



# **INDONESIA: JAILED FOR WAVING A FLAG**

PRISONERS OF  
CONSCIENCE IN MALUKU

**AMNESTY  
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# 1. INTRODUCTION

**“There is no justice, we are sentenced as separatists. Can they prove this? People who commit ‘rebellion’ (makar<sup>1</sup>) are usually armed. We never took up weapons. The only thing we did was to show a piece of cloth”<sup>2</sup>**

Johan Teterissa, the leader of the 23 Cakalele dancers, Maluku

On 29 June 2007, at least 23 men performed the ‘Cakalele’ dance (a traditional Maluku war dance) in front of Indonesia’s President, Susilo Bambang Yudhoyono in Ambon, Maluku province, Eastern Indonesia (See map of Indonesia and Maluku province, p.34-35). At the end of their performance, the Moluccan dancers displayed the ‘Benang Raja’ flag, symbol of South Maluku independence, before central government, foreign and provincial officials. Indonesian law forbids the display of regional logos or flags which are symbols of separatist movements.

Police immediately arrested 22 of them,<sup>3</sup> who are for the most part farmers. While transporting them to local police stations they beat some of them. Most of the men were stripped naked, beaten with sticks, electric cables and rifles, and repeatedly thrown into the sea and dragged out again by police while they were bleeding. Police denied all 22 Cakalele dancers access to their families, friends and lawyers immediately following the arrests and during the first 11 days of their pre-trial detention. All have now been convicted of ‘rebellion’ against the state (makar) under Articles 106 and 110 of Indonesia’s Criminal Code (KUHP, Kitab Undang-Undang Hukum Pidana) and sentenced to between seven and 20 years’ imprisonment. Moreover, their trials failed to meet international standards of fairness.

The Indonesian government has the duty and the right to protect life and to maintain public order within its jurisdiction. This is particularly relevant in a province like the Maluku, the setting of an inter-communal conflict between Christian and Muslim groups between 1999

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1 The word makar has no direct equivalent in English however for the purpose of this briefing it will be translated as ‘rebellion’. In the Indonesian Criminal Code, the word ‘makar’ is mentioned in Article 106 and refers to separatist activities.

2 In Aljazeera, “High Price of speaking up in Indonesia”, Weblink: <http://www.youtube.com/watch?gl=GB&hl=en-GB&v=i7ImzAnU2xl>, accessed on 20 February 2009.

3 The 23rd, Buce Nahumury, was subsequently arrested in June 2008 and is facing trial.

and 2002, and sporadic violent clashes thereafter (see section 2. on historical background).

However the authorities' response should differentiate between armed groups and peaceful political activists, in line with its obligation to uphold international human rights standards. In particular the Indonesian authorities should respect the rights to freedom of expression and to peaceful assembly, and ensure that any restrictions on these rights are no more than is permitted under international human rights law and in particular the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia is a state party.<sup>4</sup>

Further, the Indonesian government should abide by its international human rights legal obligations at all times. These include ensuring that torture and other cruel, inhuman or degrading treatment (other ill-treatment) are prohibited and that this prohibition is enforced in practice; that any officials who commit such violations are held accountable; that trial procedures comply with international standards; and that no one is imprisoned for the peaceful advocacy of their political views.

In the case of the 22 dancers, the response from the authorities was in clear violation of the international human rights standards set out in the ICCPR. The flag-raising event was peaceful and did not advocate or incite violence;<sup>5</sup> and the force deployed by police was unnecessary and excessive. Moreover, not only were these 22 peaceful political activists arbitrarily arrested and detained, but the courts sentenced them to long term imprisonment after unfair trials. In addition, according to a variety of credible sources, police subjected them to torture and other ill-treatment during arrest and detention.

Amnesty International has long campaigned for the right to freedom of expression and assembly to be respected worldwide. Peaceful political activists, including those who support independence, have the right to express their political views. The organization considers the 22 Cakalele dancers to be prisoners of conscience imprisoned solely for peacefully expressing their political views. As such they should be released immediately and unconditionally.

## WHAT IS A PRISONER OF CONSCIENCE?

Amnesty International considers as a prisoner of conscience a person imprisoned or otherwise physically restricted because of their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation or other status – who has not used violence or advocated violence or hatred. The organization calls for their immediate and unconditional release.

The arrest of these 22 men occurs within a broader context of crackdowns on people who the

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<sup>4</sup> See Articles 19, 20 and 21, ICCPR.

<sup>5</sup> Amnesty International is aware that following the Cakalele dance protest on 29 June 2007, there were a series of demonstrations organized by the Islamic Youth movement which led to some violence on 2 July 2007 during which two people were injured, in "Ambon heats up", Tempo Interactive, 3 July 2007. However, the 29 June flag-raising protest was peaceful and the dancers did not advocate or use violence.

government claims have taken part in pro-independence or separatist activities in Maluku<sup>6</sup> and elsewhere in Indonesia. At least 72 people in total have been arrested and detained between April 2007 and July 2008 for such activities in Maluku province. Amnesty International believes that many of these people are possible prisoners of conscience, as they may have been arrested and imprisoned solely for their peaceful political protests.

Moreover sources indicate that police have tortured and ill-treated some of these political activists during their arrest and detention. Amnesty International urges the Indonesian government to conduct an independent and impartial investigation into these reports. Those found responsible should be held to account as a matter of priority. Victims should be granted reparations in accordance with international standards.

The findings of this briefing are based on a wide variety of first-hand and other sources. The report provides information about the conditions of arrest, detention and/or sentencing of 72 people arrested between April 2007 and July 2008 in Maluku, and highlights some of the human rights violations these individuals were subjected to including arbitrary arrests, torture and other ill-treatment, incommunicado detention, inadequate medical care in detention, and denial of the right to appeal. It also includes recommendations to the Indonesian government, which, if implemented would improve the human rights situation in Maluku province.

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<sup>6</sup> It remains difficult to assess whether all those who are taking part in flag-raising events in Maluku and elsewhere are doing so to express their claims for separatism as part of an organized movement or whether they are doing so as a way to express their dissatisfaction towards the central government. In any event, those people who were arrested between April 2007 and July 2008 because they took part in flag-raising activities are peaceful political activists.

## 2. HISTORICAL BACKGROUND

In 1950, Christian Moluccans (although there were also some Muslims) expressed strong demands for an independent Republic of South Maluku (Republik Maluku Selatan, RMS), and created the 'Benang Raja' flag (or rainbow flag)<sup>7</sup> to symbolize their movement. These post-decolonization demands were strongly opposed by the newly created Indonesian state and led to a violent political struggle. The RMS armed opposition movement officially ended with the execution by the Indonesian authorities of its leader in 1966. Support for the RMS subsequently diminished in Maluku.<sup>8</sup>

Following the Asian economic crisis which severely affected Indonesia in 1998, Alexander Manuputty (who is now in exile in the United States)<sup>9</sup> and others created the Maluku Sovereignty Front (*Front Kedaulatan Maluku*, FKM) in late 2000. This small political organization based its position on the political aims of the RMS movement and symbolized for many new members a way to express their ongoing dissatisfaction with the central government. The FKM was perceived as a Christian organization, in a highly polarized local context.

At the time of the FKM creation, Maluku was the scene of a violent inter-communal conflict between Christian and Muslim groups which resulted in the deaths of thousands of people. The conflict changed in nature in mid-2000 with the arrival in the province of Laskar Jihad, an Islamist armed group. The group, which is reported to have received some military training by sympathetic military officers, joined local Muslim armed groups in an offensive against Christian armed groups. The inter-communal violence caused hundreds of thousands of civilians to flee and inflicted many casualties on both sides.<sup>10</sup> The conflict officially ended in February 2002 with the Malino peace agreement.<sup>11</sup>

Although some FKM members may have been involved in Christian armed groups at the time

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7 The Benang Raja flag is made of four colours: red, green, white and blue.

8 See Dr Fridus Steijlen, "Using old notions for new ideologies – RMS and the Moluccan conflict", paper presented at the international conference on Indonesia: Democracy and Local Politics, 1-8 January 2003 in Yogyakarta. Kirsten E. Schulze, "Laskar Jihad and the Conflict in Ambon", Spring 2002, and Gerry Van Klinken, "Communal violence and democratization in Indonesia" Chapter 7 in "Communal violence and democratization in Indonesia – small town wars", 2005.

9 On 28 January 2003, Alexander Manuputty (m) was found guilty of 'rebellion' (Article 106 of the Criminal Code) in connection with his role in establishing the FKM and raising the Benang Raja flag. He was sentenced to three years' imprisonment. In May 2003, an appeal court increased his sentence to four years' imprisonment, which was confirmed by the Supreme Court. In November 2003 Alexander Manuputty left Indonesia for the United States where he was granted asylum. He still lives there although the Indonesian police are seeking to return him to Indonesia. In "Police lobby US return Manuputty", Tempo interactive, 10 July 2007, and "RI seeks extradition of RMS leader", The Jakarta Post, 10 July 2007.

10 See Human Rights Watch, "Indonesia: the Violence in Ambon", 16 March 1999; International Crisis Group, "Indonesia's Maluku Crisis: The Issues," 19 July 2000.

11 International Crisis Group, "Indonesia: The Search for Peace in Maluku", 8 February 2002. See also Kirsten E. Schulze, and Gerry Van Klinken supra no8.



of the conflict, and some elements within Laskar Jihad blamed the fighting on the 'Christian separatists' from the RMS movement,<sup>12</sup> the FKM was not an organization which itself advocated violence or which supported an armed separatist movement; its activities, which mostly consisted of organizing flag-raising events, were peaceful.<sup>13</sup> The Indonesian authorities formally banned the FKM on 16 April 2001, and two of its leaders were subsequently sentenced to terms of imprisonment for their pro-independence activities.<sup>14</sup>

Despite the ban on the FKM, some people in Maluku continued to organize ceremonies where the Benang Raja flag was raised in the following years. On 25 April 2004, one of these ceremonies, which was held on the anniversary of the RMS declaration of independence in 1950, led to a renewal of inter-communal violence between Christian and Muslim groups, causing the death of at least 38 people. The clash started after FKM/RMS sympathizers, who had been arrested by police because they had raised the Benang Raja flag earlier that day, returned to the centre of Ambon, the provincial capital. The FKM/RMS sympathizers clashed with a group of Muslim youths who claimed to be defenders of "the unitary state of Indonesia". A cycle of violence shortly ensued and lasted a few days. The exact chronology of the unrest and the burden of responsibilities remain unclear.<sup>15</sup>

Although the responsibility for the violence was not clear, this incident, the most violent since the 2002 peace agreement, resulted in the Indonesian authorities increasing their actions to eradicate the pro-independence FKM/RMS movement. In 2004 and 2005, many FKM/RMS sympathizers were arrested for their political activities and convicted of 'rebellion'.<sup>16</sup> The Indonesian authorities increased security arrangements on the anniversary of the RMS declaration of independence on 25 April the following years (at least until 2007)<sup>17</sup> to deter a potential increase of further violence between Christian and Muslim

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12 See International Crisis Group "Weakening Indonesia's Mujahiddin Networks: Lessons from Maluku and Poso", 14 October 2005, p2. See also Kirsten E. Schulze, and Gerry Van Klinken supra no8.

13 Confidential interviews, November 2008 and February 2009.

14 See Amnesty International, "Old Laws, New Prisoners of Conscience", AI Index: ASA 21/027/2003. One of the leaders, Alexander Manuputty now lives in exile in the US, see supra n10. The other FKM leader, Samuel Waeleruny, who was convicted for rebellion, served his sentence and is now free.

15 See International Crisis Group, "Indonesia: Violence erupts again in Ambon", 17 May 2004. It has been argued that some elements within the military may have staged the incident so as to favour one candidate within the context of the approaching Presidential elections in 2004 in "Wiranto denies role in Ambon conflict", Laksamana.net, 30 April 2004 and "Police unable to stop Ambon's ongoing misery" in Laksamana.net, 26 March 2005. Others have argued that "police complacency and competition among security forces over territory, between individuals in the police and army" were to blame for the violence, in "Indonesia troops try to quell Ambon unrest", Reuters 27 April 2004. The April 2004 incident was followed by more violent actions in 2004 and 2005. See International Crisis Group report supra n12.

16 Thirty-six people, including Moses Tuwanakotta, Oly Manuputty, Frans Simiasa, Yakobus P. Siwarissa, Elisa Wattimena, Matheus Talakua went on trial in July 2004. They were accused of rebellion under Articles 106 and 110 of Indonesia's Criminal Code. In "Treason trial opens in Indonesia's restive Maluku", AFP 28 July 2004 and "Indonesia tries 17 more activists in Ambon for treason", The Jakarta Post, 28 July 2004. Moses Tuwanakotta, was sentenced to 12 years imprisonment under Articles 106 and 110 of Indonesia's Criminal Code for having organized a Benang Raja flag-raising ceremony on 25 April 2004 in "Separatist moved to Surabaya" in the Jakarta Post, 4 April 2005. Benyamin Sapulette and Johannes Cak Sapulette were arrested on 11 April 2005, "Two Ambon separatists suspects arrested in Indonesia", in Republika, 11 April 2005; Popy Egenderph, Jhon Sahureka and Domingus Saranamual were arrested in April 2006. See "Ambon arrests suspects", in the Jakarta Post, 28 April 2006.

17 "Separatist supporters mark anniversary in Maluku", the Jakarta Post, 26 April 2007.

groups.<sup>18</sup>

There is currently no active armed pro-independence movement in Maluku, which has been the case for several decades (since the execution of the RMS leader in 1966). Moreover there is no active pro-independence organization that has replaced the FKM. The general consensus, even among government officials, is that the level of support for a pro-independence movement in Maluku is very small.<sup>19</sup> However there may still be some informal groups that agree with RMS or FKM political goals and struggles in Maluku.

The raising of the Benang Raja flag has continued in some villages in Maluku. It is difficult to assess what these flag-raising events really mean for villagers. For some people it may just be ceremonial – part of a tradition. For others it is a political act of protest against the central government. This protest may encompass several messages due to the vague nature of flag-raising. It may reflect support for a Republic of South Maluku or simply greater autonomy from Jakarta. The flag-raising events may also be a symbolic way of expressing grievances about the central government's failure to address ongoing economic and social problems in the isolated province. For the Indonesian authorities, including members of the central government, the police and the courts, these events although of a small-scale, symbolize direct calls for separatism and support for the RMS or FKM 'pro-independence movement'.<sup>20</sup>

Although there is now relative peace in Maluku, there have still been sporadic violent clashes between Christians and Muslims over land and power related issues in 2008 and early 2009.<sup>21</sup> Furthermore Maluku province remains highly segregated with Christian and Muslim populations living in separate villages or neighbourhoods.<sup>22</sup> Seven years after the 2002 peace agreement and five years after the inter-communal violence which erupted in April 2004, there is still a heavy security presence in Ambon<sup>23</sup> and a large proportion of internally displaced persons. In 2008, about 12,080 families were still displaced.<sup>24</sup>

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18 See AFP, supra n.17, and "Indonesian police on alert in Ambon for Maluku separatist anniversary", in the Jakarta Post, 25 April 2005.

19 See "Flag-waving incident no real threat, says Kalla", in the Jakarta Post, 20 June 2007.

20 Interviews, Amnesty International, February 2009.

21 See Kompas "Bentrok di Ambon, Densus 88 Diturunkan" 5 February 2009; BBC news "Indonesian intelligence chief plays down Ambon clash", 25 January 2009; Kompas, "Indonesian villages to be rebuilt following islamic rampage", 17 December 2008, The Jakarta Post, "Indonesian religious forum criticizes police for late response to Maluku", 18 December 2008; see also Reuters, "Indonesia police say 3 die in Maluku land clash", 3 May 2008.

22 See "Ongoing conflict in Ambon", in the Jakarta Post, 14 May 2007. According to data from the Maluku Interfaith Agency almost 90 % of Maluku province is divided along religious lines. In Ambon only two areas, Wayame and Lata sub-districts are still mixed.

23 Interview with Amnesty International, November 2008.

24 See "Masalah Pengungsi Ambon Belum Tuntas", in Gatra, 24 October 2008, and "Nine years later: Maluku refugees still waiting for rights", in the Jakarta Post, 29 January 2008.

## 3. ATTACKS ON POLITICAL ACTIVISTS IN MALUKU

The arrests and detention of 72 people in Maluku between April 2007 and July 2008 are part of a larger crackdown on political activists in areas where there has been a history of separatist movements such as Papua or Maluku. The Indonesian authorities have reacted strongly towards individuals who have expressed claims for independence in Maluku and elsewhere. Amnesty International has documented the arrests of at least 90 people in Papua for activities connected with flag-raising events in 2008. Twenty-four of them, plus another thirteen from previous years, remained detained at the end of 2008 (for more details, see Section 4. on Freedom of expression).<sup>25</sup>

Amnesty International itself takes no position on the independence of South Maluku, Papua or any other territory. However, it calls on states to comply with their international human rights obligations which include respect for the right of everyone in their jurisdiction to freedom of opinion and expression, including the peaceful expression of political views. In this regard, the organization is concerned that in many cases the Indonesian government has made no distinction whatsoever between armed separatist groups and peaceful political activists. In the cases set out below, Amnesty International provides additional information on the 23 Cakalele dancers and 49 other political activists who were arrested between April 2007 and July 2008.

### CASE 1 – THE ‘CAKALELE’ DANCERS

**“I went to the police station in Ambon to see my son after he was arrested. The police were rude to me and shouted vulgar words at me. I tried for 14 days to see my son. Finally the police allowed me to see him. He was unrecognisable. He told me that the police had tortured him. He had been stripped naked, beaten with sticks, an electric cable and rifles. They threw him into the sea when he was bleeding and was given ice cubes to put on his wounds.”**

Ida,<sup>26</sup> the mother of one of the 23 Cakalele dancers.

On 29 June 2007, the Indonesian government organised a ceremony to mark the 14<sup>th</sup> anniversary of National Family Day in Independence Field, Ambon, Maluku province. President Susilo Bambang Yudhoyono attended. During the ceremony, Johan Teterissa (see

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<sup>25</sup> The names of those who were arrested in 2008 are Ariel Warimon, Daniel Sakatorey, Edy Aryobaba, Markus Umpes, Leonardus D. Bame, Yakobus Wanggai, Frans Karet, Elimelek Obat Kaiwai, Marthinus Luther Koromath, Noak AP, George Risyard Ayorbaba, Silas Carlos Tevez May, Zakarias Horota, Elias Weah, Ester Doloros Tapnesa, Abu Muri, Simon Tuturop, Tadeus Weripang, Viktor Tuturop, Tomas Nimbittkendik, Benedidiktus Turuop, Teles Piahar, Paulus Kiwing, Matius Magai. Those who were arrested in previous years are: Jacobus Pigai, Melki Magai, Polce Magai, Sumien Magai, Juli Gwijangge, Kuniel Nurigi, Linus Hiluka, Heri Asso, Jean Hasegem, Gustav Ayomi, Yance Hembring, Filep Karma, and Yusak Pakage.

<sup>26</sup> Not her real name. Confidential interview with Amnesty International.

box, p.21) and at least 22 other political activists (see Appendix 1), mostly farmers, managed to pass through several layers of security barriers and walked onto the field where they performed a traditional Maluku war dance - or Cakalele dance – in front of the President and other national and international officials.<sup>27</sup> At the end of the dance (which was not officially part of the ceremony) the activists unfurled the Benang Raja flag, the prohibited pro-independence RMS symbol.

Around 20 police and presidential guards immediately arrested Johan Teterissa and 21 other dancers<sup>28</sup> and removed them from the scene. It remains unclear how the political activists managed to pass the high level security barriers with the Benang Raja flag and conduct their performance until the end.<sup>29</sup> They were wearing traditional costumes and were not officially registered to be part of the ceremony. The breach of security procedures led to the removal of the Maluku Head of Police and local Army Commander.<sup>30</sup>

According to a variety of sources, during the arrest police and presidential guards punched some of the Cakalele dancers and beat them with rifle butts. Police continued beating them while they were in a police vehicle on their way to local police stations. Police then reportedly moved the 22 Cakalele dancers between different police stations during the first 11 days of their detention. The dancers were held at the regional police station (Polda, *Polisi Daerah*), the district police station (Polres, *Polisi Resort*) and the police mobile brigade (Brimob, *Brigade Mobil*) Tantui base, where the police's anti-terrorist unit, Special Detachment 88 (Densus 88, *Detasemen Khusus 88*) is also based (see Map of Ambon, p.35).

According to local sources, police tortured most of the dancers in all three police stations. Police forced some of them to crawl on their stomachs over hot asphalt, whipped them with electric cables and forced billiard balls into their mouths. The police also beat some of them on the head with rifle butts until their ears bled, and fired shots close to their ears, damaging some of the detainees' hearing to the extent that some became partially deaf, like Ida's son (see quote above p.11). While the dancers were still bleeding they were repeatedly thrown into the sea in the vicinity of the Tantui base and dragged out again. The police threatened them with further violence, sometimes holding them at gunpoint, if they did not confess that they were carrying out pro-independence activities. Special Detachment 88 officers were reportedly responsible for the most severe violations. The 22 dancers were denied contact with the outside world during their first 11 days of detention.<sup>31</sup>

When the dancers' trials began, the police moved them from the Tantui base to the Waiheru detention centre. Police reportedly compelled some of the Cakalele dancers to sign

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27 Antara, "Maluku administration urged to apologize to President Yudhoyono", 4 July 2007.

28 Ruben Saiya (m), Johny Riry (m), Fedi Akihary (m), Johan Saiya (m), Jordan Saiya (m) Pieter Saiya (m), Stevi Saiya (m), Piter Johannes (m), Ferjon Saiya (m), Melkianus Sinay (m), Samuel Hendricks (m), Leonard Hendricks (m), Ferdinand Arnold Rajawane (m), Marthen Saiya (m), Mercy Riry (m), Yohanis Saiya (m), Yosias Sinay (m), Abraham Saiya (m), Johny Sinay (m) Aleks Malawauw (m), Yeftha Saiya (m).

29 See "BIN rejects statement by TNI commander over RMS flag waving incident", Tempo, 2 July 2002, "Military investigating RMS incident", The Jakarta Post, 4 July 2007, "Maluku Police chief removed over RMS flag incident", The Jakarta Post, 17 July 2007.

30 See "Maluku Police chief removed over RMS flag incident" in the Jakarta Post, 17 July 2007, and "Maluku military chief post yet to be filled", in The Jakarta Post, 25 July 2007.

31 Amnesty International interviews in June and November 2008.

statements stating that they did not need a lawyer before or during their trial. Other dancers were assigned lawyers by the police. The lawyers advised them to plead guilty and relinquish their right to appeal. Moreover some of the dancers who were sick at the time of their trial did not appear before the judge, who nonetheless convicted and sentenced them in absentia to terms of imprisonment. The duration of the dancers' trials varied, ranging from a few days to a few months.

The Ambon district court sentenced all 22 Cakalele dancers to between seven and 20 years' imprisonment for rebellion under Articles 106 and 110 of Indonesia's Criminal Code. Buce Nahumury (m), a twenty-third dancer, was arrested in June 2008 for having taken part in the Cakalele dance. He is currently detained and awaiting trial.

## **“CRIMES AGAINST THE SECURITY OF THE STATE” USED AGAINST THE CAKALELE DANCERS AND OTHERS**

Article 106 of Indonesia's Criminal Code, used against most of the Cakalele dancers and many others, prescribes punishments of life imprisonment or a maximum of twenty years' imprisonment for 'makar' or the "attempt undertaken with intent to bring the territory of the state wholly or partially under foreign domination or to separate part thereof".

Under Article 110(1), conspiracy to commit this and similar crimes are punishable by a maximum imprisonment of six years. However, paragraph 5 of this Article provides that where "the crime really takes place, the punishment may be doubled."

Following its visit to Indonesia in 1999, the UN Working Group on Arbitrary Detention commented on these and other provisions in the Criminal Code:

"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>32</sup>

Police arrested nine other people on 29 June 2007 for having helped organize the peaceful flag-raising event or simply for having watched it (see Appendix 2). Eight of them<sup>33</sup> are currently serving sentences of between six and 12 years' imprisonment. Police reportedly tortured or otherwise ill-treated some of these people during arrest and detention. According to credible local sources, police beat Arens Arnol Saiya (m), Flip Malawau (m), Elia Sinay (m), Barce Manuputty (m), Alexander Tanate (m), and Petrus Rahayaan (m) with their hands and hard objects including raffle butts during pre-trial detention. Two of them (Arens Arnold Saiya and Barce Manuputty) had access to medical services, however it is not known whether the others did.

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<sup>32</sup> Report of the Working Group on Arbitrary Detention on its visit to Indonesia (31 January - 12 February 1999), UN Do. E/CN.4/2000/4/ADD.2, 12 August 1999, para. 50.

<sup>33</sup> Yustus Nanariaan was released two weeks after his arrest.

To Amnesty International's knowledge the Indonesian authorities have not initiated an independent investigation into the reports of torture and other ill-treatment of these detainees by the police. The Indonesian government should, as a matter of priority, ensure prompt, thorough, and effective investigations by independent and impartial bodies into these reports, and ensure that those found responsible are brought to justice in proceedings which meet international standards of fairness.

In all 30 people are currently serving long term prison sentences in connection with the peaceful flag-raising event of 29 June 2007, while prisoner of conscience Buce Nahumury, is currently detained and awaiting trial. Amnesty International urges the Indonesian government to release all 31 prisoners of conscience immediately and unconditionally.

## CASE 2 – OTHER FLAG-RAISING EVENTS IN MALUKU

Police arrested another 25 people between April 2007 and July 2008 (see Appendix 3) because they attended flag-raising events, helped organise them, and/or brought the Benang Raja flag to the event. According to all the available information, these events were peaceful.<sup>34</sup>

All 25 people are currently serving prison sentences of between six and 17 years. Amnesty International is concerned that the charges brought against these 25 people appear to relate solely to the raising of a flag or attending an event where a flag was raised and as such would be a breach of the rights of freedom of expression and of peaceful assembly. Eleven of them<sup>35</sup> were convicted of rebellion under Articles 106 and 110 of Indonesia's Criminal Code. As stated above, these articles should not be used to imprison people who have taken part in peaceful flag-raising events.

According to credible local sources, six of them, Jacob Supusepa (m), Johan Syaranamual (m), Pieter Latumahina (m), Melkyanus Syaranamual (m), Muladi Taihutu (m), Abner Litamahuputty (m), were beaten by police officials during arrest and pre-trial detention. Credible local sources reported that at least three of them sustained some injuries as a result; it is not known whether they had access to adequate medical services.

To Amnesty International's knowledge the Indonesian authorities have not initiated an independent investigation into the reports of torture and other ill-treatment of these detainees by police. The Indonesian government should as a matter of priority ensure prompt, thorough, and effective investigations by independent and impartial bodies into these reports and ensure that those found responsible are brought to justice, in proceedings which meet international standards of fairness.

Amnesty International considers all 25 people to be possible prisoners of conscience who

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34 See "Separatist supporters mark anniversary in Maluku", in the Jakarta Post, 26 April 2007; "Five Republic of South Maluku Flags raised", in Tempo interactive, 26 April 2007; "Heavy security for Indonesia's Ambon rebel anniversary", in Agence France-Presse, 25 April 2007.

35 Sony Boin (m), Jacob Supusepa (m), Johan Syaranamual (m), Pieter Latumahina (m), Melkyanus Syaranamual (m), Piere Pattisina (m), Ferdinand Noya (m), Novis Adolph (m), Abner Litamahuputty (m) Muladi Taihutu (m) and John Markus (m).

should be released if they are currently detained solely for having taken part in peaceful political activities. The organization is seeking further information to confirm that they have been arrested solely on account of these peaceful activities.

### **CASE 3 – FOURTEEN OTHER PEOPLE WHO WERE ARRESTED FOR ALLEGED PRO-INDEPENDENCE ACTIVITIES BETWEEN JUNE 2007 AND JULY 2008**

Police arrested another 14 people for alleged pro-independence activities between June 2007 and July 2008 (Appendix 4). Police charged at least seven of them, including Jusuf Sapakoly (m), Benny Titahena (m), Reimond Tuapattinaya (m), Samuel Lesnussa (m), Marlon Pattiwael (m), Yakub Leuhena, and Stepanus Tahapary (m) of rebellion under Articles 106 and 110 of Indonesia's Criminal Code.

The Ambon District Court sentenced three of them to between two and nine years imprisonment. Although Amnesty International has limited information about the background of these arrests, the charges brought against these men suggest that these arrests were politically motivated and that these men were arrested and detained solely for having taken part in peaceful political activities. There is no mention of acts of violence in the charges. Amnesty International considers them to be possible prisoners of conscience and urges the Indonesian authorities to release them immediately and unconditionally if the men were solely charged for peaceful pro-independence activities.

According to credible local sources, three of the seven people initially charged for rebellion Benny Titahena, Yakub Leuhena, and Stepanus Tahapary were beaten by police officials during arrest and pre-trial detention. Although two of them sustained injuries as a result, they did not have access to medical assistance.

To Amnesty International's knowledge the Indonesian authorities have not initiated an independent investigation into the reports of torture and other ill-treatment of these detainees by police. The Indonesian government should as a matter of priority ensure prompt, thorough, and effective investigations by independent and impartial bodies into these reports and ensure that those found responsible are brought to justice, in proceedings which meet international standards of fairness.

### **CASE 4 – SIMON SAIYA**

In early 2008, Simon Saiya, who is accused by the authorities of being an RMS leader in Maluku and the initiator of the June 2007 peaceful protest, was reportedly tortured and otherwise ill-treated by police during arrest, detention and interrogation in order to force him to confess his involvement in separatist activities against the Indonesian state. The Ambon District Court sentenced Simon Saiya to six years' imprisonment under Articles 106 and 110 of Indonesia's Criminal Code.

During his trial for 'rebellion', Simon Saiya was accused by police of alleged involvement in 'terrorism'. They attempted to make him confess to such involvement. Simon Saiya was

accused in particular of involvement in the August 2005 bombing at Mardika market in Ambon where at least four people were injured.<sup>36</sup> Local sources expressed strong concerns about the ongoing ill-treatment Simon Saiya was subjected to and explained that he was very fragile psychologically due to police torture in early 2008, and thus likely to say anything police wanted him to confess. Simon Saiya is still detained in a police cell at Brimob's base in Tantai, Ambon awaiting a second trial. Amnesty International is concerned for his well being.

The Indonesian authorities should ensure prompt, thorough, and effective investigations by independent and impartial bodies into the reported torture and other ill-treatment of Simon Saiya by police. Those suspected of involvement should be prosecuted in proceedings which meet international standards of fairness. With regard to the previous conviction and current prosecution against Simon Saiya, under international law, any statement he made as a result of torture is inadmissible as evidence against him.<sup>37</sup>

Furthermore if Simon Saiya's conviction and sentence to six years' imprisonment was solely for his peaceful pro-independence activities, he should be immediately released, unless charged with other, recognisably criminal offences and remanded by an independent court.

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<sup>36</sup> See "Explosion injures four in Indonesia's Ambon", Agence France Presse, 25 August 2005.

<sup>37</sup> "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." (Article 15, UN Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment).



## 4. FREEDOM OF EXPRESSION AND ASSEMBLY AT STAKE

### 4.1 BACKGROUND

The crackdown on freedom of expression in Maluku is symptomatic of the continuing use of repressive legislation to criminalize peaceful political activities. Violations of the right to freedom of expression are particularly severe in areas where there is an active pro-independence movement such as Maluku and Papua.<sup>38</sup> Human rights defenders and peaceful political activists are among the first ones to be targeted.

There has been some progress in recent years towards respecting the right to freedom of expression in Indonesia. Many restrictions, including on the media, political parties and labour unions were removed following former President Suharto's resignation in 1998. Recent positive moves include the repeal of repressive legislation which had been used to silence critics in the past. Among the significant measures was the repeal in 1999 of the Anti-subversion Law, which had been widely used to imprison prisoners of conscience. In December 2006 Indonesia's Constitutional Court declared unconstitutional the use of Articles 134, 136 and 137 of Indonesia's Criminal Code which criminalized "insulting the President or Vice-President" with up to six years' imprisonment.<sup>39</sup> In July 2007, the Constitutional Court declared unconstitutional the so-called 'hate-sowing articles' (Articles 154 and 155) of the Criminal Code which criminalized "public expression of feelings of hostility, hatred or contempt toward the government" and "the expression of such feelings or views through the public media".<sup>40</sup>

Although these steps are welcome, the authorities need to do more to ensure that the right to freedom of expression is upheld. People continue to be imprisoned in Indonesia simply because they took part in activities connected to peaceful flag-raising events.

### 4.2 INTERNATIONAL HUMAN RIGHTS STANDARDS AND NATIONAL LEGISLATION

The right to freedom of expression is set out in Article 19 of ICCPR to which Indonesia is a state party: "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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38 See Amnesty International Press Release, "Indonesia: Release Papuan flag-raisers", January 2009. See also Human Rights Watch, "Protest and punishment – Political prisoners in Papua", February 2007.

39 Amnesty International, "Landmark ruling for freedom of expression", AI Index: 21/024/2006, December 2006.

40 Human Rights Watch, "Bold Court Decision good for freedom of expression", July 2007.

Article 19(3) of the ICCPR allows the imposition of certain restrictions on this right, but provides that any interference with the right to freedom of expression must meet a three-tier test: it must be provided by law; only for certain specified permissible purposes (respect for the rights or reputations of others, or protection of national security, public order, or public health or morals); and must be justified as being necessary in the circumstances for one of those specified purposes. It should also be mentioned that under Article 20 of the ICCPR, any "propaganda for war" and "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" must be prohibited by law. None of these restrictions apply in the cases mentioned above (see in particular cases 1 and 2), as the political activists did not use, advocate or incite war, hostility or violence. The flag-raising events were peaceful.

The Human Rights Committee, the body of independent experts responsible for monitoring states' implementation of the ICCPR, has stated that, "when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself".<sup>41</sup> Moreover, according to the Committee, the requirement of "necessity" to a restriction to the right of expression also implies that the specific interference in any particular instance must be proportionate to its intended legitimate objective.<sup>42</sup> Similar conditions apply to any interference by the state with other rights, such as the right of peaceful assembly (Article 21, ICCPR) and the right to freedom of association (Article 22, ICCPR).

According to section 7(2) of Indonesia's Law No.39/1999 on Human Rights, provisions of international treaties which concern human rights and which have been ratified by Indonesia become automatically part of domestic law.

Moreover the right to freedom of expression is protected under Indonesia's 1945 Constitution. Article 28E(2) provides that "*Every person shall have the right to the freedom to (...) to express his/her views and thoughts, in accordance with his/her conscience*" and Article 28 E (3) that "*Every person shall have the right to the freedom to associate, to assemble and to express opinions*" (Second Amendment to the Constitution, August 2000).

However Articles 106 and 110 of Indonesia's Criminal Code which criminalize rebellion (makar) are often used to imprison people who have attended, organized or participated in peaceful political events, and who have had no involvement in violent or disruptive acts. Amnesty International urges the Indonesian government to ensure that these laws are no longer used to silence peaceful political activists. Further the Indonesian government should repeal or else amend regulations which impose on the right to freedom of expression restrictions beyond those allowed under international human rights law.

In its report following a visit to Indonesia in 1999 the UN Working Group on Arbitrary Detention commented on the authorities' response to flag raising ceremonies in Papua (then called Irian Jaya), in circumstances similar to the cases discussed here. These incidents too were peaceful, but met harsh response from the authorities, including trials, convictions and

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<sup>41</sup> General Comment No. 10 on Freedom of Expression, See Weblink:  
[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/2bb2f14bf558182ac12563ed0048df17?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/2bb2f14bf558182ac12563ed0048df17?Opendocument) , accessed on 16 March 2009

<sup>42</sup> See General Comments 22, 27 and 31 on Freedom of Expression.

long-term imprisonment of individuals under Article 106 of the Criminal Code. The Working Group concluded that:

*“On the basis of the information conveyed to it, the Working Group considers 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 is arbitrary within the meaning of category II of the Group’s methods of work.”<sup>43</sup>*

#### 4.3 THE BAN ON ‘SEPARATIST’ FLAGS

In December 2007, the Indonesian authorities issued Government Regulation No. 77/2007 on regional flags. Its Article 6.4 prohibits the display of regional logos or flags which have the same features as those used by *“organization[s], groups, institution[s] or separatist movements”* in Indonesia. It has led to a ban on the ‘Morning Star’ flag in Papua, the ‘Benang Raja’ flag in Maluku, and the ‘Crescent Moon’ flag in Aceh, as they are associated with separatist movements in Indonesia.

These flags are first and foremost symbols for peaceful pro-independence or pro-autonomy movements in Indonesia and often simply reflect local communities’ identities. They do not feature any ‘violent’ logo or message in themselves, nor do they symbolise or imply violence. Thus the mere act of raising them is not a ‘violent’ or ‘disruptive’ act but a peaceful act. Amnesty International considers that the ban on waving these flags cannot be considered a legitimate restriction on freedom of expression and association as set out in the ICCPR.

The police have used Government Regulation No. 77/2007 on regional flags as grounds for arresting and detaining people who are only organizing or taking part in peaceful flag-raising events. Since the issuing of this government regulation, Amnesty International has recorded a significant increase in the number of people arrested and detained in Papua and Maluku for peacefully expressing their political views. Over 90 people have been arrested in Papua and Maluku since 1 January 2008 for activities related to flag-raising. At least 93 people who have been arrested in 2008 and in previous years remain in detention or are facing jail sentences as of 31 December 2008 (see Table 1 below, p.20). Amnesty International considers all those who have been detained solely for peacefully displaying regional flags, including the Morning Star flag, the Benang Raja flag, and the Crescent Moon<sup>44</sup> flag to be prisoners of conscience who should be immediately and unconditionally released.

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43 Report of the Working Group, supra n. 32, para. 65. “Category II” refers, under the mandate of the Working Group, to “cases of deprivation of liberty resulting from prosecution or conviction for activities which amount to the peaceful exercise of the right to freedom of opinion and other fundamental rights protected by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.”

44 Amnesty International is unaware of any person who was arrested or detained in recent years for having raised the Crescent Moon flag.

TABLE 1 – ARRESTS AND DETENTION FOR FLAG-RAISING ACTIVITIES IN PAPUA AND MALUKU

	PAPUA	MALUKU	TOTAL
Arrests pre-2008 and still detained on 31 December 2008	13+	54+	67+
Arrests between January and December 2008	90+	2+	92+
Of which were still detained on 31 December 2008	24+	2	26+
Total of people in detention for flag-raising activities on 31 December 2008	37+	56+	93+

#### 4.4 RECOMMENDATIONS ON FREEDOM OF EXPRESSION

States are permitted to impose certain restrictions on the exercise of the rights to freedom of expression, peaceful assembly and association, but such restrictions must meet the requirements set out in the ICCPR and elaborated by the Human Rights Committee if they are to be legitimate under international human rights law (see above). While national security is one of the grounds on which, in certain circumstances, states may place limitations on the exercise of these rights, this does not mean that national security and human rights are in competition with one another, such that whenever one is enhanced the other is reduced.

With regard to freedom of expression and assembly, Amnesty International makes the following recommendations to the government:

- Immediately and unconditionally release all those who have been detained or imprisoned solely for peacefully expressing their political views, including the 23 Cakalele dancers;
- Set up a special working group to review policies and legislation in place to ensure that the peaceful exercise of the rights to freedom of expression and association are no longer criminalized;
- Revoke immediately Article 6 of Government Regulation No. 77/2007 which prohibits the display of separatist logo or flags or else bring it into compliance with international human rights standards and the provisions of the Indonesian constitution;
- Repeal or else amend Articles 106 and 110 of the Criminal Code so that these articles are no longer used to criminalize freedom of expression.

# 5. TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT

## 5.1 ILLUSTRATIVE CASES



Johan Teterissa in his cell at the Waiheru detention centre in Ambon, Maluku © Al Jazeera English

### **JOHAN TETERISSA (M)**

**Johan Teterissa, the leader of the 23 Cakalele dancers, was arrested on 29 June 2007 shortly after the Cakalele incident.**

Police tortured and otherwise ill-treated Johan Teterissa, a primary school teacher, during arrest, detention and interrogation. Aljazeera video footage of the incident shows how he was dragged into a police vehicle where he was repeatedly beaten on the head.<sup>45</sup> Johan Teterissa reports “*We were tortured, beaten up with rifles. They even put a grenade in my mouth. What we did was peaceful but they treated me as if I was a killer*”<sup>46</sup>. Although Amnesty International has not been able to confirm whether an actual grenade was put in Johan Teterissa’s mouth, or whether police officials put another hard round object in his mouth (some detainees reportedly had a billiard ball put into their mouth), the organization is strongly concerned by the allegations made by Johan Teterissa and the images broadcast by Aljazeera.

On 4 April 2008, an Ambon district court sentenced Johan Teterissa to life imprisonment for leading the peaceful flag- raising event. Three months later this was reduced on appeal to 15 years. At the time of writing Johan Teterissa, was appealing the decision to the Supreme Court. Johan Teterissa is the only Cakalele dancer who has appealed the court’s decisions, in part because some of the other Cakalele dancers’ lawyers advised them to plead guilty and relinquish their right to appeal.

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<sup>45</sup> Supra no2.

<sup>46</sup> Testimony of Johan Teterissa in Aljazeera video footage, supra n2.

As illustrated above, a number of peaceful political activists have been tortured and otherwise ill-treated by police during arrest, detention and interrogation in Maluku province in recent years (see cases 1, 2, 3 and 4; see also box above on Johan Teterissa, p.21).

In February 2009 at least 14 political activists,<sup>47</sup> who were held at Nania prison, were still reportedly suffering from the physical injuries police inflicted on them at the time of arrest, interrogation and/or detention in 2007 and 2008. The main reported health problems include swollen eyes, severe headaches, back pain and broken or fractured bones.

According to local sources, the 14 prisoners were being denied access to appropriate medical care in clear violation of provisions set out in national<sup>48</sup> and international standards. The Standard Minimum Rules on the Treatment of Prisoners (Rule 24) and the UN body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 24) call for prisoners to be given or offered a medical examination as promptly as possible after admission to a place of detention. International standards also call for medical assistance to be given to prisoners when necessary (Article 6, UN Code of Conduct for Law Enforcement Officials).



Nania prison in Ambon, Maluku © Amnesty International

On 10 March 2009, 11 of them were transferred early in the morning to prison facilities in Java<sup>49</sup> along with 26 other prisoners.<sup>50</sup> According to local sources, the prisoners as well as

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47 Ruben Saiya, Fredy Akihary, Jordan Saiya, Leonard Hendricks, Mercy Riry, Johanis Saiya, Abraham Saiya, Alex Malawau, Arens Arnol Saiya, Barce Manuputty, Pieter Latumahina, Yesayas Kermite, Fenti Sapulete, Jusuf Sapakoly.

48 Article 37.1, Government Regulation 58/1999 on Conditions and Implementing Procedures Relating to the Authority, Tasks and Responsibilities for Management of Prisoners.

49 Ruben Saiya, Jordan Saiya, and Johanis Saiya, were reportedly transferred to Kembang Kuning Nusakambangan prison, Central Java; Mercy Riry and Alex Malawau to Permisan Nusakambangan prison, Central Java; Arens Arnol Saiya to Kedungpane prison in Semarang, Central Java; Fredy Akihary to Porong prison, East Java; Leonard Hendricks and Abraham Saiya to Lowokwaru prison, Malang, East Java; and Yesayas Kermite and Fenti Sapulete to

their families and friends were not informed of their transfer to Java. Johan Teterissa (see box above, p.21) was among them. He has reportedly been transferred to Lowokwaru prison in Malang, East Java. To Amnesty International's knowledge, the other three political activists who were still suffering from physical injuries inflicted by police officials in previous months, are still held at Nania prison.

## 5.2 INTERNATIONAL STANDARDS AND NATIONAL LEGISLATION

Indonesia is a state party to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which explicitly requires states to prevent acts of torture and other ill-treatment by state agents; to ensure that there is a prompt and impartial investigation into such acts; and specifically, to ensure that acts of torture or complicity or participation in torture are punishable by criminal penalties which take into account their grave nature. Moreover, under the ICCPR the right not to be subjected to torture or other ill-treatment is absolute and cannot be restricted or derogated from at any time, even *"in time of emergency which threatens the life of the nation"*.<sup>51</sup>

Article 28G (2) of the Indonesian constitution stipulates that *"each person has the right to be free from torture or inhuman and degrading treatment"*; however national laws still fall short of fully protecting people in Indonesia from torture and other ill-treatment. The Law on Human Rights Court is the sole legislation in Indonesia to include torture as a crime. However only acts of torture in the context of 'crimes against humanity' are taken into consideration under this law, leaving many, including virtually all torture cases now occurring in Indonesia, outside the jurisdiction of the Human Rights Court and thus of the whole justice system, as torture *per se* is not specifically prohibited in Indonesia's Criminal Code.<sup>52</sup>

The Criminal Code and the Criminal Procedure Code contain insufficient provisions to protect suspects and defendants against torture. Amnesty International has made a number of recommendations to the Indonesian government in the past to amend these codes and bring them in line with international human rights standards on torture and other ill-treatment.<sup>53</sup>

In particular, Amnesty International has been long concerned that the Criminal Procedure Code is silent on the use that may be made in judicial proceedings of statements obtained as a result of torture and/or ill-treatment.<sup>54</sup> Contrary to Article 15 of the UNCAT, there is no provision which clearly excludes the use of evidence obtained as a result of torture. It is left

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Kediri prison, East Java.

50 "37 prisoners in treason case moved to Java", The Jakarta Post, 12 March 2009.

51 ICCPR, Articles 4(1) and 4(2).

52 Amnesty International is also concerned with the restrictive definition of torture in the Law on Human Rights Court, and that acts of deliberate cruel, inhuman or degrading treatment or punishment are by and large disregarded by the Law. See "Indonesia: Briefing to the UN Committee Against Torture", AI Index: ASA 21/003/2008.

53 See Amnesty International's Briefing to the Committee against Torture, supra No.51.

54 See "Comments on the draft revised Criminal Procedure Code" (AI Index: 21/005/2006). The comments are based on a draft of the revised Criminal Procedure Code obtained on 15 September 2005 from the Ministry of Justice and Law website.

to the discretion of the judge as to whether or not evidence allegedly obtained under torture is admitted, and if it is admitted, what weight to give to it.<sup>55</sup> The judge does not have the authority to order an investigation by an impartial authority into an allegation that evidence or testimony was obtained under torture or ill-treatment.

Further, victims have few reliable means of complaint, protection and redress, and in the isolated cases where suspected perpetrators of torture have been prosecuted, they are usually acquitted and *“otherwise sentenced to lenient penalties which are not in accordance with the grave nature of their crimes”*<sup>56</sup>.

Both the Criminal Code and the Criminal Procedure Code have now been under revision for many years. It is unclear as to when parliament will ratify them given that parliamentary elections will be held in April 2009. Amnesty International urges the newly elected parliament to ensure that the revised Codes comply with national and international human rights standards, and ratify these Codes as a priority.

### 5.3 RECOMMENDATIONS ON TORTURE AND OTHER ILL-TREATMENT

With regard to torture and other ill-treatment, Amnesty International makes the following recommendations to the government:<sup>57</sup>

- Ensure prompt, thorough, and effective investigations by independent and impartial bodies into all reports of torture and other ill-treatment by police, in particular in 2007 and 2008 in Maluku, and ensure that those suspected of involvement are prosecuted in proceedings which meet international standards of fairness, and that victims are provided with reparations;
- Ensure that all detainees and prisoners held at prison facilities in Maluku and elsewhere are provided access to adequate medical care at all times in accordance with international law and standards and national law. Prisoners should be given or offered a medical examination as promptly as possible after admission to a place of detention;
- Send a clear public message to all police officials in Indonesia, including in Maluku province, that torture and other ill-treatment of detainees is unacceptable, is strictly prohibited at all times and, if it occurs, any allegations of such treatment will be subject to criminal and disciplinary investigation and sanctions;
- Take measures to ensure that the draft revised Criminal Code and draft revised Criminal

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55 Under the existing Criminal Procedure Code (Article 183) as well as the draft revised Criminal Procedure Code (Article 178), a criminal charge is proven when the judge is convinced, based on at least two pieces of evidence, that the criminal act has really been committed and that it is the defendant who is guilty of perpetrating it.

56 See “Concluding Observations by the UN Committee against Torture”, CAT/C/IDN/CO/2, 16 May 2008, p4.

57 For more comprehensive recommendations, please refer to Amnesty International’s Briefing to the Committee against Torture, supra No51, as well as to the Concluding Observations by the UN Committee against Torture Supra No55, and the report of the UN Special Rapporteur on torture, UN Doc. A/56/156, 3 July 2001.



Procedure Code are debated in parliament and brought in line with Indonesia's international human rights obligations and specifically the international human rights treaties to which Indonesia is a state party. They should then be ratified by parliament as a matter of priority.

## 6. UNFAIR TRIALS

The right to a fair trial is a fundamental safeguard to ensure that individuals are not unjustly punished. It is indispensable to the protection of other human rights such as the right to life; the right to freedom from torture; and, especially in political cases, the right to freedom of expression and assembly.

### 6.1 INTERNATIONAL STANDARDS AND NATIONAL LEGISLATION

The ICCPR prohibits arbitrary detention and sets out the elements of the right to fair trial. Anyone who is arrested must be immediately told the reason for arrest and promptly informed of the charges; they must be brought promptly before a court and given a fair trial within a reasonable time, or released. Everyone has the right to be presumed innocent until proved guilty in a fair and public trial. They must have adequate time and facilities to prepare their defence and consult with their lawyer. No one must be compelled to testify against themselves or confess guilt. Everyone convicted of a crime has the right to have the conviction and sentence reviewed by a higher tribunal. Further, anyone whose rights or freedoms have been violated shall have access to an effective remedy.<sup>58</sup>

Amnesty International is concerned that the trials of the 22 Cakalele dancers - who should not have been arrested or detained in the first place as prisoners of conscience – and the other people who were arrested between April 2007 and July 2008 have often failed to meet international standards of fairness. Moreover these trials have failed to respect many of the provisions of Indonesia's Criminal Procedure Code which provide safeguards for the protection of the rights of suspects and defendants.

Among the trial irregularities reported to Amnesty International are: arrest without warrants; failure to inform the detainees of charges against them; incommunicado detention; denial or restriction of access to lawyers; denial of the right not to be compelled to confess guilt; failure to exclude as evidence statements made as a result of torture or other ill-treatment; denial of access to families; inadequate medical care, and inadequate right to appeal. Torture and other ill-treatment of detainees have also been reported (see section 5).

### 6.2 RECOMMENDATIONS ON FAIR TRIAL STANDARDS

With regard to international fair trial standards, Amnesty International makes the following recommendations to the government:

- Ensure that pre-trial and trial procedures comply with Indonesia's obligations under the

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<sup>58</sup> Article 2,3, 9 and 14 ICCPR.

ICCPR;

- Ensure that those officials who violate fair trial provisions set out in Indonesia's Criminal Procedure Code and other international human rights treaties Indonesia has ratified are held to account;
- Conduct trainings for state agents including police officials and judges to ensure that they have a good understanding of fair trial standards and relevant human rights safeguards and apply them in their daily work;
- Take measures to ensure that the draft revised Criminal Procedure Code is debated in parliament and brought in line with Indonesia's international human rights obligations and specifically the international human rights treaties to which Indonesia is a state party<sup>59</sup>. It should then be ratified by parliament as a matter of priority.

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<sup>59</sup> See Amnesty International's Comments on the draft revised Criminal Procedure Code, in Supra No54.

# APPENDIX

## APPENDIX 1 – THE 23 CAKALELE DANCERS WHO PARTICIPATED IN THE PEACEFUL PROTEST OF JUNE 2007

No	NAME	DATE OF ARREST	CHARGE	SENTENCE PERIOD
1	Ruben Saiya	29-06-2007	106 & 110 KUHP <sup>60</sup>	20 years
2	Johny Riry	29-06-2007	106 & 110 KUHP	15 years
3	Fredy Akihary	29-06-2007	106 & 110 KUHP	15 years
4	Johan Saiya	29-06-2007	106 & 110 KUHP	10 years
5	Jordan Saiya	29-06-2007	106 & 110 KUHP	17 years
6	Pieter Saiya	29-06-2007	106 & 110 KUHP	12 years
7	Stevi Saiya	29-06-2007	106 & 110 KUHP	7 years
8	Piter Johanes	29-06-2007	106 & 110 KUHP	7 years
9	Ferjon Saiya	29-06-2007	106 & 110 KUHP	12 years
10	Melkianus Sinay	29-06-2007	106 & 110 KUHP	7 years
11	Semuel Hendriks	29-06-2007	106 & 110 KUHP	10 years
12	Leonard Hendriks	29-06-2007	106 & 110 KUHP	10 years
13	Ferdinand Arnold Rajawane	29-06-2007	106 & 110 KUHP	10 years
14	Marthen Saiya	29-06-2007	106 & 110 KUHP	10 years
15	Johan Teterissa	29-06-2007	106 & 110 KUHP	Sentenced to life, reduced to 15 years on appeal. He is currently appealing the decision to

60 KUHP or Kitab Undang-Undang Hukum Pidana, Indonesia's Criminal Code.

				the Supreme Court.
16	Mercy Riry	29-06-2007	106 & 110 KUHP	7 years
17	Yohanis Saiya	29-06-2007	106 & 110 KUHP	17 years
18	Yosias Sinay	29-06-2007	106 & 110 KUHP	12 years
19	Abraham Saiya	29-06-2007	106 & 110 KUHP	15 years
20	Johny Sinay	29-06-2007	106 & 110 KUHP	15 years
21	Aleks Malawauw	29-06-2007	106 & 110 KUHP	7 years
22	Yefta Saiya	29-06-2007	106 & 110 KUHP	12 years
23	Buce Nahumury	22-06-2008	106 & 110 KUHP	Ongoing trial

APPENDIX 2 – LIST OF THE 9 PEOPLE WHO WERE ARRESTED AND DETAINED FOR  
HAVING ORGANIZED OR PARTICIPATED IN THE PEACEFUL PROTEST OF JUNE 2007

No	NAME	DATE OF ARREST	CHARGE	SENTENCE PERIOD
1	Arens Arnol Saiya	29-06-2007	106 & 110 KUHP	8 years
2	Piter Elia Saiya	29-06-2007	106, 55 & 56 KUHP	9 years
3	Flip Malawau	29-06-2007	106 & 110 KUHP	7 years
4	Elia Sinay	29-06-2007	Unknown	10 years
5	Barce Manuputty	29-06-2007	106 & 110 KUHP	6 years
6	Ferdinan Waas	29-06-2007	Unknown	10 years
7	Alexander Tanate	29-07-2007	106 & 110 KUHP	9 years
8	Yustus Nanariain	29-06-2007	Unknown	Released after 2 weeks detention
9	Petrus Rahayaan (Etok)	29-07-2007	106 & 110 KUHP	12 years

**APPENDIX 3 – POSSIBLE PRISONERS OF CONSCIENCE IMPRISONED FOR TAKING PART IN FLAG-RAISING EVENTS IN MALUKU**

<b>No</b>	<b>NAME</b>	<b>DATE OF ARREST</b>	<b>CHARGE</b>	<b>SENTENCE PERIOD</b>
1	Sony Boin	07-08-2007	106 & 110 KUHP	6 years
2	Jacob Supusepa	29-07-2007	106, 110 and 55 KUHP	10 years
3	Danel Malawau	21-06-2007	Unknown	15 years
4	Johan Syaranamual	01-08-2007	106 & 110 KUHP	10 years
5	Junus Mario Litololy	16-07-2007	Unknown	10 years
6	Pieter Latumahina	14-07-2007	106 & 110 KUHP	8 years
7	Isak Saimima	13-10-2007	Unknown	6 years
8	Romanus Batseran	21-06-2007	Unknown	17 years
9	Melkyanus Syaranamual	18-07-2008	106 & 110 KUHP	8 years
10	Matheis Wattimury	15-08-2007	Unknown	9 years
11	Dominggus Salamena	26-10-2007	Unknown	Sentenced to 12 years reduced to 8 years on appeal
12	Reinold O Ngabingan	28-08-2007	Unknown	6 years
13	Muladi Taihutu	31-08-2007	106 & 110 KUHP	6 years
14	Yohanis Sipolo	13-10-2007	Unknown	9 years
15	Piere Pattisina	11-08-2007	106 & 110 KUHP	7 years
16	Ferdinand Noya	13-10-2007	106 & 110 KUHP	6 years
17	Denny de Fretes	13-10-2007	Unknown	10 years
18	Erwin Maruanaya	29-06-2007	Unknown	12 years

19	Novis Adolph	13-10-2007	106 &110 KUHP	6 years
20	Abner Litamahuputty	02-07-2007	106 &110 KUHP	10 years
21	Yesayas Kermite	15-08-2007	Unknown	9 years
22	Fenti Sapulette	16-08-2007	Unknown	11 years
23	Matheis Wattimury	15-08-2007	Unknown	9 years
24	Yohanis Supusepa	16-08-2007	Unknown	9 years
25	John Markus	25-04-2007	106 & 110 KUHP	17 years



**APPENDIX 4 – FOURTEEN PEOPLE WHO WERE ARRESTED FOR PRO-INDEPENDENCE ACTIVITIES BETWEEN JUNE 2007 AND JULY 2008 IN MALUKU**

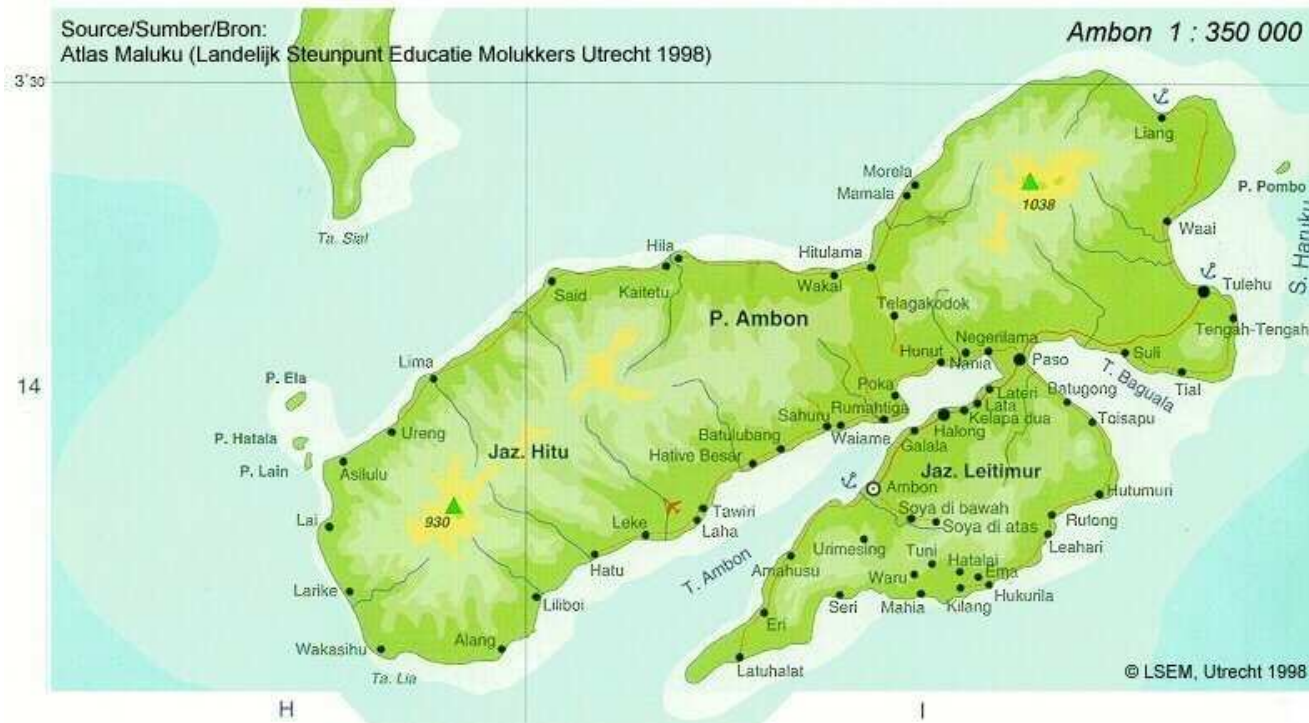
<b>No</b>	<b>NAME</b>	<b>DATE OF ARREST</b>	<b>CHARGE</b>	<b>SENTENCE PERIOD</b>
1	Daniel Akihary	01-07-2007	Unknown	12 years
2	Marthin Telussa	24-04-2008	Unknown	1 year
3	Eyne Telussa/ Siahaya	24-04-2008	Unknown	1 year
4	Jusuf Sapakoly	29-06-2007	106 & 110 KUHP	Unknown
5	Benny Titahena	29-07-2007	106 & 110 KUHP	9 years
6	Reimond Tuapattinaya	02-07-2007	106 & 110 KUHP	Unknown
7	Samuel Lesnussa	25-07-2007	106 & 110 KUHP	8 years
8	Marlon Pattiwael	04-09-2007	106 & 110 KUHP	Unknown
9	Yakub Leuhena	01-07-2007	106 & 110 KUHP	Detained 45 days and then released
10	Stepanus tahapary	01-07-2007	106 & 110 KUHP	2 years
11	Dr. Maikel Siwabessy	03-07-2008	Unknown	Awaiting trial
12	Maikel Pattisinay	12-06-2008	Unknown	Ongoing trial
13	Paulus Teterissa	12-07-2008	Unknown	Unknown
14	Junus Akihary	12-07-2008	Unknown	Unknown

APPENDIX 5 – MAP OF INDONESIA



3. Map of Indonesia © University of Texas Libraries

APPENDIX 6 – MAP OF AMBON ISLAND



4. Map of Ambon Island © University of Texas Libraries







## INDONESIA: JAILED FOR WAVING A FLAG PRISONERS OF CONSCIENCE IN MALUKU

Although there has been some progress towards respecting the right to freedom of expression in Indonesia, the authorities continue to use repressive legislation to criminalise peaceful political activities. Violations of this right are particularly severe in areas where there has been a history of pro-independence movements such as Maluku and Papua.

In June 2007, 22 men were arrested in Maluku province for unfurling the 'Benang Raja' flag, a symbol of South Maluku independence, after performing a traditional dance in front of President Susilo Bambang Yudhoyono. All have now been sentenced to long jail terms of between seven and 20 years. These people are prisoners of conscience who should be immediately and unconditionally released.

This briefing provides information on the arrests, detention and/or sentencing of these people and 50 others who were arrested in Maluku province in 2007 and 2008. It includes recommendations to the Indonesian government which, if implemented, would improve the human rights situation in the province.

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