

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right to education; the Special Rapporteur on the human rights of internally displaced persons; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL IDN 5/2020

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right to education; Special Rapporteur on the human rights of internally displaced persons; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on freedom of religion or belief and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/5, 44/3, 41/15, 34/35, 40/10 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government, information we have received concerning **the alleged intentional killings of Mr. Yerimia Zanambani, a reverend and Mr. Rufinus Tigau, a catholic church worker, by Indonesian security forces and injuries to a child through excessive use of force as well as the reported lack of access by internally displaced persons to essential services, the use of a school by the army and the destruction of a health facility.**

The situation of internally displaced persons in several regencies including Intan Jaya was previously raised in communication IDN 1/2020. We thank your Excellency's Government for the preliminary information received on 1 July 2020 regarding steps taken to provide services for IDPs. However, we note that no further reply was received.

Previous alleged extrajudicial killings of six indigenous Papuans by the police and military in 2017 and 2018 was raised in communication IDN 7/2018. We note the preliminary reply received on 14 December 2018. However, we regret that it did not include replies to the questions raised in the communication and that no further reply was received.

According to the information received:

Since August 2019, there has been an enhanced security force presence in the provinces of Papua and West Papua. Joint Security Operations between the Indonesian military and Indonesian Police force has been taking place in both provinces including in Intan Jaya Regency, Papua, against the pro-independence group Tentara Pembebasan Nasional Papua Barat (West Papua National Liberation Army - TPN PB). In this context there have been casualties on both sides and several civilians have been killed.

Killing of Pastor Yerimia Zanambani,

On 17 September 2020, the TPN PB shot dead a member of the military near the Hitadipa military base and took his firearm. The chief of the local military called for the return of the firearm immediately; threatening that otherwise the military would carry out raids in the surrounding villages in search of it. Military members also summoned people to the town of Hitadipa and again called for the return of the weapon threatening to bomb the district if it was not returned.

On 19 September 2020, Mr [REDACTED], a member of the Hitadipa Military Sub-District Command gathered together people in front of the Imanuel Church. He stated that “the People of Hitadipa have become enemies, opponents, and are now at war with me.” He listed a number of names including Pastor Yeremia Zanambani, the Chairperson of the Theological Bible College in Hitadipa as well as an advisor to GKII (Gospel Tabernacle Church of Indonesia) Region 3 Papua in Hitadipa Intan Jaya. The Pastor routinely served in the two areas of Janambu and Bulapa.

At around 1.00 p.m., TPN PB members fired shots at the Headquarters of the Hitadipa Koramil, killing one soldier. The Army, reportedly in retaliation, fired shots towards the northern part of Hitadipa village for 30 minutes.

At around 2.30 p.m. on the same day, Pastor Zanambani left his house to walk to his pigsty, around 4 kilometers away, along with a person associated with him. After feeding the pigs, the person associated with him returned home while Pastor Zanambani stayed at the pigsty.

At around 2.55 p.m., the person associated with Pastor Zanambani came across a group of soldiers being led by Mr [REDACTED]. Mr. [REDACTED] was known to Pastor Zanambani and the person associated with him as he often came to eat at or collect water from Pastor Zanambani’s house. Mr. [REDACTED] asked questions about whether the person associated with Pastor Zanambani had seen anyone on the street, and the person associated with Pastor Zanambani indicated that they had only seen Pastor Zanambani who was at his pigsty.

At around 3.30 p.m., four members of the army moved towards the pigsty. Two army members stood near the Itan Jayan Regency road. The other two members including Mr [REDACTED] went to the pigsty. They fired two shots at Pastor Zanambani, once of which hit a wall. The other bullet hit his left hand causing a 10cm long and 5-7cm wide wound and severe blood loss. Pastor Zanambani was also stabbed with a sharp knife from behind.

At 6 p.m., the person associated with Pastor Zanambani, returned to the pigsty to look for him and found him on the ground covered in blood. He was still alive and indicated that Mr [REDACTED] had attacked him. Pastor Zanambani also said that he raised his hands but they had shot him in the hand and then stabbed him in the neck. The person associated with Pastor

Zanambani went to a nearby house to seek help but, due to the military presence, the villagers did not want to leave their houses. The body of Pastor Zanambani was brought to the village the next day.

On 2 October 2020, the coordinating Minister for Political, Legal and Security Affairs announced the formation of a Joint Fact-Finding Team (Tim Gabungan Pencari Fakta – TGPF) including members from Indonesian military, police, presidential staff office, and Papua academics who were given two weeks to investigate and report on the incident.

On 9 October 2020, the Joint Fact-Finding Team was attacked. One member of the military and one member of the Fact-Finding Team were injured. It is believed the attack was carried out by members of the TPN PB.

On 21 October 2020, the Joint Fact-Finding Team submitted their report, which indicated that Mr. Zanambani may have been killed by security forces but left open the possibility of third-party involvement in the killing.

A second investigation was set up, led by the independent National Commission on Human Rights (Komnas HAM). It found that the shots fired at Pastor Zanambani were released at a distance of around 1 meter and found evidence that he had been tortured including traces of mud on his knees indicating that he was forced to kneel and choke marks. Both the Komnas HAM report and the Joint Fact-Finding Team report conclude that Pastor Zanambani died from blood loss rather than the shots themselves. The Komnas HAM investigation further found indications that the perpetrator of his killing tried to alter the evidence and noted that all the bullets were removed from the site. The report found that a soldier from the Hitadipa Military Command, was allegedly behind the pastor's killing and that the killing was “extra-judicial.”

The Papuan Governor also established a “humanitarian aid team” to investigate the killing and to report on the situation of civilians in Intan Jaya Regency.

In response, Indonesian Military (TNI) spokesman said the police's investigation had yet to conclude the TNI was involved in the murder as the police had just recently carried out a ballistics test and had yet to examine witnesses.

Reportedly, the results of the police investigation will be handed to the military police and any prosecutions dealt with in a military court. The Government fact-finding team has concluded that eight Indonesian military personnel might be involved, and are now suspects in the case. The Government has highlighted that the outcome of the Fact-Finding Team's investigation is similar and in line with the investigation conducted by Komnas HAM.

Killing of Mr. Rufinus Tigau

Sometime between July and August 2020, TPN PB established a temporary base in a traditional Papuan house (a honai) in Kampung Jibugage near to Jalai

Pigu hills, which is in between Kampung Jalai and Kampung Abundoga, in Sugapa District, Intan Jaya Regency.

In early October 2020, additional troops were deployed into the area. The local population in Kampung Jalai were afraid of the additional military presence.

Between 23 and 25 October, it is believed troops from the joint security operation went into the Naitungga hills to observe the TPN PB.

On 25 October 2020, the TPN PB left and moved to another location. Mr. Rufinus Tigau, a catechist, catholic church worker and non-permanent staff member of the Education Bureau of Intan Jaya Regency, along with several others, who were keeping a vigil to assure the security of their village, went to visit the honai of the tribal chief to discuss the situation.

On 26 October 2020, individuals in Kampung Jalai heard shots in the distance. Mr. Tigau rushed back to his own honai, which was 15 meters away to check on the safety of his family. While trying to reach his honai, he was stopped by members of the joint security operation. They asked for his identity and he informed them that he was a catechist and church worker from the village. The security forces accused him of providing food to the TPN PB, asked him to tell them the current location of the TPN PB and asked who was in his home. Mr. Tigau indicated he did not know the location of the group and that his family were in his honai. The security forces then released multiple shots, which instantly killed Mr. Tigau. He was hit four times in the head, armpit, stomach and hip. The security forces then entered Mr. Tigau's home and gave a person associated with him a package of food and a bank note for Indonesian Rupiah 100.000 (around US\$ 7).

Between 5.30 and 6.30 a.m., members of the joint security force fired shots around the neighbourhood hitting several other honais. A child, [REDACTED] who was in one of the other honais, was injured after being hit in four places by gunshots.

The joint security operation then searched the honais and took the body of Mr. Tigau to the honai of the tribal chief. The soldiers brought four other individuals to the honai and made them kneel and crawl around the compound of the honai. They were then forced to dig a hole in front of the honai with a shovel and crowbar and to bury the body of Mr. Tigau in the hole. They were then forced to walk with an Indonesian flag to the honai where the TPN PB had been staying previously in Kampung Dasiga and to burn it. One of the individuals was then forced to erect the Indonesian flag in front of his own home as a symbol of support for the Indonesian Government.

Later in the day, the four men as well as women and children were forced to gather in the football field of Kampung Jalai. Security forces came and picked up the injured child, [REDACTED], accompanied by two women to take them to the Regional Public Hospital in Timika. The security forces informed the crowd that "we will take these three persons, and we will bring them back either alive or dead."

After the security forces left, the villagers decided to rebury Mr. Tigau in front of his own honai. They discovered that the trousers he normally wore had been replaced by TPN PB trousers, to imply he was a member of the TPN PB.

The authorities have made several statements claiming that Mr. Tigau was a member of the TPN PB, including statements from the Head of Public Information of Papua Provincial Police. The official TPN PB spokesperson denied that Mr. Tigau was a member and the allegation has also been refuted by the Administrator of the Catholic Diocese of Timika, Papua who confirmed that Mr. Tigau worked as a catechist in the Timika Diocese.

Other Killings

There have been several other killings of civilians in the area including another church worker killed in early October 2020 and two civilians believed to have been killed by a TPN PB member. At least 10 security forces personnel have also been killed.

Other incidents occurred in the Grasberg Mine in Timika region in Papua, including the shooting dead of a worker by TPN PB members and of five civilians by security forces.

Internally Displaced Persons, use of a school by the army and destruction of a health care facility

The security force operations in September and October 2020 in Intan Jaya Regency have led to the displacement of individuals in Hitadipa District. The number of military deployed in Hitadipa has reportedly been raised from 75 to 300 soldiers. Reportedly only a few elderly individuals remain in the Hitadipa. The majority of the IDPs have fled to Sugapa and Homeyo districts, while others have gone to Nabire and Mimika regencies. To date there has been no collection of the number of internally displaced persons (IDPs). It is believed they do not have access to assistance, including food, shelter, medical treatment and education.

In December 2019, many people left Hidayapa and travelled to their home districts to celebrate Christmas. Whilst they were away the army took over the YPPGI Joint Elementary and Junior High School in Hitadipa. It is now being used as the headquarters of the Hitadipa Military Sub-District Command (Koramil Hitadipa). The Komnas HAM investigation found that 100 primary and secondary students in the district of Hitadipa have been unable to attend school for 10 months due to the military using the building. Reportedly in Sugapa Town, Intan Jaya regency, members of the military visited schools, documented the identities of pupils and interrogated them after classes had finished. Reportedly, the monitoring began in August 2020 and is ongoing.

On 19 September 2020, TPN PB members hid in health care buildings in Taunduga Village and shot dead a member of the army. Several hours later military members burnt down the health facility and health staff accommodations.

Without prejudging the accuracy of these allegations, we express our most serious concern about the alleged extrajudicial killing of Mr. Yerimia Zanambani, Mr. Rufinus Tigau by members of the joint security operation and about alleged excessive use of force leading to injuries to a child, [REDACTED]. We are also concerned by the alleged ill-treatment or torture of Mr. Yerimia Zanambani prior to his death and reports that individuals were forced to immediately bury Mr. Rufinus Tigau by the military. We are also seriously concerned by the other reported incidents of killings of civilians by the security forces as well as reported killings of civilians by the TPN PB. While we welcome the investigations conducted into Mr. Yerimia Zanambani's killing, we are concerned that any prosecutions are likely to be carried out in military courts. We also express concern that the abovementioned two religious personnel appear to have been targeted due to the charity and humanitarian work of their religious institutions.

We further express concern at the alleged situation of IDPs from the Hitadipa District and by the use of a school by the military in Hitadipa, as well as at the reported use by the TPN PB of health care buildings in Taunduga Village and by allegations that the military burnt the premises in response several hours later.

We wish to refer to articles 3 and 5 of the Universal Declaration of Human Rights (UDHR) and 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia acceded on 23 February 2006, and which guarantee the right of every individual to life and security, and provide that these rights shall be protected by law, that no one shall be arbitrarily deprived of his life and that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Moreover, 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 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.

With regards to the alleged intentional killing of Mr. Yerimia Zanambani and the information that the results of the investigations may be treated through the military court system, we note that in cases where military personnel commit human rights violations, "the intervention of a military judge who is neither professionally nor culturally independent is likely to produce an effect contrary to the enjoyment of the human rights and to a fair trial with due guarantees," (2014, A/HRC/27/48) and that military tribunals should not be used for cases of human rights violations by military personnel.

With regards to the alleged intentional killing of Mr. Rufinus Tigau and excessive use of force leading to injuries to [REDACTED]. We underline the importance of thorough, prompt and impartial investigations.

In relation to all three cases, we underline that the relevant obligations include identifying and bringing to justice those responsible through criminal investigation and prosecution in civilian courts; granting adequate compensation to the victim or their families; and taking steps to ensure the non-recurrence of such executions and excessive use of force.

Without making a judgement on the applicability of international humanitarian law in the Regency, we would like to highlight that international human rights law continues to apply during war and public emergencies. The Special Rapporteur on extrajudicial, summary or arbitrary executions has suggested that assessment of the use of force in situations of public emergency or away from the line of front demands contextual and situational analysis, the reference to other sources of law and purposive interpretation, taking into account the location, circumstances, possibilities of armed resistance and the planning involved.¹ On the basis of the information received in this case, the low intensity of the conflict and circumstances of the incidents in question, make international human rights law particularly pertinent. Furthermore, intentional killing of individuals under the control of members of the armed forces and torture are strictly prohibited in both international human rights law and international humanitarian law.

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.

It is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, and we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comments that you may have on the above-mentioned allegations.
2. Please provide further details, and where available the results, of the aforementioned investigations and any other investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the alleged killing of Mr. Yerimia Zanambani and Mr. Rufinus Tigau and the injuries to [REDACTED]. In cases where no inquiry has taken place or if they have been inconclusive, please explain why.
3. In cases where the alleged perpetrator had been identified, please provide the full details of any prosecutions that have been undertaken or are in process. Please include information on whether prosecutions will be under the jurisdiction of a military tribunal and if so, how this is compatible with Indonesia's human rights obligations.
4. Please indicate what measures your Excellency's Government has taken to ensure the full respect and protections of persons belonging to an indigenous group, specifically in relation to the Papuan community.
5. Please provide information on any efforts undertaken to ensure IDPs in Hitadipa district have access to food, shelter, medical treatment and education.

¹ UNODC and OHCHR, Resource Book on the use of force, 2017. See also A/HRC/44/38 para 50

6. Please provide information on the alleged use by the military of a school in Hitadipa District, which has prevented students from accessing education and by the reported burning down of a health facility in Taunduga.

We would appreciate receiving a response within 60 days. After this date, 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.

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

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punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we wish to draw your Excellency's attention to the following principles:

Article 6(1) of the International Convention on Civil and Political Rights (ICCPR), to which Indonesia acceded on 23 February 2006, provides that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life. In General Comment 31, the Committee has 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).

With regards to **excessive use of force**, the Code of Conduct for Law Enforcement Officials (1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) provide an authoritative interpretation of the limits on the conduct of law enforcement forces. Principle 4 provides that in carrying out their duties, law enforcement officials may use force and firearms only if other means remain ineffective. Principle 5 adds that if the use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offense and obliges the authorities to offer assistance and medical aid to any injured persons as soon as possible. Moreover, Principles 9 reiterates that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. Furthermore, firearms should never be used simply to disperse an assembly; Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated, including giving a clear warning of the intent to use force and to provide sufficient time to heed that warning, and providing medical assistance as soon as possible when necessary (principles 5 and 10). Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles (principle 8). We further note that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life and that states parties may be in violation of article 6 even if such threats and situations do not result in loss of life (Human Rights Committee, General Comment 36).

We wish to recall that International Humanitarian Law, in particular Geneva Convention I, Articles 24 and 25; Geneva Convention II, Articles 36 and 37; Additional Protocol I, Article 15(1); Customary International Humanitarian Law, Rules 25 and 27; provides that religious personnel must be respected and protected in all circumstances. This means that religious personnel may not be directly attacked, threatened or hindered in their activities, but also that they and their particular role must be actively protected and supported by the belligerents.

There is a duty to conduct thorough, prompt and impartial **investigations** of all suspected cases of extra-legal, arbitrary or summary executions and the obligation to bring to justice all persons identified by the investigation as having participated in those executions as laid down in the Principles on Effective Prevention and Investigation of

Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989. The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) provides detail on the duty to investigate potential unlawful deaths “promptly, effectively and thoroughly, with independence, impartiality and transparency.” It notes the authorities must “conduct an investigation as soon as possible and proceed without unreasonable delays. We remind that amongst other things, investigations into alleged unlawful killings should seek to determine who was involved in the death and their individual responsibility for the death and seek to identify any failure to take reasonable measures which could have had a real prospect of preventing the death. It should also seek to identify policies and systemic failures that may have contributed to a death, and identify patterns where they exist (para 25.).

We further highlight that the arbitrary deprivation of life of an individual may cause his or her relatives mental suffering, which could amount to a violation of their own rights under article 7 of the Covenant. Furthermore, even when the deprivation of life is not arbitrary, failure to provide relatives with information on the circumstances of the death of an individual may violate their rights under article 7...Relatives of individuals deprived of their life by the State must be able to receive the remains, if they so wish and to dispose of those remains according to their own tradition, religion or culture (Human Rights Committee, General Comment 36, and A/HRC/16/48, page 15).

With regard to prosecution, Principle 29 of the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity (2005) explicitly states that “**military tribunals** must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court.”

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (hereafter ICERD), ratified by Indonesia in 1999, guarantees the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equal treatment before tribunals and all other organs administering justice. It also guarantees equality before the law, to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution. It is worth recalling that any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life constitute racial discrimination (Article 1). Article 2 of the Convention requires States to implement affirmative measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, with a view to guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. States have a responsibility to combat prejudices, which lead to racial discrimination and to promote understanding, tolerance and friendship among nations and racial or ethnical groups (Article 7).

We would also like to refer to the Guiding Principles of Internal Displacement, and in particular to some its principles that are relevant to the present allegations. Principle 3 states that “National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction” and Principle 5 that “All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons”. We would also like to highlight Principle 18 that states that “1. All internally displaced persons have the right to an adequate standard of living. 2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: (a) Essential food and potable water; (b) Basic shelter and housing; (c) Appropriate clothing; and (d) Essential medical services and sanitation; 3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies”. Principle 23 focuses on education highlighting that “1. Every human being has the right to education. 2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion. 3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes”.

Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples adopted by the General Assembly in 2007 provides in Article 7 that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

We also refer to the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, which highlight that “functioning schools and universities should not be used by the fighting forces of parties to armed conflict in any way in support of the military effort. (a) This principle extends to schools and universities that are temporarily closed outside normal class hours, during weekends and holidays, and during vacation periods.” Furthermore, the use of schools for military purposes puts children at risk of attack and hampers children’s right to education (Office of the Special Representative of the Secretary-General for Children and Armed Conflict).

We further note that medical units exclusively assigned to medical purposes must be respected and protected in all circumstances. They lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy. Prior to an attack against a medical unit which is being used to commit acts harmful to the enemy, a warning has to be issued setting, whenever appropriate, a reasonable time-limit and that an attack can only take place after such warning has remained unheeded (ICRC, Customary IHL Database, rule 28 and practice).