

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

Ref.: AL IDN 2/2023
(Please use this reference in your reply)

30 March 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 44/8, 43/4, 50/17 and 43/16.

We would like to bring to the attention of your Excellency's Government information we have received concerning allegations of **judicial harassment of human rights defenders, including a prominent human rights lawyer and a leading woman human rights defender, as well as infringement of their freedoms of expression and of association because of their online activism.**

Haris Azhar is a human rights lawyer who serves as the Executive Director of Lokataru. He was previously the Coordinator of Commission for the Disappeared and Victims of Violence (KontraS), a prominent human rights organization in Indonesia established in 1998. For many years, 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 Southeast 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).

Fatia Maulidiyanti is a woman human rights defender and the current Coordinator of KontraS. She has been involved in various civil society movements since she was in university, through her participation in the student press, working on various human rights issues such as the death penalty, business and human rights, unfair trials, 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.

Several other mandate-holders have already written to your Excellency's Government expressing concern about the reported judicial harassment of Mr. Azhar and Ms. Maulidiyanti (ref: AL IDN 8/2021). We thank your Excellency's Government for its two responses to previous communications, though we remained concerned over the alleged continued acts of judicial harassment.

According to the information received:

On 20 August 2021, the two human rights defenders posted a talk show on Haris Azhar's YouTube Channel. In it, they reviewed the research findings of a report by several human rights organizations, including KontraS, that

claimed that active and retired Indonesian army officials were involved in the gold mining business with plans to exploit the Blok Wabu area in Intan Jaya, Papua. The two human rights defenders reportedly suggested in the talk show that the military operations in West Papua serve to protect mining businesses there. 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”) and former army general is a shareholder, has mining projects in the Intan Jaya District of West Papua.

On 26 August 2021, the Minister issued a subpoena to Fatia Maulidiyanti and Haris Azhar related to the above-mentioned talk show. The subpoena allegedly included requests for an explanation of the video’s motives and a public apology. If an apology was not made, legal action would allegedly be pursued. On 2 September 2021, the Minister issued another similar subpoena to Ms. Maulidiyanti and Mr. Azhar. That subpoena also allegedly stated that they would face charges under article 27(3) of the Electronic Information and Transactions Law and articles 310 and 311 of the Criminal Code concerning defamation and attacking someone’s honor and reputation with accusations. The human rights defenders’ actions are reportedly protected under provisions in the Criminal, notably under article 310(3), which states that an act “does not constitute defamation if the act is carried out in the public interest.” Reports received further indicate that Government officials are abusing their power by using the Electronic Information and Transactions Law to silence human rights defenders in Indonesia.

On 7 September 2021, Fatia Maulidiyanti sent a response to the second subpoena stating that her critique was aimed at the Minister’s official position as a minister and not as an individual. On 8 September 2021, Haris Azhar sent a similar response. On 22 September 2021, the Minister lodged a defamation complaint against Ms. Maulidiyanti and Mr. Azhar at the Jakarta Police Headquarters allegedly in response to their above-mentioned talk show.

After a few summons, Ms. Maulidiyanti and Mr. Azhar reported to the Greater Jakarta Metropolitan Regional Police (Polda Metro Jaya) for questioning on 21 March 2022. In March 2023, the Special Criminal Investigation Directorate of Polda Metro Jaya allegedly finalized the investigation and handed the case over to the East Jakarta Prosecutor’s Office. This filing implies the imminent start of Ms. Maulidiyanti and Mr. Azhar’s trial.

It was reported that if they are convicted, Ms. Maulidiyanti and Mr. Azhar could face up to six years in prison.

Without prejudging the accuracy of the information received, we wish to express our grave concerns over the judicial harassment of and arbitrary charges filed against human rights defender Fatia Maulidiyanti and human rights lawyer and defender Haris Azhar, whose rights to exercise their free speech without the threat of partial or unfair judicial proceedings being initiated against them is guaranteed by international law. Mr. Azhar’s rights to freely exercise the legal profession is also protected by international norms. If confirmed as an effort to repress their activism, the defamation case against these two human rights defenders and members of civil society organizations would amount to serious breaches of several international human rights laws and standards.

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 identify measures your Excellency's Government is taking to ensure that Fatia Maulidiyanti and Haris Azhar can enjoy their right to freely express themselves and exercise their human rights activism and freedom of association without threats of judicial harassment, intimidation or any other form of retaliation.
3. Please identify measures your Excellency's Government is taking to protect the human rights of Fatia Maulidiyanti and Haris Azhar against frivolous lawsuits that may be brought against them.
4. Please provide information about the applicable rules and procedures regarding charges under the Electronic Information and Transactions Law. Please indicate the legal basis for these rules and procedures, explain whether there have been any recent changes to these rules and policies, and explain how these rules and procedures are compatible with international human rights law, including the right to freedom of expression and the protection of human rights defenders, civil society actors and lawyers against judicial harassment.

We would appreciate receiving a response within 60 days. Past 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.

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.

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

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

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the International Covenant on Civil and Political Rights (ICCPR), acceded to by the Republic of Indonesia on 22 February 2006. Article 14(1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 of the ICCPR provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing.

The Human Rights Committee notes that whenever rights and obligations in a suit at law are determined, this must be done at least at one stage of the proceedings by a tribunal. The failure of a State party to establish a competent tribunal to determine such rights and obligations or to allow access to such a tribunal in specific cases would amount to a violation of article 14.

We also recall article 19 of the ICCPR, which guarantees that everyone shall have the right to hold opinions without interference, and the right to freedom of expression; which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice. Legitimate restrictions to freedom of expression may be implemented in accordance with the requirements of article 19(3) of the Covenant.

Restrictions must meet the standards of legality, meaning that they are publicly provided by a law which meets standards of clarity and precision, and are interpreted by independent judicial authorities; necessity and proportionality, meaning that they are the least intrusive measure necessary to achieve the legitimate interest at hand, and do not imperil the essence of the right; and legitimacy, meaning that they must be in pursuit of an enumerated legitimate interest, namely the protection of rights or reputations of others, national security or public order, or public health or morals. In this context, we underscore that the Human Rights Committee has found that "It is not compatible with article 19(3), for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information." (CCPR/C/GC/34 para. 30).

With regard to the expressions made by the human rights defenders, 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.

In this context, we would also like to refer to Human Rights Council resolution 22/6, which called upon States to create a safe and enabling environment for the work of human rights defenders; and Human Rights Council resolution 31/32 which in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

We would also like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana (Cuba), 27 August – 7 September 1990).

Principle 16 requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 18 provides that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. This principle must be read in conjunction with principle 16(c), referred to above, which requires national authorities to adopt all appropriate measures to ensure that lawyers are not subject to, or threatened with prosecution or any other administrative, economic or disciplinary sanctions for actions undertaken in good faith in the exercise of their professional duties and responsibilities. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, resolution 67/187 adopted in 2012, note in principle 2, that "States should consider the provision of legal aid their duty and responsibility".

Furthermore, we wish to call the attention of your Excellency's Government to the provisions contained in the Declaration on Human Rights Defenders, adopted by the General Assembly in its resolution 53/144, which in its article 5 declares that '[f]or the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) To meet or assemble peacefully'. We also wish to refer to 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.