

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
IDN 7/2015.

8 September 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged threats and intimidation of human rights defender Mr. Theo Hese gem.

Mr. Theo Hese gem is the head of the Advocacy Network for Upholding Law and Human Rights of Papua Central Highlands (*Jaringan Advokasi Penegakan Hukum dan HAM Pegunungan Tengah Papua, JAPHAM*) and the chair of the Coalition Team for Justice, Law and Human Rights of the Central Highlands of Papua (*Tim Koalisi untuk Perdamaian Hukum dan HAM Pegunungan Tengah*). He is engaged in investigative reporting on serious human rights violations occurring in the central highlands of West Papua, and provides assistance to victims of human rights violations. Mr. Hese gem was the subject of a previous communication sent to your Excellency's Government on 12 September 2014, case number IDN 4/2014, see A/HRC/28/85. We regret that to date no response has been received to this communication.

According to the information received:

In May 2015, Mr. Theo Hese gem, received a threatening text message from an unknown number following the arrest and reported torture of a Papuan man by local police. The text message stated: "Don't cry out about the victim or his torture just because you are a human rights defender. You don't know when your turn will come to be tortured and experience the same misery." In the same month, Mr. Hese gem received a threatening phone call from the Chief of the Jayawijaya Regional Police, [REDACTED]

On 21 June 2015, Mr. Hese gem accompanied a family as they visited their severely injured relative in hospital. The relative was being held in intensive care after having been shot three times by Wamena police. Upon arrival at the hospital, Mr. Hese gem requested that the police guarding the relative wait outside the emergency room in order to allow the family to make their visit. A short while later, the Chief of the Regional Police Mr. [REDACTED] arrived at the hospital and demanded that Mr. Hese gem leave. Subsequently, on 4 July 2015, the Chief of the Regional Police was quoted in an article in a local newspaper referring to the hospital visit. He allegedly stated that Mr. Hese gem had been the provocateur in the incident, and had driven policemen from the hospital on the date in question.

On 28 July 2015, Mr. Hese gem, along with other human rights defenders from the Coalition Team for Justice, Law and Human Rights, accompanied the abovementioned man during a pre-trial hearing in Wamena District Court. It is alleged that the pre-trial hearing was attended by dozens of police officers in an attempt to intimidate Mr. Hese gem and other members of the Coalition Team for Justice, Law and Human Rights.

On 8 August 2015, Mr. Hese gem met with the chief of the National Police in Jakarta and reported his alleged harassment by local and regional police.

Concern is expressed at the threats made against Mr. Hese gem, which appear to be a clear attempt to dissuade him from documenting human rights abuses committed by local and regional police in the West Papuan highlands. Further concern is expressed at the apparent role of local and regional police in the on-going intimidation and harassment of Mr. Hese gem, which appears to be related to the legitimate exercise of his right to freedom of expression.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with the above alleged facts and concerns, please refer to the **Reference to International Law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Has any action been taken following the complaint lodged by the victim?
3. Please indicate what measures are in place to ensure oversight of the actions of local and regional police in the province of West Papua.
4. Please indicate what measures have been taken to ensure that the right to freedom of expression and opinion, including the legitimate right to collect and disseminate information, is respected and guaranteed in Indonesia, and in particular the province of West Papua.
5. Please kindly indicate what measures have been taken to ensure that human rights defenders, including members of civil society organizations, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.
6. Please provide information on measures undertaken to improve the responsiveness and effectiveness of domestic protection mechanisms available to human rights defenders, as well as measures undertaken to ensure human rights defenders do not face retaliation after having presented complaints to the relevant authorities.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the articles 19 and 20 of the Universal Declaration of Human Rights (UDHR) and articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), accessed by Indonesia on 23 February 2006, which provide for the right to freedom of expression and opinion and the right to freedom of association.

In paragraph 23 of its General Comment No. 34, the Human Rights Committee has urged that States parties should protect against attacks aimed at silencing those exercising their right to freedom of expression. The Committee has recognized that those "persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports", are "frequently subjected to threats, intimidation and attacks because of their activities." The Committee has urged that all such attacks be vigorously investigated in a timely fashion, perpetrators prosecuted, and victims receive the appropriate form of redress.

Similarly, the Human Rights Council, in paragraphs 3 and 5 of its Resolution 12/16, has also expressed its concern at the violation of human rights, including intimidation, persecution and harassment, threats of acts of violence and censorship against those who seek to promote their rights, including human rights defenders, and has called upon States to take all necessary measures to put an end to violations of these rights and bring those responsible to justice.

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;

- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;

- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would also like to refer to Human Rights Council Resolution 22/6, which urges States to acknowledge publicly the important and legitimate role of human rights defenders in the promotion of human rights, democracy and the rule of law (OP 5).

