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Human Rights Council Working Group on Arbitrary Detention

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No. 50/2011 (Egypt)

Communication addressed to the Government on 23 June 2011

Concerning: Maikel Nabil Sanad

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 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 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 the 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. Maikel Nabil Sanad, born in 1985, usually residing in Cairo is an Internet blogger.
4. Mr. Sanad is renowned in Egypt for having announced on his blog that he would refuse doing his compulsory service in the Egyptian military. More recently, he criticized the military in a series of articles, a post on his blog entitled “The Army and people wasn’t ever one hand” as well as several posts on his Facebook page. He has denounced abuses by the agents of military forces during the protests and the management of these following the end of President Hosni Mubarak’s regime on 11 February 2011. On several occasions, Mr. Sanad had formally lodged criminal complaints; the last one dated 22 February 2011 (registered No. 2068-2011) for having been brutally beaten by the military.
5. On 28 March 2011, Mr. Sanad was arrested at his home. He was charged with “insulting the military establishment” under article 184 of the Egyptian Penal Code and “spreading false information” under article 102 of Egyptian Penal Code.
6. He was transferred to the High Military Court, which held its first hearing on 30 March 2011. On 6 April 2011, a military judge announced that he would render the judgment on 10 April 2011. The source informs that on 10 April 2011, Mr. Sanad’s lawyers were denied access to the court’s session being informed that the session had allegedly been cancelled and there would be no verdict. However, on the following morning, 11 April 2011, Mr. Sanad’s lawyers found out on the court roll that he had been sentenced to three years’ imprisonment and a fine by the High Military Court.
7. First, the source argues that Mr. Sanad’s detention lacks any legal basis and on this count is arbitrary. As a civilian, Mr. Sanad was brought before a military jurisdiction on the basis of the decree of 11 May 2011, which renewed for a further two years the emergency laws, in force since 1981. According to the information received from the source, this decree limits the scope of application of the emergency laws to counter-terrorism and drug-trafficking. Given that the charges retained against Mr. Sanad do not fall into either of these categories, the source submits that the military tribunal lacked jurisdiction to try him in the first place. Moreover, even though article 6 of the Code of Military Justice provides for the possibility of deferring civilians to a military judge, this power is expressly subjected to a presidential decision which, according to the source, was not available in this case. The source concludes that Mr. Sanad’s detention contravenes article 41 of the Egyptian Constitution.
8. Second, the source argues that Mr. Sanad’s detention is a direct consequence of his exercise of the right to freedom of opinion and expression. According to the source, the fact that Mr. Sanad maintained an Internet blog on which he discussed different subjects concerning Egypt and other countries is the only reason for his arrest and detention by the military. Therefore, the source contends that his detention is arbitrary contravening article 19 of the International Covenant on Civil and Political Rights, in particular Mr. Sanad’s right to peacefully express his political opinions.
9. Third, the source maintains that Mr. Sanad’s detention is contrary to article 9, paragraphs 1 and 4, of the Covenant. Reportedly, Mr. Sanad is being deprived of his liberty without having been entitled to appeal the sentence rendered against him and without any

possibility to contest the legality of his arrest and detention. It is in this sense that the source considers that Mr. Sanad's detention is not in conformity with article 14, paragraph 1, of the Covenant which guarantees that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

10. According to the source, Mr. Sanad has not benefited from the minimal guarantees as enshrined in the right to a fair trial. In the context of expedient military procedure, Mr. Sanad's lawyers were not only denied the possibility to plead before the High Military Court but they were also denied to attend the session of 10 April 2011 during which Mr. Sanad was sentenced. In the light of the foregoing, the source submits that the violations of Mr. Sanad's guarantees to a fair trial have been of such gravity as to amount to an arbitrary deprivation of his liberty.

11. According to the information received, Mr. Sanad is currently being held at the Tora Prison in Cairo.

Response from the Government

12. The Working Group forwarded a communication to the Government on 23 June 2011 and regrets that the Government has not provided the requested information. On 16 August 2011, the Working Group received the request from the Government of Egypt of a one-month extension of the time limit to provide a response. The Government noted that the purpose of the extension was to "fully provide a reply that takes into consideration the recent developments of the above-mentioned case". The Working Group does not consider that the reasons demonstrated by the Government were sufficient so as to justify the extension, in particular given the concomitant developments in the case, namely the fact that Mr. Sanad has been on a long-standing hunger strike in protest of his detention and sentence rendered by a military jurisdiction.

Discussion

13. 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.

14. The central question in the present case relates to the competence, lawfulness and independence of military trial as applied to Mr. Sanad, a civilian and blogger who has publicly expressed its opinions. 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).

15. In its general comment No. 32 (2007) on right to equality before courts and tribunals and to a fair trial, the Human Rights Committee has reaffirmed that the guarantees in article 14 are applicable to common and exceptional jurisdictions of civil and military character (para. 22). The Committee also noted that trials of civilians by military courts or special jurisdictions may raise serious problems as far as the fair, impartial and independent administration of justice is concerned. The Committee emphasized that the trial of civilians by military jurisdiction should be exceptional, that is to say limited to cases where the State party can show that the use of such courts is absolutely necessary and justified on objective and serious grounds and where, in relation to the specific category of persons and offences, an ordinary civilian courts are not able to undertake a trial.

16. The Working Group stresses that the procedures of military or special jurisdiction are often irregular. In addition to the fact that the identity and status of the judges presiding is not known to the accused, other irregularities permeate the trial such as exclusion of the lawyers, family and public. Other common irregularities include restrictions on access to communicate with a lawyer, on the preparation of defence, summoning and examining of witnesses.

17. The allegations raised in this case are sufficient to show the seriousness of the breach of the safeguards referred to in the general comment No. 32. Indeed, Mr. Sanad is a civilian and there are no elements that could demonstrate the absolute need of military trial. Mr. Sanad has not benefited from the conditions of detention that would allow him to confer with a lawyer and to be able to prepare adequate defence. This is in violation of article 14, paragraph 3 (b) and (d). The sentence rendered by the military court is of no appeal and this is further inconsistent with Mr. Sanad's rights under article 14, paragraph 5, of the International Covenant on Civil and Political Rights. Moreover, Mr. Sanad has not been allowed to call upon and examine witnesses in accordance with article 14, paragraph 3 (e), of the Covenant. In the light of these circumstances, the Working Group holds that Mr. Sanad's deprivation of liberty is arbitrary as a result of unfair trial and grave breaches of minimum due process guarantees falling into category III of the categories applicable to the consideration of cases submitted to the Working Group.

18. Finally, the Working Group finds no specific facts capable of justifying Mr. Sanad's detention. The only reasonable explanation is that Mr. Sanad's detention is due to his criticism of the military and the police in the country. Recently, he had criticized the army in a series of articles available on the Internet. His complaints to the police and security regarding acts of public violence against him have been of no avail. It follows that Mr. Sanad's deprivation of liberty is also arbitrary falling into category II of the categories applicable to the consideration of cases submitted to the Working Group.

Disposition

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

The deprivation of liberty of Maikel Nabil Sanad 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 into categories II and III of the categories applicable to the cases submitted to the Working Group.

20. The Working Group requests the Government to take the necessary steps to remedy the situation, which would include the immediate release of Mr. Sanad and the provision of adequate reparation to him.

[Adopted on 2 September 2011]