

No. 44/2011 (Saudi Arabia)

Communication addressed to the Government on 18 February 2011

Concerning: Muhammad Geloo

The State is a not 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 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 adopted on 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. Muhammad Geloo, born in XXXX, of British nationality, residing in Saudi Arabia since 2003 at the University Residence in Madinah, is a student at Islamic University.
4. It is reported that on 7 November 2006, Mr. Geloo was arrested by the Saudi Security Services in plain clothes at his university campus in front of his university residence at Madinah, Saudi Arabia. According to the information received, Mr. Geloo was not presented with an arrest warrant or any other decision by a judicial authority. Similarly, Mr. Geloo was not informed of any reasons for his arrest.
5. Mr. Geloo was taken to Mabath Detention Centre in Madinah where he was held in incommunicado detention and allegedly subjected to severe physical and mental torture. It was not until 16 December 2006 that Mr. Geloo's family was able to visit him and to receive news about his

fate and whereabouts. It is reported that during that visit, the family found Mr. Geloo in a terrible health condition due to alleged torture and other ill-treatment he had endured. Since his arrest, Mr. Geloo has been transferred to Abha and Dahahban prisons and often prevented from being in contact with his family.

6. It is further reported that Mr. Geloo was not presented before any competent judicial authority until 30 October 2008. On that date, Mr. Geloo was brought before the Sharia Court, which sentenced him to seven years' imprisonment. The source contends that Mr. Geloo's trial did not respect his right to defence and was based on a dossier containing confessions extracted through severe torture and duress. During one of the hearings, Mr. Geloo referred to the allegations of torture but no investigation followed; he was not examined by a doctor to establish evidence of torture.

7. Following a number of measures undertaken by Mr. Geloo's family, he was allowed to meet a lawyer for the first time on 22 May 2009. However, his lawyer was not able to appeal the Court judgment, which was *res judicata*.

8. The source reports that article 114 of the Saudi Law on Criminal Procedure provides that if the accused is to be detained in pretrial detention, it is to last a maximum of five days, renewable up to a total of six months. Mr. Geloo has been detained since 7 November 2006. In accordance with article 114, Mr. Geloo should have been "directly transferred to the competent court or ...released".

9. In accordance with article 36 of the Saudi Basic Law of Governance, "the State shall provide security for all citizens and residents on its territories. No one may be confined, arrested or imprisoned without reference to the Law". Moreover, article 35 of the Saudi Law on Criminal Procedure (Royal Decree No. M/39) provides that "no person shall be arrested or detained except on the basis of order from the competent authority". This article also specifies that "any such person ... shall also be advised of the reasons of his detention". Article 2 of the Law of Criminal Procedure declares that "detention ... shall be for the period prescribed by the competent authority". From 7 November 2006 to 30 October 2008, Mr. Geloo was detained without any charge and was not subject to judicial procedures. Moreover, for more than a month, Mr. Geloo's family was unaware of his fate and whereabouts.

10. It is reported that Mr. Geloo has not had access to a lawyer and he has not had regular access to his family who attempted to mandate a lawyer in order to prepare his defence. Mr. Geloo was sentenced to seven years of imprisonment before being allowed to confer with his lawyer for the first time on 22 May 2009. In addition, Mr. Geloo was sentenced using evidence and confessions allegedly extracted under torture. According to the information received, he was not allowed to contest these confessions before the judge.

11. In the light of the foregoing, the source concludes that Mr. Geloo's deprivation of liberty is arbitrary on the grounds that it lacked any legal basis during the period between 7 November 2006 and 30 October 2008 and it is in total or partial non-observance of the international legal norms relating to fair trial.

Response from the Government

12. The Working Group transmitted the above allegations to the Government of Saudi Arabia requesting that it to provide, in its reply, detailed information about the current situation of Mr. Geloo and to clarify the legal provisions justifying his continued detention.

13. It is regretted that the Working Group has not received a response from the Government within the requested delays. Nor has the Working Group received the request for extension for its reply from the Government. The Working Group would have welcomed the cooperation of the Government of Saudi Arabia.

Discussion

14. According to its revised methods of work, the Working Group is in a position to render an opinion on the basis of the submissions that have been made.

15. In the absence of a response from the Government and based on its revised methods of work, the Working Group is able to render an opinion in light of the information submitted to it.

16. The Working Group, based on the information submitted to it notes that in the case in hand, a number of violations of domestic Saudi law as well as international human rights have been highlighted. First, Mr Geloo was held incommunicado between 7 November 2006 and 30 October

2008 without recourse to legal and judicial forums. There is no information pointing to a presentation before a judge before 30 October 2008 or recourse to legal counsel until 22 May 2009, after he was sentenced. The second point to note here is the ill-treatment and alleged torture through which confessions and a statement were extracted, without allowing Mr. Geloo to retract these before a judge. Established practice throughout the world demands that any confessional statements made under pressure and duress be ruled inadmissible in a court of law. A third issue relates to the procedure followed throughout the period of detention which fell short of minimum standards and requirements of a fair trial including the right to be arrested upon production of an arrest warrant and production before a judge within a certain period of time. It further includes the right to know the charges against the person being arrested. According to the information before the Working Group, none of these safeguards were in place in the case of Mr. Geloo.

17. The Working Group notes with concern a consistent pattern of arrest and detention of persons exercising their basic human rights, in particular their right to freedom of opinion, expression and association (see, for instance, opinions No. 22/2008, No. 36/2008, No. 37/2008, No. 2/2011, No. 10/2011, No. 30/2011, No. 33/2011, No. 41/2001 and No. 42/2011 of the Working Group). The case of Mr. Geloo is an instance of the widespread failure in the Kingdom of Saudi Arabia to comply with basic human rights.

18. The Working Group reiterates that the prohibition of arbitrary detention is part of customary international law. It has been authoritatively recognized as a peremptory norm of international law or *jus cogens* (see Human Rights Committee in its general comment No. 29 on states of emergency, CCPR/C/21/Rev.1/Add.11, para. 11, 31 August 2000), which this Working Group follows in its opinions. The judgment of the International Court of Justice in *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* of 30 November 2010 has been of assistance and, in particular, the discussions by Judge Cañado Trindade on arbitrariness in customary international law which the Working Group adopts.¹ The constant jurisprudence of the rulings contained in the opinions of this Working Group, and of the other United Nations special procedures mandate holders is a further source.

Disposition

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

The detention of Mr. Geloo is arbitrary, falling under categories I, II and III of the Working Group, being without legal basis, and in violation of articles 9, 10 and 19 of the Universal Declaration of Human Rights.

20. Consequent upon the opinion rendered, the Working Group requests the Government of Saudi Arabia to release Mr. Geloo forthwith and bring his situation in conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

21. In view of the adverse effect of this wrongful arrest and detention on Mr. Geloo and his family, the Working Group requests the Government of Saudi Arabia to ensure appropriate reparation.

22. In view of the alleged ill-treatment of Mr. Geloo during his ongoing detention, the Working Group forwards this case to the attention of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

23. The Working Group urges and invites the Government of Saudi Arabia to ratify the International Covenant on Civil and Political Rights.

[Adopted on 2 September 2011]

¹See International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment of 30 November 2010, ICJ Reports 2010, para. 79; Separate Opinion of Judge Cañado Trindade, pp. 26-37, paras. 107-142.