

OPINION No. 21/2005 (UNITED STATES OF AMERICA)

**Communication addressed to the Government of the United States of America
on 28 January 2005.**

Concerning Mr. Ahmed Ali.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)

2 The Working Group regrets that the Government did not provide it with the requested information, despite repeated invitations to do so. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.

3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. According to the information received, Mr. Ahmed Ali, born on 1 January 1980, of Somali nationality, a resident of Madison, Wisconsin, United States of America, status pending before legal proceedings in the United States of America, was first arrested on 30 June 2000 and detained since 7 June 2002 by the Department of Homeland Security, is currently at the Tri-County Detention Center in Ullin, Illinois, United States of America. Mr. Ali is a member of the Rahanweyn minority clan of Somalia. He grew up in the city of Baidoa with his family, until clan violence and internal war devastated the country, and many of his family members were killed by armed militias. Mr. Ali and the remainder of his family fled to a town on the border of Somalia and Kenya, and in 1998 to Nairobi, where they lived as refugees before being formally admitted as refugees by the United States in 1999. Mr. Ali and his sister moved to Wisconsin, while the rest of the family settled in Minnesota. Mr. Ali worked at various retail stores and attended classes at a technical college.

5. Mr. Ali was diagnosed with post-traumatic stress disorder and experiences depression and flashbacks, having witnessed traumatic events in Somalia. He has been receiving appropriate medical treatment since September 2000. He was involved in several altercations that led to his arrest and detention. The first incident occurred in April 2000, the second in June 2000. After that incident, Mr. Ali was arrested and detained, but released after two weeks on his own recognizance with some conditions. He was prosecuted, pled guilty and was sentenced on 13 July 2001 to 11 months' imprisonment. The court, however, gave him a status that allowed him to leave jail during the day to continue working and receive his medical treatment.

6. Mr. Ali's detention status was revoked in October 2001 after an argument with a fellow inmate and following harassment by fellow inmates, allegedly because of his observance of his Islamic religion, in the wake of the events of 11 September 2001. On 7 June 2002, the Immigration and Naturalization Service took custody of Mr. Ali, charged him as removable under immigration laws because of his previous conviction, placed him in removal proceedings and transferred him to immigration detention.

7. Mr. Ali appeared before an immigration judge in Chicago on 10 October 2002, at a hearing to determine his immigration status. Although his previous crime caused the revocation of his refugee status, he requested the immigration judge to waive his crime in order to gain permanent residency status and relief from removal either in the form of asylum, withholding of removal or protection under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The immigration judge issued an oral decision denying Mr. Ali asylum status because of his conviction, but granting him withholding of removal because it was found that he had suffered past persecution and faced a clear probability of future persecution if returned to Somalia. During this hearing, counsel for the United States Government presented a memorandum from the FBI characterizing Mr. Ali as a suspected terrorist. The immigration judge found this memorandum unreliable and concluded that Mr. Ali was not a threat to national security.

8. The source further mentions that the United States Government appealed the decision of the immigration judge to the Board of Immigration Appeals (BIA) on 12 November 2002. BIA issued transcripts and requested briefings from the parties on 29 August 2003, and on 14 November 2003, it reversed the decision of the immigration judge to grant withholding of removal. BIA found that Mr. Ali's conviction constituted a "particularly serious crime", rendering him excludable from refugee protection. It remanded the case back to the immigration judge for consideration of Mr. Ali's eligibility for relief under the Convention against Torture.

9. The immigration judge conducted a second hearing on the merits on 10 February 2004 and on the same day issued an oral decision concluding that Mr. Ali faced a clear probability of torture upon return to Somalia and granting him deferral of removal under the Convention. The United States Government again appealed the decision and Mr. Ali cross-appealed to preserve appellate review of all issues in his case. On 14 July 2004, BIA issued a briefing schedule and the case was fully briefed, but BIA has not issued a decision on Mr. Ali's case as of January 2005. During all the proceedings, Mr. Ali continues to be detained.

10. The source states that Mr. Ali has been detained since July 2002 by the Federal Government. At no time during the civil proceedings instituted against him has he been subject to mandatory detention under United States immigration law. Custody determination is vested in the immigration judge, who must determine whether to release Mr. Ali on bond, or if he is a danger to the community or a flight risk. The source indicates that the immigration judge concluded on 1 October 2003 that Mr. Ali was neither dangerous nor a flight risk and ordered him released on a US\$ 5,000 bond. The Government appealed this decision, invoking a regulation that unilaterally stayed the immigration judge's bond decision until final resolution of the appeal. BIA overruled the decision of the immigration judge to release Mr. Ali on bond on 3 December 2003, concluding that Mr. Ali was a danger to the community given his criminal conviction and his mental illness, which made him dangerous and a flight risk. Mr. Ali requested again that the immigration judge determine his custody status and on 17 March 2004, the immigration judge denied his release on bond, holding that he was bound by the previous BIA decision. Mr. Ali appealed this decision to BIA and on 9 June 2004 BIA upheld the decision not to release him on bond.

11. Mr. Ali filed a writ of habeas corpus in the Federal District Court in Chicago on 16 April 2004 challenging the constitutionality of the automatic stay provision. On 29 October 2004 the Court denied Mr. Ali's request for a writ because he had had previous opportunity to request release on bond and could not review the BIA factual determination on whether he was or was not dangerous or a flight risk.

12. The source further states that Mr. Ali has been detained in substandard conditions of detention throughout 30 months in civil administrative custody, has been transferred numerous times between different county jail facilities without notice to his family or counsel and has not been provided with adequate medical treatment for his mental health condition, which requires regular psychiatric consultations and oversight.

13. The source mentions that the continued detention of Mr. Ali for this period of time violates the principle of proportionality and that the legal justification for his detention is a bond judgement issued by BIA, which has not been subject to effective judicial review since December 2003. Mr. Ali has been deprived of his liberty during the time necessary to consider

his application for persecution-based relief in the United States, and these proceedings are continuing for an indeterminate duration. Furthermore, Mr. Ali has not been able, during his continued period of detention, to an effective review of the circumstances of his detention.

14. The source also states that the continued detention of Mr. Ali is the result of differential treatment because of his race, religion, or nationality. The source expresses concern that the Government's evaluation of Mr. Ali's right to be released on bond has been influenced by the climate of suspicion and fear of Muslims in the context of the events of 11 September 2001. The source mentions that adult males from Somalia have been subjected to restrictive security measures by immigration authorities since then and that while in custody, Mr. Ali has been provoked and subjected to harassment because of his observance of the Islamic faith. At trial, the Government attorneys submitted specious evidence suggesting that Mr. Ali was a terrorist, although the immigration judge set aside these allegations. The portraying of Mr. Ali as a violent and dangerous criminal, although he has committed only one crime of battery, for which he was convicted and sentenced, amounts to discrimination.

15. Although the Government abstained from commenting on the allegations of the source, although it was given the opportunity to submit observations, the Working Group is able to deliver, on the basis of the detailed information provided by the source, an opinion on the communication.

16. Mr. Ali was detained on 7 June 2002 and charged as removable under immigration legislation. During the almost three years which he spent in detention since then, the immigration authorities conducted various inquiries to find out whether Mr. Ali's release pending determination of his status would represent a danger for the community, or a flight risk. The source asserts that in October 2003 the immigration judge concluded that Mr. Ali was neither dangerous nor a flight risk and ordered his release, but the decision was overruled. Such altercations between authorities competent in immigration matters repeatedly occurred - decisions favourable to Mr. Ali were later set aside by other authorities - but he remained in detention.

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

The impossibility for Mr. Ahmed Ali to have recourse to a competent authority to present additional evidence regarding his circumstances, despite substantial evidence that he is neither a danger to the community nor a flight risk, or to challenge his continued detention, confers an arbitrary character on his detention as being in contravention of article 9 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

18. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Ahmed Ali and to bring it into conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights.

Adopted on 27 May 2005