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Media Release

UN Working Group on Arbitrary Detention Unanimously Finds Detention of Former Maldivian President Mohamed Nasheed in Violation of International Law; Urges His Immediate Release

London — Today, the legal team of former President Mohamed Nasheed – Amal Clooney of Doughty Street Chambers, Jared Genser of Freedom Now and Ben Emmerson QC of Matrix Chambers – released Opinion No. 33/2015 (The Maldives) of the United Nations Working Group on Arbitrary Detention. In its decision, the Working Group concluded that:

The deprivation of liberty of Mr. Nasheed, being in contravention of articles 9, 10, 19, 20, and 21 of the UDHR [Universal Declaration on Human Rights] and articles 9, 14, 19, 22, and 25 of the ICCPR [International Covenant on Civil and Political Rights], is arbitrary, falling within categories I, II, III, and V of categories applicable to the considering of cases . . . the Working Group requests the Government . . . release Mr. Nasheed immediately and accord him an enforceable right to compensation . . .

An independent and impartial specialist body of the UN Human Rights Council, the Working Group consists of experts from Australia, Benin, Mexico, South Korea and Ukraine. The Government and its legal team, led by Cherie Blair QC, submitted a 111-page response with 48 annexes to President Nasheed's original petition, arguing that the trial, conviction and sentence should be considered legal under domestic and international law. In reaching its decision conclusion, the UN Working Group on Arbitrary Detention upheld the legal arguments made by President's counsel, and rejected all the arguments filed by the Government seeking to justify Nasheed's show trial.

Highlights of the Working Group's decision are as follows.

In relation to Category I, which relates to the lack of a basis for President Nasheed's detention, it concluded (at paras 94-5) that:

The Working Group notes that detention will be considered arbitrary when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty. The Working Group respectfully disagrees with the Government's assertion that since Mr. Nasheed was convicted by a Maldivian court in accordance with Maldivian law, this precludes the case falling within Category I . . . In an offence as serious as terrorism, which in the Maldives carries a sentence between 10 to 15 years of imprisonment or banishment for Terrorist acts which do not result in the loss of life, the Government should have been able to demonstrate the legal basis of the charges . . . the Government has not explained how the arrest of Judge Abdulla, which was carried out by the MNDF (Maldives National Defence Forces) under an order given by a third party, could constitute terrorism . . . the Government has also failed to rebut the assertion by the source that there was no

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evidence produced at the trial that Mr. Nasheed had ordered Judge Abdulla's arrest. The Working Group considers that it is therefore clearly impossible to invoke any legal basis justifying the deprivation of liberty of Mr. Nasheed . . .

With regards to Categories II and V, which relate to President Nasheed's detention in retaliation for the exercise of his rights to freedom of opinion and expression, association, and political participation, the Working Group concluded (at para 97) that:

In the view of the Working Group, there are several factors which, taken together, strongly suggest that Mr. Nasheed's conviction was politically motivated. These include:

(i) the history and pattern of proceedings brought against Mr. Nasheed, including his arrest and detention in 1994 which was declared by the Working group to be arbitrary and solely motivated by the will to suppress his critical voice,

(ii) the sudden way in which charges were reinstated against Mr. Nasheed after the original case had been inactive for 2.5 years when the Government lost a key coalition partner in the parliament,

(iii) the fact that, two weeks after Mr. Nasheed was sentenced, the Government adopted a law banning all prisoners from being members of political parties, and

(iv) the fact that Mr. Nasheed will not be able to participate in the 2018 presidential election as a result of his conviction. In this case, the Working Group considers that Mr. Nasheed's detention has resulted from the exercise of his rights as a political opposition leader to express views contrary to the Government, to associate with his own and other political parties, and to participate in public life in Maldives . . . The Working Group concludes . . . that he was targeted on the basis of his political opinions.

And with regards to Category III, which relates to violations of due process of law, the Working Group concluded (at paras 103-105) that:

[T]here were several serious due process violations which, taken together, demonstrate that Mr. Nasheed did not receive a fair trial . . . The violations include:

(i) the fact that 20 days elapsed between Mr. Nasheed's arrest and conviction . . . and proceedings commenced the day after Mr. Nasheed's arrest, suggesting that the result was pre-determined;

(ii) an apparent conflict of interest on the part of the Prosecutor General and two of the three presiding judges who were friends and colleagues of Judge Abdulla . . .

(iii) refusal to allow Mr. Nasheed to call any witnesses or evidence, and the limits placed on his cross-examination of prosecution witnesses;

(iv) limited provision of evidence to the defence team, including CDs and video evidence;

(v) the absence of legal representation for Mr. Nasheed at key points during the trial;

(vi) refusal of adjournment after the withdrawal of Mr. Nasheed's counsel;

(vii) limitations on how many observers and members of the public could attend Mr. Nasheed's trial . . .

(viii) a sudden change by the Supreme Court of the appeal rules, and the delay in providing the trial record to the defence . . .

In a statement released by the Maldivian Foreign Ministry on the Opinion, the Government of the Maldives stated that it “does not accept the decision of the WGAD.” It claimed that the decision of the Working Group “failed to address a number of salient points submitted” and “makes little reference to the submissions made and therefore the question must be asked as to whether the WGAD has given the Governments [sic] submission due attention during its deliberation.” Yet a review of the Working Group's 21-page decision shows it fully considered the Government's arguments. Indeed, in a section entitled “Response from the Government,” the Working Group presented the elements of the Government's claims in 23 elaborate paragraphs. The Working Group then proceeded in its discussion to analyze the application of international law to the facts of the case, after a thorough review of the arguments and evidence put forward by both sides.

In response to the Working Group opinion, Laila Ali, wife of former President Nasheed, stated:

“We all knew that my husband's trial was politically motivated. The Government is trying to silence him and crush the political opposition. Now that the Working Group has ruled that my husband's imprisonment is in violation of international law, my daughters and I are looking forward to being reunited with him soon.”

Amal Clooney added:

“This UN opinion was rendered by an independent group of experts after full consideration of the legal arguments presented by international lawyers on both sides. It upholds every legal argument put forward on behalf of President Nasheed, and flatly rejects the Government's myths and denials. The Government fully engaged with the legal process that led to this UN decision, and must now abide by the recommendations that have been made. It must immediately release President Nasheed, in accordance with the UN Working Group's opinion.”

And Jared Genser further emphasized:

“President Nasheed has repeatedly emphasized that his ongoing detention is merely symbolic of a broad set of ongoing abuses in the Maldives. We demand the immediate release of President Nasheed and all political prisoners in the Maldives. And we urge the Government to drop charges against the 1,700 people facing imprisonment for their non-violent exercise of their rights to free speech and peaceful assembly.”

And Ben Emmerson adds:

“Now that we have the Working Group opinion in hand, we will next seek immediate action by governments around the world, urging them to impose travel bans and targeted sanctions against

individuals who are guilty of serious human-rights abuses in the Maldives. And we will work through multilateral institutions to make clear to the Government that it can no longer act with impunity.”

Hisaan Hussein, Counsel to President Nasheed, states:

“Under the constitution of Maldives it is binding upon the government of the Maldives to enforce its legal obligation under treaties to which it is a state party, including the International Covenant on Civil and Political Rights. The government of the Maldives must therefore release President Nasheed immediately and abide by its international commitments to uphold human rights and democracy in the Maldives.”

Hassan Lateef, Counsel to President Nasheed, concluded:

“The government of Maldives must abide by its international commitments. We do not want to become a pariah state and for Maldivians to bear the consequences of this. The Government must immediately release President Nasheed to restore the international standing of our nation.”

The full text of Opinion No. 33/2015 (The Maldives) is available on <http://www.freedom-now.org/wpcontent/uploads/2015/10/UNWGAD-Opinion-33-2015.pdf>