

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes**

Ref.: AL IDN 6/2023  
(Please use this reference in your reply)

12 September 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 52/4, 51/8, 46/7, 52/9 and 45/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary detention of Mr. **Heri Budiawan**, whose original sentence of ten months in prison, which he completed in 2018, was extended to a period of four years. The motivation for his sentencing appears to be in relation to the legitimate exercise of his human rights.

Special Procedures sent a communication on the case of Mr. Heri Budiawan on 6 April 2018 (**AL IDN 3/2018**). We regret that we have still not received any response from Your Excellency's Government in regard to this communication. We look forward to hearing from Your Excellency's Government in regard to both the previous and current alleged violations against the human rights defender.

Mr. Heri Budiawan (also known as Budi Pego) is an environmental human rights defender and farmer from the Sumberagung village, in the Pesanggaran District, located in Banyuwangi Regency in Indonesia. Since 2014, he has actively protested on behalf of his community, namely campaigning against the environmental impacts of gold-mining activity in the Tumpang Pitu and Salakan mountains in East Java. Such impacts not only refer to the detrimental effect of mining activities on the natural environment, but also concern their repercussions on the safe and healthy environment of five villages in the local area, specifically the villages of Sumberagung, Pesanggaran, Sumbermulyo, Kandangan, and Sarongan.

According to the information received:

*Background information:*

On 19 November 2013, a decree (No.826/MENHUT-II/2013) stipulated that 1,942 hectares incorporating the Tumpang Pitu mountain and its surrounding area were to be allocated as a protected forest zone.

On 19 November 2013, however, the decision to conserve this habitat was subsequently reversed by ██████████, the then Minister of Forestry, and the area was rezoned as an “industrial forest”. This designation was made in spite of concerns that the mountain and the south coast of Banyuwangi, downhill of where this vicinity is located, are considered to be disaster-prone areas.

Fears of the risk of disaster that a mining project could precipitate were also made real in August of 2016 when the Banyuwangi regency coastal area suffered flooding emanating from an area in Tumpang Pitu which had been cleared for an upcoming mining project, after the Kapak river overflowed. This damage to the livelihoods of local farmers and fishermen, whose estimated 300 hectares of crops and shores were affected by the disaster, resulted in a loss of hundreds of millions of Rupiahs. The use of cyanide in the project, as well as the pollution of rivers with byproducts of the mineral extraction, such as ore, have also been reported. Moreover, the destruction of the ecological habitat has seen the displacement of wild animals which have been sighted with more frequency on nearby farmland.

In March 2017, production began on a gold mining project in the forest mountain area of Tumpang Pitu and Salakan. This mining project was led by PT Merdeka Copper Gold and operated by its two subsidiaries, PT Bumi Sukses Indo (BSI) and PT Damai Sukses Indo (DSI), who were granted licenses by Banyuwangi Regent to mine the respective plots of 4,998 hectares and 6,623 hectares back in 2012.

*The case of Mr. Heri Budiawan:*

On 4 April 2017, Mr. Budiawan coordinated a peaceful assembly against the gold mine in Salakan Mountain along with other members of the community. Together they called for licenses of the mining companies to be revoked.

On 5 April 2017, police reportedly accused Mr. Budiawan of drawing Communist-affiliated “hammer and sickle” symbols on the eleven signs used as part of the protest on the road from the Red Island Beach to the Pesanggaran District Office.

On 4 September 2017, Mr. Budiawan was arrested allegedly for spreading the Communist ideology.

On 24 January 2018, Mr. Budiawan was sentenced to 10 months in prison by the Banyuwangi District Court, in the East Java Province for ‘crimes against state security’ as per article 107a of Law No.27/1999. He was found guilty of three charges including spreading Communist ideology, promoting Communist ideology as the leader of a protest, and failure to notify local authorities of a protest, in accordance with Law No. 9/1998.

On 29 January 2018, Mr. Budiawan and the public prosecutor filed appeals at the High Court of Surabaya, East Java.

On 14 March 2018, Mr. Budiawan’s appeal was reportedly rejected and his conviction was upheld in a judgement by the the East Java High Court, who ruled in favour of the lower court.

In response to this, Mr. Budiawan's legal team once again challenged the ruling and appealed this decision to the Supreme Court.

On 1 July 2018, Mr. Budiawan was released from prison after completing his 10-month sentence.

On 23 February 2018, Mr. Budiawan's counsel submitted a legal memory of appeal to the High Court.

On 16 October 2018, Mr. Budiawan's cassation appeal was rejected by the Supreme Court. In addition to this, the court ruled to increase his sentence from the ten months, which at that point he had already served, to four years imprisonment. However, the human rights defender and his legal team were reportedly not informed of the court's decision and did not receive a copy of the verdict.

In the months that followed, between November and December 2018, Mr. Budiawan was issued with two summons from the Banyuwangi Prosecutor's Office to serve his sentence as per the Supreme Court's verdict.

However, in the following years, there were no further updates on Mr. Budiawan's incarceration, since law enforcement authorities reportedly did not take any further action to carry out the verdict.

In March of 2023, it is reported that representatives of the mining company that operated in the area conducted a geological mapping survey in Salakan Mountain. They were accompanied by members of the local police, the military, and the public order agency.

On 21 March 2023, in the evening, it is reported that nine unidentified individuals went to the house of Mr. Budiawan. They destroyed a sign which had been hanging outside the human rights defender's house, with a message of protest against the gold mine in the Salakan Mountains.

On 24 March 2023, nearly five years after his release, multiple officers representing the law enforcement authority reportedly visited the house of Mr. Budiawan and arrested the human rights defender. They stated that this was in connection with the verdict issued by the Supreme Court in 2018.

It is reported that, since 24 March 2023, Mr. Budiawan has been held in detention at the Banyuwangi Prison, in East Java province.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our concern over the prolongation of the sentencing of Mr. Heri Budiawan for crimes against state security, in connection to his work in the defence of human rights. This relates specifically to Mr. Budiawan's legitimate right to freedom of peaceful assembly and of association, and his right to freedom of opinion and expression, which he exercised through the manifestations he carried out on 4 April 2017, in protest against the detrimental impact of the gold mine in Tumpang Pitu and Salakan mountain in East Java. We are also concerned that the original ruling to incarcerate the individual, as well as his recent re-arrest in compliance with the subsequent court

verdict to extend his initial sentence, appear to be motivated by an intent to halt the human rights defender's activities for the protection of the environment, and to facilitate the activities of the mining companies.

Further concern is expressed that the sentencing of the environmental human rights defender could discourage other human rights defenders and affected communities from carrying out their environmental activism, and from advocating for the legitimate rights which they are owed under International law, in the context of Tumpang Pitu and other large-scale industrial initiatives.

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 above-mentioned 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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information concerning the legal and factual grounds for the conviction and sentencing of Mr. Heri Budiawan, as well as the decision to extend his sentence as per the ruling of the Supreme Court. Please clarify how these comply with Indonesia's obligations under international human rights law.
3. Please also indicate whether a human rights and environmental impact assessment was carried out for the mining concession in the forest mountains of Tumpang Pitu and Salakan, and if so kindly provide details of the results.
4. Please indicate what measures have been taken to ensure that human rights defenders, particularly those working on issues of human rights and the environment, are able to carry out their legitimate work in a safe and enabling environment in Indonesia, without fear of judicial harassment.
5. Please explain what measures, if any, have been taken to ensure that adequate compensation has been awarded to individuals whose livelihoods have been affected as a consequence of the mining project.

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.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Matthew Gillett  
Vice-Chair on communications of the Working Group on Arbitrary Detention

David R. Boyd  
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

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

Marcos A. Orellana  
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards.

We would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), which was acceded by Indonesia on 23 February 2006, which guarantees the right of every individual to liberty and security of the person, to freedom of opinion and expression, freedom of peaceful assembly, and freedom of association as enshrined in articles 9, 19, 21 and 22.

We wish to remind your Excellency's Government that article 9 of the ICCPR prohibits arbitrary arrests or detention. According to General Comment no. 35 and the jurisprudence of the Working Group on Arbitrary Detention, arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR is arbitrary, including the rights guaranteed in articles 19 and 21 of the Covenant.

Reference should also be made 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. Of particular relevance are 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 (a), establishes that for 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: to meet or assemble peacefully; article 6 (b) and c) provides that everyone has the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, and to study, discuss, form and hold opinions on the observance of these rights. article 12 (1) and (3), provides for the right to participate in peaceful activities against violations of human rights and fundamental freedoms, as well as for the right to be protected effectively under national law in reacting against, or opposing, through peaceful means, activities and acts that result in violations of human rights and fundamental freedoms.

We recall Human Rights Council resolution 31/32, which in its paragraph 1 reaffirms the urgent need to respect, protect, promote and facilitate the work of those defending economic, social and cultural rights as a vital factor contributing towards the realization of those rights, including as they relate to environmental and land issues as well as development.

In addition, both the United Nations General Assembly and the Human Rights Council recognized the right to a clean, healthy and sustainable environment with the adoption of resolutions A/RES/76/300 and A/HRC/RES/48/13. We also refer to the Framework Principles on human rights and the environment of the Special Rapporteur on human rights and the environment (A/HRC/37/59, annex), which summarize the

main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Namely, Framework Principle 4 reaffirms that States should provide a safe and enabling environment in which human rights defenders that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence, while Principle 5 recalls that States should respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters.

Further, we would like to highlight that Indonesia is a party to the Minamata Convention on Mercury, and is thus required to develop a National Action Plan with "Strategies to prevent the exposure of vulnerable populations, particularly children and women of child-bearing age, especially pregnant women, to mercury used in artisanal and small-scale gold mining" and to reduce emissions of and exposure to mercury in artisanal and small-scale gold mining and processing, including mercury-free methods, as well as a public health strategy on the exposure of artisanal and small-scale gold miners and their communities to mercury, among other elements.

Finally, we would also like to refer to the Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution 17/4. The Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. They recognize the important and valuable role played by independent civil society organizations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.