

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of indigenous peoples; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 34/5, 33/12, 34/35 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the use of a snake by the police in Papua, while interrogating Mr. [REDACTED], an indigenous Papuan minor. The incident seems to reflect a broader pattern of racism, violence, harassment, killings, arbitrary arrest and detention as well as alleged use of snakes and other methods amounting to torture or other cruel, inhuman or degrading treatment by security and police personnel against indigenous Papuans and human rights defenders in the wake of the ongoing military operation in Papua.**

Allegations of use of excessive force, torture and killings against indigenous Papuans by the police or military have been the subject of previous special procedures communications, including most recently IDN 7/2018, IDN 1/2017, IDN 1/2016 and IDN 8/2015. While we note that an acknowledgement of receipt was received on 22 March 2017 for communication IDN 1/2017, we regret that no substantive response has been received to date on this communication and none on the others.

According to the information received:

Mr. [REDACTED] is a 17 years-old boy, who lives in [REDACTED] in Papua. On 6 February 2019, Mr. [REDACTED] was arrested in the [REDACTED] by security officers wearing plain clothes. Reportedly, some local residents had observed Mr. [REDACTED] steal a mobile phone in an inebriated condition, whereafter they called the police. He was taken by the security officers to the [REDACTED] police station to be interrogated without a warrant.

At the police station, the police officers allegedly used a snake in the interrogation to coerce Mr. [REDACTED] to make a confession. A dark brown snake of around 2 meters length was wrapped around Mr. [REDACTED] neck and waist, while police officers pushed its head towards Mr. [REDACTED] face. Mr. [REDACTED] was handcuffed at the time. The police officers reportedly laughed during the interrogation and used racist insults, while asking how many times Mr. [REDACTED] had stolen mobile phones.

Mr. [REDACTED] was released the following day, on 7 February 2019, without charges. He is reportedly traumatised by the incident.

The interrogation was filmed by one of the police officers, and the recording was afterwards uploaded on Facebook. It has since been shared broadly on social media, as well as in national and international media reports.

Following the incident, Indonesian police representatives have publicly apologised and acknowledged that police officers used a snake in the interrogation. [REDACTED] police chief, Mr. Tonny Ananda Swadaya, was reported in the media to have said that officers had acted unprofessionally and on their own initiative, but that the snake was not venomous and that the officers had not beaten the man. According to media reports, he furthermore stated that the police officers had been disciplined by giving ethics training and moved to another location. Papua province's police spokesman, Mr. Ahmad Musthofa Kanal, furthermore expressed to the press that the officers involved are being questioned by an internal affairs unit to assess if violations of the law or code of conduct occurred. He is quoted in the media as having said that the police does not institutionally recognise such unprofessional methods of interrogation, and that they guarantee that such inhuman methods will not be used in the future.

The incident seems to indicate a broader pattern of alleged racism, violence, harassment, killings and arbitrary arrest and detention by security and police personnel against indigenous Papuans and activists in the wake of the ongoing military operation in Nduga regency in Papua. Indigenous Papuans often face offensive stereotypes that portray them as “primitive,” “rebellious,” and “traitors”, allegedly also by state institutions, including the police and military.

Recent related incidents include the arrest of six members of the West Papua National Committee (Komite Nasional Papua Barat - KNPB) on 31 December 2018, when they were organising a prayer gathering to commemorate the groups' fifth anniversary. KNPB is a Papuan organisation with the main aim to advocate, through non-violent means, for the right to self-determination for Papuans by holding a referendum. According to the information received, there were no arrest warrants or search warrants, but the six persons were arbitrarily detained for more than 24 hours and several of them, including one woman, were beaten during the arrest. All six individuals and two others were questioned again by the police on 5 January 2019. Three were later arrested and charged with “attempt of treason” (punishable with 20 years or life imprisonment) and “conspiracy to commit the

crime of treason” (punishable with six years imprisonment), reportedly due to their work for KNPB and the planning of the anniversary event. It has also been reported that several KNPB Secretariat offices have been damaged and vandalized, including in Asmat on 1 December 2019 and in Jayapura on 19 November and 1 December 2018. On 31 December 2019, at least 100 police without a warrant used batons to forcibly remove KNPB members from their office in Timika, vandalising the office building. Since this incident, the office has according to the information received been used as a joint military-police post.

Furthermore, there have reportedly been at least 95 victims killed in cases involving the police and security forces between January 2010 and February 2018. Almost 90 % of the victims were indigenous Papuans. In most instances, investigations have not been conducted into these alleged killings, or they were performed internally, protracted, lacked transparency, and did not consider important evidence.

While we do not wish to prejudge the accuracy of these allegations, we express our serious concern regarding the alleged arbitrary detention of Mr. [REDACTED], including the use of snakes and inhuman methods during the interrogation by members of the Indonesian police and security forces, in order to coerce him to make a confession. We are furthermore concerned about allegations of arbitrary arrests of members of the West Papua National Committee (Komite Nasional Papua Barat - KNPB).

We furthermore find it deeply concerning that the incidents appear to reflect a broader culture of racism and intolerance, as well as an alleged general practice of using torture, violence and killings by the Indonesian police and security officers in Papua and in particular targeted at indigenous Papuans, amongst them human rights defenders and indigenous rights defenders. We additionally express our deepest concern about the reported systematic lack of thorough, prompt and impartial investigations into these cases of torture and killings.

These cases appear to be a prima facie violation of international human rights norms and standards, including the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, as set forth in article 5 of the Universal Declaration of Human Rights (UDHR) and 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia acceded on 23 February 2006.

We furthermore wish to refer to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007 with the affirmative vote of Indonesia. The UNDRIP elaborates upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. These fundamental human rights include equality and non-discrimination, life and personal integrity, culture, health and property, all of which are recognized in the principal human rights treaties ratified by Indonesia and mentioned above. In particular, we would like to recall article 7 of the UNDRIP which provides that indigenous

individuals have the rights to life, physical and mental integrity, liberty and security of person.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the legal basis for the arrest and detention of Mr. [REDACTED] and members of the West Papua National Committee (Komite Nasional Papua Barat - KNPB), and any charges that have been brought against them.
3. Please provide detailed information on the measures taken to provide to Mr. [REDACTED] and members of the West Papua National Committee, the guarantees of due process and fair trial, and effective access to a counsel of their choosing as established in international human rights law, and in particular Articles 9 and 14, of the ICCPR.
4. Please provide information on the investigation conducted by the Police's internal affairs unit or any other measures taken by the Government to carry out an immediate, impartial, and transparent investigation into the incident involving the interrogation of Mr. [REDACTED] with the use of a snake as well as the unlawful arrests and detention of members of the West Papua National Committee.
5. Please provide further information on the findings of the investigation of the incident involving Mr. [REDACTED] conducted by the Police's internal affairs unit or any other investigation by the Government should it already had been completed, and particularly if an individual or group of officers were held accountable. Please provide information on all penal, disciplinary or administrative sanctions, which had been imposed.
6. 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.

7. 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 in Papua.
8. 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.
9. Please indicate what measures your Excellency's Government has taken to eliminate racial discrimination against Papuans in law and in practice and to ensure the full respect and protections of persons belonging to indigenous peoples, specifically in relation to the Papuan community.
10. Please indicate what measures have been taken to ensure that human rights defenders, including those defending indigenous rights, in Papua are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any kind.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. 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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Michel Forst
Special Rapporteur on the situation of human rights defenders

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

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw your attention to Articles 6, 9, 10 and 14 of the International Covenant on Civil and Political Rights, (ICCPR), to which Indonesia acceded on 23 February 2006. Article 6 of the ICCPR guarantees the inherent right to life of every individual and provides that this right shall be protected by law and that no one shall be arbitrarily deprived of his life. Article 9(1) of the ICCPR guarantees the right to liberty and security of all persons, thus safeguarding against arbitrary arrest and detention. Further, all persons deprived of their liberty are required to be treated with humanity and respect for their inherent dignity in accordance with article 10(1) of the ICCPR. Article 14 of the ICCPR provides for right to fair proceedings before an independent and impartial tribunal. The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment is set forth in Article 7 of the International Covenant on Civil and Political Rights (ICCPR) as well as Article 5 of the Universal Declaration of Human Rights (UDHR). We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, and as mirrored, *inter alia*, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

In connection with the described incidents in Papua, we would also like to remind your Excellency's Government of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), to which the State has been a party since 25 June 1999. In particular, we would like to recall Article 1 on the prohibition of racial discrimination; Article 2 on the obligation of the States to eliminate any act or practice of racial discrimination against persons and/or groups of persons; Article 5 on the right of everyone, without any distinction, to equality before the law, notably in the enjoyment of the right to security of person and protection by the State against violence or body harm (b); and article 6 on the right of everyone to effective protection and remedy against any acts of racial discrimination.

We furthermore wish to refer to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007 with the affirmative vote of Indonesia. We would like to emphasize that this instrument provides an authoritative statement of international human rights standards related to indigenous peoples. The UNDRIP elaborates upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. These fundamental human rights include equality and non-discrimination, life and personal integrity, culture, health and property, all of which are recognized in the principal human rights treaties ratified by Indonesia and mentioned above. In particular, we would like to recall article 7 of the UNDRIP which provides that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

We finally would like to recall to Your Excellency's Government Articles 1 and 12(2) of the UN Declaration on Human Rights Defenders, adopted by the UN General

Assembly on December 9, 1998 which ensure that “Everyone has the right, individually and 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 “The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.”