

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the human rights to safe drinking water and sanitation**

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights of indigenous peoples; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 35/15, 33/12, 34/35, 34/19 and 33/10.

In this connection we would like to bring to your Excellency's Government information we have received concerning **allegations of extrajudicial killings through either torture, intentional killing or excessive use of force of six indigenous Papuans by the police and the military in 2017 and 2018 which are alleged to be part of a broader pattern of extrajudicial killings of indigenous Papuans.**

Another allegation of death in detention due to torture was the subject of special procedures communication IDN 1/2017. While we note that an acknowledgement of receipt was received on 22 March 2017, we regret that no substantive response has been received to date. Allegations of use of excessive force, torture and killings of several indigenous Papuans were the subject of special procedures communications IDN 1/2016 and IDN 8/2015. We regret that no responses have been received to date.

According to the information received:

6 individual cases

**Daud Ayoumi**

On 22 October 2018, at 20:00, a member of the military shot dead Mr. Daud Oyomi in Waroki village, Nabire Regency. Mr. Ayoumi had left his house to buy water and was crossing a junction where four soldiers in plain clothes were standing. As he passed one of the soldiers shot at him, hitting him in the chest and killing him instantly. It is unclear why the soldier fired at Mr. Oyomi.

Following the shooting, three of the soldiers left the location immediately. A fourth soldier tried to leave using Mr. Oyomi's motorbike but was unable to start the engine. He hid behind Mr. Oyomi's house but was found at around 20:30 by villagers who slit his throat and killed him.

At 21:00, members of the police mobile brigade took the body of Mr. Oyomi and the soldier for a post-mortem. At 22:00 the head of the district police and military command met with villagers in relation to the incident. Reportedly the head of the military district command proposed to settle the case outside of the law. The district police chief indicated they would undertake a criminal investigation into the killing of the soldier. After the meeting, three individuals requested to see Mr. Oyomi's body, but instead of being taken to the hospital they were arrested.

At 11:30 on 23 October 2018, Mr. Oyomi's body was returned to his next-of-kin and another villager was arrested.

The Head of the XVII Cenderawasih Military Area Command Information Department stated in a public interview that several villagers who were under the influence of alcohol attacked the soldier with knives and machetes and Mr. Oyomi was killed in self-defence. He also stated that consumption of alcohol causes over-reactions in such situations leading to criminal acts and vigilante justice. The presence of three other soldiers was not mentioned and this statement was made without any apparent investigations.

### **Yohanis Bisai**

On 21 May 2018, a military officer stabbed Mr. Yohanis Bisai, an indigenous Papuan man, in his house in Anotarei Village of Yapen Selatan District.

On the day of the killing, around midnight, a group of men from the nearby Mariadei Village, for unknown reasons, allegedly threw stones at a military officer's house. During this incident, the officer saw Mr. Bisai sitting with others at his home, which was approximately 70 meters away from the officer's house. The military officer approached Mr. Bisai and accused him of directing the group to throw stones at his property. He then punched Mr. Bisai, and subsequently stabbed him in the head, the chest and the back with a bayonet. Mr. Bisai fled to his relative's house, who rushed him to the General Hospital in Serui. He died in the hospital due to his severe injuries.

The military police arrested the officer after the attack. On 22 May 2018, a military spokesman stated in an interview that the military law enforcement unit would investigate the case and submit it to a military court. The details of the investigation into Mr. Bisai's killing or any relevant legal proceedings are not known.

### **Gerry Goo**

On 9 May 2018, Mr. Gerry Goo, an indigenous Papuan man, died after he had been shot and allegedly tortured by the police.

On 6 April 2018, at 19:00, security forces arrived in Mauwa Village, Dogiyai Regency, in two pickup trucks. Villagers witnessed the members of the security forces stop the vehicles at the bridge over the Mauwa River and shoot at an unknown target. The security forces then left the village towards Odedimika Mountain.

After the security forces left, a group of villagers gathered at the bridge and set up a roadblock as a protection measure. At 19:30, the two pickup trucks returned from Odedimika Mountain and stopped at the roadblock. A group of young villagers then approached and asked members of the security forces to explain why they were shooting earlier and who or what they were trying to find. Instead of responding, one of the members of the security forces fired a warning shot. The villagers did not disperse and continued to block the vehicles from passing. The security forces then requested backup from the Moanemani sub-district police station. Around 19:45, police forces arrived in Mauwa Village and used teargas to disperse the villagers. Some police officers also opened fire at the villagers.

Mr. Goo, who was at the bridge with the villagers, was shot twice in his right shoulder. The police then detained Mr. Goo and brought him to the Kamu sub-district police station, where he was allegedly tortured and sustained a head injury.

The next day, on 7 April 2018, Mr. Goo was admitted to Siritwini General Hospital in Nabire, where he was closely guarded by the police. His family was also prohibited from seeing him. Mr. Goo had bullets lodged in his shoulder, but Siritwini General Hospital was not equipped to remove them. Several weeks later, on 21 April 2018, he was finally transferred to a hospital in a different province to remove the bullets, but doctors there felt that his condition was too unstable to undergo a surgery to remove the bullets.

On 7 May 2018, family members brought Mr. Goo back to Dogiyai Regency. He died on 9 May 2018, with bullets still lodged in his shoulder. According to information received, the police and the military did not investigate Mr. Goo's death.

### **Emakulata Emakeparo**

On 3 February 2018, Ms. Emakulata Kolaka Emakeparo, an indigenous Papuan woman of the Kamoro tribe, was shot and killed by the police.

On the day of the incident, at around 22:00, she and a relative were crossing the river in a small canoe in search of drinking water. They heard cries for help and followed the sound. It was a dark night and Ms. Emakeparo was holding a flashlight to guide the canoe. The relative heard three shots and asked her to turn off the flashlight. She did not respond. Her relative then realized that Ms.

Emakeparo was unconscious because she had been shot in the head. He rushed to a local clinic, but Ms. Emakeparo died on the way.

A police spokesperson explained that Ms. Emakeparo was killed by a stray shot fired by a police officer. Allegedly, the police arrested three Papuan men who had stolen property from a cargo dock. One of the men attempted to flee, jumped in the river and cried for help. The Vice Chief of the Papuan regional police stated local villagers heard the cry and attacked the police officers, who then released shots.

The Head of the Mimika District Police publicly stated that seven policemen involved in the incident were under investigation. However, the status of the investigation or any related legal proceedings are not known.

### **Isak Dewakyekua**

On 19 November 2017, Mr. Isak Dewakyekua died as a result of injuries allegedly sustained when three members of the army from Infantry Battalion 755 tortured him. On 18 November 2017, three soldiers arbitrarily detained Mr. Dewakyekua and took him to the military post in Kimaam District, Merauke Regency. There, the military men allegedly beat and tortured Mr. Dewakyekua. Several hours later, they transferred him to a police station in Kimaam.

The next day, a person associated with Mr. Dewakyekua's learned that he was at the police station and visited him there. Upon their arrival they found him dead on the floor of his cell. He had a swollen chest and blood and bruises covered his body.

A local health center performed an autopsy of Mr. Dewakyekua. Members of the police and the military were present during the procedure. The authorities prohibited the deceased's family from seeing his body until the completion of the autopsy. Members of the military offered money to the next of kin of the victim and requested they sign a statement that they would not report the incident.

In November 2017, the Military Police of Merauke launched an investigation into the incident and in December 2017 it was submitted to the Military Police of Cendrawasih. In July 2018, a trial began against the three soldiers in a military court located in Jayapura, a distant city from where the incident took place which prevented some witnesses from testifying, including the individual who first found Mr. Dewakyekua deceased in his cell, as they could not afford the airfare.

In July 2018, the three soldiers had been court martialled and dishonourably discharged from military service. Additionally, two had been sentenced to one year and four months in prison and one sentenced to one year and eight months. However, in September 2018, the military court reduced all three imprisonment sentences to four months.

## **Theodorus Cekatem**

On 9 August 2017, a Chief Brigadier in the Military Intelligence Unit, shot and killed Mr. Theodorus Cekatem, an indigenous Papuan man, during a fight between local tribesmen and non-resident fishermen at Poumako Port in Timik.

On 7 August 2017, local officials approved a request by non-resident fishermen to use customary fishing grounds of an indigenous group, during a meeting to which representatives of the indigenous community and other stakeholders were not invited. On 9 August 2017, several indigenous fishermen saw non-resident fishermen leave the harbor to fish. Subsequently, at around 13:00, a group of indigenous fishermen followed the non-resident fishermen in several long boats to stop them from fishing. At around 15:00, the non-resident fishermen returned to the harbor, escorted by the indigenous fishermen. Several of the indigenous fishermen then confiscated fishing equipment from the non-residents to prevent future fishing operations.

Two of the non-resident fishermen, accompanied by a group of their colleagues and followed by indigenous fishermen, then walked to a local police station to complain. After a short while, a non-resident fisherman exited the police station, approached an indigenous fisherman, snatched a bottle that he was holding and struck him with it. Upon seeing this, a brawl broke out between the two groups.

The Chief Brigadier, who was stood by the police station, shot three times at the crowd. The bullets hit three individuals, injuring two and killing Mr. Theodorus Cekatem. A group of indigenous persons then attacked the police post and injured a police officer.

Following a six months investigation, the Brigadier was criminally charged with “maltreatment” resulting in death, punishable with imprisonment of up to seven years in prison. The case was eventually submitted for trial to a military tribunal in military court III-19 in Jayapura, although a local military tribunal could have heard the case. This made it difficult for the deceased’s family to attend the trial. Additionally, the military prosecutor did not summon any witnesses to testify. On 20 March 2018, the tribunal sentenced the Brigadier to eight months in prison.

### Pattern of killings

These cases appear to reflect a broader pattern of killings of indigenous Papuans by the security forces. Reportedly, there have been at least 69 such cases with 95 individual victims between January 2010 and February 2018– nearly 90 percent of victims were indigenous Papuans. For cases where information is available, in 25 cases no investigation was conducted, in 26 cases the security forces indicated they had conducted internal investigations but the results were not made public and only in six cases were perpetrators held accountable for the deaths. Where cases are investigated, the police and military institutions lack transparency and investigations frequently take a long time and do not consider important evidence.

It is alleged that these killings are related to racial discrimination faced by the Papuan community including from state institutions. They face offensive stereotypes that portray them as “primitive,” “rebellious,” and “traitors.” These racist stereotypes, which are also allegedly prevalent among members of the police and military, contribute to excessive use of force against Papuans by police and military actors in a wide range of circumstances.

Without prejudging the accuracy of these allegations, we express our most serious concern about the alleged killings of six indigenous Papuan individuals through either torture, intentional killing or excessive use of force by members of the police or military. We are also concerned by the alleged killing of a soldier by villagers in retaliation for one of these incidents. We additionally express concern about the alleged broader pattern of extrajudicial killings of indigenous Papuan individuals and that this may be linked to racial discrimination and intolerance as well as the systematic lack of thorough, prompt and impartial investigations into the killings.

We would like to refer to articles 3 and 5 of the Universal Declaration of Human Rights (UDHR) and 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia acceded on 23 February 2006, and which guarantee the right of every individual to life and security, and provide that these rights shall be protected by law, that no one shall be arbitrarily deprived of his life and that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

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 use of force and firearms is permitted only as a last resort when unavoidable and must be exercised with the utmost restraint. According to the information available to us, the authorities’ use of lethal force that had resulted in the killings of the aforementioned individuals do not seem to have met the principles of necessity or proportionality.

We would further like to recall that when the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility which can only be overcome through a thorough, prompt and impartial investigation. This obligation includes identifying and bringing to justice those responsible through criminal investigation and prosecution; granting adequate compensation to the victim or his family; and taking steps to end impunity and the recurrence of such executions. We are thus deeply troubled by the fact that there had been no investigation into the killing of Mr. Goo and apparent lack of information and flaws in the investigations into the other cases.

Judges should always be independent and impartial. However, in cases where military personnel commit human rights violations, “the intervention of a military judge

who is neither professionally nor culturally independent is likely to produce an effect contrary to the enjoyment of the human rights and to a fair trial with due guarantees,” (2014, A/HRC/27/48) and military tribunals should not be used for cases of human rights violations by military personnel.

We welcome the fact that the authorities have investigated some of the allegations in this communication, which had led to the prosecution and conviction of those responsible. Nonetheless, we are concerned that the punishments levied on the perpetrators of these human rights violations by military tribunals are not adequate and fail to serve their deterrent aims. Furthermore, Indonesia’s domestic law does not criminalize torture. This legislative gap all but guarantees that those who torture and kill will not held judicially accountable for the full range of human rights violations that they may commit. Regrettably, it is thus not surprising that a military tribunal had sentenced each of three members of the army who had tortured and killed Mr. Dewakyekua to merely four months in prison. Unless these issues are addressed, a climate of impunity will perpetuate and more lives will be lost.

We also wish to remind your Excellency’s Government that according to Principle 16 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989), families of the deceased and their legal representatives must be informed of and have access to any hearing as well as to all information relevant to the investigation, and must be entitled to present other evidence. We are thus concerned that the military authorities chose to hold the trials related to the cases of Mr. Dewak and Mr. Cekatem in cities located far from the areas where they had been killed despite the existence of more proximate tribunals, which made it difficult, and in some cases impossible, for the victim’s families and witnesses to attend the trials.

Lastly, we wish to add that the Papuan community is an indigenous group in Indonesia and we would thus like to bring to your Excellency’s Government attention the international standards regarding the protection of the rights of persons belonging to indigenous groups.

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.

It is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, and we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comments that you may have on the above-mentioned allegations.
2. Please provide further details, and where available the results, of the aforementioned investigations and any other investigation, medical examinations, and judicial or other inquiries which may have been carried out

in relation to the allegations. In cases where no inquiry has taken place or if they have been inconclusive, please explain why.

3. In cases where the alleged perpetrator had been identified, please provide the full details of any prosecutions which have been undertaken. Please provide information on all penal, disciplinary or administrative sanctions that had been imposed, including justification for the length of any imprisonment terms.
4. Please indicate any legislative or other provisions which allow for military personnel who commit human rights violations to be systematically tried in civilian courts. If such provisions do not exist, please indicate whether your Excellency's Government plans to implement the reforms required to enable this.
5. Please indicate any remedies and financial compensation afforded to the victims' families in these cases.
6. Please provide information on measures taken by your Excellency's Government to prevent the excessive use of force by law enforcement and military officials who perform law enforcement functions.
7. Please provide information on the process of codification of the definition of torture in Indonesia's Penal Code that covers all of the elements contained in article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
8. Please indicate what measures your Excellency's Government has taken to ensure the full respect and protections of persons belonging to an indigenous group, specifically in relation to the Papuan community.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from Your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

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Special Rapporteur on extrajudicial, summary or arbitrary executions

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



E. Tendayi Achiume  
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punishment

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**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your Excellency's attention to the following principles:

Article 6(1) of the International Convention on Civil and Political Rights (ICCPR), to which Indonesia acceded on 23 February 2006, provides that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life. In General Comment No. 31, the Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces. Permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13).

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (hereafter ICERD), ratified by Indonesia in 1999, guarantees the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equal treatment before tribunals and all other organs administering justice. It also guarantees equality before the law, to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution. It is worth recalling that any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life constitute racial discrimination (Article 1). Article 2 of the Convention requires States to implement affirmative measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, with a view to guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. States have a responsibility to combat prejudices, which lead to racial discrimination and to promote understanding, tolerance and friendship among nations and racial or ethnical groups (Article 7).

Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples adopted by the General Assembly in 2007 provides in Article 7 that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

Excessive use of force

The Code of Conduct for Law Enforcement Officials (1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) provide an authoritative interpretation of the limits on the conduct of law enforcement forces. Principle 4 provides that in carrying out their duties, law enforcement officials may use force and firearms only if other means remain ineffective. Principle 5 adds that if the use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offense and obliges the authorities to offer assistance and medical aid to any injured persons as soon as possible. Moreover,

Principles 9 reiterates that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. Furthermore, firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (para 60 of the recommendations). Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated, including giving a clear warning of the intent to use force and to provide sufficient time to heed that warning, and providing medical assistance as soon as possible when necessary (principles 5 and 10). Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles (principle 8).

#### Deaths in custody including through torture

In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions (principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). Further, the deprivation of life of individuals through acts or omissions that violate other provisions of the Covenant, such as the prohibition on torture in article 7, are arbitrary in nature.

#### Military tribunals

Principle 29 of the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity (2005) explicitly states that “military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court.”

#### Investigations

There is a duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary or summary executions and the obligation to bring to justice all persons identified by the investigation as having participated in those executions as laid down in the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989. The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) provides detail on the duty to investigate potential unlawful deaths “promptly, effectively and thoroughly, with independence, impartiality and transparency.” It notes the authorities must “conduct an investigation as soon as possible and proceed without unreasonable delays. We remind that amongst other things, investigations into alleged unlawful killings should seek to determine who was involved in the death and their individual responsibility for the death and seek to identify any failure to take reasonable measures which could have had a real prospect of preventing the death. It should also seek to identify policies and systemic failures that may have contributed to a death, and identify patterns where they exist (para 25.).

We further note to the extent possible, family members should also be consulted prior to an autopsy. They should be entitled to have a representative present during the autopsy (para 37). The relatives of a deceased person must be sought, and informed of the investigation. Family members should be granted legal standing, and the investigative mechanisms or authorities should keep them informed of the progress of the investigation, during all its phases, in a timely manner (para35).

Moreover, the Human Rights Committee recalled in *Annakkarage Suranjini Sadamali Pathmini Peiris v. Sri Lanka* that “criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by article 6” of the ICCPR. Additionally, we recall that the Special Rapporteur on extrajudicial, summary or arbitrary executions has observed that “the legal duty to punish those individuals responsible for violations of the right to life is not a formality. Punishment is required in order to ensure the right to life by vindicating the rights of the victims and preventing impunity for the perpetrators. Therefore, States must punish those individuals responsible for violations in a manner commensurate with the gravity of their crimes” (E/CN.4/2006/53).

In addition, persons whose rights have been violated have the right to a full and effective remedy included to adequate, effective and prompt reparation.