

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 rights of indigenous peoples; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: AL
IDN 1/2016:

24 March 2016

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 rights of indigenous peoples; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 25/2, 24/5, 24/9, 26/12, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged use of excessive force, torture, killing, arbitrary arrest and charging of individuals celebrating West Papuan National Day in an attempt to restrict their rights to freedom of peaceful assembly and association, and freedom of expression on 1 December 2015.

The four individuals killed were Mr. **Yonas Manitori**, Mr. **Herik Manitori**, Mr. **Yulianus Robaha** and Mr. **Darius Andiribi**.

Ten of the individuals injured were Mr. **Niko Suhun** (shot in the head), Mr. **Zet Tabuni**, Mr. **Paulinus Wororoai** (shot in the ribs), Mr. **Zakarias Torobi** (shot in the leg), Mr. **Yance Manitori** (shot in the ankle), Mr. **Agus Manitori** (shot in the leg), Mr. **Daud Ayomi** (shot in the hand), Mr. **Pilemon Ayomi** (shot in the shoulder), Mr. **Alius Karimati** (shot in the hand) and Mr. **Anton Runaweri** (shot in the neck).

The two individuals charged with criminal offences were Mr. **Enos Suhun** and Mr. **Eliakim Itlay**.

Excessive restrictions on the exercise of the right to freedom of peaceful assembly by indigenous Papuans were the subject of joint allegation letters sent on 9 October 2015 (see case no. IDN 8/2015); 1 May 2014 (see A/HRC/27/72, case no. IDN 2/2014); 23 September 2013 (see A/HRC/25/74, case no. IDN 4/2013); and 24 July 2012 (see

A/HRC/22/67, case no. IDN 6/2012). We acknowledge receipt of your reply of 25 September 2012. We regret that no other reply was received.

According to the information received:

The 1 May and 1 December are considered national days for indigenous Papuans, who commemorate the administrative transfer of West Papua to Indonesia in 1963. The Morning Star flag is associated with the Papuan community and often used to commemorate the Papuan National Day.

On 1 December 2015, several demonstrations and events were held in various locations across the country to commemorate this day in Nabire, Jakarta and Yapen Island.

Nabire, Papua Province

On 28 November 2015, individuals cleared a site at the Bunga Bangsa Papua Field in preparation for a prayer service to commemorate Papuan National Day. Security forces arrived at the site and detained 17 individuals overnight, releasing them the next day without charge.

On 1 December 2015, individuals assembled to attend the planned prayer service at the Bunga Bangsa Papua Field and security officers forcibly dispersed the crowd, using rifle butts and wooden beams. Security forces detained and interrogated 32 individuals and later released them without charge.

Central Jakarta, Jakarta Special Capital Region

On 1 December 2015, individuals commemorating the Papuan National Day gathered at multiple meeting points in Jakarta to conduct a march through the city towards the Presidential Palace. All the demonstrations were contained and ended by security officers reportedly using excessive force and violence. Legal representatives failed in attempts to negotiate with the police to allow the demonstrations to take place.

At demonstrations near the Hotel Indonesia traffic roundabout, demonstrators attempted to break out of the security forces' blockade and security forces responded with tear gas, throwing stones and sticks, as well as firing one rubber bullet at demonstrators, which hit Mr. Niko Suhun in the head. Mr. Niko Suhun dropped to the ground immediately and security officers continued to beat him with batons on the ground. Mr. Zet Tabuni attempted to assist Mr. Niko Suhun and was also beaten by police officers, including being punched on the temple by a security officer wearing a knuckleduster. Mr. Niko Suhun remains in a critical condition at the National Brain Centre Hospital in Jakarta. Security officers contained the demonstration using violence for several more hours, reportedly kicking and beating the demonstrators with rattan canes. In a separate instance,

security forces attempted to remove clothing from individuals, as well as banners and flags, displaying the Morning Star flag. Two women suffered sexual abuse from security officers, which included being forced to take off their clothes and subjected to molestation by security officers. Reportedly, a total of 133 people suffered injuries from tear gas inhalation and violence during the demonstrations in Jakarta.

At approximately midday, demonstrators at the various meeting points near Hotel Indonesia traffic roundabout were coerced on to buses and so-called crowd control vehicles that transported them to Jakarta Metro Police Headquarters (also known as “Polda Metro Jaya”), where they were detained and interrogated. Reportedly, a total of 306 demonstrators were arrested in Jakarta, including student members of the Papuan Student Alliance (also known as “Aliansi Mahasiswa Papua”). It is reported that most of the demonstrators were released on the same day. Two demonstrators, namely Mr. Enos Suhun and Mr. Eliakim Itlay, remained in detention until 4 December 2015, after being charged under the Indonesian Criminal Code with violence against persons or property, incitement, violence or threat of violence against a state officer and maltreatment. The charges against them have subsequently been dropped.

Additionally, journalists were prevented from reporting on the demonstrations in Jakarta, including Ms. Stephanie Vaessen of Al Jazeera, who was forced to delete recorded footage of the violence used against demonstrators by the police. Police subsequently apologized to Ms. Vaessen for the conduct.

Yapen Island, Papua Province

On 1 December 2015, villagers from Wanampompi village in the Anggaisera District were holding their annual commemorative celebrations for Papuan National Day, which included raising the Morning Star flag and a prayer service. Reportedly, at 6:00am on 1 December 2015, security forces conducted a patrol across the Anggaisera District. Mr. Yonas Manitori, a local villager, approached the patrol to question its purpose. He was shot and killed. Attempting to come to the aid of Mr. Manitori, two other villagers, namely Mr. Herik Manitori and Mr. Yulius Robaha, were both shot in their legs. Mr. Herik Manitori and Mr. Yulius Robaha were forced into trucks and tortured to death. Mr. Herik Manitori’s stomach was torn open with a bayonet blade and his eyes were damaged. Allegedly further live rounds were fired at villagers, resulting in the death of Mr. Darius Andiribi and seriously injuring eight other villagers, including Mr. Paulinus Wororoai, Mr. Zakarias Torobi, Mr. Yance Manitori, Mr. Agus Manitori, Mr. Daud Ayomi, Mr. Pilemon Ayomi, Mr. Alius Karimati and Mr. Anton Runaweri.

Grave concern is expressed about the alleged motivation for the aforementioned violations is an attempt to stifle the rights of individuals celebrating Papuan National Day by restricting their rights to freedom of peaceful assembly and freedom of expression. In

particular, serious concern is expressed for the alleged excessive use of force, torture and violence, which resulted in the injury of 141 individuals and the death of four individuals. Additional concern is expressed for the alleged arbitrary arrest and detention of 355 individuals and the charges against Mr. Enos Suhun and Mr. Eliakim Itlay that have subsequently been dropped. Concern is also expressed about the measures adopted in an attempt to prevent journalists from reporting on the demonstrations and violence.

Serious concern is expressed about the alleged pattern of violence and intimidation of Papuan people and individuals celebrating Papuan National Day. Further concern is expressed for the chilling effect that these measures may have on other individuals commemorating Papuan National Day and celebrating Papuan culture, restricting the legitimate exercise of their rights to freedom of assembly and association, and freedom of expression and opinion, as well as the right to cultural life.

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.

As 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. Please provide any additional information and any comments you may have on the allegations described in this letter.
2. Please provide information concerning the legal grounds for the use of force against the demonstrators and how these are compatible with international human rights law.
3. 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 the above allegations. If there have been no such investigations or inquiries, please explain why.
4. Please provide information about any measures adopted to ensure that the legitimate rights to freedom of peaceful assembly and freedom of expression are respected and that the physical and psychological integrity of Papuans, and others exercising these rights, is guaranteed, especially of those with dissenting opinions.

We would appreciate a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent the re-occurrence the alleged violations 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

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

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

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In this connection, we wish to draw your Excellency's Government's attention to Article 3 of the Universal Declaration of Human Rights and Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) acceded by Indonesia on 23 February 2006, which respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life. Moreover, we would like to refer to Articles 19 and 21 of the ICCPR, and Article 28 of the Constitution of the Republic of Indonesia, that provide for the right to freedom of opinion and expression and the right to peaceful assembly.

Under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. The Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), though not binding, provide an authoritative interpretation of the limits on the conduct of law enforcement forces. Principle 9 provides that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. Principle 12 provides that "everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the UDHR and the ICCPR, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14." These provisions restrict the use of firearms to situations of violent assemblies and provide that force and firearms may only be used as a last resort when unavoidable and require exercising the utmost restraint (see also principles 4 and 5).

In addition, the Human Rights Committee has in its General Comment No.34, urged that States parties should protect against attacks aimed at silencing those exercising their right to freedom of expression.

ICCPR furthermore provides in Article 27 that members of minority groups "shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, and to use their own language.

Indonesia is party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) which provides in Article 15 that States recognizes the right of everyone to take part in cultural life.

We would like to remind your Excellency's Government of the Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper

management of assemblies. In particular, we refer to the practical recommendations, which state that “Automatic firearms should not be used in the policing of assemblies under any circumstances... Effective systems for monitoring and reporting on the use of force must be established by the State, and relevant information, including statistics on when and against whom force is used, must be easily accessible to the public... [and] States should ensure in law and practice that law enforcement officials do not have immunity from criminal or civil liability for cases of misconduct” (A/HRC/31/66).

We also wish to draw attention of your Excellency’s Government to operative paragraph 2 of Human Rights Council resolution 24/5 which “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully [...] 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.”