

Jayapura, 10 August 2004

Mr Leandro Despouy
Special Rapporteur on the independence of judges and lawyers
Office of the High Commissioner for Human Rights
United Nations Office
1211 Geneva 10
Switzerland

Re: The legal proceedings of the Bolakme Case of 5 November 2003

Dear Mr Despouy,

The Office for Justice and Peace of Jayapura (*Sekretariat Keadilan dan Perdamaian* or *SKP Jayapura*) and Franciscans International (FI) would like to update you on the legal proceedings of the Bolakme Case of 5 November 2003 as handled by the Magistrate of Wamena, Papua, Indonesia.

This case is the second one resulting from a large-scale military operation conducted in Wamena, the capital of the regency of Jayawijaya (350 km from Jayapura, the provincial capital of Papua) following a burglary of the military arsenal in Wamena on 4 April 2003. This operation covered Wamena city and its surrounding districts, including Kwiyawage and Bolakme. During this sweeping operation in the Village of Yalengga, District of Bolakme, in the early morning of 5 November 2003, the military shot dead ten people, listed below¹:

1. **Yustinus Murib (male, 35)**
2. **Ogalimon Tabuni (male, 50)**
3. **Yosep Gombo (male, 30)**
4. **Penius Wandikbo (male, 20)**
5. **Nes Murib (male, 35)**
6. **Naek Telenggen (male, 17)**
7. **Fano Hak Wandikbo (male, 35)**
8. **Samuel Tabuni (male, 40)**
9. **Aitus Murib (male, 25)**
10. **Yenggewi Murib (male, 50)**

This raid took place in the very early morning (03.00 AM) under the direct command of the military commander of Wamena, **Lieutnant Colonel Gustaf Agus Irianto** and involved some divisions of the army, including the Army Strategic Reserve Command (*Kostrad*) 310/ Kujang Kencana commanded by **Lieutnant Colonel Herman D.**, the Army Special Forces (*Kopassus*) commanded by **Captain Rohayat** and 15 personnel of the Wamena military command.

Besides killing 10 people, the military arbitrarily arrested and detained **Jigi Jigibalom (male, 50)** and **Tenius Murib (male, 28)** claiming that they were members of the

¹ As various lists are circulating we just quote the names as given in the daily *Cenderawasih Pos*, 6 and 7 November 2003.

Free Papua Movement (*Organisasi Papua Merdeka or OPM*)² who stole weapons from the arsenal in Wamena (4 April 2003). In fact, these people are farmers from the village Prime that were staying over night with the victims on their way to Wamena and therefore their involvement with the group attacking the arsenal is questionable, if not a complete fabrication. The military detained these two people for ten days and according to their consultation with their lawyers they have been tortured during the military custody. On 15 November 2003 the military took them to the local hospital for medical treatment and transferred the detainees to the police's authority³.

The two detainees were detained for ten days without proper medical treatment. They still suffer from wounds inflicted to this date. Despite their poor health condition, the police took them to the Wamena prison on 25 November 2003 as suspects of the burglary incident.

The Wamena police charged the men with treason under Article 106 of the Penal Code and brought them to court. The trial is still underway in Wamena. The panel of judges, chaired by **Justice Kiswanto** has been hearing the case since 17 June 2004.

During these legal proceedings, we have found evidence that clearly demonstrates lack of fairness and impartiality of the trial.

First, since their detention, these two defendants have never had proper medical treatment, particularly Mr Jigi Jigibalom who has been suffering from chronic cataracts and from illness due to torture. Our lawyers who provide legal aid for him have repeatedly asked the judges for permission to have him medically treated first. However, the judges refused the request from defence lawyers arguing that they are under strong pressure of the Wamena military commander.

Secondly, during the hearings, the two defendants -- who do not speak Indonesian fluently -- and thus require the services of a translator, are denied access to translators. Thus, they cannot follow the court proceedings.

Thirdly, the judges have repeatedly intimidated the defendants by employing very misleading questions during the proceedings forcing them to admit, against their will, that they are perpetrators and thus involved in a burglary of the Wamena military arsenal on 4 April 2003.

Finally, the military personnel have free access to the prison of Wamena so that the prisoners and the defendants are in high risk of intimidation and terror. Our lawyers have repeatedly complained to the head of the prison, **Mr Hendro Sekaryanto**, but he does not take any necessary measures to address this worrying situation.

Given the facts mentioned above, we believe that these legal proceedings do not fulfil the 2002 Bangalore Principles of Judicial Conduct⁴ that emphasise the independence, impartiality and integrity of judiciary.

Moreover, the fact that the judges push the defendants with poor health to present their testimony before the court and deny them access to urgent medical treatment,

² The OPM is a resistance movement fighting for the independence of Papua. The government has deployed a large contingent of military personnel to wipe it out.

³ According to the Penal Code (KUHAP) the military are not allowed to detain suspects, but have to hand them over to the police authorities at the first possible occasion.

⁴ Document E/CN.4/2003/65

as well as access to proper translation of the whole proceeding, can lead to another conclusion, i.e. that the judges do not respect the Standard Minimum Rules for the Treatment of Prisoners.

We urge you to:

1. Bring this issue to the attention of the Indonesian government and urge them to take any necessary measures to provide medical treatment to the defendant in order to comply with the Standard Minimum Rules for the Treatment of Prisoners;
2. Monitor the legal proceedings and ensure they are in line with international standards, particularly to meet the 2002 Bangalore Principles of Judicial Conduct, while stressing that during the 60th Session of the Commission on Human Rights, the Indonesian government adopted the CHR Resolution 2004/33 concerning the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers;
3. Transmit this communication to the relevant Special Procedures.

Thank you kindly for your attention.

Yours sincerely,

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