COMMENTS ON THE STATE PARTY'S OBSERVATIONS ON ADMISSIBILITY AND MERITS:

UNITED NATIONS

HUMAN RIGHTS COMMITTEE

under the

Optional Protocol to the International Covenant on Civil and Political Rights

In the Matter of
Mohamed Nasheed,
Citizen of the Republic of Maldives

v.

Government of the Republic of Maldives

Communication No. 2851/2016

Submitted by:

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Table of Contents

I. Background on the Case and Request for Urgent Consideration by Human Rights Committee

On October 7, 2016, Mohamed Nasheed ("Petitioner"), former President of the Maldives, submitted a complaint to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). It alleged the Government of the Maldives ("Government") had violated Articles 25 (right to political participation) and Article 22 (right to freedom of association) of the ICCPR by disqualifying him from running for office on the basis of an arbitrary arrest, trial, conviction, and sentence, and prohibiting him from being the leader of his political party.

Subsequently, on December 18, 2017, Mr. Ibrahim Salama, Chief, Human Rights Treaties Branch in the Office of the UN High Commissioner for Human Rights, requested the Petitioner's comments on the State Party's Observations on admissibility and merits. While the deadline provided was February 19, 2018, this reply has been submitted early to enable Communication No. 2851/2016 to be scheduled for examination during its March-April 2018 session.

While having a communication considered is not a guarantee that the Human Rights Committee would necessarily be ready to adopt a View in the case during this session, the Petitioner would respectfully urge it to do so if at all possible. This is because it is expected that the Petitioner's Maldivian Democratic Party (MDP) will hold its presidential primary election by May 2018. And it is expected that the Maldives will hold its presidential elections in August 2018.

If the Human Rights Committee delays in adopting a View, then it would have the practical effect of rendering any subsequently adopted View superseded by events where the Petitioner would have been practically barred from running for President again until the next election in five years.

II. Overview of Comments on State Party's Observations

As will be explained in substantial detail, the Petitioner's arrest, trial, conviction, sentencing, and imprisonment were arbitrary and in violation of Article 9 (arbitrary detention), Article 14 (right to due process of law), Article 19 (right to freedom of opinion and expression), Article 25 (right to political participation), and Article 22 (right to freedom of association). In addition, his ongoing disqualification to run for office and be able to lead his political party emanating from his arbitrary detention are also therefore in violation Article 25 and Article 22 of the ICCPR.

Before addressing the Government's specific claims, it is important to observe there are numerous general defects in its Observations.[1]

First, the length of the response appears to be an attempt to divert attention from the substance of the case by telling a much broader and irrelevant story about the general political situation in the Maldives. For example, Paragraphs 10-31 of the Government's

[1] Response of The Government of the Republic of Maldives to the Human Rights Committee in the matter of *Mohamed Nasheed v. The Government of the Republic of Maldives*, Case No. 2851/2016, Dec. 13, 2017 [hereinafter *Government Observations*].

Observations present inaccurate information about the Petitioner's term as President that is not relevant to the case at hand and portrays him in a negative light.[2]

Second, the Government argues that the Petitioner is guilty of the crimes for which he was convicted. This is not accurate, as it never presented specific documentation or evidence to the Criminal Court ("Court") that the Petitioner ordered the arrest of Judge Abdulla Mohamed, which was the underlying basis for its having charged him with having committed a "terrorist abduction."

Third, the Government repeatedly attempts to counter arguments that have been evidenced in the Complaint with bald and general denials.

And fourth, there are many examples of demonstrably deceptive claims made by the Government in its response, which should further undermine its credibility. These claims are discussed in detail below, with clear independent evidence which contradicts the Government's assertions.

In Paragraphs 51-53 of its Observations, the Government has asked the Human Rights Committee to conduct a *de novo* review with respect to the Petitioner's arrest, detention, trial, conviction, and imprisonment.[3] It is important to emphasize that these are the exact same issues that were presented in detail before the UN Working Group on Arbitrary Detention ("Working Group") and vigorously contested by the Government, which presented a response of 111 pages with 48 annexes to our submission there.[4] On September 15, 2015, the Working Group adopted Opinion 33/2015, finding that the Petitioner's deprivation of liberty was arbitrary and in violation of Articles 9, 10, 11, 19, 20, and 21 of the Universal Declaration of Human Rights and Articles 9, 14, 19, 22, and 25 of the ICCPR, falling within Categories I, II, III, and V of its Methods of Work.

It is expected the Human Rights Committee will review this case fully and in accordance with its Rules of Procedure. However, because this case has been thoroughly examined not only by another international mechanism of dispute adjudication but also by numerous credible international organizations, foreign governments, and NGOs, it is very much hoped that the Government will not be permitted to delay the process of the Human Rights Committee adopting a View in this case to achieve its primary goal: maintaining Nasheed's disqualification from running for President of the Maldives in its August 2018 elections.

In light of the Government's Observations and its request, these Comments will summarize our key arguments, provide new information that has come to light since the issuance of the Working Group Opinion, address arguments presented by the Government to the Human Rights Committee and, where informative, also address prior arguments the Government had presented to the Working Group.

But the crux of this case is simply that the Government is asking the Human Rights Committee to disbelieve not only what the Petitioner has said, but also what every international organization, foreign government, NGO, and independent media organization

[2] *Government Observations*, *supra* note 1.
[3] *Id.*
[4] Response of The Government of the Republic of Maldives to the Working Group on Arbitrary Detention in the matter of *Mohamed Nasheed v. The Government of the Republic of Maldives* 78, ¶ 96, July 10, 2015 [hereinafter *Government Response*].

that has looked at this case has concluded. These third parties say, as the Petitioner has explained, that he was targeted for prosecution based on his political stature and popularity, and that his rushed trial was fundamentally flawed in many ways that render his detention as arbitrary under international law, as is the Government's subsequent disqualification of the Petitioner from running for office and leading his political party that emanates from this arbitrary detention.

The Government's Observations to our Complaint are insufficient to challenge any of these conclusions. In most instances, the Government does not even attempt to refute the evidence of violations of international law. We respectfully request the Human Rights Committee to find in those instances that the Government has admitted the facts as alleged.

In particular, we have quoted extensively from the trial observation report of the Bar Human Rights Committee of England and Wales,[5] an independent international expert body whose conclusions strongly support the Petitioner's case. The report was prepared by Blinne Ní Ghrálaigh, a barrister and expert in international human rights law. The credibility and accuracy of the report are confirmed by the fact that the Government previously referenced it in its response to the Working Group on one point, although it did so by deceptively omitting critical parts of its reference.[6]

III. Violations of Articles 9 and 14 of the International Covenant on Civil and Political Rights in Arbitrary Detention Case

The criminal case against the Petitioner was marred by numerous due process violations and failed to meet international fair trial standards.

The following violations will be discussed below in turn: (A) lack of a presumption of innocence; (B) arrest without a proper warrant; (C) lack of independence and impartiality of the judges; (D) bias by the lead prosecutor and selective prosecution of the Petitioner; (E) denial of adequate time and facilities to prepare a defense; (F) violation of the Petitioner's right to present evidence and present witnesses; (G) violation of the Petitioner's right to cross-examine witnesses; (H) denial of the right to counsel; (I) lack of a public hearing; and (J) denial of the right to appeal.

These due process failures affecting the proceedings against the Petitioner were so grave and so widely recognized that the Government had no choice but to acknowledge in its prior response to the Working Group that "criticisms have been made of the trial process."[7]
It should be noted that the conclusions that the arrest, trial, conviction, and sentence were unfair have been confirmed by key UN officials, foreign governments, and NGOs who have assessed the case. Not one such expert or organization supported the Government's view, since it is baseless.

For example, UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein said, citing "flagrant irregularities," that "it is hard to see how such hasty proceedings, which are far from

[5] Blinne Ní Ghrálaigh, *Trial Observation Report: Prosecution of Mohamed Nasheed, Former President of the Republic of the Maldives* 294, BAR HUMAN RIGHTS COMM. OF ENGLAND & WALES, Apr. 2015, *available at* http://www.barhumanrights.org.uk/sites/default/files/documents/biblio/trial_observation_report_-_prosecution_of_mohamed_nasheed_1.pdf [hereinafter *BHRC Report*].
[6] *Government Response*, *supra* note 4, at 78, ¶ 288.
[7] *Id.*, at 7, ¶ 23.

the norm in the Maldives, can be compatible with the authorities' obligations under international law to conduct a fair trial."[8] Similarly, Gabriela Knaul, the then UN Special Rapporteur on the Independence of Judges and Lawyers, was quoted as saying that "[t]he series of due process violations that were reported . . . since Mr. Nasheed's arrest on 22 February is simply unacceptable in any democratic society."[9] Ms. Knaul went on to express extreme concern "about the lack of respect for the most basic principles of fair trial and due process during Mr. Nasheed's criminal proceedings."[10] Similar conclusions were reached by a number of international rights groups, including Transparency Maldives,[11] Human Rights Foundation,[12] Asian Forum for Human Rights and Development and Maldivian Democracy Network,[13] and Amnesty International, which labelled the trial a "travesty of justice."[14]

Serious concerns about the due process violations in the proceedings against the Petitioner were also expressed by the US Government, with then US Secretary of State John Kerry stating that the Petitioner's "imprison[ment] without due process" is "an injustice that must be addressed soon."[15] This view was echoed by the UK Foreign Office, with then Minister Hugo Swire stating that "the former President's trial has not been conducted in a transparent and impartial manner or in accordance with due legal process;"[16] and by India's Foreign Ministry Spokesperson,[17] as well as the Canadian government.[18]

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[8] *Conduct of Trial of Maldives Ex-President Raises Serious Concerns – Zeid* (Statement of UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein), UN HIGH COMM'R FOR HUMAN RIGHTS, Mar. 18, 2015, *available at* http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15712&LangID=E [hereinafter *Statement of High Commissioner Zeid]*.

[9] *Maldives: "No Democracy is Possible Without Fair and Independent Justice," UN Rights Expert* (Statement of UN Special Rapporteur on the Independence of Judges and Lawyers Gabriela Knaul), OFFICE OF THE UN HIGH COMM'R FOR HUMAN RIGHTS, Mar. 19, 2015 [hereinafter *Statement of UN Special Rapporteur – Knaul*].

[10] *Id.*

[11] *Transparency Maldives Concerned about Legal Process for Trial of Former President Nasheed*, TRANSPARENCY INT'L, Mar. 16, 2015 *available at* http://www.transparency.org/news/pressrelease/transparency_maldives_concerned_about_legal_process_for_trial_of_former_pre [hereinafter *Statement of Transparency Int'l*].

[12] *HRF to Maldives: Release Mohamed Nasheed*, HUMAN RIGHT FOUND., Apr. 10, 2015, *available at* http://humanrightsfoundation.org/news/hrf-to-maldives-release-mohamed-nasheed-the-countrys-first-democratically-elected-president-00430.

[13] *Maldives: Trial and Conviction of Former President Nasheed Condemned*, FORUM-ASIA, Mar. 14, 2015, *available at* http://www.forum-asia.org/?p=18545 [hereinafter *Statement of FORUM-ASIA*].

[14] *13 Year Sentence for Former President 'A Travesty of Justice'*, AMNESTY INT'L, Mar. 14, 2015, *available at* https://www.amnesty.org/en/latest/news/2015/03/maldives-mohamed-nasheed-convicted-terrorism/.

[15] Remarks by US Secretary of State John Kerry in Colombo Sri Lanka, *Strengthening the U.S.-Sri Lanka Partnership for Human Rights and Lasting Peace*, May 2, 2015, *available at* http://www.state.gov/secretary/remarks/2015/05/241421.htm.

[16] *Minister Expresses Concern About Sentencing Of Former Maldives President Nasheed*, UK FOREIGN OFFICE, Mar. 13, 2015 *available at* https://www.gov.uk/government/news/minister-expresses-concern-about-sentencing-of-former-maldives-president-nasheed.

[17] *Nasheed Cuffs Strain Male Ties*, THE TELEGRAPH (INDIA), Mar. 14, 2015, *available at* http://www.telegraphindia.com/1150315/jsp/nation/story_8804.jsp#.Va0F0OuIVUQ.

[18] On May 6, 2015, during the Maldives' Universal Periodic Review at the UN Human Rights Council in Geneva, the Canadian government said: "Canada recommends that Maldives … immediately release political prisoners, including former president Mohamed Nasheed, and conduct an effective and thorough review of the investigation and legal proceedings to ensure that international obligations related to fair trials and the rule of law have been fully respected." Video of remarks available at http://webtv.un.org/search/maldives-review-22nd-session-of-universal-periodic-review/4221938434001?term=Maldives&languages=&sort=date (starting at 2:10:08).

The European Parliament even adopted a Resolution stating that: "[Nasheed's] controversial trial failed to meet national and international standards of justice . . . [the European Union] deplores the serious irregularities in the trial of former president Mohamed Nasheed; [and] insists that he should be immediately released."[19]

Similarly then UK Prime Minister David Cameron announced in May 2015 "[t]here needs to be political dialogue, release of Nasheed, and all political prisoners."[20]

Furthermore, the detailed Trial Observation Report prepared by the Bar Human Rights Committee of England and Wales (BHRC) emphasized that "Mohamed Nasheed's right to a fair trial, as guaranteed under international law, has been breached" and therefore his "conviction cannot properly be regarded as safe."[21]

There have been no independent organizations which have supported the Government's assessment of the case as provided in its Observations – and the Government has cited to none. Having failed to provide any independent assessments that contradict the Petitioner's presentation of the facts or provided credible evidence to refute it, the Government's arguments that the Petitioner's arrest, trial, conviction, and sentencing were neither arbitrary nor in violation of international law should be dismissed.

A. Lack of a Presumption of Innocence

The ICCPR affords individuals "the right to be presumed innocent until proved guilty according to law."[22] Guilt cannot be established until the charge has been proved beyond reasonable doubt. According to the Human Rights Committee, "[i]t is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial."[23]

At every stage in these rushed legal proceedings against him, the presumption of innocence in favor of the Petitioner was systematically violated and the Court's actions made clear that it had no intention of impartially considering his case. In its Opinion, the Working Group found there was a violation of the Petitioner's right to the presumption of innocence. For example, it observed "the fact that 20 days elapsed between Mr. Nasheed's arrest and

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[19] European Parliament Resolution of 30 April on the Situation in the Maldives, 2015/2662(RSP), P8_TA-PROV(2015)0180, at B (2015).
[20] Tweet by UK Prime Minister David Cameron (@David_Cameron), June 24, 2015, 10:26AM, *available at* https://twitter.com/David_Cameron/status/613760092706603008.
[21] *BHRC Report*, *supra* note 5, at 5.
[22] *International Covenant on Civil and Political Rights*, G.A. Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* 23 March 1976, at art. 14(2)(e) [hereinafter *ICCPR*]. This same right is established by the Universal Declaration of Human Rights: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence." *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810, at art. 11(1) (1948) [hereinafter *Universal Declaration*]. This right is also protected in Maldivian law: "Everyone charged with an offense has the right:…to be presumed innocent until proven guilty beyond a reasonable doubt." CONSTITUTION OF THE REPUBLIC OF MALDIVES (2008), art. 51(h), *available at* http://www.majlis.gov.mv/en/wp-content/uploads/Constitution-english.pdf (functional translation) [hereinafter *Constitution of the Maldives*].
[23] *General Comment No. 13 on Article 14: Administration of Justice*, HUMAN RIGHTS COMM., Apr. 13, 1984, at ¶ 7, [hereinafter *General Comment 13*].

conviction in a trial involving a serious new charge of terrorism, proceedings commenced the day after Mr. Nasheed's arrest, suggest[ed] that the result was pre-determined."[24]

This was also confirmed by international observers, including UN Special Rapporteur on the Independence of Judges and Lawyers Gabriel Knaul, who noted "[t]he speed of the proceedings combined with the lack of fairness in the procedures lead me to believe the outcome of the trial may have been pre-determined."[25] Furthermore, in May 2015 a member of Amnesty International's fact-finding mission to the Maldives echoed these sentiments, commenting after their April visit that "the outcome [of Nasheed's trial] appeared to be predetermined even before the trial began."[26]

The Petitioner's right to the presumption of innocence was violated in the following ways: the Court denied the Petitioner the right to present a defense; the Court chose to examine only evidence presented by the Government, reasoning that there was no evidence that the Petitioner could have introduced that would have proven his innocence; the Court ruled that Petitioner would be held until the end of his trial and never even considered the issue of bail; the Court improperly took into account the Petitioner's "criminal record"[27]; and the fact that the speed of the proceedings was so expedited as to suggest their outcome was pre-determined.

Many of these shortcomings also violate various components of the right to a fair trial, set out in paragraphs other than in Article 14(2) of the ICCPR. Accordingly, the violation of the Petitioner's right to present a defense, the denial of his right to present witnesses and the rushed speed of the trial are discussed further below, while this section will focus on the Government and Court's improper use of his supposed "criminal history."

In convicting the Petitioner, the Court improperly relied on his alleged "criminal record," which itself is only a compendium of past persecution and had no relevance to the current charge.[28] This supposed criminal record included prior convictions for terrorism, theft, perjury, and disobedience to the law. But it is well known that the Petitioner's prior convictions were, like the one currently at issue, politically motivated. The Working Group previously issued Decision No. 36/1995, which found the Petitioner's prior imprisonment for contempt to be arbitrary on the basis that the Government had used his conviction to punish him for his public criticism of the Government.[29] Additionally, Amnesty International

[24] *Mohamed Nasheed v. The Maldives*, WGAD Opinion No. 33/2015, Adopted September 4, 2015, at ¶ 103(i), 104(i).
[25] *Statement of UN Special Rapporteur – Knaul*, *supra* note 9.
[26] Raghu Menon, *Maldives Should End the Assault on Human Rights*, AMNESTY INT'L, May 5, 2015, *available at* https://www.amnesty.org.in/show/entry/maldives-should-end-the-assault-on-human-right [hereinafter *Amnesty Int'l: Statement from Maldives Mission*].
[27] *Synopsis of The Case Report of Proceedings Re: Prosecutor General v Mohamed Nasheed*, Report No. 145-A/2015/87, Criminal Court of Malé, Republic of Maldives, Mar. 29, 2015, at ¶ 21 [hereinafter *Case Report Synopsis*] ("Taking into account of the criminal record of Mohamed Nasheed of G. Kenereegé, Malé, it was found that Mohamed Nasheed had earlier been found convicted with crime of terrorism charge, and in addition, on the charges of theft, perjury, and disobedience to law").
[28] *Id.*
[29] *Mohamed Nasheed and Mohamed Shafeeq v. Maldives*, WGAD Decision No. 36/1995, Adopted Nov. 24, 1995, at ¶ 7 [hereinafter *Mohamed Nasheed 1995 WGAD Decision*].

publicly named the Petitioner a prisoner of conscience in reference to two other prior convictions.[30]

B. Arrest Without a Proper Warrant

In Paragraphs 101-103 of the Government's Observations, the Government accurately states the Petitioner has said he was detained in accordance with a defective arrest warrant. But in a conclusory manner and without any specificity the Government asserts the arrest warrant was legal and issued in accordance with Maldivian law.[31]

Article 9 of the ICPPR provides that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."[32] The Constitution of the Maldives specifies the three situations in which an arrest can be made: (1) "the arresting officer observes the offence being committed," (2) the arresting officer "has reasonable and probable grounds or evidence to believe that person has committed an offense or is about to commit an offense," or (3) under the authority of an arrest warrant issued by a court.[33]

In this case, the warrant issued by the Court for the Petitioner's arrest was highly irregular and not in conformity with Maldivian law.

First, the warrant was issued at the request of then Prosecutor General Muhthaz Muhsin, who personally went to the Court to seek the order. Normally, only a criminal investigatory agency, such as the police, requests arrest warrants from the Court. Neither the Maldivian Constitution nor the Prosecutor General's Act give the Prosecutor General the power or authority to request arrest warrants.[34] The fact that the Prosecutor, acting outside of his authority, took the time to personally request the arrest warrant is both irregular and strongly suggests that his decision was politically-motivated.

Second, the warrant issued on February 22, 2015, for the Petitioner's arrest was missing critical pieces of key information, including the place where the Petitioner should be detained, the period of his detention, and when he was to be brought to court.[35] Therefore, the police did not have the authority to arrest or detain the Petitioner overnight on February

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[30] *Republic of Maldives: Continued Detention of Prisoner of Conscience Mohammed [sic] Nasheed*, AMNESTY INT'L, 1996, *available at* https://www.amnesty.org/en/documents/document/?indexNumber=ASA29%2F002%2F1996&language=en.

[31] *Government Observations*, *supra* note 1.

[32] *ICCPR*, *supra* note 22, at Art. 9(1).

[33] *Constitution of the Maldives*, *supra* note 22, at Art. 46.

[34] The closest provision in the Prosecutor General's Act gives the Prosecutor General the power "[t]o consider and asses [sic] evidence presented by investigating bodes to determine whether charges should be pursued". Prosecutor General's Act of 2008, No. 9/2008, at § 15(b), *available at* http://www.agoffice.gov.mv/pdf/sublawe/PG.pdf [hereinafter *Maldives Prosecutor General's Act*]. The Act does not go on to give the Prosecutor General any responsibilities or powers related to arrest warrants.

[35] Zaheena Rasheed, *Nasheed Denied Right to Appoint Lawyer and Appeal "Arbitrary" Arrest Warrant, Contend Lawyers*, MINIVANNEWS, Feb. 23, 2015, *available at* http://minivannews.com/politics/nasheed-denied-right-to-appoint-lawyer-and-appeal-arbitrary-arrest-warrant-contend-lawyers-92928#sthash.iwtie6b0.dpbs [hereinafter *"Arbitrary" Arrest Warrant*].

22, which they did anyway. To cover up its error, the Court issued a second warrant the following day, ordering the police to present the Petitioner at a specific time.[36]

Finally, the justification for issuing an arrest warrant to detain the Petitioner pending trial was without merit. The arrest warrant stated that the Petitioner was being detained on suspicion that he was "likely to abscond to avoid facing terrorism charges."[37] However, as the Petitioner's lawyers argued, he "had never absconded from court, nor taken the opportunity to flee or go into hiding during numerous opportunities he had in the prior few weeks to travel abroad, and he had expressly informed the judiciary and the Prosecutor General that he does not have any intention to abscond from Court or avoid charges being brought against him."[38] In addition, the Petitioner had never previously fled while facing charges, despite having been arrested more than 20 times over several decades. Therefore, the police had no basis on which to believe that the Petitioner would attempt to abscond, and were unjustified in detaining him on the first night pursuant to the deficient arrest warrant.

The Petitioner attempted to raise these procedural errors and irregularities to the Court, requesting a hearing to consider the legality of his arrest and request bail. The High Court scheduled a hearing regarding the issue of the first arrest warrant for March 15, 2015 – two days after the Petitioner was summarily convicted and sentenced in the Criminal Court.

C. Lack of Independence and Impartiality of the Judges

ICCPR Article 14 guarantees criminal defendants "a fair and public hearing by a competent, independent, and impartial tribunal established by law."[39] In Paragraph 106 of its Observations, the Government asserts "at all stages all measures were taken to ensure independence of the court as well as the bench hearing [Nasheed's] case.[40]

Yet in its Opinion, the Working Group found a violation of the right to an independent and impartial tribunal, noting specifically for example "an apparent conflict of interest on the part of . . . two of the three presiding judges who were friends and colleagues of Judge Abdulla and witnessed his arrest, as well as the refusal by the judges to recuse themselves after deliberating on the request for only 20 minutes."[41]

The Maldivian courts displayed an absolute lack of independence and impartiality throughout the judicial proceedings against the Petitioner. This is confirmed by international observers who concluded "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."[42]

In this section, we will explain: (i) the judges' bias, given that they were witnesses to the arrest and submitted witness statements in support of the Government's case; (ii) the close personal relationship between the presiding judges and the alleged victim; (iii) the judges'

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[36] *Id.*
[37] *Former President Arrested Under Anti-Terrorism Law*, THE GUARDIAN, Feb. 22, 2015, *available at* http://www.theguardian.com/world/2015/feb/22/former-maldivian-president-arrested-under-anti-terrorism-law
[38] *"Arbitrary" Arrest Warrant, supra* note 35.
[39] *ICCPR*, *supra* note 22, at art. 14(1) ("All persons shall be equal before the courts and tribunals. 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 and public hearing by a competent, independent and impartial tribunal established by law").
[40] *Government Observations*, *supra* note 1.
[41] *Mohamed Nasheed v. The Maldives*, WGAD Opinion No. 33/2015, Adopted September 4, 2015, at ¶ 103(ii).
[42] *BHRC Report*, *supra* note 5, at 5 (emphasis in original).

biased behavior during trial; (iv) the "victim" Judge Abdulla Mohamed's influence over the proceedings; and (v) the lack of any legal basis for the judges to convict the Petitioner.

i. Presiding Judges Witnessed Arrest and Submitted Statements for the Government

First, two of the three judges presiding over the Petitioner's case were not only present at Judge Abdulla's arrest, they also submitted witness statements on behalf of Judge Abdulla to the Maldives Police Service and Maldives Human Rights Commission, and were listed as witnesses for the prosecution in this case, when the charges were still framed as "illegal detention." Shockingly, the depositions provided by these judges in 2012 were even admitted and relied on as evidence in the proceedings before them that in 2015 led them to convict the Petitioner on terrorism charges.[43] These statements were not limited to describing the arrest process; they even include Judge Yoosuf's admission that, from the time of the arrest, he and one of the other judges in the case (Judge Didi) "worked to . . . do everything possible to free [the alleged victim, Judge] Abdallah [sic]."

The BHCR confirmed the assessment that the judges' clear bias renders the trial unfair. Their report "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."[44] Similar statements were made by the UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein,[45] UN Special Rapporteur on the Independence of Judges and Lawyers Gabriela Knaul,[46] and Transparency Maldives.[47]

The Government acknowledged in its prior response to the Working Group that two of the judges personally witnessed the alleged crime, but argued that they were not "privy to the investigation that took place after the arrest, nor were they privy to the evidence that formed the prosecution case."[48]

This is a significant and deliberate understatement of the judges' involvement in the case. Tellingly, the Government omitted mention that the two judges were not only present at the time of Judge Abdulla's arrest, but they filed witness complaints that were used as evidence in the proceedings against the Petitioner and at one stage were listed as witnesses for the prosecution. The judges themselves admitted that they remained deeply involved in the case after Judge Abdulla was arrested. For instance, when asked about how much contact he had had with the victim *after his arrest*, Judge Yoosuf also stated that:

> I would prefer if you don't ask that question. That is, *we are doing a lot of work in this matter negotiating with senior officials to take this matter forward* as you know . . . I am personally doing much in this matter. *Abdulla Mohamed is a long time close friend of mine. Other than that he is the long time chief of us.* So considering that

[43] *Witness Statement of Judge Abdul Baree Yoosuf to the Human Rights Commission of Maldives*, Feb. 2, 2012, and *Witness Statement of Judge Abdullah Didi to the Police*, Mar. 28, 2012.
[44] *BHRC Report*, *supra* note 5, at 39.
[45] *Statement of High Commissioner Zeid*, *supra* note 8.
[46] *Statement of UN Special Rapporteur – Knaul*, *supra* note 9.
[47] *Statement of Transparency Int'l, supra* note 11.
[48] *Government Response*, *supra* note 4, at 69, ¶ 238.

> there are a lot of things I would be doing. So, I would prefer if you don't ask that question.[49]

In addition, the prosecutor in the Petitioner's case had previously explained that the case against the Petitioner was initially brought before the Hulhumalé Magistrates Court instead of the Criminal Court because it had a conflict of interest in the case.[50]

ii. Close Personal Relationship Between Presiding Judges and Alleged Victim

Second, the judges had close personal relationships with the alleged victim, being both colleagues and close friends of Judge Abdulla. As explained above, one of the judges admitted when he was interviewed as a witness that he was "personally doing much in this matter [of Judge Abdulla's arrest because Abdulla] is a long time close friend" as well as the judges' "long time chief."[51]

Because of the obvious bias, the Petitioner's lawyers requested that both judges recuse themselves on the basis of conflict of interest. However, as noted by Amnesty International, "[d]espite this most obvious conflict of interest, the judges refused to recuse themselves after a request by the defence and proceeded with the trial"[52] after only 20 minutes of deliberations.

Again, the BHRC independently confirmed our conclusion, stating that:

> 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 on the right to an independent and impartial tribunal, enshrined in international law and guaranteed under the Maldivian Constitution . . . 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 Abdullah to hear the case stand in their stead.[53]

The BHRC goes on to further condemn the judges' bias, noting "the judges' acknowledgement 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."[54]

The Government previously argued that there was no lack of impartiality and independence by "draw[ing] attention to the accepted fact that a judge is deemed to be capable of distancing themselves from any personal feelings that they may have in relation to a matter that comes before the court, and we must put our trust in the judiciary and their duty to uphold principles of impartiality and independence."[55]

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[49] *Witness Statement of Abdul Baree Yoosuf*, *supra* note 43.
[50] Maldives High Court, Case No. 2012/HC-A/ 240.
[51] *Witness Statement of Abdul Baree Yoosuf*, *supra* note 43.
[52] *Amnesty Int'l: Statement from Maldives Mission, supra* note 26.
[53] *BHRC Report*, *supra* note 5, at 40.
[54] *Id.*, at 39–40.
[55] *Government Response*, *supra* note 4, at 70, ¶ 243.

The Government's rather laughable reassurance that judges should simply be trusted to "forget" their bias does not disprove the existence in this case of either actual or apparent bias by the judicial panel. Actual bias is confirmed not only by the statements made by the judges and reflected above, but also by their overall conduct of the proceedings, which consistently evidenced their partiality in favor of the prosecution.

Further, and in any event, there need not be actual bias on the part of a judge for him to be disqualified from a case – an appearance of bias is enough. As explained by the Human Rights Committee, the tribunal must appear to a reasonable observer to be impartial,[56] as "justice not only needs to be done but must also be seen to be done."[57] The Government itself has previously admitted as much.[58] The appearance of bias is obvious here and has been noted by numerous third-party observers of the case.

Cases as outrageous as the present one – where the judges themselves have given evidence in the trial – clearly warrant the same conclusion.[59] There can be no doubt that where, as here, a number of cumulative sources of bias and lack of independence exist, the only acceptable solution must be the recusal of the affected judge or judges, something they refused to do. On this basis alone, the trial must be deemed unfair.

iii. Presiding Judges' Biased Behavior During Trial

Third, there is no need to speculate about potential judicial bias; a number of key examples confirm that bias actually did exist among the judges in the Petitioner's case.

The judges did not recuse themselves, and their bias against the Petitioner was on display throughout the trial – they refused to allow the Petitioner to call any witnesses in his defense, they limited cross-examination of prosecution witnesses for five out of nine witnesses; they themselves were leading key Government witnesses through their testimony; and they called as a witness Judge Abdulla, *their boss*, to testify for the prosecution.

The Government indicates that the Prosecutor asked the court that Judge Abdulla not to be called as a witness.[60] Yet the judges rejected this motion and called him anyway, and then improperly relied on his testimony to convict the Petitioner.

The BHRC expressed particularly strong concerns on this point in its trial report:

> [T]he 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

[56] *General Comment No. 32 on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*, HUMAN RIGHTS COMM., CCPR/C/GC/32, Aug. 23, 2011, at ¶ 21 [hereinafter *General Comment No. 32*].
[57] Gabriela Knaul, *Addendum – Mission to Tunisia* 19, Human Rights Council, May. 26, 2015.
[58] *Government Response*, *supra* note 4, at 73, ¶243.
[59] Further, international experts have noted that codes of criminal procedure all over the world "exclude the participation of members on the bench who have a familial relationship to the accused or to the victim or who have already been involved in the pre-trial proceedings either as a public prosecutor or as a witness". P. Rädler, *Independence and Impartiality of Judges*, UNIV. OF MINNESOTA, Feb. 17, 2005, *available at* http://www1.umn.edu/humanrts/fairtrial/wrft-rae.htm.
[60] *Government Response*, *supra* note 4, at 69, ¶ 234.

> 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.[61]

iv. The "Victim" Judge Abdulla Mohamed's Influence Over the Court

As noted before, the Government claimed that "at all stages all measures were taken to ensure independence of the court as well as the bench hearing [Nasheed's] case.[62] It then argued that the Prosecutor General had "requested the Criminal Court to remove Judge Abdulla Mohamed from all stages of the case in order to shield it from any perceived or actual influence. The Court responded by appointing a replacement Chief Judge at the Criminal Court."[63] The Government contends in Paragraph 107 that "such prompt action by the Court, demonstrates good faith and respect on their part to confirm impartiality and independence of the bench."[64]

But this only tells one part of the story, which is directly and unequivocally contradicted by independent trial observers of the Petitioner's case.

Contrary to the Government's assertions that Judge Abdulla kept his distance from the trial, the reality is that he was very much present and involved in all affairs of the court in general, and the Petitioner's case in particular. The Bar Human Rights Committee's independent trial observation reports state that Judge Abdulla "contin[ued] to wield considerable influence."[65] Furthermore, although Judge Abdulla was reportedly "on leave" from his duties, the BHRC reported 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."[66] In addition, Judge Abdulla also was a direct witness at the trial against the Petitioner, appearing before his own colleagues.

v. Impossible to Invoke Legal Basis for Detention

In considering the Petitioner's case, the Court should have found that it was impossible to invoke any legal basis for his arrest, let alone a conviction, sentence, and detention. While the Human Rights Committee has repeatedly stated that it cannot and does not substitute itself for a domestic fact-finder, in this case it need not do so to understand that no actual evidence was presented by the Government to the Court in support of the Petitioner's conviction.

First, the alleged act – an unlawful arrest – does not satisfy the *actus reus* element under the Prevention of Terrorism Act of 1990, which itself is a violation of international law and should be invalid because of its vagueness.

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[61] *BHRC Report*, *supra* note 5, at 53.
[62] *Government Observations*, *supra* note 1.
[63] *Id.*
[64] *Id.*
[65] *BHRC Report*, *supra* note 5, at 38.
[66] *Id*.

And second, even assuming that the alleged action did satisfy the definition of terrorism, there was absolutely no evidence presented in the court that the Petitioner ordered the arrest of Judge Abdulla.

1. The Petitioner's Alleged Conduct Did Not Constitute an Offense Under the Prevention of Terrorism Act

Previously the Government has simply asserted without reasoning that "[t]he fact remains that the Petitioner *has* been charged under appropriate domestic law, and therefore detention post conviction on this basis simply cannot be deemed to be arbitrary."[67] The Government must show the Petitioner has in fact been appropriately charged under domestic law. And it should present independent evidence and assessments confirming its position.

The Petitioner was charged under the facially-vague Section 2(b) of the Prevention of Terrorism Act for allegedly ordering the arrest of Judge Abdulla in 2012. The relevant actions that can be construed as acts of terrorism under the provision are "the act or intention of kidnapping or abduction of persons(s) or of taking hostage(s)."[68]

However, the Government wholly failed to allege or provide any evidence that the Petitioner took any actions that constitute terrorism as defined under the law. More specifically, the Government failed to explain how an arrest and detention by the military acting under an order given by a third party could constitute "terrorism" by the Petitioner.

In fact, when the Petitioner was originally charged in 2012 it was for the alleged crime of "illegal detention," not "terrorism," which the Petitioner has always contended was politically-motivated as well. But it was at that time acknowledged that the alleged act of ordering an arrest did not meet the definition of terrorism under the plain language of the Prevention of Terrorism Act because there was no attempt to charge it as terrorism until it became politically expedient to do so. Nor does the indictment or judgment refer to the Petitioner taking the specific act of ordering or even indirectly approving the arrest – the Petitioner's alleged specific actions have never been explained.

In Paragraphs 97-100 of its Observations, the Government seeks to portray its decision to withdraw the original charges and file new charges as having occurred after a "substantial period of deliberation and review," yet in fact it took no action between 2012-2015 to prosecute the "illegal detention" charge.[69] The Government only withdrew and re-filed the case as a terrorist abduction just two weeks after Gasim Ibrahim MP withdrew his political party from the ruling coalition and joined the Petitioner's and the MDP, which shifted a quarter of the parliamentary seats from Yameen to the Petitioner, putting at risk his parliamentary majority.

In Paragraph 65 of its Observations, the Government has merely asserted "it is quite clear . . . the decision to convict the Petitioner was in accordance with domestic law."[70] The Government has previously offered the conclusory statement that an "instance of 'kidnap'

[67] *Government Response*, *supra* note 4, at 44, ¶ 165.
[68] Prevention of Terrorism Act 1990, No. 10/1990, at § 2(b), *available at* http://www.agoffice.gov.mv/pdf/sublawe/Terrorism.pdf.
[69] *Government Observations*, *supra* note 1.
[70] *Id.*

can quite appropriately satisfy the *actus reus* of terrorism."[71] It goes on to argue that similar laws exist "in several jurisdictions,"[72] including "some of the principle [*sic*] and most respected judicial systems internationally."[73]

But the Government does not provide an explanation of how an unlawful arrest constitutes an offense of terrorism, "kidnapping" or otherwise, *under Maldivian law*. Even in Paragraph 67 of its Observations, the Government claims that "the Petitioner's decision to abduct the judge was one of a series of acts of intimidation of the judiciary and its officials" but does not explain in any way how this could be considered an act of terrorism (noting that the Petitioner strenuously disagrees with the Government's characterization of what occurred as an abduction, let alone that he ordered it).[74] And in Paragraph 72, the Government claims "the fact remains that a sitting judge was unlawfully arrested with the aid of the army, and thus the reality is that he was kidnapped/abducted," but again fails to connect the Petitioner to the decision of the military to arrest Judge Abdulla nor to explain how could be viewed as an act of terrorism.[75]

The acts committed in 2012 constituted an arrest, not an "abduction." The arrest and detention of a person by the military of a country cannot and should not be viewed as an act of terrorism, and the use of the word "abduction" does not provide a citizen with sufficient notice of what acts might qualify as criminal. This level of vagueness results in a violation of *nulla poena sine lege* (no penalty without law) because it would not be possible to know in advance which actions would be criminalized.

If the Government's overbroad interpretation of the Prevention of Terrorism Act were to be valid, then the police and military would be unwilling to ever arrest anyone, when an ex-post analysis of that decision could later result in charges of committing an act of terrorism being filed against the arresting officer.

This is even more problematic where, as here, the relevant domestic law does not provide for any *mens rea* requirement relevant to the offense of terrorism; for instance, an intent to terrorize the civilian population or cause public alarm.

This lack of *mens rea* distinguishes Maldivian law, which has been invoked for the first time in this case 25 years after its adoption, from the laws of other jurisdictions that the Government alleges are similar. *All* of these other laws require a *mens rea* consisting of a terrorist intent – something entirely lacking in the Maldivian counterpart. For instance, Article 557 of the Spanish Criminal Code criminalises acts that alter public order or cause injury to persons "*in order to* disturb the peace." 18 US Code § 2331 criminalises "violent acts … that are a violation of the criminal laws of the United States … [and that] appear *to be intended* (i) *to intimidate or coerce* a civilian population; (ii) *to influence the policy of a government*…; or (iii) *to affect the conduct of a government* by mass destruction, assassination, or kidnapping…" Article 421-1 of the French Criminal Code requires proof

[71] *Government Response*, *supra* note 4, at 44, ¶ 168.
[72] *Id.*, at 44, ¶¶ 166–68.
[73] *Id.*, at 45, ¶ 172.
[74] *Government Observations*, *supra* note 1.
[75] *Id.*

that the defendant intended to "seriously disturb public order by intimidation or terror"[76] and Article 137 of the Belgian Criminal Code[77] defines the crime as certain acts "intentionally committed with the aim of seriously intimidating a population or unduly compelling a Government or an international organization to do or abstain from doing any act, or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization."

There is no such mental element of the crime of "terrorism" in the Maldives law. Nor are any specific actions by the defendant alleged in the indictment or the judgment that could constitute the *actus reus* of abduction.

For these reasons, the Petitioner was wrongly charged and convicted under the Prevention of Terrorism Act, which is itself facially vague and in violation of international law. There was therefore no basis for the charge against him.

2. There Was No Evidence Presented That the Petitioner Ordered the Arrest of the Judge

Assuming that the alleged actions could ever satisfy the elements of "terrorism" under the Prevention of Terrorism Act, there was literally no evidence presented to show that the Petitioner ordered Judge Abdulla's arrest even indirectly and, in fact, there was direct evidence to the contrary.

The Government previously said that "[t]he Prosecution case [in the Maldives] was that President Nasheed had ordered the abduction of Judge Abdulla"[78] and then offered the conclusory statement that "the Petitioner ordered the unlawful arrest and subsequent detention of Judge Abdulla."[79]

This is the same approach adopted in the Judgment: a bald conclusion without evidence cited to support it.

In fact, the Government presented no evidence that the Petitioner ordered the arrest of Judge Abdulla, which is the critical issue in the case. Neither the indictment nor the judgment explain precisely what he allegedly did.

Simply put, what did he order? Who did he issue the order to? When? How?

It is undisputed that the military arrested Judge Abdulla, but no evidence was ever presented that the Petitioner issued a written or oral order to the military to arrest him.

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[76] « Constituent des actes de terrorisme, lorsqu'elles *sont intentionnellement* en relation avec une entreprise individuelle ou collective *ayant pour but de troubler gravement l'ordre public par l'intimidation ou la terreur*, les infractions suivantes… » (unofficial translation).

[77] « Constitue une infraction terroriste, l'infraction … qui, de par sa nature ou son contexte, peut porter gravement atteinte à un pays ou à une organisation internationale et est commise *intentionnellement dans le but d'intimider gravement une population ou de contraindre indûment des pouvoirs publics ou une organisation internationale à accomplir ou à s'abstenir d'accomplir un acte, ou de gravement déstabiliser ou détruire les structures fondamentales politiques, constitutionnelles, économiques ousociales d'un pays ou d'une organisation internationale*) » (unofficial translation).

[78] *Government Response*, *supra* note 4, at 70, ¶ 241.

[79] *Id.*, at 41, ¶ 149.

None of the witnesses cited to in the Court's Judgment even claimed to have knowledge that the Petitioner ordered the arrest. Of the three possibly relevant witnesses cited in the Court's Judgment, the witnesses stated that the Petitioner actually spoke to the police about the arrest after it had taken place. The other two did not clarify any timeframes or establish any prior knowledge, let alone action by the Petitioner regarding the arrest.

The Government has only pointed to a list of "evidence" presented at Court; it fails to explain how this evidence actually goes to show that the Petitioner ordered any arrest. And then there is Judge Abdulla himself – the key witness in the case – who was reported in the Court's Judgment to have only said he "assumed" the Petitioner ordered the arrest.[80]

In Paragraph 68 of its Observations, the Government argues that the Petitioner made public statements "fully admitting that the arrest was in response to his wishes and fully demonstrating that he has no remorse for his conduct, and that he would do it again."[81] In Paragraphs 69-70, the Government quotes from a 2012 interview on BBC Hardtalk, interpreting the Petitioner's comments to "have admitted fault in arbitrarily arresting and detaining Judge Abdulla Mohamed during his Presidency, and reaffirmed his conviction in his action."[82]

However, these claimed "confessions", which were never shared with the Petitioner's counsel, were not relied on or even mentioned by the Court in its Judgment. They are therefore irrelevant to any assessment of the basis for conviction. And even looking at them on the basis of their plain language demonstrates they do not stand for the proposition asserted by the Government.

For example, when the Petitioner was directly asked, "Why did you order the arrest of a senior judge in the criminal court . . . without any due process," he responded by explaining that it was the Judicial Service Commission which had taken disciplinary action against the judge. He then explained generally that he had to act as the head of state to defend the Constitution.

But he did not admit to taking any specific action or ordering the military to arrest Judge Abdulla. And at the time of his interview, he hadn't even been accused of terrorism, so the idea that a statement from this interview is somehow Nasheed publicly admitting he ordered a terrorist abduction is nonsensical.

More importantly, there was no evidence presented to the Court that the Petitioner ordered Judge Abdulla's arrest, no such evidence was ever presented to his counsel to provide an opportunity to challenge such a claim, and the Judgment does not refer to any evidence that the Petitioner ordered the arrest or even had prior knowledge of it. Unfortunately, however, the judges did not let this stand in the way of a conviction.

As a result, there was no legal authority to convict the Petitioner for the crime of terrorism in the Court judgment. In addition, having made no allegations and having supplied no evidence to explain how an arrest by the military constitutes a terrorist abduction under the Prevention of Terrorism Act, the Government failed to provide any valid legal basis for the Petitioner's detention.

[80] *Case Report Synopsis*, *supra* note 27.
[81] *Government Observations*, *supra* note 1.
[82] *Id.*

Finally, in Paragraph 71 of its Observations, the Government points to an interview given by the Petitioner to a foreign media outlet in August 2017 claiming he reportedly said that the judge's arrest was "not the best thing to do."[83] It is unclear how the Government can claim that a statement made in August 2017, let alone one that admitted nothing material, could have served as an admission of guilt in a trial that ended in March 2015.

D. Lead Prosecutor's Bias and Selective Prosecution

Article 14(1) of the ICCPR states "[a]ll persons shall be equal before the courts and tribunals."[84] According to the Human Rights Committee, this "ensures that the parties to the proceedings in question are treated without any discrimination" and in accordance with the principle of "equality of arms."[85]

For the reasons set out below, the prosecution of the Petitioner was clearly politically-motivated and selective. This is confirmed by the obvious bias against him of the Prosecutor General who was also a witness to the arrest of Judge Abdulla and was himself, at the time, a judge in the Maldives Criminal Court, as the Government concedes.[86]

In its Opinion, the Working Group highlighted the serious issue with the Petitioner's prosecution, noting specifically "an apparent conflict of interest on the part of the Prosecutor General . . . ."[87]

The Government noted previously that "[i]ndependent and impartial prosecutors are an integral part of a legal system based on respect for the rule of law."[88] The Government then argued that "the Prosecutor General took the appropriate step of recusing himself from the prosecution of the Petitioner."[89]

This is simply untrue: the Prosecutor General did not recuse himself from the trial, despite the Petitioner's counsel's repeated requests that he do so. Instead, the prosecution team claimed that the Prosecutor General would recuse himself if and when he felt it was necessary and – unsurprisingly given the conduct of these proceedings – he never did. The presiding judges, who had their own biases, did not allow the Petitioner's counsel to pursue the request any further.

International observers have closely observed the highly-selective prosecution of the Petitioner. Notably, then UN Special Rapporteur on the Independence of Judges and Lawyers Gabriel Knaul spoke to the discriminatory application of the law, saying that "[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 is . . . troubling for a country whose Constitution enshrines the independence and impartiality of the justice system as a prerequisite for democracy and the rule of law."[90]

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[83] *Id.*
[84] *ICCPR*, *supra* note 22, at art. 14(1).
[85] *General Comment No. 32*, *supra* note 56, at ¶ 8.
[86] *Government Response*, *supra* note 4, at 46, ¶ 180.
[87] *Mohamed Nasheed v. The Maldives*, WGAD Opinion No. 33/2015, Adopted September 4, 2015, at ¶ 103(ii).
[88] *Id.*, at 71, ¶ 249.
[89] *Id.*, at 73, ¶ 254.
[90] *Statement of UN Special Rapporteur – Knaul*, *supra* note 9.

The lack of prosecutorial impartiality and independence, together with the politically-motivated and selective nature of the Petitioner's prosecution, violate the principle of equality before the courts enshrined in Article 14(1).

E. Time and Facilities to Prepare a Defense

Article 14(3) of the ICCPR ensures the right of an individual "[i]n the determination of any criminal charge against him . . . [t]o have adequate time and facilities for the preparation of his defence."[91] What constitutes "adequate time" depends on the circumstances of each case, but at a minimum, the facilities must include access to documents and other evidence that the accused requires to prepare his case.[92]

In its Opinion, the Working Group found a violation of the right to adequate time and facilities to prepare a defense.[93]

The Maldivian authorities fell short of this international standard in at least five respects: (i) only twenty days elapsed from arrest to sentence; (ii) proceedings on the merits started the day after the Petitioner's arrest, when he was notified of the new charges (iii) the Court unreasonably refused an adjournment sought by the Petitioner after his counsel resigned; (iv) the Petitioner and his counsel were denied access to evidence; and (v) the Petitioner's counsel was entirely absent from key hearings in the case.

i. Only Twenty Days from Arrest to Sentencing

First, the Petitioner and his counsel were given virtually no time to prepare their case, since he was arrested, charged, tried, convicted, and sentenced in only 20 days.

In the words of UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, "it is hard to see how such hasty proceedings, which are far from the norm in the Maldives, can be compatible with the authorities' obligations under international law to conduct a fair trial."[94] The BHRC also expressed "serious concerns"[95] over the rushed proceedings, stating that "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."[96] The BHRC went on to express its 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."[97]

The 20-day timeframe presented in our Complaint is not disputed by the Government in its Observations and should therefore be considered to be established.[98]

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[91] *ICCPR*, *supra* note 22, at art. 14(3)(b). This is also reflected in Maldivian law: "Everyone charged with an offence has the right:... to have adequate time and facilities for the preparation of his defence and to communicate with and instruct legal counsel of his own choosing." *Constitution of the Maldives*, *supra* note 22, at art. 51(e).
[92] *General Comment 13*, supra note 23, at ¶ 11.
[93] *Mohamed Nasheed v. The Maldives*, WGAD Opinion No. 33/2015, Adopted September 4, 2015, at ¶ 104(iv).
[94] *Statement of High Commissioner Zeid*, *supra* note 8.
[95] *BHRC Report*, *supra* note 5, at 5.
[96] *Id.*, at 46.
[97] *Id.*
[98] *Government Response*, *supra* note **Error! Bookmark not defined.**, at 75, ¶ 269.

However, the Government attempts to justify the haste of these proceedings by claiming that the Petitioner somehow asked for a rushed trial. In Paragraph 117 of its Observations, the Government reports that the Petitioner "filed an application on 27 April 2014 requesting that the court speed up the proceedings." It further added that "[i]t is therefore rather paradoxical that the Petitioner would subsequently argue that the proceedings were rushed."[99] Not only does the Government seek to try and justify the speed of the trial but in Paragraph 116 it even seeks to minimize the extraordinary difference between a prosecution for an "illegal arrest" and a charge of "terrorism," by claiming "[t]he only material change [in the new case] was the legal qualification of the charge as an offense of terrorism."[100]

This argument is disingenuous. While the Petitioner's legal team did call for expedited proceedings, the Government omits to mention that this request was made in reference to the charges of "illegal detention" filed in 2012, which had been stalled for two-and-a-half years at the time of the request. No such request was made during the 2015 proceedings, nor would such a request to be tried at breakneck speed on entirely new charges of "terrorism" have even been considered. It is equally shocking for the Government to have tried to minimize the terrorism charge that could have subjected the Petitioner to 15 years in prison and suggest it is similar to the "illegal detention" charge for which if convicted, the Petitioner could have even avoided jail time entirely.

ii. Only One Day Between Notification of Charges and Trial

The trial against the Petitioner for terrorism, an offense carrying between 10 and 15 years imprisonment, began the day after he had been notified of the charges.[101] The Petitioner's lawyers were not afforded the opportunity to review the charges and present a response in preparation for the first hearing. They were not even admitted to the courtroom because under Maldivian law, a lawyer must register to appear in court on behalf of a criminal defendant two days prior to a hearing. This was impossible given the Petitioner was presented to the Court for his first hearing on the merits of the case the day after his arrest.

In Paragraph 112 of its Observations, the Government actually blames the Petitioner's counsel for having "failed to appoint and register themselves as legal counsel for him two days prior to the hearing."[102] In short, the Government is practically contending that the Petitioner's counsel should have been able to predict the future and should have known that he was going to be arrested one full day prior to it happening so they could have registered with the Court for his trial two days late.

Indeed, the Human Rights Committee has already previously found a violation of the right to adequate time to prepare one's defense in criminal proceedings for political offenses where the accused had been notified of the charges only two days before trial.[103] UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein concluded: "The Government argues the new case against Nasheed was based on the same materials previously available to

[99] *Government Observations*, *supra* note 1.
[100] *Id.*
[101] *UN Rights Chief Raises Serious Concerns about 'Rushed' Trial of Former Maldives President*, UN NEWS CENTRE, Mar. 18, 2015, *available at* http://www.un.org/apps/news/story.asp?NewsID=50358#.VczA2Z1Viko.
[102] *Government Observations*, *supra* note 1.
[103] *Patricio Ndong Bee v. Equatorial Guinea*, Communication Nos. 1152/2003 & 1190/2003, HUMAN RIGHTS COMM., Adopted Oct. 31, 2005, at ¶ 6.3.

his legal team, but [Nasheed] should still have been given time to instruct his counsel and prepare a new defence."[104]

iii. Refusal to Adjourn

During the Petitioner's short trial, his counsel was forced to withdraw because the circumstances created by the Government were preventing them from carrying out their responsibilities and ethical duty to provide him with effective legal representation. In its Opinion, the Working Group concluded the "refusal of an adjournment after the withdrawal of Mr. Nasheed's counsel" was a violation of due process.[105]

After their withdrawal, the Court refused to appoint new counsel, refused to give him the three-to-15-day time period to appoint new counsel under Maldivian law, refused to provide court-appointed counsel, and refused the Petitioner's request for a 30-day period to review the evidence in the case when he decided ultimately he would be representing himself. Indeed, it is estimated that the Petitioner requested a lawyer more than 100 times during Court hearings that took place after his lawyers were forced to resign. The rejection of each request denied the Petitioner his right to present a defense.

BHRC's conclusions support the argument that "Mohamed Nasheed's right to a fair trial, as guaranteed under international law, has been breached . . . in part because of . . . the failure by the Court to provide Mr. Nasheed additional time to prepare for the remainder of his trial",[106] which it concludes independently "constitutes a breach of Article 14(3)(b) [of the ICCPR]."[107]

The Government does not dispute the fact that the Court refused the request for an adjournment for the Petitioner to review the evidence. This runs counter to the general obligation recognized by the Human Rights Committee to grant reasonable requests for adjournment, "in particular, when the accused is charged with a serious criminal offence and additional time for preparation of the defence is needed."[108] As a result, the denial of an adjournment reasonably required by the Petitioner to acquaint himself with the evidence after his counsel's resignation constitutes a violation of Article 14(3)(c) of the ICCPR.

iv. Limited Access to Evidence

The right to adequate facilities to prepare a defense requires that, in addition to information about the charges, the accused and their counsel should be granted timely access to relevant information.

In its Opinion, the Working Group concluded the "limited provision of evidence to the defense team" was a violation of due process.[109]

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[104] *Statement of High Commissioner Zeid, supra* note 8.
[105] *Mohamed Nasheed v. The Maldives*, WGAD Opinion No. 33/2015, Adopted September 4, 2015, at ¶ 103(vi).
[106] *BHRC Report, supra* note 5, at 5.
[107] *Id.*, at 46.
[108] *HRC General Comment No. 32, supra* note 56, at ¶ 32 (citing to *Chan v. Guyana*, Communication No. 913/2000, HUMAN RIGHTS COMM., at ¶ 6.3, and *Phillip v. Trinidad and Tobago*, Communication No. 594/1992, HUMAN RIGHTS COMM., at ¶ 7.2.).
[109] *Mohamed Nasheed v. The Maldives*, WGAD Opinion No. 33/2015, Adopted September 4, 2015, at ¶ 103(iv).

The Petitioner's counsel was provided with a stack of documents – 1,125 pages – on February 24, 2015, one day after the trial commenced on February 23. The documents were not organized, catalogued, or even stapled together. Counsel was not informed of which documents in particular the prosecutor was relying on as evidence until the third hearing on March 2. No video and audio evidence was not provided until March 4, 2015, when it was disclosed only in part. Despite repeated requests by counsel, some video footage relied upon by the prosecution during trial – and by the court in its judgment – was never provided.

In Paragraph 76 of its Observations, the Government notes "a wealth of documentary evidence was put forward at trial . . . ." and in Paragraph 120 claims the Petitioner argued "that all prosecution evidence was withheld."[110] As noted above, it is acknowledged more than a thousand pages of purportedly relevant documentation was provided to counsel and that a limited subset of audio and video evidence was later provided.

That said, nowhere in its Observations does the Government dispute that the Court refused to disclose all video and audio evidence to the Prosecution – a fact which must therefore been taken as having been conceded by the Government. This amounts to a violation of the Petitioner's right to adequate facilities to prepare his defense, since the Human Rights Committee has clarified that this must be understood as a guarantee that individuals cannot be convicted on the basis of evidence to which the accused or their counsel do not have full access.[111]

v. Counsel Absent From Key Hearings

On the first day of trial and for the second half of the 20-day trial proceedings, the Petitioner's counsel was absent.

The day after arrest during the first hearing, the Petitioner's lawyers were not admitted to the courtroom because they could not possibly have registered with the Court two days earlier as required by Maldivian law.

Then on March 8, 2015, the Petitioner's counsel was forced to withdraw from the case because the circumstances created by the Government were preventing them from carrying out their responsibilities. During the hearing on March 8, the judges informed the Petitioner that the proceedings would continue regardless of whether he had legal representation. The Court refused the Petitioner's request for a 30-day period for the Petitioner to review the evidence in the case. And the judges also refused to appoint new counsel to represent him.

The result was that four out of the ten trial hearings took place without counsel being present. Counsel was excluded when part of the prosecution evidence was presented – including all documentary, audio, and video evidence relied upon by the prosecution and subsequently by the Court. Counsel was also excluded from the first hearing when bail was denied, without

[110] *Government Observations*, *supra* note 1.
[111] *Onoufriou v. Cyprus*, Communication No. 1636/2007, HUMAN RIGHTS COMM., UN Doc. CCPR/C/100/D/1636/2007, adopted Oct. 25, 2010, at ¶ 6.11, and *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant - Concluding Observations of the Human Rights Committe: Canada*, UN Doc. CCPR/C/CAN/CO/5, Apr. 20. 2006, at ¶13. *See also Prosecutor v. Katanga and Ngudjolo* (ICC-01/04-01/06-2681-Red2) ICC Pre-Trial Chamber, Decision on the Prosecution's Request for the Non-Disclosure of Information, a Request to lift a Rule 81(4) Redaction and the Application of Protective Measures pursuant to Regulation 42, Mar. 14, 2011, at §27.

any consideration or explanation. Under these circumstances it is simply not possible to argue that the right to counsel was not violated.

In its Opinion, the Working Group concluded the "absence of legal representation for Mr. Nasheed at key points during the trial" was a violation of due process.[112]

F. Denial of Right to Present Witnesses

Article 14(2)(e) of the ICCPR provides that any criminal defendant has the right to "obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."[113]

However, in this case, the Court refused to hear any witnesses put forward by the defense.[114]

According to the Court, "Defence witnesses would not be able to refute the evidence submitted by the prosecution against Mohamed Nasheed and hence, it was decided not to call any Defence witnesses to the court."[115] The Petitioner was prevented from calling any witnesses or introducing documentary evidence, including photographic evidence, that would call into question the credibility of some of the prosecution's witnesses. Such refusals by the Court are acknowledged openly in its Judgment.

In its Opinion, the Working Group concluded there was a violation of Article 14(3)(e) of the ICCPR because of the Court's "refusal to allow Mr. Nasheed to call any witnesses . . . ."[116]

The Petitioner had sought to call four witnesses – Hassan Afeef, former Home Minister in the Petitioner's Government; Mohamed Jinah, former Head of Drug Enforcement Unit, Maldives Police Service; Ahmed Mausoom, former Chief of Staff, Office of the President; and Muhuthaz Muhusin, the then Prosecutor General and alleged witness to Judge Abdulla's arrest. It is self-evident, by virtue of the positions held by the proposed witnesses at the time of Judge Abdulla's arrest, that they had direct knowledge of the facts and circumstances of the detention and could provide valuable and relevant testimony. Nevertheless, none of them were allowed to take the stand.

As noted in the Petitioner's Complaint, the Court's failure to hear witnesses for the defense was strongly criticized by international observers. For instance, UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein noted that this was "contrary to international fair trial standards,"[117] while the former UN Special Rapporteur on the Independence of Judges and Lawyers Gabriela Knaul concluded that this failure was "in clear violation of the principle of equality of arms."[118]

The BHRC also expressed concern that "the failure to allow the Defence to call any witnesses raises particular concerns when seen in the context of the trial as a whole . . . Given the apparent bias of the judicial bench, which tainted the entire trial proceedings, its rulings

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[112] *Mohamed Nasheed v. The Maldives*, WGAD Opinion No. 33/2015, Adopted September 4, 2015, at ¶ 103(v).
[113] *ICCPR*, *supra* note 22, at art. 14(2)(e).
[114] *Case Report Synopsis*, *supra* note 27, at ¶ 17.
[115] *Id.*
[116] *Mohamed Nasheed v. The Maldives*, WGAD Opinion No. 33/2015, Adopted September 4, 2015, at ¶ 103(iii).
[117] *Statement of High Commissioner Zeid, supra* note 8.
[118] *Statement of UN Special Rapporteur – Knaul, supra* note 9.

regarding which witnesses it would and would not hear would not have appeared impartial or unbiased to a reasonable observer."[119] Similar concerns were also included in Amnesty International's report on its April 2015 fact-finding mission.[120]

In its Observations, the Government has acknowledged that the Court refused to hear all four of these proposed defense witnesses. The Government justifies this decision by claiming that "the defense counsel was unable to enlighten the Court as to the specific contention said witnesses would address, and it became evidence to the Court that the none [sic] of the witnesses presented were able to give evidence as to the circumstances of the case – rather it was a testimony merely on the basis of character."[121]

This is a rather desperate argument by the Government, contradicted by the Court's Judgment itself. In its Judgment, the Court noted in detail what each witness was going to give testimony about in terms that confirmed their relevance to the charges in the case. In the Court's own words:

> On the charges against Mohamed Nasheed by the Prosecution, Defence witnesses from Mohamed Nasheed were proposed. These witnesses were:
>
> 1. Mr. Muhthaz Muhsin of Raiymasge, GA. Maamendhoo as a person who had been present at Abdullah Mohamed's home at the time of his arrest, witnessed it, had heard the conversations with the military, and additionally experienced the events of the case.
>
> 2. Mr. Mohamed Jinaah of Fonimaage, S.Maradhoo, to prove how the decisions of the President were executed according to the law.
>
> 3. Mr. Hassan Afeef of G. Bodugaadhoshuge, Malé, to explain to the court the letter given by the police to the military regarding Chief Judge Abdullah Mohamed.
>
> 4. Mr. Ahmed Mausoom of G. Pleasant Wave, Malé, to explain to the court the implementation of decisions of the President.[122]

Therefore, it was abundantly clear to the Court, though apparently not to the Government, that the Petitioner's counsel explained what the witnesses would testify about and the relevance of their testimony. Amazingly, the Court decided in advance of hearing any testimony "the said Defence witnesses would not be able to refute the evidence submitted by the Prosecution against Mohamed Nasheed and hence, it was decided not to call any Defence witnesses to the court." The Court concluded that the prosecution's narrative that the judge's arrest "was executed on the order of Mohamed Nasheed" was adopted "without any room for argument."[123] The verdict was a foregone conclusion, and the Judgment says so.

Previously, the Human Rights Committee found a violation of the principle of equality of arms where a court refused a defense request to call officials who could have provided

[119] *BHRC Report*, *supra* note 5, at 53.
[120] *Amnesty Int'l: Statement from Maldives Mission, supra* note 26.
[121] *Government Observations*, *supra* note 1, at ¶¶ 131, 128.
[122] *Id.*, at 16, ¶ 6.
[123] *Id.*, at 17-19, ¶¶ 6-7.

information relevant to the accused's claim that his confession had been extracted by torture.[124] Similarly, the Committee decided in *Shchetka v. Ukraine* that the rejection by the domestic court of the defendant's request to call several important witnesses that could have confirmed his alibi amounted to a violation of Article 14(3)(e) of the ICCPR.[125]

G. Denial of Right to Cross-Examine Witnesses

The ICCPR guarantees a defendant the right "to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."[126] This encompasses a right to test the prosecution's evidence by cross-examining witnesses presented against the accused.[127]

In its Opinion, the Working Group concluded there was a violation of the right to examine witnesses under Article 14(3)(e) of the ICCPR because of the Court's "limits placed on his cross-examination of prosecution witnesses."[128]

The Petitioner's ability to examine the witnesses presented by the Government was severely curtailed. In addition, Judge Abdulla was called directly by the judges, even though his name had been removed from the prosecution's witness list. This further undermined the defense's ability to prepare a cross-examination in a manner consistent to the prosecution's obligation, recognized by international human rights law, to give the defense adequate advance notification of the witnesses that it intends to call.[129]

Additionally, the Petitioner's defense counsel was prohibited from questioning the credibility of other prosecution witnesses to establish bias or otherwise discredit their testimony. Cross-examination was limited in this fashion for five of the nine witnesses presented by the prosecution.

Both the UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein[130] and then UN Special Rapporteur on the Independence of Judges and Lawyers Gabriela Knaul commented specifically on this due process abuse. The BHRC[131] and Amnesty International's fact-finding mission[132] also expressed serious concerns.

In Paragraphs 122-123 of its Observations, the Government claims merely that it "put reasonable limitations on [Nasheed] putting questions to the witnesses that were deemed

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[124] *Litvin v. Ukraine*, Communication No. 1276/2004, HUMAN RIGHTS COMM., CCPR/C/95/D/1276/2004, adopted July 19, 2011, at 11–12.
[125] *Shchetka v. Ukraine*, Communication No. 1535/2006, HUMAN RIGHTS COMM., CCPR/C/102/D/1535/2006, adopted Apr. 23, 2009.
[126] *ICCPR*, *supra* note 22, at art. 14(3)(e). The Maldivian Constitution similarly guarantees "Everyone charged with an offence has the right to examine the witnesses against him and to obtain the attendance and examination of witnesses" *Constitution of the Maldives*, *supra* note 22, at art. 51(g).
[127] *HRC General Comment No. 35 on Article 9: Liberty and Security of Person*, HUMAN RIGHT COMM., CCPR/C/GC/35, Dec. 16, 2014, at ¶ 22.
[128] *Mohamed Nasheed v. The Maldives*, WGAD Opinion No. 33/2015, Adopted September 4, 2015, at ¶ 103(iii).
[129] *See e.g.* International Criminal Court, *Rule 76: Pre-trial Disclosure Relating to Protection Witnesses*, RULES OF PROCEDURE AND EVIDENCE 26–27 (2002, 2nd ed.); *Adams v. Jamaica*, Communication No. 607/1994, HUMAN RIGHTS COMM., Adopted Nov. 1, 1994, at ¶ 8.3; and *Peart v. Jamaica*, Communication Nos. 464/1991 & 482/1991, HUMAN RIGHTS COMM., Adopted Jul. 7, 1991, at ¶11.4-11.5.
[130] *Statement of High Commissioner Zeid, supra* note 8.
[131] *BHRC Report*, *supra* note 5, at 5.
[132] *Amnesty Int'l: Statement from Maldives Mission, supra* note 26.

irrelevant" and these claims "had not been substantiated with evidence . . . as to how the Petitioner was prevented from cross-examining any witness."[133]

While restrictions on the accused's right to question prosecution witnesses may be permissible in exceptional circumstances,[134] no such circumstances existed in the Petitioner's case.

The only reason why further evidence cannot be specifically provided is because the Court patently refused to provide the Petitioner after his trial with a transcript of the proceedings, which is required by Maldivian law. Claims that audio recordings were provided are patently false. But it is important to emphasize that the Government's claims that the Court did not interfere with witness cross-examination is contradicted by reputable international observers.

The Court's arbitrary restrictions on the Petitioner's right to cross-examine prosecution witnesses constitute therefore a further violation of the right to equality of arms enshrined in Article 14(3)(e) of the ICCPR.

H. Denial of Right to Counsel

Article 14(3)(d) of the ICCPR provides for an accused's right to defend himself in person or through legal assistance of his own choosing.[135] This fundamental defense right was denied to the Petitioner throughout the proceedings.[136]

In its Opinion, the Working Group concluded the Petitioner's right to counsel was violated in a number of different ways.[137]

First, the Petitioner was not assisted by counsel at his first hearing on February 23, 2015. This was because his lawyers had not registered with the court two days in advance as required – something that was impossible since the Petitioner had only been arrested and notified of the charges the night before.

As noted by the BHRC, this was "a clear breach of Article 14(3)(d)" on the very first day of trial.[138] This has been confirmed by the Human Rights Committee, which has previously held that the right to legal assistance was violated where a preliminary hearing took place while defense counsel was not present.[139]

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[133] *Government Observations*, *supra* note 1.
[134] For instance, where the witness is particularly vulnerable because of his age or mental capacity.
[135] *ICCPR*, *supra* note 22, at art. 14(3)(d). The Maldivian Constitution similarly ensures "[e]veryone has the right on arrest or detention to retain and instruct legal counsel without delay... and to have access to legal counsel facilitated until the conclusion of the matter for which he is under arrest or detention." *Constitution of the Maldives*, *supra* note 22, at art. 48(b).
[136] In addition, counsel was denied adequate time and facilities to present their defense, as described in a separate section above.
[137] *Mohamed Nasheed v. The Maldives*, WGAD Opinion No. 33/2015, Adopted September 4, 2015, at ¶¶ 103(v), 104(vi).
[138] *BHRC Report*, *supra* note 5, at 51.
[139] *Brown v. Jamaica*, Communication No. 775/1997, HUMAN RIGHTS COMM., Adopted Nov. 17, 1997, at ¶ 6.6, and *Hendricks v. Guyana*, Communication No. 838/1998, HUMAN RIGHTS COMM., Adopted Jun. 5, 1998, at ¶ 6.4.

The Petitioner was again in court without counsel on March 8 and 9, 2015, because his counsel had resigned in protest of the repeated denial of adequate time and facilities to prepare a defense.

The Court refused to adjourn to allow the Petitioner to find new counsel, or to prepare his own defense, and the Petitioner was unrepresented for the remainder of the case. The Court simply continued with the trial.

The Government previously claimed that the Court "refused to accept the withdrawal of the legal team"[140] and that it was "under no obligation to suspend proceedings when it is clear that it is the defendant who is deliberately attempting to frustrate matters through his own inaction."[141]

The Government's claim that the Court refused to accept counsel's withdrawal is a flagrant misrepresentation. On the contrary, in its Judgment, the Court acknowledges this withdrawal, noting that "the Defence lawyers . . . resigned from acting as lawyers for Nasheed."[142] Moreover, contrary to the Government's suggestion, this was not due to the Petitioner's "inaction" or to a "deliberate attempt to frustrate matters." It was due to his circumstances: given he was held in prison, the Petitioner had no way to reach new counsel overnight and therefore was denied the right to access counsel of his choosing.

But even assuming, for the sake of argument, that the failure to appoint counsel was attributable to the Petitioner, this would not relieve the Government of its responsibility to ensure adequate and effective representation by counsel. In fact, the Human Rights Committee sees this as an obligation incumbent on the State even where, for instance, it is solely the fault of assigned counsel that he or she fails to attend a hearing[143] and international standards require that counsel be imposed to represent an accused if the latter's conduct derails the proceedings.[144]

As a result, the Petitioner's right to counsel was violated in numerous ways.

I. Lack of a Public Hearing

The right to a public hearing is enshrined in Article 14(1) of the ICCPR, which states "everyone shall be entitled to a fair and public hearing."[145]

In its Opinion, the Working Group concluded the Petitioner's right to a public hearing was violated because of "limitations on how many observers and members of the public could

[140] *Government Response*, *supra* note 4, at 83, ¶ 315.
[141] *Id.*, at 83, ¶ 317.
[142] *Case Report Synopsis*, supra note 27, at ¶ 6.
[143] *Borisenko v. Hungary*, Communication No. 852/1999, HUMAN RIGHTS COMM., Aug. 2,1997, at ¶7.5.
[144] *See e.g.*, *International Standards on Criminal Defence Rights: UN Human Rights Committee Decisions* 24–29, OPEN SOCIETY JUSTICE INITIATIVE, April 2013, *available at* https://www.opensocietyfoundations.org/sites/default/files/digests-arrest%20rights-human-rights-committee-20130419.pdf.
[145] The Maldives Constitution also guarantees "everyone is entitled to a fair and public hearing". *Constitution of the Maldives*, *supra* note 22, at art. 42(a).

attend Mr. Nasheed's trial, and the provision by the Court of a synopsis of the proceedings rather than a judgment."[146]

The Petitioner was repeatedly denied this right, as the Court actually removed seats in the courtroom to prevent access to the public and barred outside observers from entering the courtroom on various days.

Previously, the Government falsely claimed that the trial was public, citing as evidence in support the fact that the BHRC report notes that the observer had access to the courtroom and confirmed that members of the public could in principle attend. But the Government fails to quote the remainder of the BHRC report, which notes that:

> The trial proceedings were held in a courtroom . . . configured with 20 seats in the public gallery, which were allocated on a 'first come, first served' basis on the morning of the hearing . . . 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; and four seats were reserved for court security officials, and therefore unavailable to the public . . . .
>
> 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.[147]

The BRHC concluded that:

> 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).[148]

The Government's counter-argument concerning the publicity of the hearings is that "the complaint . . . appears to be in reality that the public were allowed to observe proceedings, but not as many members of the public/media as the Petitioner would have liked."[149]

This is not entirely incorrect. While the Petitioner agrees that some members of the public were allowed into the courtroom (albeit 16, including press, not 40 as claimed by the Government),[150] he claims that his right to a public hearing was not respected because of the unduly limited number of individuals who were able to attend proceedings at any given time and the exclusion of independent trial monitors from court on more than one occasion.

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[146] *Mohamed Nasheed v. The Maldives*, WGAD Opinion No. 33/2015, Adopted September 4, 2015, at ¶ 103(vii).
[147] *BHRC Report*, supra note 5, at 42–43.
[148] *Id.*, at 43.
[149] *Government Response*, *supra* note 4, at 79, ¶ 289.
[150] *Id.*, at 78, ¶ 287.

The Human Rights Committee has previously recognized that courts should "provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, *inter alia*, the potential interest in the case and the duration of the oral hearing."[151] There was no legitimate basis for restricting access to 16 people in the most important trial that has ever taken place in the Maldives, where there were questions about its fairness and where the courtroom could have accommodated a larger presence but for actions taken to *reduce* the space available. Moreover, there was no reason to hold hearings at night, which also restricted the openness of proceedings to the general public.

In light of the international profile and domestic importance of the case, the Court must have known that the public and media interest in the trial was likely to be extremely high, and that the 16 seats made available to the public were far from sufficient.

Further, despite the Government's claim to the contrary,[152] it did not go unnoticed by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein that throughout the Petitioner's trial the Court refused requests by the Human Rights Commission of the Maldives and domestic as well as international observers to monitor the trial proceedings.[153]

For these reasons a violation of Article 14(1) must be added to the long list of fair trial provisions violated by the Government in the criminal proceedings against the Petitioner.

J. Denial of Right to Appeal

The ICCPR protects the right to appeal a criminal conviction to a higher court.[154]

In its Opinion, the Working Group concluded the Petitioner's right to appeal was violated in part because "a sudden change by the Supreme Court of the appeal rules, and the delay in providing the trial record to the defence."[155]

The Government prior claim that "no attempt has been made to appeal"[156] by the Petitioner was a flagrant misrepresentation of the facts. The Petitioner submitted to the High Court a written intent to appeal on March 15, 2015, two days after his conviction. Furthermore, the Government's subsequent claims that the Petitioner was welcome to file an appeal, both in its written submission and in the media, were wilful misrepresentations of the law in the Maldives.

In Paragraph 141 of its Observations, the Government makes several brazen misrepresentations that are contradicted by credible independent NGO and media reports. The false claims include that the Petitioner "refused to avail this right [to appeal], let the appeal period lapse, and instead, had requested the Prosecutor General to file appeal points on his behalf."[157]

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[151] *General Comment No. 32*, *supra* note 56, at ¶ 28.
[152] *Government Response*, *supra* note 4,, at 79, ¶ 294.
[153] *Statement of High Commissioner Zeid, supra* note 8.
[154] *ICCPR*, *supra* note 22, at art. 14(5). The Maldives Constitution is clear that "[e]veryone related to a matter has the right to appeal a conviction and sentence, or judgement [sic] or order in a criminal or civil matter." *Constitution of the Maldives*, *supra* note 22, at art. 46.
[155] *Mohamed Nasheed v. The Maldives*, WGAD Opinion No. 33/2015, Adopted September 4, 2015, at ¶¶ 103(viii), 104(viii)
[156] *Government Response*, *supra* note 4,, at 85, ¶ 328.
[157] *Government Observations*, *supra* note 1.

This right was denied to the Petitioner since – in a Kafkaesque turn of events – the Supreme Court shortened the deadline for the filing of appeals to 10 days, and the Petitioner and his counsel were only provided with an incomplete and inaccurate trial report 11 days after the Judgment was rendered. Accordingly, the Petitioner, whose counsel was absent from half the trial and couldn't even rely on their own notes to prepare a potential appeal, initially had no opportunity to take those proceedings further. The idea that the Petitioner would have instead asked the Prosecutor General to appeal on his behalf, when losing the appeal would result in his serving a 13-year prison sentence is ludicrous.

In fact, in an unprecedented act, the Maldivian Prosecutor General was the first to appeal the Petitioner's conviction to both the High Court and Maldives Supreme Court. In Paragraphs 132-138 of the Government's Observations it attempts to explain that his decision to initiate an appeal was not an usual act and was done "in the interest of justice."[158] The Petitioner does not contest that the Prosecutor General has a right under Maldivian law to file an appeal; it was, however, unprecedented for him to file an appeal after he won a conviction and secured close to the maximum sentence allowable under the law.

In Paragraphs 139-155 of its Observations, the Government presents an extraordinary inaccurate account of the appeals process in the Petitioner's case from the High Court to the Supreme Court. It does not require further examination because the Government admits the Petitioner never had his final appeal heard before the Supreme Court when it stated "[s]ubsequent to the Prosecutor General filing an appeal with the Supreme Court, the Petitioner had also appealed his conviction on the basis of substantive legal errors and procedural violations, and the Supreme Court had not, to the date of submitting the complaint to the Human Rights Committee, made a decision on whether to grant for appeal."[159]

It is clear on the basis of how the Petitioner's entire case has been conducted that there would be no reasonable likelihood of success even if the Maldives Supreme Court were to consider the Petitioner's appeal because of the politicization of the judiciary.

Indeed, this is only reaffirmed by the Supreme Court having ignored a letter sent to the Chief Justice on July 16, 2017, by former Maldives Vice President Ahmed Adeeb Abdul Ghafoor who stated as follows:

> I wish to inform you that I have information that could prove former president Mohamed Nasheed's 13-year prison sentence was masterminded under direct Government scheming and influence . . .
>
> I . . . know that the judgement entered against Mr Nasheed was not written by any judge; and who was the author of the judgement I also know. The judgment's first draft stated he would receive a 10 year jail sentence, its implementation to be suspended for three years. Nonetheless I also know who ordered to alter the judgment to receive a 13-year prison sentence and who complied to that directive.
>
> I have before me evidence to prove that the judgment passed on Mr Nasheed

[158] *Id.*
[159] *Government Observations*, *supra* note 1.

> was meted out under heavy manipulation conducted against the presiding judges and on the judiciary as a whole.[160]

These claims are highly credible because at the time of the Petitioner's trial, Adeeb served in the Government and was widely reported as being very close with President Yameen. He subsequently fell out of favour with Yameen and was convicted and sentenced to 25 years in prison himself for terrorism, possession of firearms, and corruption. Adeeb wrote this letter from his prison cell, and it is highly credible both because it implicates him in additional unlawful acts and it put him at great risk for further mistreatment by the Government, which has repeatedly denied him access to medical care for several critical health issues.

IV. Violations of Articles 19, 22, and 25 of the International Covenant on Civil and Political Rights in Arbitrary Detention Case

There is often a strong interrelationship between an individual's right to freedom of opinion and expression, association, and political participation.

In Paragraph 78-81 of its Observations, the Government contends "there is nothing to suggest that political opinion entered into the reasoning behind the bringing of the [terrorism] charge," erroneously believing that a case is politically-motivated only if there is a political charge.[161] The Government claims it is "at a loss as to how an allegation of terrorism stemming from the abduction of a senior member of the judiciary can be seen to fall into the sphere of expression, association, and political opinion."[162] Yet in its Observations, the Government has failed in any way to address wide array of evidence demonstrating the Petitioner's arrest, trial, conviction, sentencing, and imprisonment was a pretext to decapitate his ability to catalyze opposition to Yameen and run against him in the 2018 Presidential election.

In considering its Opinion on these questions, the Working Group concluded:

> There are several factors which, taken together, strongly suggest that Mr. Nasheed's conviction was politically motivated. These include:
>
> (i) the history and pattern of proceedings brought against Mr. Nasheed, including his arrest and detention in 1994, which was declared by the Working Group to be arbitrary and solely motivated by the will to suppress his critical voice,
> (ii) the sudden way in which charges were reinstituted against Mr. Nasheed after the original case had been inactive for 2.5 years when the Government lost a key Coalition partner in the parliament,
> (iii) the fact that, two weeks after Mr. Nasheed was sentenced, the Government adopted a law banning all prisoners from being office holders in political parties, and
> (iv) the fact that Mr. Nasheed will not be able to participate in the 2018 presidential election as a result of his conviction.
>
> In this case, the Working Group considers that Mr. Nasheed's detention has resulted from the exercise of his rights as a political opposition leader to express views

[160] Letter to Chief Justice of the Maldives Supreme Court Abdulla Saeed by Ahmed Adeeb Abdul Ghafoor, July 16, 2017 (Copy in Divehi and English available on request).
[161] *Id.*
[162] *Id.*

> contrary to the Government, to associate with his own and other political parties, and to participate in public life in the Maldives.[163]

The Working Group then concluded "there is a violation of Mr. Nasheed's rights to freedom of opinion and expression, freedom of association, and freedom of political participation under articles 19, 20, and 21 of the UDHR and articles 19, 22, and 25 of the ICCPR, and that he was targeted on the basis of his political opinions."[164]

A. Denial of Right to Freedom of Opinion and Expression

Freedom of opinion and expression are protected by Article 19 of the ICCPR. The Human Rights Committee has recognized that the protection of free expression must include the right to express a dissenting political opinion.[165] It is broad enough to "[include] the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment."[166]

As discussed in our Complaint, the Petitioner a former journalist and opposition figure, has been an outspoken opponent of the Government of the Maldives, and has publicly expressed concern about the state of Maldivian democracy under President Abdulla Yameen. Yameen's regime is widely viewed as a resuscitation of the 30-year authoritarian rule of Yameen's half-brother, Maumoon Gayoom, which preceded democratic reform and adoption of the new Constitution.[167]

The Government of the Maldives has historically persecuted and targeted the Petitioner because of his opinions, demonstrating that it is more than willing to engage in repressive behavior to silence its critics. In a 1995 case considered by the Working Group on Arbitrary Detention, it concluded:

> [T]he detention of . . . Mohamed Nasheed [and another journalist], was solely motivated by the will to suppress their critical voices – as journalists strongly devoted to the freedom of press and members of the opposition – on the eve of parliamentary elections which were to decide the future of the country. Their detention was therefore arbitrary since they merely exercised their right to freedom of opinion and expression, guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.[168]

Because the Petitioner was exercising his fundamental right to express his opinion, he was summarily convicted and sentenced to 13 years in prison in a trial that was a mockery of justice. His imprisonment amounts to no more than an attempt to silence a legitimate voice of democracy in the Maldives.

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[163] *Mohamed Nasheed v. The Maldives*, WGAD Opinion No. 33/2015, Adopted September 4, 2015, at ¶¶ 97.
[164] *Id*., at ¶ 98.
[165] *General Comment No. 34 on Article 19: Freedom of Expression*, HUMAN RIGHTS COMM., CCPR/C/GC/34, Sept. 12, 2011, at ¶ 11.
[166] *Rafael Marques de Morais v. Angola*, Communication No. 1128/2002, HUMAN RIGHTS COMM., Adopted Mar. 29, 2005, at ¶ 6.7.
[167] José Ramos-Horta & Benedict Rogers, *Maldivian Democracy is Dead – With the Jailing of Former President Mohamed Nasheed*, THE GUARDIAN, Mar. 18, 2015.
[168] *Mohamed Nasheed 1995 WGAD Decision*, *supra* note 29, at ¶ 7.

B. Denial of Right to Freedom of Association and Political Participation

The Government's persecution and detention of the Petitioner as a result of his association with the MDP opposition party violates his right to freedom of association under Maldivian and international law.

Article 22(1) of the ICCPR provides that "[e]veryone shall have the right to freedom of association with others . . . ."[169]

It is evident that the Government singled out the Petitioner because he is associated with the major opposition party, the Maldivian Democratic Party. The Petitioner was a co-founder of the MDP and regularly convenes with the party's other leaders. The Government views the MDP as a threat to its power, as the MDP is the most popular opposition political party in the Maldives. The MDP won the presidency in 2008 and currently holds the second highest number of seats in the Maldivian Parliament.

Though the Petitioner is well within his rights to associate with the political party of his choice and express his political opinions through that party, the Government has systemically persecuted him, as well as members of his political party, as a means to suppress their involvement in national politics, as explained further above.

The Government continues to violate the Petitioner's right to exercise his fundamental right to association. On March 30, 2015, some two weeks after the Petitioner's summary conviction and sentence, the Parliament, in a coalition led by Yameen's political party, adopted a new law that stripped people serving prison sentences of their leadership positions in political parties. This new law also *de jure* prohibits the Petitioner from continuing to serve as the leader of the MDP.

The Bar Human Rights Committee wrote of this amendment: "It is difficult to see [it] otherwise than as specifically targeted at Mr Nasheed."[170] Similarly, an independent media report from the *Associated Press* on this amendment was entitled "New Maldives Law Strips Ex-President of Party Membership,"[171] and *Al Jazeera*'s report was entitled "Maldives Passes Law to 'Oust Ex-Leader From Politics.'"[172]

Such a law is in violation of the Maldives Constitution and Article 22 of the ICCPR, which protects the right to freedom of association with others, including through political parties. In addition, General Comment No. 25(57) to the ICCPR notes that "the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by Article 25 [right to participate in public affairs]."[173]

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[169] *ICCPR*, *supra* note 22, at art. 22(1).
[170] *BHRC Report*, *supra* note 5, at 22.
[171] *New Maldives Law Strips Ex-President of Party Membership*, THE DAILY MAIL, Mar. 30, 2015, *available at* http://www.dailymail.co.uk/wires/ap/article-3018110/New-Maldives-law-strips-ex-president-party-membership.html.
[172] *Maldives Passes Law 'to Oust Ex-Leader from Politics',* AL JAZEERA, Mar. 31, 2015, *available at* http://www.aljazeera.com/news/2015/03/maldives-passes-law-oust-leader-politics-150331003043123.html.
[173] *General Comment No. 25 on Article 40, Paragraph 4: Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, HUMAN RIGHTS COMM., CCPR/C/21/REV.1/ADD.7, Aug. 22, 1996, at ¶ 27 [hereinafter *General Comment No. 25*].

By adopting this law that prevents the Petitioner from participating in his political party on account of his conviction and detention, the Government is again violating his right to freedom of association under domestic and international law.

In its prior response, the Government acknowledged the legislation to disqualify prisoners from being members of political parties was adopted within weeks of the Petitioner's trial but denies that this legislation was adopted to target him. It utterly fails, however, to provide any evidence to refute that argument or to explain the amendment's suspicious timing or provide any alternative reasons as to why it was adopted.

C. Denial of Right to Freedom of Political Participation

The Government's conviction of the Petitioner was also punishment for exercising his right to take part in public affairs and be elected without unreasonable restrictions as protected by ICCPR Article 25. According to the Human Rights Committee, this right allows "[c]itizens . . . [to] take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring the freedoms of expression, assembly and association."[174] Moreover, this right depends on the ability of individuals to run for office.

The Petitioner's conviction was in response to him having exercised his right to participate in the conduct of public affairs as a member and leader of the opposition Maldivian Democratic Party (MDP) and is therefore contrary to Article 25 of the ICCPR.

This is confirmed by the fact that his conviction paired with the ban from public office applicable to persons convicted of a criminal offense and sentenced to a term of more than twelve months,[175] means that unless the Human Rights Committee finds his disqualification emanating from an arbitrary detention also illegal under international law, the Petitioner will be unable to participate in the August 2018 presidential election.

The logical inference to draw from this is that the Petitioner's arrest, trial, conviction, and sentencing were motivated by an intent to silence him and to stifle the democratic movement that he led. The Petitioner's conviction sends a loud and clear message to the Maldivian people: opposition to the Yameen regime will not be tolerated.

The Government previously acknowledged that, because of his conviction, the Petitioner will not be able to participate in the 2018 presidential elections. However, it argued that there is nothing discriminatory about the ban since the constitutional provision that sets it out was adopted in 2008, before the Petitioner's case.[176] Of course, this misses the point entirely. It is not the ban itself that is discriminatory, but Government's reliance on a conviction that was itself in violation of international law to trigger the ban and thereby prevent the Petitioner's candidacy.

V. Specific Violations of Article 22 and 25 of the International Covenant on Civil

[174] *General Comment No. 25*, *supra* note 173, at ¶ 8 (*emphasis added*).
[175] The Constitution provides "A person elected as President shall have the following qualifications… not have been convicted of a criminal offence and sentenced to a term of more than twelve months, unless a period of three years has elapsed since his release, or pardon for the offence for which he was sentenced." *Constitution of the Maldives*, *supra* note 22, at art. 109(f).
[176] *Government Response*, *supra* note 6, at 19, ¶ 47.

and Political Rights Resulting From Arbitrary Detention Case

The Petitioner refers to the Human Rights Committee back to its primary arguments in its Complaint, which can be found at:

- Section I.C. Facts Showing Ongoing Restrictions on Political Participation and Association (pp. 9-11).
- Section II. Legal Analysis (pp.11-20).[177]

In Paragraphs 161-163 of its Observations, the Government claims that the charge for "illegal arrest" brought in 2012 against the Petitioner was filed "after much deliberation on the seriousness and the consequences" of his alleged actions. It then restates that the Prosecutor General acted with independence and impartiality when filing the new charges brought against the Petitioner for "terrorism" in 2015. In a conclusory manner, the Government merely rejects the arguments put forth in the Petitioner's Complaint and fails to provide any independent support from any international organization, foreign government, NGO, or media source that supports a conclusion that the prosecution of the Petitioner was not politically motivated.[178]

In Paragraphs 167-169, the Government accurately explains that those convicted of certain crimes may be precluded from running for President. This is not in dispute. The Petitioner contends that this disqualification as applied in his case was in violation of the ICCPR because it emanated from an arbitrary arrest, trial, conviction, and sentence.[179]

In Paragraphs 170-181, the Government accurately explains the process by which the law prohibiting convicts from political participation was adopted and claims it is "at a loss as to how this amendment is merely targeted at the Petitioner, whilst the law applies to all convicts."[180] It was widely understood and reported by numerous credible independent experts that the timing made very clear that it was adopted to target the Petitioner in the wake of his conviction. In addition, the Government totally fails to explain how this law is consistent with its obligations under Article 22 and 25 of the ICCPR and the consistent interpretation of these provisions by the Human Rights Committee.

In Paragraphs 182-184, the Government disingenuously argues that the Petitioner could request clemency under Maldivian law after having served 1/4 of his sentence, which once granted, could make him eligible to run for President sooner than the 16-year disqualification period.

Yet the Government fails to mention that under Article 115(s) of the Constitution of the Maldives that the President may only "grant pardons or reductions of sentence as provided by law, to persons convicted of a criminal offence who have no further right of appeal."[181] The Petitioner has emphasized that he has effectively exhausted domestic remedies because the

[177] Individual Complaint to the United Nations Human Rights Committee Under the Optional Protocol to the International Covenant on Civil and Political Rights, *In the Matter of Mohamed Nasheed v. Government of the Republic of the Maldives*, Oct. 7, 2016.
[178] *Government Observations*, *supra* note 1.
[179] *Id.*
[180] *Id.*
[181] *Constitution of the Maldives*, *supra* note 22.

Supreme Court both has deferred consideration of his appeal for almost two years and even if the case was heard, it would be practically impossible for him to prevail.

But, in contrast, the Government has argued that the Petitioner has not exercised his final right to appeal so its claim in the very same brief he could be eligible for a pardon is contradicted by its own Observations.

VI. Comments Responding to Specific Paragraphs in the State Party's Observations Not Otherwise Addressed in Prior Discussion

In this section, specific paragraphs from the State Party's Observations will be provided verbatim in *italics*, with our Comments in response.

61. Although a detailed submission was filed in response to the Petitioner's Communication to the Working Group, very little, if any, consideration was given to those submissions.

This claim is demonstrably false. Indeed, it is self-evident that the Working Group spent an enormous amount of time and effort in considering *Mohamed Nasheed v. The Government of the Maldives*.

The Government launched an attack on the integrity of the Working Group both immediately after the issuance of its Opinion and here due to its having eviscerated the arguments the Government had been presenting to defend the Petitioner's conviction. Having considered the arguments by all sides in so much detail and repeatedly rejecting those presented by the Government, the Working Group's deep analysis of the situation prominently undercut the Government's credibility in its case against the Petitioner. In fact, the reason why the Government lost its case so thoroughly and completely is because it committed egregious violations of the Petitioner's rights under the ICCPR from his arrest, through his trial, conviction, sentencing, and appeal process. And these violations were widely documented by everyone from the UN High Commissioner for Human Rights to numerous foreign governments to many credible international NGOs and in many independent media reports. The Government failed to present any independent evidence or documentation to support the arguments that it presented to the Working Group.

More specifically, our original complaint to the Working Group was 55 pages, with 292 footnotes. The Government responded with a 111-page response of its own with 444 numbered paragraphs and an additional 48 annexes. And our reply to the Government's response was another 44 pages with 262 footnotes that addressed point by point the response of the Government in detail.

Subsequently, the Working Group adopted Opinion Number 33/2015 on September 4, 2015. Its Opinion was itself 21 pages with 112 numbered paragraphs. Its presentation of the Government's response alone was four full pages of that Opinion, comprising 28 numbered paragraphs.

To claim the Working Group and its members gave "very little, if any" consideration to the Government's response is a deeply unfair and inaccurate characterization.

62. In the Working Group's opinion, a number of contentious matters were decided in favour of the Petitioner in the absence of any credible evidence being put to the

Respondent. In particular, the Respondent notes, that a clear finding has been made in respect of the Petitioner's conditions of detention that runs counter to the submissions advanced by the Respondent and the evidence submitted in support thereof.

Although the Petitioner was indeed subjected to cruel, inhuman, and degrading treatment, which may have amounted to torture, for purposes of limiting the focus of this case as he is no longer imprisoned, a detailed presentation of this information has not been presented. That said, the Working Group considered information presented both by the Petitioner and the Government and appropriately expressed its concerns about the need for his physical and psychological integrity to be respected.

While detained, the Petitioner was held a cell in Maafushi Prison that was adjacent to the garbage dump, infested with mosquitos and fleas that had been feeding on the garbage. Previously this facility as a whole had been found unfit for prisoners by the Human Rights Commission of the Maldives. He was also held in Dhoonidhoo Island Detention Center in extended solitary confinement in a small cell infested with mosquitos. And in Asseyri Jail, he was held in a small cell with three other political prisoners, including one who had previously directly threatened his life.

90. As it was made clear in the submissions from the Respondent to the Working Group, it was not alleged that Mr. Ben Emmerson QC, an experienced international lawyer and member of the Bar of England and Wales, had acted inappropriately, nor was it suggested that he would seek to exert any influence on the Working Group's consideration. The issue was the perception of bias, and that perception was quite clear.

Ben Emmerson QC served as co-counsel on the petition submitted to the UN Working Group on Arbitrary Detention. The Government claimed to the Working Group that his inclusion on the legal team was "a clear conflict of interest"[182] because Mr. Emmerson "is himself a Special Rapporteur (Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism)."[183]

There is no provision in any of the relevant international standards or codes of conduct – including the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council,[184] Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission,[185] and the Manual of the UN Human Rights Special Procedures[186] – that prohibits a UN Special Rapporteur from maintaining a legal practice focusing on human rights or making an independent submission, in his personal capacity, to another one of the UN Special Procedures.

In response to the Government's claims, the Working Group stated it had "adopted this Opinion by consensus among its five independent members" and there it "considers that no

[182] *Government Response*, *supra* note 6, at 8, ¶ 4.
[183] *Id.*, at 23, ¶ 65.
[184] *United Nations Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council*, adopted June 18, 2007 [hereinafter *UN Code of Conduct*].
[185] *Regulations Governing the Status, Basic Rights and Duties of Officials Other Than Secretariat Officials, and Experts on Mission*, UN Doc. ST/SGB/2002/9, adopted Mar. 27, 2002.
[186] *Manual of the United Nations Human Rights Special Procedures*, revised Aug. 2008.

reasonable person could conclude that its independence is compromised by the fact that one of the four petitioners is a Special Rapporteur."[187]

Most importantly, for present purposes, Mr. Emmerson has not been involved in this case before the Human Rights Committee under the Optional Protocol to the ICCPR in any way.

Conclusion

In light of the arguments explained above, the Petitioner's arrest, trial, conviction, and sentence was the result of an unfair trial initiated as part of a politically-motivated campaign to silence him for his political views and potential for a democratic come-back. His detention was therefore arbitrary and in violation of numerous provisions of the ICCPR. Therefore, the disqualification of him to run for President and the prohibition on him leading the Maldivian Democratic Party are equally arbitrary and in violation of Articles 22 and 25 of the ICCPR.

As noted previously, the Petitioner would be exceptionally grateful if the Human Rights Committee were to consider his case and adopt a View during its March-April 2018 session. If this does not occur, then he will suffer irreparable harm as he will remain disqualified and unable to run for President in the Maldives August 2018 election.

[187] *Mohamed Nasheed v. The Maldives*, WGAD Opinion No. 33/2015, Adopted September 4, 2015, at ¶ 109.

Annex – *Synopsis of The Case Report of Proceedings Re: Prosecutor General v Mohamed Nasheed*, Report No. 145-A/2015/87, Criminal Court of Malé, Republic of Maldives, March 29, 2015