

## AMNESTY INTERNATIONAL OPEN LETTER

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HE Ir. H. Joko Widodo  
The President of the Republic of Indonesia  
State Secretariat  
Jl. Veteran No. 17-18  
Central Jakarta  
DKI Jakarta 10110  
Indonesia

2 October 2019

### OPEN LETTER ON THE INCREASING USE OF *MAKAR* CHARGES AGAINST PAPUAN ACTIVISTS TO STIFLE FREEDOM OF EXPRESSION

Your Excellency:

Amnesty International is writing to express our deep concern about the sudden surge in the use of *makar* charges against at least 22 Papuan activists in Jakarta and Papua over the past few weeks based on their peaceful exercise of the rights to freedom of expression, association and assembly. The activists are being charged and detained under Articles 106 and 110 of Indonesia's Criminal Code (KUHP), which cover crimes against the security of the state and impose life imprisonment as a maximum punishment.

Amnesty International considers the 22 Papuan activists facing prosecution to be prisoners of conscience imprisoned solely for peacefully expressing their opinions. As such they should be released immediately and unconditionally.

Article 106 of the Criminal Code authorizes the courts to sentence a person "to life imprisonment or a maximum of twenty years imprisonment for *makar* with the intent to bring the territory of the state in whole or in part under foreign domination or to separate part thereof."<sup>1</sup> In addition, Article 110 stipulates that conspiracy to commit *makar* is punishable as a violation of Article 106. The Indonesian authorities have used these criminal code provisions to prosecute dozens of peaceful pro-independence political activists in Maluku and Papua over the last decade.

Our organization takes no position whatsoever on the political status of any province of Indonesia, including on calls for independence. However, we consider that the right to freedom of expression protects the right to peacefully advocate for independence or any other political solutions that do not involve incitement to discrimination, hostility or violence.

In the view of our organisation, the restrictions on the rights to freedom of expression imposed under Articles 106 and 110 of the Criminal Code go beyond the permissible limitations allowed under the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia is a state party. The prosecution of Papuan activists for *makar* also undermines your stated commitment to improve the human rights situation in Papua. Moreover, it runs counter to positive gestures regarding the protection of freedom of expression that you made during your first presidential term. As you will recall, in May 2015 you granted clemency to five political activists in Jayapura, Papua, and in November 2015 prisoner of conscience Filep Karma was released after spending more than a decade in prison for his peaceful political expression and activities.

The Papuan activists currently in detention had organized anti-racism protests in different cities inside and outside Papua, including Jakarta, Manokwari, Jayapura and Sorong in mid to late August 2019. These protest were carried out in response to

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<sup>1</sup> Note that the definition of "*makar*" is still debated among Indonesian legal scholars. While "*makar*" literally means treason, the criminal code has other provisions that criminalize treasonous acts such as rebellion and inciting revolution. Experts have argued that article 106 was directly translated from the Dutch Criminal Code during colonial times and that "*makar*" is used erroneously to translate the word "*aanslag*," which means "attack" or "onslaught," signifying a physical attack.

an earlier incident in Surabaya, East Java province, where some military personnel and members of anti-Papua independence organizations had besieged Papuan students in their dormitory. During the incident the mob verbally attacked the students, using racist slurs such as “monkey,” “dog,” “animal,” and pig.” Some of the racist verbal harassment was recorded on video that was shared widely on social media, and which led Papuans to stage later protests in big cities in Papua. Some of these protests turned violent, with angry mobs destroying public facilities, government buildings, stores and homes. In several of the protests, Papuan political activists waved the Morning Star Flag, a banned symbol of Papuan independence.

The Jakarta Police Force arrested six Papuan activists (Dano Tabuni, Carles Kosai, Ambrosius Mulait, Isay Wenda, Arina Lokbere and Surya Anta Ginting) in separate places on 30 and 31 August. They charged the activists under Articles 106 and 110 of the Criminal Code for allegedly organizing a peaceful protest in front of the Presidential Palace in Jakarta on 28 August, in reaction to the racist incidents in Surabaya and Malang in East Java province. All of the detainees are still being held by the police at the Mobile Brigade Headquarters (*Mako Brimob*) in Depok, West Java province. Further, their lawyers claim that the police have been preventing them from accompanying and providing legal assistance to their clients during interrogation, in violation of the activists’ fair trial and due process rights.

In Manokwari, Papua Barat province the police arrested Sayang Mandabayan at the local airport on 2 September for carrying 1,500 mini Morning Star Flags, allegedly to be used in a protest in the city that day. The police charged her with *makar* under Articles 106 and 110 of the Criminal Code and detained her at the Manokwari Resort Police Station (Polres). Subsequently, on 19 September, the Manokwari Police Force arrested three university students (Erik Aliknoe, Yunus Aliknoe and Pende Mirin) and charged them with *makar* under Articles 106 and 110 of the Criminal Code for organising anti-racism protests in Manokwari on 3, 6 and 11 September, protests in which some participants waved the Morning Star Flag. The police are holding them at the Manokwari Resort Police Station (Polres). Their lawyers have also complained that they were barred from assisting their clients while the police were interrogating them.

In Jayapura, Papua province the police arrested eight Papuan activists and charged all of them under Articles 106 and 110 of the Criminal Code, accusing them of being the masterminds of the peaceful anti-racism protest that turned violent in Jayapura on 29 August. Immediately after the protest, high-ranking police officers accused the ULMWP (United Liberation Movement for West Papua)<sup>2</sup> and the KNPB (the West Papuan National Committee),<sup>3</sup> two pro-independence Papuan political organizations, of being behind the Jayapura protest, as well as other violent protests in Papua. Between 9 and 23 September in Jayapura, the police arrested three KNPB leaders (Agus Kossay, Steven Itlay and Assa Asso) and a ULMWP activist who was also a former chairperson of the KNPB (Buchtar Tabuni). They have been detained and charged with *makar* by the police under Articles 106 and 110 of the Criminal Code. The police also claimed that the ULMWP and KNPB were planning to incite riots in Papua to provoke repressive actions by the security forces, and to depict the police response as human rights violations in the upcoming UN Human Rights Council and General Assembly sessions. The police also arrested four Papuan university students (Ferry Kombo, Alexander Gobay, Henky Hilapok and Irwanus Urupmabin) between 6 and 11 September in Jayapura, charging them with *makar* under Articles 106 and 110 of the Criminal Code as the accused masterminds of the 29 August Jayapura “riot,” because their student union was the only organization that informed the police that there would be a peaceful anti-racism protest in Jayapura.

In Sorong, Papua Barat province the police arrested four Papuan activists (Rianto Ruruk alias Herman Sabo, Yoseph Laurensius Syufi alias Siway Bofit, Manase Baho and Ethus Paulus Miwak Kareth) on 18 September and charged all of them under Articles 106 and 110 of the Criminal Code, accusing them of being for producing and distributing pamphlet which contained a Morning Star Flag image with words of “Referendum, Papua Independent” during the mass protest in the city between 16 and 18 September. The police are holding them at the Sorong Resort Police Station (Polres).

Police have a duty to investigate and prevent acts of violence, but they should not unreasonably restrict the rights of other protesters. Measures in response to violence should be targeted at those participating in violence or inciting violence, and reasonable, necessary and proportionate in accordance with law. It should also be underlined that access to lawyers is an

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<sup>2</sup> The ULMWP is an umbrella organization formed in December 2014 by factions of the independence movement in Indonesia and abroad. ULMWP’s short-term objective is to be accepted as a full member of the Melanesian Spearhead Group, a sub-Pacific intergovernmental organization founded in 1983 and composed of the four states of Fiji, Papua New Guinea, Solomon Islands and Vanuatu, as well as the Kanak and Socialist National Liberation Front of New Caledonia. Indonesia is an associate member, while ULMWP has observer status.

<sup>3</sup> The KNPB was established in 2008 by Papuan students, mostly from the highland region. It is one of the most active political organizations and has strong links to Papua pro-independence movements abroad. The organization has organised mass demonstrations in several cities in Papua to call for a referendum on self-determination. The KNPB has actively supported the ULMWP’s campaign.

important safeguard for many human rights, including the right to a fair trial and ensuring the detainee's rights are respected in custody, including their right to access medical care when needed, protection from torture and other ill-treatment, coerced confessions and enforced disappearances. Denial of this right amounts to incommunicado detention and is in itself a form of ill-treatment. Lawyers and family members of detained persons are entitled to be promptly informed of where the detained person is being held and lawyers and independent medical professionals should have unrestricted access to detainees.

The vast majority of individuals who have participated in the protests in various cities in Papua have acted peacefully, and the police must find ways of facilitating the assembly for those who want to assemble peacefully, while stopping those who want to engage in violence. The police may have a legitimate and lawful basis to arrest individuals who are engaging in violence toward others or are damaging or destroying property.

No person should be arrested solely for peacefully exercising rights to peaceful assembly and freedom of expression. In cases where there are grounds to arrest people engaging in violence, law enforcement officials must only use such force as is necessary, reasonable and proportionate to this aim. Under international human rights law and standards, police are permitted to only use force where absolutely necessary and proportionate to the legitimate objective they are trying to achieve. The use of force should be aimed at stopping violence, while minimizing injury and preserving the right to life (see UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials).

Further, we acknowledge that there have clearly been incidents of violence committed by some Papuans in the community against security forces personnel and non-indigenous Papuan residents in Papua recently, and recognize that the Indonesian government has an obligation to protect the life, liberty and security of all persons in its territory. Where acts of violence are being committed, this should be promptly and impartially investigated and where appropriate evidence found, accountable individuals should be charged under the domestic criminal law, with the right to a fair trial guaranteed.

However, the continued widespread use of unlawful detention in the Papua region, apparently as a deterrent to political activism and to suppress the exercise of the rights to freedom of expression and of peaceful assembly, highlights the failure of the Indonesian government to make a distinction between peaceful activists who support Papuan independence through peaceful expression of opinion, and those who pursue their aims through the use or threat of violence.

Our organization notes with concern that the *makar* provisions are found in the latest draft Criminal Code (September 2019 version), enshrined under the Book II on Chapter I entitled "Criminal Offences Against State Security," Part Two. The UN Working Group on Arbitrary Detention (WGAD) has consistently raised concerns about provisions in the Criminal Code relating to national security contained in the four chapters of Book II of the Code.<sup>4</sup> According to the WGAD, "[m]ost 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."<sup>5</sup> The WGAD has also stated that "these provisions carry grave risks of arbitrary detentions, as long as they have not been abrogated or their content amended to make them compatible with international standards guaranteeing the freedoms of opinion and expression."<sup>6</sup>

The rights to freedom of opinion and expression are enshrined in the Indonesian Constitution and national legislation. However, the authorities continue to use criminal law provisions to suppress peaceful activities and to detain people solely for the peaceful exercise of their rights to freedom of expression and opinion, peaceful assembly, conscience and religion.

In light of the foregoing concerns, we urge you, as the President of the Republic of Indonesia, to take the following steps:

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<sup>4</sup> See Report of the Working Group on Arbitrary Detention on its visit to Indonesia (31 January-12 February 1999), UN Doc: E/CN.4/2000/4/Add.2, 12 August 1999 (Report of WGAD on its visit to Indonesia); WGAD, Opinion No. 41/2008 (Indonesia); and WGAD, Opinion No. 48/2011 (Indonesia). The four chapters include "Crimes against the security of the State" (Chapter. 1, Articles 104-129), "Crimes against the dignity of the President and Vice-President" (Chapter 2, Articles 130-139); "Crimes against public order" (Chapter 5, Articles 154-181); and "Crimes against public authority" (Chapter 8, Articles 207-241).

<sup>5</sup> Report of WGAD on its visit to Indonesia, Footnote No. 4, para 50.

<sup>6</sup> Opinion No. 48/2011 (Indonesia), Footnote No. 4, para 25. See also Report of WGAD on its visit to Indonesia, Footnote No. 4, para 51.

- Immediately drop the *makar* charges under Article 106 and 110 of Indonesia's Criminal Code brought against the 22 Papuan political activists who expressed their political opinion or peacefully advocated for independence or other political solutions for Papua that did not involve incitement to discrimination, hostility or violence, and immediately and unconditionally release them;
- Ensure that while the activists are in detention they are not tortured or otherwise ill-treated, and have regular access to their family members and lawyers of their choice. They must be assisted by their lawyers in all stages of the legal process, in line with the right to a fair trial;
- Together with the parliament, repeal or substantially amend Articles 106 and 110 of Indonesia's Criminal Code, ensuring that these provisions can no longer be used to criminalize freedom of expression beyond permissible limitations in accordance to international human rights law and standards;
- Together with the parliament, eliminate the *makar* provisions from the current draft of the Criminal Code amendments and from other draft legislation.

We remain at your disposal should you wish to discuss this matter. A copy of this letter will be sent to Mr. Wiranto, Coordinating Minister for Politics, Law and Security Affairs; Ms. Puan Maharani, Chairperson of the House of Representatives of the Republic of Indonesia (DPR RI); Police General Tito Karnavian, Chief of the Indonesian National Police; and Mr. Ahmad Taufan Damanik, Chairperson of the National Human Rights Commission (Komnas HAM).

Thank you for your attention.

Yours sincerely,

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Amnesty International Indonesia