

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; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: AL
IDN 8/2015

9 October 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; Special Rapporteur on the rights of indigenous peoples; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 25/2, 24/5, 24/9, and 26/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a series of incidents of excessive use of force by Indonesian security forces in Papua Province, which resulted in the killing of nine individuals and injury to several persons. The persons killed include Mr. [REDACTED], Mr. [REDACTED], Mr. Simon Degei, Mr. [REDACTED], Mr. [REDACTED], Mr. Yulianus Okoare, Mr. Imanuel Marimau, Mr. [REDACTED] and Mr. [REDACTED].

According to the information received:

Ipakiye Village, Pantai District, Papua Province

On 8 December 2014 at 1.30 am, three young indigenous men were on guard at a Christmas hut in Ipakiye Village, Pantai District, in Papua Province. They yelled at a 'Black Fortuner'-type vehicle which was passing through the village, calling on it to switch on its headlights. Two members of the 753rd Battalion 'Arga Vira Tama' (AVT) were in the vehicle on their way to their command post located in Uwibutu Village. Shortly afterwards, the two members of the 753rd Battalion quickly went to the Christmas hut with other soldiers, shooting in the air and looking for the three young men. By then, two of them had left, and the third one, Mr. [REDACTED] was there. The soldiers seized him and beat him until unconscious.

At approximately 9.00 am on the same day, after having heard the news about Mr. [REDACTED]'s beating, the villagers of Ipakiye and Madi erected road blocks near the Christmas hut in Ipakiye. This action drew further attention from army personnel, who went to the scene in a 'Black Fortuner' vehicle, which the villagers believed to be the same as that involved in the initial incident. The villagers stopped and damaged the vehicle. In response, the soldiers destroyed the Christmas hut. After this incident, the villagers marched in *waita* (traditional Papuan marching with songs and chants) towards Enarotali (about 5 km from Ipakiye). They wanted to ask for clarification from the Local Army Command and the Police Station in Enarotali regarding the beating of Mr. [REDACTED]. The crowd was surrounded by security forces who opened fire on them. Four villagers, all high school students from Enarotali were killed: Mr. [REDACTED], aged 17, Mr. [REDACTED], aged 17, Mr. Simon Degel, aged 18, and Mr. [REDACTED], aged 17. Seventeen others were also seriously injured.

Following the incident, the Indonesian National Human Rights Commission (Komnas HAM) established a specific team (Paniai Team) to investigate the case. After four months of work, the Commission found evidence of serious human rights violations as defined in Law No. 26/2000 on the Human Rights Court, and recommended the establishment of an ad-hoc team or Commission of Inquiry on Human Rights Violations (KPP HAM).

Desa Ugapuga, Kamu Timur District, Dogiyai Regency, Papua Province

On 25 June 2015, at 6.30 pm, 10 youth were hunting with a dog along the road in Desa Ugapuga, an indigenous community in Kamu Timur District, Dogiyai Regency, in Papua Province. The dog was run-over by a truck. At 8.00 pm, the youngsters began stopping vehicles passing on the road where the dog was killed and forced drivers to pay a monetary fee for the loss of their dog. Some of the drivers reported the incident to the police station in Waghete, Enatoli. At 10.00 pm, a car with Indonesian security force onboard arrived at the place of the incident. Two young men approached it, Mr. [REDACTED], a third-year junior high school student from Desa Ugapuga, and Mr. [REDACTED], a recent graduated of junior high school from Desa Ugapuga. Without warning, one of the soldiers got out of the car and shot Mr. [REDACTED] twice. The student tried to escape but was shot twice again. The perpetrator allegedly opened Mr. [REDACTED]'s deadly wounds with a bayonet to give the impression that he had died from an injury other than gunshots. Mr. [REDACTED] together with another eight youngsters, also attempted to escape, but was wounded in the hand with a bayonet. At 10.30 pm, the people from the town heard the news and came to the place of the incident where they found Mr. [REDACTED]'s dead body with two bullets penetrations. They also collected a bullet casing stamped 'PT PIN 558', which may be used by the Mobile Brigade of the Indonesian Police Force.

On 26 June 2015, the Sub-District Commander of the Police from Monamani Police Station and his staff visited Mr. [REDACTED]'s family. They offered to conduct

an autopsy on the victim's body. The relatives refused as they were afraid that the police would falsify the autopsy, and conclude that the victim died from bayonet injuries and not from the firearms. The family stated that Mr. [REDACTED] was unarmed at the time of the incident.

On 27 June 2015, a joint investigation team composed of the Mobile Brigade, the Criminal Investigation Agency and a doctor visited the family four times to receive authorization for the autopsy and to request that they return the bullets found in Mr. [REDACTED]'s body and the bullet shell casing. The family refused.

On 28 June 2015, the Police and the joint investigation team returned to Desa Ugapuga and summoned Mr. [REDACTED] for the reconstruction of the incident and further investigation.

Karabuga, Tolikara Regency, Papua Province

On 17 July 2015 at 7.00 am, several youths from the Evangelical Church of Indonesia (GIDI) went to the Baitul Mutaqin mosque in Karabuga, Tolikara Regency, in Papua Province, in order to ask not to use the loudspeaker at the time of prayers since it was interfering with an ongoing youth seminar at the church. The people in the mosque refused to turn off the loudspeaker. As a result, the youths from GIDI started throwing stones at the mosque and burned some nearby stalls and houses which subsequently led to the burning of the mosque. Indonesian National Police officers were dispatched to the scene and opened fire on the youth which resulted in the killing of a 15 year-old boy, Mr. [REDACTED], and injury to 11 others.

On 24 July 2015, Papua Police arrested two people for instigating the riot. Their place of detention and the charges brought against them are not known.

The incident was investigated by (Komnas HAM). On 10 August 2015, the Commission announced that it had found four human rights violations regarding the killing of Mr. [REDACTED], including the right to life, right to security, right to housing and right to worship. It is not known whether any official investigation has been conducted into the incident, including the shooting of the youngsters by the police, which resulted in one death and many injuries.

Bayangkara, Timika, Mimika Regency, Papua Province

On 28 August 2015, around 2.30 pm, two soldiers from the Indonesian army (Tentara Nasional Indonesia - TNI) rode a motorcycle past a crowd of 100 people who were having a party along Bayangkara Street in Timika, Mimika Regency, in Papua Province. The crowd reprimanded the soldiers for driving too fast and told them to drive slower along the road. Minutes later, three more soldiers on motorcycles arrived. The situation escalated and the soldiers opened fire on the

people. People ran for safety but two people were killed and four others were seriously injured by the gunshots. Mr. Yulianus Okoare, aged 18, died at the scene and Mr. Imanuel Marimau, aged 23, died later at Mimika hospital. The persons who were critically injured were taken to Mimika hospital. It is unclear whether any investigation into this incident has been opened against the soldiers responsible for the shooting.

GorongGorong, Timika, Mimika Regency, Papua Province

On 28 September 2015, around 7.00 pm, Mr. [REDACTED], aged 17, and Mr. [REDACTED], aged 17, were sitting in a tower in Biak residential housing complex in GorongGorong, Timika, Mimika Regency, in Papua Province. The two students were reported to the police as troublemakers and their fathers were accused of being members of the Free West Papua Movement (OPM). Police trucks came into the complex and policemen asked for Mr. [REDACTED] and Mr. [REDACTED]. Ten minutes later, policemen on 15 motorbikes and three police cars surrounded the complex. Mr. [REDACTED] and Mr. [REDACTED] tried to run away and the police opened fire on them. Both young men were injured and transferred to the Mimika hospital. Mr. [REDACTED] died from his injuries and Mr. [REDACTED] remains in a critical condition.

After the incident, the members of the Provincial Police of Papua visited Mr. [REDACTED] in hospital. They also spoke with the family of the victims. They informed them that three police officers from Mimika Baru Sector were under investigation.

According to the allegations, the killing may have been politically motivated. Mr. [REDACTED]'s father, [REDACTED], is a Priest at the local Papuan Evangelical Kingme Church and a member of the West Papuan National Committee (KNPB) Timika, a West Papua non-violent movement which is pushing for a referendum on Papua's political status. It is reported that between 2010 and 2014, 40 KNPB members have been killed by the police, security forces and the army. Reports also indicate that between 2006 and September 2015, nine students have allegedly been killed by Indonesian military police (TNI) in Timika.

According to reports, extrajudicial and summary executions by Indonesian security forces in the provinces of Papua and West Papua take place regularly. The rate of extrajudicial executions has not fallen for several years despite many allegations of a change in the approach by authorities. In all cases of extrajudicial executions in Papua and West Papua in the last two years, the victims have been indigenous Papuans despite the fact that Indigenous Papuans make up less than 45 per cent of the population.

We express grave concern at what appears to be a pattern of excessive use of force by Indonesia security forces against indigenous peoples in Papua Province, which has resulted in the killing of nine persons and injuries to many others. In several

instances, they were exercising peacefully their rights to freedom of opinion, expression, assembly and association. We are further concerned that the alleged use of firearms and excessive force by Indonesian law enforcement personnel appears to target primarily members of indigenous Papuan communities.

While we do not wish to prejudge the accuracy of these allegations, they indicate a prima facie violation of the right of every individual to life and security and not to be arbitrarily deprived of his or her life, as well as the rights to freedom of opinion, expression and peaceful assembly, as set forth in articles 3 of the Universal Declaration of Human Rights (UDHR) and 6 (1), 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR). The excessive use of force directed against members of the indigenous population of Papua would also contravene several key provisions of the United Nations declaration on the rights of indigenous peoples, in particular articles 1, 2 and 7 regarding equality of rights, non-discrimination, and protection of life, integrity, security and liberty.

In connection to these allegations 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. Are the facts alleged in the summary of the cases accurate? Please provide any additional information and any comment you may have on the allegations described in this letter.
2. Please provide the full details of any investigations which have been undertaken concerning the cases described above of excessive use of force by Indonesian security forces, and in particular with regards to the killings of Mr. [REDACTED], Mr. [REDACTED], Mr. Simon Degel, Mr. [REDACTED], Mr. [REDACTED], Mr. Yulianus Okoare, Mr. Imanuel Marimau, Mr. [REDACTED] and Mr. [REDACTED]. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
3. Please, indicate whether compensation has been provided to the victims and their families.
4. Please provide details regarding the recommendations and decisions adopted by the National Human Rights Commission with regards to the alleged violations occurred in Paniai district and in Tolikara Regency, and the steps undertaken to ensure their full implementation.
5. Please indicate what measures have been taken to ensure that the legitimate rights to freedom of expression and peaceful assembly are respected

and that the physical and psychological integrity of those exercising these rights is guaranteed in the provinces of Papua and West Papua.

6. Please indicate measures adopted by the Government of Indonesia, in terms of policy, legislation, regulations and practices to ensure that law enforcement personnel operating in the Papua do exercise their duties in an equal and non-discriminatory manner with regard to the province's indigenous populations; and how the implementation of these measures are effectively monitored, controlled and their breaches sanctioned.

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 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

Annex
Reference to international human rights law

In this connection, we wish to draw your Excellency's Government's attention to Articles 3 of the Universal Declaration of Human Rights and 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 that provides for the right to freedom of opinion and expression and the right to peaceful assembly.

Furthermore, we would like to draw your attention to relevant international principles and norms governing the use of force by law enforcement authorities. 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. Moreover, 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. According to these instruments, law enforcement officials may only use force when it is strictly necessary and only to the extent required, for the performance of their duties. The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent means. Force used must be proportionate to the legitimate objective to be achieved.

Moreover, we would like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life. We urge your Excellency's Government in line with the Prevention and Investigation Principles, in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions.

In paragraph 23 of its General Comment No. 34, the Human Rights Committee urges States parties to protect against attacks aimed at silencing those exercising their right to freedom of expression. The Committee has stated that, under no circumstances can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19 (CCPR/C/GC/34).

Similarly, the Human Rights Council in paragraphs 3 and 5 of its resolution 12/16, strongly condemns all attacks and violence, including torture, extrajudicial killings, enforced disappearances and arbitrary detention, as well as intimidation and harassment against those persons who "exercise, seek to promote or defend these rights." The Resolution calls upon States to "ensure accountability through the conduct of

impartial, speedy and effective investigations into such acts falling within their jurisdiction, to bring to justice those responsible and to ensure that victims have access to appropriate remedies.”

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.”

We would also like to draw your attention to your Excellency's Government to the International Convention on the Elimination of All Forms of Racial Discrimination which your Excellency's Government acceded to on 25 June 1999 and in particular to its General Comment XXIII on the Rights of Indigenous Peoples which calls on state parties to “ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity.” (included in Annex V of A/52/18) We would also like to draw your Excellency's Government's attention to the UN Declaration on the Rights of Indigenous people, adopted by the Council of Human Rights on 13 September 2007 which affirms that “indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such” and calling for States to take effective measures “to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.”