

**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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health**

REFERENCE:  
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26 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 43/16, 43/4 and 42/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **accusations brought against human rights defenders Mr. Egi Primayogha and Mr. Miftachul Choir for their work in human rights and denouncing corruption.**

Mr. **Egi Primayogha** is a human rights defender and member of Indonesia Corruption Watch (ICW), a prominent anti-corruption organisation in Indonesia. As a student, he was involved in various civil society movements in university, such as the student press and student co-operative movement. The human rights defender is currently working on various human rights issues such as freedom of information, access to health, and the right to natural resources. He is also vocal about the implication of politicians and business groups in human rights violations.

Mr. **Miftachul Choir** is a human rights defender and a short-term contract employee of the Political Corruption Division of Indonesia Corruption Watch (ICW). His research focuses on the political-economy of the coal mining industry, the party financing regime and the electoral system. Prior to joining ICW, Miftachul Choir was involved with the student press and various student movement groups. Currently, he is a postgraduate student at the Institute of Human Rights and Peace Studies (IHRP), Mahidol University.

According to the new information received

On 29 July 2021, it was reported that the Presidential Chief of Staff planned to file a complaint against Egi Primayogha and Miftachul Choir regarding a study published by ICW. This study was published by the Political Corruption Division of ICW and uncovered the possible involvement of public officials, in promoting the circulation of the drug “Ivermectin” during the COVID-19 pandemic, which has not been officially approved as a drug to treat the virus. The study showed an alleged conflict of interests between state officials and private parties in the distribution of this drug. Both human rights defenders were involved in the research and presentation of this study. On the same day, 109 civil society organisations and community groups expressed solidarity with Egi Primayogha, Miftachul Choir and ICW and urged General Moeldoko to withdraw the subpoena.

On 2 August 2021, the lawyer of the Presidential Chief of Staff sent a subpoena to ICW, specifically addressing Egi Primayogha and Miftachul Choir. The subpoena asked them to withdraw the claims made by their study and to apologise to the Presidential Chief of Staff within 24 hours. It allegedly also threatened to report the human rights defenders to the police if the demands were not met. Subsequently, two other subpoenas issued by Moeldoko were sent to Egi Primayogha and Miftachul Choir on 5 August 2021 and 20 August 2021, with similar demands and threats.

On 10 September 2021, General Moeldoko, the Presidential Chief of Staff officially reported human rights defenders Egi Primayogha and Miftachul Choir to the Criminal Investigation Unit of the National Police of Jakarta for alleged “defamation” (Article 27 of the Electronic Information and Transactions Law), “harm to someone’s honor” (article 310 of the criminal code) and “slander or libel” (311 of the criminal code). The accusations are believed to be related to the study published by ICW. If charged, the human rights defenders could be sentenced to 6 years in prison. ICW has repeatedly explained that the results of ICW's research do not accuse any particular party, and the information was presented as to ensure no direct accusations are levied against individuals.

Without prejudging the accuracy of the above allegations, we wish to express our concern for the complaints brought against human rights defenders Mr. Egi Primayogha and Mr. Miftachul Choir by state officials allegedly for their involvement in a study that denounced the involvement of various public officials, in promoting the circulation of the drug “Ivermectin” during the COVID-19 pandemic, which has not been officially approved to treat the virus. We express further concern on the fact that in the same article that the defenders could be accused of, paragraph (3) states that it does not constitute defamation if the act is carried out in public interest. We are deeply concerned that the Electronic, Information, and Transactions Law and defamation charges could be used to silence activists or human rights defenders in the country and stifle the enjoyment of the right to freedom of opinion and expression, guaranteed under article 19 of the International Covenant on Civil and Political Rights (ICCPR). According to the Human Rights Committee, defamation laws must be crafted with care and that a public interest in the subject matter of the criticism should be recognized as a defence (CCPR/C/GC/34, para. 47).

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.

We are issuing this appeal in order to safeguard the rights of the abovementioned individuals from irreparable harm and without prejudicing any eventual legal determination.

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 provide information on the legal and factual basis for the subpoenas brought against Mr. Egi Primayogha and Mr. Miftachul Choir, and how they are consistent with your obligations under international law.
3. Please provide information on the measures available to protect human rights defenders that work in anti-corruption, without fear of reprisals and free of all restrictions, in line with Indonesia's international human rights obligations and commitments.

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

Tlaleng Mofokeng  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

## **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 relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer your Excellency's Government to articles 14, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Indonesia on 23 February 2006, which provide for the rights to fair judicial proceedings, freedom of opinion and expression, and freedom of peaceful assembly.

We would also like to draw your attention to article 19 of the ICCPR, which guarantees the right to freedom of expression and opinion, including the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers. This right applies both online and offline. Any limitations on the right to freedom of expression must meet the criteria set by international human rights standards. Under these standards, limitations must be determined by law and must meet the strict test of necessity and proportionality, must be applied only for the purposes for which they were prescribed, and must be directly related to the specific need on which they are based. With reference to the abovementioned allegations, we would also like to refer to General Comment no.34 of the Human Rights Committee, which states that defamation laws must be crafted with care to ensure that they comply with Article 19(3), and that they do not serve, in practice, to stifle freedom of expression. Care should also be taken by States parties to avoid excessively punitive measures and penalties. Where relevant, States parties should consider the decriminalization of defamation<sup>1</sup> 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.<sup>1</sup>

In addition to the above, we would like to refer to the United Nations Convention against Corruption, ratified by Indonesia on 19 September 2006, whereby States Parties undertake to adopt appropriate measures to encourage the participation of civil society, non-governmental organisations and community-based organisations in the prevention and fight against corruption (article 13), as well as appropriate measures to provide protection against any unjustified treatment of persons who report acts of corruption (article 33). We recall, resolutions 7/11 and 19/20 in which the Human Rights Council noted "that the fight against corruption at all levels is important to the promotion and protection of human rights and to the process of creating an enabling environment for the full enjoyment of human rights.

In this context, we would also like to further 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

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<sup>1</sup> (CCPR/C/GC/34) para. 47

prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Furthermore, we would like to bring to the attention of your Excellency's Government article 6 (b) which guarantees the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms.

Finally, we would like to finally refer to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) acceded by Indonesia in 2006, which enshrines the right to health. As part of their obligations under ICESCR article 12, States should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assisting groups in vulnerable or marginalized situation in the realization of their right to health. (para 62).