

**PETITION TO:  
UNITED NATIONS  
WORKING GROUP ON ARBITRARY DETENTION**

**Chairperson-Rapporteur: Mr. Malick El Hadji Sow (Senegal)**

**Vice-Chairperson: Ms. Shaheen Sardar Ali (Pakistan)**

**Mr. Roberto Garretón (Chile)**

**Mr. Mads Andenas (Norway)**

**Mr. Vladimir Tochilovsky (Ukraine)**

**HUMAN RIGHTS COUNCIL**

**UNITED NATIONS GENERAL ASSEMBLY**

**In the Matter of  
FILEP JACOB SEMUEL KARMA,  
Citizen of the Republic of Indonesia  
v.  
Government of the Republic of Indonesia**

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**URGENT ACTION REQUESTED**

**Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4 and 15/18**

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May 16, 2011

### **BASIS FOR “URGENT ACTION” REQUEST**

As set forth in the attached Petition, the Government of Indonesia has been arbitrarily depriving Mr. Filep Samuel Karma of his liberty for over six years for organizing and participating in a flag-raising ceremony to celebrate the anniversary of the 1961 Papuan declaration of independence from Dutch rule. Moreover, the severe conditions of his imprisonment are endangering his life and health. We request that Mr. Karma’s case be considered under the “Urgent Action” procedure. Further, we ask that communications be made immediately to the Government of Indonesia to ensure that Mr. Karma receives adequate food, clean water, and medical treatment.

Mr. Karma has been detained since his arrest on December 1, 2004 in two different detention centers: Abepura Prison and the Jayapura Police Station. He was incarcerated at Abepura Prison from the date of his arrest until December 3, 2010, at which time he was moved to the Jayapura Police Station. As grounds for this transfer, Indonesian authorities issued vague and unsubstantiated allegations that Mr. Karma had instigated a riot at the Abepura Prison. In fact, the Government of Indonesia aimed to pin false charges against Mr. Karma to remove him from Abepura Prison, where he had become a leading non-violent advocate for Papuan human rights. Indonesian authorities ultimately declined to formally charge Mr. Karma with any crime in relation to the December riot at the Abepura Prison and denied him access to counsel. Mr. Karma was moved back to Abepura Prison on March 7, 2011.

The Jayapura Police Station is not a prison equipped for long-term incarceration as it fails to provide adequate food or medical assistance for long-term inmates. Mr. Karma was nevertheless held there for over three months in a rodent-infested cell with direct exposure to exhaust fumes. He also lacked adequate food, medicine and health care since most of his family and friends, who were expected to provide him with such care, do not reside in Jayapura. Under these conditions, Mr. Karma’s health seriously deteriorated and continues to worsen. He suffers from chronic prostate issues, debilitating knee and back pain, and chronic respiratory infections, which were aggravated by his constant exposure to exhaust fumes. Time is of the essence for Mr. Karma, who continues to suffer from the effects of his unlawful detention at the Jayapura Police Station.

For the foregoing reasons, the Petitioner hereby requests that the Working Group consider this Petition pursuant to the Working Group’s “Urgent Action” procedure. Furthermore, the Petitioner requests that this Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights, as reconfirmed by Resolutions 2000/36, 2003/31, and Human Rights Council Resolutions 6/4 and 15/18.

## QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION

### I. IDENTITY

1. *Family name:* Karma
2. *First name:* Filep Jacob Semuel
3. *Sex:* Male
4. *Birth date:* August 14, 1959 (51 years old)
5. *Nationality:* Indonesian
6. (a) *Identity document (if any):* Identity Card  
(b) *Issued by:* Government of the Republic of Indonesia  
(c) *On (date):* May 12, 2010 (expiration date August 14, 2015)  
(d) *No.:*9171.009.7048
7. *Profession and/ or activity (if believed to be relevant to the arrest/ detention):*  
Mr. Filep Jacob Semuel Karma is a prominent Papuan human rights activist and former Indonesian civil servant in the Indonesian Education and Training Department. He is a non-violent advocate of Papuan independence.
8. *Address of usual residence:*  
Postal address: Jl. Macan Tutul No. 33 Dok V Atas Distrik Jayapura Utara / Jayapura City

### II. ARREST

1. *Date of arrest:* December 1, 2004.
2. *Place of arrest (as detailed as possible):* Abepura, Papua, Indonesia.
3. *Forces who carried out the arrest or are believed to have carried it out:* Indonesian National Police.
4. *Did they show a warrant or other decision by a public authority?* No.
5. *Authority who issued the warrant or decision:* Jayapura District Prosecutor.
6. *Relevant legislation applied (if known):*  
Articles 106, 110, 154 and 155 of the Criminal Code of Indonesia (KUHP), which relate to “crimes against the security of the state” and “crimes against public order,” including incitement and conspiracy charges.

### III. DETENTION

1. *Date of detention:* December 1, 2004
2. *Duration of detention (if not known, probable duration):* Mr. Karma has been detained since the date of his arrest on December 1, 2004.
3. *Forces holding the detainee under custody:* Government of the Republic of Indonesia
4. *Places of detention (indicate any transfer and present place of detention):* Mr. Karma was initially detained at the Jayapura Police Station while having his trial in 2005. He was moved to the Abepura prison in mid-2005. He was transferred to the Jayapura Police Station in December 2010. He was returned to Abepura Prison on March 7, 2011. Mr. Karma's health continues to deteriorate. He suffers from prostate issues that recently required surgery, leg and back injuries, and chronic respiratory problems.
5. *Authorities that ordered the detention:* On December 1, 2004, the Indonesian National Police arrested Mr. Karma at Trikora Field, Abepura, acting upon instructions. The Jayapura District Prosecutor filed a detention warrant the next day. On May 26, 2005, the Jayapura District Court convicted Mr. Karma of sedition, conspiracy to commit sedition and crimes against public order.
6. *Reasons for the detention imputed by the authorities:* The Jayapura District court sentenced Mr. Karma to fifteen years imprisonment – a sentence three times that sought by the prosecutor. The Jayapura High Court and Indonesian Supreme Court affirmed the conviction on July 11, 2005, and October 27, 2005, respectively.
7. *Relevant legislation applied (if known):* Articles 54, 67, 106, 110, 154, 155, 158, 198 and 244 of the Criminal Code of Indonesia (KUHP), which relate to “crimes against the security of the state” and “crimes against public order,” including incitement and conspiracy charges.

**DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY**

**STATEMENT OF FACTS**

**I. Introduction**

On December 1, 2004, Mr. Filep Samuel Karma was arrested for organizing and participating in a ceremony at Trikora Field in Abepura, Papua, to celebrate the anniversary of the 1961 Papuan declaration of independence from Dutch rule. Several hundred Papuans gathered at the ceremony, shouted the word “freedom,” chanted a rejection of Papua’s Special Autonomy status, and raised the Morning Star flag, a symbol of Papuan independence. When Indonesian police attempted to forcibly disband the rally, some attendees threw wood, rocks and bottles. Police responded by firing into the crowd. Mr. Karma and Mr. Yusak Pakage, another participant in the ceremony, were arrested and charged with sedition the next day. In May 2005, Mr. Karma was sentenced to fifteen years in prison and Mr. Pakage to ten. Mr. Pakage accepted a conditional pardon and was released from prison in July 2010.<sup>1</sup> Mr. Karma, now in poor health, has refused a conditional pardon and remains a prisoner of conscience.

**II. Non-violent Prisoner of Conscience Sentenced to 15 Years for Flag-raising**

**a. Prisoner Background and Political Involvement**

Mr. Filep Karma, 51, is one of the most prominent advocates of Papuan independence. He was formerly an Indonesian civil servant in Jayapura’s Education and Training Department. He is married with two daughters.

Mr. Karma was born on August 14, 1959. His father, Andreas Karma, was a Dutch-educated Indonesian civil servant who served as regent of Wamena and Serui.<sup>2</sup> Filep Karma earned a university degree in political science from the March 11 University in Solo, Java, and began his civil service career in 1987.<sup>3</sup> In 1998, Mr. Karma became a vocal advocate of Papuan independence.<sup>4</sup> In July of that year, he participated in a flag-raising ceremony in his home town of Biak. Mr. Karma was wounded in the legs by rubber bullets fired by the Indonesian military, and he was arrested, charged and convicted of sedition.<sup>5</sup> He was sentenced to six-and-a-half years’ imprisonment but was freed on appeal after serving nearly 1½ years, on November 20, 1999.<sup>6</sup>

Mr. Karma has explicitly renounced the use of violence, stating: “We want to engage in a dignified dialogue with the Indonesian government, a dialogue between two peoples with dignity,

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<sup>1</sup> See *Most Political Prisoners in Papua Refuse to Ask for Pardon*, THE JAKARTA POST, July 10, 2010, available at <http://www.thejakartapost.com/news/2010/07/10/most-political-prisoners-papua-refuse-ask-pardon.html>.

<sup>2</sup>HUMAN RIGHTS WATCH, PROSECUTING POLITICAL ASPIRATION: INDONESIA’S POLITICAL PRISONERS 30 (June 22, 2010) [hereinafter PROSECUTING POLITICAL ASPIRATION].

<sup>3</sup>*Id.*

<sup>4</sup>*Id.* at 29.

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

and dignity means we have no use of violence.”<sup>7</sup> Indeed, the Indonesian government has not alleged that Mr. Karma was involved in the violence (which was spontaneous, not planned) that ensued at the December 2004 ceremony after security forces attempted to disband it. Amnesty International has designated him a “prisoner of conscience.”

## **b. Arrest, Trial and Imprisonment**

Upwards of 200 individuals joined Mr. Karma as he and his colleagues celebrated Liberation Day and raised the Morning Star flag on the morning of December 1, 2004, at Abepura.<sup>8</sup> Indonesian police at first attempted to disband the crowd. When met with resistance by a limited number of protesters, police resorted to firing on the crowd and beating participants with batons.<sup>9</sup> Reports indicate four individuals sustained injuries, including two head wounds.<sup>10</sup> A human rights monitor from the Institute for Human Rights Study and Advocacy was beaten while attempting to photograph the unfolding violence.<sup>11</sup> Indonesian authorities withdrew temporarily to await reinforcements, and then ended the ceremony by force. Mr. Karma was arrested at the scene, and Indonesian forces beat and stomped on him en route to the local police station.<sup>12</sup>

Indonesian officials indicted Mr. Karma on three charges: conspiracy to sedition (the primary charge), sedition (a subsidiary charge) and declaring “feelings of hate or offense” against the government (a subsidiary charge).<sup>13</sup> These charges are discussed in more detail in Section II of this petition.

At trial, Mr. Karma’s lawyers asserted a well-documented procedural defense focused on the partiality of Judge A. Lakoni Hernie. Mr. Karma’s counsel pointed to several specific statements attributed to the judge that violate Article 158 of the Indonesian Code of Criminal Justice, which requires judicial impartiality.<sup>14</sup> For example, Mr. Karma’s counsel noted that the judge stated, “smash in the head of Filep if he’s naughty”<sup>15</sup> and, to Mr. Karma, “don’t bring the name of your God in here, your God has been dead a long time.”<sup>16</sup> Counsel also indicated that, during an incident outside the district court, Judge Lakoni Hernie beat one young female supporter of Mr. Karma’s and struck

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<sup>7</sup>*Id.* at 30.

<sup>8</sup> Testimony of Filep Karma, Defendant’s Legal Advisors’ Defense Brief, on Behalf of Filep Karma, In Criminal Matter No. 04/Pid.B/2005/PN-JPR, p. 14 [hereinafter Defendant’s Trial Brief].

<sup>9</sup> Amnesty International, Indonesia: Special Case Focus on Filep Karma and Yusak Package, *available* at [http://www.upr-info.org/IMG/pdf/AI\\_IND\\_add9.pdf](http://www.upr-info.org/IMG/pdf/AI_IND_add9.pdf).

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

<sup>12</sup>*Id.*

<sup>13</sup> See District Prosecutor for Jayapura, Indictment: Case Reg. No. PDM-111/T.1.10/Ep.2/12/2004, pp. 1-2.

<sup>14</sup> The Indonesian Criminal Code (Kitab Undang-Undang Hukum Acara Pidana) is often abbreviated as KUHAP and is referred to as Law 8 of December 31, 1981. The text in Bahasa reads: “Hakim dilarang menunjukkan sikap atau mengeluarkan pernyataan di sidang tentang keyakinan mengenai salah atau tidaknya terdakwa.” See [http://www.kontras.org/uu\\_ri\\_ham/Kitab%20Undang-undang%20Hukum%20Acara%20Pidana\\_KUHAP.pdf](http://www.kontras.org/uu_ri_ham/Kitab%20Undang-undang%20Hukum%20Acara%20Pidana_KUHAP.pdf). One translation of this text into English reads: “A judge is prohibited from showing by his attitude or by a remark during the trial whether or not he thinks the defendant is guilty.”

<sup>15</sup> The judge made this statement while directing police to break-up Mr. Karma’s speech on April 19, 2005. See Defendant’s Trial Brief, *supra* note 8, at 7. See also Defendant’s Legal Advisors’ Appeals Brief on Behalf of Filep Karma, In Criminal Matter No. 04/Pid.B/2005/PN-JPR, pp. 4-6 [hereinafter Defendant’s Appeals Brief].

<sup>16</sup> The judge made this statement to Mr. Karma at an April 19, 2005 hearing. See Defendant’s Trial Brief, *supra* note 8, at 7 and Defendant’s Appeals Brief, *supra* note 15, at 4-6.

another while yelling “you be quiet, you want to die do you?”<sup>17</sup> This and other evidence present an overwhelming case of judicial bias.<sup>18</sup>

Mr. Karma also asserted a second procedural defense – that he was unfairly denied access to his counsel in violation of Articles 54 and 198(2) of the Indonesian Criminal Code. Article 54 reads: “In the interest of a defense, a suspect or a defendant has the right to seek legal assistance from one or more legal advisors during and at every stage of the hearings...”<sup>19</sup> Article 198(2) reads: “If a legal advisor is unable to appear, he will appoint a substitute and if the substitute is not present or unable to attend, the hearing will proceed.”<sup>20</sup> On May 10, 2005, the Court began proceedings with insufficient notice to Mr. Karma’s counsel, including numerous messages and phone calls from Mr. Karma’s lawyers indicating that they were in fact able and planning to attend the hearing.<sup>21</sup>

Mr. Karma did not prevail on either procedural defense. Upon conviction, the Panel of Judges sentenced Mr. Karma to a sentence three times longer than the one proposed at the start of the trial proceedings. The prosecution had proposed a five-year sentence for Mr. Karma’s alleged crimes, but the Panel of Judges sentenced Mr. Karma to fifteen years in prison.<sup>22</sup>

The trial proceedings provoked violent clashes between Mr. Karma’s supporters and security forces, and Mr. Karma’s defense counsel were subjected to targeted intimidation. In one instance, a severed dog’s head, accompanied by a note naming Mr. Karma’s lawyers, was left in front of the Jayapura Legal Aid office.<sup>23</sup>

Flawed and irregular judicial procedure also marred Mr. Karma’s prompt appeal to the High Court. On July 11, the High Court rejected the appeal<sup>24</sup> but acknowledged it never received Mr. Karma’s appellate brief, which was to be forwarded by the trial court.<sup>25</sup> On October 27, 2005, the Supreme Court rejected Mr. Karma’s final appeal despite this irregularity.<sup>26</sup> The Supreme Court provided no reasoning for its denial.<sup>27</sup>

### **c. Current Status**

Mr. Karma is held at Papua’s Abepura prison, where numerous human rights abuses have been reported.<sup>28</sup> He has served six years of his sentence and has nine years remaining. His eligibility for parole remains unclear.

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<sup>17</sup> See Defendant’s Trial Brief, *supra* note 8, at 8 and Defendant’s Appeals Brief, *supra* note 15, at 5.

<sup>18</sup> See Defendant’s Trial Brief, *supra* note 8, at 7 and Defendant’s Appeals Brief, *supra* note 15, at 4.

<sup>19</sup> See Defendant’s Trial Brief, *supra* note 8, at 7 and Defendant’s Appeals Brief, *supra* note 15, at 5.

<sup>20</sup> *Id.*

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

<sup>22</sup> Decision of the Jayapura High Court in the Matter of the Criminal Case Appeal for the Defendant Mr. Filep Jacob Samuel Karma, Case Number 21/PID/2005/PT.JPR, July 11, 2005 [hereinafter Jayapura High Court Decision].

<sup>23</sup> *Diteror dengan Kepala Anjing*, PAPUA POS, May 20, 2005, and *PH Filep Karma Dikirmimi Kepala Anjing*, PAPUA POS, May 25, 2005, cited in PROSECUTING POLITICAL ASPIRATION, *supra* note 4, at 13.

<sup>24</sup> Jayapura High Court Decision, *supra* note 22.

<sup>25</sup> *Id.*

<sup>26</sup> “An Excerpt of the Decision of the Republic of Indonesia Supreme Court in the Name of the Defendant: Dr. Filep Jacob Samuel Karma,” Document Number 688/TU/2005/1710, November 24, 2005, p. 2.

<sup>27</sup> *Id.*

<sup>28</sup> PROSECUTING POLITICAL ASPIRATION, *supra* note 2, at 33.

Mr. Karma has suffered from acute prostate problems for years. These problems began to worsen in 2009, and after almost a year of undue delay, he was transferred to a hospital in Jakarta for medical consultations and surgery in July 2010. Prior to this transfer, he was denied timely access to necessary care despite offers by supporters to pay for the costs of medical services. After Mr. Karma initially reported intense discomfort due to urinary and related problems, prison officials at Abepura told Mr. Karma to drink water and rest with his legs elevated.<sup>29</sup> After pictures of Mr. Karma so positioned in his prison cell were published in the Bintang Papua newspaper, Mr. Karma was permitted to see doctors at Dok Dua hospital. These doctors recommended in October 2009 that Mr. Karma be sent immediately to Jakarta for urological surgery, but it took eight months before prison authorities finally allowed him to travel to Jakarta.<sup>30</sup> Even then, Mr. Karma had to resist the Indonesian authorities' attempts to transfer him to a Jakarta prison—which would expose him to potential abuse—before being transferred to a hospital for surgery. In addition to his prostate ailment, Mr. Karma suffers from leg injuries, which date to wounds from rubber bullets fired by armed forces during the aforementioned 1998 flag-raising ceremony at Biak.<sup>31</sup> Mr. Karma also was briefly transferred to a hospital in Jayapura to undergo treatment for back injuries.<sup>32</sup>

Mr. Karma's detention conditions worsened dramatically as a result of an incident in December of last year.<sup>33</sup> On December 3, 2010, a number of inmates at Abepura Prison attempted to escape. Prison officials captured one inmate and shot and killed another. The other inmates at Abepura Prison asked Mr. Karma to represent them in an effort to avoid further violence and mediate widely shared grievances. During initial negotiations with prison officials and a representative of the Papua Commission for Human Rights, some inmates began to hurl stones and prison officials responded with gunfire. Mr. Karma implored the inmates to desist and, to calm tensions, attempted to gather them near the prison church. When prison authorities subsequently demanded that all inmates return to their cells, Mr. Karma echoed that order and encouraged his fellow inmates to comply. Despite his compliance with the order, Mr. Karma shortly thereafter was transferred, along with several other prisoners, to the Jayapura Police Station. Neither his family nor his lawyers were informed of this transfer. Poor conditions of detention at the Jayapura Police Station, including inadequate food and exposure to rats, have contributed to a precipitous decline in Mr. Karma's health. On March 7, 2011, Mr. Karma was returned to Abepura Prison.

### III. Background on the Conflict in Papua

The region of Papua occupies the western half of the island of Papua New Guinea, and today consists of two Indonesian provinces, Papua and West Papua. The overall region constitutes more than one-fifth of Indonesia's total landmass but is home to approximately 3.9 million people, just over 1% of the Indonesian population. It is one of the most remote areas of Indonesia, and this isolation has been exacerbated by government-imposed restrictions on access to the region.

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<sup>29</sup>*Id.* at 31.

<sup>30</sup>*Id.*

<sup>31</sup>PROSECUTING POLITICAL ASPIRATION, *supra* note 2, at 29.

<sup>32</sup> *Convicted Papuan Speaks Out*, AUSTRALIAN BROADCASTING CORP., May 4, 2006, available at <http://www.abc.net.au/lateline/content/2006/s1631133.htm>.

<sup>33</sup> The following account is summarized from a signed statement by Mr. Karma dated December 14 that he hand-wrote from the Jayapura detention facility. The statement was addressed to Amnesty International, Human Rights Watch, Freedom Now, Executive Director Imparsial, and the Chairman of the Indonesian Commission for Human Rights.

Papua was a Dutch colony until 1961. Prior to its withdrawal from the region, the Netherlands offered a plan for Papuan independence by 1970, but Indonesian President Soekarno launched a campaign for Indonesian control of the region that included several armed skirmishes with withdrawing Dutch forces. A U.S.-brokered accord transferred the region first to UN trusteeship, and then to Indonesia in May 1963. Per the U.S.-brokered accord, Indonesia organized a vote on independence among a gathering of Papuan representatives in 1969. However, widespread criticism alleged that this exercise was rigged, with opaque selection of representatives, military supervision of voting and overt threats of coercion. The Indonesian Government demurred to demands for a popular referendum.

The Indonesian government interprets and addresses expression of Papuan sovereignty in the context of general and longstanding anxiety about the potential for political disintegration in a deeply multiethnic, multicultural, and multilingual country with a highly fragmented geography. Independence for East Timor and prolonged strife in Aceh have sustained these concerns.

In 2001, Papua was granted special autonomy status, which provided for some degree of self-rule through the Majelis Rakyat Papua (MRP / Papuan People's Assembly), consisting of "tribal" elders. However, persistent dissatisfaction with the pace of economic development and respect for civil and political rights has encouraged recent unrest. In summer 2010, for instance, the MRP approved a no-confidence motion against Papua's special autonomy status,<sup>34</sup> and large crowds of protesters urged the provincial legislature (Dewan Perwakilan Rakyat Papua) to do the same.<sup>35</sup>

#### **a. Indonesia's Human Rights Record in Papua**

Since Papua's incorporation into Indonesia, small units of guerillas loosely organized under the Organisasi Papua Merdeka's (OPM) Tentara Pembebasan Nasional (TPN) have staged abductions and hit-and-run attacks on military posts and mining sites. This low-level insurgency has provoked a heavy military presence utilizing heavy-handed tactics.

Indonesia's response to the long-running insurgency in Papua has been harsh and disproportionate, particularly under Soeharto. Until October 1998, Papua was officially designated a Military Operations Area, which afforded Indonesian security forces broad discretion to target civilian opposition groups in addition to armed insurgents. There have been numerous reports of atrocities committed by security forces against civilians, including torture and extrajudicial executions.<sup>36</sup> UN observers report that a "climate of fear" persists in Papua.<sup>37</sup>

#### **b. Political Reform under President Yudhoyono**

Indonesia has markedly improved freedom of expression since the fall of Soeharto, and a broad-based civil society movement for Papuan independence has emerged in the wake of

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<sup>34</sup>*Papua Parliament to Review Special Autonomy: Mass Demonstrations Call for End to Status*, RADIO NEW ZEALAND INTERNATIONAL (July 13, 2010), <http://pidp.eastwestcenter.org/pireport/2010/July/07-14-05.htm>.

<sup>35</sup>*Id.*; Karishma Vaswani, *Papua Autonomy Protests Challenge Jakarta*, BBC NEWS (July 9, 2010), <http://www.bbc.co.uk/news/10565860>.

<sup>36</sup>*See, e.g.*, PROSECUTING POLITICAL ASPIRATION, *supra* note 2.

<sup>37</sup>*See, e.g.*, Report of the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, A/HRC/7/28/Add.2 20-22 (January 28, 2008).

liberalization. However, Indonesian laws criminalizing defamation, insult and treason are frequently invoked to punish pro-independence sentiment in Papua. Human Rights Watch (HRW) alleges that there are more than 170 persons in prisons throughout Indonesia for acts of peaceful expression alone.<sup>38</sup>

In May 2010, Justice and Human Rights Minister Patrialis Akbar indicated that the Government of Indonesia planned to release a number of Papuan political prisoners, but he clarified that prisoners charged with engaging in armed conflict or—even peacefully—raising the Papuan Morning Star flag would not be pardoned.<sup>39</sup>

#### **IV. The United Nations Working Group on Arbitrary Detention 1999 Visit to Papua**

The UN Working Group on Arbitrary Detention (WGAD) conducted an on-site visit to Papua in 1999. The WGAD raised human rights objections to two specific sections of the Criminal Code of Indonesia—“Crimes Against the Security of the State” and the “Crimes Against the Public Order”—and singled out flag-raising in particular:

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>40</sup>

The WGAD also specifically referred to the 1998 detention of Mr. Karma, among others, for flag-raising as arbitrary within the meaning of Category II of the Group’s method of work.

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<sup>38</sup> Human Rights Watch, *Indonesia: Release Papuan Flag-Raisers* (November 18, 2009), <http://www.hrw.org/en/news/2009/11/18/indonesia-release-papuan-flag-raisers>.

<sup>39</sup> Nivell Rayda, *Releasing Papua Political Prisoners ‘Not the Answer,’* JAKARTA GLOBE (May 20, 2010), <http://www.thejakartaglobe.com/news/releasing-papua-political-prisoners-not-the-answer/376188>. The release of Mr. Yusak Pakage contradicts this reported statement, but Pakage’s alleged recantation may have been the decisive factor in his release.

<sup>40</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, at 13 (August 12, 1999) [hereinafter Working Group Visit Report].

## ANALYSIS

For the reasons set forth below, Mr. Karma's arbitrary detention for organizing and participating in a flag-raising ceremony to celebrate the anniversary of the 1961 Papuan declaration of independence from Dutch rule violates both domestic and international law.

### **V. Violations of Indonesian and International Law**

Mr. Karma was indicted on and convicted of three charges:

- (1) "...undertaking or giving of orders of participation in the act of Sedition with the intention of causing disintegration or separation of the Republic of Indonesia";
- (2) "conspiracy to rebel with the intent to cause disintegration of the Republic of Indonesia and to cause social unrest"; and
- (3) "publicly stating hostility, feelings of hate or offense toward the government of the Republic of Indonesia."

#### **a. Indonesian Law**

Charges 1 and 2, above, are based on Articles 110 and 106 of the Criminal Code of Indonesia (Kitab Undang-Undang Hukum Pidana / KUHP).<sup>41</sup> Article 110 criminalizes conspiracy to commit sedition; Article 106 permits imprisonment for sedition, furthering secession, or attempting to bring a territory of Indonesia under the authority of another state.<sup>42</sup>

Collectively, these articles of the Criminal Code of Indonesia are considered "Crimes against the Security of the State."<sup>43</sup> Although frequently invoked when charging members or sympathizers of armed separatist groups, the broad language of Articles 106 and 110 allows the Government of Indonesia to apply these provisions against non-violent acts as well. The primary charge of conspiracy against Mr. Karma is based on a planning meeting held on November 28, 2004, at Cenderawasih University Museum, at which he and a handful of others planned the December 1 celebration.<sup>44</sup>

Charge 3 is based on Articles 154-155 of the Criminal Code of Indonesia, pertaining to "Crimes against the Public Order."<sup>45</sup> Article 154 penalizes individuals who publicly voice "feelings of hostility, hatred, or contempt" against the national government, and Article 154(a) penalizes "violation" of the Indonesian national flag. Article 155 provides lesser punishment for the distribution of materials that publicize hostility against the state.

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<sup>41</sup> Indonesian Criminal Code (KUHP), *supra* note 14.

<sup>42</sup>*Id.*

<sup>43</sup>*Id.* Articles 104-129.

<sup>44</sup> Defendant's Trial Brief, *supra* note 8, at 9.

<sup>45</sup> Indonesian Criminal Code (KUHP), *supra* note 14, Articles 153-181.

Constitutional amendments passed in 2000 focus on human rights and specifically rely on internationally-recognized standards as codified in the Universal Declaration of Human Rights. The original constitution passed in 1945 guaranteed that “all citizens shall have equal status before the law and the government....”<sup>46</sup> In 2000, Article 28(d) of the constitution was amended to require that “[e]ach person has the right to recognition, security, protection and certainty under the law that shall be just and treat everybody as equal before the law.”<sup>47</sup>

Article 28(e) contains twin guarantees of individual liberty. First, “[e]ach person has the right to be free in his convictions, to assert his thoughts and tenets, in accordance with his conscience.”<sup>48</sup> This provision is followed by a more traditional requirement that “[e]ach person has the right to freely associate, assemble, and express his opinions.”<sup>49</sup> These liberties, along with several others, are guaranteed in a crucial reaffirmation clause: “The rights to life, to remain free from torture, to freedom of thought and conscience, to adhere to a religion, the right not to be enslaved, to be treated as an individual before the law, and the right not to be prosecuted on the basis of retroactive legislation, are fundamental human rights that *shall not be curtailed under any circumstance*” (emphasis added).<sup>50</sup>

Mr. Karma’s rights under the Indonesian constitution were clearly violated. At trial, the judge offered derogatory remarks about Mr. Karma’s Christian faith. The act of flag raising itself was an act of an free expression: the Morning Star flag is a symbol for Papuans to celebrate their independence from Dutch rule. Moreover, the conspiracy charge against Mr. Karma violates his freedom of association. According to the constitutional amendments passed in 2000, each of these constitutes a “fundamental human right” that cannot be breached “under any circumstance.”<sup>51</sup> Consistent with these arguments, in July 2007, Articles 154 and 155 – under which Mr. Karma was charged – were declared unconstitutional by Indonesia’s Constitutional Court. However, the Government of Indonesia has denied calls to exonerate prisoners charged under those provisions.<sup>52</sup>

### ***(i) Irregularities in the Appeal Process***

Mr. Karma was improperly denied access to an appeal of the trial court’s conviction and sentencing. As noted above, it appears that Mr. Karma’s appeal was dismissed because his appellate brief was not transferred by the trial court to the High Court. The Indonesian Supreme Court failed to provide redress to this violation of Articles 67 and 244 of the Criminal Code of Indonesia, which guarantee a defendant’s right to appeal.

In addition, prejudicial statements and actions by the trial judge, combined with a sentence three times that which was recommended by the state prosecutor, suggests compromising judicial partiality. Such partiality is explicitly prohibited by Criminal Code of Indonesia Article 158, which

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<sup>46</sup>Undang-Undang Dasar Republik Indonesia 1945 [UUD ‘45] [Constitution] art. 27(1) (Indon.) *available at*[http://www.humanrights.asia/countries/indonesia/laws/uud1945\\_en](http://www.humanrights.asia/countries/indonesia/laws/uud1945_en).

<sup>47</sup>*Id.* at art. 28(d)(1).

<sup>48</sup>*Id.* at art. 28(e)(2).

<sup>49</sup>*Id.* at art. 28(e)(3).

<sup>50</sup>*Id.* at art. 28(i)(1).

<sup>51</sup>*Id.*

<sup>52</sup>HUMAN RIGHTS WATCH, INDONESIA: BOLD COURT DECISION GOOD FOR FREE EXPRESSION (July 19, 2007),<http://www.hrw.org/en/news/2007/07/18/indonesia-bold-court-decision-good-free-expression>.

stipulates that “a judge is prohibited from showing by his attitude or by a remark during the trial whether or not he thinks the defendant is guilty.”

### ***(ii) Cultural vs. Sovereign Expression***

Indonesian law distinguishes between “cultural” and “sovereign” expression: it allows the former but forbids the latter. When Indonesia passed the Special Autonomy Legislation for Papua in 2001, it carved out a number of areas designed to give Papuans a greater autonomy to govern their own affairs.<sup>53</sup> Under Presidents Wahid and Megawati, flag-raising was consistently interpreted as “cultural” expression. However, subsequent interpretation has reversed this pattern, and the line between the “cultural” and “sovereign” expression has become unreasonably vague as a basis for prosecution. While the opening clause of Chapter II of the Special Autonomy Legislation explicitly contemplates a regional Papuan flag—“the Papua Province may have Regional Symbols as its greatness and grandeur banner and cultural symbol for the greatness of the Papuans’ identity in the form of the regional flag...”<sup>54</sup>—the law also requires that the flag not be “positioned as [a] sovereignty symbol.”<sup>55</sup> No clarification is provided as to how a flag might be “positioned” exclusively as a cultural expression and not a sovereign one.

### **b. International Law**

The detention of Mr. Karma constitutes an arbitrary detention of liberty<sup>56</sup> falling within Category II and Category III of the classifications of cases as defined by the Working Group.<sup>57</sup> This case meets the requirements of Category II because Mr. Karma’s arrest and detention are the result of his exercise of his fundamental right to freedom of expression, assembly and association embodied in Articles 19 and 20 of the Universal Declaration on Human Rights (UDHR), and Articles 19, 21 and 22 of the International Convention on Civil and Political Rights (ICCPR). This case meets the requirements of Category III because the Government of Indonesia failed to observe the minimum international standards required for a fair trial. When the government prosecuted Mr. Karma, it violated basic protections embodied in Articles 9, 10 and 11 of the UDHR.

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<sup>53</sup> Bill of Law of the Republic of Indonesia No. 21 Year 2001 on Special Autonomy for the Papua Province, *available at* <http://www.papuaweb.org/goi/otsus/files/otsus-en.html>.

<sup>54</sup>*Id.*

<sup>55</sup>*Id.*

<sup>56</sup> An arbitrary deprivation of liberty is defined as any “depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law.” International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52 U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976, at art. 9(1) [hereinafter ICCPR]. Such a deprivation of liberty is specifically prohibited by international law. *Id.* “No one shall be subjected to arbitrary arrest, detention or exile.” Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at art. 9 (1948) [hereinafter UDHR]. “Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law...”

<sup>57</sup> A Category II deprivation of liberty occurs, “[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20, and 21 of the [UDHR] and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the [ICCPR].” Office of the High Comm’r for Human Rights, United Nations, Fact Sheet No. 26: The Working Group on Arbitrary Detention, pt. IV(B) [hereinafter Fact Sheet No. 26]. A Category III deprivation of liberty occurs, “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the [UDHR] and in the relevant instrumental instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.” *Id.* Additionally, in making a Category III determination, the Working Group will look to the Principles for the Protection of All Persons under any Form of Detention or Imprisonment, and if the State is a party to the ICCPR, articles 9 and 14 of the ICCPR.

Indonesia acceded to the ICCPR in February 2006. By its own admission, Indonesia is still in the process of harmonizing its laws, particularly its criminal code, with its commitments under the ICCPR.<sup>58</sup> Nevertheless, Indonesian law requires that human rights provisions of international law ratified by Indonesia are self-executing domestically.<sup>59</sup>

Mr. Karma's imprisonment violates Indonesian commitments under the UDHR and ICCPR. Although Mr. Karma was convicted and imprisoned before Indonesia acceded to the ICCPR, his ongoing detention nevertheless violates UDHR obligations, and his post-ICCPR-accession imprisonment on the basis of acts protected by the ICCPR constitutes a breach of that Convention as well.<sup>60</sup> The UN Human Rights Committee's General Comment 26 finds that the individual rights contained in the ICCPR become vested in individual citizens upon their state's accession to the agreement, and that "any subsequent action" designed to divest individuals of those rights is prohibited.<sup>61</sup> Indonesia's ongoing imprisonment of Mr. Karma post-accession to the ICCPR constitutes such a prohibited action. Indonesia has registered no reservations, declarations or understandings that would prevent application of the ICCPR to citizens imprisoned, pre-accession, under laws inconsistent with ICCPR. Moreover, independent of ICCPR obligations, Mr. Karma's imprisonment clearly falls under Category II of the mandate of the UN Working Group on Arbitrary Detention. Where the ICCPR is not applicable, the Working Group applies the UDHR.<sup>62</sup>

The primary provisions of international law violated by the arrest, trial and imprisonment of Mr. Karma are UDHR Articles 9, 10, 11, 19 and 20, and ICCPR Articles 19(1), 19(2), 21 and 22. Mr. Karma's treatment in prison also contravenes Article 22(2) of the UN Standard Minimum Rules for the Treatment of Prisoners.<sup>63</sup>

***(i) Violation of Mr. Karma's Right to Freedom of Expression***

UDHR Article 19 provides a "right to freedom of opinion and expression," and ICCPR Article 19(1) provides a "right to hold opinions without interference." ICCPR Article 19(2) further provides that

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

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<sup>58</sup> U.N. Human Rights Council, Rep. of the Working Group on the Universal Periodic Review Indonesia, A/HRC/8/23, at 6 (May 14, 2008).

<sup>59</sup> Article 7(2) of Indonesian Law No.39/1999 on Human Rights, *available at* <http://asiapacificforum.net/members/apf-member-categories/full-members/indonesia/downloads/legal-framework/indonesiaact.pdf>.

<sup>60</sup> This argument does not and need not stipulate that the ICCPR has retroactive effect.

<sup>61</sup> U.N. Human Rights Comm., General Comment 26 to the ICCPR, U.N. Doc. CCPR/C/21/Rev.1/Add.8/Rev.1 (1997) ("The rights enshrined in the Covenant belong to the people living in the territory of the State party. The Human Rights Committee has consistently taken the view, as evidenced by its long-standing practice, that once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in Government of the State party, including dismemberment in more than one State or State succession or any subsequent action of the State party designed to divest them of the rights guaranteed by the Covenant").

<sup>62</sup> Working Group Visit Report, Fact Sheet No. 26, *supra* note 40.

<sup>63</sup> U.N. Standard Minimum Rules for the Treatment of Prisoners, August 30, 1955.

The arrest, detention and imprisonment of Mr. Karma for mere flag-raising violate Articles 19 of the UDHR and ICCPR. While ICCPR Article 19(3) provides that, so long as they are “provided by law and are necessary,” restrictions on freedom of expression may be subject to certain restrictions “for the protection of national security or of public order,” since its accession to the ICCPR, the Government of Indonesia has not defended alleged human rights violations on this basis. Even if it were to do so here, such a claim would fail under prevailing, authoritative interpretations of this exception. The Human Rights Committee’s General Comment 29 provides that any derogation based on national security concerns must conform to the requirements of proportionality and necessity:

[T]he fundamental requirement for any measures derogating from the Covenant...is that such measures are limited to the extent strictly required by the exigencies of the situation....[T]he obligation to limit any derogations to those strictly required by the exigencies of the situation reflects the principle of proportionality which is common to derogation and limitation powers. Moreover, the mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation.<sup>64</sup>

The 1995 Johannesburg Principles on National Security, Freedom of Expression, and Access to Information also contain principles applicable to invocation of the national security exception. Principle 6 provides that, apart from divulging state secrets, expression may be punished as a threat to national security only if a government can demonstrate that such expression is intended and likely to incite communal violence, and where the connection between such expression and anticipated violence is direct.<sup>65</sup>

Although the Government of Indonesia continues to deploy a heavy contingent of armed forces in Papua, it has not designated the area a special military operations zone since that status was lifted in 1998. Nor has it invoked alternative “emergency” powers in Papua that could help justify derogation from ICCPR obligations.

***(ii) Violation of Mr. Karma’s Right to Freedom of Assembly and Association***

Article 20 of the UDHR and Articles 21 and 22 of the ICCPR guarantee rights to peaceful assembly and freedom of association. Mr. Karma’s arrest at a peaceful flag-raising ceremony unquestionably violated these rights. Although both ICCPR Articles 21 and 22 provide exceptions for national security, public safety and public order,<sup>66</sup> the same restrictions on derogation that apply to freedom of expression apply to these rights as well, and for the same reasons, they have neither been invoked nor met.

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<sup>64</sup>*Id.*

<sup>65</sup> Johannesburg Principles on National Security, Freedom of Expression, and Access to Information, E/CN.4/1996/39 (1996).

<sup>66</sup>ICCPR, art. 21 (“No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”) See also ICCPR, art. 22.

*(iii) Violation of Mr. Karma's Right to Minimum Standards of Treatment while in Prison*

The UN Standard Minimum Rules for the Treatment of Prisoners Article 22(2) provide that “sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals.”<sup>67</sup> Denial and delay of medical transfer for Mr. Karma, despite the clear recommendation of qualified physicians, violated this obligation.

*(iv) Violation of Mr. Karma's Right to a Fair Trial*

Article 9 of the UDHR prohibits arbitrary arrest and detention, and UDHR Article 10 provides a right to a “fair and public hearing by an independent and impartial tribunal.” UDHR Article 11 requires that anyone charged with a penal offense “have all the guarantees necessary for his defence.” The inflammatory statements about Mr. Karma made by Judge A. Lakoni Hernie,<sup>68</sup> a member of the Judicial Tribunal of the Jayapura District Court, coupled with the tripling of the prosecutor’s recommended sentence, strongly suggest judicial partiality in violation of UDHR Article 10. The circumstances of his arrest and detention, including numerous violations of Indonesian law as outlined above, violated UDHR Article 9. And breaches of UDHR Article 10 include the failure to dispatch Mr. Karma’s appellate brief to the Jayapura High Court; the arbitrary and capricious timing of hearings so as to exclude proper legal defense; and the denial of Mr. Karma’s appeal despite these other violations of due process below.

## **VI. Conclusion**

The Government of Indonesia has sought to intimidate and silence Mr. Karma as a consequence of his lawful exercise of rights protected under Indonesian and international law. For the reasons stated above, Mr. Karma’s arrest, conviction and detention violated international and Indonesian human rights to free expression, assembly, association and fair trial. His detention is thus “arbitrary” under Categories II and III.

**INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN**

Mr. Karma was convicted in 2005 of crimes relating to a flag-raising ceremony in December 2004. As described in detail above, Mr. Karma has diligently pursued available domestic judicial remedies in Indonesia to no avail. All appeals, including to the Supreme Court of Indonesia, have been exhausted. Mr. Karma remains in arbitrary detention, in violation of Indonesian and international law.

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<sup>67</sup>Standard Minimum Rules, art. 22(2), *supra* note 59.

<sup>68</sup>*See* Indonesian Criminal Code (KUHAP), *supra* note 14.

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