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Ten Questions for the Government of the Maldives

By: Jared Genser

It has been very interesting to observe how the Government of the Maldives has responded to its defeat at the UN Working Group on Arbitrary Detention. A close review of Toby Cadman's recent oped in the *Maldives Independent*, "The UN Working Group Opinion: Next Steps," is a case in point and deserves closer scrutiny. Here are our ten questions for the Government of the Maldives, based on what he wrote, which is in *italics*.

A number of international personalities have attempted to tarnish the image of the Indian Ocean nation by criticizing the trial of former President Mohamed Nasheed, who was convicted of having ordered the abduction of judge Abdulla Mohamed, a sitting criminal court judge.

This is a dramatic understatement. It isn't merely that some "international personalities" have criticized the Government. These people and organizations include the UN Secretary-General, UN High Commissioner for Human Rights, US Secretary of State John Kerry, UK Prime Minister David Cameron, the European Parliament (in a unanimous resolution urging his immediate release), Amnesty International, Asian Human Rights Commission, International Commission of Jurists, and Bar Human Rights Committee of England and Wales, among others.

1. Can you name any independent intergovernmental institution, government, or non-governmental organization which has agreed with your assessment of President Nasheed's case?

It is equally regrettable that the High Court rejected the admissibility of the appeal and then went on to consider the merits without hearing legal argument from either side.

The Government has insisted President Nasheed must appeal the decision on his case. His legal team has made clear he was legally prevented from appealing by having been given the transcript on the 11th day after the 10-day appeal period expired. The Government has repeatedly insisted the Maldivian legal system is independent and impartial.

2. Why should President Nasheed trust a legal system which, by the Government's own admission, would reject the admissibility of the appeal but decide the case on the merits without hearing legal arguments from either side?
3. What independent intergovernmental institution, government, or non-governmental organizations have agreed with the Government's assessment the judiciary in the Maldives is independent and impartial?

The WGAD's opinion can equally be followed by affording the former President a full right of appeal under conditions that satisfy Maldives' international treaty obligations.

That is a willful misreading of the WGAD's opinion. The Working Group said "the Government has not explained how the arrest of Judge Abdulla, which was carried out . . . under an order given by a third party, could constitute terrorism . . . The Government has also failed to rebut the assertion by the source that there was no evidence produced at the trial that Mr. Nasheed had ordered Judge Abdulla's arrest." It then concluded "The Working Group considers that it is therefore clearly impossible to invoke any legal basis justifying the deprivation of liberty of Mr. Nasheed." The Working Group does not present options to the Government from which it can pick and choose. Instead it says "the Working Group considers that the adequate remedy would be to release Mr. Nasheed immediately"

Furthermore, by the Government's own admission and criteria, a fair appeal has already been precluded. In his oped, Cadman says Nasheed should be provided a "full right of appeal under conditions that satisfy Maldives' international treaty obligations," but also admits the first appeal to the High Court was rejected "without hearing legal argument from either side."

In addition, the Government still has not provided Nasheed with a copy of the Prosecutor General's motion to the High Court. And although prisoners have a right to access their counsel at anytime, typically on the same day of the request, under Maldivian law, Nasheed's access to counsel is severely restricted. It took two full weeks of repeated requests by Nasheed's counsel to access to him just once. Nasheed would like to lodge a final appeal to the Supreme Court, despite the High Court's arbitrary decision in violation of international law, but is being practically prevented from doing so.

4. How can Nasheed be provided a "full right of appeal" when his first appeal was rejected without hearing any arguments from either side?
5. Will the Government commit, unequivocally, to provide Nasheed access to counsel at anytime, like every other prisoner in the Maldives?
6. How is Nasheed supposed to appeal the High Court's ruling to the Supreme Court when he has not been provided a copy of the Prosecutor General's legal brief?

There is argument to suggest that, as a State Party, there is an obligation to apply the International Covenant on Civil and Rights, even though in the absence of implementation

legislation that position is not clear

The Government should have an unequivocal and consistent position as to whether it considers the ICCPR binding. It is important to note that the Government voluntarily acceded to the ICCPR, that it voluntarily reported to the treaty-monitoring body the Human Rights Committee about its compliance with the treaty, and that this is the first time the Government has ever claimed it may not be bound by the treaty; however, even if it was the position of the Government that it did not have to implement the treaty, it did voluntarily accede to it. Therefore, under the Vienna Convention on the Law of Treaties, to which it also acceded, it is bound not to take any actions to undermine the object and purpose of the treaty, which simply put means it cannot proactively violate any of its provisions as it did egregiously in this case.

7. Yes or no, does the Government of the Maldives consider itself bound by the ICCPR? If no, then why did the Government submit a periodic report to the Human Rights Committee about a treaty to which it now claims it was not bound?

It must therefore be accepted that whilst an opinion of the WGAD may be used as a tool of political pressure, it has no enforcement mechanism of its own.

This is an impossible standard that Mr. Cadman must know that no international dispute mechanism achieves on its own. For example, none of the following courts or commissions have enforcement mechanisms of their own: The International Court of Justice, International Criminal Court, Inter-American Court of Human Rights, European Court of Human Rights, European Court of Justice, Arab Human Rights Committee, ECOWAS Community Court of Justice, African Court on Human and People's Rights, ASEAN Intergovernmental Commission on Human Rights.

8. What international tribunal or quasi-judicial body has an “enforcement mechanism of its own”?

The WGAD has rejected all the legal and factual arguments presented by the Government even if they were justified by documentary evidence, which invites the question whether the WGAD has considered the material in sufficient detail.

It is an extraordinary admission by the Government to acknowledge that the WGAD rejected all its legal and factual arguments. But the Government fundamentally misunderstands the meaning of due process of law. It does not have a right to win its case before the WGAD. It only had the right to have a fair and impartial process before an independent group of experts. The “documentary evidence” in Nasheed’s case, according to the Government is his claimed “admissions of guilt.” But none exist. When Nasheed said in the New York Times, for example, “my government . . . ordered the arrest of Abdulla Mohamed,” it is self-evident it is not an admission that he personally ordered the arrest, let alone that he ordered a “terrorist abduction,” which is a necessary element of the alleged crime. It is also wholly consistent with his having asked his Home Minister to look into the situation and to take appropriate action in accordance with law. Indeed, none of the Government’s own witnesses testified they witnessed

Nasheed ordering the arrest. And, it is important to recall that the court refused to hear any defense witnesses saying they “would not have been able to refute the prosecution’s witnesses.” Nasheed’s former Home Minister would have proven on the stand that he had no advance knowledge of the arrest.

Even if one puts aside the selective and biased nature of the charges against Nasheed or the extraordinary due process abuses that took place in the case, there is just not a shred of evidence, anywhere, that Nasheed himself ordered the judge’s arrest. This is why the WGAD concluded “it is therefore clearly impossible to invoke any legal basis justifying the deprivation of liberty of Mr. Nasheed.”

Furthermore, Foreign Minister Dunya Maumoon said on BBC World that the WGAD members “may have been influenced” by “celebrities in this case,” and that the decision of the Working Group was itself “arbitrary.” PPM Parliamentary Group Leader Ahmed Nihan described Amal Clooney and myself as “enemies of the state” because we called for travel bans and asset freezes to be imposed on serious human-rights abusers in the Maldives. And PPM MP Riyaz Rasheed, who introduced the bill to criminalize calling for any kind of sanctions, said that all MDP MPs should be imprisoned and referred to the Working Group members as the “janitors” of the UN system. It is also important to emphasize that when the Working Group’s mandate was up for renewal by the Human Rights Council in 2013, that the Maldives, which was a member of the Council, supported its unanimous renewal.

9. What specific evidence have does the Government have that the adoption of this opinion, unanimously, by the five independent experts of the WGAD from Australia, Benin, Mexico, South Korea, and Ukraine was based on anything other than its assessment of the facts and law in the case?

10. Does President Yameen support MP Abdulla Riyaz’s bill and believe that all MDP MPs should be imprisoned? How is this bill compatible with the right to freedom of opinion and expression guaranteed under the International Covenant on Civil and Political Rights?

While it is unsurprising that the Government of the Maldives wishes to have a fact-free conversation about the rapidly deteriorating human-rights situation in the country, the international community will not be persuaded by mere repetition of the same claims lacking foundation in law or evidence.

Jared Genser is founder of Freedom Now and pro bono counsel to former President Mohamed Nasheed.