

OPINION No. 10/2004 (MALAYSIA)

Communication addressed to the Government on 20 February 2004

Concerning: Muhammad Radzi bin Abdul Razak, Nurul Mohd Fakri bin Mohd Safar, Mohd Akil bin Abdul Raof, Eddy Erman bin Shahime, Muhammad Ariffin bin Zulkarnain, Abi Dzar bin Jaafar, Falz Hassan bin Kamarulzaman, Mohd Ikhwan Abdullah and Shahrul Nizam Amir Hamzah

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

1. (Same text as paragraph 1 of opinion No. 20/2003.)
2. The Working Group regrets that the Government has not replied within the 90 day deadline and has not provided any information on the case in question.
3. (Same text as paragraph 3 of opinion No. 20/2003.)
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 refuted by the Government.
5. The cases summarized hereafter have been reported to the Working Group as follows: Muhammad Radzi bin Abdul Razak, 19 years old, Nurul Mohd Fakri bin Mohd Safar, 17 years old, Mohd Akil bin Abdul Raof, 21 years old, Eddy Erman bin Shahime, 19 years old, Muhammad Ariffin bin Zulkarnain, 18 years old, Abi Dzar bin Jaafar, 18 years old, Falz Hassan bin Kamarulzaman, 17 years old, Mohd Ikhwan Abdullah, 19 years old, Shahrul Nizam Amir Hamzah, 21 years old, all of Malaysian nationality, and students at the University of Islamic Studies in Karachi, Pakistan, were initially arrested in Karachi on 20 September 2003. They were suspected of involvement in the activities of the organization called Jemaah Islamiyah, which has been accused of terrorist bombings in the South-East Asian region. The students were arrested during a pre-dawn raid on three religious schools in Karachi, together with four other Malaysian students.
6. On 25 September 2003, Malaysian authorities announced that the 13 students were being groomed to take over the leadership of Jemaah Islamiyah. On 10 November 2003, Pakistani security forces deported the 13 students to Malaysia, where they were immediately arrested and detained under sections 73 (1) and 8 of the Internal Security Act 1960 (ISA). They are being held by order of the Home Minister of Malaysia at unknown locations, although they are reported to be at Kamunting detention centre. ISA empowers the police to arrest and detain anyone threatening national security for 60 days without trial. When the first 60-day detention period lapses, the Home Minister can extend the detention without trial for a further two years under section 8 of the ISA, and then indefinitely.
7. On 11 November 2003, Malaysian police authorities confirmed that the 13 students had been in police custody since their arrest on their return in a special aircraft. Their detention was carried out under the powers enacted in the ISA. On 12 November 2003, the Government of

Malaysia defended the detention of the students, arguing that investigations were under way to clarify their links with the Jemaah Islamiyah. On 24 November 2003, 4 of the 13 students were released unconditionally. The persons named in the communication are the other nine, who remain in detention.

8. The source also indicates that on 22 November 2003, the nine students met with their lawyers at police headquarters in Kuala Lumpur for the first time since their arrest. The lawyers were given only 20 minutes for each student. Police officers were reportedly sitting behind the lawyers and could see and hear the interviews. The police officers allegedly listened and took notes of the conversations between the detainees and their lawyers. According to the source, the police were present in order to intimidate the detainees.

9. On 8 December 2003, the Home Minister decided to extend the detention orders issued against five of the students by a further two years, under section 8 of the ISA. They continue to be interrogated by the police. On 9 December 2003, Muhammad Ariffin bin Zulkarnain, Falz Hassan bin Kamarulzaman, Shahrul Nizam Amir Hamzah and Nurul Fakri bin Mohd Safar were released and placed under Restricted Order for two years. The Restricted Order prevents them from leaving the district where they were sent and obliges them to report to the police at least three times a month. They must be in their houses by a certain time of the day.

10. According to the source, the ISA should not be used to detain and interrogate the young men, as it exposes them to a high risk of physical and psychological ill-treatment and, potentially, torture. Their incommunicado detention without trial is a violation of their fundamental human rights. The authorities should produce them before a competent and impartial court and present evidence of their alleged acts, or release them immediately if evidence cannot be provided.

11. The Working Group, based on the information it received, which has not been contested by the Government, observes that the five Malaysian students who remain in detention - Muhammad Radzi bin Abdul Razak, Mohd Akil bin Abdul Raof, Eddy Erman bin Shahime, Abi Dzar bin Jaafar and Mohd Ikhwan Abdullah - were detained in Pakistan and deported to Malaysia, where they are kept in detention without trial. The administrative detention has been extended by the Home Minister based on an internal law. No criminal charges have been brought against them. They have not been given the opportunity of a fair trial before an independent judicial authority.

12. The Working Group considers that administrative detention on such grounds, even when in conformity with a domestic law, constitutes denying the opportunity of a fair trial by an independent and impartial judicial authority. In addition, these persons were not allowed to appoint a lawyer or to communicate with their relatives. Their detention is therefore a serious contravention of international norms and constitutes a violation of the due process of law of such gravity as to confer upon the deprivation of liberty an arbitrary character.

13. In the light of the above, the Working Group renders the following opinion:

With regard to Muhammad Ariffin bin Zulkarnain, Falz Hassan bin Kamarulzaman, Nurul Mohd Fakri bin Mohd Safar and Shahrul Nizam Amir Hamzah, the Working Group, in view of their release and on the basis of section 17 (a) of its methods of work, decides to file their cases.

With regard to Muhammad Radzi bin Abdul Razak, Mohd Akil bin Abdul Raof, Eddy Erman bin Shahime, Abi Dzar bin Jaafar and Mohd Ikhwan Abdullah, their deprivation of liberty is arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

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

Adopted on 28 May 2004.