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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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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; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 25/2, 24/5, 25/18, and 25/13.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the **violent dispersal of a demonstration in Jayapura, West Papua, on 2 April 2014**, and the arrest and torture of two student demonstrators, Mr. **Alfares Kapisa** and Mr. **Yali Wenda**.

Mr. Alfares Kapisa is a medical student at Cenderawasih University, Jayapura. He is also the field coordinator of the demonstration on 2 April 2014.

Mr. Yali Wenda is a social and political sciences student at Cenderawasih University, Jayapura. He is also a member of the Student Solidarity for Political Prisoners (Solidaritas Mahasiswa Peduli Tapol).

According to the information received:

On 28 March 2014, Mr. Yali Wenda submitted a letter to the Jayapura City police station (Polres Kota Jayapura) where he provided notification of two planned peaceful demonstrations on 2 April 2014. The purpose of these demonstrations was to call for the release of 76 Papuan political prisoners, the opening of democratic space, and access for journalists, researchers and United Nations observers to West Papua. Mr. Wenda was reportedly advised by the police to return on 1 April 2014 to collect a letter confirming the police's receipt of their notification., which he did. He was then requested to sign a nine-point letter

guaranteeing that the demonstrations scheduled for 2 April would be peaceful. Mr. Wenda signed the letter as requested and was assured that he would receive the confirmation letter on the morning of 2 April.

On 2 April 2014, two demonstrations took place; one at the Cenderawasih University (UNCEN) in Waena and the other one in Abepura. At around 8:00 a.m., students gathered at UNCEN in Waena for the demonstration. A few moments later, three trucks of Jayapura Crowd Control police (polisi Pengendalian Massa, Dalmas) and three trucks of police Mobile Brigades (Brigades Mobil, Brimob) arrived, along with a water cannon and a barracuda tank.

At around 10:20 a.m., the demonstrators at UNCEN attempted to march towards Abepura to join the other demonstration and were subsequently blocked by the police. The assistant of Rector III of UNCEN then reportedly prepared two trucks to transport the students; however, the police similarly blocked these trucks and ordered the demonstrators to disperse and return home. The demonstrators did not comply with this request.

Mr. Alfares Kapisa and Mr. Yali Wenda then approached the police in an attempt to negotiate. The two students were subsequently arrested and thrown into the control truck. They were reportedly kept in the truck for 1.5 hours and were repeatedly beaten with fists, sticks and rifle butts, and kicked with jackboots.

Following the arrest of the two student demonstrators, the police officers reportedly shouted racist insults at the remaining indigenous student demonstrators, calling them “monkeys” and “idiots”. During this time, the police officers reportedly detained several older indigenous women who were in the area and said “we are going to torture your mothers.” The crowd responded by throwing stones at the police. The police reportedly then fired 11 shots and teargas at the demonstrators. The student demonstrators fled the area and sought cover in the campus.

Mr. Kapisa and Mr. Wenda were subsequently brought to the Jayapura police station. During the journey, they were reportedly forced to lie face down in the truck, while the police trampled on them and shocked them with electric stun batons.

Mr. Kapisa and Mr. Wenda were then taken to the criminal investigation unit (Reserse Kriminal, reskrim) at the Jayapura police station and placed in a cell. During the night, a doctor arrived at their cell to clean their wounds. The doctor also stitched Mr. Wenda’s ear that had been torn. This was allegedly done without anesthetics. The doctor also requested Mr. Kapisa and Mr. Wenda to hand over their clothes which were covered with blood and the police officers brought them clean clothes to put on.

On 3 April between 08:00 and 11:00 a.m., Mr. Kapisa and Mr. Wenda were interrogated by the police investigator. They were reportedly forced to sign a

police investigation report, which said that they had not been beaten, and to promise not to carry out any more demonstrations. Reportedly, their lawyers were refused access to Mr. Kapisa and Mr. Wenda at three separate occasions while they were detained. Reportedly, one of the lawyers was informed by the Chief of Jayapura Police that Mr. Kapisa and Mr. Wenda had been arrested because they had violated the terms of the letter which Mr. Wenda had signed before the demonstration.

Mr. Kapisa and Mr. Wenda were released at noon and were taken to Dian Harapan hospital to receive medical treatment and obtain a medical report. Their injuries included the following; Mr. Kapisa had a swollen eye and temple, swollen top centre of head, wounds on the body from electric stun baton, while Mr. Wenda had a torn left ear, swollen chin and wounds on the body from electric stun baton. Allegedly, when Mr. Kapisa and Mr. Wenda and their lawyers requested a medical report detailing their injuries, they were informed that this could only be issued with a letter from the police. Furthermore, Mr. Kapisa and Mr. Wenda have allegedly not received any compensation from the authorities for the treatment that they have required for the injuries that they sustained.

Following their release, Mr. Wenda has been visited on two occasions by police intelligence agents who reportedly asked him whether he is scared after having been beaten.

Grave concerns are expressed regarding the reported excessive use of force against the demonstrators. Further concerns are expressed regarding the arrest and torture of Mr. Alfares Kapisa and Mr. Yali Wenda, and for their physical and psychological integrity in light of the reports acts of intimidation following their release.

While we do not wish to prejudge the accuracy of these allegations, we would further like to refer to your Excellency's Government to the following provisions of the ICCPR:

- article 19, which provides that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”; and
- article 21, which provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

We would like to further refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely,

online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In addition, 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental

freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

In addition, we would like to refer to the 2006 report to the General Assembly (A/61/312) of the Special Representative of the Secretary-General on the situation of human rights defenders and in particular to paragraph 98 which states that “in conformity with article 15 of the Declaration [on Human Rights Defenders], the Special Representative urges States to ensure that law enforcement agencies and their members are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials and other relevant treaties, declarations and guidelines. The Special Representative also advises all States that all allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials”.

With regards to youth defenders taking part in demonstrations, we would like to refer to the 2007 report to the General Assembly of the Special Representative of the Secretary-General on the situation on human rights defenders in which she recommends to “take steps to create a conducive environment that allows children and young adults to associate and express views on matters affecting them as well as on broader human rights issues. Student protests have a high educational value as they are among the first experiences of public participation and human rights defense of students. Ensuring a conducive environment for student protests is a social investment in addition to a legal obligation” (A/62/225, para. 101 b)

Furthermore, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context, we would like to draw the attention of your Excellency’s Government to paragraph 1 of Human Rights Council Resolution 16/23 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

We would also like to draw your Excellency’s Government’s attention to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Excellency’s Government’s attention to paragraph 7b of Human Rights Council Resolution 16/23,

which urges States “To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture;”.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary accurate?
2. Has a complaint been lodged by or on behalf of the victims?
3. Please provide information concerning the legal grounds for the use of force against the demonstrators and how these measures are compatible with international human rights law.
4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case.
5. Please provide information concerning the legal grounds for the arrest and detention of the abovementioned persons and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR. Please provide information on whether all detainees have access to family members, legal counsel, and medical personnel.
6. Please indicate what measures have been taken to ensure that the legitimate right to assemble peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.
7. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

We would appreciate a response within sixty days. Your Excellency’s Government’s response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned

persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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