

OPINION No. 13/2000 (PAKISTAN)

Communication addressed to the Government on 1 June 1999

Concerning Najam Sethi

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1977/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group regrets that the Government has not replied within the 90-day deadline.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. According to the source, Najam Sethi, editor of the national newspaper Friday Times, was arrested at 2.30 a.m. on 8 May 1999 at his home in Lahore by police. He has not been charged with any offence, and is said to be held solely for the exercise of his right to freedom of expression.

6. Twenty plainclothes and two uniformed police officers allegedly broke into his house, entered the bedroom and dragged Mr. Sethi off. Allegedly, they did not have a warrant of arrest nor permission to enter private property.

7. Mr. Sethi's wife, Jugnoo Mohsin, filed three petitions in the Lahore High Court: a habeas corpus petition to produce Mr. Sethi before the court, a writ petition to have a medical examination administered, and a petition requesting that the police record a complaint regarding Mr. Sethi's unlawful arrest and abduction. On 10 May 1999, the Lahore High Court asked the State of Punjab to respond to the allegations brought forward by Mr. Sethi's wife. On the same day, the Deputy Attorney-General of the State of Punjab stated that Mr. Sethi was not in the custody of the federal investigating agency.

8. In a further hearing on 12 May 1999, the Lahore High Court dismissed all three petitions on the grounds that Mr. Sethi was under investigation for anti-State activities in the custody of military intelligence (i.e. Inter Services Intelligence (ISI)), over which the High Court had no jurisdiction. It reportedly admitted that no charges had been brought against him. However, the acting Director-General of the ISI Public Relations Department reportedly stated that The News, a local newspaper, had said on 12 May 1999 that the ISI had nothing to do with Mr. Sethi's arrest.

9. According to the source, Mr. Sethi's wife filed a petition in the Supreme Court of Pakistan, reportedly asking for Mr. Sethi to be produced in court and for his defence to be informed of the grounds for his continued detention. A bench of three Supreme Court judges heard the petition on 17 May 1999 and allowed Mr. Sethi to meet with his family members and lawyer on that day. At a further hearing on 20 May 1999, the Supreme Court ruled that Mr. Sethi be allowed to meet with his family members and lawyer twice a week.

10. Mr. Sethi's wife also reportedly challenged the judgement of the Lahore High Court and contended that Mr. Sethi, as a civilian, could not be arrested under the Army Act. The Supreme Court of Pakistan commenced the hearing of appeal on 31 May 1999 to determine whether the ISI was legally empowered to arrest Mr. Sethi under the Army Act.

11. To this date, Mr. Sethi is said to be held by the ISI in a solitary confinement cell, without light, and has not been charged with any criminal offence. These actions allegedly contravene articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights.

12. In the light of the allegations made by the source, which have not been denied by the Government although it had the opportunity to do so, the Working Group finds that the above-named was arrested at his home in Lahore on 8 May 1999 by the Pakistani police, without a warrant. His wife filed a habeas corpus petition before the Lahore High Court, followed by a petition to have the above-named medically examined, and a third petition complaining about his unlawful arrest. The Lahore High Court dismissed all three petitions on the grounds that Najam Sethi was under investigation for anti-State activities by military intelligence, over which the High Court had no jurisdiction. Mrs. Sethi then challenged the judgement before the Supreme Court, contending that Najam Sethi, as a civilian, could not be arrested under the

Army Act. The hearing of appeal before the Supreme Court was due on 31 May 1999. Meanwhile, the above-named was held in solitary confinement by military intelligence without being charged.

13. According to a source, government officials had alleged that Najam Sethi's arrest was due to a speech he reportedly made on 30 April 1999 in New Delhi before the Indo-Pakistani Friendship Society about problems currently facing Pakistan. Mr. Sethi's wife and journalists in Pakistan, however, maintain that his arrest was in connection with the contacts he maintained as a journalist with a BBC team inquiring into corruption in Pakistan.

14. In the Working Group's opinion, the circumstances of Najam Sethi's arrest, as reported to the Working Group, justify the conclusion that Mr. Sethi's arrest and detention are definitely related to his activities as editor of a newspaper, that is to say, with the exercise of his right to freedom of opinion and expression as guaranteed by article 19 of the Universal Declaration of Human Rights.

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

The deprivation of liberty of Najam Sethi is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

16. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to take the appropriate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 17 May 2000