

DECISION No. 36/1993 (INDONESIA)

Communication addressed to the Government of the Republic of Indonesia on 23 March 1993.

Concerning: Fernando de Araujo, on the one hand, and the Republic of Indonesia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Indonesia. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision 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. Fernando de Araujo, aged 27, was arrested on 24 November 1991 at his home in Denpasar, Bali, allegedly without a warrant, by a group of policemen and two plain clothes agents, following a search of his residence, during which the agents had allegedly planted explosives and grenades, which they later pretended to discover. The indictment against Araujo reportedly did not mention the discovery of explosives in his residence. He is reportedly a founding member and leader of the student movement "National Resistance of East Timorese Students" (Renetil). Mr. Araujo, who was held at Denpasar police headquarters until 22 December 1991 and then transferred to the Polda Metro Jaya Detention Centre in Jakarta until 3 March 1992, is since then believed to be detained at Salemba prison, Jakarta.

6. On 16 March 1992, Mr. Araujo was reportedly put on trial together with another East Timorese activist named Joao Freitas da Camara, both charged under the anti-subversion law for masterminding a demonstration in Jakarta, on 19 November 1991, in protest over the killing of dozens of demonstrators by Indonesian troops on 12 November 1991, at the Santa Cruz cemetery in Dili, East Timor; and for planning public demonstrations "to gain the sympathy of the international community for abuses of human rights in East Timor". Reportedly, Mr. Araujo was also charged for violation of articles 154 and 155 of the Indonesian Penal Code (KUHAP), for publicly expressing feelings of hostility, hatred or contempt towards the Government of Indonesia.

7. Mr. Araujo was sentenced to nine years' imprisonment. The indictment, which reportedly contained no evidence of his having used, advocated or incited violence, was said to be based largely upon the testimony of absent witnesses, who had testified in the presence of the police or other investigatory authorities or representatives of the prosecutor's office and whose testimony's veracity was not allowed to be impeached by Mr. Araujo. He is reported to have been subjected to beatings and solitary confinement prior to his trial. His detention and conviction allegedly stemmed from the fact that he had exercised his right to express his non-violent political opinions and organize a peaceful protest meeting.

8. The facts as set out above clearly suggest that Mr. Araujo has been victimized for expressing his non-violent political opinions. The fact that the indictment against him did not mention discovery of any explosives in his residence suggests that such explosives might have been planted with the intent to implicate him only for the purposes of arresting him. His arrest without a warrant, coupled with the attempt to implicate him falsely in the context of the fact that Mr. Araujo has not used, advocated or incited violence when peacefully demonstrating clearly suggests the arbitrary nature of his detention.

9. Mr. Araujo's conviction based on the testimony of witnesses who were not allowed to be cross-examined on account of their absence and whose statements made in the presence of police and other investigatory authorities were relied upon, suggests that the testimony itself is tainted. Some of the statements relied upon were made before other investigatory authorities or representatives of the prosecutor's office whose testimony was not also allowed to be impeached by Mr. Araujo. Reliance on such tainted testimony vitiates the trial and renders the continued detention of Mr. Araujo arbitrary. The fact that Mr. Araujo was subjected to beating and solitary confinement further points to the arbitrary nature of his detention. The facts, therefore, suggest that Mr. Araujo's detention and ultimate conviction is in violation of articles 5, 9, 19 and 20 of the Universal Declaration of Human Rights and articles 7, 9, 10, 14, 19 and 21 of the International Covenant on Civil and Political Rights.

10. In the light of the above the Working Group decides:

(a) The arrest of Fernando de Araujo and his continued detention upon conviction are unjustified and are declared to be arbitrary being in contravention of articles 5, 9, 19 and 20 of the Universal Declaration of Human Rights, articles 7, 9, 10, 14, 19 and 21 of the International Covenant on Civil and Political Rights and Principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The Working Group decides, furthermore, to transmit the information concerning the alleged ill-treatment to the Special Rapporteur on the question of torture.

11. Consequent upon the decision of the Working Group declaring the detention of Fernando de Araujo to be arbitrary, the Working Group requests the Government of the Republic of Indonesia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1993