

DECISION No. 18/1995 (INDONESIA)

Communication addressed to the Government of Indonesia on
23 August 1994.

Concerning Jannes Hutahaen, Parlin Manihuruk, Muchtar Pakpahan and
Maiyasyak Johan, 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 appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.
3. (Same text as para. 3 of Decision No. 35/1994.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Indonesia. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.
5. The communication submitted by the source, a summary of which was forwarded to the Government, concerned two workers' rights activists, Mr. Jannes Hutahaen and Mr. Parlin Manihuruk, one trade union leader, Mr. Muchtar Pakpahan and a human rights lawyer, Mr. Maiyasyak Johan. It was alleged by the source that Mr. Mutahaen and Mr. Manihuruk were arrested in Jakarta on the evening of 13 June 1994 by police officers from Medan and that it was not known where they were being held. Mr. Pakpahan was allegedly questioned by the Medan police for three days commencing 14 June 1994 and was again questioned from 23 June 1994. Mr. Johan was reportedly under intensive interrogation at Medan police headquarters (Poltabes Medan) since 18 June 1994. All four had been reportedly accused of incitement in connection with a wave of labour unrest in Medan, North Sumatra, in April 1994. The source further alleged that the four persons named above were arrested and questioned only because of their non-violent activities.
6. In response to the communication of 23 August 1994, the Government of Indonesia informed the Working Group that the alleged labour demonstration in Medan, North Sumatra between 14 and 20 April 1994 in fact resulted in the commission of brutal and destructive acts of crime involving thousands of rioters and causing material damage to factories, shopping centres and public transportation. One employee died and many persons received injuries. The Government observed that in order to restore public order and morality and to ensure the general welfare of the people, necessary legal and security measures were taken by the competent authorities. In respect of each of the persons concerned, the Government gave the following information:

(a) Mr. Jannes Hutahaen, an NGO activist of Kelompok Pelita Sejahtera (KPS) Medan and Mr. Parlin Manihuruk, an NGO activist of Pondokan, Medan, both fled to Jakarta following the Medan labour unrest, only to be arrested in the morning of 14 June 1994. They were then brought back to Medan and detained in the Medan police detention house from 15 July to 13 August 1994.

(b) During the investigation at the Medan police headquarters in June 1994, both Mr. Hutahaen and Mr. Manihuruk acknowledged that the preparation for the April labour strike was discussed and finalized at the office of the KPS, adding that they were acting as "facilitators". It was up to the workers themselves to decide upon its technical implementation, they contended.

(c) Following the investigations at the Medan police headquarters in June 1994, Mr. Muchtar Pakpahan, the self-claimed Chairman of the Indonesian Welfare Labour Union (SBSI), was finally arrested in Jakarta on 13 August 1994 after ignoring several police summons addressed to him in order to facilitate and complete the legal process. He was transferred to Medan, where he was then detained at the Medan police headquarters.

(d) The role of the three activists in the April labour unrest in Medan was substantiated by Mr. Amosi Telaumbanna, Chairman of the SBSI Medan chapter, during police investigation in June 1994. Mr. Telaumbanna himself was now under police detention.

(e) Mr. Maiyasyak Johan, a lawyer and Executive Director of the Central Advocacy Institute for the Indonesian Children (LAAI) in Jakarta was arrested upon his arrival in Medan by plane from Jakarta on 12 August 1994. Together with the other three activists, Mr. Johan was to be brought to trial in due time in connection with the violent labour riots in Medan in April 1994. According to the police, he was allegedly participating in the preparation of the labour riots.

(f) While in detention, the four men were, according to the Government, treated humanely in accordance with national law and international standards. The chairman of the Indonesian Legal Aid Institute (LBH), Mr. Adnan Buyung Nasution, visited them at the Tanjung Gusta penitentiary on 4 September 1994. After seeing them, Mr. Nasution said that he was fully satisfied with their health condition.

7. The Government affirmed that upon completion of investigation by the police, Mr. Muchtar Pakpahan was brought to trial in Medan on 19 September 1994 on charges of inciting workers to resort to violence, leading to the brutal and massive riot in the city in April 1994. He was reportedly represented by a group of 19 lawyers from Medan and Semarang, chapters of the Indonesian Bar Association (IKADAN) and the city chapter of the Legal Aid Institute (LBH). Mr. Muchtar Pakpahan was charged with stirring up the workers through speeches and written materials which violated articles 160 and 161 of the Indonesian Penal Code. The Government informed the Working Group that, if convicted, he was liable to be sentenced to six years imprisonment. The prosecutor in the case told the presiding judge trying the case, that Mr. Pakpahan had established the Indonesian Labour Union (SBSI) Medan Chapter, funded its activities and encouraged workers to strike.

The defendant, according to the Government, misled the workers by telling them that the SBSI was a legal organization. It was also alleged that Mr. Pakpahan gave courses and bribed workers, and that throughout the week-long riot in Medan, Mr. Pakpahan was in Jakarta, but he was monitoring the situation through his subordinates in Medan.

8. The Government in its reply stated that it was of the firm belief that the detention of these four persons was not and could not be arbitrary, since it was in conformity with relevant national law and with article 29 of the Universal Declaration of Human Rights and article 19 (3) of the International Covenant on Civil and Political Rights and that the rights of the concerned four persons were subject to respect of the rights or reputations of others and subject to the protection of national security or of public order, or of public health or morals.

9. After the response of the Government, additional information was received from the source, which reported that the four concerned persons had been convicted and sentenced. Jannes Hutahaen was sentenced on 22 November 1994 to seven months' imprisonment which was later reduced to five following an appeal to the High Court. Parlin Manihuruk was sentenced on 8 December 1994 to 11 months. The decision in the appeal before the High Court, however, was awaited. Mr. Muchtar Pakpahan was sentenced on 7 November 1994 to three years' imprisonment for incitement. It was alleged that his trial was marked by serious irregularities. Maiyasyak Johan was sentenced to nine months' imprisonment.

10. Pursuant to this additional information from the source, the communication was transmitted to the Republic of Indonesia on 7 February 1995, in respect of which a reply dated 18 April 1995 was received, reiterating the Government's views as reflected in the first above-mentioned response.

11. In the light of the facts alleged and the response of the Government it is clear that no definitive role has been attributed either to Mr. Jannes Hutahaen or Mr. Parlin Manihuruk in the labour demonstration in Medan, North Sumatra, between 14 to 20 April 1994. Neither of them was alleged to be present in Medan at the time of the labour demonstration which allegedly resulted in the commission of brutal and destructive acts wherein public property was destroyed. In these circumstances it is not understood how the charge of incitement can be made against them; especially since no overt or covert act has been attributed to either of them. The Government has also not placed before the Working Group facts which may lead to the conclusion that either of them facilitated the events in Medan between 14 and 20 April 1994. Their participation in discussions, even if this is taken to be correct, in preparation for the April labour unrest, cannot be regarded as an act of facilitation, nor can this amount to incitement.

12. Similarly, no specific act can be attributed to Mr. Muchtar Pakpahan which might suggest that he either facilitated or incited the labour unrest in Medan in April 1994. In fact, Mr. Pakpahan was in Jakarta throughout the week-long riot in Medan. His alleged writings which spurred workers to resort to criminal acts have also not been brought to the attention of the Working Group.

13. The facts as referred to above demonstrate that Jannes Hutahaen, Parlin Manihuruk, Muchtar Pakpahan and Maiyasyak Johan were doing no more than exercise their rights to freedom of opinion and expression and the right to freedom of peaceful assembly and association. The former right is protected under article 19 of the Universal Declaration of Human Rights and the latter under article 20 of the Universal Declaration of Human Rights. Their right not to be subjected to arbitrary arrest, as guaranteed by article 9 of the Universal Declaration of Human Rights, and by article 9 of the International Covenant on Civil and Political Rights, has also been violated.

14. The contention of the Government that article 29 (2) of the Universal Declaration of Human Rights applies to the activities of these persons is also not tenable. It cannot be said that the activities of Jannes Hutahaen, Parlin Manihuruk, Muchtar Pakpahan and Maiyasyak Johan could legitimately have been limited by these arrests for securing due recognition and respect for the rights and freedoms of others.

15. Consequent upon the view taken by the Working Group, it is clear that the subsequent trial and conviction of each of these persons is also arbitrary and unacceptable.

16. In the light of the above, the Working Group decides:

The detention of Jannes Hutahaen, Parlin Manihuruk, Muchtar Pakpahan and Maiyasyak Johan is declared to be arbitrary, being in contravention of articles 9, 19 and 20 of the Universal Declaration of Human Rights and articles 9 and 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

17. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government 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 2 June 1995.