

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights of indigenous peoples; 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 45/3, 44/5, 42/20, 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 detention, enforced disappearance and extrajudicial execution of Mr. **Apinus Zanambani**, and Mr. **Luther Zanambani**, at the hand of the military in Suagapa, Intan Jaya, Papua.

Mr. Apinus and Mr. Luther Zanambani are indigenous Papuans and relatives of Pastor Yeremia Zanambani, who was reportedly extrajudicially killed by Indonesian security forces on 17 September 2020. Special Procedures mandate holders raised concerns relating to the killing Mr. Yerimia Zanambani, in a communication transmitted to your Excellency's Government, on 29 December 2020 (IDN 5/2020). We thank your Excellency's Government for the initial reply received on 20 January 2021 and look forward to receiving a reply to the other questions raised.

According to the information received,

On 21 April 2020, a group of soldiers belonging to the Indonesian Army (TNI) carried out an inspection at a crossroads near public high school SMA Negeri 1 Sugapa, during which three people were arrested, including 22-year-old Apinus Zanambani and 23-year-old Luther Zanambani. They were escorted to the Sugapa Sub-District Military Command (Koramil) Centre. One of the arrested individuals was later released. The two others remained in the custody of the military: neither Apinus Zanambani nor Luther Zanambani have been seen since that day.

As the inspection was considered to be a routine check for compliance with COVID-19 health protocol, persons associated with Apinus Zanambani and Luther Zanambani believed that the two had tested positive for COVID-19 and had therefore been quarantined for a two-week period. As their relatives had not received any notification from the authorities about their arrest, they did not seek for information following their detention. However, the claim that the arrest was related to a COVID-19 inspection was later disproved by the Intan Jaya COVID-19 Task Force.

After two weeks, the relatives of the two men approached the Sugapa Koramil to inquire about their fate. Although the soldiers admitted that they had arrested Apinus Zanambani and Luther Zanambani, they claimed to be unaware of their whereabouts.

On 14 May 2020, the relatives reported their disappearance to the Sugapa Sector Police.

On 23 December 2020, the Military Police Commander stated in a press conference that Apinus Zanambani and Luther Zanambani had been arrested on suspicion that they were members of an armed criminal group; and that they were interrogated and tortured to death. It was later reported that the TNI members who had killed Apinus Zanambani and Luther Zanambani had burnt the bodies and dumped their ashes in the local river to get rid of the evidence. It is also reported that nine soldiers have been declared as suspects for this crime, while three other soldiers are under investigation.

Even after the relatives had reported the disappearances to the police and the TNI in May 2020, no information was given to them on the fate and whereabouts of the two young men for eight months. It was not until 23 December 2020, when the Military Police Commander held the press conference, that they learned about what had happened to them.

Without prejudging the accuracy of these allegations, we are expressing our serious concern regarding the arrest, enforced disappearance, torture and extrajudicial executions of Mr. Apinus Zanambani and Mr. Luther Zanambani, indigenous Papuans and relatives of Pastor Yeremia Zanambani, himself a victim of an extrajudicial killing on 17 September 2020.

Should these be confirmed, these acts would amount to violations of the right of every individual to life; to physical and mental integrity; to the right of personal security and not to be arbitrarily detained; as well as the right to be recognized and treated equally by the law, and protected by it without discrimination as set forth in articles 3, 5, 6, 7, 8 and 9 of the Universal Declaration of Human Rights (UDHR); articles 6, 7, 9, 10, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR) ratified by Indonesia in 2005. They would also constitute a violation of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, 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.

These acts would also constitute a violation of the right to due process of Mr. Apinus Zanambani and Mr. Luther Zanambani after they were arrested, and to either be promptly charged with a recognizable criminal offence or brought before an independent and competent judicial authority to be fairly tried, or immediately released, which contravenes the Principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Their subsequent enforced disappearance further violates the principle dispositions of the Declaration on the Protection of all Persons from Enforced Disappearance, especially articles 2, 10, 11, 12 and 19.

We respectfully draw the attention of your Excellency's Government to the fact that the universal experience over decades shows that short-term or prolonged incommunicado detention of individuals, without any mechanism to supervise and verify the legality of their detention and their treatment - as it occurred in the present case – increases the risk of the torture, ill-treatment, execution and disappearance of these persons, as well as all sort of other abuses of power by those detaining them.

We note with heightened concern that the two young men were members of the Papouan minority in Indonesia, and that subsequently to their arrest and disappearance, another man, a Christian Pastor related to them, and named Yeremia Zanambani, was extra judicially killed on 17 September 2020. Both the Indonesian Constitution and international human rights norms prohibit the discrimination between individuals before the law. Article 26 of the ICCPR, states that *“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against 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 welcome information received indicating that a military police investigation has been ordered into the case. In this respect we underscore the critical importance of the obligation to ensure in law and in fact the autonomy and independence of the authorities charged with the criminal investigation and prosecution of these cases.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information regarding the factual and legal basis for the deployment of soldiers to a T-junction near the public high school SMA Neger 1 Sugapa in Intan Jaya on 21 April 2020.
3. Please provide information regarding the factual and legal basis for the arrest of Mr. Apinus Zanambani and Mr. Luther Zanambani, and how this is compatible with the obligations of your Excellency Government under international human rights norms and standards, particularly with article 9 ICCPR.
4. While we welcome the information that a military police ordered or conducted an investigation into the case, we would be grateful for detailed information concerning any investigation, judicial or otherwise, as well as result of such results enquiries, carried out in relation to the case. In particular we would welcome information that the perpetrators of these crimes have been identified, on the basis of a fair investigation, and brought to account. If no investigation has been initiated, please

explain why and how this is compatible with the international human rights obligations of Indonesia under ICCPR and CAT.

5. Please explain why, despite making a complaint in May 2020, following their disappearance, relatives of the two men reportedly did not receive any information on their fate or whereabouts or any investigations into the case until their deaths were publicly announced in December 2020, that is 8 months later.
6. Please clarify where, under whose orders and authority, were the two young men detained. Why were they detained in prolonged incommunicado detention for 8 months?
7. Please provide detailed information about the existing laws, regulations and procedures, the implementation of which guarantees to all Indonesian nationals, whatever their ethnic or social origin, to be protected from arbitrary arrest and detention and the risk of disappearance. What safeguards exist in this regard; and why, if they exist, they were not implemented, thus protecting the two young men against what happened to them ?
8. Please provide details of any reparation measure envisaged for the relatives of the victims of these allegations.

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 respectfully urge that the above case be thoroughly examined to establish the facts in an objective manner, so as to determine the responsibilities direct and supervisory that led to the prolonged secret detention of these two young men, their torture, execution and destruction of their bodies; as well as corrective measures in terms of procedures and their strict implementation and supervision, that should be taken - to prevent the recurrence of these violations, and to ensure the accountability of any person(s) responsible. In this respect, we stand ready to provide our expertise and work closely with your Excellency's Government to review the military system of arrest and detention, in order to strengthen the safeguards that will protect Indonesian citizens from abuses of power by military or other authorities and the respect of their human rights.

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

Tae-Ung Baik
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

José Francisco Cali Tzay
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Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to your Excellency's Government to the international norms and standards applicable to the case. We would like to draw your attention to the International Covenant on Civil and Political Rights (ICCPR), including article 6 which guarantees the right of every individual to life and security

Furthermore, Article 7 of the United Nations Declaration on the rights of indigenous peoples sets out that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

We would like to remind your Excellency's Government the legally binding prohibition of torture has been codified in various human rights treaties and also reaffirmed in the ASEAN Human Rights Declaration of 2012 (art. 14).

When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In this respect we would like to recall that there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council in resolution 8/3, stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions".

The Council added that this includes the obligations "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions". These obligations to investigate, identify those responsible and bring them to justice arise also under articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We also highlight 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.

We would also like to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which sets out the necessary protections with respect to the responsibility of the State; in particular that no State shall practice, permit or tolerate enforced disappearances (Article 2), that any person deprived of liberty shall be held in an officially recognized place of detention (Article 10.1) and that an official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention (Article 10.3).