



Brief: Former President Mohamed Nasheed's Appeal Status and Medical Condition

4 October 2015

Former President Mohamed Nasheed was sentenced to 13 years' imprisonment early this year in March. The requirement for a non-political and non-partisan Prosecutor General was introduced under the new democratic Constitution enacted in August 2008. Four years after appointment in July 2012, months after Nasheed's disputed resignation, former Prosecutor General Ahmed Muizzu charged Nasheed for the "unlawful detention" of controversial Chief Judge of Criminal Court Abdulla Mohamed. However, when the new Prosecutor General Muhthaz Muhsin was sworn in by the ruling-party controlled Parliament in late 2013, Nasheed's charges were abruptly withdrawn, revised and resubmitted to court. The revised charges were filed for the more serious offence that constituted an act of terrorism – specifically an "enforced disappearance" – under the Anti-Terrorism Act 1990. Blatantly contrary to practiced juridical norms, the charges were followed by criminal proceedings that violated domestic and international law.

Few weeks before Nasheed was arrested in late February 2015, the Supreme Court restricted the appeal period to 10 days, in contrast to the previous 90-day appeal period. After the verdict was issued, the trial report was only made available to Nasheed's legal team after the appeal deadline elapsed. Nasheed's legal team still contends that the trial report is incomplete and insufficient to mount an appeal. In March this year, MDN called on President Abdullah Yameen Abdul Gayoom to grant Nasheed clemency as per Sections 106 and Section 29(c) the Clemency Act.¹ The Spokesperson for the Government responded (on social media) claiming that clemency cannot be granted.

In late June Nasheed was transferred to house arrest citing medical grounds of recurring back pain. On 19 July, a member of Nasheed's legal team, Jared Genser claimed his client's sentence was commuted to house arrest. The Maldivian High Commission in Colombo confirmed the statement at the time and later retracted it. Analysts remarked apropos of the political initiative, labelling it as a ruse to make the

¹ Maldivian Democracy Network, 'The Trials of Former President Mohamed Nasheed and Former Defence Minister (Retired) Colonel Mohamed Nazim', (published online 24 March 2015) <http://www.mvdemocracynetwork.org/wp->

opposition “toe the line.”² Following the constitutional change and appointment of the new Vice President, the government refused to abide by the terms of the political negotiations. Former President Nasheed was swiftly transferred back to high security Maafushi prison on 23 August.³ The Home Ministry later informed media that Nasheed was not granted a commutation to house arrest while Nasheed’s family produced an official letter, with national stamps, confirming the commutation.

Prior to re-imprisonment, the Prosecutor General who levied the charges also assumed the role of the appellant, appealing Nasheed’s conviction at the High Court on 23 July. The issues over the trial raised by Nasheed’s legal team were not included in the State’s appeal. At the preliminary hearing Nasheed’s lawyer Hisaan Hussain claimed that the State could not appeal the conviction “without conceding to the flaws of the trial.” Prosecutors argued that the appeal was initiated on behalf of Nasheed as the case involved “national interest.” The appeal was rejected by the High Court after the preliminary hearing without giving opportunity for either side to make oral submissions. In effect, the High Court made its decision regarding the trial court summarily.

Recently the Prosecutor General has requested the Supreme Court to overturn High Court’s decision to reject the appeal. A favourable outcome from the apex court will demand the appellate court to hear the appeal submitted by the State.

Since Nasheed’s arrest, the Maldivian Democratic Party and members of his family⁴ have expressed fear for his safety. These fears arise due to the trappings of long-existing culture of torture against political opponents, now normalized and evident from the harrowing human rights situation in the country. Given the uncontested fact that the government transferred Nasheed to house arrest due to medical reasons, it is concerning that after re-imprisonment negligent actions regarding medical care have resurfaced.

The actions of the State with regard to the political prisoners, specifically former president Nasheed can constitute to acts of torture criminalized under Section 21 of the Anti-Torture Act. According to Section 19 subsection (b) of the Anti-Torture Act,

² Naseem, Azra, ‘The Maldivian Political Thriller’, *Himal*, (published online 11 July 2015) <http://himalmag.com/maldivian-political-thriller/> accessed 20 July 2015

³ Maldivian Democracy Network, ‘President Nasheed’s Re-Imprisonment Following Commutation of Sentence’ (published online 24 August 2015) <http://www.mvdemocracynetwork.org/wp-content/uploads/2015/08/P-Nasheed-reimprisonemnt24Aug-2015.pdf> <http://www.mvdemocracynetwork.org/wp-content/uploads/2015/08/P-Nasheed-reimprisonemnt24Aug-2015.pdf> accessed 27 September 2015.

⁴ The Office of President Mohamed Nasheed, ‘Daughter of Former Maldivian President to Address the Human Rights Council’, (published online 24 September 2015) <http://raeesnasheed.com/archives/25534> accessed 24 September 2015.

authorities must facilitate medical assistance within 24 hours of any such request by an inmate or detainee. The ex-leader's prescribed MRI was afforded after delays that could exacerbate his medical condition.

The landmark Act prescribes penalties and remedies for infliction of physical and psychological torture. Under the law, Section 13 subsection (a) defines physical torture as any act or omission of "a state official under whose care a person is," that results in "the sensation of pain," or "weakens the body," and eventually causes "the body or part of the body to not function in its normalcy." The continued obstruction to medical treatment to former President Mohamed Nasheed has the propensity to create the same detrimental effects stipulated under the definition of physical torture. Damage to the backbone as a result of torture is a criminal offence that carries 10-15 years of imprisonment (Section 23 subsection (d) Number 6).

Visitation rights have also been arbitrarily restricted specifically for Nasheed. Since 8 September his siblings have been prohibited from visiting him, allowing only immediate family and parents. These discriminatory administrative actions amount to "prohibiting a person from talking with a family member" – an act of psychological torture as defined under Section 14, subsection (b), Number 14. All these surrounding factors must be considered regarding Former President Nasheed's grievances. Nasheed's brother, lawyer Nazim Sattar has filed a civil lawsuit against the Maldives Correctional Services for restricting Nasheed's visitation rights.⁵

On 17 September the UN Working Group on Arbitrary Detention communicated its decision to the Government of Maldives regarding Nasheed's detention and trial. The Government rejected the ruling claiming that the decision was "arbitrary" and "premature."⁶ UN Secretary General Ban Ki-Moon has also called on the Government to grant Nasheed clemency⁷, in order to open sincere dialogue with the opposition.

⁵ Fathih, Mohamed-Saif, 'Ex-President's brother sues prisons authority over visitation rights', *Maldives Independent*, (published online 29 September 2015)

<http://maldivesindependent.com/politics/ex-presidents-brother-sues-prisons-authority-over-visitation-rights-117780> accessed 30 September 2015.

⁶ Ministry of Foreign Affairs, Press Statement, (published online on 30 September 2015) <http://foreign.gov.mv/v2/en/media-center/news/article/1421> accessed 30 September 2015.

⁷ United Nations, Readout of the Secretary-General's meeting with H.E. Ms. Dunya Maumoon, Foreign Minister of Republic of Maldives, (published online 30 September 2015) <http://www.un.org/sg/offthecuff/index.asp?nid=4182> accessed 30 September 2015.

