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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its seventy-third session, 31 August-4 September 2015

#### Opinion No. 33/2015 concerning Mohamed Nasheed (Maldives)

##### Communication addressed to the Government

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), on 12 May 2015 the Working Group transmitted a communication to the Government of Maldives concerning Mohamed Nasheed. The Government has replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);

(b) When 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, 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 (category II);

(c) When 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 (category III);



(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds 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, that aims towards or can result in ignoring the equality of human beings (category V).

## **Submissions**

### *Communication from the source*

4. Mr. Nasheed is a 48-year-old national of Maldives. He is the founder and leader of the Maldivian Democratic Party.

5. Mr. Nasheed is a prominent environmental activist, journalist and politician in Maldives. As a journalist, he regularly reported on and criticized the Government of Maldives. According to the source, Mr. Nasheed has been subjected to multiple instances of politically motivated persecution, having been arrested and detained at least 20 times over the past two decades for his pro-democracy activism. Mr. Nasheed was the subject of a decision adopted by the Working Group in 1995,<sup>1</sup> and was designated a prisoner of conscience by Amnesty International at that time.

6. From 2008 to 2012, Mr. Nasheed served as the fourth President of Maldives, after winning the first multiparty election, held in 2008. According to the source, Mr. Nasheed is the first and only democratically elected President in Maldives.

7. According to the source, Mr. Nasheed was forced to resign as President on 7 February 2012 under threat of personal violence and unrest created by his opponents. Mr. Nasheed allegedly continues to be targeted by the Government and its current President, who is the half-brother of a former President who held power for 30 years from 1978 to 2008. Mr. Nasheed was first imprisoned during that 30-year rule.

8. On 22 February 2015, Mr. Nasheed was arrested by police at his home. The police presented him with an arrest warrant issued by the Criminal Court of Maldives at the request of the Prosecutor General. Mr. Nasheed was accused of masterminding the abduction of Judge Abdulla Mohamed on 16 January 2012. At that time, Judge Abdulla was the Chief Judge of the Criminal Court, and currently holds that position.

9. On 23 February 2015, during the first hearing at the Criminal Court of Maldives, Mr. Nasheed was charged with terrorism for his alleged role in the abduction of Judge Abdulla, under section 2 (b) of the Prevention of Terrorism Act (No. 10/1990), which provides that “the act or the intention of kidnapping or abduction of person(s) or of taking hostage(s)” shall be construed as acts of terrorism.

10. On 13 March 2015, less than three weeks after he was arrested and charged, Mr. Nasheed was found guilty of terrorism and was sentenced to 13 years of imprisonment. According to an information note distributed by the Government of Maldives on 25 March

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<sup>1</sup> In that decision (36/1995), the Working Group found that the detention of Mr. Nasheed and another journalist was “solely motivated by the will to suppress their critical voices ... on the eve of parliamentary elections which were to decide the future of the country”. The detention of Mr. Nasheed was found by the Working Group to be arbitrary, falling within category II of the categories applied by the Working Group.

2015 to permanent missions to the United Nations in Geneva, the Criminal Court recorded a sentence of 10 years for the offence of terrorism. However, the Court increased the sentence by three years owing to aggravating factors, including Mr. Nasheed's previous convictions for theft, perjury, disorderly conduct and misappropriation.

*Background to the terrorism charges against Mr. Nasheed*

11. The source submits that the detention of Mr. Nasheed is the most recent act of the Government in a long-running campaign to silence him and impede his political involvement in Maldives.

12. In particular, the source alleges that Mr. Nasheed received numerous complaints during his presidency regarding the serious misconduct of Judge Abdulla during his tenure at the Criminal Court. Mr. Nasheed asked the police and the Minister of Home Affairs to investigate Judge Abdulla, but Mr. Nasheed's involvement ended with that request. According to the source, Mr. Nasheed neither gave any instructions to arrest Judge Abdulla, nor was he involved in the decision to do so.

13. The source notes that it was the Ministry of Home Affairs, with assistance from the Defence Minister, which ordered the Maldives National Defence Force to arrest Judge Abdulla in January 2012. Judge Abdulla was detained by the Force for 22 days. According to the source, the Supreme Court issued an order for Judge Abdulla's release, which was directed to the Force, not Mr. Nasheed.

14. In November 2012, legal proceedings were initiated against Mr. Nasheed under section 81 of the Maldivian Penal Code for the "illegal detention" of Judge Abdulla. This offence carries a maximum penalty of three years' imprisonment. The source alleges that the proceedings were an attempt by the Government to prevent Mr. Nasheed from campaigning for the 2013 presidential election. The criminal case was suspended in July 2013, and no further hearings took place.

15. Despite these proceedings, Mr. Nasheed retained a strong political base, winning 45 per cent of the vote in the first round of elections in September 2013. The source attests that the Supreme Court nullified those results, despite international consensus that the election had been free and fair, and suspended attempts to restage the election three times in order to block Mr. Nasheed's candidacy. Mr. Nasheed subsequently lost the election to the current President. Meanwhile, the illegal detention charges against Mr. Nasheed remained dormant.

16. In January 2015, the Government lost a key coalition partner in the parliament, who had switched his allegiance from the current President to Mr. Nasheed. A few weeks later, on 16 February 2015, the Prosecutor General, 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 illegal detention charges against Mr. Nasheed.

17. On 22 February 2015, the Prosecutor General released a statement that the illegal detention case against Mr. Nasheed had been withdrawn to review the charges and to change the court at which it was filed, but did not mention that any new charges would be filed. However, that same day, Mr. Nasheed was arrested on charges of terrorism, based on the same underlying facts as the 2012 illegal detention case. The offence of terrorism carries a minimum sentence of 10 years of imprisonment and a maximum sentence of 15 years of imprisonment or banishment. Mr. Nasheed was not informed of the terrorism charges until the time of his arrest.

*Detention and trial of Mr. Nasheed on terrorism charges*

18. On 23 February 2015, Mr. Nasheed attempted to speak to the press prior to the first hearing of his trial, but the source alleges that he was assaulted by the police and suffered

injuries to his arm, finger and shoulder. Mr. Nasheed also suffers from chronic back pain and pain in his ribcage and chest. According to the source, Mr. Nasheed was denied medical treatment despite repeated requests, forcing him to create a makeshift sling for his arm by using his tie. The Maldives Human Rights Commission provided a doctor to conduct a medical examination at Maafushi Prison, but he was turned away by the prison authorities. Mr. Nasheed was taken to an independent clinic the next day, but not to the hospital requested by his lawyers.

19. The source alleges that Mr. Nasheed was denied legal representation during the first hearing and that he was tried before a three-judge panel. The three judges summarily denied bail to Mr. Nasheed on the basis that he might abscond. This decision was never reconsidered, even though a hearing was scheduled to review the legality of the arrest warrant and the denial of bail.

20. The second hearing was held three days later, on 26 February 2015, despite Mr. Nasheed's request to be granted at least 10 days to prepare his defence. The hearings continued for 19 days until sentencing took place on 13 March 2015.

21. On 13 March 2015, the Court handed down a guilty verdict solely on the basis of the prosecution evidence. The source attests that Mr. Nasheed was not given time to prepare for the sentencing and has not been able to appeal his sentence. In January 2015, the Supreme Court, of its own volition, repealed the provisions relating to appeal in the Judicature Act, creating a new procedure in the form of a Supreme Court circular. Under the new procedure, the time for lodging an appeal is reduced from 90 to 10 days and the trial court is required to forward the appeal petition to the High Court. Mr. Nasheed's lawyers indicated in writing that they intended to appeal, but the Criminal Court failed to provide the trial record until 24 March 2015, the eleventh day after the verdict and therefore outside the 10-day period for appeal, making it substantively impossible for Mr. Nasheed to lodge an appeal.

22. Mr. Nasheed was detained from 22 February to 21 April 2015 at the Dhoonidhoo Island Detention Centre and from 21 to 27 April 2015 in Asseyri Jail on Himmafushi Island. The source alleges that, during these periods of detention, Mr. Nasheed spent approximately six weeks in solitary confinement, particularly at the Dhoonidhoo Island Detention Centre.

23. According to the source, Mr. Nasheed was transferred on 27 April 2015 to serve his sentence in the maximum security Special Protection Unit at Maafushi Prison. The source alleges that Mr. Nasheed's cell was specifically constructed for him. The cell was highly unsanitary as it was located immediately adjacent to the prison garbage dump, and was full of flies and mosquitoes. His food was barely edible. His family and counsel were denied entry on multiple occasions, even after being previously told that visits would be permitted.

24. In August 2015, the Government informed the Working Group that Mr. Nasheed had been transferred temporarily to house arrest on 21 June 2015 in order to undertake medical examinations. However, the Office of the United Nations High Commissioner for Human Rights (OHCHR) issued a briefing note indicating that Mr. Nasheed had been suddenly transferred back to Maafushi Prison on 23 August 2015.<sup>2</sup> The briefing indicates that force, including pepper spray, was used against Mr. Nasheed's supporters, who had gathered around his residence to protest against the renewed imprisonment. The briefing also notes that: "The return of Mr. Nasheed to prison in our view constitutes a serious setback to the human rights situation as well as to moves towards finding a political solution in the Maldives".

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<sup>2</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16345&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16345&LangID=E).

*Submissions regarding arbitrary detention*

25. The source submits that the detention of Mr. Nasheed violates his rights under articles 9-11 and 19-21 of the Universal Declaration of Human Rights and articles 9, 14, 15, 19, 22 and 25 of the Covenant, and constitutes an arbitrary detention according to categories I, II, III, and V of the categories applied by the Working Group.

26. In relation to category I, the source claims that the warrant pursuant to which Mr. Nasheed was arrested refers generically to “terrorism” and failed to set out the alleged criminal conduct for which he was detained. Furthermore, the source submits that the law under which Mr. Nasheed was charged is so vague as to raise concerns about any individual prosecuted under its provisions. The source argues that it is nonsensical for the Government to insist that the arrest of Judge Abdulla, which was *prima facie* valid and conducted in accordance with the law, can later be determined to be an act of terrorism, subjecting anyone involved, up to the President, to criminal prosecution. In addition, the source claims that no evidence of any kind was presented to prove that Mr. Nasheed had ordered Judge Abdulla’s arrest and, even if this was proved, it could not satisfy the elements of the alleged crime.

27. In relation to category II, the source submits that Mr. Nasheed’s detention resulted from the exercise of his rights to freedom of opinion and expression, association and political participation.<sup>3</sup>

28. The source argues that the terrorism charge against Mr. Nasheed was a pretext for the curtailment of his right to freedom of opinion and expression as a political leader. The source points to several public statements made by Mr. Nasheed against the Government, including criticism of the Government for using torture to intimidate the public and to maintain power, questioning the legitimacy and independence of the judiciary and challenging his rivals to compete in elections rather than using the courts to manipulate presidential polls. The source argues that a pattern of attempting to discredit and silence Mr. Nasheed can be seen in his previous trials and in his current detention and trial.

29. The source submits that the Government has singled out Mr. Nasheed because he is associated with the major opposition party in Maldives, the Maldivian Democratic Party, in violation of his freedom of association and right to political participation. The source claims that the Government views the Party as a threat to its power, as it is the most popular opposition political party in Maldives, having won the presidency in 2008.

30. In addition, the source emphasizes that, two weeks after Mr. Nasheed was sentenced, the Government adopted a law banning all prisoners from being members of political parties. As a result, Mr. Nasheed is no longer able to lead the Maldivian Democratic Party and, owing to his conviction for terrorism, he is disqualified under article 109 (f) of the Maldives Constitution from running for the presidency for the length of his detention, plus three additional years. Mr. Nasheed will be unable to participate in the 2018 presidential election in Maldives.

31. In relation to category III, the source submits that the violations of Mr. Nasheed’s right to a fair trial was of such gravity as to give his detention an arbitrary character. The source refers to statements made by the United Nations High Commissioner for Human Rights and the former Special Rapporteur on the independence of judges and lawyers,<sup>4</sup> as

<sup>3</sup> While these freedoms are not absolute, the source submitted that Mr. Nasheed’s situation does not fall within the limitations that are permissible under article 19 (3) of the Covenant to protect national security, public order, public health or morals.

<sup>4</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15712&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15712&LangID=E), and [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15725&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15725&LangID=E).

well as Amnesty International and other human rights organizations, on the haste with which Mr. Nasheed's trial was conducted and the lack of respect for the most basic principles of a fair trial and due process during the trial.

32. The source alleges that the Government violated numerous procedural requirements, including by arresting Mr. Nasheed without a proper warrant on 22 February 2015. The source states that the warrant had been sought by the Prosecutor General, who personally had gone to the Court to seek the order, even though the Prosecutor General has no power to seek a warrant. Furthermore, the source submits that the warrant had been missing critical information, including the place where Mr. Nasheed was to be detained, the period of his detention and when he was to be brought to court. In addition, the source alleges several violations of his right to fair trial, including the principle of equality of arms. According to the source, Mr. Nasheed was refused the right to prepare an adequate defence, to present any defence witnesses or cross-examine prosecution witnesses fully and to examine key evidence.

33. Furthermore, the source alleges that the Government failed to provide an independent and impartial tribunal. The source points to the fact that the Prosecutor General had no authority to withdraw the previous illegal detention charges in the already initiated prosecution against Mr. Nasheed and to replace them with a new charge of terrorism on the same set of facts.

34. The source claims that both the timing of the new terrorism charges against Mr. Nasheed and the rapid pace of the trial raise serious concerns that the judiciary was not acting impartially or independently. The source points to the fact that, in total, less than three weeks elapsed between Mr. Nasheed's arrest and conviction, with hearings held almost every day, often into the evening. This haste was highly prejudicial to Mr. Nasheed, who was not afforded adequate time or facilities to prepare a defence, particularly given that the new charge of terrorism involved more than 1,125 pages of documentation and a very different set of legal challenges and arguments to the original charges of illegal detention.

35. The source points to the Supreme Court circular, which changes the rules for appealing a lower court decision, noting that the timing of the change suggests that the case against Mr. Nasheed was politically motivated.

36. The source alleges that the Prosecutor General and two of the three judges who presided over Mr. Nasheed's trial had a significant conflict of interest. According to the source, both judges are close friends and colleagues of Judge Abdulla and both were present at, and tried to prevent, the arrest of Judge Abdulla. Both judges submitted witness statements during the police investigation of Judge Abdulla's arrest that were used in support of the prosecution case. In addition, both judges lodged complaints with the Maldives Human Rights Commission about Judge Abdulla's detention.

37. The source notes that Judge Abdulla, who was called to give evidence against Mr. Nasheed, is still the Chief Judge of the Criminal Court where Mr. Nasheed was tried, and all of the three presiding judges report directly to him. The source points to a recent statement by Judge Abdulla in which he praised the presiding judges for swiftly concluding the trial against Mr. Nasheed. The source claims that the bias of the judges was evident in their leading of key government witnesses through their testimony, while Mr. Nasheed was not permitted to call any witnesses or evidence. The two judges refused to recuse themselves from Mr. Nasheed's trial when his lawyers submitted an application requesting them to withdraw from the case. The source submits that, in failing to recuse themselves after only 20 minutes of deliberation, the judges deprived Mr. Nasheed of the opportunity to be tried by an independent and impartial tribunal.

38. Furthermore, the source states that there was no credible evidence that Mr. Nasheed had ordered the arrest and detention of Judge Abdulla and the only evidence used to convict him was impermissible double hearsay evidence. The source notes that Judge Abdulla testified that he “assumed” that he had been taken into custody on the order of the then-President Nasheed. In addition, the source points to the Government’s claims that it had video evidence of speeches given by Mr. Nasheed stating that he had ordered the arrest of Judge Abdulla. However, copies of the CDs provided to the defence were corrupted and the defence had no opportunity to examine the evidence in advance.

39. Furthermore, the source argues that the Government did not provide Mr. Nasheed with the right to the presumption of innocence. Instead, the Court chose to rely solely on evidence presented by the Government, reasoning that there was no evidence that Mr. Nasheed could have introduced that would have proved his innocence. The source alleges that the Court’s reasoning makes clear that the judges had every intention of convicting him. The source points to the speed of Mr. Nasheed’s trial, suggesting that Mr. Nasheed’s guilt had already been determined, especially given that a terrorism case is typically more complex and should have taken longer to complete.

40. The source alleges that the Government interfered with Mr. Nasheed’s right to counsel.<sup>5</sup> In particular, Mr. Nasheed’s lawyers were told on 23 February 2015 that they were required to register with the court two days prior to the hearing. This was impossible to comply with, as Mr. Nasheed had only been arrested the day before and was not aware of the charges against him prior to his arrest. During one of the hearings, Mr. Nasheed was forced to sit in the witness stand, physically separated from his lawyers. Furthermore, on 8 March 2015, Mr. Nasheed’s lawyers felt compelled to withdraw from the case because the Government was preventing them from carrying out their ethical duty to provide Mr. Nasheed with adequate legal representation. The Court continued the trial despite Mr. Nasheed’s requests for new counsel and refused to assign court-appointed counsel to the case.

41. Moreover, the source claims that Mr. Nasheed was repeatedly denied the right to a public trial. Although the courtroom could seat 40 persons, chairs were removed from the room so that only a limited number of people could attend. As a result, only 10 members of the press and 6 members of the public could attend.<sup>6</sup> On some occasions, all outside observers were banned. According to the source, hearings were held at night beginning at 8.00 p.m. or 10.00 p.m., and little notice of the date and time of the trial was provided to Mr. Nasheed, his counsel or the public. Several hearings were conducted completely in camera, with no explanation from the Court as to why this was necessary.

42. Furthermore, the source claims that the Government also failed to meet its obligation to provide a publicly accessible judgement, as the Criminal Court only released a synopsis of the proceedings, which does not explain how and why the Court reached its conclusions in Mr. Nasheed’s case.

43. The source claims that, owing to the sudden change by the Supreme Court of the appeal rules, Mr. Nasheed was effectively denied the right to appeal his conviction and

<sup>5</sup> The source notes that Mr. Nasheed was without defence counsel on 23 February 2015, for the presentation of charges and bail hearing, on 26 February 2015, and on 8-10 and 13 March, for the presentation of verdict and sentencing. The source states that the result was that 4 out of the 10 trial hearings took place without counsel being present.

<sup>6</sup> In annex 12 to its response, the Government provided a list of journalists and observers who attended various sessions of the trial. This document supports the source’s claim that only 10 members of the press could attend each session and does not alter the Working Group’s opinion in terms of the allegation of the lack of a public trial.

sentence. Without the trial record, it was impossible for Mr. Nasheed to file an appeal as his lawyers could not complete a thorough examination of the case.

44. In addition, the source contends that the sentence was disproportionate in the light of the nature and circumstances of the crime that Mr. Nasheed had allegedly committed, which amounts to cruel, inhuman or degrading treatment or punishment, contrary to article 7 of the Covenant. The source argues that the solitary confinement of Mr. Nasheed, the poor prison conditions and the denial of medical treatment after he was injured on the first day of the hearings could ultimately constitute torture in violation of this provision.

45. In relation to category V, the source submits that Mr. Nasheed was arrested, detained and convicted because of his political opinion, which was critical of and contrary to the Government, and his detention is therefore arbitrary.

*Response from the Government*

46. On 12 May 2015, the Working Group transmitted the allegations from the source to the Government of Maldives under its regular communication procedure, requesting the Government to provide detailed information by 11 July 2015 about the current situation of Mr. Nasheed, and to clarify the legal provisions justifying his continued detention.<sup>7</sup>

47. In its response dated 10 July 2015, the Government provided the Working Group with the information below.

48. The position of the Government is that the petition in relation to Mr. Nasheed is an attempt to divert attention from the serious offence that he committed, namely, using the military illegally to abduct a serving judge and hold him incommunicado for 21 days. The Government argues that the intent behind this act was to intimidate an independent judiciary and its officials. In its view, Mr. Nasheed has not been the victim of a politicized process but is attempting to remove the current democratically elected Government so that he can be reinstated as President of Maldives.

49. The Government states that Mr. Nasheed has publicly admitted that the arrest of Judge Abdulla was in response to his wishes. Mr. Nasheed's actions were therefore an example of the executive branch of Government seeking to impose its will on the people rather than acting in accordance with the Constitution and existing avenues to remove judges, such as through the Judicial Service Commission or in accordance with the Judges Act. The Government submits that none of the criticisms made by the source of the trial process was so serious, either individually or cumulatively, as to render the entire proceedings a denial of justice and the detention arbitrary. In any event, any actual or perceived irregularities can be addressed on appeal. The Government submits that references to previous criminal proceedings involving Mr. Nasheed are irrelevant to the consideration of the matter currently before the Working Group. Nevertheless, according to the Government, Mr. Nasheed was widely known prior to this matter for his disposition towards breaking the law, and gives several examples of this as a matter of setting the historical record straight.

50. The Government refers to the mandate of the Working Group and the rules in respect of its independence. Furthermore, the Government notes that one of the four

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<sup>7</sup> On 25 March 2015, the Government transmitted an information note to the Permanent Missions of the United Nations Office and other international organizations in Geneva, in which it outlined the 13-year sentence which had been imposed on Mr. Nasheed for terrorism on 13 March 2015, and noted that: "This brief is prepared to properly communicate accurately, to our stakeholders and partners, informing the same of the applicable law and the prescribed opportunity of appeal".



petitioners acting on behalf of Mr. Nasheed is a special rapporteur<sup>8</sup>, so there is potential for the independence of the Working Group to be compromised by inference. The Government submits that the petitioner in question must withdraw and that the source's communication is compromised and must be dismissed on that basis.

51. In relation to the submissions by the source, the Government notes that Mr. Nasheed was convicted by a Maldivian court in accordance with Maldivian law and this precludes his case from being argued under category I of the categories applied by the Working Group. The Government adds that the petition is further flawed in that it seeks to argue that Mr. Nasheed's detention is arbitrary under categories II and V. The case against Mr. Nasheed is specifically related to allegations of an individual criminal act and not to the exercise of his human rights to freedom of opinion and expression, association and political participation. In relation to category III, the Government reminds the Working Group that it has no power to assess the value of any evidence adduced in any trial or to substitute itself for a domestic appellate tribunal and should not, as the source suggests, enter into any evaluation of the strength of the evidence against Mr. Nasheed. Likewise, the Government argues that the Working Group has no mandate to assess the source's argument as to whether the allegations against Mr. Nasheed constitute an offence under anti-terrorism laws. Alternatively, even if the Working Group considers this matter, the Government argues that charges involving kidnapping can constitute an offence of terrorism.

52. The Government argues that it is also beyond the mandate of the Working Group to consider the conditions in which Mr. Nasheed is detained. However, in relation to the detention of Mr. Nasheed without access to his family or lawyers, the Government notes that incommunicado detention is permitted in exceptional circumstances for "a matter of days".<sup>9</sup> The Government states that it has submitted a schedule of visits that shows that adequate visitation was subsequently permitted.

53. The Government seeks to refute the source's arguments relating to deficiencies in the arrest warrant executed in relation to Mr. Nasheed. The Government notes that the allegations against Mr. Nasheed predate the appointment of the current Prosecutor General, that the seeking of the warrant cannot have been politically motivated and that the warrant was lawfully sought and issued and clearly set out the charges.

54. The Government argues that bail was denied because the charge related to a non-bailable offence, that the defence had previously attempted to delay the proceedings and that there were reasonable grounds to believe that Mr. Nasheed would attempt to flee the jurisdiction of the Maldivian courts, as he had done on two previous occasions. In relation to the source's allegation of the interference with Mr. Nasheed's right to counsel and adequate time to prepare a defence, the Government states that Mr. Nasheed knew in advance of the case against him as it was based on the same materials previously available to his legal team for the illegal detention charge. The Government argues that the only material change was the legal qualification of the charge as an offence of terrorism. In addition, Mr. Nasheed had the ability to challenge rulings of the Court and availed himself of that opportunity on more than one occasion. In its view, the "double threshold" applied

<sup>8</sup> The petitioner in question is the current Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

<sup>9</sup> See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principles 15, 16 and 18 (3). The Government also cites opinion 26/1999, in which the Working Group considered that charges of terrorism represented an exceptional circumstance where incommunicado detention might be authorized for a brief period. However, the Working Group points out that, in that case, the relevant court took measures for the physical and psychological protection of the person under arrest in order he received a medical examination daily, unlike in Mr. Nasheed's case.

by the Working Group should be utilized in the present case to determine that, even if there was a violation of Mr. Nasheed's due process rights, the violation was not of sufficient importance to nullify the proceedings.

55. The Government submits that Mr. Nasheed was not prevented from calling any evidence in his defence or from cross-examining prosecution witnesses. The Court has an inherent discretion to hear relevant evidence and to refuse to hear witnesses that are not capable of providing evidence that goes to a relevant matter in issue. The Court had requested Mr. Nasheed's lawyers to specify what issues its witnesses would give evidence on, but the defence failed to do so and the Court ruled upon the available prosecution evidence. The Government points out that it was appropriate for the Court to have taken into account Mr. Nasheed's previous convictions in convicting and sentencing him on the terrorism charges.

56. In relation to the independence of the judges who presided over Mr. Nasheed's trial, the Government states that the Prosecutor General wrote to the Criminal Court requesting that Judge Abdulla have nothing to do with the matter so as to avoid actual or perceived influence and a replacement Chief Judge was appointed. Furthermore, of the eight Criminal Court judges, seven witnessed the arrest of Judge Abdulla but none was privy to the investigation after the arrest or the evidence that formed part of the prosecution case. The facts surrounding the arrest could have been gleaned from any media outlet or ordinary discussions in the community. The Prosecutor General also recused himself from prosecuting the case given that he had previously served as a judge on the Criminal Court.

57. The Government argues that Mr. Nasheed was afforded a public trial as members of the public were allowed to observe, including the Bar Human Rights Committee of England and Wales. Hearings took place in the evenings owing to the need to preserve security.

58. On the right to appeal, the Government submits that the application at this stage is simply for leave to appeal, which Mr. Nasheed could have undertaken within 10 days. This period can be extended if the delay is caused by the courts, and it only includes business days. The Government argues that the defence team were provided with the trial record but caused the delay by initially refusing to sign it. Mr. Nasheed can also submit an out-of-time appeal.

59. The Government rejects that Mr. Nasheed was the subject of ill-treatment. As a former President, he was afforded the privilege of not being handcuffed and was warned not to speak to the media outside court. Physical force was used to bring him into the building, but not to an excessive level. The Government notes that a review by the Police Integrity Commission of the production of Mr. Nasheed at court found that the action taken had been proportionate to the situation. Mr. Nasheed received medical care, though not from a medical practitioner of his choosing. Mr. Nasheed was not held in solitary confinement but, as a former President, was separated from other prisoners owing to security concerns and was held in conditions that far exceed minimum standards. The Government claims that Mr. Nasheed also received numerous visits from his family and lawyers during his detention.<sup>10</sup>

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<sup>10</sup> In annex 16 to its response, the Government provides a series of five "Security Sector Information Bulletins" from the Maldives Police Service during the trial", which support the Government's claims concerning Mr. Nasheed's treatment in detention and first appearance at court, although in one of the bulletins it is noted that the Maldives Human Rights Commission condemned police action at Mr. Nasheed's first appearance. The Working Group is informed that OHCHR continues to closely monitor Mr. Nasheed's situation, including through two recent visits to the Maldives.

60. On 19 August 2015, the Government sent a letter from the Maldives Minister of Foreign Affairs to the Chair-Rapporteur of the Working Group with an update on Mr. Nasheed's case. In the letter, the Government notes that the Prosecutor General has filed an appeal in the High Court in relation to the case. It also notes that many of the issues raised by the Prosecutor General were not cited by Mr. Nasheed as grounds of appeal, but instead raised "in line with the clear commitment to the right to a fair trial, and more generally, the rule of law". The Government points out that the decision by the Prosecutor General was taken following the lodging by Mr. Nasheed of an appeal on six grounds, which was accompanied by a request from Mr. Nasheed for the Prosecutor General to submit the six grounds of appeal to the High Court.

61. The Government attests that Mr. Nasheed was moved to house arrest in order for medical examinations to be undertaken, which was a temporary measure only and not a change in his sentence. This step "evidences how the Government is demonstrating its commitment to the fundamental rights of its citizens and, furthermore, respects the dignity of those that have been imprisoned, contrary to the allegations contained within the communication filed by President Nasheed with the Working Group".

*Further comments from the source*

62. The Government's response was sent to the source on 10 July 2015 for comment. The source replied on 19 August 2015. The source states that the Government is asking the Working Group to disbelieve not only what Mr. Nasheed says, but also what every international organization, third party Government and non-governmental organization that has looked at this case has concluded. The source notes that this includes comments made during the universal periodic review of Maldives in May 2015. In addition, the source refers to a trial observation report in which the Bar Human Rights Committee emphasized that "Mohamed Nasheed's right to a fair trial, as guaranteed under international law, has been breached" and therefore his "conviction cannot properly be regarded as safe." Furthermore, the source notes that, on 24 July 2015, the Prosecutor General announced an intention to appeal the conviction that his office had secured, suggesting that even the Maldivian authorities recognize that the trial was flawed.

63. In relation to category III of the categories applied by the Working Group, the source reiterates its submission that the criminal case against Mr. Nasheed was marred by serious due process deficiencies and failed to meet international fair trial standards, including through:

- (i) Violations of the presumption of innocence;
- (ii) Lack of independence and impartiality of the judges;
- (iii) Bias by the lead prosecutor and selective prosecution of Mr. Nasheed;
- (iv) Denial of adequate time and facilities to prepare a defence;
- (v) Violation of Mr. Nasheed's right to present evidence and present witnesses;
- (vi) Violation of the Mr. Nasheed's right to cross-examine witnesses;
- (vii) Denial of the right to counsel;
- (viii) Lack of a public hearing;
- (ix) Denial of the right to appeal.

64. The source argues that the Government's reply on whether it was appropriate for the Court to take Mr. Nasheed's previous convictions into account misses the point. The source claims that those convictions were themselves politically motivated, as determined by independent third parties. The fact that those convictions were taken into account in Mr.

Nasheed's trial on terrorism charges violated his right to be presumed innocent until proved guilty.

65. Furthermore, the source submits that the Government's response to allegations of bias against two of the presiding judges is misleading. According to the source, the Government omits to mention that two judges not only had been present at the time of Judge Abdulla's arrest, but also had filed witness complaints that were then used as evidence in the proceedings against Mr. Nasheed. At one stage, they were listed as witnesses for the prosecution. If there was no unbiased judge available, international assistance should have been sought or other measures taken, such as constituting a bench from appellate court judges or retired judges.

66. The source submits that the refusal to allow Mr. Nasheed to call witnesses, the limits placed on his cross-examination of prosecution witnesses, the fact that judges led government witness through their testimony and the fact that Judge Abdulla was called to testify, over the objections of the prosecution, are examples of actual bias. In addition, the source notes that, in its report, the Bar Human Rights Committee confirmed that the bias of the judges, including the failure to recuse themselves, rendered the trial unfair. Finally, the source argues that, contrary to the Government's assertions that Judge Abdulla kept his distance from the trial, the reality is that he was very much involved, which was confirmed by the Bar Human Rights Committee trial observation.

67. The source disputes the Government's claim that the Prosecutor General had recused himself from the trial, noting that this is simply untrue, despite requests from Mr. Nasheed's lawyers that he do so. Instead, the prosecution team claimed that the Prosecutor General would recuse himself if and when he felt it was necessary, though he never did, and Mr. Nasheed's lawyers were not permitted by the Court to pursue this matter.

68. The source states that the Government fell short of this international standards in at least five respects: (a) only 20 days elapsed from arrest to sentence; (b) proceedings on the merits started the day after Mr. Nasheed's arrest, when the new charges were notified to him; (c) the Court unreasonably refused an adjournment sought by Mr. Nasheed after his counsel resigned; (d) Mr. Nasheed and his counsel were denied access to evidence; and (e) Mr. Nasheed's counsel was entirely absent from key hearings in the case.

69. According to the source, the Government's argument that Mr. Nasheed had previously requested expedited proceedings omits to mention that the request was made in reference to the charges of illegal detention filed in 2012, which had been stalled for 2.5 years by the time of the request. In addition, the source contends that the Government's argument that the matter was not new and would not require a greater level of preparation is not sustainable. The source reiterates that the elements of the more serious crime of terrorism are completely different to those of illegal detention and would require a different assessment of the evidence, and that at least 21 entirely new documents that had not been relied on in the 2012 trial were provided to Mr. Nasheed's lawyers. The source refers to a statement from the United Nations High Commissioner for Human Rights that, despite the Government's argument that the new case was made on the basis of the same materials previously available to his legal team, Mr. Nasheed should still have been given time to instruct his counsel and prepare a new defence.<sup>11</sup>

70. Furthermore, the source states that the Government does not dispute the fact that the Court refused the request for an adjournment for Mr. Nasheed to review the evidence. The source notes that the Bar Human Rights Committee report found that the failure to allow Mr. Nasheed adequate time to prepare violated article 14(3)(b) of the Covenant.

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<sup>11</sup> UN News Release dated 18 March 2015 (cited at footnote 4, above).

71. The source submits that the Government's response does not dispute the failure by the prosecution and the Court to disclose video and audio evidence, and that Mr. Nasheed should not have been convicted on the basis of evidence to which he or his lawyers did not have full access. The source also recalls that Mr. Nasheed sought, but was not permitted, to call four witnesses that had direct knowledge of the facts of Judge Abdulla's detention, in violation of the principle of equality of arms. Finally, the source contends that Mr. Nasheed's lawyers were prohibited from questioning the credibility of prosecution witnesses to establish bias or discredit their testimony.

72. The source recalls the withdrawal of Mr. Nasheed's defence counsel during the trial and notes that, while the Court stated that he could appoint new counsel, he was only given 24 hours to do so, which was practically impossible while he was being held in prison. Moreover, even if Mr. Nasheed failed to appoint new counsel, the source argues that the Court should not have proceeded with the trial and should have ensured that legal representation was available to Mr. Nasheed.

73. The source disputes the Government's contention that Mr. Nasheed's trial was open to the public. The source points to the findings of the Bar Human Rights Committee in its report that Mr. Nasheed was not guaranteed a public trial, in violation of article 14(1) of the Covenant. The source argues that there was no legitimate basis for restricting access in the most important trial that has ever taken place in Maldives, where there were questions about its fairness, and where the courtroom could have accommodated a larger presence but for actions taken by the Government to reduce the space available. Finally, as pointed out by the United Nations High Commissioner for Human Rights,<sup>12</sup> the Court refused requests to monitor the trial by the Maldives Human Rights Commission and domestic and international observers.

74. The source also disputes the Government's contention that Mr. Nasheed has not attempted to appeal his conviction and sentence. The source states that Mr. Nasheed submitted a written intent to appeal on 15 March 2015, two days after his conviction. The source notes that, contrary to the Government's submission that the appeal period runs from the date the trial record is received, the 10-day period runs from the date of conviction, as stated in the new Supreme Court circular which introduced this change. Moreover, the circular requires defendants to file the complete appeal within 10 days of the conviction, not just leave to appeal, as the Government incorrectly stated. There is also no discretion of the Court to accept out-of-time appeals. The source submits that the Prosecutor General's appeal in this case does not remedy the violation of Mr. Nasheed's denial of a right to appeal.

75. In relation to categories II and V, the source argues that the Government has failed to understand and reply to the allegations made in relation to Mr. Nasheed. The source argues that a criminal charges do not have to relate to the exercise of protected rights, but that the Working Group looks behind such charges to determine whether, as is the case for Mr. Nasheed, they have been used as a pretext to limit the exercise of fundamental rights, including freedom of opinion and expression, freedom of association and freedom of political participation. The source notes that the Government acknowledged that legislation to disqualify prisoners from being members of political parties was adopted within weeks of Mr. Nasheed's trial, but denies that it targeted him. The source argues that the Government did not provide any evidence to refute the allegation and has not explained the suspicious timing of the legislation or given alternative reasons as to why it was adopted.

<sup>12</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15712&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15712&LangID=E).

76. According to the source, the Government acknowledges that, because of his conviction, Mr. Nasheed will not be able to contest the 2018 presidential elections. However, the Government argues that there is nothing discriminatory about the ban since it is set out in a constitutional provision that was adopted in 2008, before Mr. Nasheed's case. However, the source argues that it is not the ban itself that is discriminatory, but the Government's reliance on a groundless conviction to trigger the ban and thereby prevent Mr. Nasheed's candidacy.

77. In addition, in relation to category I, the source submits that it is not enough for the Government simply to assert that Mr. Nasheed has been charged under appropriate domestic law and that therefore his detention after conviction on this basis cannot be arbitrary. The source contends that the Government must show that Mr. Nasheed has in fact been appropriately charged under domestic law, but has failed to do so.

78. Furthermore, the source notes that Mr. Nasheed was originally charged in 2012 for the alleged crime of "illegal detention", not "terrorism." The source argues that, at that time, it was acknowledged that the alleged act of ordering an arrest did not meet the definition of terrorism under the plain language of the Prevention of Terrorism Act, which explains why there was no attempt to charge Mr. Nasheed with terrorism until it became politically expedient to do so. The source submits that the Government should have ensured that anti-terrorism legislation defines the nature of the prohibited acts with sufficient precision as to enable individuals to regulate their conduct accordingly, but that in this case it failed to do so. The source notes that the judgement does not refer to any evidence that Mr. Nasheed ordered the arrest of Judge Abdulla or had prior knowledge of it.

### **Discussion**

79. The Working Group thanks the source and the Government for their extensive submissions in relation to Mr. Nasheed's most recent legal proceedings. It is evident that the detention of Mr. Nasheed and, in particular, whether it is arbitrary, is highly contested between the parties. The source claims that Mr. Nasheed's detention was arbitrary according to categories I, II, III and V of the categories applied by the Working Group. The Working Group considers each of these categories in turn below.

80. In relation to category I, 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 from falling within category I. The Working Group considers that it is entitled to assess the proceedings of the court and the law itself to determine whether they meet international standards. In this regard, the Working Group recalls the reaffirmation by the Human Rights Council that States must ensure that any measures, including national laws, taken to combat terrorism comply with their obligations under international law, in particular international human rights law.<sup>13</sup>

81. In an offence as serious as terrorism, which in Maldives carries a sentence of 10 to 15 years of imprisonment or banishment for terrorist acts that do not result in the loss of

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<sup>13</sup> See Human Rights Council resolution 7/7 of 27 March 2008, para. 1. See also the Working Group's list of principles concerning the compatibility of anti-terrorism measures with arts. 9 and 10 of the Universal Declaration of Human Rights and arts. 9 and 14 of the Covenant, contained in the report of the Working Group (A/HRC/10/21, paras. 50-55). These principles include that the detention of persons suspected of terrorist activities shall be accompanied by concrete charges and that, in the development of judgements against them, the persons accused shall have a right to the guarantees of a fair trial and the right to appeal.

life, the Government should have been able to demonstrate the legal basis of the charges against Mr. Nasheed. The Working Group considers that the Government has not explained how the arrest of Judge Abdulla, which was carried out by the Maldives National Defence Force under an order given by a third party, could constitute terrorism. In simply producing a list of witnesses and evidence in its response, the Government has also failed to rebut the assertion by the source that there was no evidence produced at the trial that Mr. Nasheed had ordered Judge Abdulla's arrest.

82. The Working Group considers that it is therefore clearly impossible to invoke any legal basis to justify the deprivation of liberty of Mr. Nasheed and that his detention was arbitrary and falls within category I of the categories applied by the Working Group.

83. In relation to categories II and V, the source submitted that Mr. Nasheed's detention resulted from the exercise of his rights to freedom of opinion and expression, association and political participation and that he was detained because of his "political opinion", which was critical of and contrary to the Government.

84. 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: (a) 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; (b) the sudden way in which charges were reinstituted against Mr. Nasheed after the original case had been inactive for two and a half years, when the Government lost a key coalition partner in the parliament; (c) 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 (d) 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.

85. The Working Group concludes that there is a violation of Mr. Nasheed's rights to freedom of opinion and expression, freedom of association and freedom of political participation under articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 22 and 25 of the Covenant, and that he was targeted on the basis of his political opinions. The case therefore falls within categories II and V of the categories applied by the Working Group.

86. In relation to category III, the Working Group notes that Mr. Nasheed's trial has been the subject of an exceptionally high level of attention and scrutiny, both within and outside Maldives. A range of human rights experts who are familiar with Mr. Nasheed's case have stated that his trial did not meet international human rights standards, including the United Nations High Commissioner for Human Rights and the former Special Rapporteur on the independence of judges and lawyers.

87. As an example, the Working Group refers to the findings of one of two visits conducted by OHCHR representatives to Maldives in April and July 2015 in relation to Mr. Nasheed's case. During its first visit on 20-23 April 2015, the delegation met with the Government and judicial officials, civil society and Mr. Nasheed, and found that:

However serious the allegations against him, the trial of Mr. Nasheed was vastly unfair and his conviction was arbitrary and disproportionate. In the absence of an adequate criminal code, evidence law and criminal procedures, the Prosecutor-General and the judges have excessive discretionary powers that worked in this case against Mr. Nasheed. He learned about the new charge under the Terrorism Act only upon arrest. Following a rushed process that took place over less than three weeks,

at night and often without the presence of Mr. Nasheed's lawyers, he was convicted and sentenced. Importantly, the court denied Mr. Nasheed the possibility to prepare and present adequate defence, including calling defence witnesses and examining the evidence against him.<sup>14</sup>

88. In addition, the problems associated with the judiciary in Maldives, including its actual and perceived lack of independence and the "reactivation of old cases to arrest opposition members of Parliament or bar them from Parliament",<sup>15</sup> have been documented by the United Nations in recent years.<sup>16</sup> These reports suggest that there are systemic problems in Maldives involving the arrest of political opposition leaders, the lack of independence of the judiciary and prosecutors and procedural defects in providing a fair trial.

89. While this information from multiple sources does not bind the Working Group, it is difficult for the Government to credibly contend that Mr. Nasheed's trial met international standards despite overwhelming evidence to the contrary. The Working Group has considered each of the alleged due process violations. In doing so, the Working Group emphasizes that it did not substitute itself for a domestic appellate tribunal, but considered whether the facts in Mr. Nasheed's case demonstrate a failure by the Government to afford him a fair trial.

90. In the view of the Working Group, there were several serious due process violations which, taken together, demonstrate that Mr. Nasheed did not receive a fair trial. These violations have not been sufficiently rebutted by the Government, including by documentary evidence of the trial proceedings and judgement to support the Government's arguments.<sup>17</sup> The violations include:

- (a) The fact that 20 days elapsed between Mr. Nasheed's arrest and conviction in a trial involving a serious new charge of terrorism and proceedings commenced the day after Mr. Nasheed's arrest, suggesting that the result was pre-determined;
- (b) 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 and witnessed his arrest, as well as the refusal by the judges to recuse themselves after deliberating on the request for only 20 minutes;
- (c) Refusal to allow Mr. Nasheed to call any witnesses or evidence and the limits placed on his cross-examination of prosecution witnesses;
- (d) Limited provision of evidence to the defence team, including CDs and video evidence;
- (e) The absence of legal representation for Mr. Nasheed at key points during the trial;

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<sup>14</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15915](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15915).

<sup>15</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13917&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13917&LangID=E).

<sup>16</sup> See, for example, the compilation of the Working Group on the Universal Periodic Review (A/HRC/WG.6/22/MDV/2). See also the report of the Special Rapporteur on the independence of judges and lawyers (A/HRC/23/43/Add.3).

<sup>17</sup> See opinion No. 41/2013 (Libya), in which the Working Group recalls, in para. 27, that, where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he was entitled, the burden to prove the negative fact asserted by the applicant is on the public authority, because the latter is generally able to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law by producing documentary evidence of the actions that were carried out.



- (f) The refusal of an adjournment after the withdrawal of Mr. Nasheed's counsel;
- (g) The limitations on the number of observers and members of the public who could attend Mr. Nasheed's trial and the provision by the Court of a synopsis of the proceedings rather than a judgement;
- (h) A sudden change by the Supreme Court of the appeal rules and the delay in providing the trial record to the defence.

91. The Working Group considers that there was a violation of Mr. Nasheed's right to a fair trial, particularly: (a) the right to the presumption of innocence (article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant); (b) the right to an independent and impartial tribunal (article 10 of the Declaration and article 14 (1) of the Covenant); (c) the right to equality of arms (article 10 of the Declaration and article 14 (1) of the Covenant); (d) the right to adequate time and facilities to prepare a defence (article 11 (1) of the Declaration and article 14 (3) (b) of the Covenant); (e) the right to examine prosecution witnesses and call and examine witnesses for the defence (article 11 (1) of the Declaration and article 14 (3) (e) of the Covenant); (f) the right to counsel (article 11 (1) of the Declaration and article 14 (3) (b) and (d) of the Covenant); (g) the right to a public hearing (article 10 of the Declaration and article 14 (1) of the Covenant), and (g) the right to appeal (article 14 (5) of the Covenant).

92. The Working Group concludes that the breaches of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant in the case of Mr. Nasheed are of such gravity as to give his deprivation of liberty an arbitrary character, falling within category III of the categories applied by the Working Group.

93. The Working Group wishes to record its concern about Mr. Nasheed's physical and psychological integrity while serving the 13 years of imprisonment imposed in March 2015. In particular, the Working Group refers to the allegations made by the source that Mr. Nasheed has been held in solitary confinement and in unsanitary conditions, subjected to ill-treatment before his first hearing and not given access to medical care. The source alleged that these factors constitute cruel, inhuman and degrading treatment and could amount to torture as the conditions persist. These allegations were denied by the Government.

94. The Working Group recalls that efforts addressed to the abolition of solitary confinement as a punishment or to the restriction of its use should be undertaken and encouraged.<sup>18</sup> Given that Mr. Nasheed has recently received medical attention while under house arrest and was recently visited by a delegation from OHCHR while in prison and under house arrest, the Working Group considers that it does not need to refer the matter to the relevant Special Rapporteur for follow up action. OHCHR continues to monitor the situation closely.

95. The Working Group notes that it is rendering the present opinion while an appeal that was initiated by the Prosecutor General is ongoing in Maldives. As the Working Group has previously made clear in its jurisprudence, there is no requirement that domestic remedies be first exhausted before the Working Group can issue an opinion.<sup>19</sup> In addition, it is not clear when the outcome of that appeal will be known or whether it will reach the same conclusion as the Working Group that Mr. Nasheed has not been afforded a fair trial. Accordingly, the Working Group considers it appropriate to render an opinion requesting

<sup>18</sup> Principle 7 of the Basic Principles for the Treatment of Prisoners.

<sup>19</sup> See opinions No. 11/2000 and 19/2013.

Mr. Nasheed's immediate release on the basis that his detention was arbitrary, particularly in the light of recent information that Mr. Nasheed has been returned from house arrest to prison.

96. Finally, given that the Working Group has adopted the present opinion by consensus among its five independent members, the Working Group considers that no reasonable person could conclude that its independence is compromised by the fact that one of the four petitioners is a Special Rapporteur.

#### **Disposition**

97. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Nasheed, being in contravention of articles 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 9, 14, 19, 22 and 25 of the Covenant, is arbitrary, falling within categories I, II, III and V of the categories applicable to the consideration of cases submitted to the Working Group.

98. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Nasheed without delay and bring it into conformity with the standards and principles in the Universal Declaration of Human Rights and the Covenant.

99. Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to release Mr. Nasheed immediately and accord him an enforceable right to compensation in accordance with article 9 (5) of the Covenant.

*[Adopted on 4 September 2015]*

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