

OPINION No. 4/1997 (MALAYSIA)

Communication addressed to the Government on 16 August 1996.

Concerning: Nasiruddin bin Ali, Fakharuddin Ar-Razi bin Abdullah, Pahrol bin Mohd Juoi, Jaafar Ahmad, Mohd Nizamuddin Aashaari, Hashim Ahmad, Hasyim Jaafar, Ahmad Salim Omar and Hashim Muhamad.

Malaysia is not a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group regrets that the Government has not replied within the 90-day deadline.
3. (Same text as paragraph 3 of Opinion No. 1/1997.)
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. According to the communication received from the source, a summary of which was transmitted to the Government, Nasiruddin bin Ali, aged 37, Fakharuddin Ar-Razi bin Abdullah, aged 30, Pahrol bin Mohd Juoi, aged 36, Jaafar Ahmad, aged 29, Mohd Nizamuddin Ashaari, aged 33, Hashim Ahmad, aged 42, Hasyim Jaafar, aged 40, Ahmad Salim Omar, aged 49 and Hashim Muhamad, aged 30, all former members of the banned Al Arqam Islamic sect have allegedly been ordered to be detained without trial for two years under the Internal Security Act, for "acting in a manner prejudicial to the security of Malaysia". It is alleged that their detention orders may be renewed indefinitely by the Minister of Home Affairs without any reference to courts. The nine men arrested in May and June 1996 are allegedly being held at Kamunting Detention Centre, Taiping, in the State of Perak. These men are allegedly being held for the peaceful expression of their religious beliefs.
6. In the absence of a response from the Government and taking into account the allegations made, the Working Group notes that all the above-mentioned persons have been detained without a trial having commenced. Their detention may be extended beyond two years without reference to courts. Article 9 of the Universal Declaration of Human Rights stipulates that no one shall be subjected to arbitrary detention. Under article 10, everyone is entitled to a fair and public hearing by an independent and impartial tribunal. None of the above-mentioned persons have been formally charged with the commission of an offence. The Working Group believes that the rights of the above-mentioned persons enshrined in articles 9 and 10 of the Universal Declaration of Human

Rights, relating respectively to the right not to be arbitrarily detained and the right to a fair trial, have been contravened, and that the contravention is of such gravity as to confer on the deprivation of liberty an arbitrary character.

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

The deprivation of liberty of Nasiruddin bin Ali, Fakharuddin Ar-Razi bin Abdullah, Pahrol bin Mohd Juoi, Jaafar Ahmad, Mohd Nizamuddin Aashaari, Hashim Ahmad, Hasyim Jaafar, Ahmad Salim Omar and Hashim Muhamad, is arbitrary, as being in contravention of articles 9, 10 and 18 of the Universal Declaration of Human Rights and falls within category III of the applicable categories to the consideration of the cases submitted to the Working Group.

8. Consequent upon the opinion rendered, the Working Group requests the Government of Malaysia to take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 15 May 1997.