

OPINION No. 21/2002 (UNITED STATES OF AMERICA)

Communication addressed to the Government on 1 May 2002.

Concerning: Ayub Ali Khan and Azmath Jaweed.

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

1. (Same text as paragraph 1 of opinion No. 15/2002.)
2. The Working Group conveys its appreciation to the Government for having submitted information concerning the case.
3. (Same text as paragraph 3 of opinion No. 15/2002.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government, but regrets that it did not provide the Group with all the information it sought and did not facilitate its task by investigating the specific points of the case that were cited in a letter dated 1 May 2002 from the Working Group's Chairman-Rapporteur. The Working Group transmitted on 22 November 2002 the reply provided by the Government to the source. To date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. According to the information submitted to the Working Group by the source, Ayub Ali Khan (alias Syed Gul Mohammed Shah), born in 1967, of Indian nationality and Azmath Jaweed, also of Indian nationality, were residing in New Jersey and looking for employment before their arrest on 13 September 2001 at the Amtrak Railroad Station in San Antonio, Texas, by agents of the Federal Bureau of Investigation in relation to the events that took place on 11 September 2001 in the United States.
6. It was reported that the two persons are detained without any charges or accusations levelled against them at the Metropolitan Detention Center in Brooklyn, New York, in solitary confinement. It was also alleged that they are detained on mere presumption and baseless suspicion relating to the 11 September 2001 attacks and that all the required investigations have been completed. Ayub Ali Khan and Azmath Jaweed were not found to have been involved in the said events at any point.
7. The source further reports that Ayub Ali Khan and Azmath Jaweed are the only sources of income for their families in India. The elderly mother of Ayub Ali Khan is suffering from high blood pressure and diabetes and could not have any contact with her son. It was also reported that the family contacted the Secretary of State and the Secretary of Defence to discover whether they were the subject of any judicial proceedings and requested an entry visa to the United States, but did not receive any response.
8. In its reply, which did not provide any specific information about the cases at issue, the Government addresses the general concerns identified in the communication and stresses that all detentions by federal, state and local authorities must be consistent with United States substantive and procedural protections.

9. The Government also noted that in order for any individual to be deprived of his or her liberty through placement into federal, state or local custody, such detention may only occur on the basis of an authorized warrant and subsequent order justifying his or her continued detention. Moreover, in general, detainees, whether detained on criminal or immigration-related charges, are entitled to an administrative or judicial hearing to determine the lawfulness of such detention. There are some exceptions to this rule in the immigration context that the Government claims are not pertinent to the present case.

10. At such hearings, individuals have the right to contest the charges that are brought against them and to seek release from custody. In criminal proceedings, individuals will be notified of their right to be represented by court-appointed counsel if they cannot afford their own lawyer. In immigration proceedings, individuals will be notified that they have the privilege of being represented by counsel at no expense to the Government and are provided with a list of pro bono counsel. Furthermore, in both criminal and immigration proceedings, all detainees are notified of the charges that have been lodged and given the opportunity to seek release on bond, continuances to prepare their cases, the opportunity to examine and confront evidence against them and the right to appeal their cases.

11. For the foregoing reasons, the Government considers that the communication should not be considered by the Working Group because it fails to establish that Mr. Khan and Mr. Jaweed have been subjected to arbitrary detention.

12. In the light of the foregoing, the Working Group would have appreciated more cooperation from the Government, which has had over seven months, rather than the 90 days provided for under paragraph 15 of the methods of work of the Working Group, to clarify the situation of the above-named persons. In that regard, the Working Group recalls that the Government requested additional time, which it was granted in accordance with paragraph 16 of the methods of work, but notes that, in its response, it merely described the current procedure under United States law without providing any information on the individuals in question. Indeed, the Government began its reply with the words "Without providing any specific information about the cases reported ..."

13. The Working Group would have appreciated more information on the specific cases under consideration in order to enable it to ensure that the guarantees established in the relevant international standards and in United States legislation were being observed, particularly as the source claims that the families of the above-mentioned persons have attempted to contact the detainees, without success, and have approached the United States authorities to find out the reasons for their continued detention, again without success.

14. In that regard, the documents at the Working Group's disposal show that the mother of Ayub Ali Khan received a letter dated 14 November 2001 from a lawyer appointed by the United States Government to assist her son. The letter confirmed that Mr. Khan had been arrested as a material witness in the FBI investigations into the 11 September 2001 attacks and that he was being held in detention with another person, without charge or indictment.

15. In the light of the foregoing, the Working Group considers that Mr. Khan and Mr. Jaweed have been detained for more than 14 months, apparently in solitary confinement, without having been officially informed of any charge, without being able to communicate with their families and without a court being asked to rule on the lawfulness of their detention.

16. This series of violations is of such gravity as to confer an arbitrary character on their detention, which constitutes a violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, to which the United States is a party and which guarantee, respectively, the right to a review of the lawfulness of detention by a competent judicial authority and the right to a fair trial, as well as principles 10 to 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

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

The deprivation of liberty of Mr. Ayub Ali Khan and Mr. Azmath Jaweed is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, to which the United States is a party, and principles 10 to 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and falls within category III of the principles applicable to the consideration of cases submitted to the Working Group.

18. Consequently, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 3 December 2002