



FREEDOM NOW

FREEDOM NOW — SUBMISSION OF INFORMATION FOR THE EXAMINATION OF THE STATE REPORT OF INDONESIA BY THE HUMAN RIGHTS COMMITTEE

WITH REGARD TO UNITED NATIONS HUMAN RIGHTS COMMITTEE 108TH SESSION (JULY 8-16, 2013)

June 13, 2013

Introduction

1. Freedom Now individually submits this report to assist the Human Rights Committee (“the Committee”) regarding the human rights policies and practices of Indonesia. Freedom Now is a non-partisan, non-governmental organization that works to free prisoners of conscience through focused legal, political, and public relations advocacy. In particular, Freedom Now serves as international *pro bono* counsel to detained Indonesian citizen Filep Samuel Karma.

2. This report examines how the Indonesian government’s use of arbitrary detention is inconsistent with its obligations under the International Covenant on Civil and Political Rights (ICCPR). By highlighting the facts of representative individual cases, this report seeks to provide further information on the key issues identified by the Committee.

Arbitrary Detention in Indonesia

Indonesia’s Accession to the ICCPR

3. Indonesia acceded to the ICCPR in February 23, 2006.¹ The government submitted its initial report in 2012 and is now undergoing its first review by the Committee.² This analysis of

¹ Indonesia’s accession to the ICCPR is subject to the following declaration: “With reference to Article 1 of the International Covenant on Civil and Political Rights, the Government of the Republic of Indonesia declares that, consistent with the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States, and the relevant paragraph of the Vienna Declaration and Program of Action of 1993, the words “the right of self-determination” appearing in this article do not apply to a section of people within a sovereign independent state and can not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states.” International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171 (*hereinafter* ICCPR). Regardless of this declaration, the right to freedom of expression regarding self-determination is widely recognized as a non-derogable right.

² Indonesia’s initial report to the Committee was overdue since 2007. Human Rights Council, Compilation Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21, Mar. 12, 2012, UN Doc. A/HRC/WG.6/13/IDN/2.

1776 K Street NW, 8th Floor • Washington, D.C. 20006 • +1 202.223.3733 • www.freedom-now.org

arbitrary detention in Indonesia focuses in particular on the government's compliance with Articles 2, 9, 14, 18, 19, 21, 22, and 26 of the ICCPR.

Article 2: Equal Protection and Article 26: Equality Before the Law

4. The ICCPR guarantees the right to equal protection and equality before the law through Articles 2 and 26, respectively.³ Accordingly, the Committee indicated that one of the key issues for its analysis of Indonesia was “the protection against discrimination on all grounds including race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁴

5. Indonesia has a constitutional and legal framework that provides for equal protection and equality before the law, but often these principles are not upheld in connection with freedom of expression. Article 28I, paragraph 2 of the Indonesian Constitution ensures freedom from discrimination, and is supplemented by Law no. 39 of 1999 on Human Rights in Article 3, paragraph 3, which states that freedom from discrimination extends to the protection of human rights and fundamental freedoms.⁵ In practice, however, political dissidents, particularly in regions such as Papua, are increasingly subject to arbitrary detention. This indicates that Indonesia does not fully provide equal protection or equality before the law in accordance with Articles 2 and 26 of the ICCPR.

Article 9: Liberty and Security of Person and Article 14: Right to a Fair Trial

6. Article 14 of the ICCPR states that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”⁶ In its General Comment 32 on Article 14, the Committee reinforces this requirement of judicial fairness by stating that it is, in essence, an absolute right provided to all individuals in criminal cases and civil suits. The guarantee of a fair trial cannot be made subject to any exception nor be limited in scope by domestic law.⁷

7. State parties to the ICCPR must satisfy two requirements in order to ensure the impartiality of domestic courts and tribunals. First, judges must not let their judgment be swayed by personal bias or prejudice, or allow outside interests to take precedence over their

³ ICCPR.

⁴ Human Rights Committee, List of Issues to be Taken up in Connection with the Consideration of the Initial Report of Indonesia (CCPR/C/IDN/1), Mar. 11-28, 2013, ¶ 5, at <http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.IDN.Q.1.doc> (*hereinafter* Committee's List of Issues).

⁵ See Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Initial Reports of States Parties: Indonesia, March 19, 2012, ¶¶ 17-18, UN Doc. CCPR/C/IDN/1 (*hereinafter* Initial Report by Indonesia) .

⁶ ICCPR.

⁷ Human Rights Committee, General Comment 32, *Right to Equality Before the Courts and to a Fair Trial*, ¶ 19, UN Doc CCPR/C/GC/32 (2007).

responsibility to render a fair verdict. Decisions made by biased judges interfere with the administration of justice and violate the second sentence of Article 14. Second, the trials must be regarded as impartial by outside observers. An observer of an impartial trial should be able to distinguish the functions and competencies of the judiciary from those of the government. In contrast, a trial cannot be considered impartial under Article 14 if it is administered by a judge who should have otherwise been disqualified for misconduct under the constitution or the law.⁸

8. The government has fallen short of its obligation to uphold the Article 14 right to a fair trial. Corruption influences the administration of justice at every level and disproportionately impacts the poor, the vulnerable, and indigenous minorities, including the Papuan people. During the pre-trial period, arbitrary detention is commonly used as a means of suppressing political dissent. In addition, the police are legally permitted to suspend a detainee's right to a fair trial for up to 110 days by seeking extensions from the courts.⁹ Moreover, the Special Rapporteur on Torture noted in his 2010 report to the Human Rights Council that the police frequently subject detainees in pre-trial detention to torture and ill treatment in order to extract confessions, which then may be used as admissible evidence in court.¹⁰

9. A climate of impunity for perpetrators of these abuses pervades the criminal justice system. Detainees, like Filep Samuel Karma, are frequently denied access to their lawyers and legal aid and face procedural obstacles when attempting to appeal their verdicts. Similarly, legal representatives for detainees face intimidation and the threat of extrajudicial retaliation, and often encounter biased judges who should otherwise be disqualified from the bench.

10. Detainees are generally convicted under provisions of the Indonesian Criminal Code that are so vaguely worded that courts are able to use them to justify limitations on the freedoms of opinion, expression, assembly, and association in contravention of its obligations under the ICCPR. While some of these provisions—including the provisions used to arbitrarily detain Mr. Karma—were ruled as unconstitutional by Indonesia's Constitutional Court in 2007, they still remain in effect and are used as a means to silence peaceful political dissent.¹¹ Trials and convictions based on these provisions fundamentally violate the Article 14 right to a fair trial.

Article 18: Freedom of Thought, Conscience, and Religion; Article 19: Freedom of Opinion and Expression; Article 21: Freedom of Assembly; and Article 22: Freedom of Association

11. Articles 18, 19, 21, and 22 of the ICCPR protect freedom of thought, conscience, and religion; freedom of opinion and expression; freedom of assembly; and freedom of association.¹²

⁸ *Id.* at ¶¶ 20-22.

⁹ Initial Report by Indonesia, ¶¶ 137-140.

¹⁰ Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, Feb. 25, 2011, UN Doc. A/HRC/16/52/Add.2, at ¶ 10.

¹¹ *Filep Jacob Samuel Karma v. Indonesia*, UN Working Group on Arbitrary Detention, Opinion No. 48/2011, May 25, 2011, available at <http://www.unwgadatabase.org/un/Document.aspx?id=2800>.

¹² ICCPR.

The Committee has raised freedom of expression as an issue, citing particular concern for the protection of this right in West Papua.¹³

12. Although the Indonesian Constitution guarantees freedom of expression in Articles 28 and 28E, several constitutional and statutory provisions limit the scope of this freedom. For instance, Article 28J of the constitution states that the right to freedom of expression is subject to restrictions, and, in practice, these restrictions may be interpreted more liberally than Article 19 of the ICCPR allows.¹⁴ In addition, Articles 9, 10, and 11 of the Law on Freedom of Expression in Public limits where and when freedom of expression may be exercised by stating that it is not allowed in certain locations or on national holidays.¹⁵ Articles 154 and 155 of the Indonesian Criminal Code, which criminalize “feelings of hatred or contempt toward the government,” continue to be used to uphold arbitrary detentions, even though the Indonesian Constitutional Court declared these articles unconstitutional in 2007.¹⁶ These constitutional and statutory limits, as well as the government’s continued use of arbitrary detention to silence political minorities and members of indigenous groups, undermine the right to freedom of expression.

13. Contrary to Articles 18, 19, 21, and 22 of the ICCPR, the government has used arbitrary detention as a means to regulate freedom of expression among indigenous and religious minorities. As a result, the government has upheld the detention of more than 100 prisoners of conscience, many of whom are from Papua. These detainees frequently are convicted of “crimes against the public order,” such as criticizing the national government and violating the Indonesian national flag and receive sentences that exceed the statutory maximum. The failure of the courts to respect fundamental human rights sets an alarming precedent for the future of detainees.¹⁷

14. Indonesia’s responses to other international standards on freedom of expression have been mixed. During the 2012 Universal Periodic Review (UPR), the Indonesian government accepted 150 out of 180 recommendations, several of which pertained to arbitrary detention. At that time, the government promised to respect and uphold freedom of expression and freedom of religion, and to ensure that provisions of the Indonesian Criminal Code, such as Articles 106 (imprisonment for sedition) and 110 (punishment for conspiracy to commit sedition) were not used to limit freedom of speech.¹⁸ The government further stated that it would take steps to

¹³ See Committee’s List of Issues at ¶ 26.

¹⁴ See Initial Report by Indonesia at ¶¶ 248-53; Human Rights Committee, General Comment No. 34: Article 19: Freedoms of Opinion and Expression, September 12, 2011, ¶¶ 21-36, UN Doc. CCPR/C/GC/34.

¹⁵ See Initial Report by Indonesia at ¶¶ 258-62.

¹⁶ See *Filep Jacob Semuel Karma v. Indonesia*, UN Working Group on Arbitrary Detention, Opinion No. 48/2011, May 25, 2011, ¶ 23, at <http://www.unwgadatabase.org/un/Document.aspx?id=2800> (*hereinafter* UNWGAD Opinion).

¹⁷ See *id.* at ¶ 25.

¹⁸ See Human Rights Council, National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21*: Indonesia, Mar. 7, 2012, ¶¶ 108.113 and 108.116, UN Doc.

ratify the Rome Statute, the Optional Protocol to the Convention Against Torture (OP-CAT), and the International Convention for the Protection of All Persons from Enforced Disappearance (CPED).¹⁹ It affirmed that it would improve the human rights situations of ethnic and religious groups, including those in Papua.

15. However, while the government accepted a majority of the UPR recommendations, it rejected several key recommendations that are central to ending its practice of arbitrary detention. It rejected recommendations to end prosecutions under Articles 106 and 110 of the criminal code and review convictions and sentences of individuals prosecuted under those laws.²⁰ Moreover, the government declined to take steps, particularly in Papua, to increase protection for human rights defenders, to ensure the right to freedom of expression and peaceful protest, and end the detention of those imprisoned solely for peaceful political activities.²¹ This stance is further manifest in its refusal to enforce accountability among the police and military ranks, thereby permitting the use of arbitrary detention as a tool to silence voices of dissent. This unwillingness by the government to uphold freedom of expression and freedom of association will prolong the practice of arbitrary detention in Indonesia.

16. The government rejected the request by the UN Working Group on Arbitrary Detention (UNWGAD) not to arbitrarily detain activists like Filep Samuel Karma.²² Although the government has shown some willingness to engage with the international community and work to remedy its past record of human rights violations, the UNWGAD emphasizes that arbitrary detention continues to be employed “to target the press, peaceful political opposition activities, and trade unions as they were frequently under the former regimes.” It further notes that cases of arbitrary detention that occurred before Indonesia’s accession to the ICCPR in 2006 must be reconsidered to determine their compliance with the ICCPR.²³ Restricting free expression in this manner prevents the government from fulfilling its obligation to uphold human rights.

17. Arbitrary detention is broadly used as a tool to limit exercise of the freedom of expression in Indonesia, and individualized accounts show how it has been put into practice. The following case study provides a particular example of how arbitrary detention is used as a means to silence political dissent in regions like Papua. The human rights violations detailed in this account reflect a troubling trend in Indonesia.

A/HRC/WG.6/13/IDN/1 (*hereinafter* National Report); UPR Info, Recommendations & Pledges: Indonesia, Sept. 19, 2012, ¶¶ 108.113, 108.116.

¹⁹ See *e.g.* National Report at ¶¶ 108.2-10.

²⁰ UPR Info, at ¶ 109.32.

²¹ *Id.* at ¶ 109.33.

²² See UNWGAD Opinion at ¶¶ 27-28.

²³ See *id.* at ¶¶ 22 & 25.

The Arbitrary Detention of Filep Samuel Karma²⁴

18. Filep Samuel Karma is one of the most prominent Papuan independence activists in Indonesia and widely recognized as a prisoner of conscience. After working for a decade as a civil servant, Mr. Karma became involved in the cause for Papuan independence and is a staunch proponent of non-violent resistance. In 1998, he fell out of favor with the authorities when he peacefully participated in a Papuan flag-raising ceremony. The Indonesian military shot him in the legs with rubber bullets and arrested, charged, and convicted him of sedition. He was sentenced to six-and-a-half years in prison, but was freed on appeal after serving one-and-a-half years.

19. In 2004, the Indonesian National Police arrested Mr. Karma without a warrant after he organized and participated in another flag-raising ceremony commemorating Papuan independence from Dutch colonial rule. The police forcibly ended the ceremony and beat and stomped on him on the way to the police station. Mr. Karma was charged with conspiracy to commit sedition, sedition, and expressing “feelings of hate or offense against the government” under Articles 106 and 110 of the Criminal Code of Indonesia, which have since been ruled unconstitutional. During his trial, the judge repeatedly mocked him, insulted his religion, and beat and threatened his supporters outside the courtroom. Mr. Karma’s legal counsel was also subjected to harassment and intimidation. On one occasion, a severed dog’s head with a note naming his lawyers was found outside the Jayapura Legal Aid office. Mr. Karma was also unfairly denied access to his counsel, when the court began proceedings with insufficient notice to his counsel. However, despite Mr. Karma’s complaint, the court continued trial proceedings. His counsel attempted to appeal the verdict because of the judge’s bias, but the High Court rejected the appeal without having even received the appellate brief from the trial court. The Supreme Court followed suit and dismissed Mr. Karma’s final appeal without providing an explanation.

20. Mr. Karma was sentenced to fifteen years in prison—three times longer than the sentence proposed by the prosecution. He is currently incarcerated at Abepura Prison, where he has been a prisoner of conscience for the past eight years, and has not been made eligible for parole. Despite UNWGAD’s finding that Mr. Karma should immediately be released because his case is a Category II and III arbitrary detention under Articles 9, 14, 19, 21, 22 of the ICCPR and Articles 9, 10, 11, 19, and 20 of the Universal Declaration of Human Rights (UDHR), the government has not taken any action toward his release without conditions on his free expression.²⁵

21. In addition to being denied the exercise of his rights, Mr. Karma has suffered gravely from various health ailments while in prison. He has endured acute prostate problems for years,

²⁴ For a detailed discussion of the facts and law involved, see Freedom Now, *Petition to the UN Working Group on Arbitrary Detention: In the Matter of Filep Jacob Samuel Karma v. Indonesia*, May 16, 2011, available at <http://www.freedom-now.org/wp-content/uploads/2011/05/Filep-Karma-Petition-to-UNWGAD-5-16-2011.pdf>. See also Freedom Now, *Letter from 26 Members of the U.S. House of Representatives for Release of Renowned Human Rights Advocate Filep Karma*, Aug. 22, 2011, available at <http://www.freedom-now.org/wp-content/uploads/2011/08/Press-Release-for-Karma-letter1.pdf>.

²⁵ UNWGAD Opinion at ¶¶ 27-28.

which began to worsen drastically in 2009. The prison refused him necessary care, even denying offers by his supporters to pay for his medical services. After almost a year of delay, the prison finally allowed him to be transferred to a hospital in Jakarta for a urological operation, although it did not fulfill its legal obligation to cover medical costs for the procedure. This decision came immediately after the publication of incriminating photographs showing his deteriorating physical state.

22. In 2010, Mr. Karma attempted to mitigate tensions during a prison riot, which ensued after one escaped prisoner was shot and killed, by acting as an impartial negotiator between the prison officials and inmates. Although he encouraged inmates to desist and peacefully comply with the guards' orders, he was transferred shortly thereafter to Jayapura Police Station. Neither his lawyers nor his family were informed of his transfer. Mr. Karma faced squalid conditions in his holding cell in the police station, which was infested by rats and in an extreme state of decline. He was also denied adequate food and water. After three months at the police station, Mr. Karma was finally transferred back to Abepura.

23. Mr. Karma's health continues to be a concern. Ever since he returned from the Jayapura Police Station, he has suffered from respiratory and stomach problems due to poor prison conditions. His history of ailments in prison, including bronchopneumonia, excess fluid in the lungs, urinary tract infection, bleeding hemorrhoids, chronic diarrhea, and blood in stool, contribute to ongoing health concerns. His continued prostate problems require him to adhere to a special diet. Moreover, he has recently had difficulty walking due to a toe infection, which recently required treatment. In addition, Mr. Karma has faced ongoing colon concerns, which required him to undergo a colonoscopy and follow-up treatment in September and October of 2012. He also suffers from a back injury as well as leg injuries dating back to wounds he received during the 1998 protest.

Conclusion and Recommendations

24. The continued detention of Filep Samuel Karma in Indonesia demonstrates that the government continues to employ arbitrary detention to silence critical voices in clear violation of international law and specifically the ICCPR. This case also illustrates the very real threat of intimidation and harassment faced by lawyers and human rights defenders in the country and the government's continued restriction on exercise of the freedom of expression. In light of the above, Freedom Now submits the following recommendations:

- Immediately and unconditionally release all Indonesian citizens currently detained because they exercised internationally protected human rights—including Filep Samuel Karma.
- End the practice of arbitrarily detaining individuals in response to their peaceful exercise of fundamental human rights—including the right to peaceful free expression and association.
- Revise legislation prohibiting sedition and conspiracy to sedition to specifically protect the right to peaceful free expression and association.

- Investigate allegations of judicial bias, intimidation of lawyers and detainees, and inhumane prison conditions; and investigate and punish perpetrators of the torture of prisoners of conscience.
- Fully cooperate with, respond to, and follow the recommendations of the Committee.