

INDIVIDUAL COMPLAINT TO:

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

Submitted by:

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Information on the Complainant

Name: Mohamed Nasheed
Nationality: Maldivian
Date and Place of Birth: May 17, 1967 – Malé, Maldives

State Concerned and Articles Violated

Name of the State against which the complaint is directed: The Republic of Maldives

Articles of the Covenant or Convention alleged to have been violated: International Covenant on Civil and Political Rights (ICCPR) Article 25 (right to political participation) and Article 22 (right to freedom of association)

Exhaustion of Domestic Remedies and Application to Other International Procedures

A. Domestic Remedies Have Been Exhausted

Domestic remedies available in the Maldives have been effectively exhausted.

Nasheed was convicted of ‘terrorism’ in March 2015, following a trial widely condemned by the international community as politically motivated, and was sentenced to 13 years imprisonment. In an unusual and unprecedented act, the Maldivian Prosecutor General was the first to appeal Nasheed’s conviction to the Maldives Supreme Court. Nasheed then also appealed the decision on the basis of substantive legal errors and procedural violations. On June 27, 2016, the Maldives Supreme Court considered the Prosecutor General’s appeal, ignoring all arguments presented in Nasheed’s appeal, and upheld the ‘terrorism’ conviction. To date, the Maldives Supreme Court has not made a decision on whether to grant leave for the appeal submitted by Nasheed, and it is not likely that they will do so given the already prolonged process and elaborate machinations that characterize this case. Furthermore, independent international analysis reaffirms that there is no reasonable likelihood of success even if the Maldives Supreme Court were to consider Nasheed’s appeal arguments because of the politicization of the judiciary.

Therefore, in this unusual case, the prosecution itself exhausted domestic remedies that should have been available to Nasheed.

There are no further domestic legal remedies available to Nasheed.

B. The UN Working Group on Arbitrary Detention Found Nasheed’s Detention to be Arbitrary and in Violation of the Maldives’ Obligations Under International Law

As required under Article 5, paragraph 2(a) of the Optional Protocol, this matter is not being examined under another procedure of international investigation or settlement.

On a related matter, Nasheed’s detention was submitted for examination to the UN Working Group on Arbitrary Detention (Working Group) on April 30, 2015. As set forth in a petition to the Working Group (summarized below in Section I.B and attached for reference), it was argued that the Government of the Maldives was arbitrarily depriving Mohamed Nasheed of his liberty in violation of numerous provisions of the ICCPR and the Universal Declaration on Human Rights (UDHR).

The Working Group reviewed all submissions from both parties, and rendered its opinion in favor of Nasheed on October 2, 2015.¹ Rejecting the Government’s counter-arguments, the Working Group found that Nasheed’s conviction and detention were arbitrary and requested that the Government of the Maldives “take the necessary steps to remedy the situation of Nasheed without delay and bring it into conformity with the standards and principles in the UDHR and the ICCPR,”² which encompass ICCPR Article 25 right to political life and Article 22 right to freedom of association.

¹ *Mohamed Nasheed v. Republic of the Maldives*, WGAD, UN Doc. Opinion No. 33/2015, Sept. 4, 2015 [*hereinafter Working Group 2015 Opinion on Nasheed*].

² *Id.*, ¶ 111.

I. Facts of the Complaint

Mohamed Nasheed is a Maldivian environmental activist, renowned journalist, and politician who served as the first democratically-elected President of the Maldives (2008–2012). He was forced to resign in 2012 under threat of violence against him and domestic unrest caused by his opponents.³ After being ousted, he continued his pro-democracy activism. As punishment for refusing to stay silent, Nasheed has been targeted and persecuted by the Maldivian government throughout his life, most recently by the current administration of President Abdulla Yameen (2013–present).

A. Biography and History of Political Engagement

Nasheed made a name for himself as a dissident journalist during the administration of President Maumoon Gayoom (1978–2008), regularly reporting on and challenging Gayoom’s authoritarian tactics. In 1990, after Nasheed published an article alleging the Government had rigged the 1989 general election, his magazine was banned and he was put under house arrest and subsequently imprisoned.⁴ Later that year, Nasheed was sentenced to three years in prison (18 months of which he spent in solitary confinement) on separate politically motivated charges.⁵ He was named an Amnesty International prisoner of conscience in 1991.⁶ Over the next 15 years, Nasheed was arrested at least ten more times.⁷ In 1995, the Working Group on Arbitrary Detention found that Nasheed was only detained because of his dissenting political opinion and public criticism of the Government, and thus called for his immediate release.⁸

In 2003, Nasheed helped establish the Maldivian Democratic Party (MDP), an opposition political party.⁹ The MDP was officially recognized in 2005 when the Government decided to allow political parties.¹⁰

In the Maldives’ 2008 election, the country’s first-ever multi-party presidential election, Nasheed ran for President on the MDP ticket and won with 54 percent of the popular vote.¹¹ Under his leadership, the Maldives embarked on significant reforms. Nasheed called for popular elections, and was instrumental in implementing articles of a new Constitution that sought to establish an independent judiciary and provide for separation of powers among the three branches of government.¹² He was also a major advocate for increased awareness of and action

³ Decca Aitkenhead, *Dictatorship is Coming Back to the Maldives and Democracy is Slipping Away*, THE GUARDIAN, Apr. 1, 2012.

⁴ Olivia Lang, ‘Anni’ Heralds New Era in Maldives, BBC NEWS, Oct. 29, 2008.

⁵ Mohamed Nasheed, ENGLISH PEN, available at <http://www.englishpen.org/campaigns/mohamed-nasheed/>.

⁶ Mohamed Nasheed, WASHINGTON POST, Dec. 10, 2009.

⁷ Olivia Lang, *supra* note 4.

⁸ *Mohamed Nasheed and Mohamed Shafeeq v. Maldives*, WGAD Decision No. 36/1995, Nov. 24, 1995.

⁹ James Meikle, *Profile: Mohamed Nasheed*, THE GUARDIAN, Feb. 7, 2012.

¹⁰ *Profile: Mohamed Nasheed*, AL JAZEERA, Feb. 7, 2012.

¹¹ *Mohamed Nasheed*, ENCYCLOPEDIA BRITANNICA (written by Lorraine Murray & Erik Gregersen), last updated May 24, 2016, available at <https://www.britannica.com/biography/Mohamed-Nasheed>.

¹² In August 2008, a new constitution came into effect at the end of Gayoom’s reign. It paved the way for the multi-party elections that Nasheed went onto win that year. The Constitution envisaged, amongst other things, deep reforms to the judiciary, which should have been implemented during Nasheed’s tenure. However, the Judiciary fiercely resisted reform, undermining Nasheed’s efforts and the spirit and letter of the new constitution. *See, also,*

against global warming; his environmental efforts were chronicled in the acclaimed documentary *The Island President*.¹³

Nasheed's presidency was forcibly ended by a coup in February 2012 when he was made to resign under threats of personal violence and domestic unrest created by his political opponents.¹⁴ He was charged later that year for his alleged role in the January 2012 arrest and detention of Abdulla Mohamed, Chief Judge of the Maldivian Criminal Court.¹⁵ Legal proceedings against Nasheed were initiated in November 2012 for 'illegal detention' under Section 81 of the Maldivian Penal Code, which carries a maximum penalty of three years' imprisonment.¹⁶ Then, without explanation, the Government suspended the 'illegal detention' case against Nasheed in July 2013, and no further hearings took place.

Nasheed has repeatedly and categorically denied the allegations as an overtly political attempt to prevent him from campaigning for the November 2013 presidential election. Indeed, before the case was suspended, the Maldivian Home Minister publicly stated: "For the sake of national stability, Nasheed's trial must be concluded before the presidential election," and further remarked that any delays would undermine the country's "political and social fabric."¹⁷

However, the trial did not have the desired effect of tarnishing Nasheed's political career, as Nasheed continued to garner a strong showing of popular support. During the 2013 presidential campaigns, which were marred by judicial interference and numerous irregularities in the voting process leading the international community to conclude the elections were neither free nor fair, Nasheed only narrowly lost to Abdulla Yameen, half-brother of former president Gayoom. Nasheed secured 48.6 percent of the vote to Yameen's 51.3 percent.¹⁸ But, despite the irregularities, Nasheed accepted the defeat, acknowledging publicly, "democracy is a process."¹⁹

B. Arbitrary Conviction and Detention in February 2015

CONSTITUTION OF THE REPUBLIC OF MALDIVES (2008), available at <http://www.majlis.gov.mv/en/wp-content/uploads/Constitution-english.pdf> (functional translation) [hereinafter *Constitution of the Maldives*].

¹³ See, e.g., A.O. Scott, *In Paradise, and Closer Than Ever to Disaster*, NEW YORK TIMES, Mar. 27, 2012; *Carbon-Neutral Goal for Maldives*, BBC NEWS, Mar. 15, 2009, available at

<http://news.bbc.co.uk/2/hi/science/nature/7944760.stm>; and *Climate Vulnerable Forum*, DARA, available at <http://daraint.org/climate-vulnerable-forum/>.

¹⁴ An independent assessment of the events and the report issued by the Commission of National Inquiry (CONI) prepared by a former Attorney General of Sri Lanka characterized the transition as a *coup d'etat*. *A Legal Review of the Report of the Commission of National Inquiry (CONI) Maldives* 28–33, Sept. 6, 2012, available at <http://mdp.org.mv/wp-content/uploads/2012/09/CONI-A-Legal-Analysis.pdf>.

¹⁵ *Mohamed Nasheed*, ENCYCLOPEDIA BRITANNICA (written by Lorraine Murray & Erik Gregersen), last updated May 24, 2016, available at <https://www.britannica.com/biography/Mohamed-Nasheed>.

¹⁶ Maldivian Penal Code, Act No. 1/81, § 81, Apr. 21, 1975, available at http://www.unodc.org/res/cld/document/penal-code-of-the-maldives_html/Maldives_Penal_Code_P1.pdf (unofficial English translation) ("It shall be an offence for any public servant by reason of the authority of office he is in to detain to arrest or detain in a manner contrary to Law innocent persons. Person guilty of this offence shall be subjected to exile or imprisonment for a period not exceeding 3 years or a fine not exceeding Mrf. 2,000.00").

¹⁷ *MDP Accuses Home Minister of Influencing President's Trial*, MINIVAN NEWS, Jan. 30, 2013.

¹⁸ *Maldives Election: Abdulla Yameen Wins Run-Off Vote*, BBC, Nov. 16, 2013, available at <http://www.bbc.com/news/world-asia-24974019>.

¹⁹ *Id.*

The politically motivated case against Nasheed remained inactive until January 2015, when the Jumooree Party (JP), a political party whose backing was crucial to Yameen's narrow 2013 victory, left the ruling coalition and joined Nasheed and the MDP in the opposition.²⁰ As a result, the Government's sense of urgency to address the perceived threat they saw in Nasheed grew immensely.

On February 16, 2015, the Maldives' Prosecutor General withdrew the pending 'illegal detention' charges against Nasheed, which had been dormant since July 2013. Six days later on February 22, 2015, the Prosecutor General's Press Office released a statement that the 'illegal detention' had been withdrawn to "review the charges filed against Nasheed and to change the court at which it was filed," but there was no mention that any new charges were to be filed.²¹ Nevertheless, Nasheed was arrested that day pursuant to a defective arrest warrant on charges of 'terrorism' based on the same underlying facts as the 2012 'illegal detention' case.²² Under Maldivian law, terrorism carries a *minimum* sentence of 10 years and a maximum sentence of 15 years, 12 years more than the three-year maximum sentence allowable for the withdrawn charge of 'illegal detention.'²³

The trial commenced immediately the next day. Throughout the proceedings, the Court displayed a complete lack of impartiality or respect for due process protections. A full accounting of the due process abuses and violations of international standards of fair trial can be found in the attached petition to the UN Working Group on Arbitrary Detention.

By way of illustration, Nasheed's lawyers were barred from attending the first day of proceedings because they were supposedly required to register with the Court two days prior, even though that was impossible given that Nasheed had only been arrested the day before. Nasheed's request for a 10-day extension so that his lawyers could prepare was summarily dismissed. All the prosecution's evidence was withheld until the time in which it was formally introduced to the Court. When evidence was introduced, there was nothing provided to show that Nasheed had actually ordered Judge Abdulla's arrest, nor were there any arguments made explaining how a lawful arrest qualifies as 'terrorism.' In its own synopsis, the Court acknowledges that Judge Abdulla testified "he assumed that he was taken into custody of the military on the order of the then President Mohamed Nasheed."²⁴ Apparently, no further evidence was required.

Nasheed's opportunity to cross-examine witnesses was limited and he was not permitted to call a single witness in his defense because, as the judges later wrote in the opinion, "it was found that the said Defence witnesses would not be able to refute the evidence submitted by the Prosecution against Mohamed Nasheed."²⁵ Faced with these challenges, Nasheed's lawyers

²⁰ *JP Leaves Govt Coalition*, MIADHU, Jan. 24, 2015, available at <http://www.miadhu.com/article/en/1442>.

²¹ Statement of the Hulhumalé Magistrate Court, Feb. 22, 2015.

²² Although there was no evidence to support the allegations, Nasheed was charged with committing "the act or intention of kidnapping or abduction of persons(s) or of taking hostage(s)." Prevention of Terrorism Act 1990, No. 10/1990, at § 2(b), available at <http://www.agoffice.gov.mv/pdf/sublawe/Terrorism.pdf>.

²³ *Id.*, at § 2(b).

²⁴ *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 ¶ 12.

²⁵ *Id.*, at ¶ 17.

were forced to withdraw from the case on March 8, 2015, believing that their continued representation of Nasheed would violate applicable rules of professional responsibility. The Court carried on with the trial, ignoring Nasheed's repeated requests for new legal counsel.

On March 13, 2015, less than three weeks after he was arrested and charged, Nasheed was convicted and sentenced to 13 years in prison with no opportunity for parole or supervised release.²⁶

In April 2015, Nasheed's case was submitted to the Working Group on Arbitrary Detention (the Working Group). At the conclusion of a fact-finding process in which the Maldivian government fully participated, submitting a 111-page brief with 48 annexes, the Working Group adopted a decision in September 2015 finding that it was "impossible to invoke any legal basis justifying the deprivation of liberty of Mr. Nasheed."²⁷ Accordingly, the Working Group concluded that the Government had violated Nasheed's rights to freedom of opinion and expression, freedom of association, and freedom of political participation, which are enshrined in Articles 19, 22, and 25 of the ICCPR. It also considered that, in light of the serious due process violations, Nasheed's right to a fair trial under Articles 9 and 14 of the ICCPR were gravely violated. The Working Group called upon the Government of the Maldives to undertake the "necessary steps to remedy the situation of Mr. Nasheed without delay and bring it into conformity with the standards and principles of the UDHR and the ICCPR."²⁸

The appeals process has been similarly marred by due process abuses and a lack of impartiality. In a perplexing move, the Maldivian Prosecutor General filed his own appeal on Nasheed's behalf, though not at his request, in September 2015.²⁹ Nasheed responded by filing his own Supreme Court appeal on December 20, 2015.³⁰ The Supreme Court heard only the Prosecutor General's appeal, and issued its final decision affirming Nasheed's conviction on June 27, 2016.³¹ None of Nasheed's arguments relating to due process abuses were heard; only the issues addressed in the Prosecutor General's appeal were noted in the opinion. For example, the Supreme Court found that Nasheed had adequate time to prepare a defense during the 19-day period between arrest and conviction – it justified this finding by noting that the time to prepare a defense began when the initial charges were filed in 2013, without making any mention of the fact that the inflated terrorism charges came without any prior notice. Nasheed's hope for a domestic remedy from an impartial judiciary, while never strong, has now been fully extinguished.

²⁶ *Id.*

²⁷ *Working Group 2015 Opinion on Nasheed*, *supra* note 1, at ¶ 93.

²⁸ *Id.*, at ¶ 111.

²⁹ *Press Release: Prosecutor General Files Appeal with the Supreme Court in Former President Nasheed's Case*, MALDIVES MINISTRY OF FOREIGN AFFAIRS, Sept. 18, 2015, *available at* <http://www.maldiveshighcommission.org/news/news-from-maldives/item/820-prosecutor-general-files-appeal-with-the-supreme-court-in-former-president-nasheed-s-case>.

³⁰ Mohamed Saif Fathih, *Nasheed Lodges Appeal at the Supreme Court*, MALDIVES INDEPENDENT, Dec. 20, 2015, *available at* <http://maldivesindependent.com/politics/nasheed-lodges-appeal-at-the-supreme-court-120766>.

³¹ Opinion of the Supreme Court of the Maldives in the case of Mohamed Nasheed, 2016/SC-A/01, June 27, 2016, *available at* [http://www.supremecourt.gov.mv/mediafolder/2016-sc-a-01_pg_\(mohamed_nasheed\).pdf](http://www.supremecourt.gov.mv/mediafolder/2016-sc-a-01_pg_(mohamed_nasheed).pdf) (in Dhivehi).

In the meantime, following much criticism of the Government by international leaders and organizations,³² Nasheed was released on medical leave in January 2016 and permitted to travel to the United Kingdom for treatment.³³ On May 19, 2016, Nasheed was granted political asylum by the UK Government.³⁴

C. Facts Showing Ongoing Restrictions on Political Participation and Association

While Nasheed is not currently in physical detention, his conviction and sentence are still effective. The Maldivian Supreme Court confirmed his conviction, and his sentence has not been commuted. Therefore, under Maldivian law, Nasheed is still treated as a criminal convicted of ‘terrorism’ and all other restraints on his liberty are in effect, including restrictions on his right to political participation guaranteed in ICCPR Article 25 and right to freedom of association in ICCPR Article 22.

As a result, Nasheed is subject to a 16-year disqualification from running for political office under the Constitution, and he is banned from holding a leadership position in a political party under an Amendment to the Prison and Parole Act.

The Maldivian Constitution prohibits individuals from holding political office for three years after completion of a prison sentence greater than one year.³⁵ Terrorism carries a *minimum* sentence of 10 years and a maximum sentence of 15 years.³⁶ Having been sentenced to 13 years, Nasheed has now been effectively barred from holding political office for 16 years – or until

³² See, e.g., *13 Year Sentence for Former President ‘A Travesty of Justice’*, AMNESTY INT’L, Mar. 14, 2015 [hereinafter *Amnesty 2015 Statement*]; *Conduct of Trial of Maldives Ex-President Raises Serious Concerns – Zeid*, 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 *High Commissioner Statement*]; *Maldives: “No Democracy is Possible Without Fair and Independent Justice, UN Rights Expert*, OFFICE OF THE UN HIGH COMM’R FOR HUMAN RIGHTS, Mar. 19, 2015; *Maldives: Grossly Unfair Nasheed Conviction Highlights Judicial Politicization*, INT’L COMM’N OF JURISTS, Mar. 26, 2015, available at <http://www.icj.org/maldives-grossly-unfair-nasheed-conviction-highlights-judicial-politicization/>; European Parliament Resolution on the Situation in the Maldives, Apr. 30, 2015, 2015/2662(RSP); *Maldives: UN Rights Office Says Trial of Former President Politicized, Unfair*, OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, May 1, 2015, available at <http://www.un.org/apps/news/story.asp?NewsID=50749#.V78fMVIi6Mm>; Letter from U.S. Senators John McCain and Jack Reed to US Secretary of State John Kerry and Secretary of Defense Ash Carter, Calling for the Release of Political Prisoners in the Maldives, June 8, 2015, available at <http://www.armed-services.senate.gov/press-releases/senators-mccain-and-reed-call-for-release-of-political-prisoners-in-the-maldives>; Letter from U.S. Congress Tom Lantos Human Rights Commission to President Abdulla Yameen, July 31, 2015; *Remarks by the UN High Comm’n for Human Rights Zeid Ra’ad Al Hussein*, 30th Session of the U.N. Human Rights Council, Sept. 14, 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16414&LangID=E>; and European Parliament Resolution on the Situation in Maldives, Dec. 17, 2015, 2015/3017(RSP).

³³ Philip Sherwell, *Maldives Ex-President Mohamed Nasheed Leaves Island For Surgery*, THE TELEGRAPH, Jan. 18, 2016, available at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/maldives/12106087/Maldives-ex-president-Mohamed-Nasheed-leaves-island-for-surgery.html>.

³⁴ Patrick Wintour, *Ex-President of the Maldives Granted Asylum in UK*, THE GUARDIAN, May 23, 2016, available at <https://www.theguardian.com/world/2016/may/23/ex-president-of-the-maldives-granted-asylum-in-uk-mohammed-nasheed>.

³⁵ *Constitution of the Maldives*, *supra* note 12, at Art. 109(f).

³⁶ Prevention of Terrorism Act 1990, *supra* note 22, at § 2(b).

2031. In the meantime, he will not be able to participate in presidential elections in 2018, 2023, and 2028.

By comparison, the original charge of illegal detention would have carried a minimum sentence of less than one year, with a maximum of three years. In theory, Nasheed could have been sentenced for less than one year, in which case the Constitutional ban would not have been triggered. Even if Nasheed had been sentenced for the maximum number of years for illegal detention, he would only be barred from holding political office until 2021, missing only the 2018 presidential cycle.

Prior to his conviction, Nasheed was fully considering a candidacy for the 2018 presidential election. Candidates must be registered by July 13, 2018 to be eligible for the 2018 presidential election.

Furthermore, two weeks after Nasheed was sentenced, the People's Majlis (Parliament of the Maldives) pushed through the "Bill on Amendment to the Prison and Parole Act, Act No. 14/2013" (the Amendment) banning all prisoners from holding leadership positions in political parties.³⁷ The Amendment was passed 42-2 (out of a total of 85 members of parliament—those who protested the vote were not counted) on March 30, 2015.³⁸ The two members of parliament who voted against the Amendment have since resigned and their party (the Adhaalath Party) withdrew their support for Yameen's government, saying that Yameen was acting to eliminate political rivals.³⁹

This has in fact been the result, as Nasheed, the principal political rival of President Yameen, is now barred from leading his political party. Many have suggested that the Amendment was specifically targeted at Nasheed, especially given that it was pushed through the legislature only two weeks after his conviction.⁴⁰ The MDP leaders have since announced that they will not accept the Amendment and intend for Nasheed to remain their presidential candidate regardless.⁴¹

As the Maldives continues to face a political crisis, Yameen announced that all political parties would be invited to take part in a political dialogue. Initially, Nasheed was barred from participating, but in April 2016, amid growing international pressure for political reform, President Yameen announced his intention to allow imprisoned opposition leaders, including Nasheed, to participate.⁴² However, this announcement is not permanent or binding, as the

³⁷ *Bill on Amendment to the Prison & Parole Act passed by Majlis*, PEOPLE'S MAJILIS – REPUBLIC OF MALDIVES, Mar. 30, 2015, available at http://www.majlis.gov.mv/di/download/majleehun_faas_kuri_bill/2015firstbill/7_Jail%20and%20Parole_1st%20IsIaah%20Bill%2028.4.2015.pdf (in Dhivehi).

³⁸ Bradly McAllister, *Maldives Parliament Approves Measure To Eliminate Political Party Membership For Inmates*, JURIST, Mar. 31, 2015, available at <http://www.jurist.org/paperchase/2015/03/maldives-parliament-approves-new-measure-to-eliminate-political-party-memberships-for-inmates.php>.

³⁹ Zaheena Rasheed, *Government Bars Nasheed from MDP*, MINIVAN NEWS, Mar. 30, 2015, available at <http://minivannewsarchive.com/tag/prisons-and-parole-act>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Shihar Aneez & Ranga Sirilal, *Under Pressure Maldives to Let Jailed Opposition Leaders Attend Talks*, REUTERS, Apr. 21, 2016, available at <http://www.reuters.com/article/us-maldives-politics-idUSKCN0XH2MQ>.

Amendment is still effective. Yameen could, at any time, revoke permission for Nasheed to participate in the political dialogue and lawfully enforce the ban on leadership of political parties. Therefore, Nasheed is still officially prohibited from leading his political party.

II. Legal Analysis

As a result of his arbitrary conviction and detention, Nasheed's right to participate in political affairs under ICCPR Article 25 and right to freedom of association under ICCPR Article 22 are being violated by the Government of the Maldives.

If not for the illegal conviction of 'terrorism' and 13-year prison sentence, Nasheed would not be subject to a 16-year disqualification from running for political office under the Constitution, nor would he be subject to the ban on political leadership under the Amendment to the Prison and Parole Act.

The UN Working Group on Arbitrary Detention, an international dispute mechanism, found, after the full and voluntary participation of the Government of the Maldives in an adversarial process, that Nasheed's detention was arbitrary and in violation of the Government's obligations under international law.

The petitioner is asking the Human Rights Committee to conclude that the restrictions on the rights to political participation and to freedom of association emanating from an arbitrary conviction and sentencing are therefore equally arbitrary and in violation of the Maldives' obligations under Articles 25 and 22 of the ICCPR.

Therefore, the Government of the Maldives must immediately lift these arbitrary restrictions.

A. ICCPR Prohibits Arbitrary Restrictions on Political Participation and Association

The Maldives is a party to the International Covenant on Civil and Political Rights and its Optional Protocol (ICCPR).⁴³ Article 25 of the ICCPR sets out the rights of all citizens in relation to political life:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

⁴³ *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, at Art. 25 [hereinafter *ICCPR*]. See also *United Nations Treaty Status: ICCPR*, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-4&chapter=4&lang=en#EndDec (noting that the Maldives acceded to the treaty on Sept. 19, 2006).

- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

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Article 22 includes the related right to freedom of association: “Everyone shall have the right to freedom of association with others.”⁴⁵

In addition, the right to political participation and freedom of association are constitutionally guaranteed in the Maldives. Article 26 of the Maldivian Constitution states that:

Unless otherwise provided in this Constitution, every citizen of the Maldives eighteen years or older has the right:

- (a) to vote in elections, and in public referendums...;
- (b) to run for public office;
- (c) to take part in the conduct of public affairs⁴⁶

Article 30 of the Constitution provides that “Every citizen has the right to establish and to participate in the activities of political parties.”⁴⁷

Article 25 obligations are further interpreted by the Human Rights Committee in its “General Comment No. 25.”⁴⁸ Significantly, this General Comment established a high level of scrutiny for any restrictions on political rights by governments:

- “Any conditions which apply to the exercise of Article 25 rights should be based on **objective and reasonable** criteria . . . The exercise of these rights by citizens can only be interfered with on grounds which are established by law and which are objective and reasonable.”
- “The effective implementation of the right to stand for elective office ensures that voters have a free choice of candidates . . . Persons who are otherwise eligible to stand for election should not be excluded by **unreasonable or discriminatory requirements** . . . or by reason of political affiliation.”
- “The right to **freedom of association**, is an essential adjunct to the rights protected by Article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process.”

⁴⁴ *Id.*, at Art. 25.

⁴⁵ *Id.*, at Art. 22(1).

⁴⁶ *Constitution of the Maldives, supra* note 12, at Art. 69 (emphasis added).

⁴⁷ *Id.*

⁴⁸ UN Human Rights Committee (HRC), CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, CCPR/C/21/Rev.1/Add.7, July 1996 [hereinafter *Comment No. 25*].

Thus, states many only interfere with the rights articulated under Article 25 on the basis of objective and reasonable criteria. Those who wish to stand for election may not be disqualified by unfair requirements including prejudice against their political beliefs. Additionally, membership in political parties plays a significant role in the election process, and freedom to associate with political parties must be assured if the process is to be legitimate.

B. Restrictions on Nasheed Are Based on an Arbitrary Conviction And Are Therefore in Violation of the ICCPR

Nasheed's conviction and subsequent detention were arbitrary, as independently confirmed by the UN Working Group on Arbitrary Detention and numerous other UN officials, international NGOs, and foreign governments.

Because restrictions on political participation and association based on arbitrary convictions are *prima facie* unreasonable,⁴⁹ Nasheed's 16-year disqualification from running for political office under the Constitution and his ban on political leadership under the Amendment to the Prison and Parole Act are in violation of ICCPR Article 25 and Article 22.

1. Nasheed's Conviction and Subsequent Detention are Arbitrary

The conviction and detention of Nasheed in March 2015 for alleged terrorism are arbitrary and in violation of international law. This conclusion is supported by the Working Group, which unanimously concluded that Nasheed's detention is arbitrary, and by numerous intergovernmental organizations, foreign governments, and human rights organizations.

The Working Group consists of five independent experts, appointed by the Human Rights Council, that serve in their individual capacities.⁵⁰ It was established by Resolution 1991/42 of the former Commission on Human Rights,⁵¹ and its mandate was clarified and extended in successive resolutions of the Commission and later the successor Human Rights Council, most recently by Resolution 24/7 of September 26, 2013. In addition to conducting country visits and producing annual reports, the Working Group is the only one of the UN Special Procedures that adjudicates individual cases.⁵² After having received a complaint from a petitioner (referred to as the 'source'), the government against whom the complaint is made is given 60 days to respond.⁵³ If a response is received, the source is given the opportunity to reply.⁵⁴ The case is then considered at the next tri-annual session of the Working Group, during which an opinion may be adopted.⁵⁵

⁴⁹ See *Dissanayake v. Sri Lanka*, HRC, CCPR/C/93/D/1373/2005, ¶ 8.5, Aug. 4, 2008.

⁵⁰ *Fact Sheet No. 26: The Working Group on Arbitrary Detention*, OFFICE OF THE HIGH COMM'N FOR HUMAN RIGHTS, at 3.

⁵¹ *Report of the Working Group on Arbitrary Detention*, A/HRC/16/47, Annex ¶ 7(b) ("Revised Methods of Work"), Jan. 19, 2011, at ¶ 2.

⁵² *Fact Sheet No. 26*, *supra* note 50, at 3.

⁵³ *Revised Methods of Work*, *supra* note 51, at ¶¶ 9–14.

⁵⁴ *Id.*, at ¶¶ 15–16.

⁵⁵ *Id.*, at ¶¶ 17–20.

Nasheed’s international legal counsel submitted a petition to the Working Group on April 30, 2015. The Government took the opportunity to respond, hiring the London-based Omnia Strategies, founded by Cherie Blair, as counsel. The Government fully engaged in the process, submitting a 111-page response with 48 annexes. During a press conference announcing their response on June 27, 2015, Omnia Strategies partner Toby Cadman claimed that Nasheed’s petition to the Working Group was “baseless” and that all international principles and standards had been observed during his trial. Nasheed was then given a final opportunity to reply, which was submitted on August 16, 2015, both sides having taken all opportunities to fully participate in the process.

The Working Group reviewed all submissions from both parties, and rendered its opinion in favor of Nasheed on October 2, 2015.⁵⁶ Fully rejecting the Government’s counter-arguments, the Working Group accepted that Nasheed’s conviction and detention were arbitrary under all four categories presented: that there was no legal basis for the detention (Category I); that it resulted from the exercise of his rights of freedom of opinion and expression, association, and political participation (Category II); that there were serious due process violations (Category III); and that he was targeted on the basis of his “political opinion” (Category V).

The Working Group requested that the Government of the Maldives “take the necessary steps to remedy the situation of Mr. Nasheed without delay and bring it into conformity with the standards and principles in the UDHR and the ICCPR,”⁵⁷ which must include the right to political life in ICCPR Article 25 and right to freedom of association in ICCPR Article 22.

Further details of the arguments presented to the Working Group are summarized below, and the full petition is attached.

a. The Maldives Had No Legal Basis for Nasheed’s Conviction and Detention

In addition to failing to put forth any supporting evidence that Nasheed ordered Judge Abdulla’s arrest, the Government did not explain how an arrest and detention by the military acting under a lawful order could constitute ‘terrorism.’ There was literally no evidence presented by the Maldivian government to show that Nasheed had committed the alleged act and even if it were proved, the act could not satisfy the elements of the charged crime.

The Working Group agreed that there was no evidence presented in the Government’s response that Nasheed had ordered the arrest: “In simply producing a list of witnesses and evidence in its response, the Government has also failed to rebut the assertion by [Nasheed] that there was no evidence produced at the trial that Mr. Nasheed had ordered Judge Abdulla’s arrest.”⁵⁸ The Working Group also agreed that the Government did not show how the alleged act would have constituted the charged crime: “The Working Group considers that the Government has not explained how the arrest of Judge Abdulla, which was carried out by the MNDF [Maldivian National Defense Force] under an order given by a third party, could constitute

⁵⁶ *Working Group 2015 Opinion on Nasheed*, *supra* note 1, at ¶ 93.

⁵⁷ *Id.*, ¶ 111.

⁵⁸ *Id.*, ¶ 94.

terrorism.”⁵⁹ The Working Group concurred “that it is therefore clearly impossible to invoke any legal basis justifying the deprivation of liberty of Mr. Nasheed.”⁶⁰

b. Nasheed’s Conviction and Detention Were Punishment for Exercising Fundamental Rights

Nasheed’s conviction and sentence was arbitrary because they resulted from his having exercised fundamental rights protected by international law,⁶¹ including the rights to freedom of opinion and expression,⁶² political participation,⁶³ and association.⁶⁴ The charge brought against Nasheed was clearly a pretext for the curtailment of his right to freedom of opinion and expression as a political opposition leader. Nasheed, a former writer and journalist, has been an outspoken opponent of the Government of the Maldives,⁶⁵ and has publicly expressed concern about the state of the Maldivian democracy under President Yameen—whose regime is widely viewed as a resurrection of the 30-year authoritarian rule of President Yameen’s half-brother, Maumoon Gayoom.⁶⁶ In response, the Government has targeted and systematically persecuted Nasheed as a means to discredit his image, suppress his involvement in national politics, and silence his voice. Nasheed’s conviction sends a loud and clear message to the Maldivian people: opposition to the Yameen regime will not be tolerated.

⁵⁹ *Id.*

⁶⁰ *Id.*, ¶ 95.

⁶¹ Specifically, a Category II deprivation of liberty occurs, “[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration of Human Rights and, and insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the International Covenant on Civil and Political Rights.” *Revised Methods of Work*, supra note 51, at ¶ 8(b).

⁶² ICCPR, supra note 43, at Art. 19(1).

⁶³ ICCPR, supra note 43, at Art. 25.

⁶⁴ ICCPR, supra note 43, at Art. 22(1).

⁶⁵ See, e.g., *Over 350 Political Activists Arrested in Maldives*, ASIA CENTER FOR HUMAN RIGHTS, Aug. 19, 2005, available at <http://www.achrweb.org/press/2005/Maldives0305.htm> (On August 12, 2005, Nasheed was arrested while participating in a peaceful demonstration in commemoration of the anniversary of the brutal crackdown on the pro-democracy supporters); *Attacks on the Press 2005, Countries That Have Jailed Journalists: Maldives*, COMMITTEE TO PROTECT JOURNALISTS, 2006 (noting that Nasheed was charged with terrorism and sedition in 2005 just days after he had published a critical article entitled “President Gayoom will do anything to stay in power”); Roland Buerk, *Maldives Opposition Plan Protest*, BBC NEWS, Apr. 20, 2007 (During the 2007 protests against the death of a prisoner in police custody, Nasheed openly criticized the Government for using torture to intimidate the public and to maintain power); Zaheena Rasheed, *Our Rivals Do Not Know Elections*, MINIVAN NEWS, Nov. 4, 2013 (In 2013, while in a campaign rally, Nasheed publicly challenged his rivals to compete in elections instead of using the courts to manipulate presidential polls); *Former Maldives President Mohamed Nasheed Calls for His Successor Waheed to Step Down*, NDTV, Feb. 13, 2013 (Nasheed called for then President Waheed’s (interim President after Nasheed was forced out of office) resignation citing mass arrests, police brutality, and the politically-motivated trials, which prevented him from participating in free and fair elections); Ismail Humaam Hamid, *Nasheed Questions Government’s Legitimacy and Record as One-year Anniversary Looms*, MINIVAN NEWS, Nov. 12, 2014 (Following Abdulla Yameen’s one-year anniversary in power, in an interview with *Raaje TV* in 2014, Nasheed criticized Yameen’s Government; he questioned the legitimacy of how it came to power and attacked the 2015 proposed budget, comparing it to the budgets of the 30-year regime rule of Gayoom, as both included large sums of money as expected earnings which would most likely culminate into government deficit).

⁶⁶ José Ramos-Horta and Benedict Rogers, *Maldivian Democracy is Dead – With the Jailing of Former President Mohamed Nasheed*, THE GUARDIAN, Mar. 18, 2015.

The Working Group also concurred on this account, saying “Mr. Nasheed’s detention has resulted from the exercise of his rights as a political opposition leader to express views contrary to the Government, to associate with his own and other political parties, and to participate in the public life in the Maldives.”⁶⁷ It found that “there [was] a violation of Mr. Nasheed’s rights to freedom of opinion and expression, freedom of association, and freedom of political participation” under the ICCPR, including ICCPR Article 25.⁶⁸ This conclusion was based on “several factors which, taken together, strongly suggest that Mr. Nasheed’s conviction was politically motivated.”⁶⁹ Two of those factors cited in the Working Group’s opinion relate specifically to Nasheed’s ongoing deprivation of rights under ICCPR Article 25:

. . . (iii) the fact that, two weeks after Mr. Nasheed was sentenced, the Government adopted a law banning all prisoners from being members of political parties; and (iv) the fact that Mr. Nasheed will not be able to participate in the 2018 presidential election as a result of his conviction.⁷⁰

The Working Group’s views in this regard are shared by many others in the international community. Former UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression Frank La Rue highlighted the Maldivian government’s targeting of Nasheed in a report on the repressive 30-year Gayoom regime.⁷¹ The U.S. Government expressed concern over the current Government of the Maldives’ failure to adhere to its international obligations during the arrest, trial and conviction of Nasheed and called on the Government “to take steps . . . to ensure that freedom of speech, press as well the right to peaceful assembly and protest are protected.”⁷² Richard Bennett, the Asia-Pacific Director for Amnesty International, decried the political nature of Nasheed’s conviction, saying, “the [G]overnment of the Maldives has proceeded with this sham trial for political reasons.”⁷³

c. The Maldives Failed to Provide Nasheed a Fair Trial

In the rushed proceedings – a mere 19 days to arrest, charge, try, convict and sentence Nasheed – the Government of the Maldives violated numerous procedural requirements of international and domestic law. These violations were so egregious as to render Nasheed’s conviction and detention arbitrary without even considering the lack of substantive merit or evidentiary support of the Government’s claim.

The Working Group again agreed that “there were several serious due process violations which, taken together, demonstrate that Mr. Nasheed did not receive a fair trial,”⁷⁴ supporting

⁶⁷ *Working Group 2015 Opinion on Nasheed*, *supra* note 1, at ¶ 97.

⁶⁸ *Id.*, at ¶ 98.

⁶⁹ Other factors include the history and pattern of proceedings brought against Nasheed and the sudden way in which charges were reinstated against Nasheed after the case had been inactive for 2.5 years when the Government lost a key coalition partner in the parliament. *Id.*, at ¶ 97.

⁷⁰ *Id.*

⁷¹ *Report of the Special Rapporteur on the Right to Freedom of Opinion and Expression, Frank La Rue: Addendum: Mission to the Republic of the Maldives*, UN HUMAN RIGHTS COMMITTEE, May 25, 2009.

⁷² *Statement on Trial of Former President Nasheed in the Maldives*, US STATE DEP’T, Mar. 13, 2015.

⁷³ *Amnesty 2015 Statement*, *supra* note 32.

⁷⁴ *Working Group 2015 Opinion on Nasheed*, *supra* note 1, at ¶ 103.

their conclusion that the violations “are of such gravity as to give [Mr. Nasheed’s] deprivation of liberty an arbitrary character.”⁷⁵ Specifically, the Working Group found violations of:

- (i) the right to the presumption of innocence;
- (ii) the right to an independent and impartial tribunal;
- (iii) the right to equality of arms;
- (iv) the right to adequate time and facilities to prepare a defence;
- (v) the right to examine prosecution witnesses and call and examine witnesses;
- (vi) the right to counsel; and
- (vii) the right to a public hearing.⁷⁶

The Working Group’s opinion, which documented numerous rights violated by the Maldivian government,⁷⁷ firmly demonstrated the arbitrariness of Nasheed’s conviction and detention.

The international community also unambiguously condemned the procedural violations that took place during Nasheed’s arrest, trial, and conviction. For example, the UN High Commissioner for Human Rights, Zeid Ra’ad Al-Hussein “expressed strong concerns . . . about the hasty and apparently unfair trial,” and described the proceedings as “a rushed process that appears to contravene the Maldives’ own laws and practices and international fair trial standards in a number of respects.”⁷⁸ Gabriela Knaul, UN Special Rapporteur on the Independence of Judges and Lawyers, noted: “The series of due process violations that were reported . . . since Mr. Nasheed’s arrest on 22 February is simply unacceptable in any democratic society.”⁷⁹ Transparency Maldives, the Maldives office of Transparency International, noted with “grave concern” Nasheed’s sentencing in light of the “procedural irregularities [that] raise serious questions about the fairness, transparency and independence of the judicial process.”⁸⁰ The US Government expressed concern about “reports that the trial was conducted in a manner contrary to Maldivian law and Maldives’ international obligations to provide the minimum fair trial guarantees and other protections under the [ICCPR].”⁸¹ A spokesperson for the European Union stated that Nasheed’s conviction “raises very serious questions about due process of law and risks undermining people’s trust in the independence of the judiciary.”⁸²

⁷⁵ *Id.*, at ¶ 105.

⁷⁶ *Id.*, at ¶ 104.

⁷⁷ *Id.* (including the right to the presumption of innocence; the right to an independent and impartial tribunal; the right to equality of arms; the right to adequate time and facilities to prepare a defense; the right to examine prosecution witnesses and call and examine witnesses; the right to counsel; the right to a public hearing; and the right to appeal).

⁷⁸ *High Commissioner Statement, supra* note 32.

⁷⁹ *Maldives: “No Democracy is Possible Without Fair and Independent Justice, UN Rights Expert*, OFFICE OF THE UN HIGH COMM’R FOR HUMAN RIGHTS, Mar. 19, 2015.

⁸⁰ *Transparency Maldives Concerned about Legal Process for Trial of Former President Nasheed*, TRANSPARENCY INT’L, Mar. 16, 2015.

⁸¹ *Statement on the Trial of Former President Nasheed in The Maldives*, US STATE DEP’T, Mar. 13, 2015, available at <http://www.state.gov/r/pa/prs/ps/2015/03/238884.htm?goMobile=0>.

⁸² *Statement by the Spokesperson on Conviction of Former President of the Maldives Mohamed Nasheed*, EUROPEAN UNION, Mar. 14, 2015, available at http://eeas.europa.eu/statements-eeas/2015/150314_01_en.htm.

2. Restrictions on Political Participation Based on Arbitrary Convictions Are *Prima Facie* Unreasonable and in Violation of the ICCPR

Based on prior jurisprudence of the Human Rights Committee (the Committee), if the underlying basis for a restriction on political participation is a conviction that is later found to be arbitrary, such a restriction creates a *prima facie* presumption of unreasonableness.⁸³ No such restriction can be “objective and reasonable” as required by ICCPR Article 25.⁸⁴

The Committee made this clear in *Dissanayake v. Sri Lanka* (1373/2005), where it found that restrictions on political participation of a dissident figure based on an arbitrary ‘contempt of court’ conviction were violative of Article 25.⁸⁵ The petitioner in that case, a cabinet minister and political opponent of the sitting president, was sentenced to two years of forced labor in a highly-politicized trial for a speech in which he allegedly “defamed” the Sri Lankan Supreme Court. As a result of his conviction, he faced a seven-year constitutional ban on political participation after his release. During this time, he was barred “from performing his functions as National Organiser of the principal parliamentary opposition party in a year in which a presidential election [was] due to be held.”⁸⁶ While the respondent state, Sri Lanka, did not attempt to justify to the Committee that the restriction was a reasonable one, the Committee noted that even a reasonable restriction codified in law could be unreasonable as applied:

While noting that the restrictions in question are established by law, the Committee notes that, except for the assertion that the restrictions are reasonable, the State party has provided no argument as to how the restrictions on the author’s right . . . to stand for office are proportionate to the offence and sentence. **Given that these restrictions rely on the author’s conviction and sentence, which the Committee has found to be arbitrary . . . the Committee concludes that the prohibition on the author’s right to be elected or to vote for a period of seven years after conviction and completion of sentence, [is] unreasonable and thus amount[s] to a violation of Article 25(b) . . .**⁸⁷

The Committee makes clear that restrictions on political life that are triggered by an arbitrary conviction are not reasonable, even if the restrictions themselves are otherwise reasonable and objective.

In Nasheed’s case, the Working Group found that Nasheed’s conviction, sentence, and detention are arbitrary and in violation of international law. The Working Group is a reputable, independent, and impartial international dispute adjudicating mechanism and the Government of the Maldives fully participated in its extensive adversarial process. As such, the petitioner respectfully requests that here the Committee accept the Working Group’s opinion as valid and move to consider this submission on that basis, without needing to re-examine the question as to whether or not Nasheed’s conviction and sentencing were in violation of international law.

⁸³ *Dissanayake v. Sri Lanka*, *supra* note 49.

⁸⁴ *Comment No. 25*, *supra* note 48, ¶ 4.

⁸⁵ *Dissanayake v. Sri Lanka*, *supra* note 49, at ¶ 8.5.

⁸⁶ *Id.*, at ¶ 3.7.

⁸⁷ *Id.*

There are striking similarities between *Dissanayake* and Nasheed’s case. Both Dissanayake and Nasheed were political figures opposing the party in power. Both were subjected to politically motivated allegations, tried by judiciaries that lacked independence and respect for due process protections, and faced multi-year restrictions on political participation triggered by their respective constitutions. And in both cases, their convictions were found to be arbitrary and unsupported by evidence or precedent.

Other cases at the Committee have also made clear that unreasonable restrictions on the rights to political participation and association with a political party are in violation of ICCPR Articles 22 and 25. For example in *Bwalya v. Zambia* (314/1988),⁸⁸ the Committee noted that the petitioner, “a leading figure of a political party in opposition to the former President, [had] been prevented from participating in a general election campaign as well as from preparing his candidacy for this party.”⁸⁹ They held that this amounted to an unreasonable restriction on the petitioner’s right to “take part in the conduct of public affairs” and was an unreasonable restriction on his Article 25 rights.⁹⁰

The Committee has also found that even reasonable and objective limitations can still be unreasonably applied, rendering them in violation of Article 25(b) in specific cases. In *Sudalenko v. Belarus* (1354/2005), the State was found to have inconsistently applied registration requirements to different political candidates.⁹¹ The Human Rights Committee, noting the bias against Sudalenko “because he was a candidate from the opposition,”⁹² found the State’s actions were “not based on objective and reasonable criteria,” and therefore the State had violated its obligations under ICCPR Article 25.

Nasheed has similarly been barred from running for office and from associating fully as a leader of his political party because of actions by the Government of the Maldives. The Amendment to the Prison and Parole Act was a targeted effort by the ruling regime to neutralize its opponents, specifically Nasheed. And if not for the politically motivated ‘terrorism’ charge, Nasheed would not be subject to the Constitutional ban on political participation.

In Nasheed’s case, the triggering of a 16-year disqualification from running for political office under the Constitution and the ban on political leadership under the Amendment to the Prison and Parole Act are *prima facie* arbitrary and unreasonable because they are based on an arbitrary conviction. Furthermore, neither of these restrictions is reasonable as applied to Nasheed, as both are being used as tools to unreasonably silence Nasheed and prevent him for participating in Maldivian politics. Therefore, these restrictions should be considered to be in violation of ICCPR Articles 25 and 22.

Conclusion

⁸⁸ *Chiiko Bwalya v. Zambia*, Communication No. 314/1988, U.N. Doc. CCPR/C/48/D/314/1988 (1993).

⁸⁹ *Id.*, ¶ 6.6.

⁹⁰ *Id.*

⁹¹ *Leonid Sudalenko v. Belarus*, Communication No. 1354/2005, U.N. Doc. CCPR/C/100/D/1354/2005 (2010).

⁹² *Id.*, at ¶ 6.6.

Mohamed Nasheed has been targeted by the Government of the Maldives for his entire adult life because he is an outspoken critic who favors democracy, human rights, and the rule of law.

His most recent conviction for ‘terrorism’ is yet another example of this persecution. As the Working Group on Arbitrary Detention’s opinion conclusively demonstrates, this conviction was the result of a sham trial designed to silence the biggest threat to the Yameen regime.

As a result of these proceedings and subsequent legislation seeking to further exclude Nasheed from politics, the first democratically-elected President of the Maldives has been illegally and indefinitely deprived of his right to further participate in his country’s democracy under the guise of due process. A Constitutional ban on political participation was triggered because Nasheed’s sentence exceeded one year; he has been banned from running for political office for 16 years, which means he will be barred from the next three presidential elections. Additionally, Nasheed is legally prohibited from leading his opposition political party under the Amendment to the Prison and Parole Act, passed just weeks after his conviction.

The application of these restrictions to Nasheed’s case is arbitrary, unreasonable, and not objective. If not for his arbitrary conviction and sentencing, he would not be subject to either restriction, and would be able to freely and fully participate in the political process to the extent that any Maldivian citizen can. Therefore, the restrictions on his right to participate in political affairs are also arbitrary and in violation of the ICCPR.

As a former president and the leading figure of an opposition party, Nasheed must be allowed to participate in the presidential election, without arbitrary restrictions imposed by the Government of the Maldives.

We hereby request that the Human Rights Committee issue a communication finding Nasheed’s ongoing restrictions on political participation to be in violation of the Maldives’ obligations under Articles 25 and 22 of the ICCPR; and request the Government immediately lift all arbitrary restrictions so that Nasheed may have the ability to participate fully in political life in the Maldives.

Supporting Documentation

1. Opinion of the Working Group on Arbitrary Detention in the case of Mohamed Nasheed v. Republic of the Maldives (Opinion No. 33/2015)