

Mandates of 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; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights of indigenous peoples

REFERENCE:
AL IDN 4/2020

7 September 2020

Excellency,

We have the honour to address you in our capacities as 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; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 42/22, 35/15, 43/4, 41/12, 43/16 and 42/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary detention of indigenous farmers Mr. **Dilik Bin Asap**, Mr. **Hermanus Bin Bison**, and human rights defender Mr. **James Watt** and the failure to ensure the rights to life and to health of Mr. **Marius Betera** and Mr. Hermanus Bin Bison, and the inhumane conditions of detention of the former. These violations allegedly occurred in a context of a failure by the authorities to protect the rights of indigenous peoples and environmental rights defenders.

Dilik Bin Asap and Hermanus Bin Bison are two indigenous farmers who have participated in protests related to indigenous land rights; James Watt is a prominent land human rights defender; and Marius Betera is an indigenous Papuan and former employee of a palm oil company.

According to the information received:

Concerning Mr. Bin Asap, Mr. Bin Bison and Mr. Watt

PT. Hamparan Masawit Bangun Persada II (PT HMBP) is a subsidiary of BEST Group International, one of the largest palm oil companies in Central Kalimantan Province. In 2010, East Kotawaringin government officials, including the District Council, the District Chief and the District Land Agency found that PT HMBP was operating outside its concession area and then issued a warning letter to the company requesting it to return approximately 1,800 hectares (4,450 acres) of land to the community and cease operations outside the concession area. In 2011, the District Council found that the company had illegally planted on the 1,800 ha (4,450 acres) of land. The District Council echoed the District Chief's call to

return the land to the villagers. A similar warning was issued by the National Human Rights Commission (Komnas HAM), which called on the company to comply with the district government's requests.

In October 2019, PT HMBP announced that it would only relinquish control of a fraction of the disputed land — 117 hectares, or 290 acres — either completely or partially, offering to manage the area in collaboration with the villagers. The community had reportedly understood the statement to the effect that the company returned the disputed land to them, for the villagers to use and harvest.

On 2 February 2020, Dilik Bin Asap and Hermanus Bin Bison, two indigenous farmers from Penyang village in East Kotawaringin, were arrested and detained in the Bornean province of Central Kalimantan by the police, on charges raised by the company for stealing / harvesting palm fruit from inside a plantation owned by palm oil company PT HMBP. The two farmers were taken to the Central Kalimantan Regional Police HQ.

The arrest of the two farmers led to protests by community members who blocked the road leading to PT HMBP's plantation. A clash ensued between the protestors and plantation employees where one employee was reportedly injured. A child from the indigenous community also sustained injuries. In addition, 11 protestors were subsequently detained and released later that same day without charge.

On 17 February 2020, Dilik Bin Asap and Hermanus Bin Bison were charged with theft and assault of an employee of PT HMBP.

On 7 March 2020, prominent land human rights defender, James Watt, was arrested in Jakarta, where he had travelled to file a complaint on the arrests of the indigenous farmers to the Komnas HAM and the National Victims & Witnesses Protection.

During the detention of Hermanus Bin Bison his health rapidly deteriorated. At a court hearing on 6 April 2020, where Mr. Bin Bison was confined to a wheelchair because of difficulty walking, his legal team asked that he be released to seek medical treatment. The court rejected the request.

On 9 April 2020, pursuant to a request by his legal counsel, an independent doctor visited Hermanus Bin Bison in his prison cell, which he shared with several other inmates. He was diagnosed with asthenia, a condition of abnormal physical weakness, and a fever of 39° Celsius, prompting concerns that he might have contracted COVID-19, potentially putting other detainees at risk of infection.

The same day, the lawyers again petitioned the court to have him checked by a doctor at a hospital and released on medical grounds, submitting the doctor's diagnosis as basis for the request. The request for a medical check-up at a hospital was accepted. Hermanus Bin Bison was taken to Murjani General Hospital in East

Kotawaring accompanied by his legal counsel and family. At the hospital he was tested for COVID-19, as per hospital protocol, and the result was negative. He was diagnosed with a mild respiratory disease (cough and cold). He was not tested for asthenia, and no further tests were ordered (blood tests, chest x-ray). The doctors reportedly said that his health condition was good enough for him to be transferred back to the detention facility. He was taken back to the East Kotawaringin District Police detention facility that same evening.

Back in custody, the health condition of Hermanus Bin Bison continued to deteriorate. On 25 April 2020, he was transferred to a hospital in the district of East Kotawaringin in Central Kalimantan. He passed away at 12.30 a.m. on 26 April. The certificate issued by the hospital did not state the cause of his death.

On 15 June 2020, the Sampit district court in East Kotawaringin, Central Kalimantan, sentenced Dilik Bin Asap to eight months in prison for harvesting palm fruit on land reportedly owned by the PT Hamparan Masawit Bangun Persada (PT HMBP). The court sentenced James Watt to 10 months in prison for encouraging farmers to harvest land in the disputed area.

Concerning Mr. Betera case

On 16 May 2020 around 9.00 a.m., Mr. Marius Betera and his wife went to work at their banana plantation plot, located within the compound of PT TSE, a palm oil subsidiary company of the Korindo Group based in Jair District, Boven Digoel Regency, in the Province of Papua. The company allocates land for its workers to plant their own crops that they can sell for extra income. Mr. Betera resigned from PT TSE in August 2019 but the company allowed him to continue growing bananas on the plot. When visiting their plot on 16 May 2020, Mr. Betera and his wife found that their plantation had been cleared and bulldozed by the company, without any prior notice.

The same day, at around 10.00 a.m., Mr. Betera went to the company office to complain about the situation and spoke with the Planning Manager of the company. A police officer, Mr. [REDACTED], was then called upon to address the dispute in which Mr. Betera was accused of bringing his farming and hunting tools as weapons. It is reported that the police officer had recently been transferred to the Tanah Merah police station in 2019 after he had been accused of violence against an elderly indigenous woman in his previous post. According to eyewitnesses, Mr. Betera was intercepted by the police officer as he left the company office. The two men argued over the farming and hunting tools that Mr. Betera had allegedly brought. The police officer confiscated the hunting tools and allegedly struck Mr. Betera repeatedly in the face with one of them. He then punched him several times in the head and neck. He was also seen to kick him in the stomach. The assault left Mr. Betera bleeding from the ear.

At around 11.00 a.m., Mr Betera left for a nearby police station to file a complaint. However, he was told that the officer in charge was on a break so he went back to his home.

At around 1.00 p.m., Mr. Betera went to a health clinic on his motorbike to get treatment for his injuries. The clinic he went to is situated in the compound of the company. He collapsed outside of the clinic and was pronounced dead soon after.

A representative of Korindo Group, Mr. [REDACTED], sent a statement to the media claiming that the company had informed Mr. Betera in February 2020 about the plan to vacate the banana plot and that the land planted with banana trees by Mr. Betera belonged to PT TSE. According to their statement, he did not hold any customary rights to the land. The company also denied the allegation that any staff had called the police to ask for help to handle Mr Betera when he visited the company office.

The Police Chief of Boven Digoel Regency, [REDACTED], stated that an employee at the company, alarmed at the sight of Mr. Betera carrying the supposed weapons, called the police for help. The Police Chief Mr [REDACTED] also said that they had arrested Mr. [REDACTED], the police officer who had allegedly attacked Mr Betera and had asked Mr. Betera's family to file an official report. In addition to these statements, the Spokesperson of the Papua Provincial Police claimed that Mr. Betera had died of a heart attack and that an autopsy showed no signs of bruising.

Without prejudice to the abovementioned allegations, we express serious concern about the judicial proceedings against Dilik Bin Asap and Hermanus Bin Bison, which seems related to the exercise of their rights to freedom of expression and peaceful assembly, and against James Watt after he had petitioned in favour of indigenous farmers and human rights in the country. These judicial proceedings against them appear to represent a criminalization of their exercise of the right to freedom of expression. We raise our concerns that the legal basis for such a legal prosecution does not seem compatible with the conditions for permissible restrictions to the right to freedom of expression and as such may be unlawful under international human rights law.

We are furthermore deeply concerned by the circumstances leading to the death of Hermanus Bin Bison in detention and that of Mr. Marius Betera for the alleged excessive use of force by a police officer. In this connection, we remind your Excellency's Government of its obligations under the International Covenant on Civil and Political Rights, which Indonesia acceded on 23 February 2006, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Indonesia ratified 28 October 1998.

We are concerned that these measures may deter indigenous peoples and land human rights defenders from exercising their right to freedom of association, of peaceful assembly and of expression, including by speaking out against illegal palm oil plantations

on land that belongs to indigenous communities, with serious adverse effects for the rights of indigenous peoples..

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 any comment you may have on the above-mentioned allegations.
2. Please provide the full details of the factual and legal basis for the legal proceedings that led to the detention of Dilik Bin Asap, Hermanus Bin Bison and James Watt.
3. Please provide information of the measures taken to protect the physical integrity of Hermanus Bin Bison and Marius Betera and the medical causes of their deaths.
4. Please indicate what measures have been taken to protect the collective land rights of the indigenous community. How has the decision of the District Council that the company PT HMBP had illegally planted on the 1,800 ha (4,450 acres) of land been enforced?
5. Please indicate what measures have been adopted to involve the indigenous communities in transparent legal proceedings regarding the use of their lands by corporations.
6. Please indicate what redress and reparation measures have been provided to the indigenous community by the company PTHMBP.
7. Please indicate what measures have been taken to ensure community members, indigenous farmers and land human rights defenders from the village of Penyang in the East Kotawaringin district can exercise their right to freedom of association and of peaceful assembly and freedom of expression free from intimidation or persecution.

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.

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.

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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Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan
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José Francisco Cali Tzay
Special Rapporteur on the rights of indigenous peoples

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of 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 refer your Excellency's Government to articles 2, 6, 9, 17, 19 and 21 of the International Covenant on civil and political rights (ICCPR), acceded by Indonesia on 23 February 2006, which provide for the rights to life, liberty and personal security, of opinion and expression, and of peaceful assembly. Furthermore, we would like to refer your excellency to the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by Indonesia 23 February 2006, which provides for the right to health.

In connection with the above alleged facts and concerns, we would like to draw your attention to article 6 of the ICCPR guarantees the right to life of every individual. In its General Comment no. 36 on the right to life, the Human Rights Committee has provided that "States parties also have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their life and bodily integrity" (para 25). This duty "includes providing them with the necessary medical care and appropriately regular monitoring of their health" (id.). The failure to provide such monitoring and care resulting in the loss of life will constitute a violation of the right to life (compare id. para. 7).

In this regard, we would like to recall to your Excellency's Government that, under article 9 of the ICCPR, any arrest or detention shall only be carried out through procedures established by law. Persons subjected to deprivation of liberty must be immediately informed about the reasons for the arrest and promptly notified of any criminal charges, as well as allowed to challenge the legality of the detention before a court, without delay. Moreover, detention pending trial cannot be the rule, but rather the exception, and for the shortest period of time. Under article 10, those detained must be treated humanely, respecting the inherent dignity of the person.

Under international human rights law, States have a duty to protect the life of all detained individuals including through the provision of the necessary medical care and appropriate regular monitoring of their health. Article 10 (1) of the ICCPR that states "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

With regard to the death in detention of Hermanus Bin Bison, we would like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all suspected violations of the right to life.

Furthermore, the Minnesota Protocol on the Investigation of Potentially unlawful death (2016) and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989), state that an investigation must be a) prompt, b) effective and thorough, c) independent and impartial, and d) transparent. The Minnesota Protocol also indicates that a decision not to undertake an autopsy should be justified in writing and should be subject to judicial review.

We would also like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in resolution A/HRC/RES/17/31 in 2011. These Guiding Principles are grounded in recognition of:

- a) “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) “The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; and
- c) “The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

The Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. The Guiding Principles highlight the State’s duty to “take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means” that when business-related human rights abuses “occur within their territory or jurisdiction those affected have access to effective remedy” (Guiding Principle 25).

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, which elaborates upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. 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. Article 25 states that indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Furthermore, Article 32 states that ‘indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources’ and that ‘States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project

affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources'. Article 32 also affirms that 'States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact'.

In addition, Article 10 of the Declaration affirms that indigenous peoples 'shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.'

Finally, with regard to the individuals' right to freedom of expression, guaranteed by ICCPR Article 19, we would also like to 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 9(3)(a) the right to complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;