



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

TRIAL OBSERVATION REPORT

Prosecution of Mohamed Nasheed,
Former President of the Republic of the Maldives

April 2015

Written by Blinne Ní Ghrálaigh,
Vice Chair, Bar Human Rights Committee

Bar Human Rights Committee of England and Wales

Doughty Street Chambers
53-54 Doughty Street
London WC1N 2LS
England

www.barhumanrights.org.uk

Produced by the BHRC

Copyright 2015 ©

Table of Contents

Table of contents	3
Bar Human Rights Committee	4
Executive summary	5
Introduction	5
Hearings observed	7
Meetings undertaken.....	9
The charges	10
Historical and political background	11
The Maldivian legal system	15
The Maldivian judiciary	17
The history of the legal proceedings	22
The timeline of proceedings	26
The Prosecution evidence	27
Witness called by the Court	31
The Defence evidence.....	32
Verdicts and sentences	34
Compliance of the proceedings with international fair trial standards.....	36
1. <i>The right to an independent, impartial and competent tribunal</i>	37
2. <i>The right to a public hearing</i>	41
3. <i>The right to adequate time and facilities to prepare a defence</i>	44
4. <i>The right to be tried without undue delay</i>	48
5. <i>The right to legal assistance</i>	50
6. <i>The right to examine witnesses</i>	52
7. <i>The right to appeal conviction and sentence</i>	54
International concern regarding the fairness of the trial	56
Conclusions.....	57
Recommendations	58
Annexes	59

Bar Human Rights Committee

The Bar Human Rights Committee (“BHRC”) is the international human rights arm of the Bar of England and Wales. It is an independent body, distinct from the Bar Council of England and Wales, dedicated to promoting principles of justice and respect for fundamental human rights through the rule of law. It has a membership of over two hundred lawyers, comprised of barristers practicing at the Bar of England and Wales, legal academics and law students. The BHRC’s fifteen Executive Committee members and general members offer their services *pro bono*, alongside their independent legal practices, teaching commitments and/or legal studies. BHRC also employs a full-time co-ordinator.

The BHRC aims:

- to uphold the rule of law and internationally recognised human rights norms and standards;
- to support and protect practicing lawyers, judges and human rights defenders who are threatened or oppressed in their work;
- to further interest in and knowledge of human rights and the laws relating to human rights, both within and outside the legal profession;
- to advise, support and co-operate with other organisations and individuals working for the promotion and protection of human rights; and
- to advise the Bar Council of England and Wales in connection with international human rights issues.

As part of its mandate, the BHRC undertakes legal observation missions to monitor proceedings where there are reasons to believe that the judiciary may not be independent or impartial and/or the defendant might otherwise be denied the right to a fair trial.

The remit of the BHRC extends to all countries of the world, apart from its own jurisdiction of England and Wales. This reflects the Committee's need to maintain its role as an independent but legally-qualified observer, critic and advisor.

Executive Summary

Since late 2012, the BHRC has been monitoring the criminal proceedings brought by the Maldivian Prosecutor General against **Mr Mohamed Nasheed, former President of the Republic of the Maldives** and head of the Maldivian Democratic Party in relation to the arrest and detention of the Chief Justice of the Maldivian Criminal Court, Judge Abdulla Mohamed, on 16 January 2012, while Mr Nasheed was president. BHRC representatives attended a number of hearings in the case, both in the Criminal Court in Malé, the capital island, where the proceedings have been held since February 2015 and in the High Court, where a number of procedural challenges to the criminal proceedings were heard.

This report documents the findings of the BHRC's third legal observation mission to the Maldives between 26 February and 6 March 2015. Given the observer's limited access to the trial proceedings, the report also draws on information conveyed in meetings and publicly available in reports, statements and news articles concerning the proceedings from Mr Nasheed's arraignment on new charges on 23 February 2015 to his conviction on 13 March 2015, and on background materials relevant to those proceedings.

On the basis of that information and for the reasons set out in this report, the BHRC is of the opinion that **Mohamed Nasheed's right to a fair trial, as guaranteed under international law, has been breached** in the following ways:

- **there was a clear appearance of bias on behalf of two of the three judges, such as to vitiate the fairness of the entire proceedings**
- **he was deprived of the time and facilities adequately to prepare his defence as a self-representing Defendant**
- **his right to be legally represented was effectively denied at the arraignment hearing**
- **the right to a public hearing was not adequately guaranteed**

Serious concerns also arise regarding the overall speed at which the terrorism trial before the Criminal Court took place, the limited time given to Mr Nasheed's Defence team to prepare for trial and the refusal by the Court to permit Defence witnesses to be called. Serious concerns also arise regarding the delay between the original charges in 2012 and Mr Nasheed's conviction in 2015.

For those reasons, Mr Nasheed's conviction cannot properly be regarded as safe.

Introduction

This report documents the findings of the BHRC's third legal observation mission ("the Mission") to the Maldives between 26 February and 6 March 2015, undertaken by Blinne Ní Ghrálaigh, BHRC Vice Chair and barrister at Matrix Chambers, London, England, to observe at the criminal trial of former President Mohamed Nasheed ("Mr Nasheed"). It also draws on information conveyed in meetings and publicly available in reports, statements and news articles. The report was authored by Ms Ní Ghrálaigh and its legal conclusions approved by the BHRC Executive Committee.

The reports of two previous BHRC trial observation missions, conducted in November 2012¹ and February 2013,² can be accessed on the BHRC website at www.barhumanrights.org.uk.

Terms of reference

The Mission was undertaken to assess and report on the compliance of Mr Nasheed's trial with international fair trial standards, in particular Article 14 of the International Covenant on Civil and Political Rights ("ICCPR"), to which the Republic of the Maldives ("the Maldives") is a State party.³ The Mission also had regard to the separate trials of four other individuals who were prosecuted in relation to the arrest of Judge Abdulla Mohamed ("Judge Abdulla"), and observed at a number of hearings in those cases. However, the primary focus of the Mission was the case of Mr Nasheed.

Guidelines

The Mission and this report were guided by the following:

- International Commission of Jurists, *Trial Observation Manual for Criminal Proceedings* (2009)⁴

¹ Report On Bar Human Rights Committee Hearing Observation: The Maldives - A report on hearing in the case of former President Mohamed Nasheed, and meetings with lawyers, politicians, and journalists, 3-6 November 2012, available at: <http://www.barhumanrights.org.uk/report-bar-human-rights-committee-hearing-observation-maldives-0>, accessed on 24 April 2015 (all weblinks cited in this report were accessed on 24/ 27/29 April, unless otherwise stated).

² The Prosecution of Former Maldivian President Mohamed Nasheed, Report of BHRC's Second Independent Legal Observation Mission, 3-4 February 2013, available at: <http://www.barhumanrights.org.uk/report-bhrCs-second-legal-observation-mission-maldives>.

³ The Maldives became a State party to the ICCPR on 19 September 2006.

⁴ International Commission of Jurists, *Trial Observation Manual for Criminal Proceedings – Practitioners Guide No. 5*, (2009), available at: <http://icj.wppengine.netdna-cdn.com/wp-content/uploads/2009/07/trial-observation-manual-Human-Rights-Rule-of-Law-series-2009-eng.pdf>.

- Front Line Defenders, *Trial Observation Handbook for Human Rights Defenders* (2012)⁵
- Raoul Wallenberg Institute / International Bar Association, *Guidelines for Human Rights Fact Finding Missions* (2009)⁶
- Amnesty International, *Fair Trial Manual* (2014)⁷

Acknowledgments

The Mission was assisted locally by representatives from the Maldivian Democracy Network, who facilitated access to the court proceedings, provided Divehi-English interpretation at court hearings, and helped arrange meetings with other parties, including the Deputy Attorney General and Mr Nasheed’s legal defence team. The BHRC also extends its thanks to BHRC student member, Ms Nivedita S, who assisted with research and footnoting of this report. However, the conclusions reached within this report are those of the BHRC exclusively, which assumes sole responsibility for the report’s content and for the views expressed within.

Funding

The Mission was funded from BHRC central funds.

Point to note

Ms Kirsty Brimelow QC, barrister at Doughty Street Chambers, London, and current Chair of the BHRC, has acted for Mr Nasheed in a legal capacity in the case under legal observation. Ms Brimelow’s professional engagement was distinct from the BHRC’s Mission and had no influence or bearing on its scope or outcome. Ms Brimelow had no input into the content of this report and was involved neither in its editing nor in approving its conclusions. Neither the BHRC generally, nor Ms Ní Ghrálaigh personally, would have undertaken the Mission if the position had been otherwise.

⁵ Richmond, R. (ed.), *Front Line Defenders: Trial Observation Handbook for Human Rights Defenders*, (2012), available at:

https://www.frontlinedefenders.org/files/trial_observation_handbook_for_human_rights_defenders_1.pdf

⁶ Raoul Wallenberg Institute and International Bar Association, ‘Guidelines on International Fact-Finding Visits and Reports’, available at:

<http://www.ibanet.org/Document/Default.aspx?DocumentUid=D7BFB4EA-8EB6-474F-B221-62F9A5E302AE>.

⁷ Amnesty International, *Fair Trial Manual* (2nd Edition, 2014), available at:

<https://www.amnesty.org/download/Documents/8000/pol300022014en.pdf>

Hearings observed

Three hearings in Mr Nasheed's case were scheduled during the course of the trial observation mission, which lasted from the morning of 26 February 2015 to the afternoon of 6 March 2015. Those hearings took place on 26 February, 2 March and 4 March 2015, late at night, in special sittings of the Criminal Court in the Justice Building in Malé, the capital of the Maldives. Public access to the courtroom was limited to ten seats for accredited members of the media and six seats for the general public. Seats were allocated on a first-come, first-served basis on the morning of the day of the hearing, with a queue beginning to form well before the court opened at 8:00 am. **The Mission was only able to secure access to the hearing on 2 March 2015.**

- On 26 February 2015, all tickets had been allocated prior to the arrival of BHRC's trial observer in the Maldives. Although BHRC's trial observer was voluntarily reallocated one of those tickets by a local attendee through a formal court process and was formally registered on the court attendee list on the afternoon of the hearing, those manning the court doors that night appeared to be operating from the original list, which did not reflect the substitution. The Mission's representative was therefore denied entry to the court, as was a representative of the Maldivian Democracy Network, who was providing interpretation services to the Mission, and who had also been reallocated a ticket in a similar manner.
- On 2 March 2015, BHRC's trial observer was fifth in the ticket queue and was therefore able to secure one of the six available tickets.
- On 4 March 2015, BHRC's trial observer was seventh in the queue for six tickets and was unable to access the proceedings, in the absence of anybody offering to cede her their place.

The Mission was also able to secure access to two hearings in the related proceedings against former Defence Minister Tholhath Ibrahim on 2 and 4 March 2015. A similar ticketing system was in operation, but tickets were not in demand and a number of seats at each of the hearings attended remained empty.

No measures were put in place by the court to facilitate the Mission's access to the proceedings. However, the BHRC is not aware of any deliberate attempts on the part of the Court or any other body or person to prevent any part of the trial observation from occurring or specifically to impede its trial observer's access to the courtroom.

Meetings undertaken

The BHRC trial observer met with officials and stakeholders, in order to obtain as wide an insight as possible into the criminal proceedings and the background thereto. Meetings were held with:

- the Maldivian Deputy Prosecutor General
- members of the prosecution team
- members of Mr Nasheed's legal defence team
- the British High Commissioner to the Maldives
- civil society representatives, including the Maldives Democracy Network, Transparency International Maldives, local lawyers and members of the press
- members of Mr Nasheed's family

Unsuccessful requests for meetings were also made to:

- the Attorney General
- the Foreign Minister⁸
- the Human Rights Commission of the Maldives

In addition, the mission made a formal, unsuccessful request to the Foreign Minister to visit Mr Nasheed in the detention centre on Dhoonidhoo Island.

While in the Maldives, the BHRC trial observer also monitored a large demonstration held in Malé on 27 February 2015, attended by thousands of people from Malé and from other islands and atolls. The demonstrators were protesting against the arrests of Mr Nasheed and Mr Mohamed Nazim, former Defence Minister in the current Maldivian government, who had also recently been arrested and charged with criminal offences. Smaller demonstrations also took place outside the People's Majlis (the Maldivian Parliament) and the Justice Building, the venue for Mr Nasheed's trial.

⁸ The current Foreign Minister is Ms Dunya Maumoon, daughter of former President Gayoom and niece of current President Yameen.

The charges

Mr Nasheed was charged with ordering the abduction of Judge Abdulla, the head of the Criminal Court in Malé, and with unlawfully holding him captive at a military training facility for over 21 days, between 16 January and 7 February 2012, contrary to section 2(b) of the Maldivian Prevention of Terrorism Act 1990 (Act No.10/1990).⁹ Section 2(b) of the Prevention of Terrorism Act lists as an act of terrorism for the purposes of the act,

“the act or the intention of kidnapping or abduction of person(s) or of taking hostage(s)”.

The penalty for breach of section 2(b) is a sentence of between ten and fifteen years or banishment, with the possibility of hard labour (sections 6(b) and (c)).¹⁰

It is alleged that Mr Nasheed, acting in his capacity as President and Commander-in-Chief of the Maldivian National Defence Force (“MNDF”), ordered MNDF officials to arrest without warrant or other lawful authority Judge Abdulla, in a military operation dubbed ‘Operation Liberty Shield’, and to detain him.¹¹ The arrest, said to have been made against Judge Abdulla on grounds of corruption and political bias in adjudicating criminal cases, was immediately declared unlawful by the Prosecutor General. However, High Court and Supreme Court orders ordering the judge’s release were ignored, as was a High Court order for the judge to be produced before a court.

Four other men were charged in relation to the same incident and prosecuted in separate trials. They are:

- **Tholhath Ibrahim Kaleyfaanu**, Defence Minister in President Nasheed’s Government; former Maldivian Democratic Party (“MDP”) party member
- **Major General Moosa Ali Jaleel**, current Defence Minister and former Chief of the MNDF
- **Commander Major Ibrahim Didi**, former MNDF Malé Area Commander and current MDP Member of Parliament
- **Colonel Mohamed Ziyad**, former MNDF Operations Director

⁹ Prevention of Terrorism Act 1990, available at: <http://www.agoffice.gov.mv/pdf/sublawe/Terrorism.pdf>

¹⁰ *Ibid.*

¹¹ Human Rights Commission of Maldives Statement: Abdulla Mohammed, Document 93, 29 April 2012, available at Annex 2(ii) of this report; Maldives Police Service Statement: Abdulla Mohamed, Document 91, 4 March 2012, available at Annex 2(i) of this report.

Historical and political background

The Maldives is an island nation in the Indian Ocean and Arabian Sea, consisting of 1,192 coral islands in an archipelago of 26 atolls. It is the planet's lowest country, with an average ground-level elevation of 1.8 metres above sea level. The Maldivian population numbers approximately 394,000 people, inhabiting just over 200 of the islands. Approximately 27% of the population lives in the island capital, Malé.¹²

The Maldives is a presidential republic, with the President as head of State, head of Government and head of the armed forces (MNDF). The President heads the executive branch and appoints the cabinet, which is approved by the unicameral People's Majlis (the Maldivian parliament). Direct elections for the President take place every five years.

The official religion of the State is Islam. Maldivian citizenship is denied by law to non-Muslims and open practice of any other religion is prohibited and may be subject to criminal sanction.¹³ The official language of the State is Dhivehi.

1965 – 2008: autocracy

Following independence from Britain in 1965, the Maldives was governed for approximately 40 years by two autocratic, authoritarian regimes, the first led by President Ibrahim Nasir until 1978 and the second, by President Maumoon Abdul Gayoom until 2008. Under the 30-year Gayoom regime, reports of human rights violations, including arbitrary arrests, detention and ill-treatment of political opponents, were widespread, and intensified following a number of failed violent coups. Mr Nasheed himself was detained and tortured and was identified as an Amnesty International prisoner of conscience in 1991.¹⁴ It was the torturing to death in prison custody of a young inmate, Mr Evan Naseem, that spelled the end of the autocracy: faced with wide-spread political unrest and international and national criticism, President Gayoom was forced to approve fundamental political reforms, including the establishment of political parties, and to allow the first ever democratic elections in the State.

¹² 'Maldives', (19 October 2014), *World Population Review*, available at: <http://worldpopulationreview.com/countries/maldives-population/>.

¹³ Article 9, The Constitution of the Republic of the Maldives (2008), available at: <http://www.majlis.gov.mv/en/wp-content/uploads/Constitution-english.pdf>. ("2008 Maldivian Constitution")

¹⁴ See, Amnesty International, *Maldives: Fear of torture/fear for safety, Mohamed Nasheed ASA 29/003/2001* (26 October 2001), available at: <https://www.amnesty.org/download/Documents/128000/asa290032001en.pdf> ("2001 Amnesty International report on Maldives")

October 2008: the first democratic elections in the Maldives

In October 2008, Mr Nasheed, head of the MDP, became the first democratically elected president of the Maldives, for a five-year term, defeating former President Gayoom in the State's first ever freely contested elections. He formed a coalition government of political parties united in their opposition to the former president.

Thereafter, President Nasheed rapidly became an internationally recognised figure for his climate change advocacy – climate change and rising sea levels posing a real and significant threat to the existence of the island nation. At home, however, partisan politics, a split parliament and a dissolving coalition served to hinder constitutional and democratic reform. Progress on reform of the judicial arm of government, perceived as essential to the establishment of a secure democracy in the Maldives, was particularly affected. Key pieces of legislation necessary to reform the judicial and legal systems, including a unified penal code, were blocked in the People's Majlis. Serious complaints continued to be made against members of the judiciary, including for corruption and bribery; however, investigations of misconduct in judicial office were blocked by Gayoom-appointed judges in the courts, as were trials of people loyal to the former president. An opposition alliance was formed in December 2011, comprising all the political parties that formerly supported Mr Nasheed in his 2008 presidential race, and major opposition protests took place in Malé against the president and his government.¹⁵

16 January 2012: the arrest of Judge Abdulla

It is against that background that Judge Abdulla was arrested by the MNDF on 16 January 2012. A government statement issued in relation to the arrest accused the judge of failing to respect the principle of judicial independence, of allowing *"his judicial decisions to be determined by political and personal affiliations and interests"* and of *"repeatedly releasing opposition figures brought before the courts for serious crimes"*.¹⁶ It further quoted the then Foreign Minister as stating that while *"[t]he government of the Maldives fully supports and will always protect judicial independence... judicial independence does not mean that judges are above the law and can behave as they see fit contrary to the laws of the land. A judge is a citizen of the Maldives no more or less important than any other citizen"*.¹⁷

No court warrant was sought or granted for Judge Abdulla's arrest or detention, leading

¹⁵ See BHRC's November 2012 Report, *supra* n1

¹⁶ 'Arrest of Abdulla Mohamed the Result of His Total Disregard for the Constitution' (17 January 2012) Ministry of Foreign Affairs, Malé News Article, available at: <http://www.foreign.gov.mv/new/tpl/news/article/216/>.

¹⁷ *Ibid.*

the Supreme Court, the Prosecutor General and the Judicial Services Commission to declare them unlawful. On 17 January 2012, the Supreme Court issued an order for Judge Abdulla's release, stating that the arrest was "not in conformity with the laws and regulations" and that "the acts of the MNDF were outside its mandatory power".¹⁸ The order was ignored, as was a High Court order for the judge to be produced before a court.¹⁹ Judge Abdulla received a number of visits in detention from representatives of the Human Rights Commission of the Maldives; however, he did not have access to legal counsel.²⁰

International bodies, including the United Nations High Commissioner for Human Rights²¹, the European Union Heads of Mission accredited to the Maldives,²² and the Australian branch of the International Commission of Jurists,²³ issued expressions of concern at Judge Abdulla's arrest and detention. The Office of the United Nations High Commissioner for Human Rights acknowledged "the challenges the Maldives faces in reforming and strengthening its judiciary", but called on the judge to be "treated with due process, meaning he should be properly charged, moved from military detention and brought before a court, or released."²⁴

The BHRC, the mandate of which is "to support and protect lawyers, judges and human rights defenders around the world who are threatened or oppressed in their work", echoes those concerns and underscores the utmost seriousness of any unlawful interference in the proper exercise by judges of their judicial functions and of any deprivation of the rights of due process to detained individuals.

¹⁸ 'Supreme Court of Maldives issues a court order on Maldives National Defense Force for arresting Criminal Court's Chief Judge Abdullah Mohamed on 16th January 2012' (17 January 2012), *Supreme Court*, available at: <http://www.supremecourt.gov.mv/eng/mediadetails.php?media=8>.

¹⁹ 'MNDF dismiss High Court order to produce Judge Abdulla Mohamed' (26 January 2012), *Minivan News*, available at <http://minivannews.com/politics/mndf-dismiss-high-court-order-to-produce-judge-abdulla-mohamed-31207#sthash.IYy4Bfql.dpbs>.

²⁰ "'HYP://minivannews.com/politics/mndf-dismiss-high-court-order-to-pr, (10 March 2012), *Minivan News*, available at: <http://minivannews.com/politics/%E2%80%9Ci-was-not-afforded-the-rights-of-the-accused%E2%80%9D-says-judge-abdulla-93197#sthash.ky2PLZIU.dpuf>; "This is the biggest sorrow for anyone: Judge Abdulla Mohamed; (5 February 2012), *Haveeru*, available at: http://www.haveeru.com.mv/hrcm_ahmed_tholal/40101.

²¹ 'Government must release Abdullah or Charge him: UN', (29 January 2012), *Haveeru online* available at: <http://www.haveeru.com.mv/news/39983>.

²² "Statement by EU Heads of Mission in Colombo", (20 January 2012), *EU Press Release* available at: http://eeas.europa.eu/delegations/sri_lanka/documents/press_corner/20120123_en.pdf.

²³ 'Maldives faces judicial crisis', (1 February 2012), *Radio Australia* available at: <http://www.radioaustralia.net.au/international/radio/onairhighlights/maldives-faces-judicial-crisis>; 'Commonwealth to provide technical assistance to help resolve Maldives' judicial crisis', (2 February 2012), *Minivan News*, available at: <http://minivannews.com/politics/commonwealth-to-provide-technical-assistance-to-resolve-maldives-judicial-crisis-31479#sthash.E1RHSQqT.dpuf>.

²⁴ 'Government must release Abdullah or Charge him: UN', *supra* n20.

7 February 2012: the resignation of President Nasheed

The detention of Judge Abdulla sparked significant anti-government demonstrations, which culminated on 7 February 2012 with the resignation from office of President Nasheed, in disputed circumstances. Mr Nasheed was later to contend, and continues to contend, that his resignation was not voluntary and that he was forced to resign at gunpoint in a police and military mutiny, which he has described as a “coup d’état”, orchestrated by his Vice President, Mohammed Waheed Hassan Manik. However, an investigation by the Commission of National Inquiry for the Maldives (“CONI”), to which both the United Nations and the Commonwealth provided legal advice, determined that there had been “*no illegal coercion or intimidation nor any coup d’état*” and that Mr Nasheed’s resignation “*was voluntary and of his own free will*”.²⁵

Judge Abdulla was released on the day of Mr Nasheed’s resignation, after more than 21 days of detention.

Vice President Mohammed Waheed of the Gaumee Itthihaad Party (“GIP”) was sworn in as president within hours of President Nasheed’s resignation. He remained in office as the unelected ‘interim’ President of the Maldives until 16 November 2013.

November 2013: the second democratic elections

The second ever democratic elections were held in the Maldives in November 2013. Mr Abdulla Yameen Abdul Gayoom, the half-brother of former President Gayoom and head of Gayoom’s Progressive Independent Party (“PIP”) was elected president for a five-year term, beating Mr Nasheed in a closely run election.

The election was mired in controversy, involving months of legal and political wrangling, allegations of vote rigging and voting day cancellations.²⁶ There were repeated interventions by the Supreme Court in the election process, including its highly controversial annulment of the first round of elections, in which Mr Nasheed had obtained a 45% majority and which national and international observers had adjudged to have been free and fair.²⁷ The United Nations High Commissioner for Human Rights recorded her “*alarm[...] that the Supreme Court of the Maldives is interfering excessively*

²⁵ ‘There was no illegal coercion or intimidation nor any coup d’état - concludes Commission of National Inquiry for the Maldives report’ (31 August 2012), *Asiantribune.com*, available at: <http://www.asiantribune.com/news/2012/08/31/there-was-no-illegal-coercion-or-intimidation-nor-any-coup-d%E2%80%99etat-concludes-maldivia>.

²⁶ ‘Maldives presidential election re-run’ (14 November 2013), *BBC News*, available at: <http://www.bbc.co.uk/news/world-asia-24942011>.

²⁷ ‘Maldives Supreme Court is subverting the democratic process – Pillay’, (30 October 2013), *UN Human Rights*, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13917&LangID=E#sthash.R3SytmuV.sWJDG3Qg.dpuf>

in the Presidential elections, and in so doing is subverting the democratic process and violating the right of Maldivians to freely elect their representatives”.²⁸ Nevertheless, the final elections, granting a majority to President Yameen, were adjudged by international observers to have been “credible” and to have “duly reflected the democratic will of the Maldivian electorate”.²⁹

February 2015: high profile arrests

Mr Nasheed’s arrest on charges of terrorism in February 2015 and his trial and that of the other four men accused of the same crime, came in the context of a perceived crackdown by the Waheed government on its political opponents, following the defection of Member of Parliament Gasim Ibrahim and his Jumooree Party from the Government’s coalition to join the MDP and other parties in opposition. Mr Nasheed’s arrest followed the earlier arrest of the then serving Defence Minister, Colonel Mohamed Nazim, a former MNDF commander, who has since been convicted on charges of weapons smuggling aimed at overthrowing the government in a military coup. His arrest preceded the trial and conviction of opposition Member of Parliament and former Speaker of the People’s Majlis, Mr Ahmed Nazim, who was sentenced to life imprisonment on corruption charges. All of the above trials have been condemned as unfair by international monitoring bodies.³⁰

The arrests, trials and convictions of President Waheed’s political opponents have led to increasing civil unrest in the Maldives, with daily protests against the government outside the Parliament building, and numerous arrests and prosecutions of protestors.³¹

²⁸ *Ibid.*

²⁹ Commonwealth Observer Group, *Maldives Presidential Elections, 7 September, 9 November and 16 November 2013* (2014), available at: <http://thecommonwealth.org/sites/default/files/press-release/documents/Maldives%20Presidential%20Election%202013%20Commonwealth%20Observer%20Group%20Report.pdf>, at 47 – 50.

³⁰ See, e.g., ‘Maldives: Assault on Civil and Political Rights’ (23 April 2015), *Amnesty International*, available at: https://www.amnesty.org.in/images/uploads/articles/FINAL_Formatted_Brief_-_Maldives%252C_Assault_on_Civil_and_Political_Rights.pdf (“Amnesty International Report on Maldives (2015)”); ‘Regular Press Briefing by the Information Service’, (1 May 2015), *UN Office at Geneva*, available at: [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/9EE63312A872A532C1257E3800522CB0?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/9EE63312A872A532C1257E3800522CB0?OpenDocument); ‘Maldives: grossly unfair Nasheed conviction highlights judicial politicization’ (26 March 2015), *International Commission of Jurists*, available at: <http://icj.wengine.netdna-cdn.com/wp-content/uploads/2015/03/Maldives-Background-Brief-Nasheed-Trial-Advocacy-Anylysis-brief-2015-ENG.pdf> (“ICJ report on Maldives (2015)”).

³¹ ‘Calls grow for President Yameen to intervene, resolve political crisis’, (29 March 2015), *Minivan News*, available at: <http://minivannews.com/politics/calls-grow-for-president-yameen-to-intervene-resolve-political-crisis-95133#sthash.adWN7e39.dpbs>; Amnesty International Report on Maldives (2015), *supra* n29 at 11 and 12.

The Maldivian legal system

The law

The Maldivian legal system as a whole is based primarily on Islamic Sharia law.

The Constitution of the Republic of the Maldives (2008) (“Maldivian Constitution”), which declares the State to be a unitary, sovereign, independent, democratic republic based on the principles of Islam, is the supreme law of the land. It enshrines fundamental rights for Maldivian citizens, including equality before the law, the right to be accorded protection under the law and to be treated according to law, the presumption of innocence until proven guilty, the prohibition of torture and the punishment under retrospective legislation, together with the freedoms of expression, assembly and association, which are all to be guaranteed “*in a manner that is not contrary to any tenet of Islam*”.³²

There are no codified laws governing legal procedures before the courts. The draft Penal Code, Evidence Act, and Codes of Civil and Criminal Procedure, have been blocked in the People’s Majlis for several years, leaving judges to rely primarily on uncodified principles of Sharia law and laws predating the 2008 constitutional reforms in adjudicating legal proceedings.

The Maldives is a party to a number of international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the United Nations Convention on the Rights of the Child (CRC), the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).³³ The rights guaranteed under those conventions, as incorporated into the Maldivian Constitution, are enforceable before Maldivian courts.

The courts

The administration of justice in the Maldives is based on a three-tier system: the lower courts, the High Court and the Supreme Court. The lower courts are comprised of approximately 200 magistrates’ courts, with limited jurisdiction, one on each inhabited island, and five specialised courts based in Malé: the Criminal Court, the Civil Court, the Family Court, the Juvenile Court and the Drug Court. There is an automatic right of appeal from the lower courts to the High Court in Malé. The Supreme Court is the final

³² Article 16, 2008 Maldivian Constitution, *supra* n12..

³³ Maldives acceded to the ICCPR on 19 September 2000 and UNCAT on 20 April 2004; and ratified CRC on 11 February 1991.

court of appeal and the highest authority on the interpretation of the Maldivian Constitution, the law and all other legal matters. It is headed by the Chief Justice of the Maldives, who is the head of the judiciary.

The Attorney General acts as the legal advisor to the Government and represents the Government in all court proceedings, with the exception of criminal proceedings, in which the Government is represented by the Prosecutor General.

The Maldivian judiciary

The general principle of the independence of the judiciary has been formally guaranteed under the Maldivian Constitution since 2008, pursuant to Article 142:

“The judges are independent, and subject only to the Constitution and the law. When deciding matters on which the Constitution or the law is silent, Judges must consider Islamic Sharia. In the performance of their judicial functions, Judges must apply the Constitution and the law impartially and without fear, favour or prejudice.”³⁴

However, serious concerns remain about the lack of independence in practice.

Appointment of judges under President Gayoom’s Autocracy

Under President Gayoom’s thirty-year autocracy, the president controlled all three branches of power, namely the executive, the legislature and the judiciary. The president wielded the highest judicial power in the State, with sole authority to nominate and dismiss all judges. Judges nominated to office were political appointees, many of whom had no secondary or tertiary schooling, much less formal legal training.³⁵

Constitutionally-mandated judicial independence and reform

The new Maldivian Constitution of 2008³⁶ provided for the separation of powers between the executive, legislative and judicial arms of the State, and formally enshrined judicial independence and impartiality into Maldivian law. It established, for the first time in Maldivian history, mandatory educational, moral and ethical standards for the appointment of judges, based on independent benchmarks rather than political patronage.³⁷ The Constitution detailed the mechanism for the appointment of an independent judiciary within two years of the adoption of the Constitution.³⁸

Central to the judicial reform process was the removal from office of unqualified judges. The suitability for office of all Gayoom-regime appointed judges was to be assessed

³⁴ 2008 Maldivian Constitution, *supra* n12.

³⁵ See, e.g., International Commission of Jurists, *Maldives: Securing an Independent Judiciary in a Time of Transition* (February 2011), available at: http://www2.ohchr.org/english/bodies/hrc/docs/ngo/ICJ_Maldives_HRC102.pdf at paras. 84 and 85.

³⁶ 2008 Maldivian Constitution, *supra* n12.

³⁷ Pursuant to Article 149, judges must: “possess the educational qualifications, experience and recognized competence necessary to discharge the duties and responsibilities of a judge and be of a high moral character”; “be a Muslim and a follower of the Sunni school of Islam”; “be [at least] 25 years of age”; [and] not [have] been convicted of an offence for which a hadd is prescribed in Islam, criminal breach of trust or bribery”. In addition, a judge appointed to the Supreme Court must be “at least 30 years” old, have “at least seven years experience as a judge or practicing lawyer or both”, and be “educated in Islamic Shari’ah or law”.

³⁸ Article 297, 2008 Maldivian Constitution, *supra* n12.

within two years of the entering into force of the Constitution, in order to determine whether they met the new mandatory requirements for judicial appointment: only those judges who met those standards were to be reappointed as judges.³⁹

Failure of judicial reform process

The official body constitutionally mandated to assess the judicial qualifications of serving judges and to oversee the reform process was the Judicial Service Commission (“JSC”) – an oversight committee with responsibility *inter alia* for the appointment of judges, the investigation of complaints concerning the judiciary and for instituting and overseeing disciplinary measures against individual judges.⁴⁰ In August 2010, amidst much controversy, the JSC confirmed almost every Gayoom-regime appointed judge, qualified or not, in office for life, finding that the constitutional provisions regarding judicial appointment were merely “symbolic”.⁴¹

Consequently, the Maldivian judiciary remains largely unchanged since the country’s transition to a constitutional democracy. The majority of judges in office, including Judge Abdulla and two of the three judges selected to hear the case against Mr Nasheed, namely Judge Abdulla Didi and Judge Abdul Bari Yoosuf, are political appointees of former President Gayoom. Many judges lack any formal training in law. Yet, as a result of the continuing failure by the People’s Majlis to pass key pieces of legislation necessary to reform the criminal legal system, including a comprehensive penal code and clear, codified rules of criminal procedure and evidence, those judges continue to wield broad, discretionary powers in their handling of criminal cases before them.⁴²

As a result, there is a broad “perception that the justice system is a remnant of the old regime, equally authoritarian, archaic and corrupt.”⁴³ The United Nations Human Rights Committee remains “deeply concerned about the state of the judiciary in the Maldives” and has called for “more serious training” and “radical readjustment” in order “to

³⁹ Article 285, 2008 Maldivian Constitution, *supra* n12

⁴⁰ Article 157, 2008 Maldivian Constitution, *supra* n12

⁴¹ ‘Judges legitimised JSC’s actions with their silence’, (28 March 2011), *Minivan News*, available at: <http://minivannews.com/society/judges-legitimised-jscs-actions-with-their-silence-17901#sthash.P5UVoqR6.9mjnRP90.dpuf>; ‘Democracy Derailed: The unconstitutional annulment of Article 285; and its’ consequences for democratic government in the Maldives.’, (9 December 2010), *Velezinee*, available at:

<http://www.velezineeishath.com/content/democracy-derailed-unconstitutional-annulment-article-285-and-its-consequences-democratic-0>

⁴² ‘Regular Press Briefing by the Information Service’, (1 May 2015), *UN Office at Geneva*, available at: [http://www.unog.ch/unog/website/news_mediansf/\(httpNewsByYear.en\)/9EE63312A872A532C1257E3800522CB0?OpenDocument](http://www.unog.ch/unog/website/news_mediansf/(httpNewsByYear.en)/9EE63312A872A532C1257E3800522CB0?OpenDocument)

⁴³ G. Knaul, Mission to Maldives: Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, UN Doc. A/HRC/23/43/Add.3, (21 May 2013), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/137/66/PDF/G1313766.pdf?OpenElement> at page 18.

guarantee just trials, and fair judgments for the people of the Maldives”.⁴⁴

Failure of judicial accountability process

The JSC has also proved largely ineffectual in its role of investigating complaints against individual members of the Maldivian judiciary and/or of instituting measures of accountability for individual judges. By way of a pertinent example, a JSC complaints committee charged in December 2009 with investigating Judge Abdulla on charges *inter alia* of corruption and bribery, failed to issue any findings,⁴⁵ following an injunction sought by, and granted to the judge by the Civil Court, preventing any further investigation of him by the JSC and/or the publication of any report concerning his conduct.⁴⁶ The continuing failure properly to investigate and/or sanction allegations of egregious, unlawful and/or unconstitutional judicial conduct, have served significantly to impede the State’s transition into a functioning constitutional democracy, with an independent, impartial and competent judiciary.

Lack of judicial independence in practice

Therefore, notwithstanding Constitutional guarantees and on-paper judicial reforms, the continuing “*many challenges to the independence of judges, prosecutors, court officials and lawyers*” which existed prior to the 2008 constitutional reforms continue to “*directly affect the delivery of justice*”.⁴⁷ The United Nations Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, has highlighted particular “*concerns about the apparent lack of transparency in the assignment of cases, as well as the constitution of benches, within all courts, including the Supreme Court*”, rendering the legal system “*vulnerable to manipulation, corruption and external pressure*”.⁴⁸ She has also highlighted the fundamental lack of understanding surrounding the principle of judicial independence amongst the judiciary itself, stating:

“I... believe that the concept of independence of the judiciary has been misconstrued and misinterpreted in the Maldives, including among judicial actors. The requirement of independence and impartiality does not aim at

⁴⁴ See, report of UNHCR proceedings by the Centre for Civil and Political Rights, *UN Human Rights Committee Tells the Maldives: Radical Changes Are Needed*, (July 2012), available at: http://www.ccprcentre.org/wp-content/uploads/2012/07/MALDIVES-7.13.12_v2.pdf

⁴⁵ *Ibid.*

⁴⁶ ‘Former Defense Minister denies charges in Hulhumalé Magistrate Court’, (19 February 2013), *Minivan News*, available at: <http://minivannews.com/politics/former-defense-minister-denies-charges-in-hulhumale-magistrate-court-53243#sthash.UpyfCuXa.dpbs>; ‘Civil Court injunction stops us taking action against Abdulla Mohamed: JSC’, (29 January 2012), *Minivan News*, available at: <http://minivannews.com/politics/civil-court-injunction-stops-us-taking-action-against-abdulla-mohamed-jsc-31282-sthash.4ji0NsHF.dpuf>.

⁴⁷ ‘Judicial Services Commission subject to “external influence”: UN Special Rapporteur’, (24 February 2013) *Minivan News*, available at: <http://minivannews.com/politics/judicial-services-commission-subject-to-external-influence-un-special-rapporteur-53576#sthash.rBrcJloX.dpuf>.

⁴⁸ *Ibid.*

benefitting the judges themselves, but rather the court users, as part of their inalienable right to a fair trial. Integrity and accountability are therefore essential elements of judicial independence and are intrinsically linked to the implementation of the rule of law. In this context the establishment of mechanisms of accountability for judges, prosecutors and court staff is imperative.”⁴⁹

The Maldivian judiciary has also continued to come under serious criticism from United Nations and other bodies for its continued interference in political affairs, its resistance to reform and its silencing of its critics. In October 2013, the Supreme Court’s annulment of the first round of presidential election results, in which Mr Nasheed had won a majority, following a legal challenge brought *inter alia* by former President Gayoom’s Progressive Party of the Maldives, and its call for a new election, was sharply criticised by the United Nations High Commissioner for Human Rights Navi Pillay:

“I am alarmed that the Supreme Court of the Maldives is interfering excessively in the Presidential elections, and in so doing is subverting the democratic process and violating the right of Maldivians to freely elect their representatives. ... I am normally the first to defend the independence of the judiciary, but this also carries responsibilities.”⁵⁰

In 2014, the Supreme Court was strongly condemned by the international community for its institution of criminal proceedings – of its own motion (“*suo moto*”) – against the five commissioners of the Human Rights Commission of the Maldives, the national human rights institution of the State.⁵¹ The Supreme Court charged the officials with “*undermining the Constitution*” and “*high treason*”, a crime carrying a penalty of life imprisonment, following the Human Rights Commission’s written submissions to the United Nations Human Rights Council for the Maldives’ second Universal Periodic Review in September 2014.⁵² The HCRM had reported that the “*functioning of the judiciary is often questionable on various grounds including independence, transparency, interference, influence, competency, consistency, and accessibility*”.⁵³ It had also reported that the Maldivian Judicial system was “*controlled and influenced by the Supreme Court, weakening judicial powers vested in other superior and lower courts.*”⁵⁴

⁴⁹ *ibid.*

⁵⁰ ‘Maldives Supreme Court is subverting the democratic process – Pillay’ (30 October 2013), *OCHR News*, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13917&LangID=E#sthash.OjNqXhOldpuf>.

⁵¹ ‘Maldives: UN ‘deeply concerned’ as Supreme Court prosecutes rights advocates’, (17 October 2014), *UN News Centre*, available at: <http://www.un.org/apps/news/story.asp?NewsID=49100-.VT0Ukbqpoll>.

⁵² ‘Supreme Court initiates suo moto proceedings against Human Rights Commission’, (22 September 2014), *Minivan News*, available at: <http://minivannews.com/politics/supreme-court-initiates-suo-moto-proceedings-against-human-rights-commission-90220#sthash.1AvqIw7q.dpbs..>

⁵³ ‘HRCM Submission to the Universal Periodic Review of the Maldives, April –May 2015 (22nd session)’, (September 2014), *Minivan News*, available at: <http://minivannews.com/files/2015/03/HRCM-UPR-Submission.pdf> at para. 6.

⁵⁴ *Ibid* at para. 8.

The history of the legal proceedings

Criminal proceedings were first instituted against Mr Nasheed in relation to Judge Abdulla's abduction in 2012, culminating in conviction in 2015. Serious concerns have been raised that the legal proceedings were a politically-motivated attempt to keep him from office and from politics in the Maldives, in circumstances where: (a) the Maldivian Constitution bars any convicted person sentenced to a prison term of 12 months or more from standing as a presidential candidate;⁵⁵ and (b) a new legal amendment passed on 30 March 2015, just 17 days after Mr Nasheed's conviction, removes the right of prisoners to participate in the activities of any political party or association or to hold party leadership positions for the duration of their incarceration.⁵⁶ It is difficult to see the latter amendment otherwise than as specifically targeted at Mr Nasheed.

The United Nations Special Rapporteur on the Independence of Judges and Lawyers has voiced serious concern at "[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".⁵⁷

However, the Maldivian Government refutes any suggestion that the case against Mr Nasheed is politically motivated, asserting that it has no influence or control over the prosecution or the proceedings.⁵⁸

Arrest and charge

Mr Nasheed was arrested and charged on 8 October 2012 with an offence contrary to Article 81 of the Penal Code for his role in the arrest and detention of Judge Abdulla. Article 81 provides:

⁵⁵ Article 109(f), 2008 Maldivian Constitution, *supra* n12

⁵⁶ Amendment to the Prison and Parole Act, Act No. 14/2013; see: 'Bill on Amendment to the Prison & Parole Act passed by Majlis', (30 March 2015), *Majlis*, available at: <http://www.majlis.gov.mv/en/2015/03/30/bill-on-amendment-to-the-prison-parole-act-passed-by-majlis/>. See further: 'Maldives passes law 'to oust ex-leader from politics'', (31 March 2015), *Aljazeera*, available at: <http://www.aljazeera.com/news/2015/03/maldives-passes-law-oust-leader-politics-150331003043123.html>; 'Maldives Passes Law to Bar Nasheed From MDP Membership', (31 March 2015), *Indian Express*, available at: <http://www.newindianexpress.com/world/Maldives-Passes-Law-to-Bar-Nasheed-From-MDP-Membership/2015/03/31/article2739866.ece>.

⁵⁷ 'Maldives: "No democracy is possible without fair and independent justice," UN rights expert', (19 March 2015), *UNHR News*, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15725&LangID=E#sthash.089gArxr.dpuf>

⁵⁸ 'Q&A: the Sentencing of Former President Nasheed', (15 March 2015), *Maldives High Commission, London*, available at: <http://www.maldiveshighcommission.org/news/statements/item/692-q-a-sentencing-of-former-president-nasheed> and Open Letter to Lord Alton of Liverpool', (27 March 2015), *Maldives High Commission, London*, available at: <http://www.maldiveshighcommission.org/news/statements/item/706-open-letter-to-lord-alton-of-liverpool> (see Annexes 4 and 5 of this report).

“It shall be an offence for any public servant to use the authority of his office to intentionally arrest or detain any innocent person in a manner contrary to law. A person guilty of this offence shall be punished with exile or imprisonment for a period not exceeding 3 years or a fine not exceeding Mvf. 2,000.00.”⁵⁹

Former Defense Minister Tholhath, retired Major General Jaleel, retired Brigadier General Didi and Colonel Ziyad were also charged with the same offence. The five men have been prosecuted individually in five distinct criminal proceedings, rather than jointly as co-defendants in a single trial.

Proceedings before the Hulhumalé Magistrates’ Court

Proceedings against Mr Nasheed were initiated in the Magistrates’ Court on the island of Hulhumalé, near Malé, on 4 November 2012. The case began with a number of unsuccessful preliminary challenges by Mr Nasheed’s legal team before the High Court, including to the legitimacy of the Hulhumalé Magistrates’ Court (rather than the Criminal Court in Malé) – as a venue for the proceedings, and to the constitution of the appointed bench.⁶⁰ The criminal proceedings were stayed by the High Court on 1 April 2013, pending the outcome of the preliminary challenges. The proceedings before the High Court were also stayed in practice for nearly two years, during which time Mr Nasheed contested the 2013 elections unsuccessfully. They resumed at the beginning of February 2015, following a notice issued by the High Court.

Withdrawal of original charges

On 16 February 2015, shortly after the resumption of the High Court challenge to the legitimacy of the Hulhumalé Magistrates’ Court, the Prosecutor General, without prior notice, withdrew the charges against Mr Nasheed and the four others charged in relation to Judge Abdulla’s abduction.⁶¹

Re-arrest on new terrorism charges

Six days later, on 22 February 2015, at approximately 2:30 pm, Mr Nasheed was suddenly arrested from his home, without warning, and taken into detention on fresh charges of terrorism, relating to the abduction of Judge Abdulla.⁶² The four other men previously charged in relation to the same event, namely Messrs Tholhath, Jaleel, Didi and

⁵⁹ Penal Code of the Maldives, available at: <http://agoffice.gov.mv/pdf/sublawe/PC3.pdf>

⁶⁰ See BHRC’s November 2012 Report and February 2013 Report, *supra* n1.

⁶¹ ‘Prosecutor General Withdraws Charges against Nasheed’, (18 February 2015), *Quills*, available at: <http://quillads.com/maldives/prosecutor-general-withdraws-charges-nasheed/>.

⁶² ‘Maldives ex-leader Nasheed arrested on terror charges’, (22 February 2015), *BBC News*, available at: <http://www.bbc.co.uk/news/world-south-asia-31575279>.

Ziyad, were also charged with terrorism, although none of them was detained in custody.

Arraignment in the Central Criminal Court in Malé

Mr Nasheed was produced before the Central Criminal Court in Malé the following day, on 23 February 2015, at approximately 4:00 pm, for the first hearing in the criminal case against him. The three-judge judicial panel was composed of Judge Abdulla Didi, the Deputy Chief Judge at the Criminal Court in Malé (presiding), Judge Abdul Bari Yoosuf and Judge Sujau Usman. Mr Nasheed appeared in court, unrepresented. Press reports recorded that his glasses were missing, his shirt buttons were torn and his arm was in a make-shift sling.⁶³ He complained of having been manhandled and dragged into court by the police, seeking to prevent him from speaking to reporters outside the court.⁶⁴ The police claimed that he had fallen to the ground deliberately as a political stunt.⁶⁵ His requests for the hearing to be adjourned immediately so that he could seek medical treatment were denied.⁶⁶

Proceedings in the case were adjourned for three days for Mr Nasheed to appoint lawyers and to prepare his case.⁶⁷

Mr Nasheed was denied bail on the basis that he had attempted to abscond during the course of proceedings against him in the Hulhumalé Magistrates' Court. The claim appeared to relate to Mr Nasheed's alleged failure to present himself at the Hulhumalé Magistrates' Court on one occasion and to his attempt to seek refuge at the Indian High Commission in Malé for 12 days during the course of the Hulhumalé Magistrates' Court trial. Mr Nasheed denied ever having attempted to flee the jurisdiction of the criminal courts and denied any intention to abscond.⁶⁸

⁶³ 'India 'Concerned' Over Arrest, Manhandling of Maldives President', (24 February 2015), *Indian Express*, available at: <http://www.newindianexpress.com/nation/India-Concerned-Over-Arrest-Manhandling-of-Maldives-President/2015/02/24/article2683689.ece>; 'Former President Nasheed appears in court with arm in makeshift sling', (24 February 2015), *Asian Tribune*, available at: <http://www.asiantribune.com/node/86465>.

⁶⁴ 'Former Maldives President Dragged Into Court by Police', (23 February 2015), *The New York Times*, available at: <http://www.nytimes.com/aponline/2015/02/23/world/asia/ap-as-maldives-former-president-arrested.html>.

⁶⁵ *Ibid.*

⁶⁶ Amnesty International Public Statement, *MALDIVES: FORMER PRESIDENT MOHAMED NASHEED ILL-TREATED AFTER ARREST, DENIED MEDICAL TREATMENT AND LEGAL REPRESENTATION*, (3 March 2015), ASA 29/1114/2015, available at: <https://www.amnesty.org/download/Documents/ASA2911142015ENGLISH.pdf>.

⁶⁷ 'EU, UN join international chorus of concern over Nasheed ENGLISH.pdf5 ENGLISH.pdf' AL TREATMENT AND LEGAL R *Minivan News*, available at: <http://minivannews.com/politics/eu-un-join-international-chorus-of-concern-over-nasheed-s-arrest-terrorism-trial-92965-sthash.kwUwNqav.dpuf>

⁶⁸ 'Nasheed denied right to appoint lawyer and appeal "arbitrary" arrest warrant, contend lawyers', (23 February 2015), *Minivan News*, available at: <http://minivannews.com/politics/nasheed-denied-right-to-appoint-lawyer-and-appeal-arbitrary-arrest-warrant-contend-lawyers-92928#sthash.2hKXDRCH.wfiGMxw1.dpbs>.

Criminal trial

Mr Nasheed's trial lasted for 18 days, from arraignment to sentencing, with the Criminal Court sitting late at night, after 8:00 pm, for two to three hours on 26 February and 2, 4, 5, 7 8, 9, 10 and 13 March 2015.

The first two hearings post-arraignment were concerned with preliminary matters. The BHRC's observer attended one of those hearings, on 2 March 2015, at which the Defence's unsuccessful application for two of the three judges to recuse themselves on grounds of lack of independence and impartiality was heard. Further Defence challenges to the lawfulness of the laying of new charges by the Prosecutor General – who was himself a witness to Judge Abdulla's arrest – and to Mr Nasheed's ongoing detention were also rejected by the Court on the same day.

The Court began to hear prosecution evidence on 4 March 2015, after the conclusion of the Mission. It handed down its guilty verdict and sentence late at night on 13 March 2015, after the final hearing in the case on the same evening.⁶⁹

⁶⁹ 'Ex-Maldives President sentenced to 13 years in prison', (14 March 2015), *Daily Mirror.lk*, available at: <http://www.dailymirror.lk/66429/ex-maldives-president-sentenced-to-13-years-in-prison-sthash.VjzQdANi.dpuf>

The timeline of proceedings

- 16.01.12: Arrest of Judge Abdulla
- 15.07.12: Criminal charges of abduction and abuse of office filed against Mr Nasheed
- 01.10.12: Trial adjourned due to non-attendance of Defendant
- 07.10.12: Arrest of Mr Nasheed
- 09.10.12: Arraignment of Mr Nasheed before the Hulhumalé Magistrates' Court, followed by months' of procedural challenges before the High Court to the legitimacy of the Hulhumalé Magistrates' Court and its bench
 - [03.11.12 – 06.11.12: 1st BHRC legal observation mission]
 - [01.02.13 – 07.02.13: 2nd BHRC legal observation mission]
- 01.04.13: Stay of criminal trial by the High Court pending resolution of procedural challenges; effective stay of High Court proceedings
 - [07.09.13 – 16.11.13: elections]
- 28.01.15: Defence team informed that Mr Nasheed's procedural challenge was to resume at the High Court, after a hiatus of a year and nine months
- 3.02.15 – 9.02.15: Proceedings before the High Court
- 17.02.15: Original criminal charges against Mr Nasheed withdrawn
- 22.02.15: Re-arrest of Mr Nasheed on terrorism charges
- 23.02.15: First Criminal Court hearing – arraignment
- 26.02.15: [3rd BHRC legal observation mission arrives in the Maldives]
 - Second hearing –procedural matters
- 02.03.15: Third hearing –procedural matters – attended by BHRC
- 04.03.15: Fourth hearing – prosecution witness evidence (Shakir/Jamsheed)
- 05.03.15: [3rd BHRC legal observation mission leaves the Maldives]
 - Fifth hearing – prosecution witness evidence (Shiyam/Shahid/Zeena)
- 07.03.15: Sixth hearing – prosecution witness evidence (Yoosuf/S. Shareef/A. Shareef)
- 08.03.15: [Defence team alert Court that they will not be attending evening hearing]
 - Seventh hearing (short 1 hour hearing due to non-attendance of Defence team) – prosecution evidence (multimedia and other)
- 09.03.15: [Defence team recuse themselves]
 - Eighth hearing – prosecution evidence (multimedia and other)
- 10.03.15: Ninth hearing – further witness evidence (Judge Abdulla)
- 13.03.15: (20:30 pm) Tenth hearing – closing statements
 - (23:00 pm) Eleventh hearing – verdict and sentencing

The Prosecution evidence

The Prosecution's case against Mr Nasheed was based on testamentary and documentary evidence and on video and audio footage, which the Prosecution contended established beyond reasonable doubt (1) that Mr Nasheed had ordered Judge Abdulla's arrest, (2) the MNDF had carried out his arrest and detention, and (3) the judge had been detained at the military training centre on Girifushi Island.

Prosecution witnesses

During the course of the trial, the prosecution called eight witnesses. They included three army officers, two police officers and two members of Judge Abdulla's family. They were:

- **Ahmed Shakir**, Maldivian Police Service ("MPS")
- **Abdulla Mannaan Yoosuf**, former Chief Superintendent of the MPS
- **Ahmed Shiyam**, Chief of MNDF
- **Ali Shahid**, Commander of MNDF's Medical Services
- **Aishath Zeena**, MNDF Psychologist
- **Mohamed Jamsheed**, Chief Inspector of Police (MPS)
- **Sobira Shareef**, Judge Abdulla's sister-in-law
- **Aminath Shareef**, Judge Abdulla's wife

The latter two witnesses, Mses Sobira and Aminath Shareef, gave evidence via video-link from outside the courtroom. The Prosecution determined not to call a number of other witnesses, originally identified to the Court as prosecution witnesses, on the asserted basis that the above seven witnesses established Mr Nasheed's guilt beyond reasonable doubt.

The following pages set out the nature of the evidence given by the Prosecution witnesses, as reported in the local English-language and international press. The dates on which they testified are given in brackets. All prosecution witnesses were examined and cross-examined by the legal teams for the Prosecution and Defence.

Ahmed Shakir (4 March 2015)

Ahmed Shakir was the Police Station Inspector of Laamu and Thaa Atoll at the time of Judge Abdulla's arrest. He testified that he had learned of Judge Abdulla's arrest during the course of a meeting with then President Nasheed and senior police officials. He testified to having heard Mr Nasheed state that Judge Abdulla was destroying the criminal justice system, and undermining JSC by disobeying its orders, and that he would ensure that he "would bar him from within 100 feet of the courthouse" during his presidency.⁷⁰ However, he also testified that he had not heard or otherwise witnessed Mr Nasheed issuing any arrest order, and had seen no official documents linking Mr Nasheed to any such order.⁷¹

Mohamed Jamsheed (4 March 2015)

Mohamed Jamsheed, Chief Inspector of the MPS, told the Court that he had also attended a meeting between then President Nasheed and senior police officers, at which he had been made aware of Judge Abdulla's arrest.⁷² He further testified that Mr Nasheed had stated that the judge needed to be "isolated".⁷³

Ahmed Shiyam (5 March 2015)

Major General Shiyam, current Chief of the MNDF, testified that at a meeting following Judge Abdulla's arrest between senior MNDF officers, former President Nasheed and former Defence Minister Tholhath, President Nasheed had assured the officers that the military would not have to bear responsibility for the judge's detention. Rather, President Nasheed said that he himself would bear personal responsibility. Defence Minister Tholhath had given a similar assurance.⁷⁴

Ali Shahid (5 March 2015)

Dr Ali Shahid, the Commander of MNDF's Medical Services, testified that he had been assigned as Judge Abdulla's doctor during the course of his detention on the military

⁷⁰ 'Nasheed contests credibility of police and military witnesses at terrorism trial', (5 March 2015) *Minivan News*, available at: <http://minivannews.com/politics/nasheed-contests-credibility-of-police-and-military-witnesses-in-terrorism-trial-93106#sthash.TyNVgaAu.dpuf>.

⁷¹ 'Two policemen testify in Nasheed's trial hearing', (4 March 2015), *VNews*, available at: <http://www.vnews.mv/38788>. 'Never heard Nasheed issuing an order to arrest Judge Abdulla: witnesses', (5 March 2015), *Raajje*, available at: <https://raajje.mv/34922>.

⁷² 'Two policemen testify in Nasheed's trial hearing', (4 March 2015), *VNews*, available at: <http://www.vnews.mv/38788>.

⁷³ 'Never heard Nasheed issuing an order to arrest Judge Abdulla: witnesses', (5 March 2015), *Raajje*, available at: <https://raajje.mv/34922>. 'Nasheed contests credibility of police and military witnesses at terrorism trial', (5 March 2015) *Minivan News*, available at: <http://minivannews.com/politics/nasheed-contests-credibility-of-police-and-military-witnesses-in-terrorism-trial-93106#sthash.TyNVgaAu.dpuf>.

⁷⁴ 'Chief of Defense Forces testifies in Nasheed, Tholhath terrorism trials', (8 March 2015), *Minivan News*, available at: <http://minivannews.com/politics/chief-of-defense-forces-testifies-in-nasheed-tholhath-terrorism-trials-93121#sthash.KoUel0Wu.evt0GxPS.dpuf>.

training island Girifushi. He testified that he had met with the judge several times a day, and had observed that he was under military watch. He further testified that Messrs Tholhath, Didi and Ziyad called him regularly to monitor Judge Abdulla's well-being.⁷⁵

Aishath Zeena (5 March 2015)

Warrant Officer, Aishath Zeena, an MNDF psychologist, testified to the fact that Judge Abdulla had been taken to and detained on the military training island, Girifushi.⁷⁶ She also gave evidence regarding the judge's health during the course of his detention.⁷⁷

Abdul Mannaan Yoosuf (7 March 2015)

Chief Superintendent of Police, Abdul Mannaan Yoosuf, gave evidence regarding a meeting between former President Nasheed and various senior police officers, including himself, at which he testified that then President Nasheed had stated that Judge Abdulla would not be released, and that he would not be allowed to go within 100 feet of the court.⁷⁸ However, he stated that he had not been given any order by Mr Nasheed to arrest the judge and that he had not heard him issuing any such order to any other officer.⁷⁹ His evidence was challenged by the Defence on the grounds of lack of partiality: the Defence asserted that Mr Abdul had been involved in bringing about the end of Mr Nasheed's presidency in 2012, had been promoted to the rank of Chief Superintendent as a result of his involvement, and had a personal grudge against the former president.⁸⁰

Sobira Shareef (7 March 2015)

Sobira Shareef, Judge Abdulla's sister in law, gave evidence about the judge's physical arrest, which she witnessed. She said that MNDF officers, with their faces covered, had arrested Judge Abdulla from his home on the evening of 16 January 2012. She said that the MNDF had been asked to return with an arrest warrant, but instead had arrested the judge without any such warrant.⁸¹

⁷⁵ *Ibid.*

⁷⁶ 'Shiyam testifies "Nasheed said he will take full responsibility of detaining the Judge"', (6 March 2015), Minivan News, available at: <http://www.vaguthu.mv/en/10450-sthash.jvfErGlo.dpuf>.

⁷⁷ 'Nasheed agreed to take full responsibility for Judge Abdulla's detention - Shiyam', (5 March 2015), *Raajje*, available at: <https://raajje.mv/34960>.

⁷⁸ 'Witnesses: Officers who arrested Judge Abdulla did not specify a reason', (8 March 2015), *Sun.mv*, available at: <http://www.sun.mv/english/28221>.

⁷⁹ 'Trial moving forward like a charade of fireworks: President Nasheed', (8 March 2015), *Raajje*, available at: <https://raajje.mv/35066>.

⁸⁰ 'Judge Abdulla's wife testifies in Nasheed trial', (7 March 2015), *VNews*, available at: <http://vnews.mv/39004>.

⁸¹ 'Judge Abdulla's wife testifies in Nasheed trial', (7 March 2015), *VNews*, available at: <http://vnews.mv/39004>.

Aminath Shareef (7 March 2015)

Aminath Shareef, Judge Abdulla's wife, gave a similar account of her husband's arrest as her sister. She further testified that MNDF officers had used considerable force in apprehending her husband, causing him injury, despite his not resisting arrest.⁸²

Video and audio evidence

The Prosecution also relied on a video of Judge Abdulla's arrest, an audio recording of a speech made by Mr Nasheed at a meeting with senior police officers, footage of a public speech made in January 2012, at which Mr Nasheed is said to assert that Judge Abdulla should be arrested, and footage of a public speech made on 22 February 2012, in which Mr Nasheed explains the circumstances of the arrest. The English language translation of the latter speech is appended to this report.⁸³

Documentary evidence

Documents relied upon by the Prosecution included the High Court and Supreme Court orders, ordering Judge Abdulla's release and production before the court, extracts from the MNDF's Operation Liberty Shield daily report and the MDNF statement issued concerning Judge Abdulla's arrest.

⁸² *Ibid*; "Judge Abdulla Mohamed arrested against his will' says family', (8 March 2015), *Haveeru Online*, available at: <http://www.haveeru.com.mv/news/59527>; 'Judge's wife testifies against Nasheed' says judge was 'dragged out of home'', (8 March 2015), *Vaguthu.mv*, available at: <http://www.vaguthu.mv/en/10740>.

⁸³ 'Translation of President Nasheed's Speech at Artificial Beach on 22 January 2012', Document 281, available at Annex 2(iii) of this report.

Witness called by the Court

On 10 March 2015, the Court called Judge Abdulla to testify. The Prosecution had previously informed the Court that it did not need to rely on the testimony of the judge, having already proven its case beyond reasonable doubt.⁸⁴ Judge Abdulla was questioned by presiding Judge Didi. Both the Prosecution and Mr Nasheed were also given the opportunity to question the judge: the Prosecution declined, stating they had no questions for him; Mr Nasheed – who was unrepresented at the hearing, his lawyers having recused themselves on 9 March 2015, on grounds that they had had inadequate time to prepare his defence⁸⁵ – also declined to question the judge, reiterating his request that he be allowed to appoint legal representatives.⁸⁶

Judge Abdulla Mohamed

Judge Abdulla testified that he had been taken from his home by force, without court warrant, to an unknown location, where he was detained, sustaining injuries in the process. He stated that he had not been told that he was being detained on the orders of then President Nasheed, but had “assumed” that to be the case: as far as he was concerned, Mr Nasheed, as President and head of the MNDF, had to take responsibility for his arrest and detention.⁸⁷ He claimed that he had never been made aware of the reason for his arrest and remained so unaware.⁸⁸

⁸⁴ ‘Court schedules closing statements of Nasheed Trial for Friday’, (10 March 2015), *Raajje*, available at: <https://raajje.mv/35221>.

⁸⁵ See further ‘The right to legal assistance’ at pp. 49 – 50 below.

⁸⁶ *Ibid.*

⁸⁷ ‘“Nasheed responsible for my arrest; the then Ministers confirm it” – Abdulla Gaazee’, (10 March 2015), *Vaguthu*, available at: <http://www.vaguthu.mv/en/11178>; ‘President at the time responsible for my arrest: Judge Abdulla’, (10 March 2015), *Haveeru*, available at: <http://www.haveeru.com.mv/news/59582>

⁸⁸ ‘“I was not afforded the rights of the accused,” says Judge Abdulla’, (10 March 2015), *Minivan News*, available at: <http://minivannews.com/politics/%E2%80%9Ci-was-not-afforded-the-rights-of-the-accused%E2%80%9D-says-judge-abdulla-93197#sthash.iiuoybum.ZKyHQ6v2.dpuf>.

The Defence evidence

Mr Nasheed pleaded not guilty to the charges of terrorism. He denies having ordered or approved Judge Abdulla's arrest or having been informed in advance that the judge was to be arrested.

Mr Nasheed sought to call the following witnesses in his defence, but was refused permission to do so by the Court, on the stated basis that the witnesses' testimony was not capable of "negating" the Prosecution evidence:⁸⁹

- **Hassan Afeef**, former Home Minister in President Nasheed's government
- **Mohamed Jinah**, former Head of Drug Enforcement Unit, Maldives Police Service
- **Ahmed Mausoom**, former Chief of Staff, the Office of the President
- **Muhuthaz Muhusin**, current Prosecutor General and alleged witness to Judge Abdulla's arrest

At the close of the trial on 13 March 2015, Mr Nasheed made a lengthy statement in his defence, having been refused the opportunity to call witnesses and his lawyers having recused themselves. Mr Nasheed submitted that the trial proceedings had been unfair, and had deprived him of his due process rights arising under the Maldivian Constitution, before setting out his defence, as follows:

"I received continuous complaints from my Home Minister and the Commissioner of Police regarding the Chief Judge of the Criminal Court Abdulla Mohamed. Numerous complaints were also filed by the general public. [...]

The last complaint I received concerned a very tragic incident. It was the reported incident of Judge Abdulla releasing a murder suspect from police custody as the IGM Hospital had not submitted a document pertinent to the case, who subsequently went on to commit another murder. The police and Home Minister perceived this incident as a direct contract killing... I was informed that when the man was released from police custody, he was being detained as a suspect in a previous murder investigation. There was no way for the police to arrest him after Judge Abdulla released him. He went on to stab another man, committing another murder. Since suspects in other murder cases had been kept in custody till the end of their trials, the police service felt that the person in this case was released for that very purpose and informed me of such. [...]

I was elected in the hope that Maldivians would no longer have to beg for

⁸⁹ 'Court schedules closing statements of Nasheed Trial for Friday', (10 March 2015), *Raajje*, available at: <https://raajje.mv/35221..>

medical expenses or text books, that they will have employment opportunities, an adequate income and housing and to fulfil their hopes of living in a peaceful environment, leading lives of dignity. According to police intelligence, certain judges were denying them this hope and involving themselves in contract killings. As the President, this was not something I could overlook.

Therefore, I requested the police service investigate the case of Judge Abdulla.

Under no circumstances did I instruct the Commissioner of Police to do so in violation of the law and regulations. Only to do it in accordance with the laws of Maldives. Once the President of the Maldives issues an order to a relevant authority, it is their duty to comply in accordance with the law.... Everything relating to Judge Abdullah proceeded as I have mentioned. I have never ordered anyone to do anything that contravenes the law. After the police failed to summon Judge Abdulla for questioning, in continuing the investigation as far as possible without questioning him, the police found that Judge Abdullah constituted a threat to national security. When informed of this, I ordered the Home Minister to take all measures necessary to safeguard the nation from this threat. I did not give directions at any time to any party, to complete a specific task in a specific manner or to take any specific measures.

I never made a decision to take Judge Abdulla anywhere by force. And I have never given any order to that effect. When any issue relating to Judge Abdullah was brought before me, I always informed the relevant state authorities to take measures in accordance with the law. I sent some of the cases to the Judicial Service Commission and some to the Police. This is clearly evident from the documents of the Judicial Service Commission, the Maldives Police Service and the President's Office.”⁹⁰

The translation of the full statement made by Mr Nasheed has been appended to this report.⁹¹

⁹⁰ “The Closing Statement prepared by President Nasheed for submission at his trial where he was charged with terrorism by the State (Translation)”, 17 March 2015), Raees Nasheed, available at: <http://raeesnasheed.com/archives/25236>.

⁹¹ See Annex 3 of this report.

Verdicts and sentences

Since the conclusion of the BHRC's trial observation, verdicts have been passed and sentences handed down in Mr Nasheed's case and in three of the linked cases. Proceedings are outstanding in the fourth linked case.

Mohammed Nasheed

On 13 March 2015, Mr Nasheed was convicted on charges of terrorism for having ordered the abduction and detention of Judge Abdullah in 2012, during his term as President of the Maldives. The court ruled that the Prosecution had proven beyond reasonable doubt that Mr Nasheed had ordered Judge Abdulla's "forceful abduction" and that he was the "architect" of the plan. Judge Didi ruled that Judge Abdulla's detention on Girifushi Island had been unlawful and unconstitutional and that the judge had been held in defiance of orders from the Criminal Court, High Court and Supreme Court to release him.⁹²

Mr Nasheed was sentenced to 13 years in prison.

Tholath Ibrahim

On 10 April, Tholath Ibrahim, Defence Minister in former President Nasheed's government, was convicted on charges of terrorism, the Court having determined that he conspired with Mr Nasheed unlawfully to arrest Judge Abdullah and aided in his unlawful detention. The court determined that testimonial evidence heard from a number of senior military officials and Mr Ibrahim's own testimonial evidence, given during the course of proceedings in the Hulhumalé Magistrates' Court, established his responsibility for and role in the arrest and detention operation. They also determined that Mr Ibrahim had wilfully defied court orders demanding Judge Abdullah's immediate release. Mr Ibrahim had himself denied responsibility for the arrest and detention, instead accusing Mr Nasheed and Mr Didi of having respectively ordered and carried out the arrest.⁹³

He was sentenced to 10 years in prison.

⁹² 'Former President Nasheed found guilty of terrorism, sentenced to 13 years in prison', *Minivan News*, available at: <http://minivannews.com/politics/former-president-nasheed-found-guilty-of-terrorism-sentenced-to-13-years-in-prison-93263#sthash.u8C6RCUZ.dpuf>.

⁹³ 'Former Maldivian defence minister jailed for 10 years', (11 April 2015), *Deccan Chronicle*, available at: <http://www.deccanchronicle.com/150411/world-asia/article/former-maldivian-defence-minister-jailed-10-years>.

Moosa Ali Jaleel

On 8 April 2015, Moosa Jaleel, the current Defence Minister, was acquitted on charges of terrorism, the Court having found that there was insufficient evidence to convict. The Court determined in particular that there was no evidence that Mr Jaleel, Chief of the MNDF at the time of the judge's arrest, had ordered the MNDF to undertake the arrest or detention. At trial, Mr Jaleel testified that he had had no role in the planning or execution of the arrest operation or detention, his position as Chief of the MNDF having been reduced to a mere ceremonial role. Witnesses called by the defence further denied having received any order from Mr Jaleel in relation to the arrest.⁹⁴

Mohamed Ziyad

On 10 April, Colonel Mohamed Ziyad was acquitted on charges of terrorism, the Court having found that the Prosecution had failed to prove that he had intended unlawfully to arrest the judge. The Court accepted his defence that he had been following the orders of his senior operation commanders, including Defence Minister Ibrahim, as he had been duty bound to do, and had not been in a position to issue independent orders himself.⁹⁵

Ibrahim Didi

Ibrahim Didi, a current MDP opposition member of parliament, was the MNDF Area commander for Malé in 2012. It was alleged by the Prosecution that he was responsible for carrying out the arrest and detention operation, on the orders of then President Nasheed and then Defence Minister Ibrahim. He suffered a suspected heart attack in February 2015, after the initiation of proceedings against him, requiring intensive care treatment. The proceedings against him have been stayed while he receives further treatment abroad.⁹⁶

⁹⁴ 'Defense Minister Moosa Ali Jaleel acquitted from terrorism charges', (9 April 2015), *Haveeru Online*, available at: <http://www.haveeru.com.mv/news/60066>; 'Defence minister acquitted of terrorism'efence minister ac*Minivan News*, available at: <http://minivannews.com/politics/defence-minister-acquitted-of-terrorism-95957#sthash.hIGqot2x.dpbs>.

⁹⁵ 'Ziyad walks free from court with "found not guilty" verdict', (11 April 2015), *Vaguthu.mv*, available at: <http://www.vaguthu.mv/en/13567>; 'Criminal Court convicts Tholhath, acquits Ziyad', (11 April 2015), *Raajje.mv*, available at: <https://raajje.mv/37151>.

⁹⁶ 'MP Didi flown overseas for medical treatment', (9 March 2015), *Minivan News*, available at: <http://minivannews.com/news-in-brief/mp-didi-flown-overseas-for-medical-treatment-93156#sthash.1uk4D9UW.dpbs>; 'Defence minister acquitted of terrorism', (9 April 2015), *Minivan News*, available at: <http://minivannews.com/politics/defence-minister-acquitted-of-terrorism-95957#sthash.124Fi3eA.OxsqMKO2.dpbs>.

Compliance of the proceedings with international fair trial standards

The international legal standards applicable to the Maldives are set out in Article 14 of the International Covenant on Civil and Political Rights 1966 (ICCPR),⁹⁷ to which the Maldives is a party⁹⁸. Fair trial and due process rights are also enshrined in the Maldivian Constitution, including the right to a fair, public, independent, impartial and transparent hearing (Article 42), the right to adequate time and facilities to prepare a defence (Article 51), the right to legal counsel (Article 52) and the right to appeal (Article 56).⁹⁹

This section of the report assesses the compliance of the proceedings against Mr Nasheed with the following rights and guarantees arising under Article 14:

1. the right to an independent, impartial and competent tribunal
2. the right to a public hearing
3. the right to adequate time and facilities to prepare one's defence
4. the right to be tried without undue delay
5. the right to be represented by legal counsel
6. the right to call witnesses
7. the right to appeal

The compliance of the proceedings with other due process rights has not been considered for the purpose of this report.

⁹⁷ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>.

⁹⁸ Ratification status for Maldives, *UNHR*, available at:

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=106&Lang=EN

⁹⁹ 2008 Maldivian Constitution, *supra* n12

1. The right to an independent, impartial and competent tribunal

Article 14 (1) ICCPR

“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... hearing by a competent, independent and impartial tribunal established by law.”

The right to an independent, impartial and competent tribunal is an absolute right that may suffer no exception. Independence presupposes a separation of powers pursuant to which the judiciary is institutionally protected from undue influence from the executive and legislative branches of government, as well as from other powerful figures or social groups, including political parties. The independence of courts and judicial officers must be guaranteed by the constitution, laws and policies of a country as well as being respected in practice by the government, its agencies and authorities, the legislature and the judiciary itself, in order to prevent abuses of power. Practical safeguards of independence, as set out in the Basic Principles on the Independence of the Judiciary,¹⁰⁰ include the specification of qualifications necessary for judicial appointment, the need for guaranteed tenure, the requirement of efficient, fair and independent disciplinary proceedings regarding judges, and the duty of every State to provide adequate training to enable the judiciary to properly perform its functions.

Impartiality means that tribunals, courts and judges should have no interest or stake in the specific case they are examining, should hold no preconceived views about the matter they are dealing with and should refrain from acting in ways that promote the interests of any of the parties. It can properly be understood as the absence of bias, animosity or sympathy towards any of the parties. It has two elements, underscoring the fact that it is not sufficient for courts and judges to actually be impartial; they must also be seen to be so. First, judges must not allow their judgement to be influenced by personal or political bias or prejudice; they must not harbour preconceptions about the particular case before them; and they must not act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial and unbiased, in order to maintain

¹⁰⁰ UN Congress on the Prevention of Crime and the Treatment of Offenders (7th) ‘Basic Principles on the Independence of the Judiciary’ (26 August–6 September 1985) UN Doc A/CONF.121/22/Rev.1, 58, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>. The Principles have been endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. The principles were formulated to assist states in their task of securing and promoting the independence of their judiciary.

public confidence in the judicial system.¹⁰¹ This is often expressed in the form of the maxim that ‘justice must not only be done; it must also be seen to be done’. There is an unacceptable appearance of bias (i) if “a judge is party to the case, or has a financial or proprietary interest in the outcome of a case, or if the Judge’s decision will lead to the promotion of a cause in which he or she is involved”, or (ii) if “the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias”; i.e., “there should also be nothing in the surrounding circumstances which objectively gives rise to an appearance or a reasonable apprehension of bias”.¹⁰²

Impartiality requires that the assignment of cases to individual judges within a Court be random or based on predetermined, clear and objective criteria, and free from political interference or from the interference of any party to a case or anyone otherwise interested in its outcome.

Facts

General fundamental concerns regarding the independence and competence of the Maldivian judiciary as a whole are set out at pages 17 to 20 above.

In relation to Mr Nasheed’s trial, particular concerns were raised regarding the fact that the proceedings were being heard in the Criminal Court in Malé, of which Judge Abdulla remains the Chief Justice, and over which he continues to wield considerable influence. Although Judge Abdulla was officially on leave from his duties for the duration of the trial, those attending Court asserted that he was still regularly present in the Court buildings, and a person identified as Judge Abdulla was pointed out to the BHRC observer on her attendance at Court to secure tickets for trial.

Further serious concerns were raised concerning the composition of the bench empaneled to hear Mr Nasheed’s case. The Criminal Court in Malé has nine sitting judges, all but three of whom are Gayoom-era political appointees who were in office at the Criminal Court at the time of Judge Abdulla’s arrest. It is unclear how, by whom, and through what process the bench appointed to try Mr Nasheed was selected.

What is clear, however, is that two of the three judges empanelled to hear the case – namely, Judge Didi, the Deputy Chief Judge at the Criminal Court in Malé (presiding), and Judge Yoosuf – gave statements to the police regarding the judge’s arrest and were named as witnesses for the Prosecution in the original criminal proceedings before the

¹⁰¹ Communication No. 387/1989, *Karttunen v. Finland*, U.N. Doc. CCPR/C/46/D/387/1989 (1992), (23 October 1992), available at: <http://www1.umn.edu/humanrts/undocs/html/dec387.htm>, at para. 7.2.

¹⁰² As determined by the International Criminal Tribunal for the former Yugoslavia in *Prosecutor v. Furundžija*, Case No. IT-95-17/1-A, Judgement, (21 July 2000), available at: <http://www.icty.org/x/cases/furundzija/acjug/en/fur-aj000721e.pdf> at paras. 189-190.

Hulhumalé Magistrates' Court.¹⁰³ The Defence asserts that Judges Didi and Yoosuf attended Judge Abdulla's house on the evening of his arrest and were witnesses to it, Judge Didi having been called to the scene by the Chief Justice, and that they are both visible in the video footage relied upon by the Prosecution in the case. The Defence also asserts that both judges are close friends and associates of Judge Abdulla and that they had both lodged complaints with the Human Rights Commission of the Maldives on Judge Abdulla's behalf regarding his arrest and detention. The Defence had indicated its intention to call the judges as witnesses to speak to those issues in the current proceedings in the Criminal Court.

The Defence formally requested that Judges Didi and Yoosef recuse themselves, on the basis that they lacked independence and impartiality as witnesses to the proceedings, and as associates of Judge Abdulla. The judges refused the Defence application. They did not dispute that they had witnessed the events and given statements relating thereto, or that they were close associates of Judge Abdulla. Rather, they asserted that it was for them as judges to choose whether to be witnesses or judges in the case, and they had chosen the latter. On that basis, and having ruled that neither the Prosecution nor the Defence could compel them to testify in the proceedings, they determined that their independence and impartiality was safeguarded, such that there was no basis on which to recuse themselves.¹⁰⁴

Conclusion

As set out at pages 18 to 19 above, there are serious concerns regarding the independence and competence of the Maldivian judiciary as a whole, such as to raise real doubts regarding the general compliance of criminal proceedings in the Maldivian courts with Article 14(1) ICCPR. The lack of a transparent system for the assignment of cases to individual judges is particularly problematic.

In relation to Mr Nasheed's case, the BHRC concludes that the fact that two of the judges in the case were witnesses to Judge Abdulla's arrest and had been identified by the Prosecution as witnesses capable of supporting the prosecution case is a clear and flagrant breach of Article 14(1), so serious as to undermine the fairness of the entire trial.

The appearance of bias arising from the fact that the judges were witnesses to the events they were tasked with adjudicating and from the fact that their testimony had been deemed by the Prosecution to be capable of supporting its case against the Defendant, is

¹⁰³ The statements were not publicly available in English at the time of writing this report.

¹⁰⁴ 'Judges Didi and Yoosuf refuse to step down from Nasheed's Terrorism Trial', *Minivan News*, available at: <http://minivannews.com/politics/judges-didi-and-bari-refuse-to-step-down-from-nasheeds-terrorism-trial-93072#sthash.SNqCapFY.dpuf>.

indisputable. Indeed, the judges' acknowledgment that they could choose whether to be witnesses or judges in the case itself amounts to an explicit acceptance of apparent bias on their behalf. In such circumstances, the judicial panel could not possibly have appeared impartial to a reasonable observer.

The judges' failure to recuse themselves and their reasoning in support of their decision appears to demonstrate a fundamental lack of understanding by the judges of the right to an independent and impartial tribunal, enshrined in international law and guaranteed under the Maldivian Constitution. It serves to demonstrate in practice the findings of the United Nations Special Rapporteur on the Freedom of Judges and Lawyers when she described members of the Maldivian judiciary as having appeared to have "*misconstrued and misinterpreted*" the requirements of independence and impartiality as "*benefitting the judges themselves*" rather than "*court users, as part of their inalienable right to a fair trial*".¹⁰⁵ What was at issue in this case was not whether the judges would or could be compelled to testify at trial, but whether – as witnesses themselves to the events and as close associates of Judge Abdulla – they were biased against the Defendant or could reasonably or fairly be perceived as being so biased. The BHRC is of the view that if the judges had properly considered the principle of impartiality and had properly directed themselves on the matter, they could not but have recused themselves, allowing colleagues who were not witnesses and not so closely associated with Judge Abdulla to hear the case in their stead.

¹⁰⁵ 'Preliminary observations of the UN Special Rapporteur on the independence of judges and lawyers on her official visit to the Republic of Maldives (17-24 February 2013)', (24 February 2015), *UN News Centre*, available at: <http://www.ohchr.org/ar/NewsEvents/Pages/DisplayNews.aspx?NewsID=13037&LangID=C>.

2. The right to a public hearing

Article 14 (1) ICCPR

“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 public hearing... The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice...”

The right to a public hearing is an essential safeguard of the fairness and independence of the judicial process, guaranteed in all but a limited number of narrowly defined circumstances. All trials in criminal matters must therefore, in principle, be conducted orally and publicly, in order to ensure the maximum amount of transparency.

Given that the holding of a public hearing provides an important safeguard not only for the interest of the individual but also for the interest of society at large, which has the right to a transparent and accountable system of justice, courts must make information regarding the time and venue of the oral hearings available to members of the public, so as to enable their attendance.¹⁰⁶ Courts must also provide adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account the potential interest in the case and the duration of the oral hearing.¹⁰⁷ With regard to courtroom space, courts should conduct hearings in courtrooms that are able to accommodate the expected number of persons, depending on the foreseeable level of public interest.¹⁰⁸ Failure reasonably to provide an adequate sized-room, or otherwise to provide for public access to court proceedings will almost certainly constitute a violation of the right to a public trial, although there will be no violation, “*if in fact no interested member of the public is barred from attending*”.¹⁰⁹

¹⁰⁶ UN Human Rights Committee (HRC), *CCPR General Comment No. 13: Article 14 (Administration of Justice), Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law*, 13 April 1984, available at: <http://www.refworld.org/docid/453883f90.html>. (“UN HRC GC 13”)

¹⁰⁷ *G. A. van Meurs v. The Netherlands*, Communication No. 215/1986, U.N. Doc. CCPR/C/39/D/215/1986 (1990), (13 July 1990) available at: <http://www1.umn.edu/humanrts/undocs/session39/215-1986.html> at para 6.2.

¹⁰⁸ UN Human Rights Committee (HRC), *General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial*, 23 August 2007, CCPR/C/GC/32, available at: <http://www.refworld.org/docid/478b2b2f2.html> at para 28. (“UN HRC GC 32”)

¹⁰⁹ *G. A. van Meurs v. The Netherlands*, *supra* n100 at para 6.2.

Facts

The hearings in Mr Nasheed's trial were all held at the Criminal Court in Malé, housed in the Justice Building, in the centre of the city. All hearings in the criminal trial were held at night, beginning after 8:00 pm, and sometimes later than 10:00 pm. On 26 February 2015, the atmosphere outside the Justice Building was particularly tense, with dozens of riot police in attendance.

Hearing dates were typically announced by the Court at the end of the previous day's hearing, or communicated to the Defence team, and published by the media. Well-attended protests outside the court buildings suggested that the public was well aware of the time and dates of the hearings.

The trial proceedings were held in a courtroom, said to be the biggest in the building. It was configured with 20 seats in the public gallery, which were allocated on a 'first come, first served' basis on the morning of the hearing, with short queues beginning to form long before court opening hours. The 20 seats were allocated as follows:

- ten seats were allocated to accredited members of the press
- six seats were allocated to members of the public
- four seats were reserved for court security officials, and therefore unavailable to the public; at the hearing attended by BHRC's trial observer, two of these seats remained vacant throughout the proceedings

On 26 February 2015, a number of people who had formally registered with the Court to attend the proceedings were refused entry. They included the BHRC trial observer and her fellow-observer and interpreter from the Maldivian Democracy Network, both of whom had secured places by formally 'swapping' seats with two members of the public who had secured seats first thing that morning. The formal 'swapping' process – administered by the court staff, had previously been recognised at previous legal proceedings, including those observed by the BHRC in 2013. A representative from the British High Commission was also refused entry, as was a female relative of Mr Nasheed on the arbitrary basis that her shirt did not cover her forearms, in the absence of any published or other guidance stipulating a dress code for the general public.

From 1 March 2015 onwards, all members of the press and public allocated one of the available 16 public gallery seats were issued with personalised, non-transferable tickets in their name on the morning of the hearing, to be presented on the night of the hearing, together with their identity document.

On all three days on which BHRC's trial observer attended court, there were insufficient seats for those wishing to attend. She herself was prevented from observing on 4 March 2015 for this reason. No provision was made by the Court to facilitate or improve public access to the proceedings, notwithstanding the fact that the space available was demonstrably inadequate for those wishing to attend. In particular, the court failed to take any or all of the following reasonable steps:

- to seat or stand security guards elsewhere in the courtroom, and/or to allocate one or more of their unused allocated seats to the general public; on 4 March 2015, this would have been sufficient to accommodate, at the very least, all those in line for tickets on the morning of the hearing
- to reconfigure the courtroom to allow for more public seating – the same courtroom had reportedly previously been configured to seat 40 people in the public gallery
- to live-link the trial proceedings to another courtroom in the Justice Building – video facilities being available in the court room, and having been used for the oral testimony of two witnesses in the case
- to hold the trial in a larger public hall, outside the Justice Building – as occurred in at least one previous criminal case, which had attracted a high level of public interest

Conclusion

For the above reasons, the BHRC concludes that the right to a public hearing cannot properly be said to have been adequately guaranteed in this case, given the failure by the court to provide adequate facilities for the attendance of interested members of the public. This constitutes a further breach of Article 14(1).

3. The right to adequate time and facilities to prepare a defence

Article 14(3)(b) ICCPR

“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:...

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.”

The right to adequate time and facilities for the preparation of a defence applies not only to the defendant but to his/her defence counsel as well and is to be observed in all stages of the proceedings. What constitutes “adequate” time will depend on the nature of the proceedings and the factual circumstances of a case. Factors to be taken into account include the complexity of a case, the defendant's access to evidence and any time limits provided for in domestic law for various stages in the proceedings.

The right to adequate “facilities” requires that the accused should have the ability to communicate, consult with and receive visits from his/her lawyers without interference or censorship and in full confidentiality. The accused and his/her lawyers must also be guaranteed timely access to all appropriate information, documents and other evidence on which the prosecution intends to rely, as well as all exculpatory materials in their possession, which would tend to establish the innocence of the accused or could assist his/her defence in any way.¹¹⁰

Facts

In the Maldives, there is no provision or process for pre-trial disclosure of evidence. As a general rule, the evidence on which the Prosecution intends to rely is provided to the Defendant at the remand hearing or at the hearing immediately following it. The subsequent hearing timetable is then scheduled in a manner so as to ensure that adequate time is provided to the Defence to prepare for trial. This was the practice followed in Mr Nasheed’s case.

Mr Nasheed was first produced before the Court, post arrest, on 23 February 2015. He was unrepresented, his lawyers having been prevented from registering their attendance at Court, as a result of new court rules recently introduced.¹¹¹ The Court ordered an adjournment of three days to allow Mr Nasheed time to instruct legal counsel and for legal counsel to prepare themselves for trial. At the second hearing in Mr

¹¹⁰ UN HRC GC 32, *supra* n101 at para. 33.

¹¹¹ See section below on ‘The right to legal assistance’, pp 48 – 49.

Nasheed's case (the first post-arraignment) on 26 February 2015, Mr Nasheed's Defence team requested an adjournment of 30 days to prepare for trial, in light of the severity of the new charges and the volume of prosecution evidence.¹¹² The request was refused by the Court on the grounds that the charges were based on the same alleged facts as the charges made in 2012 (which had not been withdrawn until six days before the terrorism charges were laid) and on the basis of the evidence served in 2012 in relation to those proceedings. The Court ruled that the Defence had therefore had a number of years to review the evidence in question. Instead, the Court granted the Defence an adjournment of three days to prepare for trial, with the subsequent hearing being listed for 2 March 2014. A further adjournment of two days was granted thereafter.

On 4 March 2015, the Defence renewed its application for an adjournment to prepare for trial.¹¹³ The Defence contended that *inter alia* the recent copies of the video and audio materials served by the Prosecution were defective, and that they had been unable to view them.¹¹⁴ The Application was again refused, although the Court ordered the Prosecution to serve working copies of the multimedia materials without delay.

Following the non-appearance and subsequent recusal of his legal team, Mr Nasheed complained that he did not have access to facilities in detention to view the multimedia materials to assist him in preparing for trial. These included multimedia files that had been provided to his lawyers in a defective format, which they had therefore been unable to view with him following his arrest and detention. The BHRC was informed that Mr Nasheed, as a self-representing Defendant, was not provided with those facilities.

The BHRC observer was provided with conflicting accounts of whether the timetable in Mr Nasheed's case was exceptionally expedited when compared with other criminal cases in the Maldives. Mr Nasheed's Defence lawyers and others present at court asserted that it was. The Deputy Prosecutor General asserted that the speed of the trial was not out of the ordinary, and cited examples of a number of homicide cases in 2012 and 2013, in relation to which proceedings were purportedly dealt with on an even more expedited basis, together with the examples of the other defendants charged in relation to Judge Abdulla's arrest and detention.

Conclusion

The BHRC notes the conflicting accounts given to the Mission regarding the typical

¹¹² ICJ report on Maldives (2015), supra n29; 'Hearing for Nasheed's case scheduled for Wednesday night', (3 March 2015), *Raajje*, available at: <https://raajje.mv/34777>.

¹¹³ 'Nasheed's lawyers express concerns of rushed trial with no time to prepare', (4 March 2015), *Raajje*, available at: <https://raajje.mv/34880>.

¹¹⁴ 'Nasheed's lawyers stage no-show citing insufficient time for preparation', (8 March 2015), *the Maldives Chronicles*, available at: <http://themaldiveschronicle.com/nasheeds-lawyers-stage-no-show-citing-insufficient-time-for-preparation/>.

speed of Maldivian criminal trials from arraignment to sentence, in particular the stance taken by the Deputy Prosecutor General that the speed of proceedings was not out of the ordinary. In such circumstances, the BHRC is not in a position to determine whether the proceedings against Mr Nasheed were or were not extraordinarily expedited when compared to other cases before the Criminal Court in Malé and/or whether defendants in the lower courts in the Maldives are routinely deprived of the right to adequate time and facilities to prepare their defence. However, any repeated or systemic failure by the Maldivian courts to afford defendants adequate time and/or facilities to prepare their defence, could not serve to justify any specific failure to afford Mr Nasheed those rights in this case. It would also constitute a repeated breach by the Maldives of its obligations arising under Article 14(3)(b).

On the facts of this case, the BHRC considers the failure by the Court to provide Mr Nasheed additional time to prepare for the remainder of his trial, after the resignation of his legal Defence team, in circumstances where he was self-representing and was therefore without the assistance of legal counsel in respect of serious terrorism charges, carrying a heavy mandatory minimum sentence of 10 years' imprisonment,¹¹⁵ to constitute a breach of Article 14(3)(b). Insofar as Mr Nasheed, as a self-representing Defendant, was not provided with adequate facilities to view/listen to the multimedia footage relied on by the Prosecution against him before the hearings at which such evidence was presented, that would also constitute a further breach of Article 14(3).

The position in relation to the earlier part of the trial is not as straightforward, in the absence of clear information or submissions regarding any specific prejudice caused by the failure by the Court to grant the Defence team 30 days to prepare for trial, and in circumstances where the charges were based on evidence served a number of years previously, albeit in relation to much lesser charges. Nevertheless, the BHRC is of the view that a prudent court, concerned with maintaining public trust in the criminal justice system and an appearance of independence and impartiality, would have allowed the Defence more time to prepare for trial.

Here, the Court's repeated refusal of the applications for further time to prepare for trial was necessarily tainted by its fundamental underlying partiality and apparent bias, such as to call into serious question the basis for the refusal. The clear impression created, in the context of the unexplained hiatus of 15 months after the election in continuing with the criminal proceedings against Mr Nasheed,¹¹⁶ and the speed at which the trial began (one day post arrest) and concluded (19 days post arrest), was one of rushed justice, before a biased court, speeding to conviction.

¹¹⁵ Article 6(b), Prevention of Terrorism Act 1990, *supra* n8.

¹¹⁶ See further 'The Right to be tried without undue delay' below at pp. 47 – 48.

In light of the above, BHRC urges the High Court and the Supreme Court on any appeal not to restrict points of appeal to those matters that were raised in the Criminal Court, such that any prejudice caused to Mr Nasheed by the limited time to prepare for trial, the speed at which it progressed and by any inability properly to scrutinise multimedia evidence ahead of trial, can be resolved within the appeals process itself.

4. The right to be tried without undue delay

Article 14(3)(b) ICCPR

“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:...

(c) To be tried without undue delay.”

The right to be tried without undue delay obliges the authorities to ensure that all proceedings, from the moment the suspect is informed that the authorities are taking specific steps to prosecute him to the final appeal, are completed and judgments are issued within a reasonable time. The obligation is particularly pressing when the accused is being held in pre-trial detention or is detained throughout the trial and/or appeal process. It is intended to prevent accused persons being kept for lengthy periods in a state of uncertainty concerning their fate¹¹⁷ and to ensure that any deprivation of liberty as a result of pre-trial detention is kept to a minimum.

No international law instrument or established international rule specifies the actual length of time adjudged as meeting this standard. Rather, it is to be assessed in the circumstances of each case,¹¹⁸ having regard, inter alia, to the particular circumstances of the case, its complexity, the conduct of the accused and the manner in which the case was dealt with by the administrative and judicial authorities.¹¹⁹ The United Nations Human Rights Committee has, however, found a delay of two years from arrest to trial to have been contrary to Article 14(3)(c).¹²⁰

The right to be tried without undue delay is distinct from the right to adequate time to prepare a defence, and does not function as its opposite. Both guarantees can be breached in any given case.

Facts

Mr Nasheed was first charged in relation to the arrest and detention of Judge Abdulla on

¹¹⁷ UN HRC GC 32, *supra* n101

¹¹⁸ *Sandy Sextus v. Trinidad and Tobago*, Communication No. 818/1998, U.N. Doc. CCPR/C/72/D/818/1998 (16 July 2001), available at: <http://www1.umn.edu/humanrts/undocs/818-1998.html> at para. 7.2; *Kelly v. Jamaica*, Communication No. 537/1993, U.N. Doc. CCPR/C/57/D/537/1993 (17 July 1996), available at: <http://www1.umn.edu/humanrts/undocs/session41/253-1987.html> at para. 5.11; *Abdool Saleem Yasseen and Noel Thomas v. Republic of Guyana*, Communication No. 676/1996, U.N. Doc. CCPR/C/62/D/676/1996 (31 March 1998), available at: <http://www1.umn.edu/humanrts/undocs/session62/view676.htm> at para. 7.11; and *Girjadat Siewpersaud et. al v. Trinidad and Tobago*, Communication No. 938/2000, U.N. Doc. CCPR/C/81/D/938/2000 (29 July 2004), available at: <http://www1.umn.edu/humanrts/undocs/html/938-2000.html> at para. 6.2.

¹¹⁹ UN HRC GC 32, *supra* n101 at para. 35.

¹²⁰ *Clive Smart (represented by Mr. Clive Woolf of the London law firm S. Rutter and Co.) v. Trinidad and Tobago*, Communication No. 672/1995, U.N. Doc. CCPR/C/63/D/672/1995 (30 July 1998), available at: <http://www1.umn.edu/humanrts/undocs/session63/view672.htm> at para 10.2.

12 July 2012. He was convicted 32 months later, the original charges having been withdrawn, and new charges laid on 22 February 2015. At the date of publication of this report, he had not yet appealed his conviction.

For 22 months, between May 2013 and February 2015, the proceedings against him had been effectively stayed: there were no criminal proceedings in the case before the Hulhumalé Magistrates' Court throughout that time. Mr Nasheed's High Court challenge to the composition of the Hulhumalé Magistrates' Court was similarly stayed throughout that time. The stay of proceedings between May and November 2013 gave Mr Nasheed the time and opportunity to run in the 2013 presidential elections: concerns had been raised that the prosecution was a politically-motivated attempt to keep him from running for office, and Mr Nasheed himself, together with international organisations and human rights bodies, including the BHRC, had called on the Maldivian government to stay proceedings until after the elections had taken place. However, the delay of fifteen months thereafter, from the end of the election process in November 2013 to Mr Nasheed's rearrest in February 2015, in continuing the prosecution against him and/or recharging him and prosecuting him with terrorism offences remains entirely unexplained.

Conclusion

The BHRC is of the view that little criticism can be made of the delay in the proceedings pre-dating the 2013 elections: the delay having been requested by the Defence and supported by the international community, it cannot properly be described as undue. Similarly, there was no undue delay in the proceedings from February 2015 onwards: on the contrary, as set out in the previous section,¹²¹ the speed at which those proceedings progressed raised serious concerns about a separate breach of Article 14(3)(b).

Serious concerns do arise however, regarding the delay *after* the 2013 elections in proceeding with the criminal prosecution. The entirely unexplained – and seemingly entirely avoidable – delay of fifteen months in continuing the prosecution against Mr Nasheed and/or in recharging him with different offences, during which time Mr Nasheed – and indeed the Maldives as a whole – remained in a state of complete uncertainty concerning his fate, appears difficult to reconcile with the requirement to ensure that a person is tried for any criminal charge against him or her without undue delay. This is particularly so in circumstances where the need for expediency was heightened due to the particular circumstances of the case and the already substantial delay in the proceedings to accommodate the general election.

¹²¹ See above 'The right to adequate time and facilities to prepare a defence', pp. 43 – 45.

5. The right to legal assistance

Article 14(3)(d) ICCPR

“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ...

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”

Everyone has the right to defend himself/herself in person or to appoint a lawyer of his/her own choice in order to ensure an efficient defence. That right arises from the moment the suspect is first taken into custody upon arrest, to proceedings before the court before which, *“the 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”*.¹²²

The domestic courts have a duty to ensure that the accused benefits fully from the right to effective counsel at all stages of the proceedings.

Facts

Mr Nasheed was unrepresented at his arraignment hearing on 23 February 2015, the day after his arrest. His lawyers were reportedly denied permission to register to represent him, on the grounds that they were required to give the Court a minimum of two days’ notice of their appointment. They could not have complied with this requirement, having only become aware of the charges – and of the hearing – the previous day, on Mr Nasheed’s arrest.¹²³ The Court adjourned the proceedings for three days to afford Mr Nasheed time to appoint lawyers of his choosing. However, Mr Nasheed was without legal representation at the arraignment hearing to assist him in making a bail application and was remanded in custody for the duration of the trial.

Mr Nasheed was represented by a team of four local defence lawyers, led by Ms Hisaan Hussein, at the hearings on 23 and 26 February, and 2, 4, 5, and 7 March 2015. However, on 8 March 2015, after a number of unsuccessful applications by the Defence team for the proceedings to be adjourned to enable them time properly to prepare the case, the Defence team informed the Chief Justice of the Criminal Court that they would

¹²² UN HRC GC 13, *supra* n99.

¹²³ ‘Nasheed denied right to appoint lawyer and appeal “arbitrary” arrest warrant, contend lawyers’, (23 February 2015), *Minivan News*, available at: <http://minivannews.com/politics/nasheed-denied-right-to-appoint-lawyer-and-appeal-arbitrary-arrest-warrant-contend-lawyers-92928#sthash.2hKXDRCH.wfiGMxw1.dpbs>.

not be attending court that evening, and requested that he notify the judicial bench accordingly. The Defence team asserted that they had been given insufficient time to prepare for trial and were therefore “unable to dispense... legal advice and counsel to President Mohamed Nasheed and represent him on a fair and just basis”, as required under the Maldivian Constitution.¹²⁴ The following day, on 9 March 2015, prior to the evening’s hearing, the Defence team further announced that they were resigning as Mr Nasheed’s counsel. Speaking to the press, they stated: “our consciences do not allow us to continue when we are unable to carry out our duties according to the oaths we swore as lawyers”.¹²⁵ Mr Nasheed therefore represented himself at both hearings.

On 9 March 2015, Mr Nasheed’s request for an adjournment of 15 days to appoint new lawyers was refused. The Court ruled that he could appoint new lawyers to attend the following day, asserting that whether or not he was to be represented was a matter for him.¹²⁶ Mr Nasheed queried his ability, as an incarcerated person, to appoint a new legal team from prison.¹²⁷ He did not in fact instruct new lawyers and appeared unrepresented for the remainder of the case.

Conclusion

The BHRC concludes that there was a clear breach of Article 14(3)(d) in relation to the arraignment hearing on 23 February 2014, from which Mr Nasheed’s lawyers were effectively debarred from attending. The position in relation to the remainder of the trial is not as clear, given that Mr Nasheed was not prevented by the Court from appointing lawyers of his choosing, including new lawyers to replace those who had recused themselves. It is important to underscore, however, that if Mr Nasheed *had* nominated new lawyers and if the Court had failed to adjourn the proceedings to allow those new lawyers adequate time to prepare the case – in circumstances where they were not instructed in 2012 and therefore had not been provided with the evidence at that time – that failure would undoubtedly have constituted a clear breach both of the right to effective legal representation under Article 14(3)(d) and the right to adequate time to prepare a defence under Article 14(3)(c): any right to appoint legal representatives, without adequate time for them to consider unfamiliar evidence or to prepare the case, would not have fulfilled Mr Nasheed’s right to *effective* representation under Article 14(3)(d).

¹²⁴ ‘Nasheed’s Lawyers Denied Adequate Time: Say Impossible to Provide Constitutional Right to Counsel’, (10 March 2015), Miadhu, available at: <http://miadhu.com/article/en/1812>.

¹²⁵ ‘Nasheed’s lawyers quit’, (9 March 2015), *Minivan News*, available at: <http://minivannews.com/politics/nasheed%E2%80%99s-lawyers-quit-93173#sthash.OrbRzDjj.dpuf>.

¹²⁶ “‘We are Only Human’ the emotional plea by Nasheed’s Lawyers”, (8 March 2015), *Raajje*, available at: <https://raajje.mv/35107>; ‘Nasheed’s lawyers stage no-show citing insufficient time for preparation’, (8 March 2015), *Minivan News*, available at: <http://minivannews.com/politics/nasheed%E2%80%99s-lawyers-stage-no-show-citing-insufficient-time-for-preparation-93147#sthash.71EoxnZY.dpuf>.

¹²⁷ *Ibid*.

6. Right to examine witnesses

Article 14(3)(e) ICCPR

“The accused has the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”

The right to examine witnesses constitutes one of the fundamental guarantees for a fair trial, in that it counterbalances the prerogatives and the powers of the prosecutor and acts as an application of the equality of arms. Consequently in order to guarantee a fair trial, the court must provide for the possibility of the adversarial questioning of witnesses, and must afford the accused the same ability to compel the attendance of witnesses and to examine witnesses as is available to the prosecution.

The right to examine witnesses does not, however, provide an unqualified right to obtain the attendance of witnesses requested by the accused or his counsel. Witnesses to be called must be likely to be relevant to the case and/or part of the *res gestae* (the events or circumstances at issue in a case):¹²⁸ where there is no evidence that the court’s refusal to call a certain witness violates the principle of equality of arms “*for instance, if the evidence is not part of the case under consideration – there has been no violation of article 14(3)(e)*.”¹²⁹ As a general rule, a breach of Article 14(3)(e) will only be found if the hearing of the witness was absolutely necessary in order to ascertain the truth, and the failure to hear the witness prejudiced the rights of the defence and the fairness of the proceedings as a whole.

Facts

The Prosecution and Defence provided the Court with a list of witnesses on whom they intended to rely, on 1 March 2015. It appears that the Prosecution witness list was materially identical to that provided in the Hulhumalé Magistrates’ Court in 2012.

The Prosecution’s witnesses gave evidence on 4, 5 and 7 March 2015. The Court, the Prosecutors, the Defence team – when in attendance – and Mr Nasheed were able to ask questions of them, although the Defence complained at the restrictions on their questioning imposed by the Court.¹³⁰ The Court called Judge Abdulla as its own witness,

¹²⁸ *Gordon v. Jamaica*, Communication No. 237/1987, U.N. Doc. CCPR/C/46/D/237/1987 (1992), (5 November 1992), available at: <http://www1.umn.edu/humanrts/undocs/html/dec237.htm>, at para 6.3.

¹²⁹ UN, OHCHR, IBA, *Human Rights In The Administration Of Justice: A Manual On Human Rights For Judges, Prosecutors And Lawyers*, (2003), at page 285.

¹³⁰ ‘Nasheed contests credibility of police and military witnesses in terrorism trial’, (5 March 2015), *Minivan News*, available at: <http://minivannews.com/politics/nasheed-contests-credibility-of-police-and-military-witnesses-in-terrorism-trial-93106#sthash.LxG3o2mr.dpuf>.

the Prosecution having informed the Court that they would not be calling him, their case already having been proven by the witnesses called to date.

On 10 March 2015 the day of Judge Abdulla's testimony,¹³¹ the Court refused permission for the Defence to call *any* of its proposed witnesses, on the asserted basis that their testimony was incapable of "negating" the Prosecution's case.¹³²

Conclusion

The BHRC Mission did not have access to written statements, if any, prepared by the Defence witnesses and is unaware of the nature and/or content of their proposed testimony. In those circumstances, the BHRC cannot clearly assess whether the Court's refusal to allow the witnesses to testify constitutes a breach of Article 14(3)(e): insofar as the witnesses *were* in fact relevant or necessary in establishing the truth of what occurred and/or were capable of undermining the case for the Prosecution, the refusal by the Court to allow the Defence to call those witnesses would constitute a serious breach of Article 14(3)(e); insofar as the witnesses *were not* relevant or necessary to the case, the failure to allow them to be called would not constitute such a breach.

That being said, the failure to allow the Defence to call any witnesses raises particular concerns when seen in the context of the trial as a whole, and in particular in the circumstances of the Court's decision to call Judge Abdulla to testify, notwithstanding the Prosecution's position that his testimony was unnecessary to prove its case against Mr Nasheed. While there is, as a general rule, nothing improper in a Court calling its own witnesses, the judges' insistence on calling Judge Abdulla to testify in this case, notwithstanding their close personal and working relationship with him, their subordinate position to him as Chief Justice of the Criminal Court and the concerns raised about the Defence regarding those matters, in circumstances where the Prosecution had taken the view that his testimony was unnecessary, raises further concerns about the appearance of bias on the Court's behalf. Given the apparent bias of the judicial bench, which tainted the entire trial proceedings, its rulings regarding which witnesses it would and would not hear would not have appeared impartial or unbiased to a reasonable observer.

¹³¹ 'President at the time responsible for my arrest: Judge Abdulla', (10 March 2015), *Haveeru*, available at: <http://www.haveeru.com.mv/news/59582>.

¹³² ICJ report on Maldives (2015), *supra* n29.

7. Right to appeal conviction and sentence

Article 14(5) ICCPR

“Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”

The right of appeal to which any convicted person is entitled is a right to review of both the legal and material aspects of his or her convictions and/or sentence: in addition to pure questions of law, the review must provide “*for a full evaluation of the evidence and the conduct of the trial*”.¹³³ For right of appeal to be effectively available, a convicted person is entitled to have, within a reasonable time, access to duly reasoned written judgements. The guarantees of a fair trial must be observed in all appellate proceedings.

Facts

Approximately six weeks prior to Mr Nasheed’s arrest, the Maldivian Supreme Court issued a circular reducing the statutory appeal period available under the Judicature Act from 90 to 10 days.¹³⁴ The reasons for this change in the law remain unexplained. Concerns were raised that this amendment, coupled with the typical timeframe of seven to 10 days taken by the Criminal Court to produce and publish the official transcript of a criminal trial, would prevent Mr Nasheed – and other defendants before the courts – from being able effectively to appeal their convictions.¹³⁵

In this case, a judgment summary and a draft copy of the full court report were provided on 19 March 2015, six days after the hearing and four days before the deadline to appeal.¹³⁶ It has not been finalised, Mr Nasheed having refused to sign it, on the asserted grounds that it contains a number of inaccuracies,¹³⁷ and no appeal was lodged within

¹³³ *Victor P. Domukovsky, Zaza Tsiklauri, Petre Gelbakhiani and Irakli Dokvadze v. Georgia*, Communications N 623/1995, *et seq* (29 May 1998) available at:

<http://www1.umn.edu/humanrts/undocs/session62/2327.htm> at para 18.11

¹³⁴ ICJ report (2015) on Maldives, *supra* n29.

¹³⁵ ‘Supreme Court has removed right of appeal, claim legal experts’, (28 January 2015), *Minivan News*, available at: <http://minivannews.com/politics/supreme-court-has-removed-right-of-appeal-claim-legal-experts-92424#sthash.8eibynzm.dpuf>.

¹³⁶ ‘Nasheed ys before deadline to appeal. Subsequent article clarifies that the deadline to appeal was on 26ers st-warrant-hearin*Minivan News*, available at: <http://minivannews.com/politics/criminal-court-releases-nasheeds-court-proceedings-two-days-before-appeal-deadline-94070#sthash.wppKunoK.dpuf>;

¹³⁷ ‘Nasheed removed right of appeal, claim legal experts’, (28 January 2015), March 2015), *Minivan News*, available at: <http://minivannews.com/politics/criminal-court-releases-nasheeds-court-proceedings-two-days-before-appeal-deadline-94070#sthash.PWfuxftN.dpuf>; ‘Nasheed to wait on appeal until Criminal Court provides full case report’, (25 March 2015), *Minivan News*, available at: <http://minivannews.com/politics/nasheed-to-wait-on-appeal-until-criminal-court-provides-full-case-report-94474-sthash.Epd4OIWW.dpuf>.

the 10 day time-limit or since.

There have been conflicting reports as to whether or not Mr Nasheed intends to appeal his conviction and/or sentence. Initial reports suggested that he did not intend to appeal.¹³⁸ However, since making those statements, Mr Nasheed has instructed a team of international lawyers, including Ben Emmerson QC from Matrix Chambers, Amal Clooney from Doughty Street Chambers and Jared Genser, founder of Freedom Now, to assist with any appeal going forward.¹³⁹

According to media reports, the Maldivian High Court has stated that Mr Nasheed will not be time-barred from submitting an appeal by operation of the new procedural rules, reducing time to appeal.¹⁴⁰ The Maldivian High Commission in the United Kingdom has also provided assurances that “*former President Nasheed continues to retain his right to appeal*”.¹⁴¹ However, the Supreme Court – responsible for the amendment to the procedural rules and the final court of appeal in any criminal matter – has not issued any similar statement.

Conclusion

In light of the above, in particular the fact that Mr Nasheed has not yet attempted to lodge an appeal against his conviction or sentence, the BHRC concludes that there has been no breach of Article 14(5) in Mr Nasheed’s case to date.

¹³⁸ ‘Nasheed Not to Appeal 13-year Jail Term’, (25 March 2015), *Indian Express*, available at: <http://www.newindianexpress.com/nation/Nasheed-Not-to-Appeal-13-year-Jail-Term/2015/03/25/article2729795.ece>.

¹³⁹ ‘Amal Clooney to represent jailed former president of Maldives Mohamed Nasheed’, (8 April 2015), *Al-bawaba*, available at: <http://www.albawaba.com/entertainment/amal-clooney-represent-jailed-former-president-maldives-mohamed-nasheed-679456>.

¹⁴⁰ ‘High Court says Nasheed can still appeal’, (4 April 2015), *Minivan News*, available at: <http://minivannews.com/politics/high-court-says-nasheed-can-still-appeal-95646#sthash.FDMf4cH7.dpbs>.

¹⁴¹ ‘Open Letter to Lord Alton of Liverpool’, *supra* n58, (See Annex 5 of this report).

International concern regarding the fairness of the trial

The criminal proceedings against Mr Nasheed have been the subject of widespread criticism and concern on the part of international actors and organisations including:

- Amnesty International¹⁴²
- Asian Forum for Human Rights and Development¹⁴³
- International Commission of Jurists¹⁴⁴
- United Nations High Commissioner for Human Rights¹⁴⁵
- United Nations Special Rapporteur on the Independence of Judges and Lawyers¹⁴⁶
- Transparency International (Maldives)¹⁴⁷

The Maldives has rejected the criticisms, setting out its defence of the prosecution and of the trial procedures in a ‘Question and Answer’ document issued by the High Commission of the Maldives in London¹⁴⁸ and in a number of open letters, including one to Lord Alton of Liverpool, a member of the British House of Lords, appended to this report.¹⁴⁹ The letter asserts that “*the independence of the Judiciary and the fairness of due legal process have been as sacrosanct in the case against former President Nasheed as they would have been for any other Maldivian citizen*”.¹⁵⁰

¹⁴² Amnesty International report on the Maldives (2001), *supra* n13.

¹⁴³ ‘Maldives: Trial and Conviction of Former President Nasheed Condemned’, (14 March 2015), *Forum-Asia*, available at: <https://www.forum-asia.org/?p=18545>.

¹⁴⁴ ICJ report on the Maldives (2015), *supra* n29.

¹⁴⁵ ‘Conduct Of Trial Of Maldives’ Ex-President Raises Serious Concerns – High Commissioner Zeid’, (18 March 2015), *UNOG News*, available at: [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/90E82F9F8CD6A6A9C1257E0C00375E83?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/90E82F9F8CD6A6A9C1257E0C00375E83?OpenDocument).

¹⁴⁶ ‘Maldives: “No democracy is possible without fair and independent justice,” UN rights expert’, (19 March 2015), *UNHR News*, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15725&LangID=E#sthash.a1Wk2LhL.dpuf>.

¹⁴⁷ ‘Transparency Maldives Concerned about Legal Process For Trial of Former President Nasheed’, (16 March 2015), *Transparency News*, available at: http://www.transparency.org/news/pressrelease/transparency_maldives_concerned_about_legal_process_for_trial_of_former_pre.

¹⁴⁸ ‘Q&A: the Sentencing of Former President Nasheed’, *supra* n58, (see Annex 4 of this report).

¹⁴⁹ ‘Open Letter to Lord Alton of Liverpool’, *supra* n58, (see Annex 5 of this report).

¹⁵⁰ *Ibid*.

Conclusions

For the reasons set out in this report, and in the context of the long-standing concerns about the independence and politicisation of the Maldivian judiciary, the BHRC is of the opinion that **Mohamed Nasheed's right to a fair trial, as guaranteed under international law, has been breached** in the following ways:

- there was a **clear appearance of bias** on behalf of two of the three judges, such as to vitiate the fairness of the entire proceedings
- he was **deprived, as a self-representing Defendant, of adequate time and facilities to prepare his defence**
- his **right to be legally represented was effectively denied** at the arraignment hearing
- the **right to a public hearing was not adequately guaranteed**

Serious concerns also arise regarding the **unexplained delay** of 15 months post-election in pursuing criminal proceedings against Mr Nasheed, the **overall speed at which the terrorism trial before the Criminal Court took place**, once the new charges were laid, the **limited time given to his Defence team to prepare** and the **refusal by the Court to permit Defence witnesses to be called**.

In light of the above, Mr Nasheed's conviction cannot properly be regarded as safe.

The BHRC urges the High Court and/or Supreme Court on any appeal to give careful consideration to the breaches in the Criminal Court proceedings of fundamental fair trial and due process guarantees guaranteed under Article 14 ICCPR and under the Maldivian Constitution. Given the polarised political context in which the proceedings are occurring and the serious concerns about the independence of the Maldivian judiciary in general, **the Maldives must ensure that any appeal proceedings and any resulting retrial are dealt with much greater time, transparency and care. Any appeal proceedings must themselves strictly comply with international fair trial standards, as must any retrial** before the Criminal Court.

In light of the failure by the Criminal Court to afford Mr Nasheed the right to a fair trial, in particular by failing to empanel an impartial bench, and the *prima facie* unsafeness of his conviction, the BHRC would urge the higher courts to consider the possibility of releasing Mr Nasheed on bail during any appeal proceedings, if brought.

Recommendations

The BHRC urges the Maldives to:

- ensure that Mr Nasheed is guaranteed the effective right to appeal his conviction and sentence and that he is afforded all fair trial and due process rights, as guaranteed under international law and the Maldivian Constitution, in any such appeal process and/or resulting retrial
- ensure access by independent trial monitors to any subsequent court proceedings
- consider Mr Nasheed's release on bail pending the outcome of any appeal lodged, in circumstances where there have been clear violations of his right to a fair trial, rendering his conviction unsafe
- ensure the prompt adoption into law of legislation of a comprehensive penal code, evidence code and criminal procedure code, to codify the fair trial and due process guarantees contained in the Maldivian Constitution
- enable the right to appeal to be exercised effectively, including by granting Defendants reasonable time to lodge an appeal and ensuring prompt access to the trial transcript
- ensure that all internationally recognized fair trial guarantees are consistently respected both in law and in practice
- investigate all serious allegations of violations of due process and fair trial rights through independent and impartial processes and hold to account those found responsible for those violations
- continue the reform of the Maldivian justice system, in particular to strengthen the independence and impartiality of the judiciary
- publish clear guidelines explaining the process of selection of judges to adjudicate particular cases
- institute mandatory training in fair trial rights and guarantees, including those arising under the ICCPR, for all judges, at all levels of seniority
- ensure that all allegations of misconduct by judicial officers are properly investigated pursuant to clear, transparent, rules and procedures.

Annexes

1. Prevention of Terrorism Act 1990
2. Prosecution evidence
 - (i) Maldives Police Service Statement: Abdulla Mohamed (4 March 2012)
 - (ii) HRCM Statement: Abdulla Mohammed (29 April 2012)
 - (iii) Translation of President Nasheed's Speech (22 January 2012)
 - (iv) HRCM Statement: Mohamed Nasheed (21 March 2012)
3. Trial closing speech delivered by Mr Nasheed (13 March 2015)
4. Question and answer document issued by the Maldives High Commission in London regarding the trial of Mr Nasheed (15 March 2015)
5. Open letter from the Maldives High Commission in London to Lord Alton of Liverpool (27 March 2015)

**PREVENTION OF
TERRORISM ACT
(Act No. 10/1990)**



Act No: 10/1990

21-05-1411 AH

09-12-1990 AD

Name

1. This Act shall be cited as the “Prevention of Terrorism Act 1990”.

Offence of Terrorism

2. The acts/activities mentioned hereto shall be construed as acts of terrorism.
 - (a) The act of killing or causing any bodily harm or intent to carry out such actions to person(s) with the intention of creating fear or terror or with a political motive.
 - (b) The act or the intention of kidnapping or abduction of person(s) or of taking hostage(s).
 - (c) The act or the intention of hijacking of any vessel or vehicle.
 - (d) The unauthorized import of any explosive substance, ammunition or fire arms into the country, the production of such substance or equipment, the use, storage, sale or interchange of such substance or equipment in the Maldives.
 - (e) The use or intent of use of any explosive substance, ammunition or fire arms or any form of weaponry so as to cause harm or damage to person(s) or property.
 - (f) The act of or intent of arson, so as to cause harm or damage to person(s) or property.



- (g) The use of terror tactics, force or making threats to cause harm or damage to person(s) or property orally or in writing or other means to create fear amongst the community.

Aiding, Abetting and Planning

- 3. The aid or abet of any form, through finance or property, or planning of any act as stipulated under Section 2 shall be construed as an act of terrorism itself.

Invalidating the Registry of the Organization Aiding or Abetting

- 4. The aid or abet of any form, through finance or property, or planning of a terrorist act stipulated under this Act by an organization registered with the Government and operating in the country, shall be caused for its registration to be terminated.

Compensation

- 5. Person(s) guilty of an offence under this Act, in addition to being sentenced under Section 6, should compensate the victim(s) of terrorism for the subsequent damages as ordered by the court.



Penalty

6. (a) Any person(s) found guilty of an act of terrorism resulting in the loss of a life shall be sentenced to death or life imprisonment or banishment for life. The same penalty shall be passed on those found guilty of complicity in the crime. Person(s) found guilty of abetting and/or privy to such information shall be sentenced to between 10 and 15 years imprisonment or banishment.
- (b) Any person(s) found guilty of an act of terrorism, without a loss of life, shall be sentenced to between 10 and 15 years imprisonment or banishment. The same penalty shall be passed on those found guilty of complicity in the crime. Person(s) found guilty of abetting and/or privy to such information shall be sentenced to between 3 and 7 years imprisonment or banishment.
- (c) In passing sentence to imprisonment under the subsection (a) or subsection (b) the judge reserves the right to sentence imprisonment with hard labour.



Statement

Maldives Police Service
4 March 2012

Full name: Abdullah Mohamed

Occupation: Judge

I have been working as the Chief Judge of Criminal Court. As usual, on 16 January 2012 I reached home after work around 23:00 hours. While I was eating in the kitchen, there was a lot of noise coming from the house. My wife came back and told me that the Star Force was inside the house after going to check. Then I washed my hands and called the Prosecutor General, I told him that the military was in my house, that I didn't know who was here and that I was leaving with them. That night I had a police summons to go to the police station. I found out from people at my house at the time that my door had been smashed in during their entry into the house. When they entered the house, people at my house had asked them if they had a court order and not to enter the house without one. They also told me that the military personnel asked to speak with Abdullah, but they warned them and said they needed a court order even to speak with Abdullah. One of the men who came inside the house with the military was in casual attire. The man in casual attire was someone people in my house knew. When people inside the house told the military men that they could not come in without a court order, the police and military personnel waited at the front doorstep. A military man came and ordered them to enter according to people inside my house. While I was in the kitchen, I saw a sudden surge of military men come in. When the military came in, I told them to wait outside and that they couldn't enter people's residences without a court order. They refused to take any caution I made into consideration and entered, and without consent put their hands on me and took me under their custody. They put me in the military vehicle and took me to Jetty No. 3 in north Malé, and from there to Girifushi island. I realised after I got to Girifushi that in their efforts to take me under their custody they had scratched around my elbow and it was wounded and bleeding. When I got there somebody came to me and told me that he was a doctor. He said wanted to inspect me. When he said that, I told him that; I didn't want to see a doctor, I didn't have anything wrong with me and that I don't need to take any specific medication. While at Girifushi, I repeatedly requested that I be able to meet my lawyer, however I never got the opportunity to do so. I found out from my lawyer that security forces did not let the lawyer meet me even though she/he had tried to meet me. The Maldivian State's uniformed security forces came into the house I live in (M. Linkhouse) on 16 February 2012, Monday without any permission from anybody living in my house, contrary to Islam and the Constitution of the Republic of Maldives, into a private residence protected by the aforementioned. At an hour close to midnight, Maldivian police and military had disregard for my private residence, abducted me and to this day, I still haven't been told under who's orders and why this unlawful, unconstitutional, inhumane, low-level act of terrorism was committed by them (Maldivian police and military). During my stay in Girifushi nobody had asked me any

questions. When I was kept under detention by the Maldivian military after they kidnapped me, a delegation claiming to represent the government did come to meet me. The delegation included the then ministers for; Defence Tholhath Ibrahim Kaleyfan, Human Resources, Youth and Sports Hassan Latheef, and President Nasheed's Special Envoy Ibrahim Hussein Zaki. These three individuals met with me and told me that they would like this to end. They said that the detention can only come to an end in two ways; if I resigned as Chief Judge of Criminal Court or if I agreed to leave the Maldives. The delegation was led by Ibrahim Hussein Zaki. I told them that I would not decide on the proposal until speaking to my family, close relatives and lawyer. I did not see any progress in negotiating with the government so I informed them of this and stopped talking to them. Additionally, a woman claiming to be from the military came and told me that she came to attend to what Judge Abdullah wants, she kept making various different proposals. One of her proposals was to leave the Maldives with her for a few months on holiday, to go anywhere and stay at any luxury hotel together. The proposals made by the then government after the Maldives National Defence Force (MNDF) abducted me and kept me detained at a military establishment were unlawful, unconstitutional, inhumane and uncivilised. I had no communication with the outside world during those 22 days under detention. I did not have knowledge of any news locally or internationally. The military did not inform me of any news disseminated by any world news agency while I was kidnapped. Furthermore, as the house I was living at was not my own, when uniformed Maldives security forces carried out the unlawful, inhumane, unconstitutional, low-level acts with the use of force, it had damaged the women, children and old people living in the house physically and psychologically. The aforementioned acts also affected the inhabitants of the house severely, it also cast doubt over fundamental rights and protections afforded to us under the Constitution.

Statement

Human Rights Commission of Maldives

29 April 2012

Full name: Abdullah Mohamed

Occupation: Judge

Time: 14:43

Introduction: (Mohamed Husham Ali): We are meeting with you, Abdullah Mohamed, today since the Commission has decided look into the facts surrounding your arrest and detention by the defence forces, and how you were kept under custody despite the High Court and the Supreme Court orders calling for your release. As per Article 22(b) of (Law Number 6/2006) The Human Rights Commission (HRCM) Act, we require a statement by you for the aforementioned investigation. Joining me, Director Husham Ali, in taking your statement are members of the Commission, Ahmed Abdulkareem, Senior Investigation Officers Aishath Shiuna and Ibrahim Zahid.

Aishath Shiuna: Could you tell us the people you met while you we're detained, and the days you spent under custody in detail?

Abdullah Mohamed: One person I met the most was media officer Abdurraheem, and individuals from the HRCM, I don't know their names, and a delegation from the government consisting of Ibrahim Hussein Zaki, Tholhath, and Hassan Latheef on the first day, then the next day I met the two apart from Ibrahim Hussein Zaki.

Aishath Shiuna: In addition to that did anyone meet you? Did any military personnel meet you?

Abdullah Mohamed: On behalf of the military I met officers who were permanently stationed there. Dr. Shahid and the person in charge of the place, and other (military) personnel who stayed there.

Ahmed Abdulkareem: Did a woman visit you?

Abdullah Mohamed: Yes a woman representing the government, I don't know her name, I think it was a woman named Zeenath.

Aishath Shiuna: Do you meet in the room or outside?

Abdullah Mohamed: We meet in the room.

Aishath Shiuna: Did they come in uniform?

Abdullah Mohamed: No, they don't, they come in ordinary clothes.

Aishath Shiuna: What do they say? Why do they come? Do they inform you anything in particular? Or?

Abdullah Mohamed: They just say that they are here to tend to the Judge, to see if he needs something. What information would *she* give me?

Aishath Shiuna: Are you not going to elaborate?

Abdullah Mohamed: What is there to elaborate on?

Aishath Shiuna: Does she say exactly what she is there to do?

Abdullah Mohamed: No, like I said, she said to attend to the Judge.

Ahmed Abdulkareem: How long does it take?

Abdullah Mohamed: I don't know. It depends, sometimes she stays for a really long time.

Aishath Shiuna: So do you just sit and talk?

Abdullah Mohamed: Yes we talk, I think she takes notes sometimes as well.

Ahmed Abdulkareem: What do you feel when she says she is coming to attend to the Judge?

Abdullah Mohamed: I think she wants to clarify certain issues, she also reiterates what the government proposes sometimes.

Ahmed Abdulkareem: What does she propose?

Abdullah Mohamed: Her proposal was that I resign for the sake of the Maldivian people; to the effect that I should go to a place where people are protesting and resign there. She placed emphasis on that kind of proposal.

Aishath Shiuna: Usually what time does she come? Is it in the morning or at night?

Abdullah Mohamed: It depends, on different occasions it has been at different times. I can't say precisely whether it is more at night or during the day. I think it was mostly in the mornings that she visited.

Ibrahim Zahid: Are there other people there when you meet her?

Abdullah Mohamed: No she comes alone.

Mohamed Husham Ali: Which ministry or institution does she represent?

Abdullah Mohamed: She says she represents the Ministry of Defense.

Aishath Shiuna: Does she make any threats in the case you don't go along with her proposal?

Abdullah Mohamed: Yes, they say that if I don't agree, I won't be released. They said on the one side it's the government and Judge Abdullah on the other, and that I'd only be released if I did as they said, this was their demand.

Mohamed Husham Ali: Does she come everyday?

Abdullah Mohamed: Obviously she wouldn't come every day, but she comes a lot.

Ahmed Abdulkareem: Do you meet her the most?

Abdullah Mohamed: I think she would be one of those people I met a lot. I met Abdur-Raheem as well, I mean, I met him more or less the same amount of time as I did her.

Ahmed Abdulkareem: When the woman comes to visit does she make any other demands, apart from the ones you have mentioned?

Abdullah Mohamed: The other proposal was that I leave the Maldives. I think I have mentioned it to you before, to leave the Maldives with her and go anywhere in the world that I prefer.

Aishath Shiuna: The delegation that you mentioned, did they propose leaving the Maldives in the same manner?

Abdullah Mohamed. Yes, they too proposed the same, as I mentioned before, my resignation is what they really wanted. The representatives of the government kept insisting that I would only be released if I resigned. All of them reiterated that proposition. I spoke to them about other things as well, as you know; they met me on many different occasions so we do talk about other things off-topic.

Ahmed Abdulkareem: Now, others have also mentioned this before, right? We have heard about this particular woman who came to meet you. So we would like to further clarify; before they proposed that you leave with that woman, did they propose that you leave with your family or by yourself?

Abdullah Mohamed: In relation to that, I realized that their first proposal was that I leave the Maldives with her, for duration of three months, as I said before. After discussing different options, the latter you mentioned was also proposed. They offered me the option of leaving by myself or with my family, including my children. (They suggested that) the government would handle all expenses related to my children.

Aishath Shiuna: Did the delegation representing the government propose that you leave with the woman, or did the woman herself propose that?

Abdullah Mohamed: No, I think that was after the delegation met me. The woman came by herself and proposed that to me.

Ahmed Abdulkareem: Are you suggesting that the President instructed her to do so?

Abdullah Mohamed: They come to make propositions on behalf of the government. I don't know who instructs them on that. I only know what she tells me directly, she'd say the proposal is to this effect now and if I wanted to leave the government would handle all financial aspects.

Ahmed Abdulkareem: Did you ever ask the woman why she was asking you to leave with her?

Abdullah Mohamed: I don't know, maybe because if a person detained were to leave he would have to leave in the company of someone in any case?

Mohamed Husham Ali: What kind of relationship is it between the woman and the others stationed there (at Girifushi)? I mean in relation to work?

Abdullah Mohamed: I don't know what kind of relationship they have.

Mohamed Husham Ali: Do you only meet inside the room?

Ahmed Abdulkareem: Do you meet the others (delegation) inside the room too, yes?

Abdullah Mohamed: People who come to meet me meet inside the room. The delegation met with me at the hall downstairs.

Ahmed Abdulkareem: Does the woman meet you inside the room each time?

Abduallah Mohamed: The woman came straight to my room, and then met me.

Ahmed Abdulkareem: Does she ask any questions? Does the meeting differ from an official visit by a representative of the government? Do you ask her what it is she's after?

Abdullah Mohamed: No I didn't ask her any questions in that regard. I assumed that she was coming as part of her official duty; one should assume it was so, right?

Ahmed Abdulkareem: Since she was a psychologist, did she mention any sort of treatment? Did she do anything related to her field?

Abdullah Mohamed: I believe that her aim was to psychologically weaken me. I told her that I was ahead of them, and that I know which direction she was heading to next, in terms of psychologically weakening me – I told her that they couldn't weaken me in that sense. I assured them that they couldn't do it to me, but that if they wanted to take on a different approach they were welcome to do so. So I figured that the main reason for sending that woman was to mentally weaken me. As I said before, the way in which she spoke to me made me think that. For example, she would say that the Home Minister Afeef had released a statement and so forth. I told her to tell the Home Minister that the Judge has said the Home Minister is a "*****" (derogatory word). When I said that she asked me why I said that. I told her that I would tell her the reason why I said it when she reads the statement he made. If the Home Minister or Commissioner of Police has made a report then make us sit together, and then let Maldivian citizens sit as the audience. I would provide documentation of unlawful activities of Home Minister and Commissioner of Police to the extent where it reaches their full height. Amongst the two of them, they can't find one document against me; this is why I am saying this. In that regard I have done a lot of work. I challenged them and said they couldn't do anything against me. I also told the delegation from the government that they don't have the capability or calibre to negotiate with me. Firstly, I told them their proposals are similar to what gangs propose, furthermore I said that they were in no way capable of running a government, and that I doubted their ability to please Maldivian citizens. I spoke to them two more days and after that I told them I would never speak with a delegation from the government. I told them that I had exhausted everything I wanted to discuss with them (the delegation from the government), that now

I can only resort to yes or no answers. I told them one option was to keep me detained permanently, or to release me. I told them I didn't want to proceed with any more negotiations regarding anything. I told them this after meeting them for two days.

Ahmed Abdulkareem: Did your lawyer get the opportunity to speak?

Abdullah Mohamed: No, he did not.

Mohamed Husham Ali: Did the woman who visited you try to make any physical contact with you in any way?

Abdullah Mohamed: Whether physical or mental it could only happen if both parties had any such intention, I was very vigilant about this matter. When she came on the first day I was truly very scared. I was very scared and sad. The reason for that was that I was a grown man, and she was woman, and that I had been detained for many days in my lonesome, and while I've been detained in such a way, a woman had come to see me, so I was aware of what was happening. I did not speak to her that day. In reality I was thinking about it a lot and I was very saddened. I was saddened because the government had stooped to this level. I prayed to Allah, to save me from this ordeal. So, I did not speak to her at all. Later on I thought, if she had come all the way to speak to me, and since I didn't speak back it could dismay her, so I told her why I didn't speak to her. I told her clearly why I didn't speak to her. I told her I wasn't hateful of her and that given the circumstances I refused to speak to her that day. She came the next day as well, I did the same and refused to speak so she left. On the third day I explained myself to her and told her why I didn't speak to her. I told her that if I spoke to a woman alone while I was isolated, the topic could get too out of hand, and that even I, myself didn't know where that could lead, and that for that reason I decided to refuse to speak.

Ahmed Abdulkareem: Was the door locked?

Abdullah Mohamed: The door could be locked. If they came from the other side they would have keys to open it.

Ahmed Abdulkareem: Did you think she was sent for that kind of purpose?

Abdullah Mohamed: I don't know why she was sent; only those who sent her would know that.

Mohamed Husham Ali: Does the woman lock the doors after her?

Abdullah Mohamed: No, nobody locks the door after them, its kept shut though.

Aishath Shiuna: Does she come with a notebook or laptop?

Abdullah Mohamed: She had material to note things down, she also had a phone, and she also had papers to note things down. She also brought books at times.

Ahmed Abdulkareem: As you have said, she stated that the government proposed you leave the country with her. When that was said, did you ever speak in a way where you insinuated you wanted to do so or that you wanted to make any sort of contact or relationship with her?

Document 93

Abdullah Mohamed: Ahmed, neither of us was given the opportunity to do any such thing. Even if I was detained, I kept challenging them (the government), and that was why I was detained in the first place. Just because I was detained I didn't have any intention of flirting with some woman they sent.

Ahmed Abdulkareem: But was her manner of speaking in that direction?

Abdullah Mohamed: I did not give her a chance to speak. It goes for the delegation from the government as well. I did not give anyone a chance when I was detained, even for the girl, or any other person who came to see me. I kept on challenging them. In accordance with the criminal justice system, apart from talking in my defense, I did not do/say anything else.

Mohamed Husham Ali: Thank you very much.

CONFIDENTIAL

**Translation of President Nasheed's speech at Artificial Beach on 22 January
2012**

Party's Chairperson, Party Leadership, Ministers, all members, everyone present here today, and all Maldivian citizens watching this from afar and near, may peace be upon you (*Assalam alaikem*).

Years ago the Maldivian Democratic Party intended, thought, decided, and resolved to change the regime that was in power in the Maldives. One of the most important or fundamental reasons for that was to establish a criminal justice system with integrity; to have a good, progressive justice system that can solve/perfect issues in the Maldives, one that can bring development to the citizens of the Maldives.

The Constitution of the Maldives clearly illustrates that the justice system should be based on the principles of separation of powers. The Constitution also states special procedures and means in which to produce that justice system. In relation to that, as my previous speaker Velezinee said, Article 285 of the Constitution states that judges in courthouses should be those who have fulfilled the conditions prescribed by law within two years of the commencement of this Constitution. Two years after the commencement of this Constitution there should be judges in courthouses that have fulfilled the conditions prescribed under law, and they are to dispense justice to the people.

We might have forgotten how it all occurred, on 11 May 2011 we saw the then sitting judges being referred to as judges and sworn in based on standards declared by the JSC. We had not looked into whether or not the people who were sworn in night had the requisite conditions prescribed by law. At the time we did not have legislation to see if the judges fulfilled those conditions. Neither was there an act in existence pertaining to what those conditions were. JSC and judiciary themselves had decided who those judges sitting in Maldivian courts would be. I remember that night, Velezinee greatly protested this, despite that we so the judges sworn in.

Before the said judges were sworn in, on 11 May 2010, in reality JSC decided the code of conduct and disciplinary standards of the judiciary. During that month, I sent a letter to the JSC, I told them that in my opinion, the code of conduct and disciplinary standard you have declared is not one that Maldivian citizens anticipated in light of the Constitution. With regard to the characteristics required of a judge as per the Constitution, one that we notice is the required academic qualification for judges. He or she must be fully aware, honest, and reputable. For us, and certainly for myself, the standards declared by the JSC were not appropriate therefore I wrote a letter to the JSC that month, raising those concerns.

However without any consideration to the said letter, we saw the judges take the oath in August. The judge we're concerned with today was also amongst the judges who took the oath that day. After the JSC decided the composition of the judiciary in this manner I just mentioned, I then saw the interim, transitional Chief Justice of the transitional Supreme Court declare himself the permanent Chief Justice of the Supreme Court, and they wrote a letter to me stating that presently sitting judges were not subject to reappointments in accordance with the Constitution. The problem I

faced then was the need to establish a judiciary as per the Maldivian Constitution, and deal with matters relating to the judiciary. When the two years stipulated under the Constitution to do that lapsed, on that day I told the MNDF to close off the temporary transitional Supreme Court.¹ (I) Closed off that court because the aforementioned was happening. In case the window for us citizens to create a Judiciary as dictated by the Constitution would narrow and finally be lost.

As Hassan Latheef just stated, I am not mistaken about my statutory obligations. Right now I am the highest authority of the state, whom you have elected. I will carry out that position, that responsibility, that work, with conviction, without faltering, with great thought and with patience. We will do what needs to be done at any given moment. We will complete what needs to be completed at any given moment.

The Supreme Court, interim Supreme Court, was closed off in order to create a judiciary as stipulated in the Constitution. Due to the closing off of the Supreme Court, the next day, September 10th, the Judges Act was completed. The Supreme Court Judges were decided upon by the Peoples Majlis (Parliament) and all the parties came to an agreement on it. That day, I agreed to abide by and give space for what all the parties decided upon, because in my view establishing a Supreme Court was a necessary action.

All those who worked at the Parliament that day would very clearly know under what circumstances, in what way, and in what narrow margin the Judges act and the Judicature Act was produced and finished. The Judges Act and the Judicature Act were both drafted in one day, without any debate. Judges would also have to be appointed under these two laws. We would also have to establish courts under this law.

Since keeping the nations judiciary on the right path is a necessity, starting from then on the Government, and even myself, were working to reform the issues of the judiciary within those established laws. However starting from 2009 the Presidents Office, and myself as well, were sending letters regarding some of the Judges from the courthouses to the Judicial Services Commission. (They) were told to take action regarding Judges in many different instances.

The Constitution stipulates that the power to oversee the conduct of judges and to regulate all other matters pertaining to judges lies with the Judicial Services Commission. The Government kept writing to the aforementioned Commission, however even up until recently the Commission had not taken any action on what was put forward by the Government.

Yet very recently we saw the Judicial Services Commission make a decision. It decided to take action regarding some judges. However with that decision being made, another judge from another court, said that the Judicial Services Commission could not to do this work. So again a judge had said something to the Judicial Services Commission.

¹ <http://minivannews.com/politics/legal-limbo-leads-mndf-to-confiscate-keys-to-supreme-court-10106>

If we were to uphold the general principles of the Constitution of the Maldives, the person who is there to then say something on this would be, in my view not a judge, but the highest authority of the state.

The action that I took was not under any circumstances done with the intention of causing any persons grief. This action was not under any circumstance taken in order to derive pleasure/happiness from the arrest of any persons. This government, and our party, is not a government or party that would ever praise, or empower human rights abuses and unlawful actions, and I myself am not such a person as well.

Our only want, and our only purpose, is to establish through the Constitution a judiciary in line with the expectations of the citizens of this nation.

I, with the utmost sincerity, want to assure the citizens of this nation that for as long as I remain the leader of this nation, I will do all work required to reform the judiciary, God Willing. The pledges we have made to the citizens of this nation are many. The work we are doing for the citizens of this nation is plenty. What I have to tell all the members and people of this party and this nation is that the work that we have yet to do in the future is plenty as well.

When a country is transitioning into a democracy, in that transitional period, (finding out) which of the institutions of the nation doing what sort of work enables a country to transition into a democracy, is an example/lesson we can see from the history of many nations. Look upon the role that the military played during transitional periods of countries going through democratic change. Not to look too far away, say if we look at South Korea for example.

In some instances, in some moments, as the Commander in Chief of the Armed Forces, I will do what I need to do. I do those things with the utmost sincerity.

“My prayer is for a better tomorrow,
My prayer is that you will be blessed in this life and hereafter,
Praise be to Allah, Peace be upon you.”

ENDS

Statement

Human Rights Commission of Maldives

21 March 2012

Name: Mohamed Nasheed

Occupation: Former President

At a nightly hour on 16 January 2012, Ministry of Defence arrested Chief Judge of Criminal Court Uz. Abdullah Mohamed and detained him at Girifushi in the interest of national security.

I have received complaints about Uz. Abdullah Mohamed from the public and from government bodies as well. Due to this, the Office of the President filed cases regarding Uz. Abdullah Mohamed to the Judicial Service Commission (JSC) and Maldives Police Service (MPS) requesting the investigation of these cases. In relation to the case filed at MPS by the Office of the President, I am aware of the fact that MPS issued a summon requesting Uz. Abdullah Mohamed's presence at MPS. I also know that he failed to make himself present according to the summon issued to him by MPS. Home Minister had also mentioned to me that a threat to national security might occur due to Uz. Abdullah Mohamed, and that therefore the Minister of Defence should act as he sees fit.

Matters related to national security are dealt with Ministry of Defence. However, in order to ensure that he was not treated inhumanely and that he was not treated in a manner that was not apt towards a public official under the given circumstances, I sent Special Envoy to the President Hussein Zaki and Minister of Defence Tholhath Ibrahim Kaleyfan, Minister of Human Resources, Youth and Sports Uz. Mohamed Latheef to Girifushi where Uz. Abdullah Mohamed was detained. They assured me that he had not been subject to any maltreatment. More so, they informed me that Uz. Abdullah Mohamed himself told them that he was not treated inhumanely and a manner appropriate towards a Judge under the given circumstances.

As the Human Rights Commission of Maldives (HRCM) has given high priority to the case of Uz. Abdullah Mohamed, I note that the HRCM has not been appropriately investigating many cases of widespread human rights abuse towards many ordinary citizens in the Maldives, filed at the HRCM. Also the numerous cases of inhumane acts against Maldivians dispensed by the police and armed forces filed at the HRCM have not been investigated.

**PRESIDENT
MOHAMED NASHEED**

“Dictatorships don’t always die when the dictator leaves office.”

The Closing Statement prepared by President Nasheed for submission at his trial where he was charged with terrorism by the State (Translation)

(Note: This is a translation of the Closing Statement prepared by President Mohamed Nasheed for submission at his trial where he 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.)

Since becoming a Republic, the Maldives has begotten an ugly tradition of raising criminal charges including treason and civil unrest against Presidents who have vacated or been forced to vacate their office, sidelining them from the political sphere. Maldivian history has shown new Presidents working to marginalise erstwhile leaders from the system in the fear that they may pose a threat later on. However, when I was elected President, I wished to write a new page in this chapter of Maldivian history. All Maldivian citizens, without exception, will firmly believe that former President Maumoon Abdul Gayoom is at peace today because of this decision.

Following prolonged proceedings on charges raised under Article 81 of the Penal Code, the current Prosecutor General – in a move ostensibly to review the case – withdrew said charges and filed new charges of terrorism against me. Senior members of the Maldivian military were charged along with me. I believe we are blessed with the freedom we enjoy today due to the many sacrifices of the officers of Maldives National Defense Force. I am deeply concerned that the State has decided to repay them by attempting to shape the public perception that MNDF is involved in terrorist activities and raising charges that besmirch the honor and dignity of that Institution.

I have tried to prepare my defense in a manner that would not denigrate the dignity and honor of MNDF and the trust the Maldivian people have placed in the institution. If the state continues to portray the MNDF as a threat to the Maldivian people, I believe we will soon be faced with the danger of losing military aid as the MNDF loses its esteem in the eyes of the international community. Those with any love for the nation would not sully its name over mere political rivalry.

The charges raised against me and the subsequent trial have been unfair. The state charged me with an offence that carries a heavier penalty with malicious intent for political reasons. While the State has raised charges under section 2(b) of the Terrorism Act, no law explains the elements necessary to prove the criminal acts referenced in that section. 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 offence 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.

The court conducted this trial at an extraordinary pace. It has not given me adequate opportunity to defend myself against the charges raised against me. The court granted less than three days for my lawyers to go through hundreds of pages of statements and prepare a defense. Despite repeated requests for more time by my lawyers and I, the court has adamantly refused our requests. In conducting this trial, the court has denied me the benefits and the protections guaranteed under articles 17, 20, 33, 42, 49, 51, 52, 53, 54, 57, 60, 61, 68, 69, 128, 149, 223 and 246 of the constitution.

I have submitted names of witnesses and requested they be brought to court to provide defense testimony. However, the Court has refused to admit my witnesses, claiming that their testimonies will not nullify the evidence submitted by the State. The Court has even refused me the opportunity to submit my defense. Not one aspect of this trial has been conducted with fairness. I have been denied the rights of the accused in contravention of the principles clearly enshrined in the Constitution.

I received continuous complaints from my Home Minister and the Commissioner of Police regarding the Chief Judge of the Criminal Court Abdulla Mohamed. Numerous complaints were also filed by the general public.

The last complaint I received concerned a very tragic incident. It was the reported incident of Judge Abdulla releasing a murder suspect from police custody as the IGM Hospital had not submitted a document pertinent to the case, who subsequently went on to commit another murder. The police and Home Minister perceived this incident as a direct contract killing. As the man who had been contracted to commit the murder was in police custody at the time, the contractor had amended the contract to include Judge Abdulla, whose role it was to facilitate his release so he was free to fulfil the contract. I was informed that when the man was released from police custody, he was being detained as a suspect in a previous murder investigation. There was no way for the police to arrest him after Judge Abdulla released him. He went on to stab another man, committing another murder. Since suspects in other murder cases had been kept in custody till the end of their trials, the police service felt that the person in this case was released for that very purpose and informed me of such.

I was informed that those who commit violence against others in the Maldives usually do not do so out of anger but rather, to fulfill a contract and because they have been paid. The Commissioner of Police of my government had no trouble in explaining this to me. When I was imprisoned several times without cause during President Maumoon's administration, I had the opportunity to meet many different kinds of people in custody. I also know Male as I do the back of my hand. I can recognize islands from their silhouettes on the horizon. I believe the people of this country made me their leader for this reason. I believe the people of this country chose me, a common, middle-class Male' resident as their leader because even their most essential needs were unmet, and because they wanted me to work towards achieving for them what is rightfully theirs.

I was elected in the hope that Maldivians would no longer have to beg for medical expenses or text books, that they will have employment opportunities, an adequate income and housing and to fulfill their hopes of living in a peaceful environment, leading lives of dignity. According to police intelligence, certain judges were denying them this hope and involving themselves in contract killings. As the President, this was not something I could overlook.

Therefore, I requested the police service investigate the case of Judge Abdulla.

Under no circumstances did I instruct the Commissioner of Police to do so in violation of the law and regulations. Only to do it in accordance with the laws of Maldives. Once the President of the Maldives issues an order to a relevant authority, it is their duty to comply in accordance with the law. During late 2008, I asked the finance minister to increase the national revenue from MVR 6 billion to MVR 11 billion. That does not mean he was meant to use the armed forces to go around pillaging the nation.

Everything relating to Judge Abdullah proceeded as I have mentioned. I have never ordered anyone to do anything that contravenes the law. After the police failed to summon Judge Abdullah for questioning, in continuing the investigation as far as possible without questioning him, the police found that Judge Abdullah constituted a threat to national security. When informed of this, I ordered the Home Minister to take all measures necessary to safeguard the nation from this threat. I did not give directions at any time to any party, to complete a specific task in a specific manner or to take any specific measures.

I never made a decision to take Judge Abdullah anywhere by force. And I have never given any order to that effect. When any issue relating to Judge Abdullah was brought before me, I always informed the relevant state authorities to take measures in accordance with the law. I sent some of the cases to the Judicial Service Commission and some to the Police. This is clearly evident from the documents of the Judicial Service Commission, the Maldives Police Service and the President's Office.

In the testimonies of the Prosecution's witnesses to prove the decision to arrest Judge Abdullah, all testified that I had never given them the order to arrest Judge Abdulla. No one else had informed them of such an order being made, nor did they see any writing to that effect.

Additionally, during Judge Abdulla's statement to the court, he stated that based on what he heard from senior military officials, he believed the order to arrest him must have come from me. This is Judge Abdulla's personal opinion based on his experiences. This is the victim's perspective. This may not be the best testimony to prove something in a court of law.

This trial is not being conducted fairly. The three judges hearing the case are openly communicating to my close friends that this is out of their hands; that they do not have the discretion to rule over the case. In reality, it is you three Judges who have to bear the responsibility for this grave injustice. I also grew up in this country. I am known to most in this country and my greatest fortune is that many people both in this country and within the international community wish me well. God willing, there will be justice for what you three Judges are inflicting on me. Those who wish me well will never give up until justice is served.

Under the guise of a trial, you three judges conducted a circus. There is no point in speaking here as you would in a court of law. As a parting word I will again only tell you three judges to humble yourselves in the eyes of the world. To fear the afterlife. And to recuse yourselves from conducting this circus.

ENDS

Q&A: The Sentencing of Former President Nasheed

Issued By [High Commission of the Republic of Maldives](#)



What has happened?

On 13 March 2015, the Criminal Court of the Maldives sentenced former President Mohamed Nasheed to 13 years imprisonment. Mr Nasheed was charged with abducting the Chief Judge of the Criminal Court, Justice Abdullah Mohamed, under section 2(b) of the Anti-Terrorism Act 1990. Section (b) defines “kidnapping, holding as hostage or apprehending someone against their will or attempts to kidnap, hold hostage or apprehend someone without their will” as an offence.

What has former President Nasheed been sentenced for?

The sentence relates to events in January 2012, during former President Nasheed’s tenure as President and Commander-in-Chief. On the night of 16 January 2012, Chief Judge Abdullah was abducted from his home by personnel of the Maldivian

National Defence Force (MNDF) and his whereabouts were unknown for 72 hours. Judge Abdullah was subsequently detained for over 21 days in a military training camp on the island of Girifushi, without access to his family or lawyers.

Following Judge Abdullah's abduction, the Maldivian High Court and Supreme Court issued orders for the release of the Judge; and the entire legal and judicial profession of the country, the judicial oversight body the Judicial Services Commission (JSC), and the office of the United Nations High Commissioner for Human Rights publicly called for the immediate release of the Judge. Furthermore, the European Union and other multilateral and bilateral stakeholders issued public statements and communicated to the Government of Maldives to immediately release Judge Abdulla.

The Criminal Court of the Maldives has now determined that the abduction and subsequent detention of Chief Judge Abdullah was unlawful and unconstitutional, and has convicted former President Nasheed for issuing the orders for the abduction.

Why was former President Nasheed charged with terrorism?

Mr Nasheed was charged with terrorism under section 2(b) of the Anti-Terrorism Act 1990, which defines *'kidnapping, holding as hostage or apprehending someone against their will or attempts to kidnap, hold hostage or apprehend someone without their will'* as a crime. The charges under the Anti-Terrorism Act 1990, relate solely to the abduction of Chief Judge Abdullah in January 2012.

The Anti-Terrorism Act 1990 is not equivalent to many modern day anti-terror legislations which special considerations and procedures in handling suspects and the accused. The prosecution of former President Nasheed was in line with normal criminal procedure in the Maldives.

The charges against former President Nasheed changed: How? Why? Was he found innocent of the previous charges?

The Prosecutor General first filed charges against former President Nasheed for his connection to the abduction of Judge Abdullah on 15 July 2012. He was initially charged under Section 81 of the *Penal Code* 1968 which states that *"it shall be an offence for any public servant by reason of the authority of office he or she is in to detain to arrest or detain in a manner contrary to Law, innocent persons"*. Following months without significant progress being made in the case at Hulhumale' Magistrate Court, on 17 February 2015, the Prosecutor General withdrew these charges for review, under powers conferred under Article 223 of the Constitution.

Following the review, the Prosecutor General utilized the discretion afforded by the *Prosecutor General's Act 2008* to amend and re-file the charges against former President Nasheed to kidnapping and abduction charges under Section 2(b) the Anti-Terrorism Act 1990. Charges were re-filed at Male' Criminal Court on 22 February 2015.

In explaining the reason for the change of charges, the office of the Prosecutor General has publicly stated it is the belief of the Prosecutor General that the new charges better fit the circumstances of the abduction and detention of Chief Judge Abdullah. In the Prosecutor General's opinion Section 81 of the *Penal Code 1968* relates to an abuse of office by officers legislated with the authority and responsibility to make arrests, while the issue at stake in this case was the abduction of a civilian by a body (the MNDF) which has no legal basis to detain civilians for any cause. It was on this basis that Prosecutor General amended and re-filed charges under Section 2(b) of the Anti-Terrorism Act 1990.

Therefore, Mr Nasheed was not found innocent or exonerated of the initial charges. The Constitution and the *Prosecutor General's Act 2008* afford the Prosecutor General the ability to withdraw, review, amend and re-file the charges made against an individual in connection to an alleged crime.

Was president Nasheed the only person charged for their involvement in the abduction and detention of Chief Judge Abdullah?

No.

Throughout the legal proceedings four other individuals, including Mr Nasheed's former Defence Minister, Chief of Defence Force and the Commander of the Male' Area, have faced charges in connection with the abduction and detention of Chief Judge Abdullah. Throughout the proceedings, the cases against each individual have been processed identically. The Prosecutor General amended and re-filed the charges against all the accused indiscriminately, charging these four individuals under the under section 2(b) of the Anti-Terrorism Act 1990 in exactly the same manner as former President Nasheed.

Did the Government file and pursue the case against former President Nasheed?

No.

The Government of Maldives cannot file criminal charges against an individual. As per Article 220(a) of the Constitution of Maldives, charges were brought against former President Nasheed by the Prosecutor General. The post of Prosecutor General is nominated by the President and approved by Parliament. Indeed, the

Prosecutor General who first filed charges against former President Nasheed was nominated by former President Nasheed.

The Prosecutor General's decision to file charges was based on an investigation report by the Human Rights Commission of Maldives into the kidnaping of Chief Judge Abdullah. Following the unlawful abduction and detention of Chief Judge Abdullah, the Prosecutor General instructed the Human Rights Commission to open an investigation into the case in January 2012. It is important to note that this investigation was opened while Mr Nasheed was President, and legal proceedings would have continued against him even if he had remained in office.

Is the sentencing of former President Nasheed the result of a politically motivated campaign of the Government of Maldives?

No.

There is no conspiracy by the Government to unwarrantedly convict Mr Nasheed and prevent him from participating in the political arena in the future. Indeed, the charges that former President Nasheed faced in connection to the abduction of Chief Judge Abdullah did not prevent him from contesting the 2013 Presidential Election.

The Prosecutor General is entirely independent, and the Constitution of Maldives (2008) guarantees the full independence of the Judiciary from the Executive. The Government can neither interfere nor influence any decision of the Prosecutor General or the Judiciary. By virtue of the Constitution, former President Nasheed, like any other citizen of the country, has been entitled to a transparent and impartial trial in accordance with the rule of law.

The Constitution of the Maldives clearly establishes the structure of governance and the independence of the branches of state within the Maldives. All of the branches of state—without exception—function independently and without political interference, in full adherence to the separation of powers. Similarly, all legal cases—irrespective of the individuals involved—proceed fairly and transparently, in full accordance with the Constitution and the rule of law. The independence of the Judiciary and the fairness of due legal process have been as sacrosanct in the case against former President Nasheed as they would have been for any other Maldivian citizen. The Government of Maldives will continue to ensure the inviolability of a citizen's right to a fair trial, insulated from political interference.

Did two of the presiding Judges in the case act as witnesses against former President Nasheed?

No.

During the fourth hearing former President Nasheed called the Prosecutor General and two of the presiding Judges in his case as witnesses for the defence. President Nasheed's request was denied by the Bench on the basis that these officials could not be called as witnesses on evidentiary rules of relevancy and probative value.

Was former President Nasheed denied legal representation?

No.

Throughout the legal proceedings against former President Nasheed, his Constitutional right to legal counsel has been guaranteed. On 23 February 2015, when former President Nasheed was presented before the Judge of Criminal Court for a procedural remand hearing in relation to the amended and re-filed charges, he was given the opportunity to appoint legal counsel. His legal team were not present at this hearing because they had failed to register themselves as per regulations. As a result, the Criminal Court granted former President Nasheed three days, as per regulations, to appoint legal counsel. At the following four hearings in the case, former President Nasheed had legal representation.

Following the sixth hearing, however, Mr Nasheed's legal counsel recused themselves, claiming that the proceedings were progressing in an uncharacteristically speedy manner and that they were not being provided with a sufficient opportunity with which to prepare their defence. The Court determined that all the documents relevant for the defence had been issued back in July 2012, and that no new evidence was being tendered since the change in charges. Additionally, the Prosecution recorded their 'no-objection' to allowing former President Nasheed further time to engage new legal representation. However, Mr Nasheed's counsel failed to appear at any subsequent hearings. The Court repeatedly reminded former President Nasheed to engage counsel or the Bench would consider that he waived his right to counsel, but advised Mr Nasheed that he could engage counsel at any time.

Has President Nasheed been mistreated?

No.

Throughout the process, the Maldives Police service has followed standard procedure and due process. On 23 February 2015, [a statement was issued by the Maldives Police Service](#) confirming that Mr Nasheed was "granted all rights of an accused who is kept under detention and obligatory access was given to his family, party activists and legal counsel as well as officials of the Maldives Human Rights Commission."

Next steps: can former President Nasheed appeal?

Yes.

The Republic of Maldives has a three-tier court system, and the right to appeal is a fundamental right guaranteed by Article 56 of the Constitution of Maldives (2008). Former President Nasheed has been sentenced by the Criminal Court—the lowest tier of the Maldives' court system—so in the event that former President Nasheed feels that justice has not been served, he has the right to appeal in the High Court and Supreme Court.

Open Letter to Lord Alton of Liverpool

Issued By [High Commission of the Republic of Maldives](#)



Open Letter to Lord Alton of Liverpool Regarding His Comments about the Trial and Sentencing of Former President of the Maldives, Mr Mohamed Nasheed

Dear Lord Alton of Liverpool,

We write this open letter in response to your recent [opinion piece on the *Huffington Post* blog](#), dated 22 March 2015, regarding the trial and sentencing of former President of the Republic of the Maldives, Mr Mohamed Nasheed.

The Government of Maldives takes its relations with British parliamentarians very seriously, and is committed to open and transparent dialogue. As such, the High Commission in London does its utmost to ensure that all members of the All-Party British-Maldives Parliamentary Group are kept regularly informed of the facts surrounding developments in the Maldives. As a member of this APPG, you have been provided with all the facts concerning former President Nasheed's trial and sentencing. Nevertheless, you have decided to comment on the trial in such an

inaccurate and public manner, that it will further exacerbate the domestic ramifications of the case for our young democracy. This is incredibly disappointing.

We would therefore like to take this opportunity to draw your attention to the litany of factual inaccuracies in your piece, and further provide you with an accurate account of the events that preceded Mr Nasheed's trial, and the facts of the trial itself.

Firstly, the Government of Maldives categorically objects to your depiction of former President Nasheed's resignation from office on 7 February 2012, as a "coup d'état". As you will be aware, the Government of Maldives, in collaboration with the Commonwealth, established the Commission of National Inquiry (CoNI)^[1] to inquire into the facts and circumstances leading to the 7 February transfer of power. All doubts regarding the transfer of power were comprehensively laid to rest with the release of internationally accepted^[2] [Report of the Commission of National Inquiry, Maldives](#) on 30 August 2012. The Commission concluded, "that there was no illegal coercion or intimidation nor any coup d'état". Indeed, the summary of the Commission's conclusions on page 2 of the CoNI report reads as follows:

- 1. The change of President in the Republic of Maldives on 7 February 2012 was legal and constitutional.*
- 2. The events that occurred on 6 and 7 February 2012 were, in large measure, reactions to the actions of President Nasheed.*
- 3. The resignation of President Nasheed was voluntary and of his own free will. It was not caused by any illegal coercion or intimidation.*

Furthermore, the Government of Maldives categorically rejects your implication that the Government "cancelled the [2013 Presidential] election and called for a re-run". The election of 7 September 2013 was annulled by the Supreme Court of Maldives following the submission of legal challenges by both the Progressive Party of Maldives and the Jumhooree Party in respect to the voter registration process. The decision to call for a re-run of the election, therefore, was the decision of the Supreme Court. Indeed, it is important to note that the Jumhooree party is now aligned with the party of former President Nasheed, the Maldivian Democratic Party (MDP).

Similarly, the Government of Maldives rejects your claim that there were "irregularities" with the results of the 2013 Presidential Election. Although the Presidential Elections of 2013 took place in a challenging political environment, international observers from the Commonwealth, the European Union, and other interested countries monitored the entire process and confirmed the fairness and legitimacy of the results. Indeed, in the [Reports of the Commonwealth Observer Group](#), Chair of the Commonwealth Observer Group, former Prime Minister of Malta, Dr Lawrence Gonzi, concluded that "the Maldives 2013 Presidential elections have been credible and have duly reflected the democratic will of the Maldivian electorate."

In respect to the sentencing of former President Nasheed, Mr Nasheed was sentenced to 13 years imprisonment under section 2(b) of the *Anti-Terrorism Act 1990*, for ordering personnel of the Maldivian National Defence Force (MNDF) to

unlawfully and unconstitutionally abduct Chief Judge Abdullah in January 2012. Section 2(b) defines “kidnapping, holding as hostage or apprehending someone against their will or attempts to kidnap, hold hostage or apprehend someone without their will” as a crime, and it is important to note that the charges under the *Anti-Terrorism Act 1990*, related solely to the abduction of Chief Judge Abdullah.

The Government of Maldives would like to make it clear that there is no conspiracy by the Government to unwarrantedly convict Mr Nasheed. The Government of Maldives cannot file criminal charges against an individual, and as per Article 220(a) of the *Constitution of Maldives (2008)*, charges were brought against former President Nasheed by the Prosecutor General^[3]. By virtue of the Constitution, the Government can neither interfere nor influence any decision of the Prosecutor General or the Judiciary. Indeed, the independence of the Judiciary and the fairness of due legal process have been as sacrosanct in the case against former President Nasheed as they would have been for any other Maldivian citizen.

Similarly, former President Nasheed was not singled out for his involvement in the abduction of Chief Judge Abdullah. Throughout the legal proceedings four other individuals, including Mr Nasheed’s former Defence Minister, Chief of Defence Force and the Commander of the Male’ Area, have faced charges in connection with the abduction and detention of Chief Judge Abdullah. The Government of Maldives can assure you that each of these cases have been processed identically, and all the accused were charged under section 2(b) of the *Anti-Terrorism Act 1990* in exactly the same manner.

Furthermore, in your piece you claim that Mr Nasheed was “refused access to legal representation”. We can assure you, that this is simply inaccurate. Throughout the legal proceedings against former President Nasheed, his Constitutional right to legal counsel has been guaranteed. On 23 February 2015, when former President Nasheed was presented before the Judge of Criminal Court for a procedural remand hearing, he was given the opportunity to appoint legal counsel. His legal team were not present at this hearing because they had failed to register themselves as per Criminal Court regulations. As a result, the Criminal Court granted former President Nasheed three days, as per regulations, to appoint legal counsel. At the next four hearings in the case, Mr Nasheed had legal representation. Following the sixth hearing, however, Mr Nasheed’s legal counsels recused themselves, and they failed to reappear at any of the subsequent hearings. The Court did not refuse former President Nasheed access to his legal team, and he was repeatedly reminded that he could engage counsel at any time, but failing to do so would lead the Bench to consider that he had waived his right to counsel.

In your piece you also appear to confuse the allegations that two of judges were witnesses for the prosecution with the court’s refusal to hear Mr Nasheed’s defence witnesses. To clarify, during the fourth hearing, it was in fact former President Nasheed that called the Prosecutor General and two of the presiding Judges in his case as witnesses for the defence. Mr Nasheed’s request was naturally denied by the Bench on the basis that these officials could not be called as witnesses on evidentiary rules of relevancy and probative value.

Additionally, in your piece you claim that former President Nasheed was “manhandled by the police.” We can assure you that throughout the process, the Maldives Police service has followed standard procedure and due process. On 23 February 2015, [a statement was issued by the Maldives Police Service](#) confirming that Mr Nasheed was “granted all rights of an accused who is kept under detention and obligatory access was given to his family, party activists and legal counsel as well as officials of the Maldives Human Rights Commission.” Nonetheless, as part of its commitment to international engagement, the Government has already invited a delegation from the International Committee of the Red Cross (ICRC) to visit the Maldives from 19-26 March 2015 in order to inspect prison and detention facilities.

Article 56 of the Constitution of Maldives (2008) guarantees former President Nasheed’s right to appeal his sentence. Mr Nasheed has been sentenced by the Criminal Court—the lowest tier of the Maldives’ court system—so in the event that former President Nasheed feels that justice has not been served, the High Court and Supreme Court can hear his case. All the documents necessary for Mr Nasheed to file an appeal, including the full case report (detailing the full trial proceedings), have been made available^[4] to his defence team. Meanwhile, out of its commitment to transparency, the Government of Maldives has invited observers from the UN, Commonwealth and European Union to monitor the appeal process. Yet, on 24 March 2015 the MDP has announced that Mr Nasheed will not be appealing his case at the High Court, and the MDP leadership has publically stated that they will not international observers to be present for the appeal process. The Government would nonetheless like to assure you that former President Nasheed’s continues to retain his right to appeal.

Finally, the Government of Maldives would like to assure you that no individuals have been unduly arrested for their involvement in recent demonstrations, and no police officers have attacked any peaceful demonstrators. A series of protests have been held nightly in the Maldivian capital Malé, and while for the most part peaceful, a number of individuals have been arrested for violent conduct and vandalism of private and public property. Despite the highly charged atmospheres typically associated with demonstrations, officers of the Maldives Police Service have continually acted with the utmost professionalism. Indeed, it is instructive to recall Sir Bruce Robertson and Professor John Packer’s observations on the CoNI investigations, wherein they spoke of “a national obsession with street demonstrating at an alarming level”, involving a reality of “bully-boy tactics involving actual and threatened intimidation by a violent mob.”

The Government of Maldives is a firm defender of freedom of speech, and we completely respect your right to express whatever opinions you may have about the Maldives. But, equally, it is our opinion that your authorship of an op-ed piece of such inaccuracy and one-sidedness was an act of gross irresponsibility. In 2012, the *Report of the Commission of National Inquiry, Maldives*, noted, “an urgent need to address an apparent climate of popular discontent and division...propelled by the politicisation of the media”. Although initially written about Maldivian media outlets, it is disheartening to see international commentary on the Maldives — of which your piece is part — demonstrate a similar politicization. Regrettably, the release of such commentary in international media outlets — pieces with little or no connection to the

facts — only serves to perpetuate the spread of misinformation and baseless rumour. Unfortunately, the sad truth is that it will only be the Maldivian people that suffer the consequences of such biased and factually inaccurate commentary.

In closing, we trust that this letter clarifies the facts of Mr Nasheed's trial, and hope that a consideration of these facts will precede any future comments you make on the case. We can assure you that we will continue to keep you updated on the facts of the case, but should you require any further information, we would be more than happy to provide it for you.

Yours sincerely,

High Commission of the Republic of Maldives to the United Kingdom of Great Britain and Northern Ireland

[1] As you will recall the respected Singaporean judge, Justice J.P Selvam co-Chaired the CoNI, while Sir Bruce Robertson and Professor John Packer were appointed as International Legal Advisers representing the Commonwealth and UN respectively.

[2] The CoNI and its findings were welcomed and commended by a multitude of international stakeholders, including the [Commonwealth](#), the [UN](#), the [US State Department](#) and the [Foreign & Commonwealth Office](#).

[3] Indeed, the Prosecutor General who first filed charges against former President Nasheed was nominated by Mr Nasheed himself.

[4] On 23 March 2014 the Criminal Court announced that there was a delay in the release of the full case report, resulting from the refusal of Mr Nasheed and his legal team to sign the required documents necessary for the report's release.