

**Mandates of 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 OTH 63/2020

7 September 2020

Dear. Tjajadi,

We have the honour to address you in our capacities as 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 35/15, 43/4, 41/12, 43/16 and 42/20.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning the failure to respect the land rights of indigenous farmers Mr. **Dilik Bin Asap** and Mr. **Hermanus Bin Bison**, leading to their arbitrary arrest and to the failure to ensure the right to life of the former, and the arbitrary arrest of land human rights defender Mr. **James Watt**. These violations allegedly occurred in a context of a failure by palm oil industries and the authorities to respect and protect the rights of indigenous peoples and land rights defenders.

Dilik Bin Asap and Hermanus Bin Bison are two indigenous farmers who have participated in recent protests related to land rights and James Watt is a prominent land human rights defender;

According to the information received:

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 had found that PT HMBP was operating outside its concession area and had 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 Kotawaringin accompanied by his legal counsel and family. At the hospital he was tested for COVID-19, as per hospital protocol, for which he tested back 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 am on 26 April. The certificate issued by the hospital did not state his cause of 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 claimed 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.

Without prejudice to the abovementioned allegations, we express serious concern about the judicial proceedings against Dilik Bin Asap and Hermanus Bin Bison for exercising their rights to freedom of expression and peaceful assembly regarding their land rights, and against James Watt after he had petitioned in favour of indigenous farmers and human rights in the country. These actions appear to represent a criminalization of their exercise of the right to freedom of expression. We raise our concerns that the legal basis for the legal prosecution against them do not seem to be 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 Mr. Hermanus Bin Bison in detention.

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 indicate what measures have been taken to respect 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 adhered to?
3. Please indicate what redress and reparation measures have been provided to the indigenous community by the company PT HMBP.
4. Please indicate what measures have been adopted to involve the indigenous communities in transparent legal proceedings regarding the use of their lands by your corporation.
5. Please indicate what measures have been taken to ensure community members, indigenous farmers and land rights defenders from the village of Penyang in the East Kotawaringin district can voice their concerns on land related issues free from any form of threats or intimidation.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your company 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.

Please be informed that a letter on the same subject was also sent to the Government of Indonesia.

Please accept, Mr. Tjajadi, the assurances of our highest consideration.

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan  
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

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

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 remind your company of its responsibilities under the Guiding Principles on Business and Human Rights (A/HRC/17/31). The Guiding Principles have established themselves as the authoritative global standard for business to prevent and address negative business-related impacts on human rights. The responsibility to respect human rights is a global standard of conduct applicable to all businesses, wherever they operate. It exists independently of the ability and/or willingness of States to meet their own human rights obligations and does not diminish those obligations. It is an additional responsibility to that of complying with national laws and regulations protecting human rights.

“The responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”. (Guiding Principle 13).

In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute. (Guiding Principle 15)

In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships [...] meaningful consultation with potentially affected groups and other relevant stakeholders (Guiding Principle 18).

Also, Principle 22 provides that “Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”. Establishing grievance mechanisms at the operational level for those potentially affected by business activities can be an effective means of redress provided they meet certain requirements listed in Principle 31 (Commentary on Guiding Principle 22).

We would like to recall the thematic report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (ref. A/HRC/32/45) which discusses the obligation of States to protect individuals against human rights abuses by companies that they own or control. In particular, we would like to highlight the following conclusions and recommendations: “All businesses, whether public or wholly private, have a responsibility to respect human rights. This responsibility is distinct from, but complementary to, the State's duty to protect against human rights abuses by business enterprises.”

In this context, we would like to highlight that international human rights law protects individuals' right to freedom of opinion and expression, under article 19 of the International Covenant on Civil and Political Rights.

Furthermore, we would like to recall articles 5 and 12 (2) of the UN Declaration on Human Rights Defenders, which provide that, for the purpose of promoting and protecting human rights and fundamental freedoms, everyone whose rights or freedoms are allegedly violated has the right, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress where there has been a violation of that person's rights or freedoms; and that the State shall take all necessary measures to ensure the protection of anyone facing violence, threats, discrimination, or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.