

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 34/5, 42/22, 34/18 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **criminalisation of human rights defenders in the Papua and West Papua provinces of Indonesia for the exercise of their rights to freedom of expression and of peaceful assembly and the intimidations faced by other human rights defenders documenting human rights violations in Papua province**. We would like to also draw to your attention that alleged act of intimidations against Mr. Wensislaus Fatubun may be a reprisal for cooperation and sharing of information with the United Nations on human rights issues.

We previously communicated concerns to your Excellency's Government about the criminalisation of peaceful protesters who took part in demonstrations in the provinces of Papua and West Papua in August and September 2019 (IDN 8/2019). The protests were allegedly sparked by a video of Indonesian military personnel using racist slurs against Papuan students. Demonstrations quickly escalated into pro-independence marches calling for a UN supervised referendum on self-determination for Papuans, with some turning violent and at least 41 losing their lives. We thank your Excellency's Government for the responses received to these communications, however we remain seriously concerned about the continued criminalisation of a number of these protesters.

On 4 September 2019, the UN High Commissioner for Human Rights issued a statement in which she condemned the excessive use of force employed by the Indonesian Government against demonstrators.

Ambrosius Mulait is a human rights defender and head of the student organisation, the Association of Papuan Central Highlands Students in Indonesia (AMPTPI)

Charles Kossay, Dano Tabuni, Isay Wenda are students and human rights defenders who played a role in the organisation of demonstrations in August 2019.

Agus Kossay is a human rights defender and chair of the National Committee for West Papua (KNPB). KNPB is one of the largest organisations that peacefully advocates for a referendum on self-determination in West Papua, following dissatisfaction with a vote in 1969 which confirmed West Papua's integration into Indonesia.

Paulus Ginting, a non-Papuan, is a human rights defender who is the spokesperson for the Indonesian People's Front for West Papua (FRI West Papua), an organisation that calls for a free and fair self-determination referendum for West Papuans.

Alexander Goboi is the head of the student association at the Universitas Sains dan Teknologi Jayapura.

Ferry Gombo is the head of the student association at Universitas Cenderawasih, the largest state-owned university in Papua and one of the lead organisers of the 19 August 2019 protests.

Stevanus Itlay is the chair of the KNPB in the city of Timika.

Hengki Hilapok is a student at Universitas Sains dan Teknologi Jayapura.

Rianto Ruruk, Yoseph Syufi, Manase Baho and **Etus Kareth** are all students who delivered speeches at the 18 September 2019 demonstration in West Papua.

Erik Aliknoe, Yunus Aliknoe and **Pende Mirin** are all students at Universitas Papua who delivered speeches at a demonstration that took place on 3 September 2020.

Assa Asso is a documentary filmmaker at the collaborative media organisation "Papuan Voices". Through Papuan Voices, he documents social and political issues in West Papua. He is also a member of the KNPB.

Eleven human rights defenders, **Daniel Jitmau, Paulus Syama, Simon Aifat, Lukas Nauw, Frengky Nauw, Melfin Werfete, Silvester Nauw, Lukas Smas, Wilson Kofias, Joshua Kingho** and **Yanpiter Yewen** encouraged the public to participate in peaceful protests in November 2019.

Wensislaus "Wensi" Fatubun is a human rights defender and advisor for human rights at the Papuan People's Assembly. He provides documentation, testimony and analyses on human rights issues in West Papua to the United Nations and other international human rights mechanisms. He also has participated in human rights training and capacity building workshops organised by UN mechanisms.

Yones Douw is a human rights defender and member of the indigenous Me tribe. He has been investigating and documenting cases of alleged human rights violations in West Papua for over ten years, raising awareness and submitting this information to various non-governmental organisations.

According to new information received:

Anti-Racism Self-Determination Protests

Since the arrest of hundreds of Papuan human rights defenders and protesters in August and September 2019, a number of court proceedings have begun or concluded. Large numbers of peaceful protesters and protest organisers have been violently arrested, without warrants, in the days and weeks since the demonstrations took place. According to information received, at least 22 peaceful protesters are currently on trial and 34 are awaiting trial in relation to their participation in demonstrations advocating against racism and for increased autonomy in West Papua. Of those, at least 29 are human rights defenders. No large-scale demonstrations have taken place since December 2019 as most of the leaders have been arrested and gatherings of over 10,000 people were banned, with Indonesian military simultaneously increasing their presence in public areas and universities.

All 29 of those who participated in peaceful protests have been charged with various forms of treason and intent to cause revolution or armed rebellion under Article 106 and Article 110 of the Criminal Code of Indonesia. Many have been charged for participating in demonstrations where the Morning Star flag was flying and others for their role organising protests. The flag is a symbol of West Papuan independence and is illegal to display publicly under Indonesian law. Many are being detained in reportedly overcrowded conditions in the Balikpapan prison in Manokwari, Fakfak, Sorong, and Jayapura prisons in West Papua or in the capital of Indonesia, Jakarta. The Government of Indonesia has allowed for the release of 30,000 prisoners in response to the COVID-19 pandemic, however the 29 human rights defenders, and other protesters charged with treason, some of whom remain in pre-trial detention, were not among the categories of prisoners with offences that were made eligible for release despite the alleged persistence of overcrowding and heightened risk of spread of the virus as a consequence.

Following their participation in the peaceful demonstration in front of the State Palace in Jakarta on 28 August 2019, Charles Kossay, Dano Tabuni, Ambrosius Mulait, Isay Wenda and Paulus Ginting were arrested. Charles Kossay and Dano were allegedly arrested without a warrant and their housemates were threatened at gunpoint. Ambrosius Mulait and Isay Wenda were arrested after participating in a protest advocating for the release of Dano and Kossay. They have all been charged under articles 106 and 110 of the Criminal Code and their trials began on 15 December 2019. All were sentenced to nine months in prison including time already served in pre-trial detention, except Wenda who was sentenced to eight months and released on 29 April 2020. Kossay, Tabuni, Mulait and Ginting were all due to be released on 12 May 2020 in line with the release of prisoners due to the concerns over the spread of COVID-19 in prisons. After signing a number of release documents and being given food to bring home, they were informed that

they were not eligible for release and must return to prison to serve the remainder of their sentence. They were eventually released on 26 May 2020.

On 17 September 2019, Agus Kossay was arrested without warrant for his role in planning, organising and advertising the peaceful protests of 19 August 2019 and his role monitoring the 29 August 2019 protest. Both demonstrations saw the flying of Morning Star flags with calls for independence alongside anti-racism themes. In the later stages of the protest, some participants turned violent, which Mr Kossay did not condone nor participate in. He was charged under Article 106, 110 and 160 (“inciting others to commit a punishable act”) of the Criminal Code and Article 82(2) of the Law No. 2 (2017) on Civil Society Organisations.

On 6 September 2019, Alexander Gobai was arrested in connection with leading a delegation of students from his University to peacefully protest on 19 August 2019 and delivering speeches at the demonstration at the 29 August 2019. Gobai allegedly did not support nor participate in the violence. He was charged under Articles 106 and 110 of the Criminal Code.

On 6 September 2019, Ferry Gombo was arrested without a warrant for organising and leading the 19 August 2019 protest. He is also charged with leading the violent 29 August protest, a charge which he denies based on the fact that he had only returned from Surabaya the morning of 29 August where he participated in a mediation meeting with the Governor of Papua. He allegedly spent the day at home. The meeting in Surabaya was aimed at reducing tensions over the racist incident that occurred on 17 August 2019 which sparked the series of protests. He was charged under articles 106, 110 and 160 of the Criminal Code.

On 11 September 2019, Stevanus Itlay was arrested without a warrant charged with planning and designing the uprising. He was charged under articles 106, 107 (1) and (2) (“intent to cause a revolution”) and 110 of the Criminal Code.

On 11 September 2019, Hengki Hilapok was arrested for participating in and helping to organise the protests on 19 and 29 August. He hired the sound systems and vehicles used in the latter protests, for which he was charged under article 106, 110 and 160 of the Criminal Code.

On 11 September 2019, Irwanus Uropmabin was arrested without a warrant for helping to organise and monitor security at the protests on 19 and 29 August 2019. He was involved in the preparation meetings held the two days prior to the latter protest but allegedly played no role in planning or participating in the violence that ensued. He was charged under article 106 and 160 of the Criminal Code.

The trials of the six aforementioned human rights defenders, Agus Kossay, Alexander Gobai, Ferry Gombo, Stevanus Itlay, Hengki Hilapok and Irwanus Uropmabin’s took place via video-conference, due to COVID-19 restrictions,

since April 2020 with the district court in Balikpapan. On 5 June 2020 the Public Prosecutor requested sentences of 15 years for Steven Itlay and Agus Kossay, 10 years for Alexander Gobay and Ferry Gombo and 5 years for Hengki Hilapok. On 17 June 2020, Agus Kossay and Steven Itlay were sentenced to 11 months imprisonment. Ferry Gombo, Alexander Gobay, Hengky Hilapok and Irwanus Uropmabin were handed down 10 months in prison.

On 18 September 2019, Rianto Ruruk, Yoseph Syufi, Manase Baho and Etus Kareth were arrested after they delivered speeches at the demonstrations that took place the same day. They were charged in connection with the stickers they wore bearing the morning star flag. On 28 May 2020 they were found guilty of treason and sentenced to eight months and 15 days in prison.

On 19 September 2019 Erik Aliknoe, Yunus Aliknoe and Pende Mirin, all students at Universitas Papua, were arrested without a warrant for organising a demonstration that took place on 3 September 2019 in which they unfolded a Morning Star flag. The students delivered speeches at the rally in support of self-determination of West Papua. They were sentenced under Article 106, 110, 160, 212 and 213 of the Criminal Code of Indonesia. After three postponements to their trial, on 4 June 2020 they were sentenced to nine months only on the charge of incitement and imprisoned at Manokwari until their release one week subsequent, taking into account time already served.

On 23 September 2019, Assa Asso was arrested for his peaceful participation in the demonstration on 29 August and for later spreading sharing information on social media on the demonstrations. He remains in pre-trial detention and is being charged under article 106 and 160 of the Criminal Code. His trial began on 20 February 2020, with the evidentiary hearing and examination of the defendant postponed on three occasions until it finally took place on 4 June 2020.

On 26 November 2019, eleven human rights defenders, Daniel Jitmau, Paulus Syama, Simon Aifat, Lukas Nauw, Frengky Nauw, Melfin Werfete, Silvester Nauw, Lukas Smas, Wilson Kofias, Joshua Kingho and Yanpiter Yewen were all arrested as they stood outside the Mayor's Office in the city of Sorong, West Papua. They were encouraging members of the public on the peaceful protest organised for the following day. Their vehicle and banner were confiscated. They were charged for being in possession of Morning Star flags, related to the hat and the t-shirt with the Morning Star symbol attached. They remain in pre-trial detention.

Wensislaus Fatubun

In March 2017, Wensislaus Fatubun assisted the Special Rapporteur for the right to health who visited Papua during his official visit to Indonesia. Fatubun has also travelled to Geneva to meet with representatives of Special Procedures mandates. He has participated in and contributed to a number of regional training and

capacity building workshops, including remotely via Skype. In recent years, Fatubun has increasingly engaged with UN bodies and mechanisms, principally by providing information and testimony on human rights issues to the Office of the High Commissioner for Human Rights (OHCHR).

On 6 October 2019, personal details were posted about Wensislaus Fatubun and his family on Facebook, where Fatubun was presented as being affiliated with the armed separatist group, Free Papua Movement.

On 7 October 2019, police officers from the Tomohon City Police Precinct visited the health centre where Fatubun's wife works in the city. The police officers allegedly asked the head of the centre to invite his wife to talk to them. They questioned his wife about Fatubun's educational background and his specific human rights activities. She was then asked to disclose detailed personal information about Fatubun, such as his full name, date of birth, place of residence, and the number of years they have been married.

On 14 October 2019, two members of the Indonesian Military Command in Manado allegedly went to the house of Fatubun's parents in law. They met with his wife and one of her parents, where they continued their interrogation about Fatubun and his work.

On 27 February 2020, Fatubun was informed that a colleague had been approached by military personnel, and asked a series of questions about the human rights defender, including about his current location, where he lives, what work he does, and if the colleague could help them identify Fatubun.

Fatubun arranged to call the commissioner of the National Human Rights Institute (NHRI), but no action has been taken on his case at the time of writing. He has since been informed by other human rights defenders in the region that individuals affiliated with the military have continued inquiring about him.

Yones Douw

On the afternoon of 7 December 2019, two members of the Maleo regiment of Kopassus, the special forces division of the Indonesian military, visited Douw at his home in the town of Nabire in Papua province. They had allegedly found the address by asking a group of local children. The military officials alleged that they had come to invite Douw to attend a meeting to elect the new chairperson of a local community group.

One of the military officers questioned Douw about his human rights work and the work of other human rights defenders in Nabire. The military officer allegedly asked Douw to confirm the identities of other members of local human rights defenders networks. He was also asked personal questions about his family and children. When Douw refused to respond, one of the officers allegedly asked the

same questions to his children playing in the garden. The military officers also asked whether Douw was going to hold a public assembly for International Human Rights Day on 10 December 2019. Douw responded that if he was to do so, he would register it with local police if he had such plans. Douw did not proceed with the organisation of the protest due to safety concerns.

Since December 2019, Douw has allegedly been monitored and followed by unidentified individuals, allegedly wearing motorcycle helmets to conceal their identities. For safety reasons, Douw and his family no longer leave their home after sunset.

While we do not wish to prejudge the accuracy of these allegations, we express our deep concern at the persecution of human rights defenders in Papua. Those exercising their right to organise and participate peacefully in demonstrations appear to be targeted for exercising their fundamental rights of freedom of expression and association as well as their right to peaceful assembly and their right to take part in public debates concerning the economic, social and cultural development of their society. We are concerned by reports that the human rights defenders who helped organise and facilitate the protests, which were for the most part peaceful, have been systemically arrested and imprisoned, in what may be an effort to silence discontent with alleged systemic racism and hinder peaceful calls for greater autonomy. We are furthermore concerned that many of these defenders were handed down treason charges, which result in heavy prison sentences that are not eligible for early release under the COVID-19 provisions for reducing prison populations, and which may put the health of multiple human rights defenders and other individuals at serious risk.

In this context, we are furthermore concerned by the subsequent acts of intimidation against Douw and Fatubun, who also appear to be targeted for their peaceful human rights work. We are particularly concerned that the two human rights defenders may be being targeted for their peaceful advocacy for the rights of the Papuan minority in Papua and their investigations into human rights abuses committed by security forces and the military. We are concerned that the acts of intimidation by military officials may discourage Douw and Fatubun as well as other human rights defenders from carrying out their legitimate work and may have a chilling effect on civil society in the region.

Further serious concern is expressed that these acts are reported to be a form of intimidation or reprisal against Fatubun for his cooperation and engagement with UN human rights bodies and mechanisms, continually providing information and contributing to capacity building workshops. We are concerned by the possibility that the intimidations he faces have stemmed from his well-known cooperation with the UN on human rights, and may be aimed at discouraging him from continuing his role providing information to UN bodies and mechanisms, as well as benefitting from human rights trainings organised by UN bodies.

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. Please provide any additional information and/or any comment you may have on the above-mentioned allegations.
2. Please provide information on the legal and factual basis for the charges brought against human rights defenders and protesters for the exercise of their right to peaceful assemble.
3. Please provide information on why Kossay, Tabuni, Mulait and Ginting were denied early release granted to certain prisoners to mitigate the spread of the COVID-19 virus, despite having undergone all of the procedures to this effect.
4. Please provide information regarding the status of investigations into the complaint lodged by Wensislaus Fatubun to the NHRI regarding the intimidations to which he has been subjected. If no investigation has been launched, please explain how this is consistent international human rights law.
5. Please provide details regarding the nature of the visits by police and military personnel to the homes and workplaces of Douw and Fatubun and their families.
6. Regarding reported acts of intimidation and reprisals for cooperation with the UN in the field of human rights, please indicate what measures have been taken to ensure that Fatabun and human rights defenders in general are able to carry out their legitimate work, including documenting and reporting on human rights violations in Papua to the UN human rights mechanisms, including independent experts of the Human Rights Council, in a safe and enabling environment without fear of intimidation or reprisals of any kind.
7. Please indicate what specific legal and administrative measures have been taken to ensure that human rights defenders of all ethnicities in Indonesia are able to carry out their legitimate work, including through the exercise of their right to freedom of opinion and expression, their rights to freedom of peaceful assembly and of association, in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort against either themselves or their families.

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.

In light of the allegations of reprisals for cooperation with the United Nations on human rights, we reserve the right to share this communication – and any response received from your Excellency's Government - with other UN bodies or representatives addressing intimidation and reprisals for cooperation with the UN in the field of human rights, in particular the senior United Nations official appointed by the Secretary general to as senior official to lead the efforts within the United Nations system to address intimidation and reprisals against those cooperating with the UN on human rights.

We would like to inform your Excellency's Government that having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such communications in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to the right of all detained persons not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of International Covenant on Civil and Political Rights (ICCPR), acceded by Indonesia on 23 February 2006, in particular Article 9(1) which guarantees the right to liberty and security of all persons and Article 19 which guarantees freedom of expression.

In this regard, we would like to bring to the attention of your Excellency's Government General Comment No. 31, in which the Committee 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).

We would also like to underline that according to General Comment No. 34 of the Human Rights Committee, "the obligation to respect freedoms of opinion and expression is binding on every State party as a whole [...] The obligation also requires States parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities." (CCPR/C/GC/34, paragraph 7).

We would also like to recall article 21 of ICCPR, which guarantees the right to peaceful assembly. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the aim pursued.

In this context, we would also like to further refer your Excellency's Government 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. In particular, we would like to refer to 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. The Declaration also states in Article 9(2) that everyone has the right to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone 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 Declaration.

Lastly, we would like to remind your Excellency's Government of its obligation under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), to which Indonesia acceded to on 25 June 1999. Article 2 of the CERD obligates State Parties to "pursue a policy of eliminating racial discrimination in all its forms and promoting understanding among all races" and to this end, "rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination"

Regarding allegations indicating that the violations could be an act of intimidation and reprisals against those who cooperate with the UN in the field of human rights, we would like to refer to Human Rights Council Resolutions 12/2, 24/24 and 36/21, which reaffirm the right of everyone, individually or in association with other, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. In these resolutions, the Human Rights Council calls on States to prevent and refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies in order to effectively protect those who seek to cooperate, cooperate or have cooperated with the United Nations. The Council also urges States to ensure accountability for any act of intimidation or reprisal by ensuring impartial, prompt and thorough investigations of any alleged act of intimidation or reprisal in order to bring the perpetrators to justice; to provide access to effective remedies for victims in accordance with their international human rights obligations and commitments; and to prevent any recurrence."