



INDONESIA

# Protest and Punishment

Political Prisoners in Papua

HUMAN  
RIGHTS  
WATCH



To the Indonesian judiciary: .....39

To International Donors and Governments with close bilateral ties to Indonesia:  
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## I. Summary

It is very strange in this era of reform that community views that differ from those of the larger society are eliminated.

— Pieter Ell, Defense Lawyer and Coordinator for the Papuan branch of Kontras, a national human rights NGO.<sup>1</sup>

Papua, at the far eastern end of the Indonesian archipelago, is one of the most remote places in the country. This isolation, compounded by government imposed restrictions on access to the two provinces which make up Papua (“Papua” and “West Irian Jaya”), has contributed to a dearth of information on the human rights situation there. With international attention focused on the peace process and post- tsunami reconstruction in the province in Aceh, relatively little is known about recent human rights developments in Papua.

One consequence of Papua’s remoteness has been that a series of criminal convictions in recent years of peaceful political activists has not attracted the attention it deserves. A low level armed separatist insurgency in the province has resulted in a large military presence and a climate of mutual suspicion and fear. All too often Papuans not involved in the armed insurgency are caught up in anti-separatist sweeps or arrested as trouble makers for peacefully expressing their political views, a right protected by basic international free speech guarantees.

Pro-independence activists are frequently targeted for arrest. December 1 has been designated a “national day” by Papuan nationalists, commemorating the day in 1961 when a group of Papuans, promised independence by then-colonial ruler Holland, first raised the Papuan national flag, the *Bintang Kejora* (Morning Star) flag. Every year people mark this event by again raising, or attempting to raise, the flag. Most years these attempts end in clashes with local security forces intent on stopping what they see as treasonous activities against the Republic of Indonesia. They have almost always ended in arrests, and sometimes trials and convictions, often for the peaceful

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<sup>1</sup> “Vonis 15 Tahun Tak Selesaikan Masalah,” *Cenderawasih Pos* (Jayapura), May 28, 2005.

expression of political dissent. At other times activists are arrested merely for publicly expressing support for Papuan independence, or for attending peaceful meetings to talk about self-determination for Papua.

Human Rights Watch takes no position on Papuan claims to self-determination, but it supports the right of all individuals, including independence supporters, to express their political views peacefully without fear of arrest or other forms of reprisal. To the extent individuals are arrested and imprisoned for peaceful participation in symbolic flag-raising ceremonies, such treatment constitutes arbitrary arrest and detention in violation of international standards.

Indonesian authorities commonly use two sets of criminal laws against activists in Papua. The first is the colonial era “hate sowing” (*Haatzai Artikelen*) articles of Indonesia’s Criminal Code, which criminalize “public expression of feelings of hostility, hatred or contempt toward the government” and prohibit “the expression of such feelings or views through the public media.” The articles authorize prison terms of up to seven years for violations.

The other criminal law provisions most often used is one outlawing “*makar*,” which translates into English as rebellion. This is often used against persons arrested for their alleged participation in, or support for, separatism. The crime of *makar* is listed in Indonesia’s criminal code in a section entitled “Crimes Against the Security of the State” (*Kejahatan Terhadap Keamanan Negara*). The articles authorize prison terms up to twenty years for the offences.

In May 2005, Filep Karma and Yusak Pakage, independence supporters whose cases are highlighted in this report, were sentenced to 15- and 10-year prison sentences for organizing peaceful celebrations and flying the Morning Star flag in the provincial capital of Jayapura on December 1, 2004. They were charged and convicted both of spreading hatred and of rebellion. In an act of defiance, on December 1, 2005, Filep Karma managed to climb from his cell onto the roof of the prison and once again fly the Morning Star flag. Linus Hiluka, a thirty-four-year-old farmer whose case is also described below, is currently serving a 20-year jail term. His crime was his association

with an organization called the Baliem Papua Panel, deemed a separatist organization by Indonesian authorities.

These convictions are not an aberration. They reflect government policy.

There has been a long history of suppression of peaceful activism in Papua. Non-violent flag raisers and protestors against Indonesian rule have been arrested, sometimes ill-treated, and convicted for peacefully expressing their discontent through flag raising or other activities. In 2002 alone, forty-two people were arrested in Papua for peaceful independence activities.<sup>2</sup> Over the last few years through a variety of announcements, the governor of Papua, the military commander, and the president of the High Court have also instructed people in Papua not to celebrate December 1.<sup>3</sup> In 2004 the Papuan provincial chief of police, Inspector General Dodi Sumatyawan, stated that “the anniversary celebration is unlawful and parties who commemorate it will be severely punished.”<sup>4</sup>

In December 2005 TAPOL, the Indonesia Human Rights Campaign, a UK-based human rights organization, uncovered a confidential directive issued on November 10, 2005, by Chief of Police of Papua D.S. Sumantyawan. The directive instructed that anyone engaged in activities on a number of commemorative occasions in November and December would be liable to be charged under Indonesia's anti-subversion law. The terms of the directive make clear that this would encompass even those engaged in peaceful celebrations, which should be protected by the law. One of the dates highlighted by the police chief was December 1. Section Six of the November 10 directive orders police chiefs to:

Uphold the law in a clear and professional manner against all violations of the law that occur, in particular flying the Morning Star flag or the 14-point star flag, to arrest and detain those involved and confiscate evidence of

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<sup>2</sup> “Urgent Action: Papua, Indonesia,” Amnesty International, November 29, 2002.

<sup>3</sup> “Papua residents told not to celebrate ‘independence’ day,” Nethy Dharma Somba, *The Jakarta Post*, December 1, 2005; “Papuan activists face terror for celebrating 1 December anniversary,” ELSHAM News Service, December 1, 2004.

<sup>4</sup> “Papuan people warned against celebrating independence,” Nethy Dharma Somba, *The Jakarta Post*, December 14, 2004.

flags, to be processed in accordance with the law, to face charges of subversion [*maka*] in a court of law.<sup>5</sup>

The directive, which was sent in a telegram to all police commands in the territory, said that it had been sent within the framework of an operation called Mambruk II 2005.<sup>6</sup>

Indonesian law distinguishes between cultural symbols used to express Papuan identity and symbols understood as a symbol of sovereignty. International law knows no such distinction. While the Papua Special Autonomy Law, passed in 2001, explicitly allows symbols of Papuan identity such as a flag or song, courts have treated the raising of flags associated with pro-independence sentiment as a symbol of sovereignty and, as such, a banned form of expression.

Peaceful campaigning for self-determination is a right protected by several human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), both of which Indonesia acceded to in February 2006.<sup>7</sup> Human Rights Watch therefore considers individuals arrested, prosecuted, and imprisoned for peacefully expressing support for independence—whether through flag, song, or other means—as political prisoners. We know of at least eighteen such individuals in Papua.

This report details what we know of these cases based on credible sources, with particular emphasis on the Karma and Pakage cases, for which more information was available. Given the closed nature of Papua, there are likely other cases of which we are not aware and which are not even mentioned in this report.

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<sup>5</sup> Translation of “Police Instructions for Operations in Papua and West Irian Jaya during November and December 2005,” Chief of Police of Papua, D.S. Sumantyan, November 10, 2005 (copy on file at Human Rights Watch).

<sup>6</sup> “Papua threatened with subversion charges for peaceful celebrations,” Press Release, TAPOL, The Indonesia Human Rights Campaign, December 1, 2005.

<sup>7</sup> The right of self-determination is covered under Article 1 of both the ICCPR and the ICESCR. When it acceded to these treaties Indonesia declared the following in respect of article 1 of both the ICCPR and the ICESCR: “With reference to Article 1...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.” [http://www.ohchr.org/english/countries/ratification/4\\_1.htm](http://www.ohchr.org/english/countries/ratification/4_1.htm) (accessed January 2, 2007).

In what follows, we have included only cases where the defendant was convicted for peaceful expression. There are many other cases in Papua where individuals have been charged with or convicted of crimes against the security of the state where it was alleged that the defendant engaged in or advocated violence. Human Rights Watch did not include these cases in the report, even those cases where the allegations of violent activity or advocacy did not appear to be supported by available evidence.

Freedom of expression is a basic right and often acts as an enabler of other rights. Conversely, where freedom of expression is not respected, other rights are rarely secure. In Papua, related human rights concerns include restrictions on freedom of assembly, arbitrary detention, and violation of the prohibition on inhuman and degrading treatment and torture. Until there is increased access to the province for foreign correspondents, diplomats, and independent monitors, including international human rights organizations, it will be impossible to reach clear conclusions about the state of human rights in the province. What is known, however, is cause for serious, ongoing concern.

In 2006 Indonesia succeeded in securing membership of both the UN Human Rights Council and the UN Security Council. In 2006, as already noted, Indonesia also acceded to the ICCPR and the ICESCR. These are signs that Indonesia wants to be accepted as a rights-respecting member of the international community. While Indonesia is certainly in a transition period, the repression detailed in this report shows that there is still much to be done in institutionalizing meaningful protections for basic human rights in the country: That flag raisers, or others peacefully campaigning for Papuan independence, should be imprisoned for their activities is indicative of how far Indonesia still has to go on its journey to become a fully rights-respecting and democratic nation. There is a clear gap between Indonesia's international commitments and rhetoric and the reality on the ground.

The cases of Filep Karma and Yusak Pakage exemplify how real the gap is. If Filep Karma serves his full sentence it will be 2020 before he is released and he will be 61 years old. He will have spent the majority of his adult life in prison. His crime was nothing more than the expression of an opinion, the expression of a belief. He should not be in a cell for that.

## **Key Recommendations**

Human Rights Watch urges the Indonesian government and parliament to :

- Immediately and unconditionally release all persons detained or imprisoned for the peaceful expression of their political views, including raising the Morning Star flag;
- Drop any outstanding charges against individuals awaiting trial for their peaceful political activities and make a public commitment to ensure no further arrests of individuals engaged in the peaceful expression of their beliefs;
- Repeal articles 154, 155, and 156 of the KUHP (Kitab Undang-Undang Hukum Pidana, Indonesian Criminal Code) criminalizing "public expression of feelings of hostility, hatred or contempt toward the government" and prohibiting "the expression of such feelings or views through the public media," and articles 106, 107, and 108 on treason. Make a public commitment not to undertake any further prosecutions using these laws; and
- End all arbitrary restrictions on access to Papua for journalists, diplomats and human rights organizations.

A more complete set of recommendations is set forth at the end of this report.

## **Methodology**

Due to government restrictions on access to Papua, gathering credible information in the province is extremely difficult. Interviewing prisoners is impossible and family members are at risk of reprisal if they are seen talking to human rights researchers. In compiling this report, Human Rights Watch therefore relied on interviews with defense lawyers and members of local human rights organizations, and on analysis of trial documents. Research was conducted between April and December 2006.

## II. Background

### Political History

Developments in Papua<sup>8</sup> can be seen as a litmus test of Indonesia's tolerance for political dissent and of the civilian leadership's ability to control the military. In Papua, isolated from the rest of the archipelago, Indonesia's policies are played out with little oversight or scrutiny.

Occupying the western half of the island of New Guinea, Papua makes up more than one fifth of Indonesia's total land area and is roughly the size of France. Papua is home to an estimated 2.5 million people. While this is only a fraction of Indonesia's overall population of 220 million people, the region assumes disproportionate importance in national-level policy discussions not only for political reasons but also because of its size and resource wealth. The Freeport McMoran gold and copper mine in Papua alone provides Indonesia with 1.6% of its national GDP.

When Indonesia gained independence from the Netherlands in 1949, the region remained a Dutch territory. In the 1950s, the Dutch began a decolonization process; in 1961, an elected council comprised mostly of indigenous Papuans commissioned the creation of a national anthem and flag. On December 1, 1961, the Morning Star flag was flown beside the Dutch tricolor for the first time. Full independence was envisioned for 1970.

Indonesia, however, viewed the decolonization process as a Dutch effort to create a puppet state within its rightful boundaries. Nearly all of Indonesia's nationalist leaders viewed all Dutch possessions in the region, as well as the Portuguese colony of Timor and British possessions on Borneo and the Malay Peninsula, as rightful parts of Indonesia. On December 19, 1961, Indonesia's then President, Soekarno, launched a

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<sup>8</sup> The Indonesian territory of Papua occupies the western half of the island of New Guinea. Originally one province in the republic, in 2003 it was controversially divided into two new provinces. The new province of West Irian Jaya now occupies the western part of the region with a new provincial capital of Manokwari. The new province in the eastern half is still called Papua, with the provincial capital remaining Jayapura. Plans for a proposed third province named Central Irian Jaya, have been postponed. For the purposes of this report we refer to the two provinces collectively as Papua.

campaign to “return” West Irian to Indonesia. Skirmishes between Dutch and Indonesian forces escalated tension in the region and the Dutch government, under strong international pressure, abandoned its plans for West Irian. On August 15, 1962, the Netherlands and Indonesia signed a U.S.-brokered agreement in New York, under which West Irian was brought under a temporary U.N. trusteeship, the UNTEA, in October 1962, then transferred to Indonesia on May 1, 1963.

Under the New York Agreement, Indonesia was required to hold an Act of Free Choice (*Penentuan Pendapat Rakyat*, or *Pepera*) to enable the inhabitants of West Irian to determine their own future. This was held in July 1969 but, according to many Papuans and independent observers, was far from free.<sup>9</sup> Some 1,022 Papuan representatives, reportedly hand-picked by Jakarta, were convened under Indonesian military supervision, and asked to choose whether or not they wanted integration with Indonesia. The result was unanimously in favor of integration. Papuans assert that there should have been a referendum conducted on the basis of one-person-one-vote, though the procedure had not been specified in the New York Agreement, which called for all adults to participate in an act of self-determination “in accordance with international practice.”<sup>10</sup>

According to Indonesia, the method used was appropriate given the formidable geographic terrain and what they saw as the low level of social, economic, and cultural development then existing in West Irian. A Bolivian diplomat, Fernando Ortiz-Sanz, and sixteen support staff oversaw the process for the United Nations; on September 6, 1969, Ortiz-Sanz reported to the U.N. Secretary General: “I regret to have to express my reservation regarding the implementation of Article XXII of the Agreement, relating to the rights, including the rights of free speech, freedom of movement and of assembly, of the inhabitants of the area. In spite of my constant efforts, this important provision was not fully implemented and the Administration exercised at all times a tight political control

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<sup>9</sup> John Saltford, *The United Nations and the Indonesian Takeover of West Papua, 1962-1969*, (UK: Routledge Curzon, 2003); P.J.Drooglever, *Act of Free Choice: The Papuans of Western New Guinea and the limitations of the right to self-determination*, Amsterdam, 2005.

<sup>10</sup> “Agreement between Indonesia and the Netherlands concerning West New Guinea (West Irian),” signed at UN Headquarters, New York, August 15 1962 (New York Agreement). Article XVIII of the agreement states: “Indonesia will make arrangements, with the assistance and participation of the United Nations Representative and his staff, to give the people of the territory the opportunity to exercise freedom of choice. Such arrangements will include. . .the eligibility of all adults, male and female, not foreign nationals, to participate in the act of self-determination to be carried out in accordance with international practice, who are resident at the time of the signing of the present Agreement and at the time of the act of self-determination. . . .”

over the population.”<sup>11</sup> Despite this report, the United Nations General Assembly accepted the results in Resolution No. 2504, adopted on November 19, 1969, with thirty abstentions and no negative votes. In September 1969, West Irian was officially incorporated as the twenty-sixth province of Indonesia; Indonesia renamed it Irian Jaya in 1973.<sup>12</sup>

The results of the referendum are still contested in Papua today and form the basis for much of the historical antipathy towards Jakarta and the resoluteness of the independence movement.

Segments of the Papuan population have been demanding independence for decades, but, until recently, resistance to Indonesian rule was limited to small units of guerillas loosely organized under the names Free Papua Movement (Organisasi Papua Merdeka, OPM) and National Liberation Army (Tentara Pembebasan Nasional, TPN). The armed insurgents have mostly staged hit and run attacks on Indonesian military posts and, on a few occasions, have taken hostages to draw attention to their cause. Most notoriously, in 1996 an OPM group kidnapped and held hostage for four months twelve members of an international scientific expedition to the area.<sup>13</sup>

The armed insurgency, while low-level and sporadic in nature, serves as a permanent irritant to Jakarta: many in the national government and the armed forces see Papua as the front line in efforts to destroy Indonesia’s territorial integrity. In November 2006 the armed groups convened under a united umbrella framework to hold a First Congress of the West Papuan National Liberation Army (TPN-PB). In this meeting they renewed their commitment to “prepare for the war against colonialism, imperialism, and global exploitations which is about to begin in West Papua,” and announced that “armed resistance to the Indonesian Army (TNI) begins from this instant and will continue until

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<sup>11</sup> Report by the Representative of the Secretary-General in West Irian, submitted under Article XXI, Paragraph 1, of the Agreement between the Republic of Indonesia and the Kingdom of the Netherlands Concerning West New Guinea (West Irian). UN Document No. A/7723. The New York Agreement had called for UN experts to remain in the territory from the time of the transfer of West Irian to Indonesia to the Act of Free Choice to assist with preparations for the vote. However, no UN representative was present from May 1, 1963 to August 23, 1968 due to the temporary withdrawal of Indonesia from the UN.

<sup>12</sup> “Assessment for Papuans in Indonesia,” *Minorities at Risk*, December 31, 2003, <http://www.cidcm.umd.edu/inscr/mar/assessment.asp?groupId=85005> (accessed January 2, 2007).

<sup>13</sup> “OPM Information,” *Inside Indonesia*, Digest 02, January 30, 1996; “AI Report 1997: Indonesia and East Timor,” Amnesty International, 1998; “Indonesia: Resources and Conflict in Papua,” International Crisis Group, September 2002.

such time as we have reclaimed the sovereignty of our people and our country.”<sup>14</sup> It is not clear whether this statement was representative of the views of all factions of the OPM/TPN.

Since the fall of former President Suharto a broad independence movement has also emerged encompassing various religious denominations, students, and other civil society groups. Their activities have mainly involved non-violent resistance to authorities in Papua through flag raisings, mass mobilization for demonstrations, and self-declared “national” congress meetings to form political manifestos for an independent Papua. Raising the Morning Star banner to symbolize an independent Papua has been the most common form of non-violent protest by Papuans for thirty years.

The Catholic, Protestant, and Anglican churches and Islamic leaders have also been at the forefront of a movement to declare Papua a “Land of Peace” whereby dialogue is sought with Jakarta officials to come to a peaceful solution for all Papuans.<sup>15</sup>

In October 2001 Jakarta granted Papua a large degree of autonomy, legally enshrined through the Special Autonomy Law referred to above. However, regulations implementing key parts of the law were slow in coming and the establishment of the Papuan People’s Council (MRP), a key provision in the Special Autonomy Law, did not happen until 2005.<sup>16</sup>

## Human Rights Background

Indonesian authorities have responded to the long-running, low-level armed insurgency in Papua with militarization of the region and often harsh and disproportionate responses to dissent or criticism. For nearly thirty years, from 1969, when the territory was formally incorporated as part of Indonesia, until October 1998, five months after the

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<sup>14</sup> “Report on the decisions of the first congress of the West Papuan National Liberation Army (TPN-PB),” Press Release, the West Papuan People’s Representative Office, P.O. Box 1571, Port Vila, Republic of Vanuatu, November 16, 2006.

<sup>15</sup> “Geneva Appeal on West Papua: Papua Land of Peace,” Faith Based Network on West Papua, April 2005; “Papua: Land of Peace?” Franciscans International, April 7, 2005.

<sup>16</sup> For more information on this issue see “Papua: The Dangers of Shutting Down Dialogue,” Asia Briefing Paper, International Crisis Group, March 23, 2006; “Dividing Papua: How not to do it,” Asia Briefing Paper, International Crisis Group, April 9, 2003.

fall of former President Soeharto, Papua was formally designated a Military Operations Area (Daerah Operasi Militer, DOM). Under DOM, in effect in Papua far longer than anywhere else in Indonesia, security forces were given free reign to combat resistance to Indonesian rule.

As documented by Human Rights Watch and others, government counterinsurgency operations during the period targeted not only armed groups but also civilian opposition groups, all with almost complete impunity. As a result, the independence movement was driven underground, local groups reported a stream of atrocities, and fear was pervasive. As elsewhere in Indonesia, civilians suffered disproportionately during army operations.<sup>17</sup> The number of civilian casualties is not known; no comprehensive independent investigation has ever been attempted. In late 1999, the director of ELSHAM told a newspaper he had documentation of 921 deaths resulting from military operations conducted in various parts of Irian Jaya between 1965 and 1999.<sup>18</sup> Many Papuans believe the actual number is at least several times that figure. Counterinsurgency efforts and associated fear are also believed to have repeatedly led thousands of people to flee their villages and, given the harsh conditions prevailing in much of Papua, have reportedly led to several episodes in which large numbers of people died from disease, malnutrition, or starvation.

Arrests of political activists and opposition leaders during the Soeharto era in Indonesia have been well documented. Soeharto and his military ran a police state whose tentacles reached into virtually all islands and villages of the archipelago. Journalists were often arrested and magazines were banned. It was unlawful to make statements deemed insulting to the president and legal restrictions on free expression were strictly enforced.<sup>19</sup>

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<sup>17</sup> Human Rights Watch, "Death in Custody Increases Fear in Papua," New York, April 17, 2003; Human Rights Watch, "Investigate Death of Papuan Leader," New York, November 11, 2001; Human Rights Watch, "Violence and Political Impasse in Papua," New York, Vol. 13, No. 2 (C) July 1, 2001; Human Rights Watch, "Human Rights and Pro-Independence Actions in Papua," New York, 1999-2000, Vol. 12, No.2 (C); Human Rights Watch, "Human Rights and Pro-Independence Actions in Irian Jaya," New York, December 28, 1998, Vol. 10, No. 8 (C).

<sup>18</sup> "Menghitung Korban, Menarik Dukungan," *Tekad No. 5/Tahun II*, November 29 – December 5, 1999.

<sup>19</sup> Human Rights Watch, "Academic Freedom in Indonesia: Dismantling Soeharto Era Barriers," New York, 1998; Human Rights Watch and Amnesty International joint report, "Release Prisoners of Conscience Now!," June 1998; Human Rights Watch/Asia, "Press Closures in Indonesia One Year Later," Vol. 7, no. 9 (C), July 1995; Asia Watch (now Human Rights Watch/Asia), "Students Jailed for Puns," Vol. 5, no. 5, March 1993; Asia Watch (now Human Rights Watch/Asia), "Anatomy of Press Censorship in Indonesia," Vol. 14, no. 12, April 1992; Asia Watch (now Human Rights Watch/Asia), "Indonesia: Criminal Charges for Political Caricatures," May 13, 1991; Asia Watch (now Human Rights Watch/Asia), "Indonesia's Salman Rushdie," April 10, 1991.

After the fall of Soeharto in May 1998, it was hoped by many that Indonesia would enter an era of liberalization, in which fundamental human rights principles, such as freedom of expression and association, would be respected. While there have been distinct improvements in human rights protections in Indonesia on a number of fronts since May 1998, the progress has been less than hoped for, particularly on a number of freedom of expression issues, and conditions in Papua in this sense are reflective of larger, ongoing concerns.

Current Papuan demands are themselves rooted, among other things, in past military abuses and pervasive mistrust. Support for independence has also been fueled by loss of ancestral land to development projects and the influx of migrants from other parts of Indonesia seeking employment and land. The large migrant population—migrants form a majority in many coastal cities and towns—has caused tensions with a growing population competing for few jobs. Many Papuans feel discriminated against and marginalized in their own land.

There has been little movement by post-Soeharto governments to address past or contemporary human rights violations. This has had a significant impact on public sentiment towards Jakarta, as many abuses remain fixed in the public consciousness. These include extrajudicial executions, arbitrary detention, and torture during police raids on student dormitories in Abepura, Papua, in December 2000, and during operations by BRIMOB (Police Mobile Brigade) units in 2001. The official response to the assassination of prominent Papuan independence leader Theys Eluay in 2001 has also deepened cynicism. In 2003 seven low-level special forces (Kopassus) soldiers were found guilty, not of murder, but of mistreatment and battery leading to Eluay's death. The stiffest sentence was only three-and-a-half years. The chief of staff of the army, General Ryamizard Ryacudu, called the men heroes for the killing of a “rebel.”<sup>20</sup> No further investigations have been undertaken into who ordered or financed the killing in the first place.

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<sup>20</sup> M. Rizai Maslan, “The Theys Murder Verdict: The TNI View,” *www.detik.com* (accessed April 23, 2003).

### III. Legal Framework

Although political space for dissent in Indonesia has increased enormously since the fall of Soeharto, broadly worded laws limiting freedom of expression remain on the books and continue to enable authorities to arbitrarily target individuals. These laws, on their face and in their application, violate the fundamental rights to freedom of expression and association, and lead to arbitrary detention.

Article 28 of Indonesia's 1945 Constitution refers to freedom of expression, but subsequent legislation and regulations have restricted this basic right.<sup>21</sup> The result is that, by law, Indonesians can still be imprisoned for “insulting” the president, or expressing “feelings of hatred” against the government, even if such sentiments are offered as part of a peaceful exercise of political dissent.<sup>22</sup>

In its general comment No. 10, the UN Human rights Committee specifically raised concern about countries which, in their periodic reporting on compliance with the ICCPR, state that their constitutions protect freedom of expression, but make no mention of legal gaps or developments that may actually serve to restrict this right. With regard to country reports the committee stated:

In order to know the precise regime of freedom of expression in law and in practice, the Committee needs in addition pertinent information about the rules which either define the scope of freedom of expression or which set forth certain restrictions, as well as any other conditions which in practice affect the exercise of this right. It is the interplay between the principle of freedom of expression and such limitations and restrictions which determines the actual scope of the individual's right.<sup>23</sup>

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<sup>21</sup> 1945 Constitution of the Republic of Indonesia, article 28 (“Freedom of association and assembly, of verbal and written expression and the like, shall be prescribed by law”).

<sup>22</sup> Human Rights Watch, “A Return to the New Order? Political Prisoners in Megawati’s Indonesia,” New York, Vol 15 No. 4 (C), July 2003.

<sup>23</sup> Human Rights Committee, General Comment No. 10, Freedom of Expression Art. 19 (Nineteenth Session, 1983), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/Gen/1/Rev.1 (1994).

Indonesia is an example of a country in which the exceptions—the limitations and restrictions referred to by the committee—still are too often at odds with the underlying freedom of expression principle.

To the extent individuals are arrested and imprisoned for peaceful participation in flag raising ceremonies, such treatment constitutes arbitrary arrest and detention in violation of international human rights law. In 1999 the U.N. Working Group on Arbitrary Detention visited Indonesia, concluding that “the majority of individuals facing charges in connection with the above-mentioned symbolic flag-raising ceremonies were arrested for having mostly peacefully exercised their beliefs, and that their detention [was] arbitrary within the meaning of category II of the Group’s methods of work.”<sup>24</sup>

For the purposes of this report Human Rights Watch has looked specifically at non-violent activists who have been arrested, detained, and convicted under two sets of articles in the Indonesian Criminal Code (KUHP).<sup>25</sup> The first set is the “hate sowing” (*Haatzai Artikelen*) articles of KUHP. Articles 154, 155, and 156 criminalize “public expression of feelings of hostility, hatred or contempt toward the government” and prohibit “the expression of such feelings or views through the public media.” The articles authorize prison terms of up to seven years for violations.

Left over from the Dutch colonial administration, these articles were often used by the Soeharto government to restrict free expression. Political opponents, critics, students, and human rights defenders were targeted and silenced.<sup>26</sup> Not only are the articles subject to over-broad interpretation, but their very essence is to limit the right of individuals to free expression. They also violate the spirit of Indonesia's constitution, which had sought to protect this right at the time of independence.

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<sup>24</sup> U.N. Commission on Human Rights, Report of the Working Group on Arbitrary Detention on its visit to Indonesia (January 31 – February 12, 1999), E/CN.4/2000/4/ADD.2, August 12, 1999. <http://daccessdds.un.org/doc/UNDOC/GEN/G99/147/03/PDF/G9914703.pdf?OpenElement> (accessed January 2, 2007), para. 65.

<sup>25</sup> KUHP (Kitab Undang-Undang Hukum Pidana, Indonesian Criminal Code).

<sup>26</sup> Human Rights Watch, “Academic Freedom in Indonesia: Dismantling Soeharto Era Barriers,” New York, 1998; Human Rights Watch and Amnesty International Joint Report, “Release Prisoners of Conscience Now!,” June 1998; Human Rights Watch/Asia, “Press Closures in Indonesia One Year Later,” Vol. 7, no. 9 (c), July 1995; Asia Watch (now Human Rights Watch/Asia), “Students Jailed for Puns,” Vol. 5, no. 5, March 1993; Asia Watch (now Human Rights Watch/Asia), “Anatomy of Press Censorship in Indonesia,” Vol. 14, no. 12, April 1992; Asia Watch (now Human Rights Watch/Asia), “Indonesia: Criminal Charges for Political Caricatures,” May 13, 1991; Asia Watch (now Human Rights Watch/Asia), “Indonesia’s Salman Rushdie,” April 10, 1991.

The second set are articles that create the offence of treason or rebellion and are invoked against persons who are alleged to have participated in, or shown support for, the armed separatist group, the OPM (Organisasi Papua Merdeka, Free Papua Organisation) in Papua. While membership in the OPM itself is not a violation of the law in Indonesia, as the OPM is not an illegal organization,<sup>27</sup> alleged supporters are typically charged with the crime of *makar* (treason or rebellion). The government seems to favor this catch-all offense, which uses extremely broad language and is punishable by up to life imprisonment, rather than to prosecute persons for specific offenses, such as weapons possession, kidnapping, or murder. These provisions are vague and have historically been used to target non-violent political activists across Indonesia.

As the cases below illustrate, in the context of the armed insurgency in Papua the open-ended language of the law has permitted convictions without a real demonstration of wrongdoing. Charges of this kind were also regularly used in Aceh to target alleged members of GAM (*Gerakan Aceh Merdeka*, Free Aceh Movement) and their supporters. In Papua as in Aceh prior to the peace agreement there, allegations of mere association with the rebel group, whether or not based on credible evidence have resulted in convictions.

The crime of *makar* is listed in the KUHP under articles in a section entitled “Crimes Against the Security of the State” (*Kejahatan Terhadap Keamanan Negara*). Articles 106-108 of the KUHP state that:

Article 106

The attempt undertaken with intent to bring the territory of the state wholly or partially under foreign domination or to separate part thereof, shall be punished by life imprisonment or a maximum imprisonment of twenty years.

Article 107

- 1) The attempt undertaken with the intent to cause a revolution shall be punished by a maximum imprisonment of fifteen years;

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<sup>27</sup> The only organization to have been banned in Indonesia is the Indonesian Communist Party, which was banned in 1966 by a decree of the Provisional People’s Consultative Assembly (Decree XXV/MPRS/1966).

- 2) Leaders and originators of an attempt referred to in the first paragraph shall be punished by life imprisonment or a maximum imprisonment of twenty years.

#### Article 108

- 1) Guilty of rebellion and punished by a maximum imprisonment of fifteen years shall be:
  - First, the person who takes up arms against the government;
  - Second, the person who, with the intent to rebel against the government, rises with or joins a band which take up arms against the government,
- 2) Leaders and originators of a rebellion shall be punished by life imprisonment or a maximum imprisonment of twenty years.<sup>28</sup>

In its report on its 1999 visit to Indonesia, the UN Working Group on Arbitrary Detention drew particular attention to the provisions related to crimes against the security of the state (Articles 104-129), and called for them to be amended. The Working Group stated that:

Most of these provisions are, especially inasmuch as the intentional element of the crime is concerned, drafted in such general and vague terms that they can be used arbitrarily to restrict the freedoms of opinion, expression, assembly and association. They can be used notably to target the press, peaceful political opposition activities and trade unions, as they were frequently under the former regimes.<sup>29</sup>

The definition of an act in support of the OPM that constitutes *makar* is extremely elastic and susceptible to abuse by security officials and prosecutors attempting to prove a crime. Although OPM combatants who have either been captured or have surrendered are among the prisoner population in Papua, the detainee population also includes civilians who have been accused of supporting or sympathizing with the OPM. The definition of support or sympathy is so broad that it may include families of OPM

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<sup>28</sup> KUHP, Articles 106-108.

<sup>29</sup> U.N. Commission on Human Rights, Report of the Working Group on Arbitrary Detention on its visit to Indonesia (January 31 – February 12, 1999), E/CN.4/2000/4/add.2, August 12, 1999.

members, as well as individuals who are opposed to Indonesian government policy in Papua, including human rights defenders, non-violent political activists, and students.

In its decisions regarding cases of treason or spreading hatred the courts in Papua have also played a very negative role. In almost every case documented in this report, the courts handed down sentences harsher than those sought by the prosecution notwithstanding that the “offences” of the defendants were acts of legitimate peaceful political expression.

The courts have traditionally been treated with particular distrust by the population of Papua. In his report on his July 2002 visit to Indonesia, the UN Special Rapporteur on the independence of judges and lawyers, Dato’ Param Cumaraswamy, noted as much, concluding that the people of Papua “have no confidence in the administration of justice.”<sup>30</sup>

In the past six years, Indonesia has taken some steps to address the situation, creating in rapid succession a Constitutional Court, a Judiciary Commission, an Ombudsman Commission, a Prosecutorial Commission, a Corruption Eradication Commission, and a Special Court for Corruption. However, the effectiveness of these new bodies is yet to be tested.

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<sup>30</sup>“Report of the Special Rapporteur on the independence of judges and lawyers Dato’ Param Cumaraswamy on his visit to Indonesia (July 15 – July 24, 2002),” E/CN.4/2003/65/Add.2, January 13, 2003.

## IV. Cases of Political Prisoners Jailed for Peaceful Expression

Because of restrictions on access to Papua and on information about developments there, the exact number of cases in which peaceful political activists have been arrested, tried, and convicted in Papua is impossible to establish with certainty. However, that this happens with regularity is not in doubt. To illustrate this problem, Human Rights Watch highlights in detail the cases of five individuals and summarizes those of thirteen others.<sup>31</sup>

### Filep Karma and Yusak Pakage

Filep Karma, a 45-year-old civil servant, and Yusak Pakage, a 26-year-old student, are perhaps the most famous of Papua's political prisoners.

Karma and Pakage were arrested on December 2, 2004, and charged with *makar* (rebellion), a day after hundreds of students gathered at the local university campus and began a long march yelling slogans of "Papua" and "Freedom!" The chanting also included calls for the rejection of the law on special autonomy, and for the separation of Papua from Indonesia.<sup>32</sup>

The celebrations were held in Trikora Field in Abepura, and consisted of speeches, prayers, and dancing. During the course of the celebration some members of the crowd

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<sup>31</sup> Human Rights Watch was unable to confirm whether or not the following individuals were convicted: (1) Yakob Ambo Mamori: On January 28, 2006, Yakob Mamori was arrested by police in Jayapura after raising the Morning Star flag. Newspapers reported that Yakob was arrested after local residents alerted the police that four people were raising the flag outside the Sentani District Office. According to the chief of the Jayapura Police, Adj. Sr. Comr. Jacob Kalembang, Yakob admitted that he had helped to raise the flag, but that he had been told to do so by "unidentified people." The police reported that they were trying to trace the other three identified individuals. The police may have dropped the charges as it is believed that Yakob has some form of mental disability. The police have stated, however, their intent to continue the search for the three other people who are believed to have been involved with the flag raising. "Pemeriksaan tersangka bintang kejora dihentikan," *Cenderawasih Pos*, February 2, 2006; "Papuan arrested for Flying Flag," *The Jakarta Post*, January 30, 2006. (2) Charlie Imbir, Chris Ukago, Herman Katmu and Markus Jiwitao: In December 2003 four Papuan students, including one high school student, studying in the Javanese town of Semarang were arrested by the police after they tied Morning Star flags to balloons and set them afloat in the town centre to mark Papuan independence day. Indonesian police officer Sergeant Joko Sutanto told reporters that the students could be charged with treason, a crime that carries a maximum punishment of 20 years of imprisonment. "Indonesia arrests four Papuans for flying separatist flags," Associated Press, December 4, 2003; Jason MacLeod, "Students face twenty years' jail for raising flag," *Green Left Weekly*, January 14, 2004.

<sup>32</sup> "Pengibaran Bintang Kejora di Abe Berbuntut Bentrok," *Cenderawasih Pos*, December 2, 2004.

raised the Morning Star flag.<sup>33</sup> Witness statements record that during the speeches the atmosphere was calm. It was only at the moment when the Morning Star flag was raised that there was violence. Witness statements in the letter of charges against Karma state that the flag raising was a spontaneous rather than organized act.<sup>34</sup> When the police attempted to forcibly remove the flag clashes broke out and the crowd attacked the police with blocks of wood, rocks, and bottles. The police responded by firing into the crowd.<sup>35</sup>

The local newspaper, *Cenderawasih Pos*, reported that the clashes between the police and the members of the celebration resulted in injuries to five civilians ranging from gunshot wounds to sprained limbs, and injuries to eight members of the police.<sup>36</sup>

During his trial, Package described what happened at the event:

At the time that the Morning Star flag was raised, I was standing with a megaphone and coordinating with the local police. I don't know who brought the flag or who raised it. I stood between the police and the masses whilst the police were firing at the crowd and the crowd was throwing rocks at the police. I was trying to control the situation so that both sides were cool-headed... The megaphone I was holding was destroyed by a bullet.<sup>37</sup>

The Prosecutor's "Summary of Charges Sheet" includes witness testimony from a Mr. Austrin Seserai, part of the police criminal investigation unit, who describes the scene:

The Reserve Unit was on alert for the whole area of Abepura. On 1 December at 6am, we undertook a sweeping of Waena and on our way

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<sup>33</sup> The Morning Star flag is a popular symbol of independence and flag raising ceremonies has been used to declare opposition to Indonesian rule in Papua.

<sup>34</sup> Letter of Charges Number PDM-112/JPR/Ep.2/12/2004: Pendeta Yesaya Majar Dimara, pp1-2.

<sup>35</sup> Letter of Charges Number PDM-112/JPR/Ep.2/12/2004: Ivo Fontana and Ibrahim Hadi p4-5; "Pengibaran Bintang Kejora di Abe Berbuntut Bentrok" *Cenderawasih Pos*, December 02, 2005.

<sup>36</sup> "Pengibaran Bintang Kejora di Abe Berbuntut Bentrok," *Cenderawasih Pos*, December 2, 2004; "Filep Karma ditangkap," *Cenderawasih Pos*, December 02, 2004.

<sup>37</sup> Defense Brief of Yusak Package regarding Indictment (Surat Dakwaan) Number PDM-112 /JPR /Ep.2/12/2004.

back to Abepura at around 8am we noticed that some people were gathering on the field, so we stopped and observed from the top of the road. I don't know who brought the flag and I don't know who raised it-but it was the community who lowered it. At the time the flag was raised, the defendant [Yusak Pakage] was with the community and dancing in a circle. Afterwards I saw the defendant [Yusak Pakage] facing the forces and in dialogue with the police.<sup>38</sup>

Karma and Pakage were arrested the next day. Karma was later quoted on a broadcast on an Australian television program as saying “that day in 2004 we were arrested, we were put on a truck, my hands were locked behind my back, they pulled my hair and put me on a truck.”<sup>39</sup>

The indictments against both men state the primary charge as “conspiracy to rebel with the intent to cause disintegration of the Republic of Indonesia and to cause social unrest” (Article 110 (1) in connection with Article 106 of the Indonesian Criminal Code).<sup>40</sup> A second charge was “... undertaking or giving of orders or participation in the act of Rebellion with the intention of causing disintegration or separation of the Republic of Indonesia,” (Article 106 and Article 55 (1)).<sup>41</sup> The final charge was “publicly stating hostility, feelings of hate or offense toward the government of the Republic of Indonesia,” (Article 154 in connection with Article 55 (1)).<sup>42</sup> The prosecutor sought five years of imprisonment for each defendant.

Prior to December 1, Karma and a man called Frans Ukago (later used as a prosecution witness during the trial) had signed a letter that was sent to the local police force informing them of their intent to hold a celebration on the December 1 anniversary.<sup>43</sup> The prosecutor alleged that Karma and Pakage had held a meeting with a small group of

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<sup>38</sup> Letter of Charges Number PDM-112/JPR/Ep.2/12/2004: Austrin M. Seserai, p2.

<sup>39</sup> “Convicted Papuan speaks out,” Lateline, Australian Broadcasting Corporation, broadcast May 4, 2006, <http://www.abc.net.au/lateline/content/2006/s1631133.htm>, (accessed December 11, 2006).

<sup>40</sup> Surat Dakwaan No. Reg. Perk. PDM-111/T.1.10/Ep2/12/2004 – Filep Karma; Surat Dakwaan No. Reg. Perk. PDM-112/T.1.10/Ep.2/12/2004 – Yusak Pakage.

<sup>41</sup> Surat Dakwaan No. Reg. Perk. PDM-111/T.1.10/Ep2/12/2004, pp1-2.

<sup>42</sup> Surat Dakwaan No. Reg. Perk. PDM-111/T.1.10/Ep2/12/2004, pp1-2.

<sup>43</sup> Surat Tuntutan Filep Jacob Semeul Karma No. Reg.Perk: PDM-111/JPR/Ep.2/12/2004, p.6.

around twenty people beside the Cenderawasih University Museum, also prior to December 1.<sup>44</sup> Witnesses stated that Filep Karma agreed at the meeting to take full responsibility for the entire event including prayers, speeches, entertainment, and the Morning Star flag-raising ceremony.<sup>45</sup>

There are conflicting reports of when this meeting was held, but it appears to have been sometime between November 24 and 28.<sup>46</sup> However, both defendants and witnesses are clear that the meeting's content was not to discuss secessionism, but just December 1 celebrations.

Defense lawyers for the pair argued that while the prosecutor could prove that there was a meeting held near the university museum they could not prove or substantiate the claim that the defendants planned to establish an independent state of Papua or intended to disintegrate the Republic of Indonesia.<sup>47</sup> None of the witnesses for the prosecution made any mention of an independent state, and none of the evidence accumulated by the prosecution supported this theory either. Even if they had proved such discussions, so long as the plans did not involve violence this would be protected speech under international law.

In his statement before the Court on April 19, 2005, Karma again stated that the flag raising was a spontaneous act of the masses, and that he was not aware that it was going to occur.<sup>48</sup>

Karma was formally charged on December 2, 2004 and held in police custody throughout his trial and during the subsequent appeals process. His defense counsel argued that West Papuans celebrated West Papuan National Day with the raising of the

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<sup>44</sup> Nethy Dharma Somba, "Papuan separatists on trial for treason," *The Jakarta Post*, (accessed January 13, 2005).

<sup>45</sup> Surat Tuntutan PDM-111/JPR/Ep.2/12/2004 – Re: Filep Jacob Samuel Karma- Statement from Jefrison Alvian Pagawak, p1.

<sup>46</sup> Surat Tuntutan Filep Jacob Semeul Karma No. Reg.Perk: PDM-111/JPR/Ep.2/12/2004, p.7.

<sup>47</sup> Note of Defense from the Legal Advisor of the Accused: Filep Karma in the case No. 04/Pid.B/2005/PN-JPR, p16.

<sup>48</sup> Note of Defense from the Legal Advisor of the Accused: Filep Karma in the case No. 04/Pid.B/2005/PN-JPR, p15.

Morning Star flag as well as the Indonesian flag (Sang Merah Putih) and that it was undertaken in a peaceful manner with cultural courtesy.<sup>49</sup>

While in pre-trial detention, Karma went on hunger-strike and took a vow of silence. He symbolized this by tying a white cloth around his mouth. When questioned by reporters as to why he was undertaking the hunger strike and vow of silence, Karma replied (in writing) that it was form of protest against the fact that he was being held as a political prisoner.<sup>50</sup>

As part of their defense, both Karma and Pakage challenged the jurisdiction of the State Court of Jayapura (Hakim Negeri Jayapura), making the political argument that an Indonesian court did not have the right to prosecute “nationals” of West Papua. The court rejected this argument.<sup>51</sup>

The defense also challenged the impartiality of Judge A. Lakoni Hernie on the grounds that the judge had made a series of inflammatory statements. These statements included:

- “Smash in the head of Filep if he’s naughty” (Uttered in a direction by the judge to the police to break-up a public speech by Filep Karma on April 19, 2005).<sup>52</sup>
- “Don’t bring the name of your God in here, your God has been dead a long time” (Uttered to Karma during the hearing on April 19, 2005).<sup>53</sup>

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<sup>49</sup> Note of Defense from the Legal Advisor of the Accused: Filep Karma in the case No. 04/Pid.B/2005/PN-JPR, p5. The lawyers also raised arguments that the actions were consistent with the Declaration on the Granting of Independence to Colonial Countries and Peoples Resolution 1514 (XV) and Article 73 of the United Nations Charter which obliges States governing territories to ensure, amongst other things, their political, economic, social, and educational advancement, and to take due account of the political aspirations of the peoples. Karma’s defense also incorporated the historical argument that a ‘one man one vote’ referendum was never undertaken in West Papua, and therefore Indonesia had breached the UN New York Agreement (1962) regarding the future of West Papua.

<sup>50</sup> “Filep Karma Mogok Makan dan Membisu,” *Cenderawasih Pos*, December 6, 2004; “Filep Karma Mogok Makan Sampau Mati,” *Cenderawasih Pos*, December 10, 2004; “Filep Karma Diisukan Meninggal,” *Cenderawasih Pos*, December 15, 2004.

<sup>51</sup> “Eksepsi Penasehat Hukum Terdakwa Ditolak,” *Papua Pos*, February 03, 2005, p4; “Eksepsi Filep Karma Ditolak,” *Cenderawasih Pos*, February 4, 2005. Judge Iksan rejected the statements outright and explained his decision in court. He stated, “The panel of judges gives the opinion about his identity, he is a civil servant in the province of Papua, it is not possible that a foreigner can become a civil servant. As *de jure* and *de facto* he is a child (employee) of the former governor, and the suspect has not changed citizenship but remains a citizen of Indonesia. Because of that Jayapura Court, authorized to hear cases, rejects the defendants’ statements.”

<sup>52</sup> Note of Defense from the Legal Advisor of the Accused: Filep Karma in the case No. 04/Pid.B/2005/PN-JPR, 2005, p7-8.

- “You be quiet, you want to die do you?” (Uttered by the judge while he was kicking and punching a female pro-Karma protestor).<sup>54</sup>

Pakage claims that the police lied and tricked him prior to his arrest. During the clash with the police, Karma had disappeared and the angry crowd assumed that he had been kidnapped by the security forces. In order to prevent the crowd from sparking a riot at the police station, the police told Pakage and approximately twenty colleagues to go to the Jayapura Police Station to check for themselves on Karma’s whereabouts. Once they arrived at the police station, seventeen members of the group were detained and interrogated by the police. They were subsequently released but the next day Pakage was held for treason and spreading hatred against the government. Pakage refused to participate in any questioning as he did not have a lawyer present, nor had he had an opportunity to consult with one. He maintained this stand until December 11, when he says he relented due to constant pressure, persuasion, and cajoling from the police. Pakage claims that the investigator doctored his statement, added text, and forced him to sign it. During his trial, Pakage asked the court to withdraw his statement, which he claims was made under duress.<sup>55</sup>

Initial accusations against Pakage included “undertaking with one or more persons the use of violence or threatening the use of violence against a public civil servant or a civilian who is helping the public civil servant” (KUHP Article 214). This charge was later dropped in the formal indictment, but was used to extend the period of pre-trial detention for a further 40 days.<sup>56</sup>

In court on February 14, 2005, Pakage read aloud a statement in which he stated that the accusations against him were vague and inaccurate. He also stated “I do not accept the accusations of the Public Prosecuting Attorney and I request that I be released.”<sup>57</sup> His objections included the following points:

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<sup>53</sup> Note of Defense from the Legal Advisor of the Accused: Filep Karma in the case No. 04/Pid.B/2005/PN-JPR, 2005, p7-8.

<sup>54</sup> Note of Defense from the Legal Advisor of the Accused: Filep Karma in the case No. 04/Pid.B/2005/PN-JPR, 2005, p7-8; “*Catatan dibalik kerusuhan Sidang Filep Karma dan Yusak Pakage*,” ELSHAM News Service, May 11, 2005.

<sup>55</sup> Defendants Response to Charges number PDM-112/JPR/Ep.2/12/2004 in the name of Yusak Pakage, January 24, 2005, p3.

<sup>56</sup> Document for Extension of Imprisonment Number B-241/ T1.10/Epp.2/12/2004: Yusak Pakage, p.1.

<sup>57</sup> “*Sidang Makar, Yusak Pakage Tegang*,” *Cenderawasih Pos*, February 15, 2005, p2.

1. He was not a signatory to the notice given to the Regional Police regarding the event planned at Trikora Field and therefore could not be considered a “ringleader” or responsible for the event that took place.<sup>58</sup>
2. He could not have attended the alleged meeting next to the Cenderawasih University Museum, as on the date of the alleged meeting he had been attending a prayer memorial for the late Ambrosius Mote in a boarding house in Padang Bulan, Abepura.<sup>59</sup>
3. He had no desire nor plans to raise the Morning Star flag and was not involved in the preparation or raising of the flag at Trikora field. In addition he had never planned to rebel against the Republic of Indonesia in any form, either physical or verbal.<sup>60</sup>
4. At the time the Morning Star flag was raised he was standing with a megaphone and coordinating with the local police. He does not know who brought the flag to the field nor who raised it; the identity of the person(s) who raised the flag has not been determined by the police or the prosecutor.<sup>61</sup>
5. His intention in taking control of the situation at the field was so that both sides would become cool-headed (*berhati dingin*) to prevent clashes and to facilitate dialogue. He stood between the police and masses while the police were firing at the crowd and the crowd was throwing rocks at the police.<sup>62</sup>
6. He encouraged the masses to lower the Morning Star flag and, despite initial reluctance and stubbornness, after twenty minutes they agreed to do so.<sup>63</sup>
7. None of the evidence provided by the prosecutor, including documents, the flag pole, an edition of the Cenderawasih Pos newspaper, and other material items, supported the evidentiary requirements for conviction for an act of rebellion.<sup>64</sup>
8. The facts only showed that Pakage was a coordinator, and that he gave a speech.<sup>65</sup>

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<sup>58</sup> Defendants Response to Charges (Eksepsi) number PDM-112/JPR/Ep.2/12/2004 in the name of Yusak Pakage, January 24, 2005.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

The trial of Karma and Pakage was marred throughout by protests, clashes between supporters of the two men and the police, and threats and intimidation towards their defense team by anonymous persons.

On May 10, 2005, a major clash between supporters and security forces occurred outside the court. Court windows and some vehicles were smashed when protestors hurled rocks at the police.<sup>66</sup> The supporters were protesting the prosecutors' request for a five-year prison sentence for Karma, and were demanding that Karma be allowed to address the crowd directly. When no response was forthcoming, the demonstrators tried to block the vehicle that was returning from the courthouse with the two defendants inside. At least thirteen people, including two police officers, were wounded in the clashes that ensued.<sup>67</sup>

Many of the protestors claimed that the security forces had used excessive force in responding to the demonstrations, and that several protestors were wounded as a result. One of the victims stated that a security force member gave him an injection in the neck shortly after he had been put into a police vehicle.<sup>68</sup>

Some demonstrators reported the incident to the Papuan branch of Indonesia's National Commission on Human Rights (*Kommissi Nasional Hak Asasi Manusia*, Komnas HAM), claiming that security forces had used extreme brutality. In their report the demonstrators stated:

We think that in carrying out their duties the police acted brutally resulting in many victims. We request that the National Human Rights Commission of Papua carry out an investigation of the Police members and civilians that were involved in perpetrating violence.<sup>69</sup>

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<sup>66</sup> "Violence breaks out in Indonesia's Papua, many injured," Deutsche Presse Agentur, May 10, 2005; "Akibat Sidang Filep dan Yusak Banyak Sidang Tertunda," *Papua Pos*, May 27, 2005.

<sup>67</sup> "Belum Bisa Dinyatakan Penlanggaran HAM," *Papua Pos*, May 13, 2005; "At least 13 injured in riot at trial of Papua pro-independence activist," Agence France Presse, May 10, 2005.

<sup>68</sup> "Belum Bisa Dinyatakan Penlanggaran HAM," *Papua Pos*, May 13, 2005.

<sup>69</sup> "Belum Bisa Dinyatakan Penlanggaran HAM," *Papua Pos*, May 13, 2005.

The national police chief conceded that the police had overreacted. Jayapura police chief Son Ani and his subordinate Novly Pitooy were removed from their positions. Nine other lower-ranking officers were demoted on grounds of human rights and procedural violations that they were deemed to have committed during the protests.<sup>70</sup> No criminal prosecutions have been undertaken.

After this the security forces assigned 300 police officers to protect the court. The police guarded all sides of the court, as well as the main street leading to the court, and conducted searches of all persons entering the court building.<sup>71</sup> Local papers reported the court room was full of visitors and supporters of the two defendants, with all seats taken and people crowding the court's doorways.<sup>72</sup> One of the defense lawyers for Karma and Pakage, Paskalis Letsoin, was quoted in the *Cenderawasih Pos* as saying:

If it is being said that we as the defense team were the trigger for the May 10 riots, then this is erroneous. What we are doing is ensuring that all the legal processes run according to procedure, without pressure from any side, and the court must be just in its attitude with a strong presumption of innocence, unlike what we have seen occurring up until now.<sup>73</sup>

Other supporters calling themselves the "Street Parliament of the Papuan People" also protested outside the court during the trial, demanding the release of Karma and Pakage on the basis that they were political prisoners. Pamphlets distributed at the demo appealed to the government to:

Free Filep Karma and Yusak Pakage and other Papua Political prisoners, if the state forbids its people to be political then the state is denying the human rights of the Papuan people.<sup>74</sup>

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<sup>70</sup> "Country Reports on Human Rights Practices 2005: Indonesia," US Department of State, March 8, 2006.

<sup>71</sup> "Sidang Maker Filep Karma, Ditundah," *Cenderawasih Pos*, May 18, 2005.

<sup>72</sup> "Sidang Maker Filep Karma, Ditundah," *Cenderawasih Pos*, May 18, 2005.

<sup>73</sup> "PH Filep Karma Ancam Boikot Sidang," *Cenderawasih Pos*, May 23, 2005, p 2.

<sup>74</sup> "JPU Tak Siap, Tuntutan Fielp Karma Ditunda," *Cenderawasih Pos*, May 14, 2005, p4 & 8.

Karma and Pakage's defense team also received threats and intimidation during the trial. A severed dog's head was left in the front of the Jayapura Legal Aid office with a note tied around its head that said "Paskalis/Pieter [names of the lawyers], this is an example of your head, from the people of NKRI [Unitary Republic of Indonesia]."75

Reacting to the incident Pieter Ell, the main defense lawyer in the case, stated, "There are strong indications that there are people who want to intentionally create a horizontal conflict [i.e. civil conflict]... and the security forces should be questioned on this."76

At one point the defense team registered their protest by silently distributing their written defense brief to the judges, prosecutor, and defendants, and walking out of the courtroom. The judge then asked the defendants to read their own defense in the absence of any legal representation.77

Karma read his own defense to the court. Pakage stated that he felt unwell and was not fit to read out his own defense. The judge ignored the complaints of the defendants and requested a response from the prosecutor. The prosecutor requested five years of imprisonment for both Filep Karma and Yusak Pakage.78

On May 26, 2005, both Karma and Pakage were found guilty of the charges and sentenced to 15 years and 10 years of imprisonment respectively.79 They were also both fined 5,000 Rupiah (about US\$0.50) for court costs and Karma was stripped of his status as a public servant.80

In justifying the heavy sentence given to Karma, which was three times longer than the original five-year jail term requested by the prosecutor, the judges stated that there were many factors that weighed against the defendant and no mitigating factors. Filep Karma

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75 "Diteror dengan Kepala Anjing," *Papua Pos*, May 20, 2005; "PH Filep Karma Dikirim Kepala Anjing," *Pacific Pos*, May 25, 2005.

76 "Ada indikasi kuat kalau ada orang-orang yang memang sengaja ingin membuat suatu konflik horizontal, atau istilah ini seperti by design yang arahnya pada konflik horizontal. Dan itu bisa tanyakan sendiri pada aparat;" "Diteror dengan Kepala Anjing," *Papua Pos*, May 20, 2005, p2.

77 "Diteror dengan Kepala Anjing," *Papua Pos*, May 20, 2005, p2.

78 "Diteror dengan Kepala Anjing," *Papua Pos*, May 20, 2005, p2.

79 "Vonis 15 Tahun Tak Selesaikan Masalah," *Cenderawasih Pos*, May 28, 2005, p1 & p4.

80 "Divonis 15 Tahun, Filep Karma Tertawa," *Cenderawasih Pos*, May 27, 2005.

had been convicted over a similar matter on the nearby island of Biak in 1988 and at that time had been jailed for six years. The judges considered that Karma had a “hostile attitude” toward the government of Indonesia and that his actions were aimed at separating and destroying the regional integrity of the country and causing social unrest. They also stated that Karma had never shown remorse for his actions, and he had demonstrated that he had never felt like a citizen of Indonesia.<sup>81</sup>

In their ruling against Pakage, the judges concluded his actions were aimed at separating and destroying the regional integrity of Indonesia and had caused social unrest. Because Pakage had never previously been convicted, however, his sentence was shorter.<sup>82</sup>

During Pakage’s sentencing, the judges stated that Pakage had ignored a ban announced by the police, the Papuan Provincial Governor, and the head of the local administration (Muspida) by continuing to celebrate the West Papuan Independence Day and Morning Star flag raising ceremony, which had caused a riot and clashes between the police and the masses. The judges concluded he had rebelled against the state and was aware of the consequences:

It is apparent that the defendant Yusak, as a ringleader of the activities celebrating West Papuan independence on December 1, 2004, knew and understood that the raising of the Morning Star flag symbolized support for separating the Province of West Papua from the Republic of Indonesia...[the defendant] has undertaken actions that reflect hostility toward the People and Nation of the Republic of Indonesia.<sup>83</sup>

Karma and Pakage each immediately lodged an ultimately unsuccessful appeal to the High Court. A further appeal was then filed with Indonesia’s Supreme Court on the grounds that essential legal procedures were not followed in the original appeal. The defense argued that the state court of Jayapura had failed to send the defendants “Brief

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<sup>81</sup> “*Divonis 15 tahun, Filep Karma Tertawa,*” *Cenderawasih Pos*, May 27, 2005; Sentence Number: 04/Pid.B/2005/PN-JPR On the Case of the Accused Filep Karma, 2005, p 20.

<sup>82</sup> “*Divonis 15 tahun, Filep Karma Tertawa,*” *Cenderawasih Pos*, May 27, 2005.

<sup>83</sup> Ruling number 05/PID.B/2005/PN.JPR, p 22.

for the Appeal” to the High Court. The High Court’s decision clearly states that “no brief for the appeal was lodged by the defendants.”<sup>84</sup> The defense team also argued that Judge Lakoni had acted in a discriminatory manner and displayed bias throughout the trial. On October 27, 2005, the Supreme Court rejected the appeal. It did not provide an explanation or statement for its decision. Karma and Pakage were each charged a further 2,500 rupiah for court costs.<sup>85</sup>

## Linus Hiluka

Linus Hiluka is a 34-year-old farmer who was charged with rebellion against the state and spreading hatred (Article 110, 106 and 154 KUHP) for associating himself with the Baliem Papua Panel (BPP). The BPP is accused of “struggling for the independence of the province of Papua to become a region or state which is self-governing or independent.”<sup>86</sup>

Prosecutors in Hiluka’s case alleged that on May 26, 2000, Baliem community members nominated Hiluka as a delegate to attend the second Papuan Congress held between May 20 and June 4, 2000 in Jayapura,<sup>87</sup> and that the Papuan Congress II resulted in four main strategic areas of action for the delegates. These were:

- Rectifying (*meluruskan*) the history of West Papua;
- Separating from the Unitary Republic of Indonesia via dialogue in a peaceful and democratic manner;
- Restoring the basic rights of the people of Papua with the rejection of special autonomy; and
- Installing members of the Panel and the Presidium.<sup>88</sup>

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<sup>84</sup> Ruling, High Court of Jayapura Number 21/Pid/2005/PT.JPR , July 11, 2005, p11.

<sup>85</sup> Putusan Pengadilan Tinggi Jayapura Nomor: 21/Pid/2005/PT.JPR Atas Nama Terdakwa Filep Jacob Semeul Karma, July 11, 2005.

<sup>86</sup> Putusan Mahkamah Agung No. 873/K/Pid.2004.

<sup>87</sup> Other named delegates from the Jayawijaya region were John Wilil, John Wetipo, Kostan Tabuni, Murjono Murib and Obet Komba, Putusan Mahkamah Agung No. 873/K/Pid.2004, p2. For more information on the second Papuan Congress see Human Rights Watch, “Violence and Political Impasse in Papua,” New York, Vol. 13 No. 2 (C) July 1, 2001; Human Rights Watch, “Human Rights and Pro-Independence Actions in Papua, 1999-2000,” New York, Vol. 12 No.2 (C).

<sup>88</sup> Putusan Mahkamah Agung No. 873/K/Pid.2004, p2.

At the congress, Hiluka was installed on the council board of BPP. On his return from the congress, he was accused of disseminating information to the community about the congress' decisions. Hiluka was accused of making public speeches in public parks, during prayer time, in churches, and in private houses within the Jayawijaya area. These activities were often preceded by the raising of the Morning Star flag.<sup>89</sup>

As a member of the BPP, Hiluka was also accused of meeting with other members, attending meetings in Jayapura to reject the special autonomy law proposed for Papua, possessing and storing important correspondence linked with the independence movement, forming the Papuan taskforce, establishing taskforce command posts, making community members believe that Papua would be independent, and installing a painted map of West Papua and the Morning Star flag on the wall of his house in Ibele.<sup>90</sup>

For these crimes the prosecutor asked that Hiluka be sentenced to 15 years of imprisonment and a fine of 5,000 Rupiah. The State Court of Wamena imposed a tougher sentence and punished Hiluka with 20 years imprisonment with a 1,000 Rupiah fine.<sup>91</sup> Hiluka appealed the court's decision, but the High Court of Jayapura upheld the original ruling and sentence.<sup>92</sup>

Hiluka's final appeal to the Supreme Court of Indonesia was rejected on the basis that the appeal brief was received after the 14-day appeal period, thus voiding the right to appeal.<sup>93</sup>

Reports indicate that Linus Hiluka was transferred from Wamena to a prison in Makassar, Sulawesi, in December 2004.<sup>94</sup> His new prison is not only located on another island, but is located more than 1,000 miles from Wamena, making it nearly impossible for his family and lawyer to visit him.

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<sup>89</sup> Putusan Mahkamah Agung No. 873/K/Pid.2004, p3.

<sup>90</sup> Putusan Mahkamah Agung No. 873/K/Pid.2004, p3.

<sup>91</sup> Putusan Mahkamah Agung No. 873/K/Pid.2004, p7-9.

<sup>92</sup> Putusan Pengadilan Tinggi di Jayapura 4 Maret 2004 no 06/PID/2004/PT.JPR

<sup>93</sup> Putusan Mahkamah Agung No. 873/K/Pid.2004, June 28, 2004, p.11. Judges German Hoediarto, Mansur Kartayasa, H. Dirwoto, and Nyoman Dika.

<sup>94</sup> "9 Napi Makar dari Wamena Dipindahkan ke Makassar," *Cenderawasih Pos*, December 16, 2004; "Napi Makar Dipindahkan dari Wamena ke Makassar," *Kompas*, December 17, 2004.

## Moses Holago and Moses Aspalek

Moses Holago and Moses Aspalek were arrested on December 9, 2004, and charged with rebellion against the state (106 KUHP connected with article 55 KUHP, with a subsidiary charge of 110 KUHP connected with article 55).<sup>95</sup>

Moses Holago was accused of attending a meeting on August 11, 2004, to discuss the details of the structure of an independent West Papuan government. The meeting was held in the village of Wutung in the District of Muara Tami (Papua New Guinea).<sup>96</sup>

Both Moses Holago and Moses Aspalek were accused of attending a meeting at the house of Reverend Mathen Asso in Waena, Abepura District, Jayapura City, to discuss seeking funds to attend a meeting in Wewak in Papua New Guinea (PNG).<sup>97</sup>

The meeting in PNG was called the Extraordinary National Papuan Congress. The three-day meeting led to the formation of a nominal West Papuan government (West Papuan Authority Government) and nominated Edison Waromi as president of the authority. According to the indictment against Moses Holago, the intention of the assembly was to unite the factionalized pro-independence groups and develop community struggles for an independent West Papua.<sup>98</sup>

Moses Holago and Moses Aspalek were arrested at the border with PNG in the village of Wutung, Muara Tami District, as they attempted to cross from PNG back to Indonesia without proper documentation. They were searched and documents were found wrapped in plastic inside Moses Aspalek's left shoe.<sup>99</sup> The documents found on the two defendants included:

- A card with a drawing of the Indonesian flag, the Morning Star flag and the PNG flag with the writing "Internasional [sic] Border PNG-RI Humanity People Landows

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<sup>95</sup> Surat Dakwaan No. Reg Perk: PDM-32/T.1.10/Ep.2/12/2004, p.2 and 3.

<sup>96</sup> Surat Perintah Penahanan

<sup>97</sup> Surat Dakwaan No. Reg Perk: PDM-32/T.1.10/Ep.2/12/2004, p.2.

<sup>98</sup> Surat Dakwaan No. Reg Perk: PDM-32/T.1.10/Ep.2/12/2004, p.2.

<sup>99</sup> Witness Statement by Ferdinad Amora, Surat Tuntutan No. REG.PERK: PDM-32/JPR/EP.2/12/2004, 2005, p4-5.

- [sic] Right Commission Port Numbay Vanimo- Merauke-Daru” and on the back written “504 Moses Aspalek, Job Investigation Address West Papua” stamped and signed by a Mr. M Tampoto;
- A similar card to the one mentioned above owned by Moses Holago;
  - A letter stamped by the Tentara Papua Nasional (TPN) West Papua and signed by Yantos Titus Tabuni with the letter header “National Independence Army of West Papua, Regional Military Command Baliem II;” and
  - A letter “Request for Recommendation for going to Australia,” property of Moses Holago.<sup>100</sup>

During the trial Moses Holago claimed that he did not attend the fundraising meeting. However, he acknowledged crossing to Wewak on a speed boat with Moses Aspalek, as well as with other individuals named Nelles Elopere, Simon Heyapok, and Filep Karma.<sup>101</sup>

During the trial photos were produced by the prosecution showing Moses Holago, Moses Aspalek, Filep Karma, and another man named Albert Kailele at the congress. Moses Holago identified the flag in the photo as the Morning Star flag and the chair of the meeting as Filep Karma.<sup>102</sup>

The primary charges against the defendants were rebellion with intent to cause state disintegration (Article 110 paragraph 1 connected with Article 106, Article 106 and Article 55 paragraph 1) and causing social unrest. The prosecution asked for three years of imprisonment.<sup>103</sup>

The defense team argued that the prosecution’s case did not constitute proof of rebellion.<sup>104</sup> Human Rights Watch has read the trial transcript and it would appear that the sole act of “rebellion” which the men are deemed to have committed is the attendance at the meeting in Wewak, Papua New Guinea, on the structure of an independent Papuan government. The prosecution made no allegation or charge that

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<sup>100</sup> Surat Dakwaan Np. Reg Perl: PDM-32/T.1.10/Ep.2/12/2004, p.2.

<sup>101</sup> Surat Tuntutan Np. REg Perk: PDM-32/JPR/EP.2/12/2004 *Keterangan Terdakwa*, p.5.

<sup>102</sup> Surat Tuntutan Np. REg Perk: PDM-32/JPR/EP.2/12/2004 *Keterangan Terdakwa*, p.5.

<sup>103</sup> Surat Tuntutan Np. REg Perk: PDM-32/JPR/EP.2/12/2004 *Keterangan Terdakwa*, p.9.

<sup>104</sup> Nota Pembelaan Penasehat Hukum Atas Nama Terdakwa: Moses Holago, p.10.

the men were members of a banned organization and no suggestion during the trial that the two men were members of the TPN or any other banned organization. As stated above the charges were based solely on their attendance of the meeting at Reverend Asso's house.

Moses Holago was sentenced to four years of imprisonment and fined 5,000 Rupiah, and Moses Aspalek was sentenced to 6 years.<sup>105</sup> The judges considered that the sentence for Holago should be lenient as "the accused is a village person who is simple and easily influenced."<sup>106</sup>

An appeal on the sentence passed on Moses Holago was immediately launched on the day of the ruling. During the appeal hearing, the defendant and the defense team strongly objected as a copy of the ruling had not made available to them, making it difficult to prepare the appeal.<sup>107</sup>

The Jayapura High Court accepted that the appeal had been submitted in accordance with the law, but upheld the original verdict and sentence.<sup>108</sup> Human Rights Watch has no information regarding any appeal made on behalf of Moses Aspalek.

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<sup>105</sup> "Country Reports on Human Rights Practices 2005: Indonesia," US Department of State, March 8, 2006.

<sup>106</sup> Putusan Nomor: 26/Pid.B/2005/PN-JPR 09/06/2005.

<sup>107</sup> Memori Banding Penasehat Hukum Terdakwa Atas Nama Moses Holago dalam perkara nomor 26/Pid.B/2005/PN-JPR.

<sup>108</sup> Putusan No. 28/PID./2005/PT.JPR Terdakwa Moses Holago.

## V. Summary of Other Cases

### **Welmus Musa Asso, Mayus Togodly, Andi Asso, Ghen Jhon Hilapok, Heri Asso, Jean Hasegem, Gustaf Ayomi**

These seven individuals are believed to have been arrested and charged with offenses in relation to the raising of the “Bintang 14” (Fourteen Star) flag in front of the Wamena district parliamentary office on July 7, 2003.<sup>109</sup> The Bintang 14 is the flag of an independence group, started by activist Thomas Wapai Waingai, which is peacefully campaigning for an independent West Melanesian state. The 14 stars represent 14 Melanesian groups. There are also reports that police in Wamena also shot and killed one of the estimated 20 Papuans who tried to raise the flag on July 7.<sup>110</sup>

Human Rights Watch was unable to obtain much information about the sentences handed down for the seven demonstrators. We were able to learn that Gustaf Ayomi was sentenced to ten years in prison; Jean Hasegem was sentenced to eight years in prison for raising the flag; and Heri Asso was sentenced to 10 years in prison for having documents on him that related to independence for Papua.<sup>111</sup>

On December 15, 2004, Heri Asso, Jean Hasegem, and Gustaf Ayomi were moved from Wamena prison to a prison in Makassar, Sulawesi. Neither the defendants, nor the defendants’ lawyers or families, were given advance notice of the move. The defendants were first informed at 3p.m. on December 15 that they would be moved to Makassar. At 5p.m. the defendants were reportedly beaten and then put in a police vehicle and taken to Wamena airport, with no belongings except for the clothes they were wearing. The

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<sup>109</sup> Bintang 14 are a non-violent group campaigning for independence for West Papua. It is headed by Edison Waromi who himself was convicted of treason for raising of the Bintang 14 flag in 2002. He was sentenced to two years in prison for treason, but escaped after one year and fled to Australia where he claimed refugee status.

<sup>110</sup> “Country Reports on Human Rights Practices 2003: Indonesia,” US Department of State, February 25, 2004.

<sup>111</sup> “9 Napi Makar dari Wamena Dipindahkan ke Makassar,” *Cenderawasih Pos*, December 16, 2004; “Napi maker dipindahkan dari Wamena ke Makassar,” *Compas*, December 17, 2004.

defendants were held overnight in Biak and transported to Makassar at 5a.m. on the morning of December 16, 2004.<sup>112</sup>

## **Yance Hembring**

The charges against Yance revolved around his involvement in independence meetings in November 2003 and January 2004 in Nimbokrang, Jayapura regency. Yance was also accused of membership in the OPM. He was accused of building a house for meetings or gatherings of OPM members and inviting and asking for funds from the community, without the authority of the government.

Originally arrested with at least nineteen other people Yance was eventually charged with treason under articles 106 and 110 of Indonesia's Criminal Code.<sup>113</sup> There is no evidence he engaged in or abetted any acts of violence and, as already noted, membership in the OPM is itself not illegal in Indonesia.

Prosecutors at Yance's March 2004 trial produced a Morning Star flag and an OPM office sign and related documents. They also pointed to the fact that Yance was arrested while chairing a meeting at the OPM secretariat.<sup>114</sup>

In August 2004 Yance Hembring was convicted of treason and sentenced to ten years in prison by Jayapura's district court. The sentence was particularly severe considering that prosecutors in the case had only requested five years.

## **Reverend Obed Komba, Amelia Yiggibalom, Reverend Yudas Meage, Yafet Yelemaken, and Murjono Murib**

In 2001, Reverend Obed Komba, Amelia Yiggibalom, Reverend Yudas Meage, Yafet Yelemaken, and Murjono Murib were convicted of rebellion under Articles 106 and 110 of

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<sup>112</sup> Other prisoners were also transferred to Makassar at the time including those convicted of the weapons arsenal raid in Wamena in 2003. See "Surat Pemindahan paksa 9 (Sembilan) Narapidana dari LP Wamena," *Koalisi Penegakan Dan Perlindungan Ham di Papua*, December 25, 2004; "Napi Makar Dipindahkan dari Wamena ke Makassar," *Kompas*, December 17, 2004; "Irian students in Indonesia's Makassar protest over prisoner transfer," *www.detik.com*, April 20, 2005.

<sup>113</sup> "TNI Meningkatkan Kewaspadaan di Papua," *Kompas*, January 30, 2004; "Yance Hembring Dituntut 5 Tahun Penjara," *Papua Pos*, July 19, 2004.

<sup>114</sup> Nethy Dharma Somba and M. Aziz Tunny, "Papuan separatist gets ten years," *The Jakarta Post*, August 12, 2004; "Persidangan pimpinan OPM dijaga dua peleton polisi," *Liputan 6*, May 3, 2004.

the Indonesian Criminal Code (KUHP). Each was sentenced to four years of imprisonment.

Reverend Komba was one of the executive members of the Papua Presidium Council, a civilian organization which supports independence for Papua. The other four were part of the broader decision-making body of the council.<sup>115</sup> All five were accused of instigating violence in Wamena town in October 2001. Evidence showed, however, that they actively tried to prevent the violence. Amnesty International reported that they had been told by the police to find those responsible. Unable and unwilling to do so, they were then themselves charged and convicted of rebellion on the basis of their membership in the Presidium Council and attendance of public meetings which discussed independence for Papua.<sup>116</sup>

In December 2003 it emerged that there were plans to transfer the prisoners to a prison in Jakarta. Their defense lawyers and families protested at the move, which had not been communicated to them.<sup>117</sup>

The current whereabouts of this group of prisoners is unknown and information on their exact status is unclear at this time. It appears that Reverend Komba and possibly some of the others, were released prior to the completion of their four-year sentences, but then re-arrested in December 2003. Amelia Yiggibalom (and possibly the others) was released from prison to house arrest on August 29, 2005. The exact conditions of her release are unclear but it seems that she has to report regularly to the police.<sup>118</sup>

Unconfirmed reports indicate that the Yafet Yelemaken was poisoned to death in June 2002, after his release from prison.

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<sup>115</sup> "Military Madness," *New Internationalist*, No. 344, April 2002.

<sup>116</sup> "Indonesia: Prisoners of Conscience Action 2005 – The Jayapura Flag Raisers," Amnesty International, February 1, 2005.

<sup>117</sup> Nethy Dharma Somba, "Convicted Papuans to be brought to Jakarta," *The Jakarta Post*, December 22, 2003.

<sup>118</sup> Email correspondence with Amnesty International Indonesian campaigner, December 14, 2006 (copy on file at Human Rights Watch).

## **VI. Recommendations**

### **To the government of the Republic of Indonesia:**

- Immediately and unconditionally release all persons detained or imprisoned for the peaceful expression of their political views, including raising the Morning Star flag.
- Drop any outstanding charges against individuals awaiting trial for their non-violent political activities.
- Make a public commitment to ensuring that there will be no further arrests of individuals engaged in the peaceful expression of their beliefs.
- Propose the repeal of articles 154, 155, and 156 criminalizing "public expression of feelings of hostility, hatred or contempt toward the government" and prohibiting "the expression of such feelings or views through the public media," and articles 106, 107, and 108 on treason. Make a public commitment not to undertake any further prosecutions using these laws.
- Repeal any regulations or decrees that have been used to detain or imprison people for the peaceful expression of their political views.
- Ensure that the invited Special Rapporteur on Freedom of Expression is allowed unhindered access to all political prisoners across Indonesia.

### **To Indonesia's People's Representative Assembly (*Dewan Perwakilan Rakyat* or DPR):**

- Repeal articles 154, 155, and 156 criminalizing "public expression of feelings of hostility, hatred or contempt toward the government" and prohibiting "the expression of such feelings or views through the public media," and articles 106, 107, and 108 on treason.
- Pass legislation nullifying any regulations or decrees that have been used to detain or imprison people for the peaceful expression of their political views.

**To the Indonesian judiciary:**

- Throw out all prosecutions for the peaceful expression of political views on the grounds that they are inconsistent with international law and norms.

**To International Donors and Governments with close bilateral ties to Indonesia:**

- Raise concerns about regressive policies curtailing free expression in meetings with President Yudhoyono and government officials.
- Regularly monitor trials and meet with defendants.
- Support comprehensive training for all members of the judiciary in international human rights standards and applicable international law.
- Support comprehensive training for all members of the police force in international human rights standards and applicable international law.

## **VII. Acknowledgements**

Human Rights Watch would like to acknowledge appreciation for the invaluable assistance extended to its researcher during the several research trips to Indonesia from several human rights organizations and defense lawyers based in Papua. Due to the high risk of reprisals against these individuals we are unable to name them, but remain deeply indebted for their help, and acknowledge the risks they took in providing that assistance.

A Human Rights Watch researcher for the Asia division of Human Rights Watch wrote this report based on research conducted over several trips to Indonesia in 2006. For security reasons the researcher can not be named. Sarina Khilam provided research and translation assistance. Brad Adams, executive director of the Asia Division, and Joe Saunders, deputy director of the Program Office at Human Rights Watch, edited the report. Aisling Reidy, senior legal advisor, provided legal review. Dominique Chambless and Andrea Cottom, Associates in the Asia division, helped format the report. Fitzroy Hepkins, Grace Choi, Rafael Jimenez, and Veronica Matushaj provided production assistance.

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## Protest and Punishment

### Political Prisoners in Papua

In Papua, at the far eastern end of Indonesia, officials continue to violate basic rights like freedom of expression, assembly, and association. Papua's political and geographic isolation, compounded by government-imposed restrictions on access, has contributed to a dearth of information on the human rights situation there. This report documents how the Indonesian government continues to use the criminal law to punish individuals who peacefully advocate for independence. All of the prisoners highlighted in this report have been convicted for "rebellion" or "spreading hatred" for non-violent activities such as participating in flag-raising ceremonies and attending peaceful meetings on self-determination options for Papua. Relying on previously unavailable trial documents and interviews with defense lawyers this report documents known cases of political prisoners in Papua.

*Indonesian policemen detain a protester in Jayapura, Papua December 22, 2001. Indonesian police break up a demonstration over the murder of pro-independence chief Theys Eluay.*

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