

OPINION No. 5/1997 (INDONESIA)

Communication addressed to the Government on 19 November 1996.

Concerning: Cesaitino Correla, Sesario Freitas, Orlando Morreira, Jacinto Pedro da Costa Xavier, Jose Armino Morreira, Aniceto Soares, Jose Gomes, Miguel Correia, Fransisco Amat, Pedro da Luz, Luis Pereira, Cesaltino Sarmento Boavida, Jose Soares, Moises Freitas Morreira, Alipio Pascoal Gusmao, Paulino Cabral, Armino da Costa, Mario Jose Maria, Miguel de Jesus, Antonio Gusmao Freitas and Marcelino Fraga.

The Republic of Indonesia 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, 21 East Timorese, including several minors, were reportedly sentenced to imprisonment for their alleged involvement in riots which took place in Baucau in June 1996. The names of the persons concerned, their age and their sentences, as reported by the source are the following: 1. Cesaitino Correla (aged 21, sentenced to 1 year and 10 months imprisonment); 2. Sesario Freitas (aged 22, sentenced to 1 year and 10 months imprisonment); 3. Orlando Morreira (aged 21, sentenced to 1 year and 10 months imprisonment); 4. Jacinto Pedro da Costa Xavier (aged 17, sentenced to 1 year imprisonment); 5. Jose Armino Morreira (aged 21, sentenced to 1 year and 8 months imprisonment); 6. Aniceto Soares (aged 22, sentenced to 2 years imprisonment); 7. Jose Gomes (aged 24, sentenced to 4 years and 6 months imprisonment); 8. Miguel Correia (aged 21, sentenced to 1 year and 10 months imprisonment); 9. Fransisco Amat (aged 20, sentenced to 1 year and 8 months imprisonment); 10. Pedro da Luz (aged 16, sentenced to 1 year and 11 months imprisonment); 11. Luis Pereira (aged 19, sentenced to 2 years and 3 months imprisonment); 12. Cesaltino Sarmento Boavida (aged 23, sentenced to 1 year and 8 months imprisonment); 13. Jose Soares (age unknown, sentenced to 1 year and 8 months imprisonment); 14. Moises Freitas Morreira (aged 15, sentenced to 8 months imprisonment); 15. Alipio Pascoal Gusmao (aged 21, sentenced to 1 year and 9 months imprisonment); 16. Paulino Cabral (aged 24, sentenced to 1 year and 7 months imprisonment); 17. Armino da Costa (aged 21, sentenced to 1 year and 10 months imprisonment); 18. Mario Jose

Maria (aged 22, sentenced to 1 year and 6 months imprisonment); 19. Miguel de Jesus (aged 28, sentenced to 2 years imprisonment); 20. Antonio Gusmao Freitas (aged 22, sentenced to 2 years and 2 months imprisonment); 21. Marcelino Fraga (aged 22, sentenced to 1 year and 3 months imprisonment).

6. The Working Group is informed through the source that these 21 persons allegedly participated in riots which broke out on 10 and 11 June 1996 as a result of a "religious" conflict between Catholics and Muslims which was apparently provoked by a number of the Indonesian army. The above-mentioned 21 persons were reportedly convicted of violence against people and property under article 2, Part 1 of the Emergency Laws No. 132, of 1951. It is alleged that their right to a fair trial was not respected denying each of them their right to: (a) legal representation, (b) presumption of innocence, (c) be tried within a reasonable time, (d) have the court's judgement published and (e) not being compelled to testify against themselves or confess their guilt.

7. In the absence of a response from the Government and taking into account the allegations made, the Working Group notes that each of the above-mentioned persons was entitled to a fair trial. Yet none of them was granted any legal representation during the course of their trial. The Court allegedly did not respect the presumption of innocence; nor was the judgement of the court published. It also emerges from the facts as stated that the accused were compelled to testify against themselves and to confess to their guilt. All this proves that the accused were not granted a fair trial in contravention of article 10 of the Universal Declaration of Human Rights. In these circumstances the Working group believes that the detention of the above-mentioned persons is in contravention of 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, and that the contravention is of such gravity as to confer on the deprivation of liberty an arbitrary character.

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

(a) The deprivation of liberty of the persons above-mentioned is arbitrary, as being in contravention of articles 9 and 10 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.

(b) The Working Group transmits the cases of Jacinto Pedro da Costa Xavier, aged 17; Pedro da Luz, aged 16 and Moises Freitas Morreira, aged 15, to the Committee on the Rights of the Child.

(c) The Working Group also transmits the present opinion to the Secretary-General, in the framework of resolution 1997/63, paragraph 4 (a) of the Commission on Human Rights.

9. Consequent upon the opinion rendered, the Working Group requests the Government of the Republic of Indonesia 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.