

Aceh under Martial Law: Unnecessary and Dangerous Restrictions on International Humanitarian Access

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Introduction

While the world's attention on Indonesia has been focused on the terror trials of the Bali bombers, Indonesia has also been prosecuting a largely hidden war in the northwest province of Aceh. This war has been taking place off the front pages of the world's press and out of reach of human rights or even most humanitarian workers. Since Indonesia restarted hostilities on May 19, Indonesia's military has essentially sealed Aceh off from the world—and its people from urgently needed assistance. The Indonesian government has barred all independent witnesses from observing its four-month old campaign against a long-standing insurgency, obscuring the extent of the war's human casualties.

Human Rights Watch believes that the current information vacuum, caused by restrictions on Indonesian observers and the closing of the province to independent international observers, foreign correspondents, diplomats, and international human rights organizations, may be hiding a humanitarian crisis, or at least warning signs of an impending disaster.

Since the beginning of the campaign the government has tightly controlled information about the war in Aceh and its impact on Aceh's residents. The Indonesian government has restricted not just the international media, but also U.N. agencies and international nongovernmental organizations from access to areas outside of Banda Aceh, the provincial capital. It is also increasingly placing obstacles in the way of humanitarian assistance, such as by restricting access of international humanitarian staff to Aceh.

The trickle of information leaking out of the province suggests that thousands of Acehnese civilians have been forced to flee their homes to escape the conflict or to seek food and shelter. Residents who remain in their homes are subjected to shortages of food, water, and sanitation, and breakdowns in basic services such as health care and education.

The military operation in Aceh is Indonesia's largest military campaign since Indonesia invaded East Timor (newly independent after Portuguese rule) in 1975. The campaign in Aceh involves an estimated 30,000 troops in a much-publicized "integrated" operation combining military, humanitarian, law enforcement, and local governance measures. Opposing them are an estimated five thousand armed members of the Free Aceh Movement (Gerakan Aceh Merdeka or GAM). In an attempt to resolve the ongoing conflict, on December 9, 2002, the government of Indonesia and GAM signed a ceasefire agreement known as the Cessation of Hostilities Agreement. Six months later the tenuous ceasefire ended when the Indonesian government launched a major new military offensive in Aceh.

The Indonesian government initially suggested that martial law and the military operation would last six months. However, it is now clear that this will not be the case, and the war may drag on for some time, with or without the legal mandate of a military emergency. In September, the

commander of Indonesia's armed forces, General Endriartono Sutarto, told a legislative committee in Jakarta that the military operation will last as long as the government believes GAM poses a security threat.¹ In previous statements General Sutarto has commented that this could take up to ten years.² Indonesian Coordinating Minister for Security and Political Affairs, Susilo Bambang Yudhoyono, once a proponent of peace talks with Aceh's rebel movement, has recently stated that if the government did not reach its security targets after six months then it would extend the martial law.³ The government is now undertaking a one-month evaluation of the campaign to assess whether or not martial law should be extended.

The conflict in Aceh between GAM and the government of Indonesia has been raging for over two decades. The conflict has been marked by the long-term displacement of thousands of civilians and a war in which both sides have violated international human rights and humanitarian law with impunity. Human Rights Watch has documented serious abuses by government forces and, increasingly, by GAM in a series of reports over the last decade.⁴

Restrictions on International Aid under Martial Law

Since the collapse of the ceasefire in Aceh, and the subsequent declaration of martial law, U.N. agencies and international nongovernmental organizations (NGOs) in the province, in consultation with donors, have directed their efforts towards meeting the immediate needs for food, clean water, and shelter of those affected by the current conflict. However, international humanitarian bodies have been severely restricted in their ability to distribute or monitor the distribution of aid, due to new government regulations, ambiguity over the implementation of the new regulations, and ongoing security concerns.

On June 16, 2003, the Indonesian government issued Presidential Decree No. 43 of 2003, concerning "The Arrangement of Activities of Foreigners, Non-Government Organisations and the Press in Nanggroe Aceh Darussalam Province."⁵ This decree states in section 2 that:

1. International and local non-governmental organisations are not allowed to conduct activities contrary to the objectives of the Military Emergency Conditions in Nanggroe Aceh Darussalam Province.
2. Humanitarian assistance from friendly countries, international bodies, and international and local non-governmental organisations in Nanggroe Aceh Darussalam Province are

¹ "TNI Pertimbangkan Operasi di Aceh hingga Pemilu," *Kompas*, September 4, 2003.

² "Indonesian Military Offensive could last until April," Agence France-Presse, September 4, 2003; "Operasi Militer Tak Mungkin Enam Bulan," *Kompas*, July 7, 2003;

³ "Top Indonesian Security Minister rules out dialogue with rebels," Agence France-Presse, August 21, 2003.

⁴ See Human Rights Watch, "Aceh Under Martial Law: Human Rights Under Fire," *A Human Rights Watch Briefing Paper*, June 2003; Human Rights Watch, "Indonesia: Accountability for Human Rights Violations in Aceh," *A Human Rights Watch Report*, vol. 14, no. 1 (c), March 2002; Human Rights Watch, "Indonesia: The War in Aceh," *A Human Rights Watch Report*, vol. 13, no. 4 (c), August 2001; Human Rights Watch, "Indonesia: Civilians Targeted in Aceh," *A Human Rights Watch Briefing Paper*, May 2000; Human Rights Watch, "Why Aceh is Exploding," *A Human Rights Watch Briefing Paper*, August 1999; Human Rights Watch, "Indonesia: The May 3, 1999 Killings in Aceh," *A Human Rights Watch Briefing Paper*, May 1999.

⁵ "Nanggroe Aceh Darussalam Province" is the official name for the province of Aceh.

co-ordinated by the Co-ordinating Minister of Social Welfare on behalf of the President as the Central Military Emergency Authority.⁶

Despite the decree's vague reference to "activities contrary to the objectives of the Military Emergency Conditions," the martial law administration has made it clear that it interprets this clause to mean that no international personnel from the U.N. or international NGOs may travel outside of the capital. Moreover, the reference in the second clause to "coordination" by the Minister of Social Welfare has been used by the government to require that all relief supplies bound for the countryside of Aceh be distributed by government agencies alone.

On June 27, 2003, the Resident U.N. Coordinator and Humanitarian Coordinator in Jakarta, Bo Asplund, wrote to the Coordinating Minister of People's Welfare, Jusuf Kalla, requesting letters permitting all international U.N. and NGO staff to resume their activities throughout Aceh. To date those letters have not been forthcoming.

Blue Books

The Ministry of Justice and Human Rights on June 30, 2003, issued a ministerial decree outlining the procedure for access to Aceh by international humanitarian actors.⁷ This introduced what is essentially an internal visa system for Aceh province, applicable to international aid workers and foreign correspondents. Under this so-called "blue book" procedure, no access to Aceh is allowed without a pre-approved blue book, with its relevant Jakarta authorization.⁸

In compliance with the blue book procedure, international staff workers left Banda Aceh for Jakarta to obtain the new blue books required for access to Aceh, on the understanding that it would allow them greater access to the province. On August 8, 2003, Asplund met with the Coordinating Minister of Social Welfare, Jusuf Kalla, who told him that only Indonesian national staff of U.N. agencies and international NGOs would now be allowed outside of Banda Aceh and that full access for others would rest with the discretion of the martial law administrator in Banda Aceh. This was in contradiction to the previous understanding that international blue book bearers would have full access to the province.⁹

⁶ Decree No. 43 of 2003 of the President of the Republic of Indonesia as Central Military Authority, "The Arrangement of Activities of Foreigners, Non-Government Organizations and the Press in Nanggroe Aceh Darussalam Province," June 16, 2003, sec. 2.

⁷ Decree of the Minister of Justice and Human Rights, Republic of Indonesia, Number: M.02.IZ.01.10, Year 2003, Regarding Granting Permits for Foreigners to Visit and Conduct Activities in Nanggroe Aceh Darussalam Province, Jakarta, June 30, 2003.

⁸ Bakornas PBP (Indonesia's National Coordinating Body for the Management of Disaster and IDPs/Refugees) is now responsible for the consideration of requests for blue book passes for foreigners wishing to enter Aceh. Agencies that require blue books need to send a letter to the Coordinating Ministry of Social Welfare and to Bakornas. These requests will be evaluated and, if recommended by Bakornas, the Office of the Coordinating Minister will send a letter to the Ministry of Justice on the basis of which a blue book pass will be issued. The pass allows a single entry for a maximum of fourteen days with one extension at the province for a further fourteen days. After twenty-eight days the pass will expire and the bearer will have to leave Aceh in order to apply for the renewal of the pass, and re-start the whole procedure again.

⁹ Human Rights Watch interview with international aid worker, New York, August 2003.

To date, only two international staff members of U.N. agencies have received blue books to go to Banda Aceh. Both of these have subsequently expired, and only one has been renewed. No international staff persons from international NGOs have yet been issued a blue book permit. In protest over the new blue book procedures, the International Committee of the Red Cross closed its office in Banda Aceh, and withdrew all international staff.

The government of Indonesia has repeatedly stated that the restriction of access for foreigners is directly related to security concerns. Specifically, the government has emphasized that it does not want a repeat of the incident at Atambua, West Timor, when militias killed three international U.N. staff in 2000.¹⁰ A government may take appropriate steps to ensure the safety of civilians in or near combat zones. However, many international aid workers have taken the government's references to Atambua as a warning aimed to keep them out of Aceh, rather than as a statement of the government's concern for their security. In light of these fears, it is incumbent on Indonesian authorities to clarify its position to the aid community.

Under international law the Indonesian government is responsible for ensuring secure access for international humanitarian assistance. In a statement issued on May 29, the U.N. secretary-general called on the Indonesian government to "ensure the necessary security conditions to allow international aid organizations safe and unhindered access to affected populations."¹¹ On June 20, in a briefing to the Security Council on the protection of civilians in armed conflict, the U.N. Under-Secretary-General Kenzo Oshima noted his concern at "recent policies of the Indonesian Government suggesting constraints on the delivery of international humanitarian assistance" in Aceh.¹² Human Rights Watch shares these concerns.

A Civilian Population at Risk

Since martial law began in Aceh, the Indonesian government has restricted U.N. agencies and international NGOs from carrying out their duties in the province. International humanitarian aid agencies have had no access at all to areas outside of Banda Aceh, causing concern that adequate humanitarian assistance is not reaching many of those in need. An independent assessment must be made of the needs of Aceh's civilians to determine their humanitarian needs and provide them with the necessary assistance. Given Indonesia's lack of capacity and experience in handling these types of problems, the role of international humanitarian actors is particularly important, and their forced absence more troubling.

Little is known about the well-being of Aceh's civilian population. Most of Aceh's 4.2 million residents live in relative isolation outside the province's two main towns. Fighting between the Indonesian military and GAM has disrupted the lives and livelihoods of civilians by cutting food supplies, water, electricity, communications, schooling, and healthcare to thousands. Food distribution networks have been disrupted by attacks on food convoys despite recent attempts by the Indonesian military to secure the main routes. Over five hundred schools have been burned

¹⁰ On September 6, 2000, three international UNHCR workers were killed by a militia mob in Atambua, West Timor. The three UNHCR staff were in West Timor to facilitate the repatriation of East Timorese refugees to Dili. After the killings all U.N. international staff were permanently withdrawn from West Timor.

¹¹ "Indonesia: Annan deeply concerned about hostilities' effect on civilians in Aceh," U.N. News service, May 29, 2003.

¹² OCHA: Statement of Under-Secretary-General Kenzo Oshima at the open Security Council briefing on the protection of civilians in armed conflict, June 20, 2003.

down. Electricity pylons in several districts were sabotaged. Telephone communications outside Banda Aceh have been severely disrupted. The overall picture from the scant information available is that the population of Aceh faces a shortage of basic supplies and services.

Conditions are likely to be worse for those who have been forced to flee their homes. Preliminary information indicates that the fighting has forced thousands of civilians out of their homes. The Jesuit Refugee Service and Indonesian media sources have already highlighted reports of poor water and sanitation facilities, malnutrition, and skin complaints amongst this population.¹³

The International Organization for Migration (IOM), the intergovernmental agency responsible for assisting civilians fleeing conflicts or disasters in their own country, has reported that during the first three months of the military operation a total of more than 24,730 families (over 100,000 people) were displaced across Aceh Province.¹⁴ As of September 3, IOM reported that 3,972 families (some 16,000 people) remained displaced,¹⁵ a reduction from the peak of 49,000 displaced in July. These figures include those spontaneously fleeing conflict areas, and those forced out of their homes by the Indonesian military. In the past GAM has also been involved in the forcible removal of non-Acehnese communities from their homes in the province. Because of the lack of access to Aceh, it is difficult to ascertain whether this is currently taking place or not.

Current numbers reflect only internally displaced persons (IDPs) in officially designated government camps. The actual number of displaced people may be considerably higher since official figures do not include civilians who have found refuge on their own, or are staying in unofficial camps. Reports that the border between North Sumatra province and Aceh is sealed suggest that new IDPs have not been able to seek refuge in North Sumatra since the military campaign began. Civilians displaced prior to the current military campaign, and those outside of the province, including in North Sumatra and Malaysia, are also omitted from official figures.

All international aid is now distributed through local government structures and the Indonesian Red Cross. International aid agencies have already provided the government with substantial food aid and school and health kits. One Jakarta-based international aid worker told Human Rights Watch that the school and health kits given to the government after the first two weeks of martial law remained in Jakarta for a month before being sent to Aceh. This was apparently due to the government's lack of capacity to transport the supplies to Aceh, or to store them once they arrived in the province.¹⁶ Citing new regulations, the government has prevented humanitarian actors from providing aid directly, and instead has insisted that it be routed through Indonesian authorities.

Since the campaign began, Indonesia's media has reported that seventy-seven village heads and thirteen sub-district leaders have been replaced with retired military officers. These former military officers are now responsible for the coordination and distribution of aid in their

¹³ JRS Dispatches No. 137, August 1, 2003.

¹⁴ OCHA: Indonesia: Consolidated Situation Report No. 143, August 9 - 15, 2003

¹⁵ OCHA: Indonesia: Consolidated Situation Report No. 144, August 30 – September 5, 2003.

¹⁶ Human Rights Watch interview with international aid worker, Jakarta, June 11, 2003.

respective areas. While Indonesia has an obligation to ensure the humanitarian well-being of the civilian population, and thus carry out its own programs of humanitarian assistance, this cannot be the justification for barring access to impartial humanitarian agencies. Both the government and GAM must provide secure and unimpeded access to all impartial humanitarian agencies in order to ensure the survival and safety of the civilian population, particularly vulnerable groups such as the internally displaced.

Limits on access also apply to the International Committee of the Red Cross (ICRC), which initially had access to some prisoners in police and military detention. However, this access has not been comprehensive, and has not extended to all of those detained under the martial law administration. To date, very few of those detained under martial law have been charged with a recognizable offense, or had access to defense counsel.

The Indonesian government also announced plans to turn the island of Pulau Nasi, off the coast of Aceh, into a penal colony. Although this plan was then publicly retracted by senior military officers in Jakarta, it is as yet unclear whether those individuals already detained on the island have been transferred to other police or military detention facilities, or whether they have had any access to the ICRC or defense counsel.

Applicable Law

Indonesian and GAM forces in Aceh are bound by international humanitarian law governing the conduct of armed conflict. The conflict in Aceh is considered to be a non-international (internal) armed conflict, for which the applicable law includes article 3 common to the four Geneva Conventions of 1949, the Second Additional Protocol to the Geneva Conventions (Protocol II), and customary international humanitarian law. Indonesia became a party to the Geneva Conventions in 1958. Although Indonesia is not a party to Protocol II, many if not all of its provisions reflect customary international law. Parties to an internal armed conflict must allow humanitarian relief to reach civilian populations suffering undue hardship owing to a lack of foodstuffs and medical supplies essential for their survival.¹⁷ The Guiding Principles on Internal Displacement provide basic guidelines to governments on their responsibilities to internally displaced persons.¹⁸ According to principle 18, authorities are obliged to provide displaced persons with food, water, shelter, clothing, and medical services, or to ensure their access to these necessities.

There are serious concerns that Indonesia lacks the experience and expertise to handle a possible humanitarian crisis of this scale on its own. Prior to the start of the military campaign, the Indonesian government drew up a contingency plan, in consultation with U.N. agencies in Jakarta, to prepare for up to 300,000 IDPs in Aceh. In the past, the government of Indonesia had traditionally relied on international aid agencies to assist with humanitarian crises. Before the military campaign, international agencies provided significant aid and programming to assist

¹⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, entered into force Dec. 7, 1978, art. 18.

¹⁸ The Guiding Principles on Internal Displacement (the Guiding Principles), adopted in September 1998 by the U.N. General Assembly, reflect international humanitarian law as well as human rights law, and provide a consolidated set of international standards governing the treatment of the internally displaced. Although not a binding instrument, the Guiding Principles are based on international laws that do bind states as well as some insurgent groups, and they have acquired authority and standing in the international community.

victims of the ongoing conflict in Aceh. Similarly, in other parts of Indonesia, international agencies have performed a vital role in assisting civilians at risk. For instance, in 1999 and 2000 when fighting between Christians and Muslims in the Malukus displaced over half a million people, U.N. agencies and international NGOs worked closely with the government to provide aid and assistance. The international community also provided significant assistance to the 250,000 East Timorese refugees who were forcibly deported to West Timor by the Indonesian military in September 1999.

With a history of reliance on international aid and expertise it is doubtful that the Indonesian government has the capacity to cover the whole range of assistance needed by the civilian population in Aceh. In particular, the provision of water and sanitation facilities in IDP camps, supplementary feeding, and distribution of non-food items are areas of assistance historically borne by U.N. agencies and international NGOs. Other areas, such as protection and extra care of vulnerable groups such as separated children, victims of trauma, the elderly, and nursing and pregnant women, are also fields where international actors have specialized expertise. It is unclear why there have been such deliberate measures by the Indonesian government to restrict international humanitarian access and involvement in the current crisis in Aceh.

Recommendations

To the government of Indonesia:

- Provide immediate and unimpeded access throughout Aceh for all impartial humanitarian agencies to distribute and monitor aid. Facilitate, rather than impede, the movement of humanitarian workers in the province.
- End the requirement that humanitarian aid be routed through the Indonesian authorities, and permit impartial humanitarian agencies to deliver aid directly to populations in need.
- Allow access to U.N. agencies and non-governmental organizations that can assist in the protection of the civilian population, particularly displaced persons. To date, insufficient help is being provided to unaccompanied minors in need of specialized care and legal assistance, women and children at risk of sexual or other abuse, victims of trauma in need of psychosocial assistance, and separated family members in need of tracing.
- All persons detained in Aceh should be promptly charged with a recognizable offense and have access to defense counsel, or be released immediately.

To the government of Indonesia and GAM:

- Strictly abide by international humanitarian law in the conduct of military operations, particularly with respect to the treatment of civilians and other non-combatants.
- Ensure secure and unimpeded access to all impartial humanitarian agencies. Act to prevent attacks on humanitarian agencies and their workers, and take appropriate action against those implicated in such attacks.
- Displaced persons should not be denied the freedom of movement to seek refuge in other areas, particularly the province of North Sumatra.

To the government of Malaysia:

- Ensure the right of persons fleeing the conflict in Aceh to seek asylum in Malaysia in safety and dignity. Acehnese refugees and asylum seekers in Malaysia should be granted full protections under international law, including freedom from arbitrary arrest and detention and the right not to be returned to a place where their life or freedom are at risk because of persecution (*non-refoulement*).

To the United Nations:

- Continue to urge an independent assessment of the needs of Aceh's civilians to determine their humanitarian needs and ensure they are provided with the necessary assistance.