

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the rights of Indigenous Peoples and the Special Rapporteur on minority issues**

Ref.: AL IDN 2/2024  
(Please use this reference in your reply)

20 March 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the rights of Indigenous Peoples; Special Rapporteur on minority issues; pursuant to Human Rights Council resolutions 53/4, 54/14, 53/12, 51/16 and 52/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning violence in the provinces of West Papua, including the occurrence of extrajudicial and summary executions, torture, enforced disappearances and the lack of transparent and thorough investigations.

We thank your Excellency's Government for its substantive responses to the communications IDN 3/2023 and IDN 4/2023 dated 9 August 2023 and 30 October 2023 respectively. In this regard, we would like to bring to the attention of your Excellency's Government updated information in relation to the above-mentioned allegations. Part I of this letter addresses the continued concerns, pertaining to the aforementioned communications, while Part II addresses additional human rights concerns based on new information we have received.

According to the information received:

*Part I (Further to Allegation letters IDN 3/2023 and IDN 4/2023, and the respective responses by the Government of Indonesia):*

*Alleged enforced disappearance and killing of Mr. Uakhele Giban*

Concerning the alleged shooting and enforced disappearance of Mr. Uakhele Giban, object of communication JAL IND 3/2023, we take note of the information provided by your Excellency's Government that the case has not been reported to the relevant authorities.

This raises concern that the case was not reported to the police, as there is a fear of reprisals. Mr. Giban is a member of a community of internally displaced persons (IDPs) who have fled their village in the Suru-Suru District since 20 November 2021 in response to alleged ground and air raids carried out by security forces in the district. It is reported that most of the people displaced from this region have not returned to their villages due to the presence of security forces in the area and continue to live in shelters, where they remain isolated from Government services. According to information

received, as of October 2023, education and medical facilities in Suru-Suru remain dysfunctional, houses have been devastated, and all livestock as well as gardens have been abandoned. The villagers reportedly fear returning to their homes due to the ongoing presence of the military in the area, while health workers and teachers have not yet resumed work as of late 2023.

To date, Mr. Giban's body has not been found, nor have State authorities conducted any search operations to locate him. It is believed that Mr. Giban may have been shot because of his ethnic identity. As a result of the incident, individuals associated with Mr. Giban continue to live in a forest hut with other internally displaced persons and have been unable to return to their villages. Witnesses to the shooting could not provide information about the incident due to ongoing military operations in Suru-Suru District. Owing to the incident, the operation of education facilities, religious places of worship, and health services in the area have been suspended.

We recall that it is only through independent, impartial, and complete investigations that allegations of enforced disappearances and extrajudicial executions can be ruled out, and that these should be carried out ex officio by the relevant authorities, whether a formal complaint has been submitted or not.

*Alleged Killings of Messrs. Arlod Lokbere, Irian Nirigi, Lemaniol Nirigi, and Atis Tini*

We note the information provided by your Excellency's Government regarding the legal proceedings in the Timika District Court and military tribunals against the alleged perpetrators. We note that your Excellency's Government has confirmed that "members of Infantry Brigade (Brigif) R/20/IJK/3 committed the murder and mutilation of Ariod Lokbere, Lemaniol Nirigi, Atis Tini, and Irian Nirigi."

We take note of the judicial proceedings detailed, indicating that "the military defendants have been processed per applicable criminal and army laws in Indonesia and convicted under the article on premeditated murder along with mutilation, based on article 340 jo. Article 55(1)1 of the Indonesian Penal and the article on intentional failure to report which harms the interests of the service (article 121 paragraph (1) of the Military Criminal Code)." We also note that six military defendants who were sentenced to life imprisonment have appealed the verdict.

According to the information received, although the defendant Major Fransiskus Helmantho Dakhi had been sentenced to life imprisonment, the Military High Court later reduced his sentence to 15 years on appeal, disregarding the fact that he was the highest-ranking officer among the military defendants and is believed to be a key perpetrator.

We further regret that there is a lack of information concerning the four civilian defendants who were tried at the Timika District Court and the Jayapura High Court for these crimes.

Moreover, it is informed that the victims' relatives did not receive information about the court proceedings or the final verdicts. Likewise, the relatives have

reportedly not been informed of the appeals filed by the other military defendants. Additionally, it is reported that the victims' relatives have not received any form of compensation, restitution, or rehabilitation, satisfaction or any other measure of reparation from the State regarding the alleged killings, nor regarding the alleged enforced disappearance to which they were subjected from 22 to 29 August 2022, where their fate and whereabouts remained unknown.

*Incidents of alleged unlawful killings of 11 people in February 2023 and of three people in July 2023*

We refer to your Excellency's Government's response concerning this allegation and take note of the reported violent acts by civilians and the ongoing investigations. Concerning the events that occurred in February 2023 resulting in the deaths of 11 persons including 9 Papuans, we note that the Government's response states that: "investigation is still ongoing, and perpetrators are still being identified."

Regarding the events of July 2023, in which three Indigenous Papuans were killed, we note that the Government's response states that: "the Regional Police of Dogiyai, in coordination with the Cyber Unit, is still investigating the validity of a document found during the investigation, which contains more names and detailed data of victims. (...) the Regional Police of Dogiyai has not received any reports from the families of the said victims. It is highly unusual that the families of victims do not make any reports to the police following such incident. While the data is still under investigation, the evidence found on the ground regarding the news supported the high probability of this case as being a hoax, commonly spread by armed criminal groups."

We express our concern over the initial conclusion by your Excellency's Government, received through the aforementioned response, that the reported deaths were a hoax.

According to the information received, the victims' families did not officially report the cases to the authorities because they "did not trust the Indonesian justice system and feared the impartiality of the law enforcement apparatus."

Moreover, although there were no official complaints, reportedly, the allegations of the extra-judicial killings were brought to the attention of the public by various local and national media platforms, which should have prompted action from Indonesian authorities. It is also informed that police officers of the Papua Regional Police (Polda Papua) were seconded to Dogiyai to investigate the allegations of extra-judicial execution of Yosua Keiya, but concluded there were no victims. However, they did not interview the victims' relatives or witnesses, who testify to the veracity of the claims of the extra-judicial killings of Mr. Yosua Keiya and Mr. Yakobus Pekei. Lastly, it is reported that, on 18 July 2023, the allegations of the extrajudicial execution of Mr. Yosua Keiya and Mr. Yakobus Pekei were brought to the attention of the National Human Rights Commission (Komnas HAM).

*Part II (New allegations):*

Furthermore, since our previous communications, new information has been brought to our attention concerning new human rights violations allegedly occurring in West Papua.

*Alleged killing of five Indigenous Papuans in Fakfak Regency*

Reportedly, joint security forces carried out a series of raids in the Kramongmongga District, Fakfak Regency, Papua Barat Province on 16 August 2023, a day after unknown perpetrators set the district office and a school on fire. The Kramongmongga District Chief was allegedly killed during the incident.

Members of the joint security forces also reportedly killed five suspects during two separate raids on 31 August and 9 September 2023. Twelve other villagers, including children, were reportedly arrested in different locations. The police pressed charges against seven detained suspects. Five other suspects were released after being interrogated. Approximately 500 Indigenous Papuans living in the villages of Mamur and Nembukteb fled into the forest in fear of being arbitrarily arrested.

The head of the public relations department of the Papua Barat Regional Police reportedly said that the members of the security forces fired warning shots but had to kill five suspects because they had resisted arrest. One police officer was reportedly injured with a knife during the raid on 9 September.

The Manokwari Institute for Research, Assessment, and Development of Legal Aid (LP3BH Manokwari) has called upon the National Human Rights Commission to conduct a preliminary investigation into the allegations of extra-judicial executions during the raids in Kramongmongga and reported excessive use of force by law enforcement authorities in the region. We regret that, as per the information received, there has been no development in the investigations of this case.

*Alleged torture of 12 Papuans in Nduga*

According to the information received, members of the Nduga District Police and the Damai Cartenz Police Task Force raided a residence and the local head office of the Papuan Tabernacle Church (Kingmi Papua) in the town of Kenyam, Nduga Regency, Papua Pegunungan Province, on 17 September 2023. It is reported that on this occasion, several people were detained, arrested and subject to ill-treatment which may amount to torture in order for them to reveal information. All persons detained were later released.

It is alleged that law enforcement authorities conducted raids against local Kingmi Papua church leaders and their offices, reportedly in a discriminatory action against this religious group. According to the victims, one of the officers stated during the police operation, “This satanic church hides people collaboration with Egianus Kogoya [leader of the West Papua National Liberation Army TPNPB in Nduga Regency]. You hide the criminals while pretending to pray.” According to the Kingmi Papua Church, similar

discriminatory views have been expressed by officials and government representatives over more than a decade, claiming the Kingmi Papua Church to be a “separatist church.” Media sources confirm that such biased views have been publicly spread by military leaders and triggered widespread criticism in West Papua including among Papuan Government officials.

It is alleged that the acts of torture were witnessed by members of the Nduga Parliament (DPRD). The Nduga police chief Commissioner has apologised to the local church leaders for the “misconduct of his men” but did not indicate that sanctions or legal steps were taken against the perpetrators. According to the media article the Commissioner stated “I have personally and officially communicated directly with the Kingmi Church to resolve the incident, apologising for the mistakes in law enforcement efforts made. [...] Someone opened the door but closed it again, and an argument ensued, causing police members to make physical contact. I regret this and have apologised directly to the church for the destruction of the office door and the pastor being injured.”

*Alleged lack of independence and impartiality of military courts in charge of adjudicating on the killing of two civilians*

On 14 April 2020, the bodies of two Papuan men, Mr. Eden Armando Bebari, 19, and Mr. Ronny Wandik, 21, were found on a bank of the Kali Biru (Blue river), near the complex of a gold and copper mine, PT Freeport Indonesia, in Mimika regency. The two bodies bore gunshot wounds. It is believed they were shot and killed on 13 April in the afternoon when security forces were involved in a shootout with four members of the West Papua National Liberation Army (TPNPB). On the previous week, the armed group claimed responsibility for the killing of an employee of PT Freeport in the same area.

Following the killing of the two men, military representatives alleged that the victims were associated with the TPNPB. The families of the two men, however, denied that either Mr. Bebari or Mr. Wandik were involved with TPNPB or any other separatist group.

Four military personnel were accused of the killing. The trial against the four suspects did not take place in Timika, where the killing happened, but in Makassar, South Sulawesi Province, and in Bali Province, within the jurisdictions of the different military units of the defendants. Hence, two separate military trials were held for the case: one at the III-17 Military Court in Manado and the other at the III-13 Denpasar Military Court. Civil society groups and the relatives of the victims alleged that trial of the perpetrators by a military court faraway from Timika aimed to impede relatives and witnesses from attending the trial.

On 6 July 2022, the III-17 Military Court in Manado found the alleged perpetrators guilty of killing Mr. Bebari and Mr. Wandik. The two military members were found to have breached article 338 (murder) and article 170 (2) of the Indonesian Criminal Code (using collective force to commit violence resulting in death). They received lenient sentences: 7 and 6 years of imprisonment, respectively, and dismissal from military service.

On 30 October 2022, a Supreme Court verdict overruled the Military Court III-17 Manado court verdict against two of the perpetrators. The sentence against the first defendant was reduced from seven to two years, while the second defendant received one year and six months imprisonment instead of six years of the initial verdict.

On 5 September 2023, the III-13 Denpasar Military Court acquitted the two alleged perpetrators of their charges. The judges argued that the defendants had been proven to have committed the killings but acted in “self-defence.” On 12 September 2023, the III-13 Denpasar Military Prosecutor filed a request for cassation of the verdict that acquitted two of the perpetrators, however, we have not received information on the current status of this appeal process.

The leniency of sentences against the alleged perpetrators of the killing of the two civilians raises serious concerns on the independence of the military courts that adjudicate on their cases and may contribute to perpetuating a climate of impunity for human rights abuses perpetrated by members of the military forces against civilians. Human rights mechanisms have held on several occasions that the jurisdiction of military tribunals should be restricted to offences of a military nature committed by military personnel, and that military justice systems should provide adequate guarantees on the independence and impartiality of military tribunals, as well as on the equal and effective enjoyment of a number of human rights, including the right to a fair trial and the right to an effective remedy. The jurisprudence of human rights treaty bodies, special procedures mandate holders and regional human rights mechanisms tends to confine the jurisdiction of military tribunals to purely disciplinary types of military offences, rather than to offences of a criminal nature.

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned by the alleged reports of continued use of force against civilians in the West Papua region. If confirmed, the information received could amount to violations of the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of Racial Discrimination (ICERD), acceded by Indonesia on 23 February 2006 and 25 June 1999, respectively. They could also amount to a violation of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) and of the Convention on the Rights of the Child (CRC), ratified by Indonesia in 1998 and in 1990, respectively.

We remain concerned that the reported incidents lack adequate attention from the authorities, as they seem to reflect a widespread pattern of disproportionate use of lethal force, arbitrary arrests and detention, torture, and violence against Indigenous Papuans by the Indonesian police and the military, and of lack of investigation and accountability for these incidents. We remain concerned, moreover, by the alleged widespread racial discrimination against Indigenous Papuans by the Indonesian police, military, and security forces and the documented high levels of impunity that appear to prevail in police and military institutions in the Papua region.

While we welcome the reported ongoing investigations by your Excellency’s Government, as well as the sentencing of six perpetrators in the case of the killings of Arlod Lokbere, Irian Nirigi, Lemaniol Nirigi, and Atis Tini, we remain concerned that

no steps appear to be taken to bring the remaining perpetrators to justice. On the case of the killings of Mr. Eden Bebari and Mr. Ronny Wandik, we are also concerned over the apparent disparity in the administration of justice, particularly in the context of the case being tried by military courts, noting that the victims were civilians. We also express our deep concern regarding the case of two of the perpetrators and the leniency of the sentences granted on appeal.

We underscore the critical importance of the obligation to ensure in law and in fact the autonomy and independence of the authorities charged with the criminal investigation and prosecution of these cases. We reiterate that we stand ready to support your Excellency's Government efforts in this regard and remain available for any technical assistance, particularly concerning forensics, we may be able to provide to the authorities concerned.

Additionally, as regards the reported fear of reprisals by the family Mr. Uakhele Giban and the wider community in Suru-Suru District, we wish to reiterate that, under international law, any ill-treatment or intimidation against the family of the forcibly disappeared or any person with a legitimate interest, is strictly prohibited under article 12 of the ICPPED, signed by Indonesia on 28 September 2010. In this regard, we call on your Excellency's Government to refrain from taking any action that would be inconsistent with the Convention. We wish to recall article 13 of the 1992 Declaration on the Protection of all Persons from Enforced Disappearance protects the right of any person, having knowledge or a legitimate interest, to complain to a competent and independent State authority and that authorities must ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal. Article 13 further establishes that steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

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. With reference to the shooting of Mr. Uakhele Giban, please provide information whether any domestic proceedings have been started, and in case of affirmative response, what are its outcomes.
3. With reference to the killing of Messrs. Arlod Lokbere, Irian Nirigi, Lemaniol Nirigi, and Atis Tini, please provide the basis for the leniency granted to Major Fransiskus Helmantho Dakhi by the Military High Court that reduced his sentence from life imprisonment to 15 years imprisonment.

4. With reference to the above cases, please provide information regarding the outcome of the legal proceedings against the four civilian defendants who were tried at the Timika District Court and the Jayapura High Court for these crimes.
5. In the above cases, please explain any disparities in sentences handed down by military courts compared to civilian courts trying perpetrators for the same crime.
6. With reference to the killings of 11 people in February 2023 and of three people in July 2023, please provide information on whether there has been any update regarding the investigation into these deaths and if any perpetrators have been identified. If there are no updates, please explain why and what measures Your Excellency's Government is taking to ensure accountability for crimes against Papuans in Indonesia.
7. Please provide updated information on domestic procedures established to investigate the deaths of Mr. Yosua Keiya and Mr. Yakobus Pekei.
8. With reference to the killings in the Fakfak Recency, please provide information on any criminal investigations and/or legal proceedings that have been carried out into the deaths of five indigenous Papuans. If no inquiry has taken place or if inquiries have been inconclusive, please explain why.
9. With reference to the alleged torture of 12 Papuans in Nduga, please explain the measures taken to ensure accountability. If no inquiry has taken place or if inquiries have been inconclusive, please explain why.
10. With reference to the killing Mr. Eden Armando Bebari and Mr. Ronny Wandik, please provide a detailed account of the trial process leading to verdict No 15-K/PM.III-14/AD/VI/2023 and on the steps taken to ensure impartiality and independence of the military tribunal. Please, include the grounds for acquittal of two soldiers allegedly involved in the crime.
11. Please provide updated information about the ongoing process of the cassation of the verdict acquitting two of the perpetrators, and whether there has been any development. Please also provide information on how the public may access information about the judicial proceedings, and, in case that is not possible, how that complies with the international obligations of your Excellency's Government.
12. Have investigations conducted into the killings contained herein been guided by the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions, commonly known as the Minnesota Protocol?
13. Please provide updated information on the investigations initiated regarding the enforced disappearance of the individuals mentioned above. If no investigations have been initiated, please state why.

14. Please provide information on the measures of reparation, including compensation, restitution, satisfaction, rehabilitation and guarantees of nonrecurrence rehabilitation for the victims' relatives undertaken by the Indonesian Government through its respective agencies and, in case that has not occurred, explain how this lack of action from Your Excellency's Government is according to international law standards.

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.

We respectfully recommend your Excellency's Government review the rules of engagement and modus operandi of its security forces (army and police) in West Papua, in order to reduce to the strict minimum any violation of the right to life or harm that could be averted by using other methods; to establish or strengthen existing independent mechanism to investigate any allegation of violation of the right to life, to personal security, to integrity and to deprivation of liberty of Papuans, and to ensure accountability for acts of violence, improve justice and regain confidence from local communities.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations, to prevent any irreparable harm to the life and personal integrity of the members of the Suru-Suru community and to prevent the re-occurrence of these violations 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.

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

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## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 3, 5, 7, and 8 of the Universal Declaration of Human Rights (UDHR); articles 6, 7, 10, 16, 18 and 24, read alone and in conjunction with article 2.3 with regards to the rights of the family, and 26 of the International Covenant on Civil and Political Rights (ICCPR); articles 2, 5(a) and (b) and 6 of the International Convention on the Elimination of Racial Discrimination (ICERD); articles 2 and 6 of Convention on the Rights of the Child (CRC), and articles 1, 2, 14, and 16 of Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), ratified by Indonesia in 23 February 2006, on 28 October 1998, on 5 September 1990, on 25 June 1999, and on 28 October 1998, respectively.

In addition, we would like to refer to the UN Declaration on the Rights of Indigenous Peoples in its article 1 states that Indigenous Peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law. This includes the rights to life, physical and mental integrity, liberty and security of person (article 7). It further provides in article 2 that Indigenous Peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

We wish to draw the attention of your Excellency's Government to the relevant international principles and norms governing the right to life, the importance of accountability and of investigating reports of violation of human rights, as well as the principles concerning the use of force by law enforcement authorities. We would also like to recall that, under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal.

Article 6(1) of the ICCPR provides that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life. In particular, the right to life constitutes a norm of *jus cogens* and customary international law from which no derogation is permitted under any circumstances (CCPR/C/GC/36, para. 2). In general comment 31, the Human Rights Committee has 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 would like to kindly recall that law enforcement authorities shall conduct thorough, prompt, independent and impartial investigations of all suspected cases of extra-legal, arbitrary, or summary executions and the obligation to bring to justice all persons identified by the investigation as having participated in those executions as laid down in the Principles on Effective Prevention and Investigation of Extra-Legal,

Arbitrary, and Summary Executions.

In this connection, we underscore the importance of conducting investigations into all suspected unlawful deaths in line with international standards, particularly the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions ([the Minnesota Protocol on the Investigation of a Potentially Unlawful Death](#) (2016)). We underline that the relevant obligations include identifying and bringing to justice those responsible through criminal investigation and prosecution in civilian courts; granting adequate compensation to the victim or their families; and taking steps to ensure the non-recurrence of such executions and excessive use of force. In this respect we highlight the fact the families of the victims of the killings and of other violations contained herein have not received any kind of compensation from Your Excellency's Government.

Moreover, we wish to draw to the attention of your Excellency's Government that article 14 of the ICCPR provides *inter alia* for the principle of equality before competent, independent, and impartial courts and tribunals, the presumption of innocence, provision of adequate time and facilities for the preparation of the defence, and the right of accused persons to communicate with counsel of their own choosing. In addition, we wish to remind Your Excellency's Government that the prohibition of arbitrary deprivation of life and of enforced disappearances *jus cogens* norm, to which no derogations can be made, under any circumstances. In addition, according to article 7 of the of the 1992 Declaration on the Protection of all Persons from Enforced Disappearance,<sup>1</sup> no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any others may be invoked to justify enforced disappearances. We also wish to remind your Excellency's Government that in the absence of any term relating to the temporal element of an enforced disappearance, once the constitutive elements<sup>2</sup> are present, the obligations incumbent upon States under the relevant international human rights instruments are the same as in the case of any other enforced disappearance.

We also wish to recall the importance of accountability and of investigating every allegation of use of force and torture that occurs within your Excellency's Government's jurisdiction. [The UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) establishes that "States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred."

In addition, we would like to draw Your Excellency's attention to article 26 of the ICCPR, which states that "all persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this regard, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In the same vein, article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (hereafter ICERD), ratified by Indonesia in 1999,

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<sup>1</sup> [Declaration on the Protection of all Persons from Enforced Disappearance](#)

<sup>2</sup> *Idem*, third paragraph

guarantees the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equal treatment before tribunals and all other organs administering justice. It also guarantees equality before the law, to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.

With regards to the excessive use of force, the Code of Conduct for Law Enforcement Officials (1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) provide an authoritative interpretation of the limits on the conduct of law enforcement forces. Principle 4 provides that in carrying out their duties, law enforcement officials may use force and firearms only if other means remain ineffective. Principle 5 adds that if the use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offense and obliges the authorities to offer assistance and medical aid to any injured persons as soon as possible.

We would also like to refer your Excellency's Government to article 5 of the Universal Declaration of Human Rights (UDHR); article 7 of the International Covenant on Civil and Political Rights (ICCPR); and article 2 of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) which establish the absolute prohibition of torture or other cruel, inhuman or degrading treatment or punishment. In connection to such prohibition, we recall the obligations of States to investigate all acts of torture or other cruel, inhuman or degrading treatment or punishment, to prosecute or extradite suspects, to punish those responsible and to provide remedies to victims<sup>3</sup>.

We also recall that States have a positive obligation to ensure that certain human rights - including the absolute and non-derogable rights to life, to be free from torture and other ill-treatment, and not to be arbitrarily detained - continue to apply in all circumstances, including under emergency measures, while the restrictions to other rights need to be necessary, proportionate, non-discriminatory, limited in duration and comprise key safeguards against excesses.

We wish to remind your Excellency's Government that according to paragraph 5 of the Committee Against Torture's general comment no. 2 (CAT/C/GC/2), no exceptional circumstances whatsoever (including a state of war or threat thereof, internal political instability or any other public emergency, any threat of terrorist acts or violent crime, armed conflict, international or non-international) may be invoked by a State party to justify acts of torture in any territory under its jurisdiction. According to paragraph 7, the concept of "any territory under its jurisdiction" must be applied to protect any person, citizen or non-citizen without discrimination subject to the *de jure* or *de facto* control of a State party, and the State's obligation to prevent torture also applies to all persons who act, *de jure* or *de facto*, in the name of, in conjunction with, or at the behest of the State party.

This absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, is an international norm of *jus cogens*, and as reflected *inter alia*, in Human Rights Council resolution 25/13 and General Assembly resolution 68/156.

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<sup>3</sup> A/HRC/52/30

We also refer your Excellency's Government to article 14 of CAT, which enshrines the obligation of every State party to ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.

We would also like to highlight that a State should provide reparation to victims for its acts or omissions constituting violations of international human rights and humanitarian law norms, in accordance with its domestic laws and international legal obligations. States shall enforce its domestic judgments for reparation against private individuals or entities responsible for the violations, and endeavour to enforce valid foreign judgments for reparation against private individuals or entities responsible for the violations<sup>4</sup>.

We also underscore the importance of conducting investigations into all suspected unlawful deaths in line with international standards, particularly the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016)). We would like to additionally express our concern regarding the apparent impunity given to the perpetrators involved. Impunity for such violations has generated cycles of repression that gravely undermine the enjoyment and protection of those fundamental freedoms, which are essential components of democracy and for the defence of all human rights.<sup>5</sup>

We would further like to recall that the United Nations Declaration on the Protection of All Persons from Enforced Disappearances<sup>6</sup> establishes that all acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness (article 4), and that no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance (article 6). Furthermore, the Declaration stipulates that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7), and that the right to a prompt and effective judicial remedy must be guaranteed as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances (article 9).

The Declaration further sets out the necessary protection relating to the rights to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons (articles 10 and 12). It further stipulates that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to

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<sup>4</sup> Economic and Social Council, E/CN.4/2000/62, 18 January 2000

<sup>5</sup> A/HRC/53/38 Advancing accountability and ending impunity for serious human rights violations related to the exercise of the rights to freedom of peaceful assembly and of association, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, para 1.

<sup>6</sup> [Declaration on the Protection of all Persons from Enforced Disappearance](#)

complain to a competent and independent State authority and to have that complaint promptly, thoroughly, independently, and impartially investigated by that authority (article 13). The Declaration also establishes that States should take any lawful and appropriate action to bring to justice persons presumed to be responsible for acts of enforced disappearance (article 14), and that the persons responsible for these acts shall be tried only by ordinary courts and not by other special tribunal, notably military courts (article 16); not benefit from any amnesty law (article 18); and the victims or family relatives have the right to obtain redress, including adequate compensation (article 19).

The Working Group would like to add that, under international law, State authorities are obliged to take all necessary measures to effectively protect the rights of the persons deprived of their liberty, as they automatically assume responsibility for their lives, physical integrity, and wellbeing. In its General Comment on the right to recognition as a person before the law in the context of enforced disappearance,<sup>7</sup> the Working Group on Enforced or Involuntary Disappearances noted that the right to be recognized as a legal person entails the obligation of the State to fully recognize the legal personality of disappeared persons and thus respect the rights of their next-of-kin and as well as others. When a person deprived of liberty is not adequately acknowledged by the State, the legal rights of this person are placed in a legal limbo, a situation of total defencelessness. The crime of enforced disappearance puts the detainee outside of the protection of the law, denies the person of legal existence and prevents the enjoyment of their rights, including due process rights and judicial safeguards, and other fundamental rights and freedoms.

In this regard, the Guiding Principles for the Search for Disappeared Persons<sup>8</sup> of the Committee on Enforced Disappearances stipulate that the search for the disappeared should respect human dignity (Principle 2), be considered as a continuing obligation (Principle 7) and be conducted on the basis of a comprehensive strategy (Principle 8). The Guiding Principles further establish that the search should be carried out safely (Principle 14) and be independent and impartial (Principle 15).

Finally, in its study on enforced or involuntary disappearances and economic, social and cultural rights<sup>9</sup> the Working Group on enforced or involuntary disappearances has highlighted that due to the collective character of certain economic, social and cultural rights, the disappearance of one person may have a negative effect on the larger community. Such disappearances may also have an impact on the right to political participation and on the existence and protection of the society's cultural diversity, which is a condition for the exercise of all human rights.

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<sup>7</sup> [A/HRC/19/58/Rev.1](#)

<sup>8</sup> [Guiding principles for the search for disappeared persons | OHCHR](#)

<sup>9</sup> [A/HRC/30/38/Add.5](#)