

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights of indigenous peoples**

REFERENCE:  
AL IDN 4/2021

22 February 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 41/12, 43/4 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 excessive use of force against protestors in the Indonesian provinces of Papua and West Papua. We have received distressing information of arbitrary arrests against peaceful protesters and human rights defenders for organizing and participating in demonstrations in recent months.

Allegations of use of excessive force, and torture against indigenous Papuans by the police or military have been the subject of previous Special Procedures communications, including IDN 7/2019, IDN 7/2018, IDN 3/2019 and IDN 6/2019. We take this opportunity to thank your Excellency's Government for its responses to these communications, though we remain seriously concerned about the situation in Papua and West Papua, as described below.

According to the information received:

The Papuan People Congress was planning to hold a public consultation on 18 November 2020 in five indigenous territories to gather indigenous Papuans' opinions regarding the evaluation of the 20-year implementation of the Law 21/2001 or Special Autonomy Law. Months before the consultation, different protests took place in various locations of the provinces of Papua and West Papua against the Special Autonomy Law. The law was the result of negotiations over the political status of West Papua and came into force in 2001.

On 21 September 2020, police officers prevented Papuan students from conducting a peaceful assembly in the city of Manado, North Sulawesi Province. The students wanted to launch a petition against the continuation of the Special Autonomy Law in Papua in support to the right to self-determination of the Papuan people. The officers reacted by setting up roadblocks in three different locations around the Papuan student dormitory in Manado, preventing students from other cities in North Sulawesi to meet with other protesters at the student dormitory. The officers dispersed the crowd with teargas as some of the protesters attempted to overcome the police barriers. Organizers of this protests informed the local police beforehand about the peaceful assembly. However, the Manado police representatives argued that

the demonstration was illegal because it promoted the separation of West Papua from the State of Indonesia and prohibited the rally using also the COVID-19 pandemic as justification.

On 23 September 2020, a protest took place in Timika. Police officers dispersed the crowd shortly after people began to gather. They arrested seven protesters. One protester reportedly sustained multiple injuries as a result of excessive force by the police during the crowd control operation. This protest was again stopped based on the ground of the health protocol for the prevention of COVID-19.

On 24 September 2020, approximately 2,500 protesters gathered in different parts of the town of Nabire requesting a referendum regarding West Papua's political status, they also demanded the Government to withdraw all troops from West Papua immediately. The police officers directed the masses to the Nabire District Police Headquarters and arrested at least 164 protestors. All detainees were released hours later after indigenous leaders and local human rights defenders urged the police to let them go.

On 28 September 2020, the Jayapura Municipality Police and military members forcefully dispersed a peaceful student demonstration against the university's scientific assessment of West Papua's Special Autonomy status. The rally was held at the Abepura campus of Cenderawasih University. Simultaneously, joint security forces gathered outside the university building and prevented the crowd from leaving the campus.

On 27 October 2020, hundreds of protesters again gathered in Jayapura at Expo Waena and near the Cenderawasih University campus in Perumnas III Waena residential area. Joint security forces dispersed the peaceful assembly with teargas, wooden sticks, and firearms. One protester sustained a bullet injury in the upper right arm as police officers opened fire at the protesters. A second protester sustained bleeding wounds and bruises on his forehead, both eyes and mouth. Thirteen people were arrested.

Closer to the day of the public consultation, between 15 and 17 November 2020, 55 Papuans were brought to the Merauke Police station, alleging that they were discussing the Papuan referendum and that there was evidence of treason. Several members of the Papuan People Congress and indigenous Papuans were also arrested and interrogated. They were released 30 hours after.

In Jayawijaya, the indigenous territory of La Pago, 62 protestors who came from Jayapura were stopped by the police at the airport and forced to go back without an explanation. The 62 people were going to participate in the public consultations. Also, in Dogiyai, the indigenous territory of Meepago, the public consultations were canceled because of an announcement issued by the police.

While we do not wish to prejudge the accuracy and the veracity of the above-mentioned allegations, we are gravely alarmed about the excessive use of force against peaceful protesters, the organizers of such protests, human rights defenders and indigenous Papuans. We remind your Excellency's Government that the right to

freedom of expression is the foundation stone for a democratic society and a precondition for the enjoyment of human rights. In this regard, we express serious concern at what appears to be an attempt to silence critical views about the implementation of the Special Autonomy Law through peaceful assembly.

We are further concerned about the escalation of violence over the past weeks and months in the Indonesian provinces of Papua and West Papua and the increased risk of renewed violence against Papuans protestors. The excessive use of force by police and arbitrary arrests in response to protests take place in a broader context of increasing police presence and use of force in the region where the Papuan community face structural racism and intolerance, as highlighted in previous communications sent to your Excellency's Government.

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 explain the legal basis for the arrests during the protests, keeping in mind your Excellency's Government's obligations under international human rights law, in particular the right to freedom of assembly and the right to liberty under articles 9 and 21 of the ICCPR.
3. Please provide information about the number of people arrested, any criminal charges brought against them and the number of people who remain in detention.
4. Please provide information on the investigations, if any, on police violence and its excessive use of force against Papuan protestors.
5. Please indicate what measures have been taken to ensure a safe and enabling environment for peaceful assembly without fear of threats or acts of intimidation and harassment of any sort for human rights defenders, journalists, students and indigenous people in Papua and West Papua.

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.

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

Clement Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

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, and while we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the international norms and standards applicable to the present case. We would like to refer to articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Indonesia on 23 February 2006, which guarantee the rights to freedom of expression and opinion and freedom of peaceful assembly respectively.

Regarding the right to freedom of peaceful assembly we would like to refer to the recently adopted General Comment No. 37 of the Human Rights Committee on Right of peaceful assembly ([CCPR/C/GC/37](#)), which stressed that "the possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public is not sufficient grounds to prohibit or restrict the assembly. [...] States are obliged to take all reasonable measures that do not impose disproportionate burdens upon them to protect all participants and to allow such assemblies to take place in an uninterrupted manner".

As held by the Human Rights Committee in General Comment no. 37, "The right of peaceful assembly ... often has an expressive element and the rationale for the recognition of these two rights and the acceptable restrictions overlap in many ways." (para. 99). The freedom of expression includes the freedom to "seek, receive and impart information and ideas of all kinds" This right includes not only the exchange of information that is favorable, but also that which may shock, offend or disturb. The Committee has clarified that political discourse and discussion about matters of public interest enjoys particularly strong protection under the Covenant. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential." (General Comment no. 34 para. 20). The fact that such commentary is on a sensitive political issue or expresses criticism about the government policy or practice does not in itself justify restrictions to the right (*id.* para. 42). The Committee has further affirmed that, attacks on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest ... are incompatible with article 19 (*id.* para. 23).

In its General Comment No. 25 on Participation in Public Affairs and the Right to Vote (CCPR/C/21/Rev.1/Add.7), the Human Rights Committee set out that: "In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. [...] It requires full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas."

In this regard, we would like to bring to the attention of your Excellency's Government General Comment No. 31, in which the Committee 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).

We, once again, wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16. The Resolution calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

In connection with the above arrest of activists, we would like to refer to the right not to be arbitrarily deprived of liberty and to fair proceedings before an independent and impartial tribunal, as set forth in articles 9 and 14 of the ICCPR. We wish to highlight that deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by the ICCPR is arbitrary. Article 9 establishes in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law, and that anyone who is arrested shall be informed, at the time of arrest, of the reasons behind such arrest and be brought promptly before a judge for the purpose of legal assessment of detention.

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 that article 3 of UNDRIP sets out that indigenous peoples have the right to self-determination, and that by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development. Article 4 affirms that indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. Article 7 of UNDRIP underlines that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

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’.

In relation to the allegations indicating that the individuals mentioned above are being targeted because of their activities defending human rights, we would 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. Article 5 and 6 of this Declaration are also relevant as they provide for the rights, individually or in

association with others, at the national and international levels to meet, assemble peacefully; seek, obtain, receive and hold information on human rights including remedies to claim those rights; and freely publish and impart or disseminate to others view, information and knowledge on human rights.