



MDN Briefer on the Trial of Former President Mohamed Nasheed.

25 February 2015.

Detailing some points from MDN press release¹ 23 February 2015:

2. Regarding the Article 51 of the Constitution - Nasheed was allowed access to his lawyers upon arrest, and they met with him twice during detention. However a hearing on charges of terrorism was scheduled suddenly which caused his lawyers to be rejected from the court due to a procedure at the Criminal Court that required legal representation to register 2 days prior to a hearing. The hearing was scheduled only within hours.

The Constitution also requires that detainees be presented before a judge for a remand hearing within 24 hours of arrest. Nasheed was not presented for remand within the 24 hours. Individuals accused of a crime are only brought for remand in order to request for pre-trial detention, however charges were presented to Nasheed by the prosecution under Article 2(b) of the Prevention of Terrorism Act 1990, meaning he is not under arrest for purposes of the investigation but in order to produce him in court for the trial. Ordinarily individuals are brought to court under police custody for nonattendance at court.

3. Right to appeal - When Nasheed's lawyers tried to submit an appeal, they were informed that they should appeal to the same court - the Criminal Court that issued Nasheed's arrest order. The Criminal Court rejected the appeal saying the lawyers were not recognised by the court since they were not registered with the court:

Previously legal practitioners were required to register at all individual courts in order to be allowed inside. However the Supreme Court ordered a different procedure in 2011 which required legal practitioners to sign a declaration (which says they must not criticise the judiciary) and register at a single register with the Supreme Court which would enable them to practice at all courts in the Maldives. A much more recent regulation by the Criminal Court, however, states legal practitioners must register there individually.

Nasheed's lawyers requested to apply for registration at the Criminal Court and were told that an application form was unavailable. They were also informed that an appeal would take 7 days for review, which defeats the purpose of appealing an arrest in the first place.

4. The arrest order: The Constitution requires that an arrest / detention warrant must include in it where the detainee is held, under which authority (whether it is the Home Ministry - usually or

¹ <http://www.mvdemocracynetwork.org/press-release-regarding-arrest-former-president-mohamed-nasheed-subsequent-unrest-male-city/>

someone else), the duration for which a person must be held under that warrant and when, if required to attend a court hearing. None of this was included in the warrant.

7. Requests for remand or arrest is made by a criminal investigations authority - in this case the Police. However the request was made by the Prosecutor General who does not have this mandate. The Judge who issued the warrant and those policemen who arrested and continue to hold Nasheed are therefore acting under an unlawful order.

The incidents that took place following his arrest:

Peaceful protests around the city which were dispersed by the police, infiltrated by gangs trying to create unrest, several arbitrary arrests and manhandling by police. Unnecessary force, especially frequent use of pepper spray at close range, tear gas and attacks on journalists.

Nasheed's hearing was conducted at 16.00 at the Criminal Court on 23 February. As he was brought into the premises a journalist asked him a question and when Nasheed turned to respond to the journalist the police surrounded him, trying to drag him into the court without speaking to him or instructing him not to interact with the journalist. There is no law or procedure that prohibits a detainee from responding to journalists or communicating with people around the premises when they are brought in for hearings.

Nasheed asked the police not to touch him, saying that he would walk into the court by himself, but approximately 5 to 6 policemen including those from the riot squad grabbed both his arms and began shoving him which caused him to fall to the ground, where cameras lost sight of Nasheed in the scuffle. However his voice could be heard screaming for help and telling the police to leave him. When he emerged later on, being half carried and half pushed into the court room by the police, the buttons on his shirt and his reading glasses were missing.

Media personnel inside the courtroom reported that he held his arm in a makeshift sling made from his tie, and he informed the judges that the police had manhandled him and injured him, requesting that he be allowed medical attention before proceeding with the hearing. The judges responded to Nasheed saying that they had been informed that the fall and injuries had been staged by Nasheed. The court proceeded and the police were ordered to provide Nasheed with medical care afterwards.

The Criminal Court ruled to detain Nasheed for the entire duration of his trial, at a place of detention prescribed by the Ministry of Home Affairs.

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Access to legal counsel.

Nasheed's hearing is scheduled for 20.30pm, 26th February, Thursday.

Nasheed's legal team attempted to access him twice on 24th and the meetings were subsequently cancelled by the police every time. While there is no law limiting access to detainees by legal counsel, it was limited to Nasheed by the police through the following means:

1. While those detained in Male' Custodial are granted access to lawyers until midnight, Nasheed's lawyers were told by police that access to Nasheed (in Dhoonidhoo Island Detention centre) can only be granted until 18:00pm.

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2. While detainees in every new arrest are granted lawyers immediately at the time of arrest to ensure fundamental rights and presence at the time of booking into detention centres, regardless of what time the arrest is made. Nasheed's lawyers were constantly faced with obstructions in accessing their client. However once access was granted they were allowed to meet with him for the required length of time.

They eventually got permission to meet with him at Dhoonidhoo Island Detention Centre at 20.30pm.

While Nasheed has been given a period of 3 days to prepare for his hearing scheduled for 26 February, his legal team was given a box of documents, which amounted to approximately 3 reams of paper (approximately 1,500 sheets of paper). The legal team consists of 5 attorneys and have represented Nasheed in courts on previous occasions. However the legal team was informed this time that no more than 3 attorneys can be accepted inside the court. There is no law or procedure that requires a limit in the number of attorneys representing a client. The legal team has highlighted that in view of the seriousness of the charges and the short duration which has been allowed for preparation which includes reviewing the large number of documents related to the case.

The legal team was informed of this decision by the judges through the receptionist at the court and have not been able to get the decision in writing.

Requirement for judges on the bench to recuse and the case of trial premises.

Out of the documents that the legal team received from the court, witness statements taken by the State include those of the Prosecutor General and two judges on the bench for this case. The same two judges are also requested by the defence as witnesses, and therefore pose the issue of conflict of interest and a need to recuse from the bench.

The Prosecutor General, although not directly appearing in court over the matter, has initiated the arrest of Nasheed and also is parent to this case. He is also a state witness in the case.

The Chief Judge Abdulla Mohamed of the Criminal Court, where the case is being tried, is the judge who was allegedly "kidnapped" by Nasheed according to the terrorism charges pressed upon him. Although Judge Abdulla is officially on leave, it is known that he regularly attends the court and is in charge of administering the court. He is also a mentor to the judges presiding over the case. There is a high likelihood that he may influence the case through his subordinates and thus violate the right to a fair and free trial.

Former President Mohamed Nasheed's health

The police have assured the public that Nasheed does not have a medical issue.

According to Nasheed's legal team, he has informed them that he was granted access to a doctor at the detention centre and the doctor diagnosed injury to his shoulder. Nasheed was prescribed physiotherapy twice a day requiring a specific machine. The machine has been transported to the detention centre and he has been given the prescribed therapy. The fact that the police have provided for his health care contradicts with their statement that Nasheed does not have a medical problem.

Reports said that Nasheed was secretly brought to the city to a private clinic needing medical care, without informing family or the legal team.

Reports also say that there have been increased security measures at Dhoonidhoo Island Detention Centre from the evening of 24th February, and it is highly likely this may result with incidents of torture and maltreatment to Nasheed given the culture of ill-treatment to detainees, especially political opponents.

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