

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

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the arrest of two journalists, Mr. Thomas Dandois and Ms. Valentine Bourrat, and an indigenous leader, Mr. Areki Wanimbo and the summoning of the human rights defender, Mr. Theo Hese gem and their interpreter Mr. Alexander Logo.**

According to the information received:

Mr. Dandois and Ms. Bourrat, arrived in Wamena, West Papua, on 5 August 2014, to gather information for a documentary they had been working on for Arte TV. The two French journalists allegedly entered West Papua on a tourist visa.¹

On 6 August 2014, Mr. Dandois and Ms. Bourrat interviewed Mr. Wanimbo, a Papuan indigenous leader from Lanny, to obtain information regarding the conflict between the Indonesian security forces and the National Liberation Army of West Papua (*Tentara Pembebasan Nasional Papua Barat*, TPNPB). The journalists were accompanied by a Papuan human rights defender, Mr. Hese gem and a local interpreter, Mr. Logo.

On the way back to the hotel, Mr. Hese gem, who was giving a lift to Ms. Bourrat on his motorbike, was allegedly stopped by three unidentified police intelligence officers from the Jayawijaya District Police. Mr. Hese gem was permitted to continue his trip with Ms. Bourrat, who was subsequently arrested upon arrival to her hotel. Mr. Dandois and Mr. Logo were also arrested on their way back to

¹ According to information received, international journalists visiting Papua for journalistic works are required to apply for a special permit from the Indonesian Ministry of Foreign Affairs. Allegedly, the Minister of Foreign Affairs, H.E. Mr. Marty Natalegawa, has affirmed that such permits are needed solely to ensure security of the journalists, taking into account the unstable situation in Papua. However, it is allegedly not easy to obtain such a permit. It is reported that obtaining it may require a long time, up to three months. Furthermore, in several cases where such permits were granted, the journalists had to be accompanied by Indonesian government officials.

Wamena, in Jalan Bhayangkara. They were all taken to the Jayawijaya District Police station.

After arresting the two journalists and Mr. Logo, it is reported that the police also arrested Mr. Wanimbo at his house, along with two other Papuans, Mr. Deni Dow and Mr. Jornus Wenda. They were also taken to Jayawijaya District Police station for interrogation.

Mr. Logo, Mr. Dow and Mr. Wenda were subsequently released without any charge on 7 August.

The two journalists were allegedly taken to the Papua Regional Police office for further interrogation. According to information received, they were charged with misuse of permit to stay under Article 122 of Immigration Law (Law No. 6/2011), punishable by maximum imprisonment of five years and fine of IDR 500 million (approximately USD 42,740). It has also been reported that the journalists were also charged with treason attempt under Articles 106 and 110 of the Penal Code, read in conjunction with Article 53, for allegedly providing ammunition to members of the TPNPB.

Mr. Wanimbo was charged with complicity to misuse a permit to stay. As the two journalists, he was also charged with treason attempt for allegedly providing ammunition to the TPNPB, as well as for collecting donations for a meeting on West Papua's membership application to Melanesia Spearhead Groups (MSG).

Mr. Wanimbo is currently detained at the Jayawijaya District Police station, whereas Mr. Dandois and Ms. Bourrat are detained at the Papua Regional Police station.

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 to the above alleged facts and concerns, please refer to the **Reference to international law provisions**, annexed to this letter, which contains a non-exhaustive list of international human rights instruments and standards relevant to these allegations.

Since 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 be grateful for your observations on the following matters:

1. Are the facts referred to above true and accurate?

2. Were Mr. Dandois, Ms. Bourrat and Mr. Waninbo informed, at the time of the arrest, of the reasons for their arrest? Were they promptly informed of the charges against them?
3. Were Mr. Dandois, Ms. Bourrat and Mr. Waninbo allowed to be assisted by, and communicate with, a counsel of their choice? If so, when were they allowed to meet their lawyers for the first time?
4. Have Mr. Dandois and Ms. Bourrat been notified of their right under Article 36 of the Vienna Convention on Consular Relations of their right of access to a national consular officer?
5. Were Mr. Dandois, Ms. Bourrat and Mr. Waninbo brought promptly before a judge, pursuant to article 9, paragraph 3, of the International Covenant on Civil and Political Rights? If not, please indicate when they will be brought before a judge.
6. Please provide detailed information on the special permits that international journalists are required to obtain before travelling to West Papua, and explain whether this practice is consistent with the principle of freedom of the press enshrined in article 19 of the International Covenant on Civil and Political Rights.

We would appreciate 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 responsible of 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

Michel Forst
Special Rapporteur on the situation of human rights defenders

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 article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, which recognise that everyone has the right to freedom of expression and that this right includes “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”.

We would also 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”.

We would also like to bring to the attention of your Excellency's Government attention General Comment No. 34 (2011) of the Human Rights Committee, which analyses the normative content of article 19 and the legal obligations that it imposes on States parties to the Covenant.

In this General Comment, the Human Rights Committee stated that a free, uncensored and unhindered press or other media constitutes one of the cornerstones of a democratic society and is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. With regard to the press, article 19 embraces a right “whereby the media may receive information on the basis of which it can carry out its function”.

The Committee considers that free communication of information and ideas about public and political issues is essential, and this implies “a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion”. The public also has a corresponding right to receive media output.

We would also like to refer to paragraph 3 of article 19, which lays down specific conditions under which the right to freedom of expression may legitimately be restricted. These restrictions may relate either to respect of the rights or reputations of others or to

the protection of national security or of public order (ordre public) or of public health or morals.

The Human Rights Committee observed in its General Comment No. 34 that paragraph 3 “lays down specific conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be ‘provided by law’; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of necessity and proportionality”. The Human Rights Committee considers that it is for the State party to demonstrate the legal basis for any restrictions imposed on freedom of expression.

With regard to the press, the Human Rights Committee has specifically noted that “it is normally incompatible with paragraph 3 (...) to restrict the entry into the State party of foreign journalists”.

In this regard, we would also like to remind your Excellency’s Government that international bodies and other UN member States have repeatedly requested Indonesia to lift its restriction on visits of international journalists to West Papua. During the Universal Periodic Review in 2012, France made a specific recommendation for Indonesia to “ensure free access for foreign journalists to Papua and West Papua”. The former United Nations High Commissioner for Human Rights, Ms. Navi Pillay, also called on your Excellency’s Government to lift restrictions on foreign journalists to visit West Papua.