

Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 37/8, 34/18, 34/5 and 36/15.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the sentencing of environmental human rights defender, **Heri Budiawan**, for crimes against State security in connection to his role in the protests against gold mining activities in Tumpang Pitu and Salakan mountains, East Java, as well as the sentencing of land rights defenders, Messrs. **Nur Aziz**, **Sutrisno Rusmin** and **Mujiono**, for illegal logging and destruction of the forest land in Central Java in relation to the protests against the construction of a cement factory on the land traditionally cultivated by the Surokonto Wetan village.

Mr. **Heri Budiawan (also known as Budi Pego)** is an environmental human rights defender, who has been protesting against the environmental impact of the gold-mining activity in Tumpang Pitu and Salakan mountains in East Java. Mr. Budiawan has raised awareness about the deleterious impact of the mining on the safe and healthy environment of five villages (Sumberagung, Pesanggaran, Sumbermulyo, Kandangan, and Sarongan).

The mining concession in the forest mountains of Tumpang Pitu and Salakan is held by PT Merdeka Copper Gold through its two subsidiaries, PT Bumi Sukses Indo (BSI) and PT Damai Sukses Indo (DSI), which have received licences since 2012 for an area of 4,998 hectares and 6,623 hectares, respectively. Tumpang Pitu and its surrounding mountains had been designated as protected forests before a decree (No.826/MENHUT-II/2013) was issued on 19 November 2013, changing the status of 1,942 hectares of protected forests to 'industrial forest' (or production forest), effectively paving the way for what would later become the second largest gold mine in Indonesia.

Messrs. **Nur Aziz**, **Sutrisno Rusmin** and **Mujiono** are representatives of the Surokonto Wetan village, Pageruyung District in Kendal, Central Java, who have advocated for the recognition of the right of their communities to continue cultivating the

land, in the context of the construction of the cement factory by PT Semen Indonesia, the largest cement producer in the country. For more than four decades, the village has been cultivating the 127,821 hectares for the needs of its community of 450 households.

According to the information received concerning Mr. **Heri Budiawan**:

In March 2017, the mining production began in the the area of Tumpang Pitu and Salakan. On 4 April 2017, a peaceful assembly against the gold mine in Salakan Mountain was held by villagers from Sumberagung and coordinated by Mr. Budiawan, protesting against the alleged ecological destruction caused by the mining activity and the endangerment of the lives of the nearby population. The tailings from the gold mining reportedly led to increased levels of ore and mercury in the rivers and water sources, while deforestation and soil excavation threatened local biodiversity and food sources. The release of cyanide and mercury, reportedly used in these gold mining, poses serious health risks to the local community.

The protest also involved the placing of signs along the route towards Pesanggaran District Office. On the following day, local police authorities accused Mr. Budiawan for drawing communist symbols (hammer and sickle) on the banner used at the protest. The accusation was denied by Mr. Budiawan and other protesters, who asserted that none of the eleven banners displayed the communist symbols.

On 4 September 2017, Mr. Budiawan was arrested on orders of the Banyuwangi District Prosecutor for spreading communist ideology. Three other protesters, Mr. Trimanto Budi Safaat, Mr. Cipto Andreas, and Mr. Dwi Ratnasari, had been similarly accused on 15 May 2017.

On 24 January 2018, Mr. Budiawan was sentenced to 10 months imprisonment by the Banyuwangi District Court, East Java Province under article 107a of Law No.27/1999 for ‘crimes against state security’. The criminal threshold of article 107a was fulfilled by his being found guilty of three acts; spreading Communist ideology, promoting Communist ideology as the leader of a protest, and failure to notify local authorities of a protest, in accordance with Law No. 9/1998.

On 29 January 2018, Mr. Budiawan and the public prosecutor filed appeals at the High Court of Surabaya (East Java). On 23 February 2018, Mr. Budiawan’s counsel submitted a legal memory of appeal to the High Court. Mr. Budiawan has remained in detention in Banyuwangi Detention Center since his initial arrest on 4 September 2017.

According to the information received concerning Messrs. Nur Aziz, **Sutrisno Rusmin** and **Mujiono**:

In June 2014, PT Semen Indonesia began the construction of a cement factory in Rembang, Central Java, causing land conflict with local communities. The company acquired the forest area for its operations, after that area had been earlier designated as production forests. The land, previously cultivated for crops by the

Surokonto village, was then declared as protected forests to off-set the loss of the forests sold to PT Semen Indonesia.

In October 2016, the Indonesian Supreme Court reportedly ruled that PT Semen Indonesia lacked the data illustrating that its cement factory and operations would not negatively affect local water supplies and instructed to halt construction by revoking the environmental permit. In November 2016, the Governor of the Central Java issued a new environmental permit, allowing for the construction to resume in Rembang. This caused widespread protests by local communities aimed at stopping the construction of the cement factory. In January 2017, the Governor agreed to comply with the Supreme Court ruling and issued a decree for the company to suspend the construction while the environmental impact assessment and other related documents were revised. Since the construction of the factory reportedly continued, local communities held a series of protests, including in front of the Presidential State Palace in Jakarta.

On 3 May 2017, Messrs. Nur Aziz, Sutrisno Rusmin and Mujiono were declared suspects, following a complaint alleging the farmers were illegally occupying and destroying the Kalibodri forest. The charges were levied in accordance with article 19 (a) of the 2013 Law No.18 on prevention and eradication of forest destruction. The legal counsel for the accused argued that the Surokonto village had contested the prior designation of the Kalibodri forest as a production forest, paving the way for its eventual destruction by PT Semen Indonesia, and that article 11 of the Law No. 18 provided for an exemption from criminal charges for the population living near the forest area and engaging in traditional farming.

On 4 October 2017, the three land rights defenders were sentenced by the Supreme Court of Indonesia to eight years of imprisonment and a fine of Rp10 billion (USD 700,000) on charges of illegal logging and destruction of the forest land in accordance with article 19 (a) of the 2013 Law No.18. Mr. Aziz and Mr. Rusmin are held in the Central Java Prison, while Mr. Mujiono is said to be absconding and his whereabouts are unknown. The legal counsel petitioned for a presidential pardon of the individuals.

While we do not wish to prejudge the accuracy of these allegations, we express concern about the sentencing of Mr. Heri Budiawan for crimes against state security in connection to his role in protests against gold mining activities in Tumpang Pitu and Salakan mountains, East Java, as well as the sentencing of Messrs. Nur Aziz, Sutrisno Rusmin and Mujiono for illegal logging and destruction of the forest land in Central Java, in relation to their protests against the construction of a cement factory on the land traditionally cultivated by the Surokonto Wetan village. We are also concerned such prosecution was motivated by the legitimate exercise by those individuals of their fundamental rights to freedom of expression, association and peaceful assembly and was linked to their legitimate human rights activities in the protection of their environment and land.

Further concern is expressed that the sentencing of those environmental human rights defenders may have a dissuasive effect on the affected population to continue

exercising and promoting their legitimate rights in Indonesia, including in the context of the approval and implementation of large-scale projects and investments.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** 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 case accurate? Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for the conviction and sentencing of Messrs, Heri Budiawan, Nur Aziz, Sutrisno Rusmin and Mujiono, and clarify how this complies with Indonesia's obligations under International Human Rights law.
3. Please provide the details of the measures that your Excellency's Government has taken with regard to its human rights obligations relating to the environment, including public participation in environmental decision-making, access to environmental information and remedies for environmental harm.
4. Please also indicate whether a human rights and environmental impact assessment was carried out for the mining concession in the forest mountains of Tumpang Pitu and Salakan and for the construction of the cement factory by PT Semen Indonesia in Rembang, and if so kindly provide details of the results.
5. Please indicate what measures have been taken to ensure that environmental human rights defenders are able to carry out their legitimate work in a safe and enabling environment in Indonesia, without fear of persecution and harassment of any sort.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

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

John H. Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Baskut Tuncak

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards.

We would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), which was acceded by Indonesia on 23 February 2006, which provides for the right of every individual to freedom of opinion and expression, freedom of peaceful assembly, and freedom of association as contained in articles 19, 21 and 22.

Reference should also be made 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, also known as the UN Declaration on Human Rights Defenders. Of particular relevance are articles 1 and 2 of the Declaration which state that everyone has the right 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. Article 5 (a), 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 (b) and c) provides that everyone has the right to freely 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 of these rights. article 12 (1) and (3), provides for the right to participate in peaceful activities against violations of human rights and fundamental freedoms, as well as for the right to be protected effectively under national law in reacting against, or opposing, through peaceful means, activities and acts that result in violations of human rights and fundamental freedoms.

We recall Human Rights Council resolution 31/32, which in its paragraph 1 reaffirms the urgent need to respect, protect, promote and facilitate the work of those defending economic, social and cultural rights as a vital factor contributing towards the realization of those rights, including as they relate to environmental and land issues as well as development.

We also refer to the Framework Principles on human rights and the environment of the Special Rapporteur on human rights and the environment (A/HRC/37/59, annex), which summarize the main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Namely, Framework Principle 4 reaffirms that States should provide a safe and enabling environment in which human rights defenders that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence, while Principle 5 recalls that States should respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters.

Further, we would like to highlight that Indonesia is a party to the Minamata Convention on Mercury, and is thus required to develop a National Action Plan with "Strategies to prevent the exposure of vulnerable populations, particularly children and women of child-bearing age, especially pregnant women, to mercury used in artisanal and small-scale gold mining" and to reduce emissions of and exposure to mercury in artisanal and small-scale gold mining and processing, including mercury-free methods, as well as a public health strategy on the exposure of artisanal and small-scale gold miners and their communities to mercury, among other elements.

Finally, we would also like to refer to the Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution 17/4. The Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. They recognize the important and valuable role played by independent civil society organizations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.