



Promoting human rights, peace and democracy in Indonesia

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Mrs. Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders,
c/o Office of the High Commissioner for Human Rights – Palais Wilson
United Nations Office at Geneva
CH 1211 Geneva 10
Switzerland

7 March 2012

Dear Mrs Sekaggya

Urgent appeal

Indonesia: Threat to prosecute human rights defender, Mr Gustav Kaver

We are writing to you on behalf of the Asian Human Rights Commission, the Australian West Papua Association, the East Timor and Indonesia Action Network, the Faith-based Network on West Papua, Franciscans International, the Indonesia Human Rights Committee, KontraS, and the West Papua Advocacy Team, in relation to threats made against human rights lawyer Mr Gustav Kaver by the Public Prosecutor's Office in Jayapura, Papua Province, Indonesia.

Mr Kaver is an independent lawyer who is part of the legal team defending five suspects in a high-profile treason trial currently underway in Jayapura. A key issue at the trial is the defendants' right to freely express their political opinions. As a result of remarks made in the courtroom, Mr Kaver has been accused by state prosecutors of 'offensive treatment,' as outlined by Article 335 of the Indonesian Penal Code, which is punishable by up to one year's imprisonment.

This incident has occurred against a backdrop of intimidation during the trial, with security forces maintaining a heavy presence during consecutive sessions of the trial, and allegations of intimidation of the judiciary, including a reported visit to the presiding judge by the highest provincial military, police and civil authorities one hour before the first session of the trial was due to open.

We, the undersigned organisations, urge you to raise with the Indonesian government the allegations that the authorities have violated the basic rights of Mr Kaver to carry out his duties as a lawyer unhindered. We hope that you can help to protect the right of Mr Kaver to carry out his work free of threats, harassment or intimidation, and that you can help to ensure that the right to defend human rights in Papua is respected. We further request that you enter into dialogue with other UN Special Procedures to investigate allegations regarding restrictions on the right to freedom of expression and issues concerning the independence of judges and lawyers.

Facts of the case

On 21 February 2012 at the Jayapura State Court in Papua province, the sixth session of the trial of Forkorus Yaboisebut, Edison Waromi, Dominikus Surabut, Selpius Bobii and Agustus Kraar

took place. During the defence team's examination of the witnesses for the prosecution, Mr Kawer was continually interrupted by public prosecutor Mr Julius Teuf. Eventually Mr Kawer asked him *"Prosecutor, where is your brain? I am still proceeding with my questioning, so would you kindly stop disturbing me?"* Mr Teuf reportedly then fell silent.

During a later session of the trial on 24 February, the public prosecutor formally requested the court records of the 21 February session, with the stated intention of reporting a suspected crime to the provincial police headquarters. At the close of the session, the legal team discovered from the court that Mr Kawer was the subject of this report, as the public prosecutor had felt harassed by his sentence *"Prosecutor, where is your brain?"*

During and after a further session on 2 March, the Prosecutor again expressed to Mr Kawer his intention to report him to the police in connection with the event described above, indicating that this was on the orders of the Head of the Prosecutor's Office, Mr Imanuel Zebua. Mr Kawer has since reported that he feels under pressure and restricted in carrying out his human rights work and legal duties to defend his clients. A copy of a public statement made by Mr Kawer, translated by TAPOL, is attached.

The case has been reported to the Indonesian Advocates Association, Peradi, who have publicly stated that in their opinion, the remarks in question were made by Mr Kawer in the course of defending his clients, and he cannot therefore be threatened with prosecution in connection with these remarks. It should further be underlined that issues of this nature should be settled in the courtroom, under the authority of the presiding judge.

While the threat to report Mr Kawer's actions to the police has been widely reported, both publicly and to Mr Kawer himself, no formal action or explanations on the part of the prosecutors have yet been forthcoming.

National and international protection of lawyers as human rights defenders

Indonesian Law No 18/2003, known as the Advocates Law, states that a legal advocate has the right to freedom of expression and the right not to be subject to criminal or civil action in relation to the performance in good faith of his or her professional duties in defending a client in court.

The UN Declaration on Human Rights Defenders includes the right to provide professionally qualified legal advice and assistance in defending human rights (Article 3(c)) and imposes an obligation on the state to "take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration" (Article 12 (2)). As you highlighted in your recent 5 March communication, human rights defenders have a right to protection, and states are responsible for ensuring this protection.

Guarantees for the functioning of lawyers are further elaborated by the UN Basic Principles on the Role of Lawyers. In particular, they state that governments shall ensure that lawyers (i) "are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference"; and (ii) "shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics" (Article 16).

Petition

We are particularly concerned about the safety of Mr Kawer, and the wider impact of threats made against him on the legal team for the defence and on the prospects of a just and fair legal process for the five defendants on trial.

We would therefore request that you raise this matter with the Indonesian government as a matter of urgency.

Please do not hesitate to contact us should you require any further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Barber', is centered below the closing. The signature is fluid and cursive.

Paul Barber
TAPOL Coordinator

Asian Human Rights Commission
Australian West Papua Association
East Timor and Indonesia Action Network
Faith-based Network on West Papua
Franciscans International
Indonesia Human Rights Committee
The Commission for the Disappeared and Victims of Violence (*Komisi untuk Orang Hilang dan Korban Tindak Kekerasan, KontraS*)
West Papua Advocacy Team

Enc.

cc. Mrs Gabriela Knaul, Special Rapporteur on the Independence of Judges and Lawyers

Mr Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression