



AMBASSADOR OF THE REPUBLIC OF INDONESIA
TO THE UNITED NATIONS, WTO AND OTHER
INTERNATIONAL ORGANIZATIONS IN
GENEVA

Geneva, 9 July 2020

No. 105/POL-II/VII/2020

Dear Madam and Sir,

I wish to acknowledge receipt of your Joint Communication, Ref. No. AL IDN 2/2020 of 26 June 2020. I appreciate the continuing efforts of mandate holders in communicating issues of common concern to the Indonesian Government, especially during these challenging times. As a member of the Human Rights Council, rest assured of Indonesia's continued commitment to work together with mandate holders in advancing the promotion and protection of human rights.

As requested, I have brought the Joint Communication to the attention of the relevant authorities in Indonesia. While we await their response, allow me to share with you preliminary information regarding some of the issues in the present Joint Communication.

On 24 April 2020, the Central Jakarta District Court found 6 (six) individuals, namely Mr. Ambrosius Mulait, Mr. Charles Kosay, Mr. Dano Tabuni, Mr. Isay Wenda, Paulus Ginting and Ms. Arina Elopere, guilty of treason and conspiring to promote secession, violations of Article 106 and Article 110, respectively, of the Indonesian Criminal Code. All individuals were given nine-month prison sentences, except for Mr. Isay Wenda who was handed an eight-month sentence. These sentences were lower than the one year and five months prison sentence demanded by prosecutors.

All of the aforementioned individuals were detained after the 28 August 2020 demonstrations for promoting secessionism, an act that is explicitly prohibited under the Indonesian Criminal Code. Ms. Arina Elopere, for instance, was found guilty of waving the banned *Bintang Kejora* (Morning Star) flag, a flag that symbolizes the West Papua secessionist movement. The other individuals were detained and tried for repeatedly calling for West Papuan independence during the demonstration.

Ms. Mary Lawlor, Special Rapporteur on the situation of human rights defenders
Ms. Elina Steinerte, Vice-Chair of the Working Group on Arbitrary Detention
Mr. David Kaye, Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression
Mr. Clement Nyaletsossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association

Meanwhile, on 17 June 2020, Mr. Agus Kossay, Mr. Alexander Goboi, Mr. Ferry Gombo, Mr. Stevanus Itlay, Mr. Hengki Hilapok, Mr. Buchtar Tabuni, and Mr. Irwanus Uropmabin, were found guilty for committing treason under Article 106 of the Indonesian Criminal Code. These individuals were given sentences between 10 to 11 months imprisonment, far below the 5 to 15-year prison sentences demanded by prosecutors.

On 18 September 2019, in Sorong, the Province of West Papua, the police detained Mr. Rianto Ruruk, Yoseph Syufi, Manase Baho, and Etus Kareth, for printing and distributing pamphlets displaying the *Bintang Kejora* flag and the words “Freedom to Papua”. On 28 May 2020, they were found guilty of treason and sentenced to 8 months in prison.

All arrests made against the persons above were conducted in accordance with the Indonesian Criminal Procedure Code. Further, the aforementioned trials were held in an open and transparent manner, allowing the public to observe trials and media coverage. All of the defendants were afforded the rights to due process of law, including the right to counsel, the right to present evidence, and the right to file for pre-trial motions.

In all of those cases, the panel of judges decided, based on all the evidence and testimonies presented, that the actions committed by the defendants were tantamount to acts of treason that endanger national stability and security, that were aimed at damaging the territorial integrity of the Republic of Indonesia. All of the court decisions are publicly accessible through the Supreme Court’s website (<https://putusan3.mahkamahagung.go.id/direktori.html>). These updates clearly reflect the fact that the cases brought forth fall strictly within the confines of law enforcement and the administration of justice.

Further, the fact of the matter remains clear: as guaranteed by Article 28 of Indonesia’s 1945 Constitution, the Indonesian Government has consistently facilitated the right to peaceful assembly and right to the freedom of expression, including those held in front of the Presidential Palace in Jakarta on 18, 19 and 28 August 2019; and in Jayapura on 3 September 2019. Each of these demonstrations was attended by hundreds of people, most of who were calling for accountability for the racial incidents in Malang and Surabaya several days earlier. Out of the hundreds of people who protested peacefully, few were arrested, strictly due to the fact that they were in clear violation of the law.

In the same vein, I wish to therefore categorically reject your assessment in page 7 of the Joint Communication, in which you stated “those exercising their right to organize and participate peacefully in demonstrations appear to be targeted for exercising their fundamental rights of freedom of expression and association as well as their right to take part in public debates concerning the economic, social and cultural development of their society”. The right to organize and to participate peacefully in demonstrations is ingrained in the daily life of Indonesians and in our democratic system. A brief scan through Indonesian media outlets, especially prior to the COVID-19 pandemic, can attest to this fact. Further, throughout the implementation of large-scale social restrictions at the national level, an almost innumerable number of webinars discussing the issue of Papua and other human rights discussion, have been, and continues to be held, without any interruption.

The Indonesia Government has been and will continue to guarantee the right to the freedom of peaceful assembly and the freedom of expression. As state party to ICCPR, we believe that the exercise of this rights and freedoms should not contravene prevailing laws and regulations, and should be in line with the limitation provided in the Covenant.

With regard to the question on why Mr. Kossay, Mr. Tabuni, Mr. Mulait, and Mr. Ginting were denied early release to mitigate the spread of the COVID-19, please be informed that as is the case in most jurisdictions, prisoners who qualify for early release must fulfill certain criteria as set forth by the Ministry of Justice and Human Rights. In Indonesia, Regulation of the Ministry of Justice and Human Rights No. 10 of 2020 stipulates several categories of prisoners that do not qualify for early release, namely those convicted of the following crimes: terrorism, narcotics, corruption, crimes against the state, and gross human rights violations. The crime of treason falls under the category of a crime against the state, and as such, the aforementioned individuals did not meet the eligibility criteria for early release. However, please also note that by April 2020, more than 30,000 prisoners in Indonesia have been released to mitigate the spread of COVID-19.

I wish to now draw your attention to your question about the status of investigations into “the complaint lodged by Mr. Wensislaus Fatubun to the NHRI”. Upon receiving your Joint Communication, I immediately contacted *Komnas HAM*, the Indonesian NHRI, to seek clarification on this matter. From the preliminary information that we have received from them, at present, **there has not been any complaints lodged by a Mr. Wensislaus Fatubun to Komnas HAM**. However, in the event that a complaint is to be lodged to Komnas HAM, Komnas HAM has the mandate to conduct follow-up actions regarding such complaints, as they have consistently conducted in the past. This mandate is stipulated under Law No. 39 of 1999 on Human Rights.

In this regard, we once again underline that it is imperative for the Special Procedures Mandate Holders (SPMHs) to be more cautious and to exercise due diligence before addressing a particular issue through a Joint Communication mechanism. In line with the principles contained in HRC resolution 5/2, Special Procedures Mandate Holders must ensure that all domestic grievance mechanisms have been exhausted before addressing a particular human rights related issue. In regards to the case of Mr. Wensislaus Fatubun, **no domestic grievance mechanisms have been used, let alone exhausted**. Further, we also call upon Special Procedures Mandate Holders to respect the work and independence of our national judicial system, among others, by not prejudging the outcome of cases involving individuals still awaiting trial. Such cautious and due diligence exercises enable member states in general and Indonesia in particular to maintain the trust and genuine cooperation with the SPMHs.

With regard to the protection of human rights defenders as a whole, please note that as a traditional co-sponsor of all HRC resolutions on the Mandate of the Special Rapporteur on the Situation of Human Rights Defenders, Indonesia firmly believes that human rights defenders, in all their forms and professions, are key partners in the advancement of human rights. Therefore, their right to carry out legitimate work in an enabling environment, and to be free from threats, attacks, reprisals and acts of intimidation must be protected, especially in a time of pandemic. Indonesia has made this very clear throughout the resumed 43rd session of the HRC. During the closing of the 43rd session, Indonesia focused its remarks on one issue, namely the need for the Council to afford greater attention for the plight of human rights defenders, especially those who are in the frontlines in the battle against COVID-19.

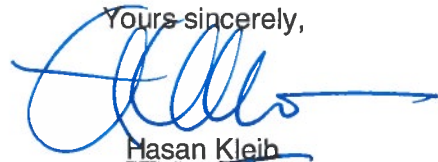
Over the years, the Indonesian Government, including through our mission in Geneva, has been actively and constructively engaging with both international and domestic civil society representatives who are critical towards Indonesian government policies. Our Mission, for example, has always participated constructively in open and transparent public discussions in Geneva on issues related to Indonesia, particularly discussions on human rights in the Provinces of Papua and West Papua. Further, the Indonesian Mission is probably one of the

only missions in Geneva that hosts regular discussions with international civil society organizations who are openly critical towards our national policies.

Madam and Sir, please rest assured that Indonesia will remain steadfast in upholding its unwavering commitment to the promotion and protection of human rights, particularly concerning the rights of human rights defenders, the right to freedom of opinion and expression, and the rights to freedom of peaceful assembly and of association.

Please accept, Madam and Sir, the assurances of my highest consideration

Yours sincerely,



Hasan Kleib

Ambassador/Permanent Representative