



BIDANG
KEADILAN, PERDAMAIAN DAN KEUTUHAN CIPTAAN (KPKC)
Justice, Peace and Integrity of Creation (JPIC)

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Mr. Leandro Despouy
Special Rapporteur on the Independence
of Judges and Lawyers
c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

Jayapura, 29 October 2008

No. : 385/D – 63/x/08

Subject : Violations of an independent and fair trial against Papuan Human Rights
Activist Sabar Olif Iwanggin

Dear Mr. Despouy,

Herewith we ask your attention and response towards the violations against the Independence of the Judiciary in the trial against the Papuan human rights activist **Sabar Olif Iwanggin (44)**.

Mr. Iwanggin stands trial at Jayapura State Court since 7 January 2008 and is charged for forwarding a short-message-services (sms) defaming the Indonesian President Susilo Bambang Yudhoyono (SBY). The charges against him are based on paragraph 134 and 160 of the Indonesian Penal Code (KUHP) with a maximum prison sentence of six years.

We would like to bring to your attention, several irregularities and violations of the Indonesia's Criminal Procedure Code (KUHAP) which occurred during the process of his arrest, during police interrogation and during the trial:

1. The arrest of Sabar Olif Iwanggin occurred arbitrarily without an arrest warrant and without any preliminary proofs against him (violation of Art. 17 and 18 (1) KUHAP);
2. The arrest by the Anti-Terror Unit of the Police, Detachment 88, was not legitimate as the charges against Sabar Olif Iwanggin are based on the Indonesian

- Penal Code (KUHP) and therefore fall under the category of “ordinary crime” and are not a terrorist act;
3. The transfer from the Provincial Police Station (POLDA PAPUA) to the Indonesian Police Headquarters (POLRI) in Jakarta was not legitimate as Sabar Olif Iwanggin is charged for a criminal act located in Jayapura, Papua. The interrogation of Sabar Olif therefore is only legitimate in Jayapura (*locus delikti*);
 4. During police interrogation Sabar Olif Iwanggin was not accompanied by a lawyer (violation of Art. 54 KUHP);
 5. During police interrogation Sabar Olif Iwanggin was psychologically forced to confess that he was the original sender of the sms (violation of Art. 117(1) KUHP);
 6. The length of the trial against Sabar Olif Iwanggin, at stage 10 months, violates the principle to be trialed within a reasonable time;
 7. The decision of the judges to allow the prosecutor to present more witnesses towards the end of the trial in order to strengthen the case against the accused is a breach of the Procedural Code (Art.182 and 184 KUHP). The examination of the witnesses and the accused had already been finalized and the prosecution had to read its charges when the judges agreed to further witness examination;
 8. The presumption of innocence is violated by the judges who during the trial are shouting at and blaming the accused (violation of KUHP 158);
 9. The principle of equality of arms is violated as the judges give more time to the prosecution to call and examine witnesses than to the defense.

In your communication with the Indonesian Government we ask you to:

- question the legitimacy of the arrest of Sabar Olif Iwanggin;
- urge the Indonesian authorities to stop the trial against Sabar Olif Iwanggin as the charges against him are disproportionate for forwarding a sms and there is no evidence that Sabar Olif Iwanggin is the original sender of the sms nor is there evidence that this sms has led to anarchic actions in the District of Boven Digul and Yahukimo;
- urge the authorities to ensure that all fair trial safeguards that are contained under Indonesia’s Criminal Procedure Code (KUHP) and international legal standards, especially the International Covenant on Civil and Political Rights (ICCPR) which was ratified by the Indonesian government in 2005, are guaranteed;
- call on the authorities to ensure that all members of the judiciary are aware of and protect fair trial safeguards under Indonesian and according to international legal standards.

We would also encourage you to request an invitation from the Government of Indonesia to visit the country, with a special focus on the Provinces of Papua and West Papua. Systematic breaches of the Procedural Code, widespread corruption within the judicial system and almost total impunity for those responsible for human rights violations, are matters of concern to our organizations.

Please find attached a detailed report about the arrest and trial against Sabar Olif Iwanggin.

Thank you for your attention.

Yours sincerely,

Rev. Jemima J. Mirino-Krey, STh
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Theo Hese gem

Director

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Jalan Trikora di Belakang Panti Asuhan Pelanggi II

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Papua, Indonesia

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CC:

Mrs. Margaret Sekaggya, Special Rapporteur on the situation of Human Rights Defenders

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The International Committee of the Red Cross, Papua

Amnesty International, International Secretariat London

Delegation of European Commission to Indonesia

Embassies in Jakarta

Asian Human Rights Commission, Hong Kong

Asian Forum for Human Rights and Development (FORUM-ASIA), Bangkok

Asian Indigenous & Tribal Peoples Network, New Delhi

World Council of Churches (WCC), Geneva

Mennonite Central Committee at the United Nations Office, New York

Appendix 1

Arrest of Sabar Olif Iwanggin

Sabar Olif Iwanggin (43) was arrested on **18 October 2007**, 6pm, in Jayapura by members of Detachment 88 (*Detasemen Khusus 88 Anti Teror*), the Anti-Terror Special Force Unit of the National Police (*Mabes Polri*). The arrest of the lawyer's assistant and human rights activist occurred without an arrest warrant. On 25 October 2007, members of the Detachment 88 and of POLDA Papua transferred Sabar Olif to Mabes Polri in Jakarta where he was held for interrogation until 1 November 2007 when he was brought back to Polda Papua.

During police interrogation at POLDA Papua Sabar Olif Iwanggin was not accompanied by a legal council. Through psychological intimidation and questions about his family, members of Detachment 88 pushed Sabar Olif Iwanggin to confess that he was the sender of the text message. Part of the interrogation at Mabes Polri also occurred without legal accompaniment.

Sabar Olif was an assistant lawyer of the Advocacy Team of the Abepura Case 2006.

Appendix 2

The hearing at Jayapura State Court

Since **7 January 2008** Sabar Olif Iwanggin has been trialed at the State Court of Jayapura and charged for defamation of the Indonesian President Susilo Bambang Yudhoyono (SBY), based on paragraph 134 and 160 of the Indonesian Penal Code (KUHP) with a maximum prison sentence of six years. Sabar Olif is suspected to have spread the following short-message-services (sms) to several people in September 2007:

“New information, be on alert, SBY has already ordered to eliminate the people of Papua and take control over the natural resources of their land. ‘The methods used to eliminate the people of Papua are food poisoning, pay doctors, pay food stalls, pay motorbike taxis, pay drivers and ABRI’ Forward this (information, red.) quickly to the whole community of Papua before it will be too late..... Maya IPDN (Institute Pemerintahan Dalam Negeri, red.) BANDUNG.”

In the statement against Sabar Olif Iwanggin, on 7 January 2008, the prosecution argued the sms of Sabar Olif Iwanggin lead to anarchic actions in the districts of Yahukimo and Boven Digul where several stores were destroyed and burned down in September 2007. During the course of the trial no evidence was presented proofing these charges.

During course of the trial the state prosecutor presented nine witnesses of whom none was able to testify against Sabar Olif Iwanggin. The lack of proof makes it difficult for the prosecution to verify the charges against Sabar Olif Iwanggin and the prosecution asked for further witness examination even though both the examination of the witnesses as well as the examination of the defendant had been closed and the prosecution was due

to read out the charges. Despite complaints by the defense the panel of judges granted the prosecution another witness examination.

The hearings were also attended by members of the Police Intelligence making the accused and those accompanying him feel insecure.

Appendix 3

Identification of victim

Name : Sabar Olif Iwanggin
Sex : Male
Date of Birth : 22.10.1964
Place of Birth : Biak, Papua Province, Indonesia
Permanent Address : Kampung Tiba-Tiba, RT IV, RW 8, Abepura, Jayapura, Papua Province, Indonesia



Figure 1: Sabar Olif Iwanggin

Appendix 4

List of police officers

1. Bonar Sitinjak, Kasat 1, Reskrim POLDA Jayapura

Appendix 5

List of Judges

1. Aman Barus, SH (Head of Panel of Judges)
2. Abdul Siboro, SH, MH
3. Marolop Simamora, SH

Appendix 6

List of prosecutors

1. Maskel Rambolangi