

OPINION No. 21/1998 (INDONESIA)

Communication addressed to the Government on 5 May 1998

Concerning: Ratna Sarumpaet, Fathom Saulina, Ging Ginanjar, Bonar Tigor Naipospos, Alexius Suria Tjakaja Tomm, Wira, Joel Thaher and Aspar Paturusi

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established pursuant to resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended in resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.
2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time.
3. (Same text as paragraph 3 of Opinion 1/1998.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations of the source.
5. The facts as disclosed by the source reveal that Ratna Sarumpaet, a playwright, actress and pro-democracy activist, was reportedly arrested on 10 March 1998 at the Horison Hotel in North Jakarta where she had called a meeting to discuss the consequences of the Indonesian economic crisis. She was allegedly arrested by the local chief of police, along with eight other persons attending the meeting, most of them either journalists or human rights activists. Those arrested were Fathom Saulina, Ging Ginanjar, a journalist and correspondent for an Australian radio station, Adi Hermawan, a journalist and former correspondent for Merdeka, Bonar Tigor Naipospos, a human rights activist who had been imprisoned in the past for distributing the works of a banned novelist, as well as Alexius Suria Tjakaja Tomm, Wira, Joel Thaher and Aspar Paturusi.
6. The source alleged that all the persons arrested were to be tried under Law No. 5 (PNPS/1963), which provides for up to five years' imprisonment for "public expression of feelings of hostility, hatred or contempt towards the Government". On 31 March 1998, a legal challenge against the detention of Ms. Sarumpaet and the other seven persons named above was allegedly rejected by the District Court in north Jakarta. The source asserts that Ms. Sarumpaet and the five others had engaged in no violent or criminal activity and that they were merely exercising their right to freedom of expression.

7. The Government, in its response dated 24 June 1998, provided a clarification concerning the persons arrested on 10 March 1998.

8. According to the Government, on 9 March 1998, Ms. Sarumpaet organized a political meeting at Putrei Dnyung cottage in Jaya Ancol park, north Jakarta, without authorization from the local police office. In the absence of an authorization the meeting could not take place and Ms. Sarumpaet, instead, invited the audience to sing the national anthem and another national song. Thereafter, they prayed and observed silence for some time. The police apparently arrived on the scene and ordered the meeting to disperse. Upon Ms. Sarumpaet's refusing to accompany the police for questioning, and following a fight that ensued she, along with eight others, was arrested. Thereafter, the Government states, on 11 March 1998, the persons arrested were officially charged with violating Law No. 5 (PNPS/1963) on political activities and under articles 154 and 160 of the Indonesian Penal Code, under which any person who publicly gives expression to feelings of hostility, hatred or contempt towards the Government of Indonesia shall be punished by a maximum imprisonment of seven years. Article 160 of the Code stipulates that any person who orally or in writing incites in public to commit a punishable act, a violent action against the public authority or any other disobedience, either with regard to a statutory provision or to an official order issued under a statutory provision, shall be punished by a maximum term of imprisonment of six years.

9. Those arrested were also charged with violating articles 55 (1) and 218 of the Penal Code. Article 55 stipulates that those who perpetrate or take a direct part in or provoke others to perpetrate punishable acts shall be punished by law. Article 218 states that any person who, with deliberate intent, on the occasion of a rally or public meeting, does not immediately move away after three summons to do so by or on behalf of the competent authorities shall be punished with a maximum term of imprisonment of four months.

10. The Government informs us that on 17 March 1998 two of those arrested were released on bail. On 21 April 1998, Ms. Sarumpaet was apparently hospitalized at the Metropolitan medical centre. On 29 April 1998 an ICRC delegation visited all those detained at the Jakarta Police Headquarters detention unit and Ms. Sarumpaet at the medical centre. On 20 May 1998, the Government informs us that the prosecutor dropped charges against those arrested for violating Law No. 5 (PNPS/1963) and articles 154 and 160 of the Indonesian Penal Code, on the basis of insufficient evidence. However, charges of violating articles 55 and 218 of the Indonesian Penal Code were pressed and the panel of judges considered the time already spent in jail as sufficient punishment.

11. In its reply, the Government alludes to a new environment of more political freedom and reform emerging from nationwide demonstrations. It refers to the peaceful transfer of power and the establishment of a more democratic government. In its response, the Government recognizes the new political environment and acknowledges that the peaceful expression of views critical of the Government could not be considered a breach of the law. It is in this context that the Prosecutor dropped the charges for which prosecution

was initially sought. The Government has also placed on record its desire and resolve to undertake further reforms and is considering the release of those who were jailed for political reasons.

12. The Working Group is of the opinion that, in the light of the response of the Government and of its having placed its resolve on record, together with its acknowledgement that peaceful expression of political views and criticism of the Government cannot be considered a breach of the law, there is no necessity to render a decision, especially since those detained have already been released. The Working Group would have considered the case on its merits had the Government not recognized the need for reforms. The Working Group believes that appropriate legal reforms will take place to ensure that the peaceful expression of political views and criticism of the Government is not regarded as a penal offence.

13. In the circumstances set out above, the Working Group resolves to file the case and urges the Government to take further steps to reform the Penal Code to make its provisions consistent with the principles set out in the Universal Declaration of Human Rights.

Adopted on 17 September 1998.

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