HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

Mandates of the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the rights of indigenous peoples

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolutions 22/9, 24/6, and 24/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged preventable deaths of 51 children and 3 adults as a result of a Pertussis epidemic**, which predominately affected the indigenous Papuans of Nduga Regency in Papua Province. Both national and local government institutions reportedly failed to adequately prevent, treat and control the Pertussis epidemic.

According to the information received:

Between November 2015 and 5 January 2016, 51 children and 3 adults reportedly died of Pertussis (whooping cough) in the districts Mbua, Dal and Mbulu Yalma, Nduga Regency, Papua Province, Indonesia.

The Ndgua Regency is one of the most remote regencies in the central highlands of Papua Province. The population largely consists of indigenous Papuans living in small villages with restricted transportation accessibility due to them being surrounded by primary mountain rainforest. Functioning health care centres and adequate health care personnel are reportedly scarce or inoperative in all three districts.

It is reported that, in October 2015, people living in these districts were severely affected by the weather phenomenon El Niño. This phenomenon, which is likely associated with climate change, resulted in extremely dry and cold climate in the West Papua region. Particularly in the Papuan highlands, these weather conditions had a grave impact on food supply and subsistence of the indigenous peoples as they caused crop damage and the death of livestock.

The cold weather and food shortages reportedly aggravated the existing chronic malnutrition of the indigenous peoples in Nduga Regency and hence further weakened their immune system. This left especially children at high risk of disease and infections.

In combination with limited access to clean water and proper ventilation, the malnutrition facilitated a fast spreading of the airborne Bordetella Pertussis bacteria, which caused pneumonia and eventually lead to the deaths of three adults and 51 children under the age of ten.

Since Pertussis is typically not fatal, it is alleged that the 54 deaths were preventable and the result of government neglect. Although the Pertussis epidemic was declared a health emergency by the Indonesian Ministry of Health, relevant local and national institutions reportedly failed to adequately respond to the situation and to adopt measures aimed at stopping the epidemic or addressing its underlying determinants. Furthermore, it is alleged that the local indigenous community was unable to effectively prevent or treat the disease because adequate medical treatment, medication and preventive vaccination for the Pertussis bacteria were unavailable in the affected districts.

Finally, it is alleged that the 54 deaths occurred in the context of a poorly managed health care system which discriminates against the indigenous Papuans with respect to the delivery of health services.

As part of Papua's special autonomy status, considerable funds are provided to local governments for the improvement of infrastructure, education and health services. However, despite the availability of resources, most indigenous villages in Papua Province do not have functioning healthcare centres and lack even the most basic medical services, equipment and personnel. This is reflected in the disproportionately high mortality rates and disease incidence in these areas.

The main reasons for the lack of adequate health services allegedly include the misallocation of funds and the mismanagement by local health and social institutions; the widespread absenteeism of health care workers in remote areas; and the failure of the Indonesian Government to hold local authorities accountable. This has reportedly contributed to a widespread mistrust of the indigenous Papuans towards government services.

While we do not wish to prejudice the accuracy of these allegations, we express grave concern at the alleged deaths of 51 children and three adults from Pertussis. We express particular concern as these deaths appear to be the result of the failure of national and local government institutions to ensure the provision of adequate health facilities, goods and services without discrimination. Finally, serious concern is expressed at the adverse impact the poorly managed health care system in Papua has on the indigenous peoples, in particular children.

We would also like to reiterate the observations made by the CESCR Committee upon review of the initial State party report of Indonesia in 2014 (E/C.12/IDN/CO/1, para.12), whereby the Committee expressed concern 'that the minimum essential levels of economic, social and cultural rights are not guaranteed in remote islands and areas in Papua and other parts of the country, primarily due to unavailability and poor quality of public services, including in education and health.' The Committee recommended that the State party 'accelerate the delivery of quality public services in remote islands and areas in Papua and other parts of the country, by allocating the necessary human and financial resources, by monitoring that they reach the intended beneficiaries, and by clearly defining the responsibilities of the various levels of Government'.

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 comment which you may have on the above mentioned allegations.

2. Please provide detailed information on any measures taken by national and local government institutions to prevent, treat and control the Pertussis epidemic, in compliance with Indonesia's international obligations regarding the right to health. Specifically, kindly indicate what measures have been put in place to improve preventive immunizations.

3. Please indicate any measures taken to ensure that local authorities are held accountable for their failure to provide essential health facilities, goods and services.

4. Please provide detailed information on measures taken to ensure, without discrimination, the provision of adequate health facilities, goods and services in Papua Province as required by international human rights law and standards. In particular, please provide information on any measures adopted to ensure that indigenous peoples can fully enjoy the right to health, including the right to be actively involved in developing and determining culturally sensitive health strategies and programmes affecting them.

5. Please provide information about any programmes or strategies designed to ensure the presence of qualified medical and health care personnel in remote areas as provided for, inter alia, in the International Covenant on Economic, Social and Cultural Rights.

6. Please provide information on any mitigation and adaption measures taken with a view to helping affected communities, including indigenous peoples, cope with the intensified effects of climate change on their ability to fully enjoy the right to health.

7. Please provide information on what measures have been taken to address the structural causes of poverty and food insecurity of indigenous Papuans in Nduga Regency in a sustainable and long-term manner.

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.

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Special Rapporteur on the right to food

Dainius Pūras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Victoria Lucia Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health as set forth, inter alia, in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Indonesia in 2006, and article 24 of the Convention on the Rights of the Child (CRC), ratified by Indonesia in 1990.

With respect to failure of local and national authorities to prevent, and respond to, the Pertussis epidemic, we would like to recall that article 12 (2) (c) of the ICESCR obliges States parties to take measures to prevent, treat and control epidemics. In this context, we would also like to bring to the attention of your Excellency's Government General Comment No. 14 of the Committee on Economic, Social and Cultural Rights (CESCR), which indicates that that article 12 (2) (c) requires, inter alia, the establishment of prevention and education programmes; the creation of a system or urgent medical care in cases of epidemics; the provision of disaster relief and humanitarian assistance in emergency satiations; as well as the implementation or enhancement of immunization programmes and other strategies of infectious disease control (GC 14, para. 16). In addition, the Committee stressed that"[t]he creation of conditions which would assure to all medical service and medical attention in the event of sickness" (art. 12.2 (d)), includes the provision of equal and timely access to basic preventive, curative and rehabilitative health services; appropriate treatment of prevalent diseases; and the provision of essential drugs (GC 14, Para.17).

With regards to the general lack of access to health services in remote areas, we would like to recall that availability and physical accessibility are two of the essential elements of the right to health. According to the CESCR, States have a core obligation to ensure that functioning public health and health-care facilities, goods and services, as well as programmes, are available in sufficient quantity and equitably distributed (General Comment 14, para. 43. This includes adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries (General Comment 14, para 12 (a)). Furthermore, the Committee emphasized that medical services and underlying determinants of health must be within safe physical reach for all sections of the population without discrimination, including in rural areas. Particular attention should thereby be paid to vulnerable or marginalized groups, such children and indigenous populations (General Comment 14, para. 12(b)).

The CESCR Committee considers that indigenous peoples have the right to specific measures to improve their access to health services and care. These health services should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines. States should provide resources for indigenous peoples to design, deliver and control such services so that they may enjoy the highest attainable standard of physical and mental health (General Comment 14, para. 27).

In this connection, we would also like to draw the attention of your Excellency's Government to the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly on 13 September 2007 and with an affirmative vote by Indonesia. In particular, we refer to Article 24 (2), which affirms that indigenous peoples have an equal right to the enjoyment of the highest attainable standard of physical and mental health. In addition, article 21 stipulates that indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including in the area of health. States are required to take effective and, where necessary, special measures in this regard, paying particular attention to the rights and special needs of indigenous children. Finally, the Declaration affirms the right of indigenous peoples to be actively involved in developing and determining health programmes affecting them and, as far as possible, to administer such programmes through their own institutions (article 23).

Concerning the failure of government institutions to address the chronic malnutrition of the indigenous peoples, we would like to remind your Excellency's Government that the CESCR Committee interprets the right to health as an inclusive right extending not only to timely and appropriate heath care, but also to the underlying determinants of health, such as access to safe and portable water; adequate sanitation; and an adequate supply of safe food and nutrition (GC 14, para. 11).

The CESCR Committee has further defined the core content of the right to food in its General Comment No. 12 (GC 12), along with the corresponding obligations of States to respect, protect and fulfil the right to food. The Committee states that especially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food. The Committee makes special note of socially vulnerable groups such as landless persons and other particularly impoverished peoples, as segments of the population who may need specific attention from governments through for example, social programmes (GC 12, para. 13).

The right to adequate food is also recognized in the Convention on the Rights of the Child (CRC) in articles 24.2(c) and 27.3. In the Convention, the right to adequate food is to be read in conjunction with the right to life, survival and development stipulated at article 6. States parties to the CRC commit themselves to combat "disease and malnutrition, including within the framework of primary health care, through, *inter alia*, (…) the provision of adequate nutritious foods and clean drinking-water."