later to remove Nasheed from the political scene. Indeed, the trumped-up charges came just a few weeks after the Government lost a key coalition partner in the parliament who switched his allegiance from Yameen to Nasheed.

DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

I. Statement of Facts

A. Maldives Political Context

Prior to 2008, Maumoon Abdul Gayoom (1978-2008) ruled the Maldives as a brutal autocracy.¹¹ Gayoom's political reign was marked by corruption and widespread human-rights violations.¹² Although increased tourism to the Maldives led to economic improvements in the 1980s and 1990s, income distribution was vastly distorted and unemployment remained high.¹³ Inequality fueled political resentments and growing opposition to the repressive regime.¹⁴ The volatile political environment erupted in 2003, when the death of a young Maldivian man in prison, and the subsequent shooting of unarmed inmates protesting over the death, prompted public demonstrations.¹⁵ The Government's violent response to the protests only intensified resistance and drew international attention.¹⁶

Under the leadership of President Nasheed (2008-2012), the Government of the Maldives embarked on significant reforms, including holding popular elections, and implementing articles

¹¹ *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, HUMAN RIGHTS COUNCIL, A/HRC/23/43/Add.3, May 21, 2013 [hereinafter *Report of the Special Rapporteur: Mission to Maldives*]; *The Prosecution of Former Maldivian President Mohamed Nasheed: Report of BHRC's Second Independent Legal Observation Mission*, BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES, Feb. 3-4, 2013 [hereinafter *BHRC Report: Prosecution of Mohamed Nasheed*].

¹² *Report on Bar Human Rights Committee Hearing Observation: A Report on Hearing in the Case of Former President Nasheed*, BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES, Nov. 3-6, 2012, available at http://www.barhumanrights.org.uk/sites/default/files/documents/biblio/bhrc_trial_observation_report_-_mr_mohammed_nasheed_dec_2012_0.pdf.

¹³ *Maldives Country Assistance Evaluation*, WORLD BANK, Jan. 22, 2001, at 1-2.

¹⁴ See e.g., *The Maldives: From Dictatorship to Democracy, and Back?*, INT'L CTR. ON NONVIOLENT CONFLICT, available at <http://www.nonviolent-conflict.org/index.php/movements-and-campaigns/movements-and-campaigns-summaries?sobi2Task=sobi2Details&catid=3&sobi2Id=35>; *Republic of Maldives: Repression of Peaceful Political Opposition 2*, AMNESTY INTERNATIONAL, July 29, 2005 ("Mass scale public pressure for reforms followed the killing of an inmate at Maafushi prison in September 2003") [hereinafter *Repression of Peaceful Political Opposition*].

¹⁵ *The Maldives: From Dictatorship to Democracy, and Back?*, *supra* note 14.

¹⁶ *Repression of Peaceful Political Opposition*, *supra* note 14, at 1.

in a new Constitution¹⁷ that sought to establish an independent judiciary and provide for separation of powers among the three branches of government.¹⁸

However, achieving meaningful change in practice has been difficult and, in some cases, nearly impossible in the face of powerful resistance by Nasheed's successors, interim President Mohammed Waheed Hassan (2012-2013) and current president Abdulla Yameen (2013-present), half-brother to former President Gayoom. Many of the most important judicial reforms have been blocked or stalled in the legislature, which, along with the judiciary has been controlled by political opponents of Nasheed and his Maldivian Democratic Party (MDP).¹⁹ For example, the Maldivian Parliament declined to enact the legislation needed to codify the new Constitution, including the Penal Code, the Evidence Act, and the Codes of Civil and Criminal Procedure, leaving judges to rely on laws that predated the Constitution and on uncodified principles of *Sharia'h* law.²⁰

In the absence of meaningful reform, the problems resulting from corruption and political influence have only grown worse, as evidenced by the 2013 presidential election. Specifically, the Supreme Court repeatedly interfered in the election by annulling and postponing the vote in order to thwart former President Mohamed Nasheed's candidacy and favor then-candidate, now-President Abdulla Yameen.

B. Political Career and History of Persecution Against Mohamed Nasheed

Mohamed Nasheed is a Maldivian environmental activist, journalist, and a politician, who served as the fourth President of the Maldives from 2008 to 2012, when his presidency was cut short. He was forced to resign under threat of personal violence against him and domestic unrest made by his opponents.²¹

Born on the capital island of Malé in the Maldives, Nasheed received his Bachelor of Science in Maritime Studies Liverpool Polytechnic (today Liverpool John Moores University).²² Back home in the Maldives, Nasheed pursued a career in journalism.²³ In the early 1990s, he

¹⁷ In August 2008, a new constitution came into effect at the end of Gayoom's reign. It paved the way for the multi-party elections that Nasheed went onto win that year. The Constitution envisaged, amongst other things, deep reforms to the judiciary, which should have been implemented during Nasheed's tenure. However, the Judiciary fiercely resisted reform, undermining President Nasheed's efforts and the spirit and letter of the new constitution.

¹⁸ CONSTITUTION OF THE REPUBLIC OF MALDIVES (2008), Art. 141(c) *available at* <http://www.majlis.gov.mv/en/wp-content/uploads/Constitution-english.pdf> (functional translation) ("No officials performing public functions...shall interfere with and influence the functions of the Special Rapporteur on the independence of judges and lawyers) [hereinafter *Constitution of the Maldives*].

¹⁹ *Prosecution of Mohamed Nasheed*, *supra* note 11.

²⁰ *The Maldives: UN Expert Warns of Major Challenges Ahead to Ensure Independence of the Judiciary*, UNITED NATIONS, Feb. 26, 2013 [hereinafter *UN Expert Warns of Major Challenges Ahead*]; *Maldives: Securing an Independent Judiciary at a Time of Transition*, INTERNATIONAL COMMISSION OF JURISTS, Feb. 28, 2011 [hereinafter *Securing an Independent Judiciary*].

²¹ Decca Aitkenhead, *Dictatorship is Coming Back to the Maldives and Democracy is Slipping Away*, THE GUARDIAN, Apr. 1, 2012 [hereinafter *Dictatorship is Coming Back to the Maldives*].

²² Nick Britten, John Bingham, et. al, *New Maldives President Mohamed Nasheed is British Public Schoolboy with Tory Links*, THE TELEGRAPH, Oct. 30, 2008; *Notable Alumni*, LIVERPOOL JOHN MOORES UNIVERSITY, *available at* <https://www.ljmu.ac.uk/discover/your-student-experience/alumni/notable-alumni>.

²³ Olivia Lang, *'Anni' Heralds New Era in Maldives*, BBC NEWS, Oct. 29, 2008 [hereinafter *New Era in Maldives*].

established a reputation for political commentaries, publishing in *Sangu* magazine – which he co-founded – at a time when vocal criticism of the Maldivian Government was almost non-existent.²⁴ Since then, the Government of the Maldives has repeatedly persecuted Nasheed with politically-motivated charges and arbitrary detentions for his political writings and pro-democracy activism.

In 1990, after Nasheed published an article alleging the Government had rigged the 1989 general election, his magazine was banned and Nasheed was put under house arrest and imprisoned.²⁵ Later that year, the Government of Maldives alleged that Nasheed withheld information about a bombing plot in December 1990, and sentenced him to three years in prison on that charge in April 1991.²⁶ Nasheed spent 18 months in solitary confinement, suffering torture at the hands of the National Security Services (NSS).²⁷ During this detention, Nasheed underwent severe sleep and water deprivation, was fed food mixed with crushed glass shards, and was chained to a chair outside for 12 days.²⁸ He was named an Amnesty International prisoner of conscience in 1991.²⁹

Nasheed was released in June 1993, then re-arrested and detained for eight days in 1994. He was again detained in 1995 on charges of contempt of court after he had refused to leave the court premises unless the judge issued him a passport.³⁰ In 1996, he was sentenced to two-years imprisonment for an article he had written about the 1993 and 1994 Maldivian elections. In 1997, Nasheed was again named a prisoner of conscience by Amnesty International.³¹ In total, Nasheed was arrested more than 10 times during former President Gayoom's rule³², missing the birth of his second daughter.³³ During his time in jail, he spent significant amounts of time studying and writing three books on Maldivian history.³⁴

In 2000, Nasheed was elected as a Member of Parliament representing the capital island of Malé.³⁵ However, Nasheed was forced to leave office on an allegation of theft, which the BBC and other international media sources also described as politically motivated.³⁶ In 2001, Nasheed tried unsuccessfully, along with other dissident politicians, to register the MDP.

²⁴ *Profile: Mohamed Nasheed*, UN LEADERS PROGRAMME, available at http://unleaders.unssc.org/main_speakers_profile.asp?id=0&R=2.

²⁵ *New Era in Maldives*, *supra* note 23.

²⁶ *Mohamed Nasheed*, ENGLISH PEN, available at <http://www.englishpen.org/campaigns/mohamed-nasheed/>.

²⁷ *Id.*

²⁸ *New Era in Maldives*, *supra* note 23.

²⁹ *Mohamed Nasheed*, WASHINGTON POST, Dec. 10, 2009.

³⁰ *Republic of Maldives: Continued Detention of Prisoner of Conscience, Mohamed Nasheed*, AMNESTY INTERNATIONAL, May 1996.

³¹ *New Era in Maldives*, *supra* note 23.

³² *Id.*

³³ *Dictatorship is Coming Back to the Maldives*, *supra* note 21.

³⁴ *New Era in Maldives*, *supra* note 23.

³⁵ Jason Burke and James Meikle, *Mohamed Nasheed: Maldives Leader Who Has Been in Tighter Spots*, THE GUARDIAN, Feb. 9, 2012, available at <http://www.theguardian.com/world/2012/feb/09/mohamed-nasheed-maldives-president-profile> [hereinafter *Maldives Leader Has Been in Tighter Spots*].

³⁶ *Maldives Leader Has Been in Tighter Spots*, *supra* note 35; *New Era in Maldives*, *supra* note 23.

In September 2003, Nasheed gained popular attention when he requested that a doctor view the body of Hassan Evan Naseem, a 19-year-old prisoner who had died in Maafushi Jail while serving a term for drug possession.³⁷ The subsequent investigation revealed that eight NSS officers had tortured Naseem to death.³⁸ This event was a turning point that sparked the mass street and jail riots of 2003, which resulted in the shooting of three prisoners and led to the first state of emergency in Maldivian history.³⁹

In November of the same year, Nasheed left the Maldives to join Mohamed Latheef in Sri Lanka and the United Kingdom to help establish the MDP.⁴⁰ After his return to the Maldives in 2005, Nasheed promoted the MDP across the country, which was officially recognized in June that year when the Government decided to allow political parties.⁴¹

On August 12, 2005, Nasheed was arrested again, along with several other MDP members, which provoked civil unrest.⁴² The Government alleged that Nasheed had incited violence against President Gayoom in a speech he made in July 2005; based on this charge, Nasheed was arrested on August 12, 2005, along with several other MDP members, and spent 13 days in jail before being charged with terrorism and sedition under the Terrorism Act.⁴³ On September 21, Nasheed was released and the Government announced in a public statement that the charges against him would be dropped if he adopted “a more conciliatory approach” to the Government. According to the US Government at that time, Nasheed’s trial suffered from a series of due process violations indicative of the sham nature of the charges. In the words of the State Department: “Before his release in September, Nasheed did not receive a long-term trial schedule, making the term of his pretrial detention under house arrest indefinite. In addition, his hearing dates changed several times without adequate notice, creating obstacles for his defense team and for an international trial observer. The broad charges against Nasheed fell under antiterrorism legislation, but the specific charges against him changed at various points during his trial. At his initial hearing, Nasheed was told he was being tried for his participation in an August 2005 demonstration that turned violent following his arrest; he was later informed that the charges against him spanned events over the last 17 years. One such accusation was “instilling fear in the people’s hearts.”⁴⁴

In Maldives’ 2008 election, the country’s first-ever multi-party presidential election, Nasheed ran for President on the MDP ticket. In the first round, Nasheed placed second with 44,315 votes (25.08 percent), behind incumbent President Gayoom of the governing Dhivehi

³⁷ *Maldives Leader Has Been in Tighter Spots*, *supra* note 35.

³⁸ *New Era in Maldives*, *supra* note 23.

³⁹ *Id.*

⁴⁰ James Meikle, *Profile: Mohamed Nasheed*, THE GUARDIAN, Feb. 7, 2012.

⁴¹ *Profile: Mohamed Nasheed*, AL JAZEERA, Feb. 7, 2012.

⁴² *Black Friday – Darkest Day in Recent Maldivian History*, CNN IREPORT, Aug. 12, 2009 [hereinafter *Black Friday*].

⁴³ *Id.*; *Writer and Leading Opposition Politician Mohamed Nasheed Charged with “Terrorism” and “Sedition”*, IFEX, available at http://www.ifex.org/maldives/2005/09/08/writer_and_leading_opposition_politician/.

⁴⁴ COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2008: MALDIVES, US DEP’T OF STATE, Mar. 6, 2007, available at <http://www.state.gov/j/drl/rls/hrrpt/2006/78872.htm>.

Rayyithunge Party (DRP), who received 71,779 votes (40.61 percent).⁴⁵ In the second round, Nasheed was backed by the unsuccessful first round candidates, winning 54.04 percent of the vote.⁴⁶ Nasheed was sworn in on November 11, 2008.⁴⁷

Upon taking office, Nasheed used his position as a platform to advocate for increased awareness of and action against global warming, pledging to set an example by making the country carbon-neutral, transitioning from oil to renewable energy such as solar power,⁴⁸ and founding the Climate Vulnerable Forum, a global partnership of countries affected disproportionately by climate change.⁴⁹

C. Pretext for the Forced Resignation and 2012 Trial of Nasheed

In February 2012, Nasheed was forced to resign in the face of the threat of personal violence and domestic unrest made by his opponents.⁵⁰ Later that year, Nasheed was charged with the crime of “illegal detention” for his alleged role in the January 2012 arrest and detention of Judge Abdulla Mohamed, Chief Judge of the Maldivian Criminal Court. The charges against Nasheed were politically-motivated, an attempt by Nasheed’s political opponents to challenge his political influence and silence him before the 2013 presidential elections. Nasheed has repeatedly and categorically denied the allegations fabricated by the Government.

During his tenure on the Criminal Court, Judge Abdulla was accused of judicial misconduct and gang involvement. Nasheed was aware of Judge Abdulla’s misconduct in general, having received numerous complaints during his presidency of Judge Abdulla’s misconduct on the bench. In fact, the former Attorney General Hassan Saeed had requested that then President Maumoon Gayoom remove Judge Abdulla from the bench⁵¹, but no action was taken against Judge Abdulla. However, one incident in particular drew significant criticism: police intelligence suggested that Judge Abdulla released a man suspected of murder for the explicit purpose of allowing him to commit another contract killing.⁵²

⁴⁵ 9th October 2008 – *Maldives Elections 2008: The First Round Results*, MALDIVES EMBASSY TO BELGIUM, available at http://www.maldivesmission.eu/index.php?option=com_content&view=article&id=111:9th-october-2008&catid=19:october&Itemid=29.tw.

⁴⁶ 29th October 2008 – *Maldives Decides 2008*, MALDIVES EMBASSY TO BELGIUM, available at <http://www.maldivesmission.eu/component/content/article/19-news-archive-2008/october50/122-29th-october-2008> [hereinafter *Maldives Decides 2008*].

⁴⁷ *New Maldives President Sworn In*, BBC NEWS, Nov. 11, 2008, available at http://news.bbc.co.uk/2/hi/south_asia/7721335.stm.

⁴⁸ *Carbon-Neutral Goal for Maldives*, BBC NEWS, Mar. 15, 2009, available at <http://news.bbc.co.uk/2/hi/science/nature/7944760.stm>.

⁴⁹ *Climate Vulnerable Forum*, DARA, available at <http://daraint.org/climate-vulnerable-forum/>.

⁵⁰ While the current Government alleged that the events in February 2012, were not a *coup d’etat* but rather a “transition of power,” an independent assessment of the events and the report issued by the Commission of National Inquiry (CONI) prepared by a former Attorney General of Sri Lanka calls into question that characterization and supports the characterization of the transition as a *coup d’etat*. *A Legal Review of the Report of the Commission of National Inquiry (CONI) Maldives* 28-33, Sep. 6, 2012, available at <http://mdp.org.mv/wp-content/uploads/2012/09/CONI-A-Legal-Analysis.pdf>.

⁵¹ Under the 1998 Constitution, the President had the power to appoint and remove judges. CONSTITUTION OF THE REPUBLIC OF MALDIVES 1998, Art. 42(a), available at <http://www.asianlii.org/mv/legis/const/1998/1.html>.

⁵² *Closing Statement Prepared by President Nasheed*, available at <http://raeesnasheed.com/archives/25236> (translation of the Closing Statement prepared by President Mohamed Nasheed for submission at his trial where he

When the police told Nasheed this information, he ordered the police to investigate fully. The police then summoned Judge Abdulla for obstruction of police duty, based on 14 official complaints lodged with the Judicial Service Commission after 2008. When the notice was served on Judge Abdulla, he immediately appealed the matter at the High Court and got the notice invalidated. But even though the police could not move forward with the information, the police ultimately determined that Judge Abdulla's conduct posed a threat to public safety and shared that information with Nasheed.

Nasheed then asked the Minister of Home Affairs to investigate and respond as appropriate to the matter to protect the public from any threat presented by Judge Abdulla.⁵³ Nasheed's involvement ended with this request to the Ministry of Home Affairs; he never instructed anyone, orally or in writing, to arrest Judge Abdulla, nor gave any agency permission to act outside of its authority. In fact, it was the Ministry of Home Affairs⁵⁴ who, through a written request, secured military assistance⁵⁵ from the Defense Minister to investigate and, if appropriate, request the arrest of Judge Abdulla.⁵⁶ The police and MNDF then approached the Supreme Court with their concerns, intending to get a court order for Judge Abdulla's arrest, as is required for judges under Maldivian law.⁵⁷ Unsurprisingly, given his influence in the judiciary, the Supreme Court refused to take any action, making it virtually impossible for the police to comply with the strict letter of the law, which did not provide any exception for cases where the Supreme Court refused to act.

Therefore, it was in accordance with these provisions of Maldivian law that the Minister of Home Affairs requested assistance from Defense Minister, who then ordered the MNDF to detain Judge Abdulla on January 17, 2012. Nasheed did not order, nor was he involved in the decision to arrest Judge Abdulla. Furthermore, Nasheed was not present at the time of the arrest, nor was he asked for approval or even informed in advance that Judge Abdulla would be arrested.

was charged with terrorism by the State. The statement was not delivered at the verdict hearing as he was not given sufficient time to prepare it) [hereinafter *Closing Statement – Terrorism Trial*].

⁵³ *Black Comedy in the Maldives*, THE NATION, Mar. 16, 2015, available at <https://www.thenation.com/article/201561/black-comedy-maldives> and *Closing Statement – Terrorism Trial*, *supra* note **Error! Bookmark not defined.**

⁵⁴ The Minister of Home Affairs has the authority to direct the Maldives Police Service. Section 16(b)(1–2) of the Maldivian Police Act states that “[i]n conformity with the orders of the President of the Republic and within the extent conferred by the President,” the Minister of Home Affairs “shall have the authority to...[e]xercise the powers and discretions available to any superior police officer at any given time [and] give a direct order to any individual police officer, or a group of police officers, or all police officers, at any given time.” Police Act of 2008 (No. 05/2008, at § 16(b)(1) and (2) [hereinafter *Maldivian Police Act*].

⁵⁵ *Id.* at § 71(a) (“In maintaining law and order, the police may request for the assistance of the military service).

⁵⁶ *Armed Forces Act*, No. 1/2008, § 22(a–b), available at <http://www.agoffice.gov.mv/pdf/sublawe/ArmedForces.pdf> (“[t]he Armed forces shall if requested and in accordance to the determined rules, assist the police and other law enforcement agencies to maintain public peace and public order” and “[i]n assisting the police and other law enforcement agencies...the Armed forces are accorded all the lawful powers accorded to the police and other law enforcement agencies).

⁵⁷ *Judges Act*, No. 13/2010, § 12 (“a judge alleged for a criminal offence in the course of performing his responsibilities or under any other circumstance, shall be arrested upon seeking a court order from a higher court than the court on which he presides) (unofficial English translation). As Judge Abdulla was the Chief Judge of the Criminal Court, the next highest court than the one on which he presided was the Supreme Court.

Judge Abdulla was subsequently detained by MNDF at Girifushi, a Maldivian military training island, and released 22 days later.⁵⁸ However, only hours later, the Supreme Court of the Maldives issued an immediate order for his release – directed exclusively at the MNDF, not Nasheed.⁵⁹

Legal proceedings against Nasheed were initiated in November 2012 for “illegal detention” under Section 81 of the Maldivian Penal Code, which carries a maximum penalty of three years’ imprisonment.⁶⁰ Throughout the proceedings, Nasheed contested the legitimacy of the court as well as the composition of the panel of judges slated to hear his case, but all of Nasheed’s requests were ignored. Nasheed’s arbitrary detention trial was a transparently political attempt to prevent him from campaigning for the fall 2013 presidential election. Indeed, in February 2013 the Maldivian Home Minister publicly stated: “For the sake of national stability, Nasheed’s trial must be concluded before the presidential election,” and further remarked that any delays would undermine the country’s “political and social fabric.”⁶¹ However, the criminal case was suspended in July 2013, and no further hearings took place.

The trial did not have the desired effect of tarnishing Nasheed’s political career. Despite substantial interference in the electoral process by the judiciary, Nasheed and his MDP party had a strong showing of popular support. In the first round of elections in September, Nasheed won 45 percent of the vote, but the Supreme Court improperly nullified the results— despite international consensus that the election had been free and fair.⁶² After the Supreme Court suspended the re-vote three times,⁶³ drawing intense criticism from the international community including the UN High Commissioner for Human Rights,⁶⁴ a new balloting was finally scheduled for November.⁶⁵ Due to political interference with vote-counting, Nasheed narrowly lost to Yameen on November 11, 2013, securing 48.6 percent of the vote to Yameen’s 51.3 percent.⁶⁶ Despite serious irregularities, Nasheed accepted the defeat, acknowledging publicly “democracy is a process.”⁶⁷ He consistently made public his concession of the election and support of the democratic process, and attended President Yameen’s presidential inauguration where he sat beside former President Maumoon Gayoom.

⁵⁸ *Police Arrest Judge Abdulla Against Court Orders*, HAVEERU, Jan. 17, 2012.

⁵⁹ *Supreme Court of Maldives Issues a Court Order on Maldives National Defense Force for Arresting Criminal Court’s Judge Abdulla Mohamed on 16th January 2012*, Jan. 17, 2012 [hereinafter *16 January 2012 Supreme Court Order*].

⁶⁰ *Penal Code*, Act No. 1/81, § 81, Apr. 21, 1975, available at http://www.unodc.org/res/cld/document/penal-code-of-the-maldives_html/Maldives_Penal_Code_P1.pdf (unofficial English translation) (“It shall be an offence for any public servant by reason of the authority of office he is in to detain to arrest or detain in a manner contrary to Law innocent persons. Person guilty of this offence shall be subjected to exile or imprison for a period not exceeding 3 years or a fine not exceeding Mrf. 2,000.00”).

⁶¹ *MDP Accuses Home Minister of Influencing President’s Trial*, MINIVAN NEWS, Jan. 30, 2013.

⁶² *See Maldives Holds Fresh Election for President*, BBC, Nov. 9, 2013.

⁶³ *Maldives Supreme Court is Subverting the Democratic Process*, UN HIGH COMMISSIONER FOR HUMAN RIGHTS, Oct. 30, 2013 [hereinafter *Maldives Supreme Court is Subverting the Democratic Process*]; see also *Maldives High Court Delays Presidential Election for Third Time*, JURIST, Nov. 10, 2013.

⁶⁴ *Id.*

⁶⁵ *Maldives Election: Abdulla Yameen Wins Run-Off Vote*, BBC, Nov. 16, 2013, available at <http://www.bbc.com/news/world-asia-24974019> [hereinafter *Maldives Election*].

⁶⁶ *Maldives Election*, *supra* note 65.

⁶⁷ *Id.*

Meanwhile, Nasheed's trial for arbitrary detention continued to lie dormant, with the Government taking no further actions. But in January 2015, the Maldivian Government had new reasons to fear Nasheed as a political opponent. Gasim Ibrahim and his Jumooree Party (JP), which had polled third in the first round of the 2013 presidential elections with 24 percent of the vote to Yameen's 25 percent and whose backing was crucial to Yameen's narrow 2013 victory, left the ruling coalition and joined Nasheed and the MDP in the opposition. With the new support from Gasim and the JP, Nasheed and the MDP could have enough support to win the 2018 elections. In light of this threat, the Government appears to have decided to neutralize the ability of Nasheed – the Maldives' first and only democratically-elected head of state – to return to power.

D. Terrorism Charges and Current Detention of Mohamed Nasheed

On February 16, 2015, the Maldives' new Prosecutor General Muhthaz Muhsin, who had been a judge on the Criminal Court at the time of Judge Abdulla's arrest and was physically present when the arrest occurred, withdrew the pending "arbitrary detention" charges against Nasheed based on the Prosecutor General's discretionary power to "discontinue any criminal proceedings at any stage prior to judgment" under Article 223(g) of the Maldivian Constitution.⁶⁸

Six days later on February 22, 2015, the Prosecutor General's Press Office released a statement that the "arbitrary detention" case in the Hulhumalé Magistrate Court was withdrawn to "review the charges filed against Nasheed and to change the court at which it was filed."⁶⁹ The press release did not mention that any new charges were to be filed. Nevertheless, Nasheed was arrested that day pursuant to a defective arrest warrant that was missing critical information by the Maldivian police, on charges of terrorism⁷⁰ based on the same underlying facts as the 2012 arbitrary detention case. Under Maldivian law, terrorism carries a *minimum* sentence of 10 years and a maximum sentence of 15 years, 12 years more than the maximum sentence allowable for the prior (withdrawn) charge of arbitrary detention.⁷¹ However, the Prosecutor General's decision was wholly extrajudicial; nowhere in Maldivian law is the Prosecutor General granted the power or authority to replace a prior charge with a completely new charge, let alone one that incurs a higher penalty.

Nasheed was not informed of the terrorism charge against him until the arrest. Four other individuals – former President Nasheed's Minister of Defense Tholath Ibrahim and three command-level personnel from the MNDF – were also charged with terrorism in connection with the arrest of Judge Abdulla. Ibrahim has already been sentenced to 10-years in prison for his involvement. Two of the MNDF defendants, including the current Defense Minister Moosa

⁶⁸ *Constitution of the Maldives*, *supra* note 18, at Art. 223(g) ("The Prosecutor General's responsibilities and powers include...to take over, review and continue any criminal proceedings instituted by any prosecuting body authorized to initiate prosecutions pursuant to a law enacted by the People's Majlis, and at his discretion to discontinue any criminal proceedings at any stage prior to judgment").

⁶⁹ Statement of the Hulhumalé Magistrate Court, Feb. 22, 2015.

⁷⁰ Although there was no evidence to support the allegations, Nasheed was charged with committing "the act or intention of kidnapping or abduction of persons(s) or of taking hostage(s)." Prevention of Terrorism Act 1990, No. 10/1990, at § 2(b), *available at* <http://www.agoffice.gov.mv/pdf/sublawe/Terrorism.pdf> [hereinafter *Maldives Prevention of Terrorism Act*].

⁷¹ *Id.*, at § 6(b).

Ali Jaleel, have already been tried and were found not guilty. The third defendant from the MNDF is abroad for medical treatment and thus his case has not been concluded. For good measure, President Yameen also sacked his own Minister of Defense Mohamed Nazim, claiming Nazim had been involved in a coup plot against him, and President Yameen was likely behind corruption charges filed against Ahmed Nazim, a Member of Parliament and long-time close ally. They have been sentenced to prison for 11 and 25 years, respectively.

While attempting to speak to the press prior to the first hearing of his trial on February 23, Nasheed was physically manhandled and injured by the police, suffering injuries to his arm, finger and shoulder.⁷² Despite repeated requests, Nasheed was denied medical treatment during the hearing, forcing him to create a makeshift sling for his arm out of his tie. Nasheed was additionally denied legal representation during the hearing. His lawyers were not allowed to attend because they were supposedly required to register with the court two days prior to the proceedings, even though that was impossible because Nasheed had only been arrested the day before and he was unaware of the charges until then. The hearing proceeded despite Nasheed's lack of representation before a three-judge panel composed of Judges Abdulla Didi, Abdul Bari Yoosuf and Sujau Usman. It was also during this hearing that the Court summarily determined that Nasheed be detained and kept under police custody in Dhoonidhoo Detention Center until the end of trial, depriving him of any bail rights without cause.

The second hearing was held three days later on February 26, despite Nasheed's request to be granted at least 10 days to prepare his defense, and continued almost non-stop until sentencing on March 13. Throughout those hearings, the Court did everything possible to deprive Nasheed of his right to present a defense. In addition to providing him with inadequate time to prepare a defense, the Court interfered with Nasheed's ability to access and consult his lawyers, limited his opportunity to cross-examine the prosecution's witnesses, and withheld all pieces of the prosecution's evidence until the time in which they were formally introduced. In fact, some pieces of evidence that were relied on to convict Nasheed were presented to the Court in the absence of defense counsel and never subsequently provided to them.

For example, the Government claimed that it had video evidence of speeches given by Nasheed stating he ordered Judge Abdulla's arrest. But purported copies of the CDs provided to the defense were corrupted and the defense had no opportunity to examine this evidence in advance. Most importantly, no video evidence presented to the trial court included any kind of statement or confession as claimed by the Government.

Extraordinarily, the Court even refused to allow Nasheed to call any witnesses in his own defense. Nasheed had sought to call four witnesses, one of whom was present at the time of Judge Abdulla's arrest, to refute the allegations made by the prosecution. In a revealing passage in its own case report, the Court openly acknowledged that it had no interest in hearing the defendant's case. In explaining why it refused to allow a single defense witness to be called the Court concluded tersely: "[I]t was found that the said Defence witnesses would not be able to

⁷² See Jason Burke, *Former Maldives President Mohamed Nasheed Jailed for 13 Years*, THE GUARDIAN, Mar. 14, 2015.

refute the evidence submitted by the Prosecution against Mohamed Nasheed and hence, it was decided not to call any Defence witnesses to court.”⁷³

Although he was not called as a witness by either the Prosecutor General or Nasheed’s defense team, the Court independently called Judge Abdulla as a witness to testify about his own arrest. In its own synopsis, the Court acknowledges that Judge Abdulla testified that “he *assumed* that he was taken into custody of the military on the order of the then President Mohamed Nasheed.”⁷⁴ No further evidence was apparently required.

Nasheed’s counsel also requested that Judges Didi and Yoosuf recuse themselves from the proceedings in light of their clear conflicts of interest: both are friends and close colleagues of Judge Abdulla and were present at his home on January 17, 2012, when he was arrested. Earlier that evening, Judge Abdulla meet with a group of judges, including Judges Didi and Yoosef, and Prosecutor General Muhthaz Muhsin (then a sitting judge on Criminal Court). When the MNDF arrived at Judge Abdulla’s house, Judge Abdulla personally called Judge Yoosef on his mobile phone and informed him of the pending arrest. Judges Didi and Yoosef, and Muhthaz Muhsin raced over and tried to stop Judge Abdulla from being arrested. As they were present, both Didi and Yoosef provided witnesses statements during the police investigation and lodged complaints with the Maldives Human Rights Commission about Judge Abdulla’s detention on his behalf. Moreover, it is significant that Judge Abdulla was at that time – and still is – the Chief Judge of the Criminal Court where Nasheed was tried; the judges on the Court – including Judges Didi and Yoosuf – are beholden to him. Notwithstanding these clear conflicts of interest, the request to disqualify both judges was promptly denied.

Faced with these challenges, Nasheed and his defense counsel had no adequate opportunity to prepare or present their case. Finally on March 8, 2015, Nasheed’s lawyers were forced to withdraw from the case, believing that their continued representation of Nasheed would violate applicable rules of professional responsibility. The Court carried on with the trial despite Nasheed’s repeated requests for new legal counsel.

On March 13, 2015, less than three weeks after he was first charged and arrested, the three-judge panel issued a guilty verdict, based solely on evidence provided by the Prosecutor General. Nasheed was sentenced the same day to 13 years in prison with no opportunity for parole or supervised release. Neither he nor his counsel were given time to prepare for, or challenge, the sentencing, and no reasoning was provided by the Court to support a finding of guilt or the egregious sentence that was imposed.

Indeed, the Court rendered a verdict that was wholly contrary to the evidence. During the second day of his trial, on February 26, 2015, Nasheed had made clear that “[a]s President of the Maldives, [he] has not ordered to harm any citizen of Maldives and has not ordered to arrest anyone.”⁷⁵ In accordance with his role as President, he simply brought the issue to the attention of the appropriate institution. There was no evidence presented in the court that the arrest was

⁷³ *Synopsis of The Case Report of Proceedings Re: Prosecutor General v Mohamed Nasheed*, Report No. 145-A/2015/87, Criminal Court of Malé, Republic of Maldives, Mar. 29, 2015, at ¶ 17 [Hereinafter *Synopsis*].

⁷⁴ *Id.*, at ¶ 12 (emphasis added).

⁷⁵ *Id.*, at ¶ 4.

ordered by him – witnesses for the prosecution merely told the court they had spoken to other people who were present when Nasheed had been briefed about the situation by the police and he had merely asked the Home Minister to investigate further and act appropriately. Beyond that, the day after Judge Abdulla had been detained in 2012, the Supreme Court of the Maldives actually ordered the Maldives National Defense Force (MNDF) to release Judge Abdulla, implicitly recognizing that this had not been a decision of the President.⁷⁶

Just in case his detention were not sufficient to silence Nasheed and prevent him from running for the presidency again, just two weeks after Nasheed was sentenced, the Yameen administration concocted an unconstitutional law banning all prisoners from being members of political parties.⁷⁷ The law was adopted by the Parliament of the Maldives, controlled by President Yameen's ruling coalition, on March 30, 2015. The law clearly targets Nasheed, as it effectively bans him from leading his own party in violation of Maldivian and international law. Furthermore, upon conviction of and sentencing for "terrorism," under the Maldivian Constitution (Article 109(f)) Nasheed is disqualified from running for political office for the length of his detention *plus* three additional years.

Nasheed was immediately taken to Dhoonidhoo Island Detention Center, where he was held in solitary confinement in a cell infested with mosquitoes until April 21 when, without prior notice to his family or counsel, Nasheed was arbitrarily moved to Asseyri Jail on Himmafushi Island. Nasheed cell at Asseyri was only 30ft x 20ft, and he shared it with three other political prisoners. On April 27, Nasheed was moved again to Maafushi Prison, to a cell specially constructed for him next to the prison garbage dump, where he is constantly harassed by flies and mosquitos feeding off the garbage. He has still not received independent medical care for the injuries sustained at the hands of the Maldivian police.

At Dhoonidhoo, he was allowed to meet with his family and lawyers under the conditions that that the meetings were to be scheduled in advance and all documents brought into the prison were subject to search. However, since the transfer to Maafushi Prison, visits from Nasheed's family and counsel have been severely restricted. On multiple occasions, they have been turned away at the gates after being previously told that visits would be permitted.

Now that the trial is over, Nasheed should have been able to appeal the decision; but action taken by the Maldivian Supreme Court in January 2015, immediately before the new terrorism charges were filed, have preemptively curtailed that right, raising even more questions about the judiciary's lack of independence. On its own volition, the Supreme Court repealed the rules for appeal as laid out in the Judicature Act⁷⁸ and created a radically new extra-constitutional procedure in the form of a Supreme Court Circular.⁷⁹ First, the Circular drastically

⁷⁶ *Supreme Court of Maldives Issues a Court Order on Maldives National Defence Force for Arresting Criminal Court's Chief Judge Abdulla Mohamed on 16th January 2012*, SUPREME COURT OF THE MALDIVES, Jan. 17, 2012.

⁷⁷ Zaheena Rasheed, *Government Bars Nasheed From MDP*, MINIVAN NEWS, Mar. 30, 2015, available at <http://minivannews.com/politics/government-bars-nasheed-from-mdp-95252#sthash.9zqZuDrX.dpbs>.

⁷⁸ Judicature Act, No. 22/2010, available at <http://www.mvlaw.gov.mv/pdf/ganoon/chapter1/22-2010eng.pdf> [hereinafter *Maldives Judicature Act*].

⁷⁹ Circular of the Supreme Court of the Maldives: Appeal against the Judgments made by Trial Courts and Tribunals to the High Court and its Divisions established in Two Regions of the Republic of Maldives, No. 2015/06/SC, Jan. 27, 2015 [hereinafter *Supreme Court Circular*].

shortened the period in which an appeal must be filed from 90⁸⁰ to 10 days.⁸¹ Second, it mandates that the court in which the case was heard be responsible for sending the appeal petition to the High Court.⁸² Despite the defense team having indicated in writing it intended to appeal and asking for the trial record, the Court failed to provide Nasheed the trial record until the 11th day after the verdict, making it substantively impossible to lodge an effective appeal.

Even now, the trial record is both inaccurate and incomplete. As just one of many examples, the trial record makes numerous false claims, such as claiming video evidence presented at the trial showed Nasheed acknowledging he ordered the detention of Judge Abdulla; that is patently false. On that point, the Court even falsely states “the said evidence was not refuted and Mohamed Nasheed had not challenged it,” despite the fact that Nasheed vigorously disputed the charges and the claimed evidence against him but was prevented from presenting defense witness testimony.⁸³

II. Legal Analysis

For the reasons set forth below, the detention of Nasheed constitutes an arbitrary deprivation of his liberty⁸⁴ under Category I, Category II, Category III, and Category V as set forth by the United Nations Working Group on Arbitrary Detention (Working Group). Some arguments made below are relevant to more than one category of arbitrariness but for the sake of brevity will not be repeated throughout.

The Maldives is a party⁸⁵ to the International Covenant on Civil and Political Rights (ICCPR), and must therefore abide by all its provisions contained therein. In addition, the rights provided for in the ICCPR are binding on the Government not only as a matter of international law but also because the 2008 Maldivian Constitution explicitly states that the international

⁸⁰ *Maldives Judicature Act*, *supra* note 78, at Art. 15(a), (“[a] matter adjudicated by the High Court and appealed to the Supreme Court ... must be submitted within 90 (ninety days from the date of the High Court ruling. The 90 (ninety) days will be counted excluding the public holidays between the date of the ruling and the deadline for submission”).

⁸¹ *Supreme Court Circular*, *supra* note 79, at 1 (“if any party wishes to appeal the judgment of Magistrates’ Court, Superior Court or that of Tribunal, the appeal shall be facilitated in accordance with the regulation... *within 10 days from the date of judgment* by the trial court or tribunal”) (emphasis added).

⁸² *Supreme Court Circular*, *supra* note 79, at 1 (“if any party wishes to appeal the judgment of Magistrates’ Court, Superior Court or that of Tribunal, the appeal shall be facilitated in accordance with the regulation, upon submission of the Form ... of this Circular... *to the trial court or tribunal*”) (emphasis added).

⁸³ *Synopsis*, *supra* note 73, at ¶ 13.

⁸⁴ An arbitrary deprivation of liberty is defined as any “depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law.” *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, at art. 9(1) [hereinafter *ICCPR*]. Such a deprivation of liberty is specifically prohibited by international law. *Id.* “No one shall be subjected to arbitrary arrest, detention or exile.” *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810, at art. 9 (1948) [hereinafter *Universal Declaration*]. “Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law.” *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, GA Res. 47/173, 43 U.N. GAOR Supp. (No. 49) 298, A/43/49, Dec. 9, 1998, at Principle 2 [hereinafter *Body of Principles*].

⁸⁵ *United Nations Treaty Status: ICCPR*, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREA TY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec (noting that the Maldives acceded to the treaty on Sep. 19, 2006).

treaties to which it is a party must be considered in applying rights and freedoms in the country. Article 68 of the Constitution reads:

When interpreting and applying the rights and freedoms contained within this Chapter, a court or tribunal shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom, and shall consider international treaties to which the Maldives is a party.⁸⁶

A. Category I: No Basis for Detention

An arbitrary detention falls under Category I when there is no legal basis justifying the detention.⁸⁷ In this case, the law under which Nasheed was charged is facially so vague as to raise concerns about any individual prosecuted under it. Additionally, Nasheed's detention is arbitrary under Category I because there was literally no evidence presented to show that the defendant had ordered the judge's arrest and second, even if this were proved, it could not satisfy the elements of the charged crime, as detailed below.

First, the vague definition of the offenses provided for under the Prevention of Terrorism Act 1990 is one reason to conclude that Nasheed's detention is arbitrary and contrary to well-established international standards. Nasheed was charged under Section 2(b) of the Prevention of Terrorism Act for allegedly ordering the arrest of Judge Abdulla in 2012. Under the provision, the relevant actions that can be construed as acts of terrorism are "the act or intention of kidnapping or abduction of persons(s) or of taking hostage(s)."⁸⁸ Among other things, this legislation criminalizes the "intent" to commit certain acts and relies on elusive concepts such as "terror tactics" or "political motive,"⁸⁹ as well as a broad definition of "aiding and abetting" liability.⁹⁰ The Working Group has previously expressed its concerns about anti-terrorism laws that:

by using an extremely vague and broad definition of terrorism, bring within their fold the innocent and the suspect alike and thereby increase the risk of arbitrary detention.⁹¹

As noted by the Human Rights Committee, state parties to the ICCPR should ensure that anti-terrorism legislation defines the nature of those acts with sufficient precision to enable individuals to regulate their conduct accordingly.⁹² Failure to do so would amount to a violation

⁸⁶ *Constitution of the Maldives*, *supra* note 18, at Art. 69 (emphasis added).

⁸⁷ Specifically, a Category I deprivation of liberty occurs, "[w]hen it is clearly impossible to invoke any legal basis justifying the deprivation of liberty." *Revised Methods of Work*, *supra* note 7, at ¶ 8(a).

⁸⁸ *Maldives Prevention of Terrorism Act*, *supra* note 70, at § 2(b).

⁸⁹ *Maldives Prevention of Terrorism Act*, *supra* note 70, at § 2.

⁹⁰ *Maldives Prevention of Terrorism Act*, *supra* note 70, at § 3.

⁹¹ Question Of The Human Rights Of All Persons Subjected To Any Form Of Detention Or Imprisonment, UN Doc. E/CN.4/1995/31, WGAD, Dec. 21, 1994, ¶ 25(d).

⁹² HRC Concluding Observations: Ethiopia, UN Doc. CCPR/C/ETH/CO/1, Aug. 19, 2011, ¶ 15. Similar concerns in relation to anti-terrorism legislation have been raised by the Committee in relation to, among others, Hungary (UN Doc. CCPR/C/HUN/CO/5 (2010), ¶ 9), Russia (UN Doc. CCPR/C/RUS/CO/6 (2009), ¶¶ 7, 24), the USA (UN Doc. CCPR/C/USA/CO/3/REV.1 (2006), ¶ 11) and Libya (UN Doc. CCPR/C/LBY/CO/4 (2007), ¶ 12).

of, among others, Article 15 of the ICCPR, which enshrines the principle of legality,⁹³ as well as the right to liberty protected by Article 9.⁹⁴ The former Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, has expressed similar concerns.⁹⁵ In fact, the act in question here would not even constitute terrorism in Pakistan,⁹⁶ India,⁹⁷ Sri Lanka,⁹⁸ Bangladesh,⁹⁹ to name but a few comparable countries.

Just as the Maldivian Prevention of Terrorism law is vague, so is the warrant pursuant to which Nasheed was arrested. The arrest warrant issued generically refers to “terrorism,” failing to set out the allegedly criminal conduct for which he was detained.¹⁰⁰ As President Nasheed himself said in his closing arguments at trial:

As I have the Constitutional right to clearly understand the charges brought against me, I believe I am entitled to be informed of the basis for the charges and the elements of the offense I am charged with. *However, from the time I have been charged, throughout the trial and as we approach sentencing, the State has yet to fully explain the charges raised against me.*¹⁰¹

The Working Group has previously found that similar practices are incompatible with international human rights standards. In its list of principles concerning the compatibility of anti-terrorism measures with Articles 9 and 10 of the UDHR and Articles 9 and 14 of the ICCPR, the Working Group noted that “[t]he detention of persons who are suspected of terrorist activities shall be accompanied by concrete charges” and detained persons “shall be immediately informed of them.”¹⁰² Accordingly, the Working Group found that two applicants had been arbitrarily detained where they had not been informed of the charges against them or the reasons for their detention “except for a vague reference to suspicions of terrorism.”¹⁰³ Other international human rights bodies have confirmed that failure to provide details of the conduct for which a person is

⁹³ See e.g., Russian Federation, HRC, UN Doc A/59/40 vol. I (2003), ¶ 64(20); Morocco, HRC, UN Doc A/60/40, vol. I (2004), ¶ 84(20); Israel HRC, UN Doc A/58/40, vol. I (2002), ¶ 85(14).

⁹⁴ *General Comment No.35 – Article 9 (Liberty and Security of the Person)*, HRC, UN Doc. CCPR/C/GC/35, Dec. 16 2014, ¶ 22; Concluding Observations: Sudan, HRC, UN Doc CCPR/C/79/Add.85, Nov. 19 1997, ¶ 13.

⁹⁵ *Special Rapporteur on Human rights and Counter-terrorism Report*, UN Doc. E/CN.4/2006/98 (2005), ¶¶ 45, 50/72. See, also *Special Rapporteur on Human Rights and Counter-terrorism*, Spain, UN Doc. A/HRC/10/3/Add.2 (2008), ¶¶ 6-14; Report on Israel, UN Doc. A/HRC/6/17/Add.4 (2007), ¶ 16.

⁹⁶ *Pakistan, National Public Safety Commission: Manual on Anti-Terrorism Act 1997* (Oct. 2008), available at <http://www.satp.org/satporgtp/countries/Pakistan/document/papers/images/Pakistan%20Doc.pdf>.

⁹⁷ *The Unlawful Activities (Prevention) Act, 1967*, available at [http://www.nia.gov.in/acts/The%20Unlawful%20Activities%20\(Prevention\)%20Act,%201967%20\(37%20of%201967\).pdf](http://www.nia.gov.in/acts/The%20Unlawful%20Activities%20(Prevention)%20Act,%201967%20(37%20of%201967).pdf).

⁹⁸ Parliament of the Democratic Socialist Republic of Sri Lanka, *Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979*, available at http://www.satp.org/satporgtp/countries/shrilanka/document/actsandordinance/prevention_of_terrorism.htm.

⁹⁹ *Anti Terrorism Act of 2009*, Act No. 16 of 2009, available at <http://mha.gov.bd/wp-content/uploads/2013/10/Anti-Terrorism-Act-2009.pdf>.

¹⁰⁰ Arrest Warrant No. 145-J(HA)/2015/45, dated Feb. 22 2015.

¹⁰¹ *Closing Statement – Terrorism Trial*, supra note 52.

¹⁰² Report of the Working Group on Arbitrary Detention, WGAD, UN Doc. A/HRC/10/21), Feb. 16, 2009, ¶ 54(c-d).

¹⁰³ *Chérif Al Karoui and Hichem Matri v. Kingdom of Saudi Arabia*, WGAD, Opinion No. 45/2011, Feb. 29, 2012, ¶¶ 11, 55.

arrested, charged and/or tried amounts to a violation of Article 9¹⁰⁴ and Article 14¹⁰⁵ of the ICCPR.

The Maldivian Government wholly failed to allege or provide evidence that Nasheed took any actions that constitute terrorism as defined under the law. More specifically, the Government failed to explain how an arrest and detention by the military acting under a lawful order could constitute “terrorism.” According to the Oxford Dictionary, the words “kidnapping,” “abduction,” and “hostage” have the following meanings:

Kidnapping – Take (someone) away illegally by force, typically to obtain a ransom.

Abduction – The action or instance of forcibly taking someone away against their will.

Hostage – A person seized or held as security for the fulfillment of a condition.¹⁰⁶

There were no allegations or evidence that Judge Abdulla was kidnapped, abducted, or taken hostage – by Nasheed or any other entity. Ultimately the only appropriate remedy for an alleged unlawful arrest or detention by a Government is challenging that decision in a court of law. It is nonsensical for the Government to insist that any arrest that is facially valid and conducted in accordance with law can later be determined an act of terrorism subjecting anyone involved, up to the President, to criminal prosecution. Therefore, the charge itself is inconsistent with the plain language and the object and purpose, of the law.

Even beyond that, however, it is critical to recall that under the law itself, it is the act of taking the person which is the act of terrorism, not their ongoing detention unless it would be for the fulfillment of some condition. Here, the entire record demonstrates clearly that Judge Abdulla was detained because of the risk he posed to public safety and not for the fulfillment of some condition. Thus, the only relevant question, if one suspends disbelief to give the Government’s tortured reading of the law credence, is whether Nasheed actually ordered the arrest itself.

There was literally no evidence of any kind presented in the court that Nasheed ordered the arrest of Judge Abdulla – particularly given he did not even know about the arrest in advance – and there was direct evidence to the contrary, such as the Supreme Court having ordered the MNDF and not Nasheed to release Judge Abdulla.

The Court disregarded the Government’s complete lack of a plausible factual and legal argument. In the case summary, the three-judge panel erroneously found that the Prevention of Terrorism Act “stipulated that abducting a person by force is an act of terrorism.”¹⁰⁷ In essence, the Court equates a legal arrest by the military with an “abduction by force,” thereby removing any exception under the law for legal arrests.

Having made no allegations and supplying no evidence to explain how an arrest by the

¹⁰⁴ *Kelly v Jamaica*, HRC, Communication No. 253/1987, Sept. 15, 1987, ¶ 5.8; *Adolfo Drescher Caldas v Uruguay*, HRC, Communication No. 43/1979, Oct. 21, 1983, ¶ 13.2;

¹⁰⁵ *Kelly v Jamaica*, HRC, Communication No. 253/1987, Sep. 15 1987, ¶ 5.8.

¹⁰⁶ See OXFORD DICTIONARIES, available at www.oxforddictionaries.com.

¹⁰⁷ *Synopsis*, supra note 73, at ¶ 20.

military constitutes an abduction by force under the Prevention of Terrorism Act, the Maldivian Government failed to provide any valid legal basis for Nasheed’s detention. Therefore, his conviction and detention under the charge of terrorism is fundamentally unjustified, and Nasheed’s continued detention is a violation under Category I.

B. Category II: Substantive Fundamental Rights

An arbitrary detention falls under Category II when detention results from the exercise of fundamental rights protected by international law.¹⁰⁸ These fundamental rights include the right to freedom of opinion and expression¹⁰⁹, political participation,¹¹⁰ and association.¹¹¹ Nasheed’s detention is arbitrary under Category II because it resulted from his exercise of these fundamental freedoms, as detailed below.

1. The Maldivian Government Detained Nasheed Because He Exercised His Rights to Freedom of Opinion and Expression

Freedom of opinion and expression are protected by Article 19 of the ICCPR¹¹² and Article 19 of the UDHR.¹¹³ It includes the “freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.”¹¹⁴ In addition to the requirements of international law, the Maldivian Constitution protects the right of freedom of expression, providing that, “every citizen has the right to freedom of speech and expression. . . .”¹¹⁵ Article 19 of the ICCPR is of special importance for the members of political opposition groups and human-rights activists. The UN Human Rights Committee has recognized that the protection of free expression must include the right to express a dissenting political opinion.¹¹⁶ It is broad enough to “[include] the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment.”¹¹⁷

While this freedom is not absolute, Nasheed’s expression does not fall within the exceptions that are permissible under international law. Article 19(3) of the ICCPR allows for a

¹⁰⁸ Specifically, a Category II deprivation of liberty occurs, “[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration of Human Rights and, and insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the International Covenant on Civil and Political Rights.” *Revised Methods of Work*, *supra* note 7, at ¶ 8(b).

¹⁰⁹ ICCPR, *supra* note 84, at art. 19(1); *Universal Declaration*, *supra* note 84, at art. 19.

¹¹⁰ ICCPR, *supra* note 84, at art. 22(1); *Universal Declaration*, *supra* note 84, at art. 21.

¹¹¹ ICCPR, *supra* note 84, at art. 22(1); *Universal Declaration*, *supra* note 84, at art. 20.

¹¹² ICCPR, *supra* note 84, at art. 19(1).

¹¹³ *Universal Declaration*, *supra* note 84, at art. 19.

¹¹⁴ ICCPR, *supra* note 84, at art. 19(1) (“Everyone shall have the right to hold opinions without interference.”) and art. 19(2) (“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”); *Universal Declaration*, *supra* note 84, at art. 19.

¹¹⁵ *Constitution of the Maldives*, *supra* note 18, at art. 10(1)(a).

¹¹⁶ *General Comment No. 34 (2011) on Article 19: Freedom of Expression*, UN HUMAN RIGHTS COMMITTEE, CCPR/C/GC/34, Sep. 12, 2011, at ¶ 11 [hereinafter *General Comment No. 34*].

¹¹⁷ *Rafael Marques de Morais v. Angola*, Communication No. 1128/2002, UN HUMAN RIGHTS COMMITTEE, Mar. 29, 2005, at ¶ 6.7.

narrow limitation on the right to freedoms of opinion and expression that is “necessary [f]or the respect of the rights or reputations of others; [or] . . . [f]or the protection of national security or of public order (*ordre public*), or of public health and morals.”¹¹⁸ The Human Rights Committee has emphasized the narrowness of this limitation and found that government limitations must be for one of the enumerated purposes and “meet a strict test of justification.”¹¹⁹

In the 1995 case that this Working Group reviewed involving one of Nasheed’s previous persecutions, the Group had no hesitation in concluding that:

[T]he detention of . . . Mohamed Nasheed [and another journalist], was solely motivated by the will to suppress their critical voices – as journalists strongly devoted to the freedom of press and members of the opposition – on the eve of parliamentary elections which were to decide the future of the country. Their detention was therefore arbitrary since they merely exercised their right to freedom of opinion and expression, guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.¹²⁰

Many international actors have criticized the Government for persecuting Nasheed and curtailing his freedom of opinion and expression once again. Former UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue, wrote openly about the Maldivian Government’s unlawful repression of expression and opinion during the 30-year Gayoom regime. When highlighting, through an example, the former Government’s efforts to restrict expression, he said, “President Mohamed Nasheed, who was a former writer and journalist and in the 1990s established a reputation for his political commentaries when vocal criticism of the Government was almost non-existent, was among many journalists imprisoned and allegedly tortured under the previous administration.”¹²¹ In this most recent iteration of Nasheed’s persecution, the US Government expressed concern over the current Government of the Maldives failure to adhere to its international obligations during the arrest, trial and conviction of Nasheed and called on the Government “to take steps . . . to ensure that freedom of speech, press as well the right to peaceful assembly and protest are protected.”¹²²

As these commentators have recognized, the charge of terrorism brought against Nasheed was clearly a pretext for the curtailment of his right to freedom of opinion and expression as a political leader. Nasheed, a former writer and journalist, has been an outspoken opponent of the Government of the Maldives, and has publicly expressed concern about the state of the

¹¹⁸ ICCPR, *supra* note 84, at art. 19(3).

¹¹⁹ *General Comment No. 34, supra* note 116, at ¶ 23; *Tae-Hoon Park v. Republic of Korea*, Communication No. 628/1995, UN HUMAN RIGHTS COMMITTEE, Jul. 5, 1995, at ¶ 10.3. Article 27 of the Maldivian Constitution of 2008 further imposes the narrow limitation that any speech or opinion cannot be “contrary to any tenet of Islam.” Nasheed’s expression does not fall within these highly narrow confines justifying limitation by the Government of the Maldives because his expression of opinion is not contrary to any of Islam’s tenets. *Constitution of the Maldives, supra* note 18, at Art. 27.

¹²⁰ *See supra* note 9, at ¶ 7.

¹²¹ *Report of the Special Rapporteur on the Right to Freedom of Opinion and Expression, Frank La Rue: Addendum: Mission to the Republic of the Maldives*, UN HUMAN RIGHTS COMMITTEE, May 25, 2009.

¹²² *Statement on Trial of Former President Nasheed in the Maldives*, US STATE DEPARTMENT, Mar. 13, 2015.

Maldivian democracy under President Yameen — a regime widely viewed as a resuscitation of the 30-year authoritarian rule that preceded democratic reform and the adoption of the new Constitution, during the rule of President Yameen’s half-brother, Maumoon Gayoom.¹²³ The following examples are a small illustration of Nasheed’s publicly-articulated views about the Government of the Maldives:

On August 12, 2005, Nasheed was arrested while participating in a peaceful demonstration in commemoration of the anniversary of the brutal crackdown on the pro-democracy supporters¹²⁴ at the Republican Square in Malé.¹²⁵ Despite the Maldivian Government’s assurance that Nasheed was taken into custody for his own safety, he was subsequently charged with terrorism and sedition.¹²⁶ These charges came just days after Nasheed had published a critical article entitled “President Gayoom will do anything to stay in power,” which also challenged the legitimacy of the charges against him.¹²⁷

During the 2007 protests against the death of a prisoner in police custody, Nasheed openly criticized the Government for using torture to intimidate the public and to maintain power.¹²⁸ When Nasheed further expressed support for the murdered prisoner, Hussain Salah, and his family by sharing his condolences publicly and visiting Salah’s grave, Nasheed was arrested and beaten by the police.¹²⁹ The Government’s actions were clearly in retaliation to Nasheed’s open criticism of its actions and public support for the victims of its brutality.

The Government’s most recent cases against Nasheed have followed his election as President of the country and are calculated to remove him definitely as a political opponent as his opinions and criticisms of the ruling regime have become more dangerous than ever for the ruling regime. When charges of “illegally arresting a judge” were brought against him in 2012, Nasheed defied court orders by refusing to appear at trial. Nasheed cited the charges as politically motivated and biased by the Maldivian judiciary, and further challenged the court ban as an unfair and politically-motivated attempt to sabotage his right to campaign in the Presidential elections.¹³⁰ In response to these charges, Nasheed said “They have to be able to intimidate the public if they are to remain in power, it is the only means they know.”¹³¹

Nasheed was arrested for a short period in 2012, while campaigning for Presidential office — a time when not only his own but also the country’s future demanded that his rights to freedom of opinion and expression be honored. By placing him behind bars, he was not able to speak, join meetings, or otherwise meaningfully participate in the elections — which is directly

¹²³ José Ramos-Horta and Benedict Rogers, *Maldivian Democracy is Dead – With the j=Jailing of Former President Mohamed Nasheed*, THE GUARDIAN, Mar. 18, 2015.

¹²⁴ *Over 350 Political Activists Arrested in Maldives*, ASIA CENTER FOR HUMAN RIGHTS, Aug. 19, 2005, available at <http://www.achrweb.org/press/2005/Maldives0305.htm>.

¹²⁵ *SAARC Human Rights Report 2006: Maldives*, ASIA CENTER FOR HUMAN RIGHTS, 2006.

¹²⁶ *Id.*

¹²⁷ *Attacks on the Press 2005, Countries That Have Jailed Journalists: Maldives*, COMMITTEE TO PROTECT JOURNALISTS, 2006.

¹²⁸ Roland Buerk, *Maldives Opposition Plan Protest*, BBC NEWS, Apr. 20, 2007 [hereinafter *Maldives Opposition Plan Protest*].

¹²⁹ *Maldives: Mohamed Nasheed Severely Beaten*, ENGLISH PEN, Apr. 16, 2007.

¹³⁰ *Maldives Ex-President Mohamed Nasheed Defies Court*, BBC NEWS, Oct. 1, 2012.

¹³¹ *Maldives Opposition Plan Protest*, *supra* note 128.

related to his right to express himself and his political opinion.¹³² Nasheed was again openly critical of the political nature of the charges brought against him, saying, “[o]nce they started to set up a fabricated court, bring in judges who are not judges of that court, and the whole structure of it is so . . . politically motivated, it is very obvious it is not meant to serve justice.”¹³³

Later in 2013, while in a campaign rally in Dhoonidhoo, Nasheed publicly challenged his rivals to compete in elections instead of using the courts to manipulate presidential polls.¹³⁴ He further pointed at the Government’s inability to participate in peaceful political activities and urged the judiciary, legislature, and executive branches of the Government to act in compliance with the Constitution. He remarked, “[o]ur rivals do not know elections. These people are a group, in other words a gang. There is no way they can participate in peaceful political activities.”¹³⁵

That same year, while seeking refuge as result of the Government’s persecution at the Indian High Commission in the capital of Malé, Nasheed called for then President Waheed’s (interim President after Nasheed was forced out of office) resignation citing mass arrests, police brutality, and the politically-motivated trials, which prevented him from participating in free and fair elections.¹³⁶ Nasheed declared, “The events of the past year - the mass arrests, the police brutality, the politically motivated trials – demonstrate that Dr. Waheed cannot be trusted to hold a free and fair election. Waheed should do the right thing and resign from office. An interim, caretaker government should be established that can lead the Maldives to genuinely free and fair elections, in which all candidates are freely able to compete.”¹³⁷

Following Abdulla Yameen’s one-year anniversary in power, in an interview with *Raaje TV* in 2014, Nasheed criticized Yameen’s Government; he questioned the legitimacy of how it came to power and attacked the 2015 proposed budget, comparing it to the budgets of the 30-year regime rule of Gayoom, as both included large sums of money as expected earnings which would most likely culminate into government deficit.¹³⁸ Further, at a rally held in Malé in June 2014, Nasheed again challenged the legitimacy of the current Government and questioned the Supreme Court’s interpretation of the Constitution.¹³⁹

On February 10, 2015, the Defense Minister Mohamed Nazim was arrested following a power struggle within the Government; Nasheed openly stated his support for Nazim and called for his release, asserting that Nazim’s prosecution was politically motivated. This was an extraordinary statement because it had been Nazim who helped force Nasheed to resign from the presidency. Twelve days later when Nasheed himself was arrested on February 22, 2015,

¹³² *Maldives Arrested Former President*, BBC NEWS, Oct. 8, 2012.

¹³³ *Id.*

¹³⁴ Zaheena Rasheed, *Our Rivals Do Not Know Elections*, MINIVAN NEWS, Nov. 4, 2013.

¹³⁵ *Id.*

¹³⁶ *Former Maldives President Mohamed Nasheed Calls for His Successor Waheed to Step Down*, NDTV, Feb. 13, 2013 [hereinafter *President Nasheed Calls for Waheed to Step Down*].

¹³⁷ *Id.*

¹³⁸ Ismail Humaam Hamid, *Nasheed Questions Government’s Legitimacy and Record as One-year Anniversary Looms*, MINIVAN NEWS, Nov. 12, 2014.

¹³⁹ Zaheena Rasheed, *President Yameen’s Administration Will Fall in a Coup*, MINIVAN NEWS, Jun. 16, 2014.

he was dragged and manhandled by the police when he tried to speak to reporters outside the court.¹⁴⁰

In response to these and many other comments and actions, the Government has targeted and persecuted Nasheed in an attempt to discredit his image and silence him. This pattern can be clearly seen in Nasheed's past politically-motivated harassment and persecutions, and continues with his current conviction and detention. Since his conviction on March 13, 2015, the Government has refused Nasheed access to an accurate and full record of his own trial, without which he could not meaningfully exercise his right to appeal, a right tied closely to his rights to freedom of expression and participation in public affairs. Again, the effect of these step-by-step, mounting procedural roadblocks is Nasheed's and his allies' forced silence. Nasheed's right to freedom of opinion and expression, guaranteed under international and related Constitutional provisions and national laws, continue to be blatantly disregarded by the Government of the Maldives.

Though Nasheed was exercising his fundamental legal rights to express his opinion, he was summarily convicted and sentenced to thirteen years in prison in a trial that was a mockery of justice. His imprisonment amounts to no more than an attempt to silence the voice of democracy in the Maldives. And in that regard, the recognition of the arbitrariness of his detention should be affirmed by the Working Group, as it has in other cases including the wrongful imprisonment of other political figures including Nobel Peace Prize Laureates Aung San Suu Kyi¹⁴¹ and Liu Xiaobo¹⁴², Venezuelan opposition leader Leopoldo Lopez¹⁴³, Belarusian opposition leader Andrei Sannikov¹⁴⁴, and Papuan political activist Filep Karma¹⁴⁵, among others.

As such, Nasheed's current detention is in direct violation of his domestic and international rights to freedom of opinion and expression.

2. The Maldivian Government Detained Nasheed Because He Exercised the Right to Freedom of Association

Article 22(1) of the ICCPR provides that “[e]veryone shall have the right to freedom of association with others”¹⁴⁶ Further, Article 20(1) of the UDHR provides that “[e]veryone has the right to freedom of peaceful assembly and association.”¹⁴⁷ Similarly, Maldivian law also ensures the right to freedom of association of a political nature. Article 30(a) of the Maldivian

¹⁴⁰ *Maldives Ex-leader Dragged Into Court By Police*, BBC NEWS, Feb. 23, 2015.

¹⁴¹ *Aung San Suu Kyi v. Myanmar*, WGAD Opinion Nos. 8/1992, 2/2002, 9/2004, 2/2007 (Represented by Freedom Now/Jared Genser), 46/2008 (Represented by Freedom Now/Jared Genser), 12/2010 (Represented by Freedom Now/Jared Genser).

¹⁴² *Liu Xiaobo v. People's Republic of China*, WGAD Opinion No. 15/2011, May 5, 2011 (Represented by Freedom Now/Jared Genser)

¹⁴³ *Leopoldo López v. Venezuela*, WGAD Opinion No. 26/2004, Aug. 26, 2014 (Jared Genser joined López legal team after submission to WGAD).

¹⁴⁴ *Andrei Sannikov v. Belarus*, WGAD Opinion No. 14/2012, Adopted May 4, 2012 (Represented by Freedom Now).

¹⁴⁵ *Filep Karma v. Indonesia*, WGAD Opinion 48/2011, Adopted Sept. 2, 2011 (Represented by Freedom Now).

¹⁴⁶ *ICCPR*, *supra* note 84, at art. 22(1).

¹⁴⁷ *Universal Declaration*, *supra* note 84, at art. 20(1).

Constitution affirms “[e]very Citizen has the right to establish and to participate in the activities of political parties.”¹⁴⁸

Despite these protections, it is evident that the Government singled out Nasheed because he is associated with the major opposition party, the Maldivian Democratic Party (MDP). The Government views the MDP as a threat to its power, as the MDP is the most popular opposition political party in the Maldives. The MDP won the presidency in 2008 and currently holds the second highest number of seats in the Maldivian Parliament. Nasheed was a founder of the MDP and regularly convenes with the party’s other leaders. Additionally, Nasheed associates with other Maldivian political leaders, most notably Gasim Ibrahim and his Jumhooree Party, who left the ruling coalition and joined Nasheed and the opposition in January 2015.

Though Nasheed is well within his rights to associate with the political party of his choice and express his political opinions through that party, the Government has systemically persecuted him as a means to suppress his involvement in national politics. Government officials actively sought to detain Nasheed because of his affiliation with the major opposition party; this violates his right to freedom of association under Maldivian and international law and thus renders his detention arbitrary under Category II.

Furthermore, on March 30, 2015, some two weeks after Nasheed’s summary conviction and sentence, the Parliament in a coalition led by Yameen’s political party, adopted a new law that strips people serving prison sentences of their political party memberships. This new law also *de facto* prohibits Nasheed from continuing to serve as the leader of the MDP. Such a law is in violation of the Maldives Constitution and Article 22 of the ICCPR, which protects the right to freedom of association with others, including through political parties. In addition, General Comment No. 25(57) to the ICCPR notes that “the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by Article 25 [right to participate in public affairs].”¹⁴⁹ By adopting this law that prevents Nasheed from participating in his political party on account of his conviction and detention, the Government is again violating his right to freedom of association under domestic and international law.

3. The Maldivian Government Detained Nasheed Because He Exercised the Right to Freedom of Political Participation

The Maldivian Government’s arrest and detention of Nasheed is also punishment for exercising his right to take part in public affairs and be elected without unreasonable restrictions as protected by Article 25 of the ICCPR¹⁵⁰ and Article 21 of the UDHR.¹⁵¹ According to the

¹⁴⁸ *Constitution of the Maldives*, *supra* note 18, at art. 30.

¹⁴⁹ *General Comment No. 25 (57) Under Article 40, Paragraph 4, of the ICCPR*, UN HUMAN RIGHTS COMMITTEE, CCPR/C/21/REV.1/ADD.7, Aug. 22, 1996, at ¶ 27 [hereinafter *General Comment No. 25*].

¹⁵⁰ *ICCPR*, *supra* note 84, at art. 25 (“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country”).

Human Rights Committee, this right allows “[c]itizens . . . [to] take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring the freedoms of expression, assembly and association.”¹⁵² Moreover, this right depends on the ability of individuals to run for office. As the Human Rights Committee has noted:

The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates . . . Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence, or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person’s candidacy.¹⁵³

In addition, the Working Group jurisprudence supports this right; a violation of Article 25 occurs where individuals are detained solely for exercising their right to freedom of association and the right to take part in the conduct of public affairs.¹⁵⁴

Nasheed’s current detention is in response to him having exercised his right to participate in the conduct of public affairs as a member and leader of the opposition Maldivian Democratic Party (MDP). In the Maldives’ 2008 election, the country’s first-ever multi-party presidential election, Nasheed ran for President as leader of the MDP. Nasheed ultimately won the Presidency during a run-off election when he scored 54.04 percent of the vote.¹⁵⁵ He was sworn in on November 11, 2008.¹⁵⁶ Upon taking office, Nasheed used his position as a platform to advocate for increased awareness of and action against global warming, pledging to set an example by making the country carbon-neutral, transitioning from oil to renewable energy sources including solar power,¹⁵⁷ and founding the Climate Vulnerable Forum, a global partnership of countries affected disproportionately by climate change.¹⁵⁸

In February 2012, Nasheed was forced to resign under threat of personal violence and unrest made by his opponents within the police and military forces.¹⁵⁹ His subsequent trial for

¹⁵¹ *Universal Declaration*, *supra* note 84, at art. 21 (“(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”).

¹⁵² *General Comment No. 25*, *supra* note 149, at ¶ 8 (emphasis added).

¹⁵³ *Id.*, at ¶ 15 (emphasis added).

¹⁵⁴ See *Tran Thi Thuy et al. v. Government of Viet Nam*, WGAD Opinion No. 46/2011, Sept. 2, 2011, at ¶¶ 21, 22, 26.

¹⁵⁵ *Maldives Decides 2008*, *supra* note 46.

¹⁵⁶ *New Maldives President Sworn In*, *supra* note 47.

¹⁵⁷ *Carbon-Neutral Goal for Maldives*, *supra* note 48.

¹⁵⁸ *Climate Vulnerable Forum*, *supra* note 49.

¹⁵⁹ While the current Government alleged that the events in February 2012, were not a *coup d’etat* but rather a “transition of power,” an independent assessment of the events and the report issued by the Commission of National Inquiry (CONI) by the former Attorney General of Sri Lanka calls into question that characterization and supports the characterization of the transition as a *coup d’etat*. *A Legal Review of the Report of the Commission of National Inquiry (CONI) Maldives* 28-33, Sep. 6, 2012, available at <http://mdp.org.mv/wp-content/uploads/2012/09/CONI-A-Legal-Analysis.pdf>.

the crime of “illegally arresting” Judge Abdulla was a transparently political attempt to prevent him from campaigning for the 2013 presidential election. Indeed, one week before Nasheed’s trial was scheduled to resume in February 2013, the Maldivian Home Minister publicly stated: “for the sake of national stability, Nasheed’s trial must be concluded before the presidential election,” and further remarked that any delays would undermine the country’s “political and social fabric.”¹⁶⁰

Throughout the 2013 election, the judiciary took a number of actions that interfered with Nasheed’s ability to conduct his presidential campaign. The Court refused to provide Nasheed with a schedule of court proceedings, prohibited him from traveling on a number of occasions, and twice arrested him while on campaign visits, purportedly for failing to appear at court proceedings—proceedings of which he was routinely provided little advance notice.¹⁶¹ Nasheed requested that the trial be suspended until the September 2013 elections; and although the prosecution did not object, the Hulhumalé Court refused to grant Nasheed’s request. On May 29, 2013, the High Court suspended Nasheed’s challenge to the constitutionality of the Hulhumalé Court, effectively suspending the trial against Nasheed indefinitely.¹⁶²

Additionally, although Nasheed was permitted to participate in the election, the judiciary inappropriately interfered with the electoral process on multiple occasions. The Supreme Court nullified the first round of the election, in which Nasheed won 45 percent of the vote, despite international consensus that the election had been free and fair.¹⁶³ The Supreme Court subsequently suspended the election three times,¹⁶⁴ drawing intense criticism from the international community.¹⁶⁵ The election was eventually held on November 9, 2013, and a run-off election between Nasheed and Yameen was held on November 16, 2013.

It was in part because of the success of the opposition under Nasheed’s leadership that the Maldivian Government has persecuted Nasheed. The Government considers Nasheed a threat to its hold on power, and as such created and tried Nasheed on false allegations of terrorism in an attempt to silence him and prevent him from participating in politics in the future. Nasheed’s continued popularity was made clear during the 2013 run-off election, in which he won approximately 48.6 percent of the popular vote even in the midst of the “arbitrary detention” trial.¹⁶⁶ This significant accomplishment most certainly played a role in the Government’s decision to institute new terrorism charges against Nasheed, which carry a 13-year punishment, effectively barring him not only from elections in 2018 but also from holding future political office during his sentence and for three years after his release. The Government saw Nasheed as

¹⁶⁰ *MDP Accuses Home Minister of Influencing President’s Trial*, *supra* note 61.

¹⁶¹ *Maldives Police Arrest Former President*, JURIST, Mar. 5, 2013, available at <http://jurist.org/paperchase/2013/03/maldives-police-arrest-former-president.php>. In February 2013, out of fear for his life, President Nasheed took refuge in the Indian High Commission in Colombo, Sri Lanka. See *Maldives Court Issues Second Warrant for Ex-President*, ASSOCIATED PRESS, Feb. 13, 2015.

¹⁶² *JSC Suspends Chief Judge Hours After High Court Postpones Case Against JSC*, MINIVAN NEWS, May 29, 2013 [hereinafter *JSC Suspends Chief Judge*].

¹⁶³ *Maldives Holds Fresh Election for President*, *supra* note 62.

¹⁶⁴ *Maldives Supreme Court is Subverting the Democratic Process*, *supra* note 63; *Maldives High Court Delays Presidential Election for Third Time*, *supra* note 63.

¹⁶⁵ *Maldives Supreme Court is Subverting the Democratic Process*, *supra* note 63.

¹⁶⁶ *Id.*

a threat because of his political work and as such wanted to move forward with illegally prosecuting him as quickly as possible. The urgency to address this threat grew dramatically after Gasim Ibrahim and the JP defected from President Yameen’s coalition – mere weeks before the new charges against Nasheed were filed.

Through the Court’s verdict, the Government not only discriminated against Nasheed on the basis of this political participation, but also directly and unlawfully interfered with his ability to exercise the right to political participation. This decision evinces an intent to silence Nasheed and the democracy for which he has fought and to disqualify him from being able to run for President ever again. Nasheed’s conviction sends a loud and clear to the Maldivian people: opposition to the Yameen regime will not be tolerated.

In addition to concerns about freedom of expression and the lack of an independent judiciary, international organizations have been openly critical of the highly-political motivations of Nasheed’s trial, conviction, and imprisonment. Richard Bennett, the Asia-Pacific Director for Amnesty International, decried the political nature of Nasheed’s recent conviction, saying, “the government of the Maldives has proceeded with this sham trial for political reasons.”¹⁶⁷

It is a violation of international law that the Government has denied Nasheed his right to freedom of opinion and expression, freedom of association, and freedom of political participation under Category II.

C. Category III: Due Process Rights

The Working Group considers a deprivation of liberty to be a Category III arbitrary detention “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”¹⁶⁸ Additionally, the Working Group will look to the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Body of Principles).¹⁶⁹

While the Government has tried to justify Nasheed’s conviction and sentencing, the international community has unambiguously condemned the arrest, trial, and conviction. UN High Commissioner for Human Rights, Zeid Raad Al-Hussein “expressed strong concerns . . . about the hasty and apparently unfair trial,” and described the proceedings as “a rushed process that appears to contravene the Maldives’ own laws and practices and international fair trial standards in a number of respects.”¹⁷⁰ Similarly in the words of Gabriela Knaul, UN Special Rapporteur on the Independence of Judges and Lawyers: “The series of due process violations that were reported . . . since Mr. Nasheed’s arrest on 22 February is simply unacceptable in any

¹⁶⁷ *Statement of Amnesty International, supra* note 6.

¹⁶⁸ *Revised Methods of Work, supra* note 7, at ¶ 8(c).

¹⁶⁹ *Body of Principles, supra* note 84.

¹⁷⁰ *Statement of OHCHR – Zeid, supra* note 5.

democratic society.”¹⁷¹ Ms. Knaul went on to express extreme concern “about the lack of respect for the most basic principles of fair trial and due process during Mr. Nasheed’s criminal proceedings.”¹⁷²

International human rights organizations and foreign governments have voiced similar concern. Amnesty International’s Asia-Pacific Director, Richard Bennett, condemned Nasheed’s conviction, noting that the “trial has been flawed from start to finish.”¹⁷³ Transparency Maldives, the Maldives office of Transparency International, noted with “grave concern” Nasheed’s sentencing in light of the “procedural irregularities [that] raise serious questions about the fairness, transparency and independence of the judicial process.”¹⁷⁴ Human Rights Foundation President Thor Halvorssen raised broader concerns about the future of democracy in the Maldives, saying that “[t]oday, the Maldives is teetering on the edge of either sliding back to full-fledged dictatorship, or finally opening up and embracing democracy and liberty. Unfortunately, the ‘kangaroo court’ that summarily convicted Mohamed Nasheed strongly suggests that the current Government of the Maldives is regressing to authoritarianism.”¹⁷⁵

The US Government expressed concern about “the apparent lack of appropriate criminal procedures” and “reports that the trial was conducted in a manner contrary to Maldivian law and Maldives’ international obligations to provide the minimum fair trial guarantees and other protections under the [ICCPR].”¹⁷⁶ A spokesperson for the European Union stated that Nasheed’s conviction “raises very serious questions about due process of law and risks undermining people’s trust in the independence of the judiciary.”¹⁷⁷ From the UK Foreign Office, Foreign Office Minister Hugo Swire conveyed deep concern about the sentencing, saying that “[d]espite the calls from the international community for due process to be followed, [the UK is] concerned that the former President’s trial has not been conducted in a transparent and impartial manner or in accordance with due legal process.”¹⁷⁸ Nasheed’s conviction even frustrated India, its most important neighbor, as Indian Prime Minister Narendra Modi cancelled a planned trip to the Maldives one day after the conviction.¹⁷⁹ A Foreign Ministry spokesperson explained India’s position, stating: “We are deeply concerned over the development in the Maldives. We are monitoring the situation there.”¹⁸⁰

¹⁷¹ *Maldives: “No Democracy is Possible Without Fair and Independent Justice, UN Rights Expert*, OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS, Mar. 19, 2015 [hereinafter *Statement of UN Special Rapporteur – Knaul*].

¹⁷² *Id.*

¹⁷³ *Statement of Amnesty International*, *supra* note 6.

¹⁷⁴ *Transparency Maldives Concerned about Legal Process for Trial of Former President Nasheed*, TRANSPARENCY INTERNATIONAL, Mar. 16, 2015.

¹⁷⁵ *HRF to Maldives: Release Mohamed Nasheed*, HUMAN RIGHT FOUNDATION, Apr. 10, 2015.

¹⁷⁶ *Statement on the Trial of Former President Nasheed in The Maldives*, US STATE DEPARTMENT, Mar. 13, 2015, available at <http://www.state.gov/r/pa/prs/ps/2015/03/238884.htm?goMobile=0>.

¹⁷⁷ *Statement by the Spokesperson on Conviction of Former President of the Maldives Mohamed Nasheed*, EUROPEAN UNION, Mar. 14, 2015, available at http://eeas.europa.eu/statements-eeas/2015/150314_01_en.htm.

¹⁷⁸ *Minister Expresses Concern About Sentencing Of Former Maldives President Nasheed*, UK FOREIGN OFFICE, Mar. 13, 2015 available at <https://www.gov.uk/government/news/minister-expresses-concern-about-sentencing-of-former-maldives-president-nasheed>.

¹⁷⁹ *Nasheed Cuffs Strain Male Ties*, THE TELEGRAPH (INDIA), Mar. 14, 2015.

¹⁸⁰ *Id.*

Because the Maldivian Government violated numerous procedural requirements under both international and domestic law in this case, the continued detention of Nasheed is arbitrary under Category III.

1. The Maldivian Government Arrested Nasheed Mohamed Without a Proper Warrant

Article 9 of the ICCPR provides that “no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”¹⁸¹ The Maldives Constitution similarly states “everyone has the right not to be arbitrarily detained, arrested or imprisoned except as provided by law.”¹⁸² The Maldivian Constitution specifies the three situations in which an arrest can be made: (1) “the arresting officer observes the offence being committed,” (2) the arresting officer “has reasonable and probable grounds or evidence to believe that person has committed an offence or is about to commit an offence,” or (3) under the authority of an arrest warrant issued by a court.¹⁸³

Under the Body of Principles, an arrest “shall only be carried out strictly in accordance with the provisions of law”¹⁸⁴ and shall be “duly recorded” with the reasons for the arrest, the time of the person’s first appearance before a judicial authority, and information about the place of custody all noted.¹⁸⁵ According to the Working Group, an “arrest without a valid search warrant is illegal, [and] contrary to international standards.”¹⁸⁶

In this case, the warrant issued by the Court for Nasheed’s arrest was highly irregular and not in conformity with Maldivian law. First, the warrant was issued at the request of the Prosecutor General Muhthaz Muhsin, who personally went to the Court to seek the order. Normally, only a criminal investigatory agency, such as the police, request arrest warrants from the Court. Neither the Maldivian Constitution nor the Prosecutor General’s Act give the Prosecutor General the power or authority to request arrest warrants.¹⁸⁷ The fact that the Prosecutor, acting outside of his authority, took the time to personally request the arrest warrant is both irregular and strongly suggests that his decision was politically-motivated.

Second, the warrant issued on February 22 for Nasheed’s arrest was missing critical pieces of key information, including the place where Nasheed should be detained, the period of his detention, and when he was to be brought to court.¹⁸⁸ Therefore, the police did not have the

¹⁸¹ *ICCPR*, *supra* note 84, at Art. 9(1).

¹⁸² *Constitution of the Maldives*, *supra* note 18, at Art. 45.

¹⁸³ *Constitution of the Maldives*, *supra* note 18, at Art. 46.

¹⁸⁴ *Body of Principles*, *supra* note 84, at Principle 2.

¹⁸⁵ *Id.*, at Principle 12.

¹⁸⁶ *Baylosis, et. al v. The Phillipines*, WGAD Decision No. 5/1993, Apr. 30, 1993, at ¶ 6 (emphasis added).

¹⁸⁷ The closest provision in the Prosecutor General’s Act gives the Prosecutor General the power “[t]o consider and asses [sic] evidence presented by investigating bodes to determine whether charges should be pursued”. Prosecutor General’s Act of 2008, No. 9/2008, at § 15(b), *available at* <http://www.agoffice.gov.mv/pdf/sublawe/PG.pdf> [hereinafter *Maldives Prosecutor General’s Act*]. The Act does not go on to give the Prosecutor General any responsibilities or powers related to arrest warrants.

¹⁸⁸ Zaheena Rasheed, *Nasheed Denied Right to Appoint Lawyer and Appeal “Arbitrary” Arrest Warrant, Contend Lawyers*, MINIVANNEWS, Feb. 23, 2015, *available at* <http://minivannews.com/politics/nasheed-denied-right-to->

authority pursuant to arrest or detain Nasheed overnight on February 22, which they did. To cover up its error, the Court issued a second warrant the following day, ordering the police to present Nasheed at a specific time.¹⁸⁹

Finally, pursuant to the arrest warrant, the police illegally detained Nasheed the night of his arrest. The arrest warrant stated that Nasheed was being detained on suspicion that he was “likely to abscond to avoid facing terrorism charges.”¹⁹⁰ However, as Nasheed’s lawyers argued, Nasheed “had never absconded from court, nor [sic] taken the opportunity to flee or go into hiding during numerous opportunities he had in the prior few weeks to travel abroad, and he had expressly informed the judiciary and the Prosecutor General that he does not have any intention to abscond from Court or avoid charges being brought against him.”¹⁹¹ In addition, Nasheed had never previously fled while facing charges, despite having been arrested more than 20 times over several decades. Therefore, the police had no basis on which to believe that Nasheed would attempt to abscond, and were unjustified in detaining him on the first night pursuant to the deficient arrest warrant.

Nasheed attempted to raise these procedural errors and irregularities to the Court, requesting a hearing to consider the legality of his arrest and request bail. The Court scheduled a hearing for March 15 – two days after Nasheed was convicted and sentenced. Regardless, Nasheed and his counsel moved forward with the challenge, requesting a public hearing on the matter as guaranteed by the Constitution.¹⁹² The Court refused the request, responded that hearings in respect of arrest warrants were conducted under close-door sessions, and after Nasheed insisted on a public hearing, dismissed the matter without a hearing. Consequently, there was never any consideration of the sufficiency or legality of the arrest warrant. Additionally, the Court also refused to grant bail, explain its reasoning, or provide a reconsideration of bail at regular intervals before the verdict.

2. The Criminal Court Failed to Provide Equality Before the Law

Article 14(1) of the ICCPR states “[a]ll persons shall be equal before the courts and tribunals.”¹⁹³ According to the Human Rights Committee, this “ensures that the parties to the proceedings in question are treated without any discrimination” and the principle of the “equality of arms.”¹⁹⁴

International observers have closely observed the highly-selective prosecution of Nasheed. UN Special Rapporteur on the Independence of Judges and Lawyers Gabriela Knaul

appoint-lawyer-and-appeal-arbitrary-arrest-warrant-contend-lawyers-92928#sthash.iwtie6b0.dpbs [hereinafter “Arbitrary” Arrest Warrant].

¹⁸⁹ *Id.*

¹⁹⁰ *Former President Arrested Under Anti-Terrorism Law*, THE GUARDIAN, Feb. 22, 2015, available at <http://www.theguardian.com/world/2015/feb/22/former-maldivian-president-arrested-under-anti-terrorism-law>

¹⁹¹ “Arbitrary” Arrest Warrant, *supra* note 188.

¹⁹² *Constitution of the Maldives*, *supra* note 18, at Art. 42.

¹⁹³ See ICCPR, *supra* note 84.

¹⁹⁴ *General Comment No. 32 (2007) on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*, UN HUMAN RIGHTS COMMITTEE, CCPR/C/GC/32, Aug. 23, 2011, at ¶ 8 [hereinafter *General Comment No. 32*].

noted the discriminatory application of the law, saying “[t]he fact that one former president is being tried on serious terrorism-related charges for one alleged offence when his predecessor has not had to answer for any of the serious human-rights violations documented during his term is also troubling for a country whose Constitution enshrines the independence and impartiality of the justice system as a prerequisite for democracy and the rule of law.”¹⁹⁵

Beyond this discrimination, as will be described in much greater detail, the trial was replete with numerous due process abuses in violation of the Maldives Constitution, Maldivian law, and international law – and these abuses were committed exclusively against Nasheed and his defense team. According to the Human Rights Committee, equality of arms means “the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant.”¹⁹⁶

In Nasheed’s case, the most flagrant violation of the principle of equality of arms was that he was refused the right to present any defense witnesses or cross-examine prosecution witnesses fully. According to the Court, “Defence witnesses would not be able to refute the evidence submitted by the prosecution against Mohamed Nasheed and hence, it was decided not to call any Defence witnesses to the court.”¹⁹⁷ This was not only a violation of the principle of equality of arms, but also a flagrant violation of Article 14(2)(e) of the ICCPR, which explicitly provides criminal defendants the right to “obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”¹⁹⁸

3. The Criminal Court Failed to Provide an Independent and Impartial Tribunal

ICCPR Article 14 guarantees criminal defendants “a fair and public hearing by a competent, independent, and impartial tribunal established by law.”¹⁹⁹ UDHR Article 10 similarly establishes that every individual “is entitled . . . to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”²⁰⁰ The Working Group has consistently held that the rights to a fair and impartial trial form an integral aspect of due process as envisaged by the ICCPR²⁰¹ and UDHR.²⁰²

¹⁹⁵ *Statement of UN Special Rapporteur – Knaul, supra* note 171.

¹⁹⁶ *General Comment 32, supra* note 194, at ¶ 13; *see also Dudko v. Australia*, Communication No. 1347/2005, UN HUMAN RIGHTS COMMITTEE, at ¶ 7.4.

¹⁹⁷ *Synopsis, supra* note 73, at ¶ 17.

¹⁹⁸ *ICCPR, supra* note 84.

¹⁹⁹ *Id.*, at art. 14(1) (“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”)

²⁰⁰ *Universal Declaration, supra* note 84, at art. 10.

²⁰¹ *See, e.g., Abdallah Hamoud Al-Twijri et al. v. Iraq*, Communication 43/2012, UN HUMAN RIGHTS COMMITTEE, at ¶ 46.7.

²⁰² *See, e.g., Mohamed Al Jazairy et al. v. Saudi Arabia*, Communication No. 52/2012, UN HUMAN RIGHTS COMMITTEE, at ¶ 28.1.

The Maldives' history is replete with examples of corruption, widespread human rights violations, and the lack of an independent judiciary.²⁰³ During Nasheed's presidency, commendable efforts were made at reforming the judiciary, but any progress made in that period has all but been erased since the Yameen administration came into power in 2013. Many of the most important judicial reforms have been blocked or stalled in the legislature; for example, as of 2013 the Maldivian Parliament had failed to enact the legislation needed to codify the new Constitution.²⁰⁴ The Judicial Services Commission, which was established to provide independent oversight of the judiciary, has been politicized and subject to outside influence, and therefore has been ineffective at judicial reform.²⁰⁵

The actions of the Maldivian Government during Nasheed's trial are unfortunately consistent with this history, as the court has displayed an absolute lack of independence and impartiality in the judicial proceedings to date.

i. Prosecutor General Unconstitutionally Withdrew and Replaced Charges

Contrary to what the Government of the Maldives has publically claimed, the arbitrary detention charges against Nasheed were not "amended and re-filed" as terrorism charges. Instead, the initial arbitrary detention charges were withdrawn and new terrorism charges filed. Legally, there is no link between the two cases; the terrorism charge begins a new and independent prosecution, even though it is based on an overlapping set of facts and evidence.

Under Maldivian law, the Prosecutor General does not have the authority to withdraw this prior charge and replace it with another charge. The Prosecutor General does have the power "to take over, review and continue any criminal proceedings instituted by any prosecuting body authorized to initiate prosecutions pursuant to a law . . . and at his discretion to *discontinue any criminal proceedings* at any stage prior to judgment."²⁰⁶ The Prosecutor General's Act of 2008 provides for the same powers.²⁰⁷ However, nowhere in Maldivian law is the Prosecutor General granted the power or authority to replace a withdrawn charge based on an already initiated prosecution with a new charge on the same set of facts, let alone one that incurs a higher penalty.

Nasheed challenged the legality of the Prosecutor General's decision, pointing out to the Court that the Prosecutor General had acted beyond the discretionary powers vested by the Constitution and Maldivian law. However, the Court dismissed Nasheed's argument. The Prosecutor General's unconstitutional decision and the Courts' failure to rectify the clear wrongdoing provide additional evidence that the Maldivian judiciary was not acting independently.

²⁰³ See *Report of the Special Rapporteur: Mission to Maldives*, supra note 11; *BHRC Report: Prosecution of Mohamed Nasheed*, supra note 11; *Securing an Independent Judiciary*, supra note 20; *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant*, HUMAN RIGHTS COMMITTEE, Aug. 31, 2012 [hereinafter *HRC Report 2012*]; and *2013 Human Rights Country Report for the Maldives*, US STATE DEPARTMENT.

²⁰⁴ *UN Expert Warns of Major Challenges Ahead*, supra note 20; *Securing an Independent Judiciary*, supra note 20.

²⁰⁵ See *Securing an Independent Judiciary*, supra note 20; see also *HRC Report 2012*, supra note 203; *US 2013 Human Rights Country Report for the Maldives*, supra note 203, at 6-7.

²⁰⁶ *Constitution of the Maldives*, supra note 18, at art. 223(g) (emphasis added).

²⁰⁷ *Maldives Prosecutor General's Act*, supra note 187 at §§ 15(g-h).

ii. *Politically-Motivated Timing of the New Charges Against Nasheed and Unjustifiable Haste of Court Proceedings*

Both the timing of the new terrorism charges against Nasheed and the rapid pace of the legal proceedings raise serious concerns that the judiciary was not acting impartially or independently.

Specifically, prominent Maldivian parliamentarian Gasim Ibrahim and his JP party had quit President Yameen's coalition government and expressed support for Nasheed in January 2015. Gasim and his JP party had received 24 percent of the vote to Nasheed's 45 percent and Yameen's 25 percent in the first round of the 2013 election. This new support for Nasheed directly threatens Yameen's grip on power. In addition, Defense Minister Mohamed Nazim, who served under President Yameen, was dismissed over claimed involvement in an alleged coup plot to overthrow Yameen. Nazim had said he was going to challenge Yameen to become head of the ruling Progressive Party of the Maldives (PPM). To maintain his power, Yameen needed to crack down on challenges from within his party and decapitate the political opposition in the wake of Gasim's defection.

In terms of the pace of the trial, Nasheed was denied the opportunity to seek bail or a remand hearing within 24 hours of his arrest, as guaranteed by the Constitution²⁰⁸; instead, the Court immediately presented the formal charges at his first hearing and denied bail summarily on the basis that he "might abscond." In total, less than three weeks elapsed between the date that Nasheed was arrested and the date he was convicted, with hearings held almost every day, often extending into the evening hours. This incredible haste was unjustified and highly prejudicial to Nasheed, who was not afforded adequate time or facilities to prepare a defense.

Another strong indication of the lack of independence of the judiciary came in the form of a Supreme Court circular, which drastically changed the rules for appealing a lower court decision. The fact that this decision was unprecedented and was made almost immediately before the terrorism charge was filed against Nasheed strongly suggests that the new rules were politically-motivated and targeted directly at Nasheed. Furthermore, the Supreme Court Circular, while requiring unnecessary haste from Nasheed's counsel in preparing an appeal, does not require such speed from the High Court in coming to a decision on the appeal. If the reason for the shortened time was in fact to expedite the legal process, as the judiciary reportedly claimed, then an early deadline should have also been mandated on the court that would ultimately review the appeal.

The Court's haste in completing the proceedings and rendering judgment were, to say the least, extremely unusual. Taken in light of the other significant events that preceded the new charge of terrorism against Nasheed, the collective facts show that the Court was not acting on its own accord, but rather was influenced by political pressure exerted by President Yameen's Government. This demonstrates that Nasheed was not tried by an independent and impartial tribunal.

²⁰⁸ *Id.*, at Art. 48.

iii. *Conflict of Interest of Prosecutor and Judges*

Prosecutor General Muhthaz Muhsin and two of the three judges presiding over Nasheed's case had a significant conflict of interest. All three were present at the time of Judge Abdulla's arrest and the two judges submitted witness statements on behalf of Judge Abdulla to the Maldives Police Service and Maldives Human Rights Commission, which were used in support of the prosecution's case. Judge Yoosuf also summarized his own lack of impartiality when he interviewed after Judge Abdulla's arrest and stated that "I am personally doing much in this matter [of Judge Abdulla's arrest]. Abdulla Mohamed is a long time close friend of mine. Other than he is the long time chief of us. So considering that there are a lot of things I would be doing [for him in the case]."²⁰⁹

In failing to recuse themselves, the judges deprived Nasheed of the opportunity to be tried by an independent and impartial tribunal. One of the judges, in his statement to the Human Rights Commission following Judge Abdulla's arrest, stated that he and one of the other judges in the case "worked to . . . do everything possible to free Abdulla."²¹⁰ Judges Didi and Yoosuf even appeared in video footage standing with their colleague Judge Abdulla as the military detained him in January 2012. Their involvement as witnesses in the 2012 case against Nasheed, which was based on the same set of facts and circumstances as the current trial, undermined their ability to impartially review the current charges because their involvement was biased in favor of the Government. It is also worth noting that Judge Abdulla - the alleged victim in the case who was called to give evidence against Nasheed at trial - is still the Chief Judge of the Criminal Court where Nasheed was tried, meaning that all three of the judges presiding over the case report to Judge Abdulla. Indeed Judge Abdulla recently praised the presiding judges for swiftly concluding the trial against Nasheed.²¹¹

Nasheed's lawyers requested that both judges recuse themselves on the basis of conflict of interest, but the judges themselves denied the request for recusal after only 20 minutes of deliberation. In the case synopsis, the judges acknowledged that the request had been made, but summarily found "that there was no reason for recusal of two of the three judges on the bench" because the two judges did not serve as witnesses in the terrorism case.²¹² In coming to this conclusion, the Court failed to mention that the witness statements from the judges, submitted by the prosecution, amounted to testimony against Nasheed in his earlier trial that they themselves relied on. The Judicial Services Commission, noted for its lack of independence, also refused to address Nasheed's complaint.

In addition to their conflict of interest following from their prior involvement in the arbitrary detention case against Nasheed, the judges also made clear their bias against Nasheed through a number of decisions during the current terrorism trial. For example, the judges led key Government witnesses through their testimony, aiding them in providing evidence against

²⁰⁹ *Witness Statement of Judge Abdul Baree Yoosuf to the Human Rights Commission of Maldives* 7, Feb. 12, 2015.

²¹⁰ *Id.*, at 2.

²¹¹ Ahmed Naish, *Chief Judge Praises Criminal Court Over Nasheed's Trial*, MINIVANNEWS, Apr. 19, 2015, available at <http://minivannews.com/politics/chief-judge-praises-criminal-court-for-concluding-nasheeds-trial-96529#sthash.uLiwqR5B.5p5upHtx.dpbs>.

²¹² *Synopsis*, *supra* note 73, at ¶ 5(b).

Nasheed. Nasheed, on the other hand, was not even permitted to present any witnesses or evidence. Moreover, the judges called Judge Abdulla, *their boss*, to testify for the prosecution, and improperly relied on his testimony to convict Nasheed – even though the Prosecutor General requested that he not be heard – and despite Supreme Court and High Court jurisprudence strongly disapproving of victims testifying in criminal cases.²¹³

UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein commented on the conflict of interest, stating: “The fact that judges in the case, as well as the Prosecutor-General, have also been witnesses in the investigation must raise serious questions about conflicts of interest.”²¹⁴ Judges Didi and Yoosuf’s conflict of interest and refusal to recuse themselves from the proceedings further illustrate that the Maldivian Government failed to provide Nasheed with an independent and impartial tribunal.

iv. No Evidence that Nasheed Ordered the Arrest or Detention

As was discussed above in relation to Category I, there is no basis for Nasheed’s detention. There is absolutely no credible evidence of that any of Nasheed’s actions constitute terrorism as defined by Maldivian law, and the only evidence used to convict Nasheed was baseless assumptions and impermissible double hearsay. Therefore, the Court rendered a verdict that was wholly contrary to the evidence available. Again it is important to recall that even under the Government’s extraordinary theory of the case, it had to prove that Nasheed himself ordered the arrest of Judge Abdulla.

During the second day of his trial, on February 26, 2015, Nasheed made clear that “[a]s President of the Maldives, [he] has not ordered to harm any citizen of Maldives and has not ordered to arrest anyone.” In accordance with his role as President, he simply brought the allegations regarding the judge to the attention of the appropriate institution.

As noted previously, only the Prosecutor General was allowed to present witnesses and evidence. But even Judge Abdulla, who was characterized in the case summary as “the person who would know best the events that followed upon him being taken into custody,” could not provide any actual evidence that Nasheed ordered his arrest or detention.²¹⁵ Judge Abdulla testified that he “*assumed* that he was taken into custody . . . on the order of the then President Mohamed Nasheed.”²¹⁶

²¹³ *Abdullah Hussain v. Prosecutor General’s Office*, SUPREME COURT OF THE MALDIVES, 2012/SC-A/01 (specifying a number of *Sharia*’h-based characteristics of witnesses, which include impartiality – under Article 142 of the Constitution, when deciding matters on which the Constitution or law is silent, judge’s must consider Islamic *Sharia*’h); *Hussain Nisaam v. Prosecutor General’s Office*, HIGH COURT OF THE MALDIVES, 2012/HC-A/187, ¶ 3(f) at 9 (finding victim had a vested interest in the case and therefore his testimony as a witness cannot be substantiated and relied upon to reach a decision in the case); *Mohamed Nasheed v. Prosecutor General’s Office*, HIGH COURT OF THE MALDIVES, 2012/SC-A/01, ¶ 3(c) at 5 (stating that a victim’s wife’s testimony cannot be valid on the basis of a conflict of interest stemming from the spousal relationship).

²¹⁴ *Statement of OHCHR – Zeid*, *supra* note 5.

²¹⁵ *Synopsis*, *supra* note 73, at ¶ 15.

²¹⁶ *Id.*, at ¶ 12 (emphasis added).

Judge Abdulla’s testimony was not the only flawed evidence on which the court relied. The other witnesses similarly were equally unable to provide any evidence that Nasheed ordered the arrest. Three other key prosecution witnesses spoke about a meeting that Nasheed had with Maldivian police. They testified that Nasheed allegedly recounted the Home Minister’s concern that “the Criminal Justice System was destroyed by [Judge Abdulla] Mohamed” and spoke about the need for Judge Abdulla “to be kept at a distance” from the court.²¹⁷ Nowhere in Court’s own trial record are any witnesses quoted as saying that Nasheed ordered Judge Abdulla’s arrest during the meeting. Further claims in the case summary, that there was video and audio evidence on CDs showing Nasheed admitting his guilt, were equally baseless. No such evidence was actually presented in court and the case summary does not provide even a single quotation from any of the CDs purported to contain this evidence. Nevertheless, the judges included baseless and conclusory claims that Nasheed ordered the arrest, even though there was literally no evidence presented to support those conclusions.²¹⁸

Additionally, these witnesses’ testimonies were based solely on impermissible double hearsay, which is a violation of international standards of due process. Not only did none of the prosecution’s witnesses have any indirect knowledge that Nasheed ordered the arrest, but the conversations they did recall were double hearsay. For example, to “prove” the only element relevant to the terrorism charge against Nasheed – that he “decided” to arrest Judge Abdulla – the summary case report relies on the testimony of three witnesses who all testified about a meeting²¹⁹ *that none of them actually attended* and whose content did not even claim that Nasheed ordered the arrest.

In addition to complete lack of evidence showing Nasheed’s guilt, there was contemporaneous and conclusive evidence – not considered or even mentioned by the Court – that proves that Nasheed was not responsible for Judge Mohamed’s arrest or detention. Only hours after Judge Mohamed’s arrest, the Supreme Court of the Maldives, which was strongly aligned against Nasheed, issued an order for the judge’s release – directed exclusively at the MNDF and not Nasheed himself.²²⁰

To be clear, it is well understood that the UN Working Group on Arbitrary Detention will not substitute itself for a domestic fact-finder in its work. Here, however, a fair and impartial judiciary, especially one applying the criminal standard of proof applied in the Maldives of “beyond a reasonable doubt,” could not have concluded that Nasheed was guilty of the crime charged (see discussion under Category I). Therefore, the Maldivian Court’s determination of guilt can only be characterized as a miscarriage of justice, unfair, and utterly prejudiced against Nasheed.

²¹⁷ *Id.*

²¹⁸ The synopsis notes “[The arrest] was executed on the order of Mohamed Nasheed.” *Id.*, at ¶ 19; And it adds “Nasheed . . . had decided to arrest Chief Judge of Criminal Court.” *Id.*, at ¶ 20.

²¹⁹ According to the Case Synopsis, a meeting allegedly took place between Nasheed and “the Police” after Judge Abdulla was arrested. *Id.*, at ¶ 12 (On proving the first part) (“that Mohamed Nasheed met with the Police after Abdulla Mohamed’s arrest” and “that in a meeting with Police officers, Mohamed Nasheed. . .”).

²²⁰ *16 January 2012 Supreme Court Order, supra* note 59.

4. The Criminal Court Failed to Provide the Right to the Presumption of Innocence

The ICCPR and Universal Declaration of Human Rights afford individuals “the right to be presumed innocent until proved guilty according to law.”²²¹ The Human Rights Committee has noted that the presumption of innocence is expressed in unambiguous terms, and “the burden of proof of the charge is on the prosecution and the accused has the benefit of the doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.”²²² In *Raúl Linares Amundaray v. Bolivarian Republic of Venezuela*, the Working Group applied this principle in finding that any hindrance of the ability to exercise the right be presumed innocent until proven guilty according to law in a public trial constitutes a violation of the right to a fair trial, as enshrined in the ICCPR and UDHR.²²³ This right is also protected in the Constitution of the Maldives.²²⁴

At every stage in this rushed legal proceeding, Nasheed was deliberately and obviously denied the right to the presumption of innocence. Specifically, Nasheed was never afforded the right to present a defense; as discussed above, he was denied the time and adequate resources to defend his innocence. Instead, the Court chose to rely on the evidence solely presented by the Government, reasoning that there was no evidence that Nasheed could have introduced that would have proven his innocence. Furthermore, the Court improperly and in violation of international norms explicitly took into account Nasheed’s “the criminal record”, which itself is only a compendium of past persecution and had no relevance to the current charge.²²⁵ The Court’s reasoning makes clear that the judges had every intention of convicting him of the alleged terrorism charges, and no intention of impartially considering any evidence presented in his defense.

In addition, the speed of the proceedings – less than three weeks from arrest to sentencing – strongly suggests that Nasheed’s guilt was decided before he had even been arrested. In comparison, a full trial on the facts, especially given the complex nature of a terrorism case, should have taken substantially longer in a fair and independent courtroom. UN Special Rapporteur on the Independence of Judges and Lawyers Gabriela Knaul commented specifically on the speed of the trial, stating “Mr. Nasheed’s trial was not only a clear violation of the

²²¹ *ICCPR*, *supra* note 84, at art. 14(2). This same right is established by the Universal Declaration at Article 11(1): “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.” *Universal Declaration*, *supra* note 84.

²²² *ICCPR*, *supra* note 84.

²²³ *Raúl Linares Amundaray v. Bolivarian Republic of Venezuela*, Communication No. 28/2012, UN HUMAN RIGHTS COMMITTEE, at ¶ 29.3.

²²⁴ *Constitution of the Maldives*, *supra* note 18, at Art. 51(h) (stating “Everyone charged with an offence has the right: ...to be presumed innocent until proven guilty beyond a reasonable doubt.”)

²²⁵ *Synopsis*, *supra* note 73, at ¶ 21 (“Taking into account of the criminal record of Mohamed Nasheed of G. Kenereegé, Malé, it was found that Mohamed Nasheed had earlier been found convicted with crime of terrorism charge, and in addition, on the charges of theft, perjury, and disobedience to law”).

Maldives' international human rights obligations under the International Covenant on Civil and Political Rights, but it also made a mockery of the State's own Constitution. The speed of the proceedings combined with the lack of fairness in the procedures lead me to believe the outcome of the trial may have been pre-determined."²²⁶

Yet if the circumstances themselves are not enough, Judge Didi – one of the presiding judges – reportedly in a tweet “referred to the former President needing to prove his innocence rather than there being a presumption of innocence.”²²⁷

The Court's speed and blatant disregard for the standards of a fair trial, taken in conjunction with explicit comments by a presiding judge, evidence a clear lack of respect for the presumption of innocence, and as such further renders Nasheed's detention arbitrary under Category III.

5. The Criminal Court Interfered with the Right to Access Counsel

Article 14(3) of the ICCPR ensures the right of an individual “[i]n the determination of any criminal charge against him . . . to communicate with counsel of his own choosing” and “to defend himself in person or through legal assistance of his own choosing.”²²⁸ Principle 18(1) of the Body of Principles further explains that “[a] detained or imprisoned person shall be entitled to communicate and consult with legal counsel.”²²⁹ While the Body of Principles does not specifically identify when access to counsel must be granted, Principle 15 notes that, notwithstanding exceptional circumstances, “communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.”²³⁰ Furthermore, Principle 18(3) states “[t]he right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted [save in exceptional circumstances].”²³¹ The Working Group has found that government restriction on access to counsel “constitutes a deprivation of liberty”²³² and interference with the right to a fair trial, including access to legal representation, constitute a breach under international law.²³³ The Maldives Constitution also explicitly provides that defendants in criminal proceedings are entitled to representation by counsel.²³⁴

Throughout the trial proceeding, Nasheed was frequently denied the opportunity to

²²⁶ *Statement of UN Special Rapporteur – Knaul*, *supra* note 171.

²²⁷ Kirsty Brimelow QC, *Maldives: Imprisoning of Former President Casts Doubts on Judiciary*, THE TIMES, Mar. 19, 2015, available at <http://www.thetimes.co.uk/tto/law/article4385819.ece> (also serves as counsel to President Nasheed on matters not relating to his arbitrary detention).

²²⁸ *ICCPR*, *supra* note 84, at art. 14(3)(b),(d).

²²⁹ *Body of Principles*, *supra* note 84, at Principle 18(1).

²³⁰ *Body of Principles*, *supra* note 84, at Principle 15.

²³¹ *Body of Principles*, *supra* note 84, at Principle 18(3).

²³² *Eskinder v. Ethiopia*, Communication No. 62/2012, UN HUMAN RIGHTS COMMITTEE, at ¶ 41.2.

²³³ *Davide Alufisha v. Republic of Malawi*, Communication No. 55/2012, UN HUMAN RIGHTS COMMITTEE, at ¶ 23.2.

²³⁴ *Constitution of the Maldives*, *supra* note 18, at Art. 48(b) (stating “Everyone has the right on arrest or detention: . . . to retain and instruct legal counsel without delay and to be informed of this right, and to have access to legal counsel facilitated until the conclusion of the matter for which he is under arrest or detention”) and Art. 53 (stating “Everyone has the right to retain and instruct legal counsel at any instance where legal assistance is required”).

consult meaningfully with his counsel, and was ultimately denied legal representation at critical moments in his case. These violations began on the first day of the legal proceedings, February 23, when his lawyers were denied access to the courtroom. His lawyers were told that they were required to register with the court two days prior to the hearing. This restriction was not only highly prejudicial, but also impossible to comply with, as Nasheed had only been arrested the day before and was not made aware of the charges against him prior to the arrest. This was also the only hearing at which Nasheed's right to bail²³⁵ was discussed, and his request for bail improperly dismissed without fair consideration. During a hearing three days later, Nasheed's lawyers were not only denied adequate time to prepare and access to documents, but also to even consult with Nasheed himself during the proceedings. Nasheed was forced to sit in the witness stand, physically separated from his counsel, and completely denied access to consult with his counsel. At one point, Nasheed's counsel were told that they had to arbitrarily and unreasonably limit their remarks to ten minutes.

On March 8, Nasheed's counsel was forced to withdraw from the case because the circumstances created by the Government were preventing them from carrying out their responsibility and ethical duty to provide Nasheed with adequate legal representation. Nasheed repeatedly requested time to obtain new counsel of his choosing, but his requests were ignored. The Court's decision to ignore Nasheed's requests was both a violation of international due process standards and Maldivian law, which requires that a person in detention be given three to fifteen days to appoint a lawyer.²³⁶ Additionally, the court also refused to assign court-appointed counsel to represent Nasheed for the remaining proceedings, which included the presentation of key evidence and closing statements.

Even after Nasheed's lawyers withdrew, the Court continued to hold hearings. During the final hearing on March 13, the Court again denied Nasheed's request for legal counsel and moved forward with his conviction and sentencing without the presence of counsel. UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, in expressing his general concern, focused on this particular detail in his review of the case: "Former President Nasheed was without counsel at his remand hearing. His legal team later recused itself after the sixth hearing but the court did not wait until he had new counsel before proceeding with the trial."²³⁷

In the case summary, the judges tried to put the blame for the Court's own errors on Nasheed and his counsel. First, it claimed that his counsel's resignation was "without any reasonable cause", when all the facts prove that the Court consistently obstructed the lawyers' ability to defend Nasheed.²³⁸ And second, the judges concluded that Nasheed was provided the opportunity to obtain counsel and "that the court has not deprived Mohamed Nasheed from legal representation."²³⁹ But in so doing, the Court wrongly indicated it could deprive Nasheed of his counsel of his choosing because of their alleged resignation without reasonable cause, failing entirely to recognize that this is a right that is personal to Nasheed, irrespective of his counsel's conduct.

²³⁵ *Constitution of the Maldives*, *supra* note 18, at Art. 49.

²³⁶ *Maldivian Criminal Court Procedure on Appointment, Acceptance and Removal of Lawyers*, at § 4(b)(1).

²³⁷ *Statement of OHCHR – Zeid*, *supra* note 5.

²³⁸ *Synopsis*, *supra* note 73, at ¶ 9.

²³⁹ *Id.*, at ¶ 9.

The Government's interference with Nasheed's opportunity to consult meaningfully with his counsel, and was ultimate denial of representation by counsel constitute a flagrant violation of international law, and constitute yet another grounds on which Nasheed's trial is arbitrary under Category III.

6. The Criminal Court Denied the Rights to Prepare an Adequate Defense, Call and Examine Witnesses, and Examine Key Evidence in Advance of Trial

Article 14(3) of the ICCPR ensures the right of an individual “[i]n the determination of any criminal charge against him . . . [t]o have adequate time and facilities for the preparation of his defense.”²⁴⁰ Further, “the accused must have adequate time and facilities for the preparation of his defence.”²⁴¹ What is “adequate time” depends on the circumstances of each case, but the facilities must include access to documents and other evidence that the accused requires to prepare his case.²⁴² In practice, this means that “(t)he accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defences and the right to challenge the conduct of the case if they believe it to be unfair.”²⁴³ In addition, the ICCPR specifically guarantees a defendant the right “to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”²⁴⁴ Working Group jurisprudence has likewise held that the right to a fair trial is violated by government denial of adequate time and facilities for the preparation of a defense.²⁴⁵ Additionally, the Maldivian Constitution enshrines the right of everyone charged with an offense to have adequate time and facilities to prepare a defense,²⁴⁶ to defend oneself through legal counsel,²⁴⁷ and to examine and call witnesses.²⁴⁸

In addition to being deprived access to counsel, Nasheed was deprived of his due process rights to prepare a defense in a broad range of additional ways, including being denied adequate time to prepare, the ability to challenge improper conduct, access and the opportunity to challenge evidence, the opportunity to confront witnesses against him, and the opportunity to produce his own evidence and witnesses.

²⁴⁰ ICCPR, *supra* note 84, at Art. 14(3)(b).

²⁴¹ *Id.*, at Art. 3(b).

²⁴² *General Comment No. 13: Equality Before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law (Art. 14)*, UN HUMAN RIGHTS COMMITTEE, HRI/GEN/1/Rev.1, Apr. 13, 1984 at ¶11 [hereinafter *General Comment No. 13*].

²⁴³ *General Comment No. 13, supra* note 242, at ¶ 9(3)(b).

²⁴⁴ ICCPR, *supra* note 84, at Art. 14(3)(e).

²⁴⁵ *Andrei Sannikov v. Republic of Belarus*, Communication No. 14/2012, UN HUMAN RIGHTS COMMITTEE, at ¶ 38.2.

²⁴⁶ *Constitution of the Maldives, supra* note 18, at Art. 51(e) (stating “Everyone charged with an offence has the right: . . . to have adequate time and facilities for the preparation of his defence and to communicate with and instruct legal counsel of his own choosing).

²⁴⁷ *Id.*, at Art. 51(f) (stating “Everyone charged with an offence has the right: . . . to defend himself through legal counsel of his own choosing”).

²⁴⁸ *Id.*, at Art. 51(g) (stating “Everyone charged with an offence has the right: . . . to examine the witnesses against him and to obtain the attendance and examination of witnesses”).

i. Denied Adequate Time to Prepare a Defense

Without question, Nasheed and his counsel were given almost no time to prepare a defense. From the date of his arrest to the date of his conviction, less than three weeks passed. This means that within 20 days, Nasheed was arrested, charged, tried, convicted, and sentenced to 13 years in prison on terrorism charges. At every stage of the rushed proceedings, Nasheed and his counsel were denied adequate time to prepare a defense.

The first hearing took place one day after Nasheed was arrested, affording his lawyers literally no opportunity to review the charges and prepare a response (in addition to the fact that his lawyers were not admitted to the courtroom, as discussed above). Nasheed was then only given two days for his legal team to prepare for the second hearing, instead of the standard allowance of 10 days for preparation. Even though the underlying facts remained the same, the new charge presented Nasheed and his defense team with more than 1,125 pages of documentation, much of it new, with a very different set of legal challenges and potential arguments. Therefore, in the words of UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein: "The Government argues the new case against Nasheed was based on the same materials previously available to his legal team, but [Nasheed] should still have been given time to instruct his counsel and prepare a new defence."²⁴⁹ Nasheed made repeated requests to have the full 10 days to prepare, but these requests were denied. During the remaining hearings, Nasheed and his counsel requested additional time to prepare and consult with each other. All of their requests were immediately denied.

Collectively, the swift legal proceedings against Nasheed and consistent refusal to grant him additional time fundamentally impeded Nasheed and his counsel's ability to prepare and present his defense.

ii. Denied Ability to Challenge the Improper Conduct of the Judiciary

As is discussed throughout, Nasheed and his lawyers were consistently denied the right to challenge the improper conduct of the judiciary. Nasheed's requests to address and rectify blatant due process violations, including motions for the recusal of the biased judges and Prosecutor General and requests for additional time to prepare a defense, for access to counsel, to call witnesses and for disclosure of evidence, were ignored or dismissed.

iii. Denied Access to Evidence

Despite repeated requests for disclosure of the prosecution's evidence against him, Nasheed was not provided with full access to evidence, including video and audio evidence and witness lists, prior to the hearings in which the evidence was introduced. For example, the Government claimed to have among its evidence videos of speeches given by Nasheed in which he acknowledged ordering Judge Abdulla's arrest. Copies of CDs containing the prosecution's video and audio evidence, which included the 2012 statements of the two judges in support of the Government, were not provided to Nasheed's lawyer until the day they were to be shown in

²⁴⁹ *Statement of OHCHR – Zeid, supra note 5.*

court. Furthermore, the CDs were corrupted and not viewable, contained duplicate files, and were completely missing a substantial amount of files – in essence, the copies were useless. This failure to provide evidence in a timely manner made it impossible for Nasheed and his counsel from having an opportunity to examine the evidence and review the arguments against him, let alone the opportunity to prepare a defense in response. And importantly, even when the videos were actually shown, they did not include any kind of statement or confession that Nasheed ordered the arrest as claimed by the Government.

iv. *Denied Opportunity to Confront Government Witnesses and Present Defense Evidence and Witnesses*

As a part of being unable to present a defense, Nasheed was prevented from adequately cross-examining Government witnesses and introducing any of his own witnesses or documentary evidence, which the court acknowledged openly in the final case summary. Nasheed had sought to call four witnesses, one of whom was present at the time of Judge Abdulla’s arrest, to refute the Government’s allegations. Nasheed also wanted to call both judges as witnesses, to demonstrate that he was not present at the arrest and that there were no documents presented to Judge Abdulla to connect him with the arrest. The Court preemptively and erroneously reasoned that any evidence or “Defence witnesses would not be able to refute the evidence submitted by the prosecution against Mohamed Nasheed and hence, it was decided not to call any defence witnesses to the court.”²⁵⁰ The Court’s reasoning not only impeded Nasheed’s right to present a defense, but also displayed clear bias and violated his right to the presumption of innocence. Indeed, the Court erroneously assumed that Nasheed was guilty before hearing any evidence to the contrary. UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein commented specifically on this due process abuse, noting “Nasheed’s defence was also constrained from calling witnesses, contrary to international fair trial standards.”²⁵¹

Even the limited opportunity that Nasheed had to examine the witnesses presented by the Government was severely curtailed. Witness names were improperly removed from the witnesses list in an attempt to surprise and undermine the defense, including Judge Abdulla himself. Additionally, Nasheed’s defense counsel was prohibited from questioning the credibility of other prosecution witnesses to establish bias or otherwise discredit their testimony. In contrast, the prosecution and judges repeatedly coached and led prosecution witness through their testimony. The Court dismissed all of Nasheed’s objections to this improper and prejudicial conduct.

v. *Court Improperly Relied on Judge Abdulla’s Testimony*

Although he was not called as a witness by the Prosecutor General or Nasheed’s defense, the Court independently called Judge Abdulla as a witness to testify about his own arrest. The Court then to relied on Judge Abdulla’s testimony as a way of “proving” he was “taken away by

²⁵⁰ *Synopsis*, *supra* note 73, at ¶ 17.

²⁵¹ *Statement of OHCHR – Zeid*, *supra* note 5.

force,²⁵² even though the Court acknowledged that Judge Abdulla testified that he only “assumed” he had been taken into custody on Nasheed’s order.²⁵³

Nasheed’s lack of access to counsel and to the evidence against him prior to trial, as well as the inadequate time Nasheed was provided to prepare and present a criminal defense, and inability to present evidence and adequately cross-examine prosecution witnesses violates basic due process requirements under international law.

7. The Criminal Court and High Court Failed to Provide a Public Trial

Article 14(1) of the ICCPR and Article 10 of the Universal Declaration and both state that “everyone shall be entitled to a fair and public hearing.”²⁵⁴ Principle 36 of the Body of Principles further elaborates that “a detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a *public trial* at which he has had all the guarantees necessary for his defense.”²⁵⁵ The right to a public hearing is protected as one of the essential elements of a fair trial, including both the public nature of the hearings and the publicity of the judgment eventually rendered in a case.²⁵⁶ The right to a public hearing means that the hearing should, as a rule, be conducted publicly, without a specific request by the parties to that effect.²⁵⁷ The court or tribunal is, *inter alia*, obliged to make information about the time and venue of the public hearing available and to provide adequate facilities for attendance by interested members of the public, within reasonable limits.²⁵⁸ The Working Group has previously held that a government’s failure to provide a public hearing by an independent and impartial trial was in violation to international law.²⁵⁹

Additionally, the Maldivian Constitution enshrines the right to a public trial in Article 42(a), which states that “in the determination of one’s civil rights and obligations or of any criminal charge, everyone is entitled to a fair and *public hearing*.”²⁶⁰ Further, Article 42(b) states that “all judicial proceedings in the Maldives shall be conducted with justice, *transparency*, and impartiality”²⁶¹, and Article 42(c) states that “trials of any matter shall be held *publicly*, but the presiding judge may exclude the public from all or part of a trial in accordance with democratic norms:

1. In the interest of public morals, public order or national security;
2. Where the interest of juveniles or the victims of a crime so require; or

²⁵² *Synopsis*, *supra* note 107, at ¶¶ 10(d), 12.

²⁵³ *Id.*, at ¶ 12.

²⁵⁴ *Universal Declaration*, *supra* note 84 note 26, at art. 10; *ICCPR*, *supra* note 84, at art. 14.

²⁵⁵ *Body of Principles*, *supra* note 84, at Principle 24.

²⁵⁶ *What Is a Fair Trial? A Basic Guide to Legal Standards and Practice* 12, HUMAN RIGHTS FIRST, Mar. 2000, [hereinafter *What Is a Fair Trial?*].

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *See, e.g., Gulgedy Annaniyazov v. Turkmenistan*, WGAD Opinion No. 22/2013, Adopted Aug. 27, 2013.

²⁶⁰ *Constitution of the Maldives*, *supra* note 18, at Art. 42(a) (emphasis added).

²⁶¹ *Id.*, at Art. 42(b) (emphasis added).

3. In other special circumstances where publicity would prejudice the interests of justice.²⁶²

Further, Article 71 of the Judicature Act of the Maldives, states that “the trials carried out in courts shall be carried out *open to the public*”, with the exception of the above mentioned three categories of exclusion – national security, juveniles, and special circumstances.²⁶³

Despite protections under Maldivian and international law, Nasheed was repeatedly denied the right to a public trial. Although the courtroom could seat far more, chairs were removed from the room so that only 40 people could sit. As a result, only a handful of the many journalists and others were allowed to attend and countless others, including civil society members, were denied access altogether. On some occasions, all outside observers were barred. In addition, when Nasheed tried to appeal his detention to the High Court, on March 15, 2015, the Court denied Nasheed’s request to hold a regular open High Court hearing on the validity of his arrest warrant claiming “neither members of the public nor journalists were allowed to observe appeal hearings.”²⁶⁴ The High Court provided no valid explanation for this decision supported by one of the three justifications outlined in Maldivian law. Additionally, trial hearings were always held at night beginning at 8pm or 10pm, and little notice of the date and time of the trial was provided to the defendant, his counsel and the public.

Further, as noted by UN High Commissioner for Human Rights Zeid, throughout Nasheed’s trial the Court refused requests by the Human Rights Commission of the Maldives and domestic as well as international observers to monitor the trial proceedings.²⁶⁵ Spokesperson for the EU Foreign Affairs and Security Policy Maja Kocijancic echoed these concerns, reminding the Maldivian Government that the country has a binding obligation to respect ICCPR provisions – including the right to a public trial – and that all citizens need to be treated in accordance with these provisions.²⁶⁶ Specifically, she raised concerns about transparency in Nasheed’s appeal and called for a fair and transparent process.²⁶⁷

The Government’s denial of Nasheed’s repeated requests open and public hearings and its refusal to allow Maldivian and international observers into the trial constitute further violations of international law.

8. The Supreme Court and Criminal Court Prevented Nasheed From Making a Timely Appeal

Under the ICCPR, “everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”²⁶⁸ The Maldivian judiciary

²⁶² *Id.*, at Art. 42(c) (emphasis added).

²⁶³ *Maldives Judicature Act*, *supra* note 78, at Art. 71 (emphasis added).

²⁶⁴ *High Court Dismisses Nasheed’s Arrest Warrant Appeal*, MINIVAN NEWS, Mar. 15, 2015.

²⁶⁵ *Statement of OHCHR – Zeid*, *supra* note 5.

²⁶⁶ *Nasheed Conviction Throws Judicial Independence in Question: EU*, HAVEERU, Mar. 14, 2015 [hereinafter *Judicial Independence in Question*].

²⁶⁷ *Id.*

²⁶⁸ *ICCPR*, *supra* note 84, at art. 5.

has preemptively acted in a way that fundamentally interfered with Nasheed’s ability to appeal his conviction.

Under Maldivian law, defendants have 90 days to file an appeal from a criminal conviction.²⁶⁹ However, in January 2015, shortly before Nasheed was arrested and charged under the Prevention of Terrorism Act, the Supreme Court, through the issuance of its own circular, modified the deadline to a mere 10 days and made the Criminal Court responsible for sending the appeal petition to the High Court. The new rules dramatically decrease the amount of time Nasheed had to appeal, evidencing a significant prejudice against him. By preemptively preventing Nasheed from having an adequate opportunity to appeal the decision, which was most certainly pre-determined, the Government effectively used the judiciary to guarantee that Nasheed would be convicted and serve a full sentence in prison.

Additionally, Nasheed has still not been provided with an accurate and complete case report from the trial to be used in preparation for his appeal. This documentation is especially critical because Nasheed was denied access to evidence during the trial, denied counsel on several occasions, and was not permitted to take notes personally. Given these circumstances, Nasheed does not have the necessary information or time to prepare a defense. In response to an immediate request for this information, the court originally informed Nasheed that he would not receive any documentation for 14 days – instantly depriving Nasheed of the opportunity to appeal within 10 days after having reviewed the case report.

The Court later provided an inaccurate and incomplete case report 11 days after the conviction, evidencing a willful desire to prevent Nasheed with the opportunity to appeal by ignoring the 10-day deadline. The Government’s refusal to provide the full case report within the 10 days that Nasheed had to file an appeal effectively ensured that Nasheed was unable to challenge the prosecution’s arguments and submissions, or to refute the baseless evidence offered against him.

Article 14(1) of the ICCPR, requiring a publicly-accessible judgment,²⁷⁰ was not complied with in this case, where the Criminal Court of Malé only released a “Synopsis of the Case Report of Proceedings” which fails to explain how and why the Court reached its conclusion concerning Nasheed’s culpability. The Human Rights Committee has interpreted this provision to explain any judgment must publicly pronounce “the essential findings, evidence and legal reasoning” of the Court’s decision.²⁷¹ There can be no genuine enjoyment of rights of appeal without a written judgment that indicates with sufficient clarity the grounds on which the decision was taken.²⁷² The Human Rights Committee has recognized that Article 14 also requires other documents necessary to enjoy the effective exercise of the right to appeal, such as

²⁶⁹ *Maldives Judicature Act*, *supra* note 78, at Art. 42(a).

²⁷⁰ Article 14(1) states that this requirement does not apply in exceptional circumstances (“where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children”), none of which applies in the present case.

²⁷¹ *General Comment No. 32* (2007), UN HUMAN RIGHTS COMMITTEE, at ¶ 29.

²⁷² *Van Hulst v. Netherlands*, Communication No. 903/1999, UN HUMAN RIGHTS COMMITTEE, Nov. 1, 1999, at ¶ 6.4; *Bailey v. Jamaica*, Communication No. 709/1996, UN HUMAN RIGHTS COMMITTEE, Sept. 17, 1999, at ¶ 7.2; *Morrison v. Jamaica*, Communication No. 663/1995, UN HUMAN RIGHTS COMMITTEE, Nov. 3, 1998, at ¶ 8.5; *General Comment No. 32* (2007), UN HUMAN RIGHTS COMMITTEE, at ¶ 49.

trial transcripts, to be made available in a timely fashion.²⁷³ In addition, as noted above, the state party must provide explanations as to why a particularly severe and summary penalty was warranted in a given case, something that the Maldives failed to do in the “Synopsis of the Case Report of Proceedings.”²⁷⁴ As a result, the Maldives’ courts’ failure to release a reasoned a detailed judgment violates Nasheed’s rights protected under Article 14 and 9(1) of the ICCPR.

9. Nasheed’s Punishment Is Grossly Disproportionate to the Alleged Crime

A grossly disproportionate sentence amounts to cruel, inhuman or degrading treatment or punishment contrary to Article 7 of the ICCPR.²⁷⁵ The Working Group has previously held that detention was arbitrary when it was based on a prison sentence of “excessive length”²⁷⁶ or not proportionate to the offense or appropriate given the summary nature of the trial.²⁷⁷ Similarly, the Human Rights Committee has found a violation of Article 9(1) where the author had been sentenced to two years’ imprisonment for contempt of court, and the State party had provided no explanation as to why a particularly severe penalty was warranted.²⁷⁸

Nasheed was found guilty of the crime of terrorism and sentenced to 13 years of imprisonment. This is a clearly disproportionate sentence in light of the nature and circumstances of the crime of which Nasheed is accused, i.e. “masterminding” the abduction of Judge Abdulla in February 2012.

In addition, the minimum sentence of 10 years set out in the Prevention of Terrorism Act for offences that do not result in loss of life may in itself be incompatible with international standards. Severe minimum statutory sentences provisions have the inherent potential to be “grossly disproportionate” to the gravity of the crime, where they do not permit the sentencing judge to consider mitigating factors indicating a significantly lower level of culpability on the part of the defendant.²⁷⁹ This is particularly the case where, as here, the same statute and sentencing regime apply to a wide variety of offences of different impact and gravity.

10. The Maldivian Government Has Violated Right to be Free of Cruel, Inhuman, or Degrading Treatment or Punishment

²⁷³ *Lumley v. Jamaica*, Communication No. 662/1995, UN HUMAN RIGHTS COMMITTEE, Apr. 30, 1999, at ¶ 7.5; *General Comment No. 32* (2007), UN HUMAN RIGHTS COMMITTEE, at ¶. 49.

²⁷⁴ *Dissanayake v. Sri Lanka*, Communication No. 1373/2005, UN HUMAN RIGHTS COMMITTEE, Jul. 22, 2008, at ¶ 8.3.

²⁷⁵ *Vinter et al. v. United Kingdom*, Applications Nos. 66069/09, 130/10 and 3896/10, EUROPEAN COURT OF HUMAN RIGHTS, Grand Chamber, Jul. 9, 2013, at ¶ 102; *Soering v. United Kingdom*, Application No. 14038/88, EUROPEAN COURT OF HUMAN RIGHTS, Jul. 7, 1989, at ¶ 104.

²⁷⁶ *Muhammad Kaboudvand v. Iran*, WGAD Opinion No. 48/2012, Nov. 16, 2012, at ¶ 19 (where the author had been convicted to 10 years imprisonment for various offences linked to his activity as a human rights advocate and defender).

²⁷⁷ *Nelson Aguiar Ramirez et. al. v. Cuba*, WGAD Opinion No. 9/2003, May 9, 2003, at ¶ 24.

²⁷⁸ See *supra* note 274, at ¶ 8.3.

²⁷⁹ See *supra* note 275, at ¶ 106.

Article 7 of the ICCPR and Article 5 of the Universal Declaration both state that “[n]o one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.”²⁸⁰ Principle 24 of the Body of Principles further elaborates that “medical care and treatment shall be provided whenever necessary” to persons who are detained or imprisoned.²⁸¹ Similarly, Articles 1-2 and 4-7 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the Maldives acceded²⁸², prohibits the infliction of physical or mental pain or suffering by a public official with the intention to intimidate or coerce.²⁸³ The prohibition against torture is also embedded in Maldivian law, as Article 54 of the Constitution of Maldives reads that “[n]o person shall be subjected to cruel, inhumane or degrading treatment or punishment, or to torture.”²⁸⁴

With respect to solitary confinement, the Committee Against Torture has recognized the harmful physical and mental effects of prolonged solitary confinement and has expressed concern about its use, including as a preventative measure during pretrial detention. It recommended the practice be abolished or at a minimum strictly and specifically regulated by law with a maximum duration and should be exercised under judicial supervision and only used in exceptional circumstances, such as when the safety of persons is involved.²⁸⁵

UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Juan Méndez has noted:

Whatever the name, solitary confinement should be banned by States as a punishment or extortion technique . . . Solitary confinement is a harsh measure which is contrary to rehabilitation, the aim of the penitentiary system . . . Social isolation is one of the harmful elements of solitary confinement and its main objective. It reduces meaningful social contact to an absolute minimum . . . A significant number of individuals will experience serious health problems regardless of the specific conditions of time, place, and pre-existing personal factors . . . Considering the severe mental pain or suffering solitary confinement may cause, it can amount to torture or cruel, inhuman or degrading treatment or punishment when used as a punishment, during pretrial detention, [or] indefinitely. . .²⁸⁶

And the new Maldivian Anti-Torture Act prohibits solitary confinement altogether.²⁸⁷

²⁸⁰ ICCPR, *supra* note 84, at art. 7; *Universal Declaration*, *supra* note 84, at art. 5.

²⁸¹ *Body of Principles*, *supra* note 84, at Principle 24.

²⁸² The Maldives acceded to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on April 20, 2004.

²⁸³ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, arts. 1-2, 4-7, June 26, 1987, 1465 U.N.T.S. 85.

²⁸⁴ *Constitution of the Maldives*, *supra* note 18, at Art. 54.

²⁸⁵ See, e.g., *Concluding Observations of the Committee Against Torture: Macao Special Administrative Region*, COMMITTEE AGAINST TORTURE, CAT/C/MAC/CO/4, Jan. 19, 2009, at ¶ 8.

²⁸⁶ *UN Special Rapporteur on Torture Calls for Prohibition of Solitary Confinement*, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, Oct. 18, 2011, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11506&>.

²⁸⁷ *Anti-Torture Act*, Law No. 13/2013, at § 14(b)(3) (with reference to § 21); *Maldives Parliament Passes Landmark Anti-Torture Act*, ASSOCIATION FOR THE PREVENTION OF TORTURE, Dec. 17, 2013.

The Government of the Maldives has subjected Nasheed to cruel, inhuman, and degrading treatment in violation of both domestic and international law. The first example took place in public on the first day of his trial, February 23, 2015, when police officers physically dragged Nasheed into the courtroom. In the process, Nasheed's suffered injuries to his arm, finger, and shoulder.²⁸⁸ This manhandling by the police was an example of excessive force, as it was unnecessary and wholly disproportionate to the legitimate needs of law enforcement officials. Additionally, the police's action appears indicative of a punitive intent to prohibit Nasheed from talking to the media, thereby infringing on his right to opinion and expression.

Moreover, Nasheed has consistently been denied appropriate medical treatment for the injuries he sustained at the hands of the Maldivian police. Nasheed repeatedly requested medical assistance during the first hearing, immediately after the incident, but his requests were denied and the hearing continued. In fact, the extent of his injuries is still unknown, as no x-ray was ever taken. Nasheed was forced to create a makeshift sling with his own tie during the hearing, which prompted no response from the panel of judges. After the hearing, Nasheed's lawyers made an official complaint to the Human Right Commission of the Maldives about his mistreatment. The following day, an independent medical doctor accompanied by the Maldives Human Rights Commission came to the Dhoonidhoo Detention Center to examine Nasheed, but the Maldives Police Service did not allow the doctor to examine Nasheed. Since their own independent doctor was refused entry, Nasheed's lawyers wrote to the Commissioner of Police, requesting an independent medical consult at a local hospital, in accordance with the Maldivian Anti-Torture Act that requires a detention center to facilitate medical consultation with a medical doctor not on staff at the detention center upon request.²⁸⁹ Nasheed was taken to an independent clinic the next day in Malé, but not to the hospital requested by his lawyers. Furthermore, the prison authorities did not inform Nasheed's lawyers or family, which was a violation of a regulation requiring notification to the family or lawyer when a detainee is taken outside of the detention center.

In addition to his physical injuries, Nasheed is also being subjected to cruel, inhuman, and degrading treatment in the detention centers. His cell at Maafushi Prison is located immediately adjacent to the prison garbage dump, where his cell is inhabited with numerous mosquitos and flies that have been feeding on the garbage. In addition, the facility as a whole was previously found to be unfit for prisoners by the Human Rights Commission of Maldives.²⁹⁰

Nasheed's past detention conditions were equally concerning. He was held in single cell at Dhoonidhoo Island Detention Center, isolated from the rest of the cell blocks and kept in solitary confinement since his the first day of his detention on February 22, 2015. The cell, which was infested with mosquitoes, was unreasonably small, with only a toilet and bed with mattress and pillow. In Asseyri Jail, he was being held in small 30 ft x 20 ft cell with three other political prisoners, including one who had previously directly threatened his life and forced him to resign from office. The conditions in which Nasheed has been confined constitute a violation of his right to fair treatment, adding to the long list of abuses.

²⁸⁸ *Former Maldives President Dragged Into Court by Police*, THE GUARDIAN, Feb 23, 2015.

²⁸⁹ *Anti-Torture Act*, *supra* note 289, at § 19.

²⁹⁰ *Criminal Court Conspires to Prevent Nasheed's Conviction Appeal*, MDP, Mar. 17, 2015. *Report on Visit to Maafushi Jail Submitted to Concerned Authorities*, HUMAN RIGHTS COMMISSION OF THE MALDIVES, Feb. 11, 2009.

At Dhoonidhoo, where he was held in solitary confinement, Nasheed was only permitted limited meeting with his family and counsel. Visits by others, including officials from Nasheed's political party and staff from his office were prohibited. However, since the transfer, visits from Nasheed's family and counsel have been severely restricted without explanation. On multiple occasions, they have been turned away at the gates after being previously told that visits would be permitted.

The Government of the Maldives' ongoing denial of medically-appropriate care, safe and sustainable conditions of imprisonment, and the imposition of solitary confinement constitute cruel, inhuman, and degrading treatment, and could ultimately constitute torture as the conditions persist. It is reasonable to conclude the purpose of this mistreatment is to inflict pain on Nasheed to try and break his spirit and his will to fight his wrongful conviction.

D. Category V: Discrimination Based on a Protected Class

The targeting of Nasheed because of his political opinion is arbitrary under Category V.

A detention is arbitrary under Category V when, in violation of international law, the detention is discriminatory “based on . . . political or other opinion . . . and aims towards or can result in ignoring the equality of human rights.”²⁹¹ While there is yet to be significant jurisprudence from the Working Group regarding this category of detention, it is clear that the factual circumstances of an arrest or detention indicate that Government officials were motivated to discriminate against Nasheed because of his political opinions.

As such, Nasheed was arrested, detained, and convicted because of his political opinion, which was critical of and contrary to the Government and thus his detention is arbitrary under Category V.

INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.

Nasheed does not have any effective legal or administrative remedies available.

In January 2015, only days before Nasheed was arrested and charged under the Prevention of Terrorism Act, the Supreme Court through a ruling of its own initiative repealed the appeals process as laid out in the Judicature Act, in violation of the Constitution. As a result, Nasheed had only 10 days to appeal his conviction and sentence, which expired on March 30,

²⁹¹ Revised Methods of Work, *supra* note 7, at § III(8)(e) (“When the deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic, or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights.”).

2015. The Criminal Court did not provide any record within that timeframe, and only provided an incomplete and inaccurate record 11 days after the conviction.

Without the trial record, it was impossible to file an effective appeal because Nasheed's counsel could not complete a thorough examination of the record to document and challenge each specific irregularity. This was particularly important given counsel had not been present during numerous parts of the case. It was clearly the intention of the Court to prevent Nasheed from being able to appeal his conviction.

Contrary to the Government's assertions, it would not have been sufficient under Maldivian law to file a notice of appeal and file a brief and related evidence later. A full and complete appeal had to have been filed within 10 days and any attempt to file materials after the appeal deadline are rejected by Maldivian courts.

Conclusion

The arrest, trial, conviction, and ongoing imprisonment of Mohamed Nasheed is an outrageous and extraordinary violation of his fundamental human rights. Collectively, the Government of the Maldives has violated the following rights that are supposed to be guaranteed to Nasheed under the Maldives Constitution, Maldivian law, and international law:

- Right to freedom of opinion and expression;
- Right to freedom of association;
- Right to freedom of political participation;
- Rights to due process of law, including:
 - Right to equality before courts and tribunals;
 - Right to fair and public hearing before competent, independent, and impartial tribunal;
 - Right to presumption of innocence;
 - Right to adequate time to prepare a defense;
 - Right to counsel;
 - Right to examine prosecution witnesses and call and examine witnesses for the defense;
 - Right to appeal a conviction to a higher tribunal; and
- Right not to be found guilty of an offense, which was not an offense when it was committed.

In short, as Amnesty International has said, Nasheed's conviction and ongoing imprisonment is a "travesty of justice."²⁹²

We hereby request that the UN Working Group on Arbitrary Detention issue an opinion finding Nasheed's ongoing detention to be in violation of the Maldives obligations under the relevant provisions of the ICCPR and UDHR; call for his immediate release; request the Government investigate and hold to account all those responsible for his unlawful arrest, detention, trial, and imprisonment; and request the Government award Nasheed compensation for the harm caused by being deprived of his liberty.

²⁹² *Statement of Amnesty International, supra* note 6.

**FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE
INFORMATION (TELEPHONE AND FAX NUMBER IF POSSIBLE)**

Submitted By:

Jared Genser & Maran Turner
Freedom Now
1776 K Street, NW, 8th Floor
Washington, DC 20006
United States
+1.202.466.3069 (phone)
+1 202.478.5162 (fax)
jgenser@perseus-strategies.com

Ben Emmerson QC
Matrix Chambers
Griffin Building
Gray's Inn, London
United Kingdom
+44.207.404.3447 (phone)
benemerson@matrix.co.uk

Amal Clooney
Doughty Street Chambers
54 Doughty Street
London W1CN 2LS
United Kingdom
+44.207.404.1313
aclooney@law.columbia.edu