

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

REFERENCE:
AL IDN 8/2021

20 October 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/16, 43/4 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged judicial harassment of woman human rights defender Ms. Fatia Maulidiyanti and human rights defender Mr. Haris Azhar**, in relation to two cease and desist letters and a defamation complaint filed against them for the expression of their opinions and the exercise of their freedom of association regarding the alleged involvement of Indonesian military officials in the gold mining business and exploitation of the Blok Wabu area in Intan Jaya, Papua.

Ms. Maulidiyanti is a woman human rights defender and the Coordinator of the Commission for the Disappeared and Victims of Violence (KontraS). She has been involved in various civil society movements since she was in university, namely through her participation in the student press, working on various human rights issues such as the death penalty, business and human rights, unfair trial, human rights defenders and human rights in conflict situations. She is also the founder of a book donation community for death-row inmates called Books For Tomorrow.

Mr. Azhar is a human rights defender, the Executive Director of Lokataru and the previous Coordinator of the Commission for the Disappeared and Victim of Violence (KontraS). Mr. Azhar has contributed to human rights and public interest litigation cases, events, campaigns and publications for promoting and defending human rights in Indonesia and South East Asia. He was also a member of the Executive Committee of the Asian Forum for Human Rights and Development (FORUM-ASIA) and was the Deputy Chair of the International NGO Forum on Indonesian Development (INFID-Indonesia).

According to the information received:

On 20 August 2021, Mr. Azhar posted a talk show on his YouTube channel, during which he and Ms. Maulidiyanti allegedly discussed the research results from a report by several civil society organizations, including KontraS, regarding the involvement of Indonesian army officials and retirees in the gold mining business in plans to exploit the Blok Wabu area in Intan Jaya, Papua. Ms. Maulidiyanti and Mr. Azhar reportedly implied in the video that a mining company, of which the Coordinating Minister for Maritime Affairs and Investment (the "Minister") is a shareholder, has mining projects in the Intan

Jaya District of West Papua.

In the last three years, the controversial deployment of Indonesian military forces in the central highlands of Papua Province has triggered an escalation of armed conflict between Indonesian security forces operations and the West Papua National Liberation Army (TPNPB). This has subsequently caused the internal displacement of indigenous Papuans and resulted in the killing of civilians. It is estimated that the number of internally displaced persons (IDPs) has reached 13,000 people in the Intan Jaya regency alone as of November 2020. Furthermore, there has reportedly been twelve cases of extrajudicial killings of indigenous Papuans in relation to security force operations in Intan Jaya since January 2020. This is coupled with violence and terror against civilians, especially in the Intan Jaya Regency. Different reports have identified that the presence of military and police posts around the mining concessions are connected either directly or indirectly with the generals.

The mining activities at the Wabu Blok area in Intan Jaya are still in the stage of exploration, thus the extent of the impacts from the current mining activities is yet to be seen. However, based on examples of other gold mining operations in West Papua, it is likely that the gold mining operations in the Blok Wabu area in Intan Jaya, Papua will have a strong impact on the environment and the social life of indigenous communities in Intan Jaya. For instance, mining operations in Degeuwo (Bayabiru District), in the neighbouring Paniai Regency, have significantly affected the environment and the lives of the indigenous peoples in the area. The mining activities in Degeuwo have caused severe damage to the surrounding environment, which is populated by various indigenous tribes such as the Mee, Wolani and Moni. Major environmental damages include deforestation and the pollution of soil around the mining sites which can no longer be used for gardening. Chemicals have contaminated the Derewo River, which indigenous communities use for drinking water, which has cut off local communities from its water supply. Locals who still use the river water for cooking and drinking seriously jeopardize their health. Some mining companies have allegedly been accused of discharging mercury into the Degeuwo river.

On 26 August 2021, Ms. Maulidiyanti and Mr. Azhar received a cease and desist letter from the Minister in response to the above-mentioned talk show on YouTube, requesting that they explain the motive for posting the video, and to publicly apologise to the Minister within five days, promising not to do it again. The cease and desist letter allegedly warned that if an apology was not made, legal action would be taken against Ms. Maulidiyanti and Mr. Azhar.

On 2 September 2021, another cease and desist letter was sent to Ms. Maulidiyanti and Mr. Azhar, similar in nature to that of the first. The cease and desist letters issued by the Minister allegedly state that Ms. Maulidiyanti and Mr. Azhar will face charges under Article 27, paragraph (3) of the Electronic Information and Transactions Law (UU ITE) concerning defamation if they do not apologize for the allegations regarding the statement, and Articles 310 and 311 of the Criminal Code (KUHP) concerning attacking one's honour and reputation with accusations and defamation respectively. However, the Criminal Code also contains justifications for Ms. Maulidiyanti and Mr. Azhar posting the talk show under Article 310, paragraph (3), which

states that, “it does not constitute defamation if the act is carried out in the public interest”.

On 7 September 2021, Ms. Maulidiyanti allegedly sent a response to the second cease and desist letter through her lawyers, stating that her critique in the talk show was aimed at the Minister’s official position, not as an individual. On 8 September, Mr. Azhar also sent a response to the Minister regarding the second cease and desist letter, clarifying his stance.

On 9 September 2021, following the responses from both Ms. Maulidiyanti and Mr. Azhar to the cease and desist letters, the Minister’s legal counsel allegedly announced their decision to report the human rights defenders to the police.

On 22 September 2021, the Minister lodged a defamation complaint against Ms. Maulidiyanti and Mr. Azhar at the Jakarta Police Headquarters. The complaint was allegedly also in response to the talk show, which suggested that the ongoing military operations in West Papua are a means of protecting mining businesses in the province. If charged, Ms. Maulidiyanti and Mr. Azhar could face up to six years in prison.

Mr. Azhar was reportedly similarly targeted for an article he published on Facebook on 28 July 2016, alleging the involvement of Indonesian police officials in corrupt activities, including the alleged acceptance of bribes from an international drug trafficking network. On 2 August 2016, a joint defamation complaint was filed against Mr. Azhar by the National Narcotics Board (BNN), the Indonesian National Armed Forces (TNI) and the National Police under the 2008 Electronic Information and Transactions Law.

Without prejudging the accuracy of these allegations, we express concern at the judicial harassment of woman human rights defender Ms. Maulidiyanti and human rights defender Mr. Azhar, through the use of cease and desist letters and a defamation complaint against them, which appear to be directly linked to the legitimate exercise of their right to freedom of opinion and expression as well as of peaceful assembly and of association, provided by articles 19, 21 and 22 of the International Covenant of Civil and Political Rights (ICCPR), acceded by Indonesia on 23 February 2006. Also of concern is the criminalization of defamation and laws that risk undermining the right to freedom of opinion and expression, a right which is guaranteed under a national regulation enacted by the Republic of Indonesia under Law Number 39 of 1999 on Human Rights. In this connection, we also recall that according to the Human Rights Committee in its General Comment no. 34, defamation laws must be crafted with care to ensure their compliance with article 19(3) of the ICCPR and that they do not serve to stifle freedom of opinion and expression, and that a public interest in the subject matter of the criticism should be recognised as a defence.¹

We are extremely concerned by Government public officials’ use of the Electronic, Information, and Transaction Law to threaten activists or human rights defenders for speaking out about the human rights situation in the Republic of Indonesia. The Joint Decree of the Minister of Communication and Information, the Attorney General, and the National Police Chief of the Republic of Indonesia

¹ CCPR/C/GC/34, para. 47

regarding the Guidelines for the Implementation of the Electronic Information and Transaction Law have highlighted that Article 27 paragraph (3) section (c) states an action is not considered a defamation offense, if the content is in the form of an assessment or evaluation result. The statements made by Ms. Maulidiyanti and Mr. Azhar were based on a report that includes methods, data, and references. Therefore, this has fulfilled the above-mentioned requirements, as their statements passed the assessment and evaluation process on an issue that is of public concern. The use of the threat of criminal charges raises additional concerns and is detrimental to the building of public trust in the Government's efforts to address human rights violations. We are furthermore concerned by the absence of any justification for the charges brought against them. We are concerned that the charges against them equate the exercise of the right to freedom of expression and to freedom of association with serious criminal offences and characterize their work as illegal. It appears that the judicial harassment of Ms. Maulidiyanti and Mr. Azhar is illustrative of the shrinking space for civil society in Indonesia.

Furthermore, it is important to emphasize that the work carried out by KontraS and other civil society organizations in relation to mining projects in the Intan Jaya District of West Papua is legitimate and important, and is protected by the right to freedom of association, provided for under article 22 of the ICCPR. The activities of Kontra S and other organizations contribute to ensuring that such projects can be carried out with clean governance, free from corruption, collusion and nepotism.

In connection with the above alleged facts and concerns, please refer to the **Annex 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 the observations of your Excellency's Government 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 concerning the factual and legal basis for the charges being brought against Ms. Maulidiyanti and Mr. Azhar. In particular, please provide detailed information about the justification for bringing charges against them under Article 27, paragraph (3) of the Electronic Information and Transactions Law and Articles 310 and 311 of the Criminal Code, and how these laws comply with your obligations under the international legal framework of human rights law and standards including, inter alia, Article 19 (1) and (2) and 22 of the International Covenant on Civil and Political Rights (ICCPR), relating to the right to freedom of opinion and expression as well as to freedom of association.
3. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any

kind.

4. Please provide information on any steps that your Excellency's Government has undertaken, or is considering to take, including policies, legislation and regulations, to fulfill its obligation to protect against human rights abuses by business enterprises within its territories and/or jurisdiction, and to ensure that business enterprises conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operation, as set forth by the UN Guiding Principles on Business and Human Rights
5. Please provide information on any steps taken by your Excellency's Government to prevent and eventually remedy adverse human rights and environmental impacts resulting from the mining project.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

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

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 principles and international standards applicable to this communication. The above-mentioned allegations appear to be in violation of Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), to which the Republic of Indonesia acceded on 23 February 2006, as well as Articles 23 and 24 of the ASEAN Human Rights Declaration, ratified by the Republic of Indonesia on 18 November 2012, relating to the rights to freedom of opinion and expression as well as of peaceful assembly and association.

We wish to refer to article 19 of the ICCPR, which provides the right to freedom of opinion and expression. As per article 19(2), the freedom of expression includes the “right to seek, receive and impart information and ideas of all kind, regardless of frontiers either orally, in writing or in print, in the form of art, or through any other media of his choice”. Intimidation or retaliation of any kind against a person for holding or expressing an opinion, such as an opinion critical of the government, is a violation of article 19(1). Article 19(3) requires that any restriction on the right to freedom of expression is (i) provided by law; (ii) serves a legitimate purpose; and (iii) is necessary and proportional to meet the ends it seeks to serve. In its General Comment no. 34, the Human Rights Committee stated that an attack on a person, including such forms of attack as a arbitrary arrest, because of the exercise of his or her freedom of expression, be compatible with article 19 (CCPR/C/GC/34, para. 23). In this connection and with specific regard to the abovementioned allegations and the defamation charges faced by Ms. Maulidiyanti and Mr. Azhar, we wish to recall that according to Human Rights Committee in General Comment no. 34, States parties should take care to avoid excessively punitive measures and penalties in relation to defamation laws. The Committee also stated that States parties should consider the decriminalisation of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty (CCPR/C/GC/34, para. 47).

We further would like to recall that Articles 21 and 22 of the ICCPR guarantee the right to freedom of peaceful assembly and of association. Article 22 (2) further indicates that no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. The Human Rights Council has emphasized that States have the obligation to respect and fully protect these rights online as well as offline (A/HRC/RES/38/7). The General Assembly has also called upon all States to “ensure that the same rights that individuals have offline, including the rights to freedom of expression, of peaceful assembly and of association, are also fully protected online, in accordance with human rights law (A/HRC/41/41, para. 10). The Human Rights Committee further affirmed that recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure its exercise without discrimination (CCPR/C/GC/37, para. 8).

The Special Rapporteur on the right to freedom of peaceful assembly and of association further recognized in previous reports that digital technology is integral to the exercise of the rights of peaceful assembly and association (A/HRC/20/27 and

A/HRC/38/34). Technology serves both as a means to facilitate the exercise of the rights of assembly and association offline, and as virtual spaces where the rights themselves can be actively exercised (A/HRC/29/25/Add.1, para. 53). Therefore, the Human Rights Council stated that where restrictions on such freedoms are made, “States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right” [General Comment n°31, para. 6]” (A/HRC/41/41, para. 12). We thusly are concerned that the criminal charges brought against Ms. Maulidiyanti and Mr. Azhar were linked to their activities as human rights defenders in organising events and coordinating actions for the promotion and protection of human rights as part of their legitimate exercise of the right to freedom of peaceful assembly and of association, both online and offline.

In this regard, we would like to recall the provisions of Human Rights Council resolution 24/5 and 15/21 which reminds States of their obligation to fully respect and protect the right of all individuals to assemble peacefully and associate freely, including on the occasion of elections, including persons professing minority or dissenting opinions or beliefs, and their obligation to ensure that any restrictions on the free exercise of the right to peaceful assembly and freedom of association are consistent with their obligations under international human rights law.

Furthermore, we bring to your attention 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.

Additionally, 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 5 (a), which provides for the right to meet or assemble peacefully;
- article 5 (b) and (c), which provides for the right of all persons to form, join and participate in non-governmental organizations, associations and groups; and to communicate with non-governmental or intergovernmental organizations;
- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;

- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Finally, the Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Principle 4 provides, specifically, that “States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.” Principle 12, provides that States should ensure the effective enforcement of their environmental standards against public and private actors. As per principle 14, States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.