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Human Rights Council Working Group on Arbitrary Detention

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No. 38/2011 (Syrian Arab Republic)

Communication addressed to the Government on 11 March 2011

Concerning: Tal Al-Mallouhi

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.
2. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);
 - (b) When 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, 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 (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Tal Al-Mallouhi, born in 1991, usually residing with her family in Homs, Syria, is a student and runs an Internet blog with poems and articles. She is not affiliated to any political party.
4. Ms. Al-Mallouhi was arrested on 27 December 2009 after having been summoned to Section 279 of the State security services, located in Damascus. The subject of interrogation was her travel to Egypt. Ms. Al-Mallouhi was detained incommunicado, without any contact with the outside world and without any legal proceedings.
5. On 10 November 2010, Ms. Al-Mallouhi was brought before the Office of the Public Prosecutor of the Supreme State Security Court. Her family was informed that she was accused of “espionage and sharing information with a foreign State” and that she was being held at Duma prison, close to Damascus.
6. On 14 February 2011, Ms. Al-Mallouhi was brought before the Supreme State Security Court and condemned to five years of imprisonment. According to the information received, her trial was held behind closed doors and she was deprived of access to a lawyer. She did not have necessary facilities to prepare for her defence and to confer with a lawyer of her choice. Moreover, the decision rendered by the Supreme Security Court of the State, an exceptional jurisdiction, is not subject to appeal.
7. The source contends that the arrest and detention of Ms. Al-Mallouhi forms part of the alleged policy of the authorities to silence any form of criticism of the Government. The reasons for Ms. Al-Mallouhi’s detention were linked to her Internet blog, in which she used to debate various topics and publish poems.

Response from the Government

8. The Working Group forwarded communications to the Government on 11 March 2011 and 10 June 2011 and regrets that the Government has not provided the requested information. The Working Group would have welcomed the cooperation of the Government.

Discussion

9. According to its revised methods of work, the Working Group is in a position to render an opinion on the case on the basis of the submissions that have been made.
10. In the present case the first question is whether the deprivation of liberty is the result of the exercise of the rights and freedoms in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.
11. The Working Group has considered the relationship between the detention of Ms. Al-Mallouhi and her exercise of the fundamental right to freedom of opinion and expression. The source alleges that the detention is in direct consequence of her exercise of that right and has no other grounds. The Working Group has not received any information from the Government that can rebut the claims that human rights guarantees enshrined in the right to freedom of opinion and expression have been violated. Since the Government

has not contested the *prima facie* case, the Working Group has no alternative but to reach the conclusion that the detention of Ms. Al-Mallouhi is an unjustified restriction on her exercise of the fundamental right to freedom of opinion and expression. Thus, her detention falls within category II of the categories applicable to the cases submitted to the Working Group.

12. Moreover, the Working Group notes with concern that Ms. Al-Mallouhi was detained incommunicado, without any contact with the outside world and without any legal proceedings. The period of detention from 27 December 2009 until she was brought before a judge on 14 February 2011 constitutes a clear breach of international human rights obligations. Further breaches are constituted by the denial of access to counsel and the necessary facilities to prepare for her defence. The Working Group also reiterates that the military and exceptional jurisdiction of the Supreme State Security Court, from which there is no appeal, does not satisfy due process guarantees.

13. In its constant jurisprudence, the Working Group has held that the use of military tribunals in such cases is in breach of international human rights obligations (see, for instance, opinion No. 27/2008). In its concluding observations on the Syrian Arab Republic, the Human Rights Committee stated that it “remains concerned about numerous allegations that the procedures of military courts do not respect the guarantees laid down in article 14 of the Covenant” (CCPR/CO/71/SYR, para. 17). In its concluding observations on the initial report of Syria, the Committee against Torture stated that it “is deeply concerned at the numerous, consistent and serious allegations that this court fails to function in accordance with the international standards for courts of law” (CAT/C/SYR/CO/1, para. 11). The Committee added that the Supreme State Security Court “has the competence to adopt sentences and impose penal sanctions for crimes that are very widely defined ...” (ibid.). Finally, in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the Human Rights Committee reaffirmed that the guarantees in article 14 are applicable to common and exceptional jurisdictions of civil and military character (CCPR/C/GC/32, para. 22).

14. The detention of Ms. Al-Mallouhi is in violation of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. The detention thus also falls within category III of the categories applicable to the cases submitted to the Working Group.

15. As the detention of Ms. Al-Mallouhi constitutes a breach of international human rights obligations, the principal remedy is her immediate release. She should also have an enforceable right of compensation under article 9, paragraph 5, of the International Covenant on Civil and Political Rights, which is an expression of general principles. The reasons that may be given for the detention of Ms. Al-Mallouhi cannot be used against a claim for compensation.

16. The Working Group further points out that this is only one of several opinions from the Working Group finding the Syrian Arab Republic in violation of its international human rights obligations (see, for instance, opinions No. 1/2011, No. 26/2011 and No. 37/2011). The Working Group reminds the Syrian Arab Republic of its duties to comply with international human rights obligations not to detain arbitrarily, to release persons who are arbitrarily detained, and to provide compensation to them. The duty to comply with international human rights rests not only on the Government but on all officials, including judges, police and security officers, and prison officers with relevant responsibilities. No person can contribute to human rights violations. The Working Group also underlines the liability that can follow from arbitrary detention when it constitutes a crime against humanity under customary international law.

Disposition

17. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Tal Al-Mallouhi is arbitrary, and constitutes a breach of articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, falling within categories II and III of the categories applicable to the cases submitted to the Working Group.

18. The Working Group requests the Government of the Syrian Arab Republic to take the necessary steps to remedy the situation, which would include the immediate release of Ms. Al-Mallouhi and adequate reparation to her.

[Adopted on 1 September 2011]
