



FREEDOM NOW

Honorary Chair  
The Most Reverend Desmond M. Tutu

## **FREEDOM NOW – SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS**

### **UNIVERSAL PERIODIC REVIEW (UPR): REPUBLIC OF INDONESIA 27th SESSION HUMAN RIGHTS COUNCIL – UPR WORKING GROUP**

**September 21, 2016**

#### **Introduction**

1. Freedom Now individually submits this report to assist the UN Human Rights Council in its review of the policies and practices of the Islamic Republic of Indonesia (“Indonesia” or the “State”). Freedom Now is a non-partisan, non-governmental organization (“NGO”) that works to free prisoners of conscience around the world through focused legal, political and public relations advocacy.<sup>1</sup>

2. This report documents the Indonesian’s government’s use of arbitrary detention and politically motivated prosecutions in violation of international law.<sup>2</sup> As outlined in detail below, Indonesia reportedly continues to silence political opposition leaders, civil society activists, and human rights defenders through wrongful criminal detention. Such practice violates the government’s freely undertaken obligations under the International Covenant on Civil and Political Rights (“ICCPR”) – a pattern documented by numerous human rights organizations and international institutions – including the UN Working Group on Arbitrary Detention (the “Working Group”) and the UN Special Rapporteur on the Situation of Human Rights Defenders (the “Special Rapporteur on Human Rights Defenders”).

#### **History of Arbitrary Detention in Indonesia**

3. The Government of Indonesia has a long and well-documented history of detaining its citizens for exercising their fundamental human rights, including the rights to freedom of expression, association and assembly. In the context of such politically motivated prosecutions, the government has allegedly also failed to meet minimum international due process standards and violated detainees’ rights to be free from torture and other forms of mistreatment.

4. In 1999, the Working Group conducted a fact-finding mission to Indonesia and documented a number of systemic violations related to wrongful detention. While the Working Group commended Indonesia’s regime change and promising reforms undertaken by the

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<sup>1</sup> FreedomNow has served as *pro bono* counsel, along with Hogan Lovells to Mr. Filep Samuel Karma, a former Papuan prisoner of conscience in Indonesia.

<sup>2</sup> While this report highlights the violations of the rights to freedom of expression, assembly, and association, the analysis is limited to arbitrary detention.

Indonesian government, it also highlighted the “dysfunction in the operation of the legal system.”<sup>3</sup> The Working Group particularly noted the lack of independent and impartial tribunals.

5. Concern for human rights defenders, particularly in the West Papua province was highlighted during Indonesia’s first Universal Periodic Review (“UPR”) in 2012.<sup>4</sup> During that review, the Indonesian government rejected recommendations pertaining to amending and appealing legislation<sup>5</sup> that “restricts the right to defend and promote human rights.”<sup>6</sup> Indonesia did accept several recommendations to “enhance efforts to provide adequate protection to human rights defenders”, “conduct impartial and independent investigations into acts of violence committed against human rights defenders” and “bring those responsible to justice and fully [guarantee] freedom of expression.”<sup>7</sup> It also accepted recommendations dealing with “fair and proper legal action” specifically dealing with fair trial and impartial tribunals.<sup>8</sup> Moreover, Indonesia also committed to ratifying the Operational Protocol of the Committee Against Torture (“OP-CAT”) and the Rome Statute, and bringing national legislation into compliance with the legal obligations under the Rome Statute.<sup>9</sup>

6. Unfortunately, although Indonesia accepted the recommendations pertaining to safeguarding the rights of citizens and human rights defenders, it has largely failed to implement the changes needed to effectuate such recommendations. Indonesia has not ratified the Rome Statute and, instead of ratifying the OP-CAT and bringing its definition of torture in compliance with international legal standards, implemented a new Acehnese Islamic Code in 2015, which “expand[ed] the use of corporal punishment to include consensual sexual relations.”<sup>10</sup> Moreover, the State has not revised the legislation limiting freedom of speech for human rights defenders, but rather has continued to arrest its citizens under these restrictive laws.<sup>11</sup>

7. In the most recent UPR period, Indonesia has made some improvements regarding its use of arbitrary detention to suppress dissent. Since President Joko Widodo assumed office in 2014,

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<sup>3</sup> United Nations Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention on its Visit to Indonesia* (31 January – 12 February), Office of the High Commissioner for Human Rights, E/CN.4/2000/4/Add.2, ¶ 54, 1999, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/147/03/PDF/G9914703.pdf?OpenElement>.

<sup>4</sup> Working Group on Universal Periodic Review, *Recommendations and Pledges for Indonesia*, May 23, 2012, available at [http://www.upr-info.org/database/index.php?limit=0&f\\_SUR=77&f\\_SMR=All&order=&orderDir=ASC&orderP=true&f\\_Issue=All&searchReco=&resultMax=100&response=&action\\_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly](http://www.upr-info.org/database/index.php?limit=0&f_SUR=77&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=100&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly) [*hereinafter* “Indonesia Recommendations and Pledges”].

<sup>5</sup> Indonesian Penal Code, Art 106, 110.

<sup>6</sup> Indonesia Recommendations and Pledges, *supra* note 4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Amnesty International, *Annual Report of Indonesia 2015/2016*, available at, <https://www.amnesty.org/en/countries/asia-and-the-pacific/indonesia/report-indonesia/> [*hereinafter* “Amnesty International on Indonesia”].

<sup>11</sup> See Andreas Harsono, *Indonesia’s Forgotten Political Prisoners*, Human Rights Watch, March 16, 2016, available at <https://www.hrw.org/news/2016/03/16/indonesias-forgotten-political-prisoners>.

he has lifted the foreign journalist ban on West Papua and Papua<sup>12</sup> and has released at least six<sup>13</sup> Papuan political prisoners.<sup>14</sup> Moreover, the Working Group has not publicly issued any opinion regarding arbitrarily-detained individuals since 2012, which could be an encouraging sign that the Working Group has received few petitions about unlawful detentions.<sup>15</sup> However, it is reported that many political prisoners still remain in custody<sup>16</sup> and, although foreign journalists are allowed entry into West Papua and Papua, many of the Papuans who were interviewed are now allegedly being targeted for government reprisals.<sup>17</sup> These facts, combined with the government's refusal to implement the recommendations it accepted at the prior UPR review, paint a troubling picture as to the permanency of any recent gains made.

### **Continued Use of Arbitrary Connection**

8. In 2014, the Special Rapporteur on Human Rights Defenders expressed concern regarding restraints on the exercise of certain rights, most notably the “undue restriction” on the “rights to freedom of peaceful assembly, expression and association in Indonesia.”<sup>18</sup> The Special Rapporteur made specific mention of the use of detention and torture against peaceful protesters and the many restrictions imposed upon “journalists who expose human rights situations in [Indonesia].”<sup>19</sup> In May 2015, 264 peaceful activists were arrested and a further 216 members of the West Papua National Committee were arbitrarily detained for participating in peaceful demonstrations.<sup>20</sup> While many were later released, 12 of the 216 detainees were charged for participating in the protest under Indonesia's rebellion laws.<sup>21</sup>

9. Any suggestion that Indonesia has made progress in promoting and protecting human rights is countered by the numerous alleged violations occurring in Papua and the West Papua provinces. The creation of the special Unit for the Acceleration of Development in Papua and West Papua Provinces focuses on improving the economy in these regions, but appears to ignore

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<sup>12</sup> Randy Fabi, *Indonesian president lifts foreign media restrictions in Papua*, Reuters, May 10, 2015, available at <http://www.reuters.com/article/us-indonesia-media-idUSKBN0NV08C20150510>.

<sup>13</sup> See *Indonesia, Events of 2015*, Human Rights Watch, 2015, available at <https://www.hrw.org/world-report/2016/country-chapters/indonesia>.

<sup>14</sup> *Indonesia: Free All Political Prisoners*, Human Rights Watch, May 9, 2015, available at <https://www.hrw.org/news/2015/05/09/indonesia-free-all-political-prisoners> [*hereinafter* “Free All Political Prisoners”].

<sup>15</sup> United Nations Working Group on Arbitrary Detention Document Search, *accessed on* July 26, 2016, available at <http://www.unwgadatabase.org/un/results.aspx?page=0>.

<sup>16</sup> Free All Political Prisoners, *supra* note 13. Human Rights Watch estimates that as of May 2015 there remained approximately 38 Papuan political prisoners imprisoned in Indonesia.

<sup>17</sup> Phelim Kine, *Indonesia's Papua Reporting Paranoia*, The Diplomat, January 22, 2016, available at <http://thediplomat.com/2016/01/indonesias-papua-reporting-paranoia/>. After a French correspondent returned from Papua, Indonesian police detained a Papuan activist who travelled around Papua with her, along with two of the activist's friends. They were interrogated for 10 hours and were demanded details of the French correspondent's trip.

<sup>18</sup> General Assembly, *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, A/HRC/28/63/Add.1, March 4, 2015, available at <http://www.ohchr.org/Documents/Issues/Defenders/A-HRC-28-63-Add-1.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> Amnesty International on Indonesia, *supra* note 10.

<sup>21</sup> *Id.*

the fact that violence, specifically targeting reporters, has worsened.<sup>22</sup> NGOs have estimated that in 2015 there were “as many as 51 political prisoners from the provinces of Papua and West Papua” with “an additional nine political prisoners from Maluku.”<sup>23</sup>

10. While the constitution and law provide for freedom of speech and press, blasphemy and defamation laws are used to restrict these freedoms;<sup>24</sup> many journalists report self-censorship for fear of imprisonment.<sup>25</sup> Blasphemy laws criminalize content that is deemed “insulting to religion or advocates separatism.”<sup>26</sup> Moreover, the recent Information and Electronic Transaction Law criminalizes “online crime, pornography, gambling, blackmail, lies, threats, and racism, prohibits citizens from distributing in electronic format any information that is defamatory and carries penalties of a maximum of six years in prison, a fine of rupiah (IDR) one billion (\$87,500), or both.”<sup>27</sup> The law has also been extended to criminalize “distribution or accessibility of information or documents that are ‘contrary to the moral norms of Indonesia.’”<sup>28</sup> This law easily lends itself to turning critics of the government into criminals.<sup>29</sup>

11. Finally, the use of excessive force has characterized many arrests carried out by military personnel, including death.<sup>30</sup> While investigations were made into some of these deaths, the military would not disclose the findings--making it difficult to confirm facts and that proper action was taken.<sup>31</sup> While the Indonesian constitution guarantees the right to be free from torture, NGOs have reported that torture is “commonplace in police detention facilities.” Overcrowding is also reportedly a serious issue in Indonesian prisons, with many pretrial detainees being held in the same cell as convicted prisoners.<sup>32</sup>

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<sup>22</sup> FreedomHouse, *Freedom in the World: Indonesia 2016*, available at <https://freedomhouse.org/report/freedom-world/2016/indonesia> [hereinafter “Freedom in the World”].

<sup>23</sup> US Department of State, *Country Report on Human Rights Practices for 2015: Indonesia*, Bureau of Democracy, Human Rights and Labor, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> [hereinafter “US State Report on Human Rights”].

<sup>24</sup> *Id.*

<sup>25</sup> Human Rights Watch, *Something to Hide? Indonesia’s Restriction on Media Freedom and Rights Monitoring in Papua*, November 10, 2015, available at <https://www.hrw.org/report/2015/11/10/something-hide/indonesias-restrictions-media-freedom-and-rights-monitoring-papua#page>.

<sup>26</sup> US State Report on Human Rights, *supra* note 23; Indonesian Penal Code, Art 106, 110, *supra* note 5.

<sup>27</sup> US State Report on Human Rights *supra* note 23.

<sup>28</sup> Freedom in the World, *supra* note 22.

<sup>29</sup> Human Rights Watch, *Turning Critics into Criminals: The Human Rights Consequences of Criminal Defamation Law in Indonesia*, May 2010, available at

<https://www.hrw.org/sites/default/files/reports/indonesia0510webwcover.pdf>; see also US State Report on Human Rights, *supra* note 23. The State report recounts an arrest made under the Information and Electronic Transaction Law where a student filmed and posted online a video of a police officer accepting a bribe during a traffic stop under defamation pursuant to the Information and Electronic Transaction Law.

<sup>30</sup> US State Report on Human Rights, *supra* note 23.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

## Indonesia's Abuses Exemplified: The Case of Activist Filep Samuel Karma and Wamoka Yudas Kossay

### A. Filep Karma

12. Filep Samuel Karma is a Papuan political activist and former Indonesian civil servant who was sentenced to 15 years in prison for raising the Morning Star flag, which has been banned, at a peaceful political rally in 2004.<sup>33</sup> Mr. Karma served 11 years of his sentence, before being released in 2015.<sup>34</sup> Mr. Karma has consistently expressed views of non-violence, calling for dignified dialogue between Indonesia and the Papuan provinces.<sup>35</sup>

13. Mr. Karma was previously arrested and detained on similar flag-raising charges in 1999, which the Working Group condemned as arbitrary, denouncing the imprisonment of Indonesian citizen for expressing their rights, specifically mentioning flag raising.<sup>36</sup> After being released, Mr. Karma was once again arrested on December 1, 2004 for organizing and participating in a peaceful protest. During the arrest, police officers repeatedly stomped on him while bringing him to the police station.<sup>37</sup> After an unfair trial where Mr. Karma was denied access to his counsel, the prosecution proposed a five-year sentence for Mr. Karma, but the panel of judges sentenced him to fifteen years.

14. Mr. Karma's detention met with international outrage; Amnesty International recognized him as a prisoner of conscience, the U.S. Department of State called him a political prisoner and the Working Group opined that his detention was arbitrary and called for his immediate release.<sup>38</sup>

15. On November 19, 2015, Mr. Karma was finally released, four years before the end of his sentence.<sup>39</sup>

### B. Wamoka Yudas Kossay

16. Wamoka Yudas Kossay is a Papuan political activist who was detained for peacefully demonstrating in support of the United Liberation Movement for West Papua ("ULMWP) on

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<sup>33</sup> FreedomNow, *Past Campaigns: Filep Samuel Karma*, available at <http://www.freedom-now.org/wp-content/uploads/2011/05/Filep-Karma-Petition-to-UNWGAD-5-16-2011.pdf> [*hereinafter* "FreedomNow Past Campaigns"]; see also Amnesty International, *Imprisoned for Raising a Flag*, available at <http://www.amnestyusa.org/our-work/cases/indonesia-filep-karma>.

<sup>34</sup> FreedomNow Past Campaigns, *supra* note 33.

<sup>35</sup> FreedomNow and Hogan Lovells LLP, *Petition to the UN Working Group on Arbitrary Detention on behalf of Mr. Karma*, May 16, 2011, available at <http://www.freedom-now.org/wp-content/uploads/2011/05/Filep-Karma-Petition-to-UNWGAD-5-16-2011.pdf> [*hereinafter* "Petition to the Working Group"].

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Working Group on Arbitrary Detention, *Filep Karma, Indonesia: Opinion No. 48/2011*, November 16, 2011, available at <http://www.freedom-now.org/wp-content/uploads/2011/11/Karma-Press-Release-FINAL.pdf>.

<sup>39</sup> FreedomNow Past Campaigns, *supra* note 33.

May 21, 2015.<sup>40</sup> One day later, Mr. Kossay was arrested, detained, and charged with incitement<sup>41</sup> pursuant to Article 160 of the Indonesian Penal Code.<sup>42</sup>

17. During his interrogation by the Indonesian police, Mr. Kossay was not provided with legal representation.<sup>43</sup> On December 7, 2015, Mr. Kossay was sentenced to 10 months in prison, which he is currently serving at Biak prison.<sup>44</sup> Since Mr. Kossay's arrest, several international NGOs have advocated for his release.<sup>45</sup>

## Conclusion and Recommendations

18. As party to the ICCPR, Indonesia is obligated to respect its citizens' rights to freedom of expression, association, and assembly. By systematically imprisoning peaceful activists and protesters for exercising these fundamental human rights, the government clearly violates its freely undertaken obligations under international law. As such, Freedom Now recommends that Indonesia:

- Immediately and unconditionally release and rehabilitate the civil and political rights of all individuals who have been detained under criminal or administrative charges for exercising their fundamental human rights, including the right to freedom of expression, the right to freedom of association, and the right to political participation.
- Thoroughly investigate all cases of arbitrary detention, torture, and other rights abuses directed against activists, human rights defenders, and opposition leaders and provide compensation for such violations.
- Ensure that all detainees have immediate access to legal counsel of their own choosing and that all procedural rights are fully respected.
- Fully cooperate with, respond to, and follow the recommendations of all UN Human Rights Council special procedure mandate holders – including the UN Working Group on Arbitrary Detention and the Special Rapporteur on Human Rights Defenders.

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<sup>40</sup> *Urgent Action*, Amnesty International, June 23, 2015, available at <http://www.amnestyusa.org/sites/default/files/uaa13915.pdf> [*hereinafter* "Urgent Action"]; *Wamoka Yudas Kossay*, *Papuans Behind Bars*, January 25, 2016, available at [http://www.papuansbehindbars.org/?prisoner\\_profile=wamoka-yudas-kossay&lang=en](http://www.papuansbehindbars.org/?prisoner_profile=wamoka-yudas-kossay&lang=en) [*hereinafter* "Papuan Behind Bars"].

<sup>41</sup> Article 160 of Indonesia's Penal Code states that "[a]ny person who orally or in writing incites in public to commit a punishable act, a violent action against the public authority or any other disobedience, either to a statutory provision or to an official order issued under a statutory provision, shall be punished by a maximum imprisonment of six years or a maximum fine of three hundred Rupiahs." Indonesia Penal Code, Art. 106.

<sup>42</sup> *Id.*; See also *Papuan Behind Bars*, *supra* note 40.

<sup>43</sup> *Urgent Action*, *supra* note 40.

<sup>44</sup> *Papuan Behind Bars*, *supra* note 40.

<sup>45</sup> *Urgent Action*, *supra* note 40.