

DECISION No. 36/1996 (INDONESIA)

Communication addressed to the Government of Indonesia on 5 February 1995.

Concerning: Francisco Miranda Branco, Isaac Soares, Miguel de Deus, Pantaleão Amaral, Rosalino dos Santos, Pedro Fatima Tilman, Marcus de Araujo, Anibal, Nuno de Andrade Sarmento Corvelho, Octaviano, Rui Fernandez, Jose Antonio Neves and Munir, 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. 35/1995.)
4. The Working Group welcomes the cooperation of the Government of Indonesia which forwarded its responses of 18 and 25 April 1995 to the allegations made concerning the above-mentioned persons. The Working Group transmitted the replies provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. 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. According to the communication submitted by the source, a summary of which was forwarded to the Government, the persons concerned may be divided into five groups: (a) Miranda Branco; (b) Isaac Soares, Miguel de Deus, Pantaleão Amaral, Rosalino dos Santos, Pedro Fatima Tilman, Marcus de Araujo and Nuno de Andrade Sarmento Corvelho; (c) Jose Antonio Neves; (d) Munir and (e) Anibal, Octaviano and Rui Fernandez.
6. Francisco Miranda Branco, born in 1952, was allegedly arrested on 6 December 1991 in Dili, East Timor by Indonesian security forces. Initially held in Comarca prison in Dili, he was on 11-12 June 1994 allegedly transferred to Semerang prison in Central Java. Pursuant to a trial Miranda Branco was sentenced to 15 years' imprisonment under the "Anti-Subversion Law" for allegedly being one of the organizers of a demonstration against the "Indonesian occupation of East Timor and for unjustly accusing Indonesia of violating human rights in East Timor". According to the source although Miranda Branco was a witness to the Santa Cruz incidents in Dili in November 1991 he neither helped organize nor participated in the above-mentioned demonstration. The Government, on the other hand, states that Branco was in fact the Secretary of the executive committee as well as the head of documentation and analysis of the "clandestine" branch of the anti-integration campaign. The Government further

alleges that Branco was one of the active organizers of the violent demonstration causing the incidents of 1991. Branco is further alleged to have played a leading role in organizing secret meetings to initiate strategies and plans leading to the disruption of law and order. The Government's position is that Branco was tried by independent and impartial courts and his activities having been substantially proven, resulting in compromising the territorial integrity of the Republic of Indonesia, the Dili Court of First Instance on 22 June 1992 sentenced him to 15 years' imprisonment. The Appellate Court, allegedly, affirmed the decision of the Trial Court. In 1994 Miranda Branco was granted a two-month remission on his sentence. On these grounds the Government challenges the allegations of arbitrary detention made by the source.

7. Isaac Soares, Miguel de Deus, Pantaleão Amaral and Rosalino dos Santos were reportedly sentenced to 20 months' imprisonment and Pedro Fatima Tilman to two years' imprisonment. Soares, de Deus and Amaral were allegedly tried at the Dili District Court and convicted of "expressing feelings of hostility to the Government" under article 54 of the Indonesian Criminal Code. None of the three were allegedly accompanied by legal counsel either during interrogation or during the trial. After the sentence they are believed to be held in Becora prison in Dili.

8. The Government responded by stating that Amaral, Soares, de Deus and Santos were all accomplices of Pedro de Fatima Tilman. The Government's position is that Tilman was a member of the clandestine branch of the anti-integration group and that his main task was to help prepare propaganda material, identify the opportunities for the violation of the law and disruption of public order and create such opportunities when possible. The Government considers Tilman to be a political agent under the control and command of the "forsa", the core armed groups. Tilman is alleged to have admitted of having organized a demonstration mainly targeted to attract foreign journalists residing at the Mahkota Hotel on 14 April 1994. The Government alleges that this task was basically ordered by the "forsa", the core armed groups. Participation in this demonstration was planned to be enlarged to create a situation for a clash between pro-integration and anti-integration sympathizers before foreign journalists. The Government position is that Tilman's activities should be evaluated in their entirety that he was arrested not merely for shouting anti-integrating slogans but acting as a dangerous agent of the armed group seeking to compromise the territorial integrity of Indonesia. The Government states that Tilman and his accomplices were accorded due process of law and all rights guaranteed to them by the Indonesian Criminal Code. Tilman, the Government states, was afforded the assistance on 23 June 1994 of proper legal counsel. He was sentenced to one year eight months' imprisonment. His accomplices Amaral, Soares, de Deus and Santos were also sentenced to one year eight months' imprisonment.

9. In respect of Marcus de Araujo and Nuno de Andrade Sarmiento Corvelho, they were also arrested in May 1994 by Indonesian Military forces, according to the source, for their non-violent political activities. They were reportedly detained in Dili, East Timor. The source could not provide any details regarding the trial of these persons. The Government in its response of 25 April 1995 stated that Araujo was one of the accomplices of Tilman and that he was arrested for the same charges as Tilman and after having accorded

him due process of law as well as other rights guaranteed by the Indonesian Criminal Procedure Code, sentenced him to one year eight months' imprisonment, which he was due to complete on 4 December 1995. Corvelho, on the other hand was arrested from 18 to 22 April 1994 and he was found at the place where Tilman and his accomplices were arrested. The Government states that when it realized that he was not involved in the crime, he was released and that during his detention he was accorded due process of law.

10. In respect of Jose Antonio Neves the source alleges that he is a leading member of the clandestine pro-independence East Timorese movement and a student of the theological institute in Malang. He was allegedly arrested on 19 May 1994 in Malang by military intelligence authorities and was taken to a safe house of the military's intelligence unit (SGI) and later transferred to the custody of the Public Prosecutor. As of late July 1994 he was held in Lowokwaru prison in Malang. The Government denies that Neves was a student. It states that he was an employee in a private company. The Government, accepting the date of arrest as 19 May 1994, denies that he was arrested by military intelligence and detained in a military intelligence safe house. The Government's position is that Neves was arrested by the police and detained at the police detention centre in Malang. The Government further stated that Neves is one of the leaders of the "clandestine" branch of the anti-integration campaign which sought to compromise the territorial integrity of Indonesia. The Government charges that Neves was mainly required to produce propaganda and campaign material to be distributed to foreign tourists visiting Malang and other places and creating and spreading false reports on the situation of human rights in East Timor to be disseminated in western countries. It is also stated by the Government that Neves was ordered to muster logistic and financial support as well as armaments for the "forsa" or the core armed groups and that some of the money received by him as contributions was diverted by him for his personal use. The Government states that when arrested he was informed of the charges against him and denied all allegations of torture. The Government admitted that as on the date of its response he was still awaiting trial.

11. In respect of Munir, a human rights lawyer at the Surabaya office of the Indonesian Legal Aid Institute (LBH), he was allegedly arrested on 19 August 1994 in Malang, East Java during a meeting with 14 workers from a company whose case LBH was assisting. Although he was released at the police station where he was taken, he was accused of organizing a public meeting without first obtaining police permission under article 510 of the Indonesian Criminal Code. The source alleges that such a law is repressive and prevents lawful dissent and political activities exposing those resorting to it to short-term interrogation in custody, imprisonment and detention and that the use of these laws are directed against human rights activists and lawyers.

12. The Government, however, states that Munir practises general law and is not specifically a human rights lawyer. It further states that the labour dispute in question with reference to 14 workers was finally adjudicated upon by the Supreme Court on 16 July 1994 and that its verdict is final subject to review if fresh evidence comes to light. Contrary to the source, the Government alleges that Munir on 19 August 1994 organized a public gathering in his personal capacity and not on behalf of his law firm and that the said meeting had nothing to do with the labour dispute, that having been finally

settled. In this regard the Government refers to article 510 of the Indonesian Criminal Code which provision relates to authorization from the Government or police for public or mass gatherings and traffic violations resultant from the organization of such mass gatherings. In this context the Government states that these provisions are administrative in nature and do not deal with the question of freedom of expression. The provisions are aimed according to the Government to protect the privacy of others and are in public interest. Denying the arrest of Munir, the Government states that he was charged with a petty offence, questioned and two weeks later on 1 September 1994 tried by the First Instance Court of Malang and fined US\$ 14.

13. In respect of Anibal, Octaviano and Rui Fernandez, though the source alleged that they also were arrested by the Indonesian military forces in May 1994 in Dili, East Timor, nothing more is stated by the source. The Government responded by stating that their names do not correspond to the lists of prisoners and detainees or those of released detainees. The Government, therefore, maintained that these names were either pseudonymous, aliases or simply non-existent.

14. Quite apart from the specific response of the Government with reference to the allegations made by the source on each person, the Government has made certain general comments which may be noticed. The Government maintains that Law No. 8, of 1981 concerning the Indonesian Criminal Procedure Law provides the relevant legal basis for the arrest and detention of those who violate the law. That arrest and detention can be affected only by police officers and that those arrested and the members of their family are informed of the reasons for their arrest and detention and that those who allege that they have been arbitrarily arrested can take recourse to legal remedies for their protection. The Government further refers to the independence of the Judiciary which ensures protection of a person's constitutional guarantees. Laws in Indonesia, claims the Government, are aimed at guaranteeing civil and political rights as well as the independence and impartiality of the judiciary. With specific reference to the case of East Timorese youths, the Government states that the anti-integration campaign in East Timor is composed of three arms, namely, the "forsa" or the core of armed groups, the "cellula" or supporting units of armed groups and the "clandestine" or the urban undercover groups. In this context the Government states that the activities of those involved in the anti-integration campaign violate two basic principles of human rights: first the exercise of the right to self-determination of the majority of the people in East Timor to integrate with Indonesia and second, the violation of international instruments guaranteeing the respect of Indonesian territorial integrity and national sovereignty. Those involved in the anti-integration campaign, claims the Government, should be considered as violators of both national and internationally recognized instruments.

15. In the case of Francisco Miranda Branco, from the facts as disclosed, it may not be possible for the Working Group to come to any definitive conclusion in respect of the nature of Branco's detention. Branco is charged and convicted for actively organizing violent demonstrations and of actively planning disruption of law and order. The Indonesian courts, affirming the role of Branco, sentenced him to imprisonment and the Appellate Court has

apparently upheld the conviction. In these circumstances, the Working Group is not in a position to hold the detention of Branco to be arbitrary in the absence of further information. It decides to keep the case of Francisco Miranda Branco pending.

16. In respect of Tilman, Soares, de Deus, Amaral and Do Santos, each of them seemed to have served their respective sentences which were completed on 4 December 1995. The contentious nature of the facts, both in the case of Tilman and his alleged accomplices and given the fact that they have been convicted pursuant to a trial in which the Government states that their constitutional guarantees were fully respected, and there is no evidence to suggest that they were not, the Working Group considers it appropriate to file the case in the light of their release on 4 December 1995.

17. In respect of Corvelho the Government admits its mistake and states that Corvelho was released as soon as it was realized that he was not involved in any crime. Though his detention cannot be justified, the Working Group is of the belief that as Corvelho was detained for only four days and released as soon as it was realized that he was not involved in any crime, it considers it appropriate to file the case of Corvelho also.

18. In the case of Antonio Neves, the Working group considers his detention to be arbitrary. He was allegedly arrested on 19 May 1994 and was still awaiting trial when the Government last responded on 25 April 1995. Admittedly Neves was detained for being part of the anti-integration campaign in which his role was to produce propaganda and campaign material to be distributed to foreign tourists. Though the Government alleges that he was required to master logistic and financial support, as well as armaments for the "forsa" or the core armed groups, the Government has provided no evidence that this was in fact done, nor has a court of law found such evidence to be true. His detention clearly violates articles 9 and 19 of the Universal Declaration of Human Rights.

19. In the case of Munir, the human rights lawyer, the Government has categorically stated that he was not detained. In terms of the mandate of this Working Group, it is not called upon to comment on the legality of the violation of articles 510 and 511 of the Indonesian Criminal Code preventing the holding of public or mass meetings. As Munir was never arrested and the source has not provided the Group with any convincing material that he was, the Working Group has no choice but to file his case.

20. To similar effect is the decision of the Working Group in respect of Octaviano, Anibal and Rui Fernandez, though for different reasons. In their case the Government denies that their names were included either in the list of detainees or those released. In the absence of any definite information in this regard, their cases are also filed.

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

(a) The detention of Jose Antonio Neves is declared to be arbitrary, being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) In the cases of Isaac Soares, Miguel de Deus, Pantaleão Amaral, Rosalino dos Santos, Pedro Fatima Tilman, Marcus de Araujo, Nuno de Andrade Sarmiento Corvelho, the Working Group, having examined the available information and without prejudging the nature of their detention, decides to file these cases in terms of paragraph 14.1 (a) of its revised methods of work.

(c) The cases of Octaviano, Anibal, Rui Fernandez and Munir are also filed since these persons have apparently never been detained.

(d) In the case of Francisco Miranda Branco, the Working Group decides, for the reasons mentioned in the main body of the decision, to keep it pending while awaiting further information under paragraph 14.1 (c) of its revised methods of work.

22. Consequent upon the decision of the Working Group declaring the detention of Jose Antonio Neves 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.

Adopted on 19 September 1996.