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Lawyers Amal Clooney, Ben Emmerson, and Jared Genser say Maldives' Government Should Face Targeted Sanctions

New York, NY - International counsel for former President Nasheed, Amal Clooney and Jared Genser, recently returned from a visit to the Maldives and Sri Lanka. During their trip they met with President Nasheed, the Sri Lankan Prime Minister, the Maldives' Attorney-General, diplomats, members of the media, and civil society.

Nasheed's unjust imprisonment violates the Maldives' due process commitments under national law as well as under the International Covenant of Civil and Political Rights, which was ratified by the Maldives in 2006. This travesty of justice has been recognised by the UN High Commissioner for Human Rights, the UN Special Rapporteur on the Independence of Judges and Lawyers, the EU, the US, the UK, Canada, Amnesty International, Transparency International, the Bar Human Rights Committee and many others. In the last week alone the High Commissioner has stated that "the rule of law continues to be manipulated for political ends" and that "the Government [should] release [Nasheed], and ... review several hundred pending criminal cases against opposition supporters in relation to protests in recent months".(1)

Diplomatic Talks

During the visit to the Maldives, international counsel stated that a diplomatic solution to Nasheed's situation remains possible. Indeed, following negotiations over the past few months, a deal had been reached between the Maldivian Government and Nasheed's party, the Maldivian Democratic Party (MDP), whereby Government officials undertook to release high-profile political prisoners, including President Nasheed, and review criminal charges against some 1,700 people who have been targeted for their political activities. Following these talks, the government made an official announcement that President Nasheed's sentence had been commuted to house arrest and presented him with an official document confirming the commutation.

President Yameen and his Government now pretend that this deal was never reached, and that clemency is not an option. This ignores the fact that under section 29 of the Clemency Act, “[t]he President has the discretion, on the President’s own initiative, to commute the sentence of a person convicted of a criminal offence, based on their age, health, treatment they are currently undergoing, their status and circumstance, or from a humanitarian perspective”. And in recent statements the government studiously avoids mention of the u-turn on their deal.

Legal Proceedings

In April 2015, international counsel filed a case before the specialised UN agency that deals with unjust imprisonment – the UN Working Group on Arbitrary Detention -and they await a decision by that body in the coming days. The government of the Maldives has hired international counsel, including renowned international barrister Cherie Blair QC, to assist with its defence of this case before the Working Group, (2) and filed extensive written pleadings to contest the case. Having fully participated in this legal process, it is expected that they will abide by any decision that is reached.

Sanctions

If the Maldives’ government continues to flout its international legal commitments, it would be entirely appropriate for targeted international sanctions to be issued against Maldivian officials. It has been suggested on behalf of the Maldivian government that the imposition of such sanctions would be “inappropriate and unjustified”, as they should only be imposed "where there is a threat to peace, or... in response to a specific policy. They ought not be used when dealing with a single case. Further, the use of such sanctions threatens the economic stability of the Maldives”. (3)

Such suggestions are entirely misplaced. On the contrary, there are precedents from all around the world of targeted sanctions being imposed in cases similar to President Nasheed’s, where state authorities violated an individual’s human rights by subjecting him to a politically-motivated prosecution, an unfair trial and an unjustifiable sentence. Such sanctions can be imposed by a single state or by an international organization and – far from affecting the entire population or the economy of the Maldives as a whole – they can be targeted to specific individuals directly responsible for the relevant human rights violations.

For instance, the United States imposed travel bans and the freezing of assets on 18 Russian officials involved in the malicious prosecution of a lawyer, Sergei Magnitsky, who was unfairly denied bail and remanded for an extensive period in custody, where he ultimately died. Similarly, the European Union ordered the freezing of funds belonging to several named Iranian and Belarusian officials for their role in human rights violations: individual judges were sanctioned for issuing disproportionate sentences following unfair trials that violated the basic rights of the accused, as were the prosecutors and government officials involved in such proceedings.

Targeted sanctions can therefore be appropriate even to address individual cases of human rights violations, where a Government persists in flouting its obligations under international law. But

in the Maldives, President's Nasheed's case is not about one individual. His conviction is emblematic of a broader, brutal crackdown on democracy and human rights involving not only the former President, but also large parts of the population. Over 1,700 persons in the Maldives are currently subject to politically motivated charges for exercising their right to peaceful protest and freedom of expression. The leaders of every single opposition party in the Maldives are currently either in prison or facing charges and intimidation by the Government. This makes the pursuit of targeted sanctions at the international level all the more appropriate and urgent.

Finally, counsel for President Nasheed note the statement issued on 17 September by the Prosecutor General's Office, indicating that an "appeal" against the High Court decision of 10 September was filed before the Maldives' Supreme Court. Counsel awaits a copy of this document and notes that the deadline for appealing the High Court judgment – which shamefully rubber-stamped the trial court's findings without even hearing argument on the merits – is 60 business days from the date of the relevant decision. This falls on 14 December 2015.

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(1) <http://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=16414&LangID=E#sthash.fnUQIjgL.dpuf>

(2) Statement by Toby Cadman, 27 June 2015, reported at: http://www.maldivesembassy.jp/cat_001/20340

(3) Statement by Cherie Blair CBE, QC dated 17 September , available at: <http://foreign.gov.mv/v2/en/media-center/news/article/1395>

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