

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on minority issues

REFERENCE:
AL INDN 3/2020

8 July 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 34/19, 42/22, 35/15, 34/18, 41/12 and 34/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **arrest and detention of seven youth belonging to the indigenous Papuan minority who were reportedly subjected to torture and ill-treatment in police custody in order to extract confessions as a basis for their convictions in connection with the anti-racism riots on 23 September 2019 in the town of Wamena, Papua Province.**

The violent riots in Papua and West Papua Provinces in August and September 2019 were the subject of previous communications sent by special procedure mandate holders with regards to excessive use of force and killings of protesters by police. We thank your Excellency's Government for its response to its letters under reference AL IND 7/2029 and 8/2019 on the aforementioned subject matter. The concerns raised herewith are in reference to the subsequent arrests and conditions of detention of suspected arsonists in Wamena and Oksibil.

According to the information received:

In September 2019, a protest in Wamena was sparked by acts of racism against a student belonging to the indigenous Papuan minority in Wamena PGRI Senior High School, Jayawijaya regency. Due to confrontation by police, there was an outbreak of violence, vandalism of stores and a building set on fire. Many victims died in the fire, most of which were non-Papuan traders. There were additionally a recorded 41 deaths as police violently dispersed the protesters with firearms.

The unrest triggered riots in surrounding highland regencies, including the town of Oksibil in the regency of Pegunungan Bintang, Papua Province. On

26 September 2019, residents set multiple stores at the Mabilabol Market in Oksibil on fire.

Following the riot, police carried out raids without warrants and arrested the below seven youth, allegedly in connection to the arsons in Wamena and Oksibil. They were charged under articles 160, 170 and 187 of the Indonesian Criminal Code (KUHP) for incitement, collective violence against persons or objects and deliberate arson respectively.

Ms. Iyaba, was arrested on 11 October 2019 in Wamena and detained at the Jayawijaya District Police detention facility.

The rest of the individuals mentioned below were arrested in Oksibil, Pegunungan Bintang Regency, and confessed under duress without any legal assistance or contact with their families. They were then transferred to the Papuan Regional Police headquarters in Jayapura. They received legal aid on 29 January 2020 and their trials begun on 11 May 2020.

Case of Teresta Tega Iyaba

Ms. Iyaba was subjected to intimidation and sexual harrasment during police custody. Police visited her cell twice, once on 15 October and a second time on 17 October, and threatened to kill her with a gun pointing, reportedly saying, “*You are the one who burned down the houses during the riots. I will shoot you in the leg*” and “*You better remember my face. There is no hope for you – you just wait here for your death. You better pray that I won't kill you instantly*”. On 14 November 2019, a police officer came to her cell and made sexual advances towards her.

Ms. Iyaba only gained access to a lawyer on 22 November 2019, after she was transferred to Polda Papua dention facility. The above incidents were reported by her lawyer on 4 December 2019 to the Polda Papua Division for Profession and Security of the Police, however no verdict or reprimand was communicated back.

On 4 February 2020, her trial commenced at the Wamena District Court and on 30 March 2020, she was sentenced to four months imprisonment. The High Court raised the sentence to six years imprisonment. The Supreme Court confirmed the sentence of six years. Ms. Iyaba is currently serving her sentence at the state penitentiary in the town of Wamena, Jayawijaya Regency, Papua Province.

Case of Karlos Asemki

Mr. Asemki, 20 years old, was arrested by police officers on 28 September 2019 in front of his house without a warrant or being given a reason for the arrest. Mr. Assemki was taken to Pegunungan Bintang District Police Station where he

was handcuffed, locked in a cell and repeatedly punched and kicked in his legs, arms and body.

He was interrogated without a lawyer present with eight police officers present. An officer tried to force him at gunpoint to confess to the burning of a market in Oksibil. Every time Mr. Asemki denied any involvement in the arson, police officers repeatedly caned him on his hands. The police officers pushed a glowing cigarette into the defendant's mouth, electroshocked him using a stun gun, kicked and punched him, and repeatedly struck him with a wooden stick to the body until the stick broke. He sustained multiple bruises on the body and the face as a result of the beatings. Despite the initial denial of his involvement, the police eventually got Ms. Asemki to sign a confession letter.

After five days he was transferred to the Papuan Regional Police headquarters in Jayapura. His relatives were not informed about the transfer.

Case of Yhoni Malyo

On 27 September 2019, Mr. Malyo, 24 years old, was taken from his home by police officers to make a statement at the district police station. Enroute in the police car, the officers punched and beat Mr. Malyo. The beatings continued during the interrogation at the station. Many police officers partook in kicking and punching him, and shocking Mr. Malyo repeatedly with a stun gun.

Intimidated and in pain, Mr. Malyo made a false confession, hoping that the torture would stop. Afterwards, the officers then handcuffed him and tied his feet, and forced him to enter a police car as they went searching for more suspects. Upon return to the police station, Mr. Malyo was thrown out of the police car hitting the ground. He was then taken to the detention cell where he was subjected to more punches to his face and electrocution a stun gun. Mr. Malyo lost two teeth as a result of the punches.

On 29 September 2019, Mr. Malyo was transferred from Pegunungan Bintang District Police to Papua Regional Police headquarters in Jayapura. He received legal aid on 29 January 2020 and his trial begun on 11 May 2020.

Case of Hermanto Nabyal

Mr. Nabyal, 23 years old, was arrested by police officers without a warrant at his uncle's house in the so-called refugee complex in Oksibil on 1 October 2019 at 21:00hrs. The Head of the Criminal Investigation Unit (Kasat reskrim) of Pegunungan Bintang district police and several other officers forced him to enter a police patrol car, and handcuffed his hands and tied his feet. Thereupon,

Mr. Nabyal had to put his hands on the floor while police officers wearing combat boots stomped on his hands and feet.

At the district police station, police officers brought Mr. Nabyal to a cell, where the abuse continued. A police officer punched him in the face and subsequently stomped on his hands and body. On the following day, he was transferred to the Papuan Regional Police headquarters in Jayapura.

Case of Keyus Balyo

Mr. Balyo, 26 years old, was stopped by two plain cloth officers in front of the military base in Oksibil (Koramil Oksibil) on 27 September 2019, as he was driving on a motorcycle. When the officers proceeded to arrest him, he tried to escape but eventually gave-up as he feared that the officers would shoot him. He was brought to the district police station at 16.30 hrs, and placed in a cell. Here, they punched and kicked him for about five minutes. One of the officers repeatedly electrocuted Mr. Balyo with a stun gun.

Case of Yosmin Duyala

Mr. Duyala, 25 years old, was arrested on 26 September 2019, at 4.00 pm, as he was waiting for a motorcycle taxi near the market. He was released 30 minutes later. However at around midnight police officers forcefully entered his house and arrested him without showing a warrant. The officers tied his hands and brought him to the district police station, where Mr. Duyala was subjected to torture by electric shocks with a stun gun. The following day, police officers forced him to sign a confession letter. They threatened to torture him if he would not sign the confession. On 2 October 2019, he was transferred to the Papuan Regional Police headquarters in Jayapura. The relatives were not informed about the transfer.

Case of Yenus Deal

Mr. Deal, 23 years old, was arrested near the Mabilabol Market on 27 September 2019, around 4.30 pm. A police car stopped next to him, a police officer jumped out of the vehicle and arrested him without showing a warrant. Two officers named Sesar and Yeheskiel repeatedly punched Mr. Deal until he fell. The officers continued to kick Yenus after he had fell on the ground. Subsequently, the officers dragged him into the car and brought him to the district police station, where he was interrogated. Police officers repeatedly kicked at Mr. Deal's body and hit him with the stock of a rifle on the head after he refused to sign a confession letter. In severe pain, Mr. Deal signed the confession. He was unable to hear properly for more than two months as a result of the torture. On 2 October 2019, he was transferred to the Papuan Regional Police Headquarters in Jayapura. His relatives were not informed about the transfer.

While we do not wish to prejudge the accuracy of these allegations, we express our most serious concern at the use of lethal force by security forces to disperse the assembly of protesting students belonging to the indigenous Papuan minority, which escalated into a violent riot that led to 41 deaths. We are further concerned by the alleged arbitrary arrests, treatment and conditions the detainees reportedly have been subjected to including sexual harassment and the pattern of coercive abuse in order to force the above mentioned individuals to admit to the crimes imputed to them. Should the facts alleged above be confirmed, they would amount to a violation of the right to life, right to liberty and security, the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment and freedom of assembly, non-discrimination, and the protection of the rights of persons belonging to minorities, as codified in articles 6, 7, 9, 19 21, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR) to which Indonesia acceded to on 23 February 2006.

We remind your Excellency's Government that, "individuals cannot lose their protection against torture and other cruel, inhuman or degrading treatment or punishment under any circumstances whatsoever, including in the context of violent riots or unlawful protests" (A/72/178, para 15). The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Indonesia ratified on 28 October 1998. Moreover the right to life under article 6 of the ICCPR entails a duty to take, "all necessary measures intended to prevent arbitrary deprivations of life by their law enforcement officials" (CCPR/C/GC/36, para 13).

In this connection, we refer your Excellency's Government to the **Annex on Reference to international human rights law** attached to this letter, which enumerates some of the main international human rights norms and standards that appear to be contravened by the previous 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 the observations of your Excellency's Government 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 detailed information on the factual and legal basis for the arrests and detention of the above mentioned individuals belonging to the indigenous Papuan minority. Please also provide information on how these are compatible with the obligations of your Excellency Government under international human rights norms and standards.
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to reported allegations of torture and/or cruel, inhuman or degrading

treatment. If no investigative action has been initiated, please explain how this is compatible with the international human rights obligations of Indonesia.

4. Please provide detailed information about the existing law and procedures in Indonesia, aimed at ensuring that statements obtained under torture or other ill-treatment from persons suspected of criminal offences are not used in court as evidence against them. In this connection, please provide detailed information about the steps that judges are required to take by law when they hear allegations by defendants that they were tortured? How in practice these laws and procedures are implemented?

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.

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 letters 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.

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

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

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Fernand de Varennes
Special Rapporteur on minority issues

Annex

Reference to international human rights law

In connection with the above allegations and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, is reflected inter alia, in article 5 of the Universal Declaration of Human Rights (UDHR), articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and Article 7 of the International Covenant on Civil and Political Rights (ICCPR).

We would also like to recall article 9 of the ICCPR that guarantees the right to liberty and security of person and the need to carry out arrests in conformity with the prescribed procedure; right to be informed of charges; right to challenge the legality of detention and be presented before a judicial authority. Furthermore, when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14 and 18-21 of the Universal Declaration of Human Rights and by articles 12, 18-19, 21-22 and 25-27 of the ICCPR, it may be arbitrary falling within category II of the Working Group on Arbitrary Detention. Finally, article 14 of the ICCPR upholds the fair trial guarantees, including the right to legal assistance of defendant's own choosing (article 14.3 (d) and the right not to be compelled to testify against himself or to confess guilt (article 14.3(g)).

In the policing of assemblies, the primary duty of law enforcement agencies is to facilitate peaceful assemblies and protect individuals from harm (CCPR/C/GC/AGO/CO/1 para 21). With regards to the excessive use of force, we would also like to draw the attention of your Excellency's Government to Principle 15 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "(l)aw enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened". While in custodial settings, Principle 16 provides that, "Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention [...]" (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

The right to freedom of expression under Article 19 of the Covenant is a precondition for the exercise of the right of peaceful assembly. Consequently, an unlawful restriction on protests will in many instances constitute a restriction on the right to freedom of expression, see CCPR/C/GC/34, para. 4. In particular, we would like to

highlight that attacks, including the use of force and arbitrary detention of individuals for exercising their freedom of expression is incompatible with the Covenant, *id.* para. 23.

We would like to draw the attention of your Excellency's Government to article 15 of the Convention against Torture, which provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." We also recall that paragraph 7c of Human Rights Council Resolution 16/23 urges States "To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment."

We would like your Excellency's Government to take note in respect of allegations of torture, the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture" and "(t)o ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation.

Lastly, we would like to bring to the attention of your Excellency's Government the international standards regarding the protection of the rights of persons belonging to minorities, in particular to article 27 of the International Covenant on Civil and Political Rights (ICCPR). Furthermore, article 26 of ICCPR guarantees equality before the law without any discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

We also wish to refer to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities), adopted by the General Assembly in 1992. In its Article 1, the Declaration on Minorities refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end. Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them. Article 4 establishes that "States will take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law".