

## **Aceh at War: Torture, Ill-Treatment, and Unfair Trials**

Glossary .....	1
I. Summary .....	2
II. Methodology.....	6
A Note on GAM Abuses.....	7
III. Background .....	8
IV. Torture and Other Mistreatment of Prisoners and Detainees .....	11
V. Violations of Due Process, Unfair Trials .....	22
Charges of Treason and Rebellion .....	23
Arbitrary Arrests .....	26
Access to Counsel, Right to Prepare a Defense.....	30
Unfair Trials.....	33
Corruption.....	40
VI. Detention and Prison Facilities .....	43
Transfers to Java .....	45
Restrictions on Family Visits.....	48
VII. Recommendations .....	50
To the Government of Indonesia .....	50
Treatment in Detention .....	50
Arbitrary Arrest and Detention .....	51
Right to a Fair Trial .....	51
Accountability .....	52
To the Indonesian Judiciary .....	52
To the international community, particularly the quartet (U.S., E.U., Japan, World Bank) taking the lead on Aceh .....	52
VIII. Appendix.....	53
Appendix 1: Recommendations made by the Committee Against Torture on November 12-23, 2001: .....	53
Appendix 2: Other HRW publications on Aceh.....	54

## Glossary

**BAP:** *Berita Acara Pemeriksaan*, Police Investigation Report, which typically includes the minutes of the police interrogation of the defendant.

**Berkas Perkara:** Prosecutor's Dossier.

**BKO:** *Bawah Kendali Operasi*, the designation of auxiliary forces from outside Aceh and nominally placed under local command.

**Brimob:** *Brigade Mobil*, Mobile Brigades, a special rapid deployment unit within the police force.

**DOM:** *Daerah Operasi Militer*, or Area of Military Operations, a designation given to Aceh during anti-insurgency operations carried out from 1990-1998.

**GAM:** *Gerakan Aceh Merdeka*, or Free Aceh Movement, the most common name for the armed separatist movement that began in 1976.

**KTP Merah Putih:** *Kartu Tanda Penduduk Merah Putih*, or red and white identification card required by Acehnese under martial law.

**Kodam:** *Komando Daerah Militer*, Regional Military Command.

**Kodim:** *Komando Distrik Militer*, District Military Command.

**Kopassus:** *Komando Pasukan Khusus*, Special Forces.

**Koramil:** *Komando Rayon Militer*, sub-district military command.

**Korem:** *Komando Resort Militer*, sub-regional military command.

**Kostrad:** *Komando Strategis Angkatan Darat*, army strategic reserve command.

**KUHAP:** *Kitab Undang-Undang Hukum Acara Pidana*, Indonesian Criminal Procedure Code.

**KUHP:** *Kitab Undang-Undang Hukum Pidana*, Indonesian Criminal Code.

**LP:** *Lembaga Pemasyarakatan*, Prison.

**Marinir:** A special unit within the navy.

**PM:** *Polisi Militer*, military police.

**Polda:** *Polisi Daerah*, provincial level police.

**Polres:** *Polisi Resort*, district level police.

**Polsek:** *Polisi Sektor*, subdistrict level police.

**POM:** *Polisi Militer*, Military Police.

**Rutan:** *Rumah Tabanan*, Detention Centre.

**SGI:** *Satuan Tugas Inteligen*, Military Intelligence Unit.

**TNI:** *Tentara Nasional Indonesia*, the Indonesian national military.

**TNA:** *Tentara Nasional Aceh*, the so-called Aceh National Army, the armed wing of GAM.

## I. Summary

*If it was the morning I was beaten by two men, if it was the evening I was beaten by the guard on duty. They hit me with a piece of wood, one used the butt of a gun and one kicked me. I was beaten for three days and three nights...and we were shocked with electric current.*

Sopyani, sixteen-year old torture victim<sup>1</sup>

*“Arbitrary detention, abuse and torture, these appear to be standard operating procedure [in Aceh].”*

Foreign embassy official, Jakarta<sup>2</sup>

Sopyani is currently serving a three-year sentence for treason in a prison in Central Java. He was convicted after a trial in which he had no legal representation and no opportunity to present a defense, and in which the prosecution presented no evidence against him apart from his confession, extracted under the conditions described above. While in pre-trial detention he was seriously and regularly beaten by police and military officials. He has not seen his family since he was transferred to a prison more than 1,100 miles from his home in the northwest province of Aceh. He did not appeal his conviction because he feared his sentence would be increased to penalize him for appealing. Sopyani is sixteen years old. His age may be unusual. His story is not.

The Indonesian government has been fighting an on-again, off-again war with the armed separatist “Free Aceh Movement” (Gerakan Aceh Merdeka, or GAM) for more than two decades. After a brief ceasefire and sporadic peace negotiations in late 2002 and early 2003, on May 19, 2003, President Megawati Sukarnoputri imposed martial law and a state of military emergency in Aceh. An estimated 40,000 military and police were then deployed to Aceh to fight an estimated 5,000 armed members of GAM. Indonesia has thrown a curtain over its military operations, closing most of Aceh to independent observers since May 19, 2003. The situation has not materially changed since the status of Aceh was formally changed to a civil emergency in May 2004. The military campaign, Indonesia’s largest military undertaking since the invasion of East Timor in 1975, continues.

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<sup>1</sup> Human Rights Watch interview with 16-year-old prisoner from Aceh, prison in Central Java, 2004. All names of Acehnese detainees have been changed to protect their security.

<sup>2</sup> Human Rights Watch interview with foreign embassy official, Jakarta, March 31, 2004.

When it resumed military operations in May 2003, Indonesia announced that this time it would pursue an “integrated operation” (*operasi terpadu*). Instead of only pursuing military victory over GAM, this time the Indonesian government would also make efforts to win the “hearts and minds” of the Acehnese people. Humanitarian operations (to mitigate the damage caused by a return to war) and good governance (to win the loyalty of the Acehnese)—two of the “hearts and minds” provisions publicly highlighted when the operation was initially announced—have not commanded the sustained attention of senior officials or sufficient resources.

Largely unnoticed by the few diplomats, journalists, and others who follow the bloody armed conflict in Aceh is the “law enforcement” (*penegakan hukum*) prong of the integrated operation. Since May 2003, the government has arrested an estimated 2,000 alleged members or supporters of GAM. While membership in GAM is not a crime under Indonesian law, hundreds have been tried and convicted in Aceh, primarily on criminal charges of “*makar*,” which translates into English as “treason” or “rebellion.”

Interviews by Human Rights Watch with thirty-five adult and child prisoners from Aceh in five separate prisons in Central Java make it clear that to gain these convictions—and at other times just to punish alleged GAM members and sympathizers—the Indonesian military and police have often relied on torture and other cruel, inhuman, or degrading treatment to coerce detainees into making signed or oral confessions of criminal conduct.<sup>3</sup> Interviewees told Human Rights Watch of routine beatings and threats of beatings, cigarette burnings, and the use of electro-shock. Several prisoners showed Human Rights Watch scars from torture at the hands of Indonesian security forces.

Forced confessions signed under such conditions have later served as the basis for convictions in trials that fail to follow Indonesian law or meet international standards of fairness and due process. In most cases arrests were made without necessary arrest warrants, defense counsels took no part in preparing a defense or participating in the trial, and no evidence or witnesses beyond dubious confessions were produced in court, making cross-examination of witnesses or testing of evidence impossible. The crime of *makar* is so broad and ill-defined as to make a legal defense extremely difficult. No less than in regular criminal cases in Indonesia, judicial corruption was rampant. Acehnese prisoners said that decisions appear to have been made in advance of court proceedings, reflecting political or financial motivations of judges and prosecutors instead of reliance on evidence and the criminal code.

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<sup>3</sup> In this report the term prisoner refers to individuals convicted of a crime. The term detainee refers to individuals in detention who have not been convicted.

Human Rights Watch interviewed several convicts who freely admitted they were either members of GAM or had financially or materially supported the separatists. In some cases they claimed that they had offered such support under duress or simply to avoid being accused of being unsympathetic by men with the power of life and death over them. The vast majority of convicts interviewed vehemently denied that they had any association with GAM. However, this report does not attempt to prove the guilt or innocence of these prisoners.

It is important to note that even if an accused was in fact guilty of a criminal law violation, the use of torture and other forms of mistreatment, as well as major defects in the trial process, undermines the validity of any convictions obtained against that individual. Only if fair trials are conducted in an atmosphere free of mistreatment and coercion can the results of those trials be given any credence.

The scale of torture and the failure of due process documented in this report makes it clear that these are systemic failures, not just the acts of rogue soldiers and police or untrained, poorly resourced judges and prosecutors. The stories of torture are chilling and sadly similar to accounts of abuses committed by Indonesian security forces in Aceh in the past and in other parts of the country.

They are also ironic, given Indonesia's recent condemnation of U.S. abuses at Abu Ghraib prison in Iraq. Major Farid Ma'ruf, a spokesman for Kopassus, the Indonesian military's notorious special forces unit, said, "It is ironic that torture and sexual abuse were committed by the military of a country that always claims to be the world's human rights guardian. The treatment of Iraqi prisoners was clearly inhumane because the military should have strict standards on how to properly interrogate detainees."<sup>4</sup> Kopassus forces are identified in this report by a number of interviewees as responsible for torture and other mistreatment.

In response to the annual U.S. State Department report on human rights, which highlighted a variety of abuses in Indonesia, in May 2004 Marty Natalegawa, the Ministry of Foreign Affairs spokesman, shot back: "The U.S. government does not have the moral authority to assess or act as a judge of other countries, including Indonesia, on human rights, especially after the abuse scandal at Iraq's Abu Ghraib Prison."<sup>5</sup> Yet Indonesia no less than the United States is obliged to respect the human rights of all people on its soil. While rightly criticizing the United States for abuses at Abu Ghraib, the Indonesian government has signally failed to respond in a serious manner to

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<sup>4</sup> "Kopassus slams Iraq prisoner abuse," Associated Press, May 18, 2004.

<sup>5</sup> "U.S. has no authority to assess RI's rights record: Govt," Antara, May 21, 2004.

allegations by Indonesian human rights lawyers, Human Rights Watch, and others of grave and apparently systematic human rights violations in Aceh since the resumption of war in May 2003.

Human Rights Watch urges the Indonesian government, and particularly the Indonesian military—which is the most powerful institution in the country—to take all necessary measures to immediately end the torture and mistreatment of detainees, whether for the purpose of extracting a confession, to exact retribution for real or alleged support of GAM, or for any other reason. No statements made as a result of torture or other coercion should be admitted into legal proceedings. To deter these practices, courts must apply the legal requirement under Indonesian law that two forms of evidence, not merely a single confession, are required for a conviction. Indonesian judges and prosecutors must fulfill their role as judicial officers and refuse to accept legally insufficient evidence. The government should conduct investigations into allegations of torture and other mistreatment. Criminal charges should be filed in cases in which credible evidence is discovered. Military and police officials should launch their own investigations and discipline personnel found to have committed, allowed, or been complicit in or negligent in allowing such acts to take place.

Human Rights Watch urges that in conformity with Indonesian and international law, all arrests except those *in flagrante delicto* (“in the act”) should be carried out with a warrant. At the time of arrest detainees should be informed of the reasons for their arrest or detention and the charges against them. Detainees must be permitted adequate access to lawyers, family members, and proper medical care.

Given the seriousness of the findings of this report, the National Commission on Human Rights, Komnas HAM, should launch an investigation of detainee treatment and the trial process for those convicted of *makar* as the result of alleged or real association with GAM. The Indonesian government should offer its full cooperation to Komnas HAM. Indonesia should invite the United Nations Special Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment, and the Special Rapporteur on the Independence of Judges and Lawyers to investigate and report on these allegations and make relevant recommendations. Without delay, it should also implement the recommendations made by the United Nations Committee against Torture in November 2001 to address Indonesia’s dismal record of torture and mistreatment.

Because of prohibitions on access to Aceh, Human Rights Watch fears that the information on abuses contained in this report may represent just the tip of a dangerous iceberg. It is crucial that the international community, in particular the quartet (the U.S.,

E.U., Japan, and the World Bank) that has attempted to broker a peace deal, insist in public and private that Indonesia open Aceh to independent national and international journalists, human rights workers, diplomats, and observers. Many of the abuses documented in this report may have been committed because soldiers and police have been able to operate behind closed doors and away from public scrutiny. Greater openness is necessary as a deterrent to further abuse.

If Indonesia wants to win the “hearts and minds” of the Acehese people, it is in Indonesia’s interests to ensure that acts of torture and mistreatment are ended and unfair trials and flawed convictions are stopped. Otherwise, Indonesia’s law enforcement operation in Aceh will be—and will be seen to be—a failure. This will only increase mistrust and resentment within the Acehese civilian population and will undermine the Indonesian government’s efforts to convince the international community of its commitment to human rights and reform in the country.

There has been a significant expansion of freedoms in Indonesia since the fall of President Soeharto in 1998 and, with increased public attention to the role of military brutality and abuse in exacerbating Indonesia’s internal conflicts, the prestige of the military for a time suffered a major blow, which seemed to create a space for much-needed reform for the first time in decades. More recently, however, the momentum for reform (*reformasi* is the Indonesian term) has almost ground to a halt, leaving many observers and friends of Indonesia concerned that the possibility of creating a state based on the rule of law and respect for human rights, with a military under genuine civilian control, is increasingly remote. After the recent debacle of the trials of Indonesians for the 1999 atrocities in East Timor, where all of the Indonesian defendants were either acquitted at trial or had their convictions overturned on appeal, Indonesia has little international capital on the issue of abuses by its military. The time for action and reform is now.

## **II. Methodology**

This report consists almost entirely of first-hand testimony covering many districts in Aceh. In the first quarter of 2004, Human Rights Watch traveled to Indonesia and interviewed thirty-five prisoners (including two children) from Aceh in five separate prisons in Central Java. In Indonesia, the United States, and the United Kingdom, Human Rights Watch also interviewed over forty representatives of various embassies and governments, United Nations officials, representatives of national and international non-governmental organizations, media representatives, and defense lawyers. During

the course of the research, Human Rights Watch also engaged in written correspondence with Indonesian government officials.

Human Rights Watch and other independent international human rights organizations are still barred from entering Aceh. Without direct access to the province the ability to verify and confirm information is hampered.

Due to the risk of reprisal, we have changed or omitted the names of Acehnese sources and the names of the prisons visited in Central Java.

### **A Note on GAM Abuses**

Since the renewal of fighting in May 2003, GAM forces have engaged in kidnapping, hostage taking, and the arbitrary detention of civilians in violation of international humanitarian and human rights law.

The most widely reported abduction by GAM forces involved a reporter and cameraman for the Indonesian television station, RCTI. On June 29, 2003, two RCTI employees were among a group of civilians kidnapped by GAM in Langsa, East Aceh. The reporter, Ersi Siregar, cameraman Fery Santoro, their driver Rahmatsyah, and two civilians who were accompanying them went missing while driving back to Lhokseumawe. On July 3, Teungku Mansoor, GAM spokesman for East Aceh, announced that the crew was being held by GAM soldiers. He told an AFP reporter that "the reason that we are holding them for questioning is that the Indonesian military have been using the press to conduct intelligence operations in Aceh."<sup>6</sup>

Rahmatsyah managed to escape on December 17, 2003. On December 29, 2003, Ersi Siregar, still in GAM captivity, was shot and killed in a firefight between GAM and TNI soldiers. Fery Santoro was not released by GAM until May 16, 2004, almost a year after he was first taken hostage. His release, along with an estimated 150 others, was eventually negotiated by the International Committee of the Red Cross (ICRC) and the Indonesian Red Cross (PMI). The Indonesian military immediately questioned whether or not GAM was continuing to hold other civilians against their will.<sup>7</sup> It is unclear whether or not GAM is still holding civilians.

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<sup>6</sup> Wartawan RCTI Ada di Markas GAM," *Tempo*, July 3, 2003; "Aceh rebels claim to hold missing RCTI crew and two civilians," Agence-France Presse, July 3, 2003.

<sup>7</sup> "Freed hostages of Aceh rebels were civilians: Indonesian military," Agence France Presse, May 19, 2004.



Human Rights Watch is concerned about possible abuses committed by GAM, which like the Indonesian military has a long record of abusive behavior in Aceh. But because Indonesia prohibits Human Rights Watch from entering Aceh, we were unable to interview people in, or released from, GAM custody. Human Rights Watch is acutely aware that a lack of testimony does not necessarily mean a lack of abuses. But until Indonesia opens Aceh to independent observers, information on possible abuses by GAM will be difficult to obtain.

Human Rights Watch urges GAM to act in accordance with its obligations under international humanitarian law. GAM may not, for instance, conduct attacks against civilians (including civilian officials), mistreat civilians or combatants under its control, or hold persons as hostages. GAM also should not take actions that place civilians at risk, such as confiscating identity cards for use by GAM combatants.

### III. Background

*"Aceh is the most serious human rights crisis in Southeast Asia today."*

Matthew Daley, U.S. official<sup>8</sup>

In a series of reports, Human Rights Watch has documented widespread human rights violations in Aceh since the start of military operations in the province in May 2003.<sup>9</sup> Based on testimony from Acehnese refugees in Malaysia, there is substantial evidence that Indonesian security forces have engaged in extra-judicial executions, forced disappearances, beatings, arbitrary arrests and detentions, and drastic limits on freedom of movement in Aceh. There is also a clear pattern of singling out and persecuting young men who the military claims, often with little or no evidence, are members or supporters of GAM. Indonesian security forces have often failed to distinguish between GAM combatants and civilians.

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<sup>8</sup> Human Rights Watch interview with Matthew Daley, Deputy Assistant Secretary of State for East-Asian and Pacific Affairs, Washington D.C, February 23, 2004.

<sup>9</sup> See Human Rights Watch, "Aceh Under Martial Law: Problems Faced by Acehnese Refugees in Malaysia," *A Human Rights Watch Report*, Vol. 16, No. 5 (C), April 2004; Human Rights Watch, "Aceh Under Martial Law: Inside the Secret War," *A Human Rights Watch Report*, Vol. 15, No. 10 (C) December 2003; Human Rights Watch, "Aceh Under Martial Law: Muzzling the Messengers. Attacks and Restrictions on the Media," *A Human Rights Watch Report*, Vol. 15, No. 9 (C), November 2003; Human Rights Watch, "Aceh Under Martial Law: Can these men be trusted to prosecute this war?" *A Human Rights Watch Briefing Paper*, October 2003; Human Rights Watch, "Aceh Under Martial Law: Unnecessary and Dangerous Restrictions on International Humanitarian Access," *A Human Rights Watch Briefing Paper*, September 2003; Human Rights Watch, "Aceh Under Martial Law: Human Rights Under Fire," *A Human Rights Watch Briefing Paper*, June 20, 2003.

The past fifteen months of fighting have also caused massive internal displacement. Tens of thousands of civilians have fled their homes and been forcibly relocated by the military for operational reasons. The cumulative strain of long-term conflict on the civilian population has been significant, with serious effects on the mental health of the population.<sup>10</sup>

In May 2004, Komnas HAM reported that in the first six months of martial law there had been an increase in the number of civilian victims of violence, including arbitrary arrests, torture, kidnapping, sexual abuse, and extrajudicial killings. It reported that both Indonesian security forces and GAM were responsible for serious human rights abuses in the province.<sup>11</sup>

The fighting between GAM and the TNI is increasingly taking place outside of Aceh's main towns, making it even more difficult to know what is happening or who is being killed, wounded, or detained. Statistics on fatalities continue to be reported by wire services, quoting military statements from the province. In almost all accounts fatalities are recorded as GAM or "rebel" deaths. These accounts do not specify the circumstances of the deaths. Furthermore, the reported statistics on numbers killed in the province are inconsistent with each other, raising more concerns about the credibility of the information and the lack of comprehensive documentation of those killed in Aceh (see box below).

On May 19, 2004, one year after martial law was imposed in Aceh, the military emergency was downgraded to a civil emergency. Formally, this meant a handover to a civilian administrator for the province and the shifting of law enforcement responsibilities from the military to the police. Major General Endang Surwarya, the martial law administrator, was now supposed to defer to the civilian rule of Aceh's Governor, Abdullah Puteh.

In practice, it appears that very little has changed. Although Governor Puteh officially took charge on June 7, 2004, the military remains firmly in control in Aceh. No significant decisions can be taken without military approval. At the handover ceremony in June, Governor Puteh himself reiterated that despite the province's change of status

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<sup>10</sup> In July 2004, the Jakarta Post reported that 750 women had so far received psychological counseling for trauma experienced during the current conflict in Aceh. "85 more Aceh women get counseling," *The Jakarta Post*, July 17, 2004. The Indonesian news magazine, Tempo, reported that half of Aceh's 4.2 million people were suffering from some form of mental depression, reported in "How prolonged conflict has affected the mental health of the people," Radio Singapore International, March 5, 2004. See also, "Acehnese traumatized by conflict," *The Jakarta Post*, August 5, 2003.

<sup>11</sup> "Violations rampant during martial law: Rights body," *The Jakarta Post*, May 24, 2004.

## HOW MANY DEAD AND WOUNDED IN ACEH?

Human Rights Watch contacted Indonesian government representatives at the Indonesian Embassy to the U.S, the Indonesian Embassy to the U.K, and the Indonesian Mission to the U.N, for official statistics on the number of GAM killed, captured, and surrendered since the start of military operations in May 2003. Casualties occurring during an armed conflict are not in themselves evidence of violations of international humanitarian law; however gaps or ambiguities in reported figures may indicate an attempt to hide or distort war crimes.

In July 2004 a representative from the Indonesian Mission to the U.N. responded that during the military operations 1,284 GAM had been killed, 1,520 had been captured, of which 1,272 had been delivered to the local government for further processing, and 164 were freed for not having enough evidence against them. 848 GAM had reportedly voluntarily surrendered. The U.N. mission reported that 353 TNI and police officers had been killed or wounded. It also reported that 503 weapons had been confiscated.<sup>12</sup> The same month, the Indonesian Embassy in the U.S. offered wildly different numbers. It wrote that since May 2003, 231 GAM had been killed, 94 members of GAM had been captured, and 112 members of GAM had voluntarily surrendered.<sup>13</sup> At the beginning of May 2004, the military issued a statement stating that since May 19, 2003, 1,963 GAM “rebels” had been killed, 2,100 arrested, and 1,276 surrendered. The statement also said that 130 soldiers had been killed and 289 wounded since the offensive began.<sup>14</sup>

The discrepancies have continued since the end of martial law. On July 21, 2004, Police Senior Commissioner Anjaya, spokesman for the civil emergency authority in Aceh, announced that 232 alleged members of GAM had died in clashes between May 19, 2004 and July 19, 2004. He added that nine soldiers and two policemen had also been killed in the same period.<sup>15</sup> However, less than a week earlier, on July 16, Aceh military chief Maj. Gen. Endang Suwarya stated that 400 “rebels” had been killed since the lifting of the military emergency in Aceh in May 2004.<sup>16</sup>

Non-governmental organizations on the ground, such as the Aceh branch of the respected organization KontraS, acknowledge that they are unable to collect data in the field effectively. Accurate figures for civilian casualties are difficult to determine, though all parties suggest that combatant and civilian casualties have been extensive.

There is also an alarming lack of information regarding numbers of those wounded or what happens to them. Typically in combat the number of wounded exceeds the number of those killed. This dearth of information, in light of what we know about treatment of detainees generally, raises concerns about possible mistreatment of wounded combatants and civilians by both sides.

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<sup>12</sup> Human Rights Watch email communication with Jonny Sinaga, First Secretary, Permanent Mission of Indonesia to the United Nations, New York, July 23, 2004.

<sup>13</sup> Human Rights Watch email communication with Suhardjono Sastromihardjo and Made Mastra, Political Section, Embassy of the Republic of Indonesia, Washington, D.C, July 28, 2004.

<sup>14</sup> “Govt Troops Have Killed Almost 2,000 Rebels A Year Into Aceh Offensive,” Agence France Presse, May 5, 2004.

<sup>15</sup> “Over 230 Aceh rebels killed in two months: Military,” Agence France Presse, July 21, 2004.

<sup>16</sup> “Indonesia Army Kills 400 Alleged Aceh Rebels Since May 19,” Associated Press, July 16, 2004.

to a civil emergency, a number of regulations from the martial law period, including the decrees restricting access for foreigners to the province, would still apply. The Chief of Army Staff, Endriartono Sutarto, also made it clear that there was no plan for the withdrawal of the Indonesian military (Tentara Nasional Indonesia, or TNI), but law enforcement responsibilities would be gradually handed over to the police.<sup>17</sup> Military involvement in the fight against GAM would continue.

Given the limited nature of the handover to civilian authorities and the fact that military operations continue on a large scale, there is little reason to believe that human rights and humanitarian law violations previously documented will decrease or stop now that the province is officially under a civil, rather than a military, emergency.

#### **IV. Torture and Other Mistreatment of Prisoners and Detainees**

*In that cell there were many kinds of torture. Some was severe and some was light, but there was always torture.*

Adi, twenty-two year-old prisoner from Aceh<sup>18</sup>

Graphic accounts of torture and other mistreatment were shockingly common among Acehese prisoners and detainees interviewed by Human Rights Watch. Many spoke credibly and at length of their ordeals. Some displayed the scars they received. All explained that it was the Indonesian military and/or police who subjected them to burning with cigarettes, electro-shock, repeated kicking, and severe beatings while in pre-trial detention in Aceh.<sup>19</sup> Beatings appeared to be regular and common. Twenty-four out of the thirty-five people interviewed told Human Rights Watch they had been tortured while in detention.

Many of the people alleging torture told Human Rights Watch that the torture occurred in an effort to gain either a written or oral confession of GAM membership or other involvement with GAM. As described below, coercive efforts to extract confessions often lasted for days. In other cases torture was not as clearly linked to efforts to extract confessions. In these cases the abuse continued whether or not detainees acknowledged the accusations against them.

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<sup>17</sup> "Indonesia: OCHA Humanitarian Update," U.N. Office for the Coordination of Humanitarian Affairs, Indonesia, June 30, 2004.

<sup>18</sup> Human Rights Watch interview with 22-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>19</sup> Until there is full access to Aceh, it will be impossible to know the extent of the physical or psychological abuse of detainees that has taken place since the start of military operations in May 2003.

The use of torture or coercion to extract confessions is illegal under Indonesian and international law. Article 421 of Indonesia's Criminal Code states that, "Any official who in a criminal case makes use of means of coercion either to force/compel a confession or to provoke a statement, shall be punished by a maximum imprisonment of four years."<sup>20</sup> International human rights and humanitarian law prohibit the use of torture and ill-treatment to obtain information; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture), to which Indonesia is a party, requires states to "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."<sup>21</sup>

In many cases, prisoners told Human Rights Watch that they had made false confessions to appease their interrogators so that beatings would end. These same prisoners also told Human Rights Watch that they were unable to later recant these confessions in court because of the lack of defense counsel, restrictions on their ability to testify, or fear of the consequences of making allegations of torture in court (see section V below entitled Violations of Due Process, Unfair Trials).

Although torture has been an ongoing problem in Aceh, recent incidents can be traced to the first days of martial law. On May, 19, 2003, at 8 p.m., seven members of a Polsek (sub-district level police) in West Aceh arrested a local resident. He told Human Rights Watch that he was then taken to the police station and held for a month. While in police detention he says he was badly beaten and tortured in order to extract a confession:

They took me to the Polres [district level police] and before I had got out of the car one of the soldiers straight away hit me. For one week I was beaten and ordered to admit that I was GAM but I did not confess it. After one week I finally confessed to it and I said "to what must I confess?" I didn't do anything... I was accused of a murder, but it was not me but other people from my village. They were wrong in who they arrested...I was burnt on my chest and my shirt was taken off and poked with cigarettes [*pungtung*]. My body was burnt with matches, they

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<sup>20</sup> KUHP (Kitab Undang-Undang Hukum Pidana, Indonesian Criminal Code), article 421.

<sup>21</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], entered into force June 26, 1987, article 15. Indonesia ratified the Convention against Torture in 1998. See also ICCPR, article 14(3)(g) (anyone charged with a criminal offense may "[n]ot be compelled to testify against himself or to confess guilt.")

also skinned [*menguliti*] me with a knife. I was also kicked, hit with a gun butt until I was bruised and vomited blood.<sup>22</sup>

An Acehese man told Human Rights Watch that he was arrested by Kopassus officers during a military operation in his village on June 5, 2003. He described what happened:

After I was arrested I was taken to an illegal post. It was a torture place. At that time I was interrogated and ill treated. They bound my hands and covered my eyes and I was hit repeatedly on my body, then they shocked me with electricity and I was abused until I was bruised. I was then taken to Lhokseumawe KP 3 [name of military post] for one night. When I got there they abused me until I was unconscious. They questioned me about guns. And I said that I don't have any guns. They also asked about my friends, and I said that I was not with any friends, I was alone. Then I was hit with some wood and the butt of a gun. And this is the scar from that abuse [showed interviewer a scar]. After one night at KP 3, the next day I was transferred to Lhokseumawe prison.<sup>23</sup>

When asked about his torturers he said:

The people who hit me were about 50 people and at that time they were wearing army uniforms, and they were from a Kopassus unit. They were [carrying] guns and torture instruments.<sup>24</sup>

Another Acehese man was arrested on June 6, 2003, by police in Cane Town, sub-district Bulalas in Aceh Tenggara. He was in police detention for two weeks and then transferred to the barracks of the *Brimob* (mobile police brigade) unit from Medan. While at the Brimob barracks he was beaten badly. He told Human Rights Watch:

Without asking any questions they straight away severely beat me, along with two other people who were detained with me, until my mouth was really swollen, it was really sore, but in fact they kept on hitting, kicking, spitting on me. I felt really humiliated, treated like that by them... They were wearing Brimob uniforms, a mixture of uniforms, there were also

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<sup>22</sup> Human Rights Watch interview with 32-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>23</sup> Human Rights Watch interview with 21-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>24</sup> Human Rights Watch interview with 21-year-old prisoner from Aceh, prison in Central Java, 2004.

some wearing Kopassus uniforms, there were lots of them. We were ordered to sit on the floor and then beaten until bloody.<sup>25</sup>

#### **APPLICABLE INTERNATIONAL AND DOMESTIC LEGAL STANDARDS**

Indonesian and GAM forces in Aceh are bound by international humanitarian law (also known as the laws of war). 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 and the customary laws of war.<sup>26</sup>

Common Article 3 provides for the humane treatment of civilians and other persons not taking an active part in the hostilities (including captured members of opposing armed forces). Prohibited at all times are murder, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; and summary trials. Also prohibited are acts or threats of violence against the civilian population that spread terror or the forcible removal of the civilian population without military necessity.

International human rights law remains in effect during an internal armed conflict. This includes prohibitions on extrajudicial executions, forced disappearances, arbitrary arrest and detention, punishment without a fair trial, and unnecessary restrictions on the freedom of movement. Fundamental rights of life and liberty may not be infringed upon, even during a state of emergency.<sup>27</sup>

International law prohibits torture and all cruel, inhuman, or degrading treatment or punishment. States are obliged to investigate all credible reports of torture. Article 5 of the Universal Declaration of Human Rights prohibits torture and other forms of mistreatment. Torture is explicitly prohibited under any circumstances by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), to which Indonesia is a state party. No exceptional circumstances, such as war, a threat of war, internal political instability of any other public emergency, can be invoked as a justification of torture.

In Indonesia, the Convention against Torture was brought into domestic law under Act No.5 of 1998.

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<sup>25</sup> Human Rights Watch interview with 53-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>26</sup> Indonesia became a party to the Geneva Conventions in 1958. Also applicable is the Second Additional Protocol of 1977 to the Geneva Conventions (Protocol II). Although Indonesia is not a party to Protocol II, many if not all of its provisions reflect customary international law.

<sup>27</sup> While Indonesia is not a party to the International Covenant on Civil and Political Rights and some other important human rights treaties, the fundamental rights found within are recognized as part of customary international law.

This same man was then transferred to the Binjai police station, where he was held for three days. While in police detention he claims he was tortured:

For three days we slept standing up, naked, only in the trousers that I am wearing. We were not allowed to sit even for a little...they took my money, about Rp50,000, then they bought drink and Dji Sam Soe cigarettes. Then, with those cigarettes, they burnt my chest, until the fire had extinguished, and then I was ordered to inhale the cigarette so that the embers [*menyala*] came back, and I was burnt again. It was like that until I was trembling/shaking [*gemetaran*] waiting to feel that burning.<sup>28</sup>

Sopyani, the sixteen-year-old boy mentioned at the outset of this report, was detained by the TNI on June 9, 2003. Soon afterwards he was transferred to police custody. He told Human Rights Watch what happened to him while in detention at a police station in Aceh:

If it was the morning I was beaten by two men, if it was the evening I was beaten by the guard on duty. They hit me with some wood, one used the butt of a gun and one kicked me. I was beaten for three days and three nights...and we were shocked with electric current. If you are against the TNI then you're tortured even more severely, and I was accused of being GAM. They consider that all Acehnese are GAM. So, while I was at the Polres the torture just continued without any ending.<sup>29</sup>

When asked if he could identify his perpetrators he said:

There were many, at that time I couldn't see anymore because my face was already swollen and blood was pouring off it. I felt really sick and my body was continuously hit with rifle butts and they kicked me, stamped on me. How could I see them while my eyes were already shut by the flowing blood? I didn't get their names, but they were verbally abusing [*memaki-maki*] me, and it wouldn't have done any good to ask.<sup>30</sup>

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<sup>28</sup> Human Rights Watch interview with 53-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>29</sup> Human Rights Watch interview with 16-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>30</sup> Human Rights Watch interview with 16-year-old prisoner from Aceh, prison in Central Java, 2004.



Another man arrested in Aceh on June 15, 2003, told Human Rights Watch what happened to him at Lhokseumawe Police Station [Polres] after he was arrested:

I was processed like an animal. They abused me until I was black and blue. Before, my uncle had also been arrested by the Kodim [district military command] and he died when he was tortured, and I was also treated inhumanely. They hit me with a wood beam [*balok*] and a gun butt and they poured water over me, and every day I was hit. Sometimes I could not eat, these are still the scars. [He pointed out his scars.] In fact until I fainted, after fainting they would pour water over me again and hit me again. It was like that every day...I was at the police station for more than one month.<sup>31</sup>

A 42-year-old man told Human Rights Watch about his arrest and detention in Aceh:

I was arrested on June 24, 2003. At the time I was a refugee [IDP], because other people in the community had fled and in my village there was often gun fighting between TNI and GAM, so we fled. When we got to the refugee place, we were questioned at the post, one by one, then they said that I was illegal and I was accused of being GAM, and they also said that I was a [GAM] state tax collector. At that time it was untrue, for sure I had helped before but only because I was forced to. After questioning at 2 o'clock in the afternoon I was taken to the Kodim [District Military Command]. At the Kodim we were questioned again there, and at the Kodim we were also abused, given electric shocks, beaten with a hammer on the head, and all of my body was sick and bleeding, we were continuously hit until bruised. Fourteen days in the Kodim, then taken to the Lhokseumawe prison and in the military police, and then taken again to police station. At the police station I was accused of helping GAM. Fourteen days in the police station and then I was taken again to the prison. On August 22, 2003, I finally arrived at the court.<sup>32</sup>

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<sup>31</sup> Human Rights Watch interview with 30-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>32</sup> Human Rights Watch interview with 42-year-old prisoner from Aceh, prison in Central Java, 2004.

## A PATTERN OF TORTURE IN ACEH

Torture and serious abuse of detainees in both military and police custody has long been routine practice in Aceh and much of the rest of Indonesia, particularly in conflict zones.

In November 2001, following Indonesia's first report on its efforts to implement the United Nations Convention against Torture, the U.N. Committee against Torture expressed its concern about "the large number of allegations of acts of torture and ill-treatment committed by the members of the police forces, especially the mobile police units ("Brimob"), the army (TNI), and paramilitary groups reportedly linked to authorities, and in areas of armed conflict (Aceh, Papua, Maluku, etc.)."<sup>33</sup>

The Committee also made recommendations on measures that should be taken by the Indonesian authorities to resolve this problem and to meet its obligations as a state party to the Convention against Torture. They included amending the penal legislation so that torture and other cruel, inhuman, or degrading treatment or punishment are strictly prohibited under criminal law; establishing an effective, reliable, and independent complaint system to undertake prompt, impartial, and effective investigations into allegations of ill-treatment and torture; reducing the length of pre-trial detention; ensuring adequate protection for witnesses and victims of torture; excluding any statement made under torture from consideration in any proceedings, except against the torturer; and inviting the U.N. Special Rapporteur on Torture to visit Indonesia.<sup>34</sup>

To date none of these recommendations have been implemented.

An eighteen-year-old boy in one of the prisons in Central Java described the night he was taken into custody by five marines who interrogated and tortured him. He was seventeen at the time of his arrest.

I was arrested by marines on June 28, 2003, at midnight. They arrived in a group of ten, knocked on the door, and then straight away shot at the door of my house. I was then arrested and my eyes were covered. Then they took me with them and I don't know where. The next day when my eyes were uncovered, I was already at their post. That night I was tortured heavily and they asked about an act of arson and the whereabouts of other GAM. I said I didn't know but I was still accused of being GAM. They abused me until I was black and blue and I was

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<sup>33</sup> "Conclusions and Recommendations of the Committee Against Torture: Indonesia," CAT/C/XXVII/ Concl.3, Committee Against Torture, 27th session, November 12-23, 2001.

<sup>34</sup> "Conclusions and Recommendations of the Committee Against Torture: Indonesia," CAT/C/XXVII/ Concl.3, Committee Against Torture, 27th session, November 12-23, 2001. A full list of the Committee's recommendations can be found in Appendix 1 at the end of this report.

unconscious...There was no time to explain because they continuously asked questions and the answers were “yes” or “no.” If you gave a different reason then you would be continuously hit, so then I just confessed...It was marines; at that time there were 5 people who hit me, also someone who interrogated me, and this was at the Bireuen post, the marines post.<sup>35</sup>

One man told Human Rights Watch of his experience in June 2003:

When I arrived at the Kodim I was interrogated and then beaten, kicked, slapped, and like that, most of my body was abused until I was black and blue. Finally I was threatened that if I did not admit that I was GAM I would be killed. I do not know their names, I did not recognize them. They were from the Kodim. There were three men who tortured me. I was abused alongside my friend, both of us beaten until black and blue, blood flowing continuously and no medicine whatsoever.

At the time I was interrogated I was ordered to admit that I was GAM. I didn't want to because I'm not GAM, my work is only as a rice farmer. Because I didn't want to [admit to being GAM], I was beaten again, they just continued beating me in turns. I was beaten for about a week and threatened that if I did not confess to being GAM I would be killed. I was beaten in my chest until it was swollen and one of my bones was broken. After that I was burned with cigarettes, then I was slashed with a knife until there were wounds and while they were torturing me they also ordered me to confess that I was GAM.

After one week at the Kopassus post I was taken to the Polres...When I got to the Polres I was tortured in the same way as at the Kopassus post. Some members of the police abused and tortured me, they also interrogated me. I was hit with the butt of a gun, and I was tortured in a dark room...I was detained at the Polres for forty days. I was continuously beaten in my chest until blood came out of my mouth and I was sick for a week, and they continued to punch me in my stomach. I was ordered to confess that I was GAM. I really didn't want to, because

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<sup>35</sup> Human Rights Watch interview with 18-year-old prisoner from Aceh, prison in Central Java, 2004.

I am not GAM, but I was forced continuously. [This last group of torturers] were Brimob troops, they wore uniforms.<sup>36</sup>

One man was arrested in June 2003 by members of TNI Battalion 143. He was initially taken to a TNI 143 Battalion post, but then transferred to the Kodim. He was held at the Kodim for seven days before being moved to the Lhokseumawe prison detention centre (*Rutan LP Lhokseumawe*). He described what happened to him while at the Kodim:

In the Kodim I was interrogated and they also hit me and severely treated me. At the time I was not taken to the Polres because I was straight away questioned in the Kodim. During interrogation I was ordered to admit that I was GAM, and I didn't admit it because I am not GAM. Then I was beaten until black and blue...I was tortured and shocked with electricity and continuously ordered to admit that I was GAM, but I just did not want to admit this; it is obvious that I am just an ordinary civilian.<sup>37</sup>

Another man told Human Rights Watch that he was beaten in June 2003 while in detention at the Polres [district level police station]. When asked about the perpetrators he said:

The policemen who were at the Polres and those who were doing the beating, it was four men and they beat us as well as interrogated us. We were ordered to confess that we were GAM, to fill in the BAP [police investigation report]. It was given to us but I did not read it and we were immediately ordered to sign the BAP. Then this BAP was taken to the court, and I don't even understand how this happened without any prior explanation. We were just ordered to sign it.<sup>38</sup>

Another prisoner explained how he was repeatedly beaten during the eight days he was in police detention:

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<sup>36</sup> Human Rights Watch interview with 30-year-old prisoner from Aceh, prison in Central Java, 2004

<sup>37</sup> Human Rights Watch interview with 34-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>38</sup> Human Rights Watch interview with 37-year-old prisoner from Aceh, prison in Central Java, 2004.

Sometimes they hit me with wood or a long roll, and sometimes we were kicked with military style boots. They did this until I was unconscious. My head, body, feet, chest, all over my body was sick and I collapsed. We were beaten until we were bruised and until now the scars are still there from when they beat me, from when they were interrogating me.<sup>39</sup>

Another man was unable to recall the exact date of his arrest, but told Human Rights Watch:

From the moment I was detained I was beaten in my chest, slapped, my body was abused completely. For 40 days it was like that, I was beaten and ordered to confess that I was GAM but I didn't want to because I am not GAM. But they continued to beat me. A soldier poured diesel oil over my body and they kicked me. I was ordered to stand up but I was unable to stand up again because my body was so weak. Then their commander told them not to beat me anymore and I was thrown into a cell. With that diesel oil, lots of people are tortured until they die. In that cell there were many kinds of torture. Some was severe and some was light, but there was always torture. Those who carried out the torture? It depended on the guard. But indeed there was one who was really evil, a man who was very hot tempered [*beringas*] and his task/duty was to continuously torture people.<sup>40</sup>

A 45-year-old man was arrested by Kopassus soldiers and accused of helping GAM. He told Human Rights Watch that he regularly paid off members of the security forces to secure his business, but it was when GAM arrived, also demanding money, that his troubles began. He explained:

Every week I gave administration money to Brimob, about Rp50,000 [US\$5.40] and every month Rp200,000 [US\$21.70], for the Polsek [sub-district police] every month Rp100,000 [US\$10.85] and for the Koramil [sub-district military command] every month Rp240,000 [US\$26]. In March some GAM members arrived to ask for monetary contributions and at that time I gave it to them, because I was scared, I gave it only to secure my motorbike taxis [*ojek*] so that they were not taken by GAM. At that time I had two business rivals and they were members of the

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<sup>39</sup> Human Rights Watch interview with 37-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>40</sup> Human Rights Watch interview with 22-year-old prisoner from Aceh, prison in Central Java, 2004.

police. And they reported that I helped GAM. Soldiers arrested me on May 22, 2003 just because I gave money to GAM, and I was considered to be financially contributing to GAM. I was taken to the BKO Kopassus SGI post for two nights. The first day at 3 o'clock I was beaten, tortured and tied up. I was like that for more than two hours. And now the scars are still sore. And I was also kicked with military boots [*propas*], I was tortured until I was unconscious.<sup>41</sup>

Another man told Human Rights Watch:

At the time I was questioned at the police station I was interrogated and also beaten, they hit me with a machine gun butt [*bothi*] on my back, and my head was kicked by a marine. Some policeman tortured me severely, my hands were tied behind my back, my feet were also tied using just a normal rope and then I was interrogated and beaten and abused until I was black and blue. Up to now the scars are still there. They ordered me to write a confession admitting that I am GAM because they had five guns as evidence. Even though those guns were not mine, I had to write a letter in which I confessed.<sup>42</sup>

Another man was held in detention in August 2003 at an unidentified, unofficial post for one week. During that time he was handcuffed and blindfolded and was unable to identify his perpetrators. After a week he was transferred to police custody. He believes that the men who arrested and unofficially detained him were from either the Polda [provincial level police] or the Kodim [district military command]. During his detention he was severely beaten. He told Human Rights Watch:

I was ordered to confess to a *Kapolda* [*Kepala Polisi Daerah*, Head of provincial level police] bombing. When I did not confess they continued to beat me until I was black and blue. So, I confessed... They hit me with a block of wood [*balok*], iron, the butt of a gun, and my head was smashed and this hand was broken, they continuously beat me... It was only because I was hit that I confessed. They said that if I did not confess I would “be taught another lesson” [*disekolahkan*, lit., “sent to school”].<sup>43</sup>

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<sup>41</sup> Human Rights Watch interview with 45-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>42</sup> Human Rights Watch interview with 36-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>43</sup> Human Rights Watch interview with 23-year-old prisoner from Aceh, prison in Central Java, 2004.

An Acehese man told Human Rights Watch that he had been accused of the bombing and burning of a Brimob house. At the close of his trial he was found guilty of treason and sentenced to nine years of imprisonment. He told Human Rights Watch that he was intimidated covertly [*dari belakang*, lit., “from behind”] to not speak at his own trial. No witnesses appeared at his trial. The confession he gave to Brimob soldiers during his pre-trial detention at Bireuen prison appears to have been the only evidence against him. He described to Human Rights Watch what took place during his detention:

I was ordered to acknowledge it [the bombing] and I was continuously hit and my hand was broken and I was continuously forced to confess what I was accused of...If I did not confess to it [the bombing] then I would be beaten continuously...After they arrested me they took me to Bireuen prison where I was tortured and I was ordered to admit to something which did not happen. They also ordered my friend who was not guilty of anything [to confess]...I am not GAM...At the time I was questioned I was ordered to confess that I was GAM and I was threatened I would be killed if I did not want to confess it. [It was] members of Brimob. Brimob hit me and I was ordered to point out my friend and then they ordered me to say that my friend is also a GAM member. But I didn't want to and then they tortured me until I was bruised and finally I had to confess.<sup>44</sup>

## V. Violations of Due Process, Unfair Trials

*I am sure not one of them [trials in Aceh] met international or even Indonesian standards. I have been told consistently that most people were convicted on a limited number of witnesses, mostly police or military witnesses, who sometimes did not even present in court.*<sup>45</sup>

Foreign embassy official, Jakarta

On July 21, 2003 Syamsul Syahputra became the first reported alleged member of GAM to go on trial in Aceh since the start of martial law in May 2003. Syahputra was charged with treason, in the first of a series of trials apparently aimed at establishing that GAM members were trying to break up the Republic of Indonesia. At the opening of his trial

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<sup>44</sup> Human Rights Watch interview with 21-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>45</sup> Human Rights Watch interview with foreign embassy official, Jakarta, March 31, 2004.

the state prosecutor, Moch Adnan, stated that Syahputra, allegedly a district secretary of GAM, “was trying to create revolt against the legal government with an aim to set up an independent state, separated from the Republic of Indonesia.”<sup>46</sup> Since his trial hundreds of others have taken place, largely unreported, and without independent monitors.

According to the Indonesian military, over 2,000 Acehnese have been arrested by Indonesian security forces in Aceh since the start of martial law in May 2003. Hundreds have been charged, tried, and convicted for *makar* (treason or rebellion) under Indonesia’s criminal code (*Kitab Undang-Undang Hukum Pidana*, or KUHP) and are now in prisons across Aceh and Central Java. Under Indonesia’s criminal code a conviction for *makar* can result in life imprisonment. The charges have generally been based on allegations of membership in, associating with, or assisting GAM, mostly for providing financial or other material support for GAM.

Human Rights Watch believes that many of those convicted under martial law have been convicted primarily on the basis of confessions extracted under torture or other ill-treatment and after trials that did not meet international fair trial standards. Prisoners interviewed by Human Rights Watch in Java spoke at length about arbitrary arrests, lack of access to legal counsel, the failure of the prosecution to produce evidence or witnesses at trial, inability to contact defense witnesses, and, in many cases, restrictions on the ability of defendants to speak at their own trial or to their own defense counsel.

On March 26, 2004, the widely respected Indonesian legal aid and human rights association, *Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia* (PBHI), held a press conference in Jakarta to announce that they had found 43 cases of legal violations by law enforcement officials in Banda Aceh, Aceh Besar, and Lhokseumawe between May 2003 and February 2004. In a statement at the conference, Hendardi, then PBHI chairman, said, “We found a great many [cases of] arrests which were not carried out by police officers, which were made without written arrest warrants and then during interrogation [the detainees] were invariably tortured.”<sup>47</sup>

### ***Charges of Treason and Rebellion***

Persons arrested for their participation in, or support for the GAM in Aceh, are typically charged with the crime of *makar* (treason or rebellion). The government seems to favor this catch-all offense, which uses extremely broad language and is punishable by up to

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<sup>46</sup> “Aceh rebel faces treason charges in Indonesia,” *Deutsche Presse-Agentur*, July 21, 2003.

<sup>47</sup> “Law enforcement in Aceh not working,” *Kompas*, March 27, 2004.



life imprisonment, rather than to prosecute persons for specific offenses, such as weapons possession, kidnapping, or murder. Membership in GAM itself is not a violation of the law in Indonesia, as GAM is not an illegal organization.<sup>48</sup>

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

#### Article 106

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

#### Article 107

- 1) The attempt undertaken with the intent to cause a revolution shall be punished by a maximum imprisonment of fifteen years;
- 2) Leaders and originators of an attempt referred to in the first paragraph shall be punished by life imprisonment or a maximum imprisonment of twenty years.

#### Article 108

- 1) Guilty of rebellion and punished by a maximum imprisonment of fifteen years shall be:  
First, the person who takes up arms against the government;  
Second, the person who, with the intent to rebel against the government, rises with or joins a band which take up arms against the government,
- 2) Leaders and originators of a rebellion shall be punished by life imprisonment or a maximum imprisonment of twenty years.<sup>49</sup>

The majority of new prisoners in Aceh have been charged and convicted of *makar* (treason or rebellion) under these articles. The charges filed against 140 of the 143

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<sup>48</sup> The only organization to have been banned in Indonesia is the Indonesian Communist Party, which was banned in 1966 by a decree of the Provisional People's Consultative Assembly (Decree XXV/MPRS/1966).

<sup>49</sup> KUHP, Articles 106-108.

prisoners transferred from Aceh to Java in January 2004 included *makar*; the charges against 126 consisted solely of offenses under articles 106-108.<sup>50</sup>

While Human Rights Watch was unable to access documentation regarding Acehese prisoners other than this group of 143, in Java, Indonesian lawyers and human rights organizations monitoring the trials in Aceh told Human Rights Watch that most cases related to GAM involve charges of *makar*.

Under the KUHP, there is no specified evidentiary requirement for *makar*. General rules of evidence under Indonesia's Code of Criminal Procedure (*Kitab Undang-Undang Hukum Acara Pidana*, or KUHAP) apply, whereby the judge has to have at least "two legal evidence materials" to prove a conviction.<sup>51</sup> In addition, a person supporting GAM's objective to create a separate state should be considered guilty of *makar* only if the intention of the individual is made clear by an act specified under article 53 of the KUHP.<sup>52</sup>

These provisions are vague and have historically been used to target non-violent political activists across Indonesia. In the context of the armed conflict in Aceh, the open-ended language of the law has permitted convictions without a real demonstration of wrongdoing. Mere association with GAM or allegations of providing material support to GAM members—as opposed to the organization as whole—has resulted in convictions in Aceh.

*Makar* is often construed by the Indonesian security services and legal system to be the crime of attempting to overthrow the government of Indonesia through support for GAM, without either the "two legal evidence materials" or the requisite act required by article 53 of the KUHP.

In 1999 the United Nations Working Group on Arbitrary Detention visited Indonesia. In its report following the visit they drew particular attention to some articles in KUHP and called for them to be amended. One group of articles raised were the provisions

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<sup>50</sup> Information provided by DepKeh-Ham (*Departemen Kehakiman dan Hak Asasi Manusia*, Department for Justice and Human Rights).

<sup>51</sup> Legal evidence materials are defined under KUHAP article 184 as, "a) the testimony of a witness; b) information of an expert; c) a letter; d) an indication; e) the statement of a defendant," These are further explained in subsequent articles, Article 184, Chapter XVI, KUHAP.

<sup>52</sup> Article 53 is a general article related to an "attempt" to commit a crime. This requires evidence that there was an intention to commit a crime and that the person undertook an act towards that goal, even if the act was not completed.

related to crimes against the security of the state (Articles 104-129). The Working Group stated that:

Most of these provisions are, especially inasmuch as the intentional element of the crime is concerned, drafted in such general and vague terms that they can be used arbitrarily to restrict the freedoms of opinion, expression, assembly and association. They can be used notably to target the press, peaceful political opposition activities and trade unions, as they were frequently under the former regimes.<sup>53</sup>

The definition of an act in support of GAM that constitutes *makar* is extremely elastic and susceptible to abuse by security officials and prosecutors attempting to prove a crime. Although GAM combatants who have either been captured or have surrendered are among the detainees and prisoners in Aceh and Java, the detainee population also includes civilians who have been accused of supporting or sympathizing with GAM. The definition of support or sympathy is so broad that it includes families of GAM members, as well as individuals who are opposed to Indonesian government policy in Aceh, including human rights defenders, non-violent political activists, and students. One defense lawyer from Aceh told Human Rights Watch:

Generally speaking until now no commanders for GAM have been arrested or detained. The majority are low-level or those forced to be GAM, forced trainings, etc. Many, for example, “couriers,” or people who have given rice or cigarettes to GAM. It does not mean they are GAM but they are accused of helping GAM.<sup>54</sup>

### **Arbitrary Arrests**

Presidential Decree No. 23/2003, which took effect on May 19, 2003, authorized a state of emergency and martial law for Aceh Province. The province thereby became subject to the provisions of martial law in Law No. 23/1959 on states of emergency, which covers both states of military and civil emergencies. This law states that the military has the authority to arrest and detain suspects for 20 days, extendable by 50 days. The detention must be reported to the martial law authority within 14 days of the arrest.

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<sup>53</sup> Report of the Working Group on Arbitrary Detention on its visit to Indonesia (January 31 – February 12, 1999), E/CN.4/2000/4/add.2, August 12, 1999.

<sup>54</sup> Human Rights Watch interview with defense lawyer from Aceh, Medan, May 7, 2004.

Even during a state of emergency, all arrests must be made with an arrest warrant, unless the suspect is caught *in flagrante delicto* (“in the act”).<sup>55</sup> Article 18 of the KUHAP states that:

The task of making an arrest shall be executed by state police officers of the Republic of Indonesia by showing their assignment letters and handing over to the suspect the arrest warrant which contains the suspect’s identity and mentions the reasons for his arrest, and explains in brief the criminal case of which he is suspect and his place of examination. If a person is caught in-the-act the arrest shall be made without a warrant, with the stipulation that the arresting officer must immediately hand over the arrested [person] and available evidence materials to the nearest investigator or assistant investigator. A copy of the arrest warrant as intended in section (1) shall be delivered to the family of the arrested [person] immediately after the arrest...<sup>56</sup>

International human rights law considers an arrest to be arbitrary if it violates existing legal procedures or includes elements of inappropriateness, injustice or lack of predictability. The purpose of an arrest warrant is to provide a judicial check on the powers of the police to ensure there is sufficient evidence to take a person into custody and to avoid arbitrary arrests. This process has failed in Aceh.

Prisoners interviewed by Human Rights Watch provided differing accounts of the circumstances of their arrest and pre-trial detention, indicating a lack of standardization in the legal process. Although most ended up in police detention immediately before trial, many were also held at military posts or barracks before being transferred to police or prison detention facilities. Much depended on which branch of the security forces arrested them. Some were held in military custody for several days or even weeks before being transferred to police custody.

However, they had one thing in common: none of the 35 prisoners Human Rights Watch interviewed said that they were ever shown an arrest warrant or informed in

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<sup>55</sup> Law No. 23/1959 covers both a state of military and civil emergency and states, “Martial Law authority is entitled to arrest and detain people for 20 days at most, but the arrest must be reported to the martial law authority within 14 days; Within 10 x 24 hours, the detainee must be investigated, the result of which must be reported to the martial law authority. The investigations must result in a dossier (BAP); If in 20 days the investigation is not completed and if detention is still required, the said person can be detained up to 50 days by the central authority of martial law; All arrests and detentions must be made with an arrest warrant,” Article 32, Law No. 23, 1959 on States of Emergency.

<sup>56</sup> KUHAP, Article 18.

writing at the time of their arrest of the charges against them. One Indonesian lawyer who has monitored trials in Aceh in the last year told Human Rights Watch:

From our own monitoring, 60% of the arrests are not valid because [the suspects] were not arrested with an arrest warrant. They were like kidnappings.”<sup>57</sup>

Human Rights Watch interviewed one man who said that no arrest warrant was produced at the time of his arrest. He described what happened:

An arrest warrant? No, there was none. At the time it was about 9 o'clock and they [the soldiers] arrived at my house. Then they knocked on my door, my nephew opened the door of the house and he was ordered to raise his hands, then all of my family raised their hands because they [the soldiers] had guns. Then I was ordered to join them to the Kodim [District Military Command]. So I went with them to the Kodim, when I got to the Kodim I was detained for four days and four nights, and during that detention I was beat up, hit until I was black and blue. After they hit me then they questioned me.

Another man described how he was arrested on June 10, 2003 without an arrest warrant:

At the time I was resting together with my family, then came the sound of a car stopping in front of my house and then at that moment some Kopassus soldiers straight away pushed the door of my house and destroyed inside my house until everything was in a mess, they took out clothes that were in the wardrobe saying “there are guns in here,” but there were not any and at that time my family were frightened. Then they [Kopassus] tied my hands behind me and I was straight away taken by them to the Kopassus post.<sup>58</sup>

Another man recounted his arrest without a warrant:

At the time I was arrested I was outside the town of Kuala Simpang. I was in a car when there was a “sweeping” by security forces and I was

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<sup>57</sup> Human Rights Watch interview with Indonesian lawyer from Aceh, Medan, May 7, 2004.

<sup>58</sup> Human Rights Watch interview with 30-year-old prisoner from Aceh, prison in Central Java, 2004.

ordered to get out of the car and show my ID card. Straight away I was arrested, together with my friend, who is also here [in this prison]. Then I was taken by a group of marines and police...to Polsek Sungai Yu Aceh Tamiang. I was detained there for one night and the next day I was taken to Polsek Langsa, East Aceh and there I was detained for 40 days. Then I was transferred to the prison...At the time they were examining my ID card and told me I was to be taken away, I asked "Sir, why do we have to go with you?" and he said "it will explained later in the office," and they snapped at us and said not to ask lots of questions. As soon as we got to the office we were straight away accused of being GAM. If you are in Aceh, there is no other accusation, if you are arrested then you are GAM, and I asked again "Sir, what is the reason you suspect me of being GAM, is there any evidence?" Again he said we were suspected of being GAM. Then I said again "I am not GAM, I am just an ordinary citizen." Finally I was taken, and then without any resistance.<sup>59</sup>

Another Acehnese man told Human Rights Watch what happened when he was arrested:

At the time [June 15, 2003] I was in my house and I was arrested about 6 o'clock in the morning. After I was arrested I was put in a gunny sack [goni], my hands were tied, and my eyes were covered. Then they took me to I don't know where, I didn't even know. And at that time I had been in the house by myself. After I was taken with them, at about 4 o'clock in the afternoon my eyes, feet, and hands were freed, then I saw that I was already at the Lhokseumawe police station.<sup>60</sup>

Under the current civil emergency the military retains the authority to arrest and detain suspects. However, since the downgrading of the province from a military to a civil emergency, arguments over applicable law and authority in Aceh have broken out between the military and the police. The result has been that security officials have frequently failed to follow Indonesian law, erroneously combining martial law and normal criminal code procedures for arrests and detentions.<sup>61</sup>

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<sup>59</sup> Human Rights Watch interview with 22-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>60</sup> Human Rights Watch interview with 30-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>61</sup> If arrests and detentions are conducted beyond what is regulated in the 1959 law, Article 1 of Chapter X in the Criminal Code applies, and the military authority can be brought to court, "A court of first instance has the authority to examine and decide, inline with the provisions contained in this law: a) whether or not an arrest,

A defense lawyer from Aceh explained to Human Rights Watch:

At the moment [April 2004] they [the security forces] are using the military emergency regulations. One example: There is a TNI post in two villages. There a person is suspected of being GAM. He can be straight away taken into detention at a military post for up to 20 days then he is taken to military police for up to 50 days before he is taken to the police. At that point the [applicable] law changes to KUHAP. But that's already 70 days in detention. That's enough to brainwash [*cuci otak*]. During those 70 days there is a possibility that if no evidence appears then they will be disappeared. We have twenty cases of people who have been disappeared until now.<sup>62</sup>

### ***Access to Counsel, Right to Prepare a Defense***

Persons arrested in Aceh on allegations of participating in anti-government activities or supporting GAM are frequently tried and convicted without adequate representation by legal counsel. Some persons have no lawyer whatsoever. Others receive court appointed lawyers who make no effort to challenge the prosecution's case or merely serve as go-betweens for the payment of bribes. The result is that at trial defendants often are left on their own, with no witnesses or other evidence presented on their behalf.

International human rights law guarantees that all persons detained shall have the right of access to their legal counsel.<sup>63</sup> Persons arrested must have immediate access to counsel, which may be delayed only because of exceptional circumstances as set out by law.<sup>64</sup> The right to counsel includes the right to effective, qualified counsel who will represent the defendant's interests and fully advocate on their behalf.<sup>65</sup>

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detention, termination of an examination or prosecution is valid," Article 77a, Chapter X, KUHAP; Luhut M.P Pangaribuan, Lawyer, Jakarta, "Aceh Martial Law authority not unaccountable," *The Jakarta Post*, June 23, 2003.

<sup>62</sup> Human Rights Watch interview with defense lawyer from Aceh, Medan, April 7, 2004. Human Rights Watch has also documented cases of men being taken from villages and then not being seen again. Disappearances are common in Aceh. See Human Rights Watch "Aceh Under Martial Law: Inside the Secret War," *Human Rights Watch Report*, Vol. 15, No. 10 (C) December 2003.

<sup>63</sup> Human Rights Committee, General Comment 20, paragraph 1.

<sup>64</sup> HRC, Concluding Observations: Georgia, UN Doc CCPR/C/79/Add.74, April 9, 1997, para. 28; Basic Principles on the Roles of Lawyers, principle 7 [CHECK]

<sup>65</sup> See Basic Principles on the Role of Lawyers, principle 6; Human Rights Committee, *Vasilskis v. Uruguay* (80/1980); *Estrella v. Uruguay* (74/1980).

The KUHAP, the Indonesian code of criminal procedure, provides detailed provisions requiring notification of arrest, the filing of charges, and provision of a summons to the defendant before court hearings. These provisions are systematically ignored. As recounted below, many prisoners told Human Rights Watch that they heard the charges against them for the first time when they appeared in court or that they never received a notice or summons. This denies them the necessary time and opportunity to prepare a defense.

The KUHAP ensures the right of free legal counsel to criminal suspects who are indigent and face a sentence of five or more years of imprisonment, or any suspect who faces a sentence of 15 years or more.<sup>66</sup> The legal assistance is required not just at the trial but for “every level of examination.”<sup>67</sup>

The Acehese charged with *makar* are entitled to free legal counsel, indigent or not, because the crime carries a sentence of up to life imprisonment. Yet all the prisoners interviewed by Human Rights Watch said that they had no access to legal counsel during most of their pre-trial military or police detention. International experience has shown that the lack of involvement of legal counsel during the period of pretrial detention has been shown to contribute to an atmosphere in which torture and other mistreatment flourish. In Aceh those that received counsel for their trial did not have adequate time to prepare a defense, and in practice many of the lawyers showed no inclination to mount a legal case on behalf of their clients.

An Indonesian NGO that monitored the trials in Aceh found that court documents were sometimes manipulated to give the appearance that there was a defense lawyer at

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<sup>66</sup> This is contrary to international legal standards, which require that all criminal suspects who do not have means to pay be afforded free legal counsel. See e.g. ICCPR, article 14(3)(d); Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, principle 17(2); Basic Principles on the Roles of Lawyers, principle 6. Principle 3 of the Basic Principles on the Role of Lawyers states: “Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and , as necessary, to other disadvantaged persons.”

<sup>67</sup> “Article 54: In the interest of defense, a suspect or defendant has the right to get legal assistance from one or more legal advisors during the period and at every level of examination, according to the procedure determined by this law; Article 55: In order to get the legal advisor as mentioned in article 54, a suspect or defendant has the right to choose his own legal advisor; Article 56: (1) In case a suspect or defendant is suspected of or charged with having committed a criminal act which is liable to a death sentence or a prison term of fifteen years or more or for those who are not capable who are liable to a prison term of five years or more while they have no legal advisors of their own, the official concerned at all levels of examination in the trial process is obliged to appoint a legal advisor for them; (2) Every legal advisor who is appointed to act as intended in section (1), shall give his assistance free of charge,” Chapter VI, KUHAP.



the trial when none was present. Said a worker for the organization: “There are many cases without a defense lawyer but the documentation has a falsified signature.”<sup>68</sup>

In some cases defendants were appointed legal defense by the court. The legal assistance they were given was described as pro forma rather than a genuine defense. A man who was tried in Lhokseumawe told Human Rights Watch about the defense lawyer at his trial:

At that time there was a defense lawyer who was appointed by the judge. But actually there was no defense at all. He was just silent. He said this was so that the punishment would be a little bit lighter [*ringan*].<sup>69</sup>

In some cases detainees were restricted from speaking to their appointed counsel during the trial. Another man explained:

Actually we were given a defense lawyer, but also we were not allowed to use the defense lawyer. They said we could not use a defense lawyer.

When asked who instructed him that he was not allowed to use the defense lawyer, he said:

The prosecutor said so, he said we could not use a defense lawyer, and the prosecutor also did not give a reason why we could not use a defense lawyer. And during the trial we were not allowed to speak and we were restrained. At the time we really wanted to defend ourselves, but what could be done?<sup>70</sup>

Another man told Human Rights Watch:

There was a defense lawyer, but from the police...I could not say very much. What is certain is that I only could be quiet because everything had already been arranged/settled [*diatur*] by them. And I also could not

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<sup>68</sup> Human Rights Watch interview with Indonesian NGO worker, Jakarta, May 11, 2004.

<sup>69</sup> Human Rights Watch interview with 40-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>70</sup> Human Rights Watch interview with 31-year-old- prisoner from Aceh, prison in Central Java, 2004.

... speak with the defense lawyer because there were restrictions which had been fixed by them.<sup>71</sup>

In July 2003 the problem of inadequate defense counsel for GAM detainees in Aceh was raised by an Indonesian lawyers' organization with the Indonesian government, including during a meeting with Vice President Hamzah Haz and Minister for Justice and Human Rights Yusril Mahendra. Indra Sahnun Lubis, chairman of the Association of Indonesian Lawyers (IPHI), stated: "We are concerned with the government's failure to provide defense lawyers for the separatists since most of them have been convicted or are facing conviction for crimes that carry a prison term of more than five years."

Lubis also told the press that while IPHI was able to provide some minimal defense support for trials in Aceh, Vice President Haz had promised to pay attention to the issue so that defense counsel could be provided to GAM detainees on trial in Aceh. In response, Justice Minister Yusril Mahendra conceded that the lack of legal defense in Aceh was a problem and admitted that his office had not allocated sufficient funding to provide legal counsel for all of the trials in Aceh. He recommended that "the funds should come from the joint operation budget, as it is impossible for my office to provide the money."<sup>72</sup>

Despite these public acknowledgements by senior government officials of problems with access to counsel, over a year later little concrete action has been taken to address this vital problem.

### ***Unfair Trials***

The trials of Acehnese charged with treason and other political offenses do not meet international fair trial standards. In addition to defendants' lack of legal counsel and the opportunity to prepare a defense, trials typically deny the defendant the right to question witnesses for the accused and to call and examine defense witnesses. Persons may be convicted with little or no evidence presented, bringing into serious question the competence, impartiality, and independence of the courts.<sup>73</sup>

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<sup>71</sup> Human Rights Watch interview with 46-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>72</sup> "Amnesti Tidak Akan Diberi Sambil Perang," *Kompas*, July 17, 2004; Fabiola Desy Unidjaja, "GAM members deprived of right to lawyers," *The Jakarta Post*, July 17, 2003.

<sup>73</sup> See generally, ICCPR, article 14,

The full extent of unfair trials in Aceh is unknown in large measure because of the difficulty local human rights monitoring organizations face in Aceh. For the most part treason trials are held in rural areas away from the relative safety of the larger towns. Security threats against human rights defenders from both the Indonesian security forces and GAM make it extremely difficult for defense counsel to do their jobs effectively. One Jakarta organization involved in trying to gather information on the Aceh trials told Human Rights Watch about the enormity of the task:

We don't yet have any information about specific cases. We are still waiting on data from colleagues in Aceh...To be specific about the Aceh cases it is not possible to carry out monitoring like that. The issue is the threat from the government against human rights defenders. What is definite is that for our efforts in Banda Aceh there are only three people from LBH Aceh, one from PBHI in the Aceh Besar area. But to go out to the districts, we cannot—and the majority of these cases happen in the districts. So, automatically we don't have any information.<sup>74</sup>

In explaining the process leading up to his trial, and the trial itself, one man captured many of the serious problems in the trials of those accused of *makar* for GAM-related activities:

I didn't have a defense lawyer, and none was given to me. They said I was indicted for treason so why did I need a defense lawyer? At the time I also asked if there was anyone who would defend me, but none was given by the judge.<sup>75</sup>

According to the man, the trial itself was conducted without any witnesses or evidence presented:

The people who made the BAP [the police investigation report] for the trial was a group from the Kodim itself. After I was processed in the Kodim I was straight away sent to Lhokseumawe [detention centre]. Fifty days after that I was handed over to the Polres. After Lhokseumawe Polres then I was tried. I was tried in a court, two trial sessions. At the first one the KUHP [criminal code charges] were read.

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<sup>74</sup> Human Rights Watch interview with Indonesian NGO Worker, Jakarta, May 11, 2004.

<sup>75</sup> Human Rights Watch interview with 34-year-old prisoner from Aceh, prison in Central Java, 2004.

At the second session I was sentenced. It was TNI who arrested me, and the witness was submitted from a TNI group but the person did not arrive. The judge did not tell me why the witness did not arrive and there was no evidence. The prosecutor demanded four years in prison for me. After it was decided in the session, I was hit with three years in prison. I was indicted under article 108 with the accusation I am a GAM adjutant. Truthfully this is not true. But I was ordered to admit because it was fitting with the confession that had been put in the BAP.<sup>76</sup>

Another man explained that after he was arrested he was taken to the police station. While at the police station he was only asked his name and employment, information he gave freely. He was therefore surprised by developments at his trial. He recounted what happened:

During the trial it was really different from what had been asked at the Polres, and the BAP which the prosecutor read was extremely different. At the Polres no one said I was guilty of anything. In my statement, I only said that I had taken in two of my friends to sleep in my house. But during the trial the judge read in the BAP that I was accommodating GAM, and at that time I didn't know that my friends were alleged to have been involved with GAM. I didn't know that, but I was charged with treason anyway.

In many cases the only evidence offered by the prosecution was a suggestion of an association with GAM. One defense counsel from Aceh told Human Rights Watch:

For the trial process the majority of cases were tried without the presence of witnesses. Or, there were witnesses but from the police who are fighting there and they only confirmed to the judge that he [the defendant] is GAM.<sup>77</sup>

In some cases no proof at all was presented. One 34-year-old prisoner told Human Rights Watch:

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<sup>76</sup> Human Rights Watch interview with 34-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>77</sup> Human Rights Watch interview with defense lawyer from Aceh, Medan, May 7, 2004.

At the time of the trial I didn't call any of my own witnesses but the judge himself pointed out a witness. Then the witness said that neither of us were involved in anything. If this trial was valid, I did not have a problem, I defended my own rights and I did not have a defense lawyer and I did not have any of my own witnesses, everything was regulated by them. I was not scared because I had not done anything wrong and I kept saying that I was not GAM, and that witness said I was not involved in anything.<sup>78</sup>

The man was nevertheless convicted.

A 22-year-old man described his trial:

At the time I had three witnesses and the head of the village was also a witness for me and he said that I was not involved with GAM, then the other witnesses also said that I was not involved with GAM. I didn't have a defense lawyer. At the time the village head was a witness for me and he knows that I am not GAM and I stated I was not GAM. But what can you say, the punishment had already been decided.<sup>79</sup>

A 29-year-old man told Human Rights Watch:

I was in court two times and the judge straight away made his decision...there was no evidence, and no witnesses. I was the only one on trial. During the first court appearance I did not have a lawyer, but at the second session there was a lawyer. The judge sentenced me to six years in prison. Because I had a lawyer it was decreased to five years...I am scared to appeal because my sentence may be lengthened. It is better to just accept the judge's decision.<sup>80</sup>

A 45-year-old man told Human Rights Watch:

It is because we don't know about politics, and there was no pity and I was accused with articles 106-108, a treason case. And I did not appeal.

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<sup>78</sup> Human Rights Watch interview with 30-year-old prisoner from Aceh, prison in Central Java, 2004

<sup>79</sup> Human Rights Watch interview with 22-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>80</sup> Human Rights Watch interview with 29-year-old prisoner from Aceh, prison in Central Java, 2004.

On September 2, 2003, in my trial there was one prosecutor, two judges, and me, and my wife sat behind me...I had three witnesses and I asked if my witnesses could be present. They said that it was not allowed to arrange for them, if I didn't want my punishment to be harsher.

I asked why it was this way, why the trial was closed like this, didn't I also have a right to ask for the presence of my witnesses. It is impossible for a trial to be like this, and the trial was unclear. They said I was hardheaded. On the 2<sup>nd</sup>, after I spoke for a little bit, the judge straight away banged the gavel. I was straight away sentenced to 5 years in prison. After that the trial was closed.

One 28-year-old man from Bireuen told Human Rights Watch that he was arrested by Brimob and police officers while he was walking on the road. They checked his KTP [I.D] and arrested him immediately in connection with a school burning near his house, where he worked as a cleaner. He told Human Rights Watch that he did not burn the school and instead was one of the men who had helped put the fire out. During the four sessions of his trial he was too afraid to present his case to the judge. He had no defense lawyer. He said that only himself, the prosecutor, and the judge were present during the trial. He explained:

How could I have explained it [my case], in that trial everything had already been settled and I could not say anything because I was scared that my punishment would increase. And they said that they already had all the data, and at that time I also asked for that data but they didn't give it to me...I was sentenced to eleven years in prison by the judge.<sup>81</sup>

Several prisoners alleged that in addition to abuse they suffered while in detention, military and police officials warned them to refrain from speaking in their own defense or pursuing other judicial options at the close of their trial.

One man told Human Rights Watch:

I did not have my own lawyer except the lawyer paid for by the government. I had already been threatened by soldiers [not to contest

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<sup>81</sup> Human Rights Watch interview with 28-year-old prisoner from Aceh, prison in Central Java, 2004.

the charges], so I didn't do anything. I just accepted whatever the judge decided.<sup>82</sup>

Another man explained:

At trial I contested the charges and lots of TNI/Polri arrived. I was threatened that I would be killed. And I maintained I was not GAM, because I am only an ordinary fisherman... [The judge] just listened, and then I was returned to the cell. I was sentenced to five years in jail under articles 106-108 for treason, after three trial sessions. I had a defense lawyer, from the government, but he put up almost no defense. In truth I [initially believed I would] be released by the judge but then a group of BKO troops [*Bawab Kendali Operasi*, the designation of auxiliary forces from outside Aceh nominally placed under local command] arrived at the prison and threatened me, saying: "If you are free you will be shot." These three men from BKO Kopassus threatened me in the prison and deliberately sent TNI/Polri to the trial to take revenge. So finally I chose not to appeal, just to accept the judge's decision.<sup>83</sup>

There is a widely held belief among convicted persons imprisoned in Java that the conduct of their trials in Aceh was politically motivated and the judges lacked the independence to rule fairly. When questioned about why he had not defended himself more aggressively during his trial, one man told Human Rights Watch:

How can we dispute, when the judge himself is threatened [*terancam*]... If it is a GAM case it's for sure that the punishment given to us will not be light. If we had given a single pack of cigarettes to GAM then the punishment will be heavier. It is already clear it is not just and it does not make sense. Everything has already been engineered by the authorities [*para penguasa*] in Aceh.<sup>84</sup>

The perception that the outcome of trials had been determined in advance by the martial law administrator was widely held among the prisoners interviewed by Human Rights Watch. The resignation and acceptance of harsh sentences and the widespread

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<sup>82</sup> Human Rights Watch interview with 37-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>83</sup> Human Rights Watch interview with 26-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>84</sup> Human Rights Watch interview with 28-year-old prisoner from Aceh, prison in Central Java, 2004.

reluctance to appeal reflects this. One eighteen-year-old explained why he did not appeal his three-and-a-half-year sentence:

It is no use for me to appeal because if I appeal then my punishment will increase and the punishment has already been decided by the martial law administrator.<sup>85</sup>

Another man told Human Rights Watch:

I didn't have a defense lawyer. A defense lawyer for what? I did not do anything wrong and I could do it [defend] myself. What would you use a defense lawyer for when the sentence had already been determined by the authorities [*penguasa*]? For sure there was an offer from the judge [to appoint counsel] but I didn't want one.<sup>86</sup>

One Indonesian defense lawyer from Aceh told Human Rights Watch that the judges could play a more effective role in stemming abuses, but choose not to:

First, the judges or the prosecutors who are assigned to Aceh are non-permanent. I mean that they originate from outside of Aceh. So their psychology is that they don't want to stay in Aceh for a long time. They want to do things quickly so that they are not too long in Aceh. Second, the quality of the indictments is weak, they are not strong... One of the judges told me, if they give out a light sentence for treason they receive a reprimand/warning [*teguran*] from the military. It's not a threat but it is enough for the judge to think twice if he wants to give out a light punishment.<sup>87</sup>

Judges and prosecutors have been brought into Aceh specifically for GAM-related trials. They are largely from other areas of Sumatra or Java. One Indonesian human rights defender from Aceh, who is monitoring the trials, told Human Rights Watch:

It is part of the integrated operations—the law enforcement operation [*operasi penegakan hukum*—because actually there were only a few judges

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<sup>85</sup> Human Rights Watch interview with 18-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>86</sup> Human Rights Watch interview with 42-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>87</sup> Human Rights Watch interview with defense lawyer from Aceh, Medan, May 7, 2004.



and prosecutors in Aceh before [the mass arrests started]. Also the salaries of judges and prosecutors brought in from the outside are higher, because of their assignment. It was the decision of the Minister for Justice and Human Rights. Normally they are assigned to Aceh for six months.<sup>88</sup>

Persons convicted of treason or other political offenses in Aceh have difficulty appealing verdicts arising from unfair trials. Indonesian law permits courts to raise as well as lower sentences on appeal. Prisoners and defense lawyers told Human Rights Watch that this provision, combined with the lack of impartiality and independence of the courts handling treason cases in Aceh, strongly deterred appeals. Persons who did appeal were believed likely to have their sentences increased rather than reduced.

One man who was sentenced to eight years in prison on charges of treason told Human Rights Watch why he wasn't appealing the verdict:

My defense lawyer told me to just accept my sentence whatever it was because if I appealed my punishment likely would just get heavier. [The prosecutor told my defense lawyer that] he was also sorry for me but [he had to do it] because of his duty, and threats on him. So I should accept the decision whatever it is. And I don't know about the law, and I didn't go to school.<sup>89</sup>

### ***Corruption***

The Indonesian criminal justice system is notorious for widespread corruption, permitting those with money and influence to escape justice while depriving many defendants of the right to a fair trial. In Aceh, where the government has prosecuted hundreds of people in the last year for alleged treason or rebellion against the state, corruption still thrives in detention facilities and in the courts of law. Human Rights Watch uncovered evidence of corruption among police and judicial officers in Aceh. Defendants were exposed to requests for bribes from police officers, prosecutors, defense lawyers, and judges. Several prisoners interviewed by Human Rights Watch said that many detainees in Aceh were able to buy their way out of convictions or pay to decrease their sentences. Others told Human Rights Watch that the only reason they were in prison was because they did not have enough money to buy their freedom.

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<sup>88</sup> Human Rights Watch interview with human rights defender from Aceh, Medan, May 7, 2004.

<sup>89</sup> Human Rights Watch interview with 42-year-old prisoner from Aceh, prison in Central Java, 2004.

One man explained how his sentence reduction was arranged after his conviction:

I was sentenced to four years in prison. I asked for a lighter sentence of three years in prison but I had to pay a Rp2, 500,000 (US\$270) bribe. Just to decrease to three years the money had to be paid to the prosecutor and the judge, just so the punishment could be decreased. Then I asked what if I paid until my money ran out, but the prosecutor said I couldn't do that.<sup>90</sup>

Another man told Human Rights Watch that while in police detention at the Lhokseukon Polsek:

I was treated with deceit, and I was ordered to confess something which I didn't do...if I didn't confess it in a report I would be hit, even though I was hit I refused to confess. I only admitted that I gave Rp240,000 to GAM, and that was it. And the prosecutor asked for Rp10 million from me. But really I didn't have any money and at the time I was at the Polsek for 50 days and 50 nights.<sup>91</sup>

One man was severely beaten while in both military and police custody. He told Human Rights Watch:

For one week I was tortured at the torture post and then I was transferred to the Polres. After I arrived at the Polres I was also beaten and I was ordered to confess, and then I gave some money [to the police] so that the prosecution dossier [*berkas perkara*] would be sent to the court quicker, so that I would not be beaten any more.<sup>92</sup>

At the end of his trial this 23-year-old man was sentenced to fifteen years in prison by the judge for treason. The sentence was later commuted to eleven years in prison. The conviction was largely based on a confession the man made while in military custody after being severely tortured and beaten. When asked if he would appeal the sentence, then man said:

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<sup>90</sup> Human Rights Watch interview with 31-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>91</sup> Human Rights Watch interview with 45-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>92</sup> Human Rights Watch interview with 23-year-old prisoner from Aceh, prison in Central Java, 2004.

## THE FIVE GAM NEGOTIATORS

Five GAM negotiators who had represented GAM during peace-talks with the Indonesian government before the collapse of the ceasefire in May 2003 were arrested in Aceh. The five were detained on their way to the airport on May 16, 2003, as they were due to fly to Japan to attend last ditch peace talks aimed at rescuing the deteriorating ceasefire. In response to diplomatic protests, police freed them as the Tokyo talks began but then rearrested them when negotiations broke down.

The arrest of the GAM negotiators was in violation of international law. International humanitarian law prohibits perfidy. Protocol I to the Geneva Conventions specifically states that it is perfidious to capture an adversary by “feigning of an intent to negotiate under a flag of truce.”<sup>93</sup> The prohibition against the use of perfidy applies to internal armed conflicts as a matter of customary international law. The five men were subsequently put on trial in Aceh. In September 2003 Amni bin Ahmad Marzuki, Teuku Muhammad Usman, Sofyan Ibrahim Tiba, Teuku Kamaruzaman, and Nashiruddin Ahmad were convicted and sentenced to between 12 and 15 years in prison for treason under the KUHP and terrorism under Indonesia’s new anti-terrorism legislation. Subsequent appeals were unsuccessful and in June, 2004, Indonesia’s Supreme Court upheld their convictions.

The indictments stated that the negotiators knew that GAM had an armed movement, a government structure, and had obtained funds from the public which were used for their activities. GAM offenses cited in the indictment included several bombings, murders, kidnappings, and arson acts allegedly carried out by the organization since December 2002.

During the trial, prosecutors did not directly accuse the negotiators of violence, but stated that they “gave assistance to GAM to oppose the authority of the Republic of Indonesia...resulting in an atmosphere of terror or widespread feelings of fear among people.” The presiding judge in one of the trials, Maratuo Rambe, stated “The defendants have caused unrest among the people. They also tried to separate (Aceh) from Indonesia.” Maratuo said the three defendants in his case were charged with terrorism since they knew of killings, bombings, and abductions but they did not report them to the authorities.<sup>94</sup>

At the end of the trials the Geneva-based Centre for Humanitarian Dialogue, which had facilitated the ceasefire agreement, voiced concern over the arrest and convictions of the negotiators, stating: “In addition to our concern for these individuals, we are worried by the potential negative implications this may have for opportunities for dialogue in Aceh and elsewhere. It may dissuade individuals from coming forward to negotiate and resolve conflict through dialogue.”<sup>95</sup>

During his trial, Sofyan Ibrahim Tiba submitted a complaint that he was ill-treated and threatened while in custody. In late August 2004 the group was transferred to Java but, due to his ill health, Sofyan Ibrahim Tiba remained in Aceh.

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<sup>93</sup> Protocol I of 1977 to the Geneva Conventions of 1949, article 37.

<sup>94</sup> Nani Farida, “GAM negotiators, activist get long sentences,” *The Jakarta Post*, October 22, 2003.

<sup>95</sup> Press Release, The Centre for Humanitarian Dialogue (HDC), Geneva, October 21, 2003.

I was sentenced to fifteen years in prison by the judge, and I did not accept it and at the time I also submitted a legal defense, and finally the judge sentenced me to eleven years in prison. I will not appeal, because I really don't have any money, and in fact if I appeal then my punishment will increase.<sup>96</sup>

## **VI. Detention and Prison Facilities**

After the declaration of martial law in Aceh the Indonesian government announced plans to use Nasi Island, off the coast of Aceh, as a detention site for arrested and surrendered GAM fighters and supporters. There were immediate comparisons in the international press to the U.S detention facility at Guantanamo Bay in Cuba. But, in fact, Indonesia has a long history of using some of its thousands of islands as prisons and detention facilities. Buru Island in the Maluku region of Indonesia was home to many of Indonesia's political prisoners in the aftermath of the attempted 1965 coup that led to the ousting of President Sukarno. Atauro island off the north coast of East Timor, was also used as a penal colony for East Timorese after Indonesia invaded the territory in 1975.<sup>97</sup>

The issue of where to house the thousands of anticipated GAM prisoners was clearly a problem when martial law was imposed in May 2003. Indonesia was preparing for large scale arrests but lacked the capacity to implement this part of the "integrated operation" properly without detention centers, extra legal resources, and prison space. There was also an acknowledgement that it was unfeasible and undesirable to convict and imprison the entire captured or surrendered population. Alleged GAM members had started to surrender to authorities, and at the beginning of July 2003 a temporary detention camp in Banda Aceh, consisting of five tents, was already housing ninety-nine detainees.<sup>98</sup>

However, by July 2003, the Nasi Island proposal had run out of steam, with an apparent lack of funds and political support blamed for the failed effort. Indonesian Armed Forces Commander, General Endriartono Sutarto told journalists, "Perhaps it would be more efficient if we rehabilitate [detainees] rather than use Nasi Island."<sup>99</sup> Soon after this the idea of "re-education" centers became policy.

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<sup>96</sup> Human Rights Watch interview with 23-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>97</sup> It is estimated that many prisoners starved to death on the island, unable to produce enough food to live on from the dry and unfertile land.

<sup>98</sup> Nani Farida, "Surrendered GAM rebels express fears over their safety," *The Jakarta Post*, July 4, 2003.

<sup>99</sup> "Indonesia cancels plans to hold rebels in island prison," Agence France Presse, July 23, 2004.

In January 2004 the first graduates of Aceh's "re-education" centers were released. A total of 438 former GAM members and supporters became the first to complete a five-month government "re-education" program. Graduates were allowed to return home but had conditions put on their release. They had to report to their district governments as well as to local military and police, ask for permission from local authorities if they wished to change their residence, and were prohibited from leaving Aceh. Major General Endang Suwarya told reporters that the graduates would be watched: "We will form a special team to monitor their development so we can know how successful this "re-education" is, because it's the first."<sup>100</sup>

During the five months in the "re-education" center inmates were given mandatory sessions in the basic principles of the Indonesian state, including the state ideology Pancasila. Military police and provincial officials were responsible for training not only state loyalty, but also trades such as fishing, farming, and tailoring.<sup>101</sup> Before returning home, the graduates were also required to take an oath declaring that they had ceased to belong to GAM, and had submitted to the ideal of the Unitary Republic of Indonesia.

On leaving the centers the graduates were given Rp 2.5 million (US\$275) each, as seed capital to start businesses in their home districts. Major General Endang Suwarya told journalists that the five-month reeducation course had cost more than Rp 2 billion (US\$220,000) in taxpayers' money.<sup>102</sup>

Since January more graduates have completed "re-education" at three established camps in Aceh. It is estimated that 1,200 people have so far attended the training courses in the three camps.<sup>103</sup> Crucially entry is limited to those who have voluntarily surrendered to authorities, and to those deemed not to have held senior positions with GAM.

One senior diplomat in Jakarta told Human Rights Watch "the treatment in the "re-education" centers is being monitored...what is happening is not that bad...visitors to these camps think that they [detainees] are well looked after, there are no signs of obvious abuse and considerable attempts at rehabilitation."<sup>104</sup>

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<sup>100</sup> Nurdin Hasan, "First group of former Aceh rebels leaves re-education program," Agence France Presse, January 18, 2004.

<sup>101</sup> Nani Farida, "More GAM members to receive re-education course," *The Jakarta Post*, April 12, 2004; "School for change," *Tempo Magazine*, August 26, 2004 – September 1, 2004.

<sup>102</sup> Nani Farida, "438 ex-rebels go home after 're-education'," *The Jakarta Post*, January 19, 2004.

<sup>103</sup> "Indonesia to release 660 Aceh rebels after 're-education'," Agence France Presse, May 9, 2004; Govt. frees 221 former separatists and supporters in Aceh," Agence France Presse, July 6, 2004.

<sup>104</sup> Human Rights Watch interview with foreign Ambassador to Indonesia, Jakarta, April 15, 2004.

While there may not be any signs of visible abuse, the criterion for entry and graduation from these centers is ambiguous. Without any clear legal mechanism for establishing the guilt or otherwise of inmates, the centers run the risk of being seen as extra-judicial internment facilities. Some press and NGO accounts question the motivation for people to voluntarily surrender to authorities in Aceh. Fear of Indonesian security authorities is pervasive in Aceh. It is possible that voluntary surrender is seen as a safer option than running the risk of arbitrary detention or arrest by Indonesian security forces. What is clear is that the treatment of those arrested, detained, and convicted is often severe, and the prospect of such treatment may well be less palatable than five months in a “re-education” center.

### ***Transfers to Java***

In January 2004, Minister for Justice and Human Rights Yusril Mahendra announced that prison overcrowding in Aceh had prompted a decision to transfer some Acehnese prisoners to prisons in Central Java. The transfer was applicable to those sentenced to prison terms of three years or higher.

The 143 prisoners selected for the first transfer from Aceh arrived in Central Java by Hercules military planes on January 21, 2004. The prisoners arrived wearing blue prison uniforms and were handcuffed and chained together at the hands and ankles.<sup>105</sup> As of late July, it was believed that fifteen transferees were children.<sup>106</sup>

Most of the Acehnese prisoners transferred to Java have been sent to maximum security prisons on Nusa Kambangan island off Java's southern coast and prisons in and around Semarang, on the north coast of Central Java.

Although Aceh's jails are indeed overcrowded, so are prisons in Java. One possible reason behind the move was to isolate prisoners from family and GAM members in Java in a bid to weaken GAM's infrastructure and communications. There has also been speculation that GAM prisoners were transferred to Java to prevent them from indoctrinating other prisoners in Aceh.

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<sup>105</sup> Syaiful Amin and Zainal Bakr, “Napi GAM kloter kedua tiba di Jawa Tengah,” *Tempo*interaktif, January 25, 2004; “Aceh rebels to be jailed in Java,” *The Jakarta Post*, January 20, 2004; “Indonesia Moves 54 Aceh Rebel Prisoners To Java Jails,” Associated Press, January 22, 2004.

<sup>106</sup> Human Rights Watch email communication with representative from UNICEF, Indonesia, July 27, 2004.

Although Justice Minister Mahendra vehemently denied any political reasons for the transfers, then Coordinating Minister for Political and Security Affairs Susilo Bambang Yudhoyono told reporters, “Incarcerating GAM members outside Aceh is a government policy for dealing with state security convicts or those involved in separatist movements, based on national security interests.”<sup>107</sup>

GAM officials in Sweden reacted angrily to the transfers. On January 26, 2004, they argued that the transfers amounted to exiling of Acehnese from Aceh in repetition of tactics used by the Dutch East Indies colonial administration.<sup>108</sup> The widely respected *Jakarta Post* made the same argument in an article.<sup>109</sup> Justice Minister Mahendra responded that, “A newspaper has cynically said that we are aping the approach of the Dutch East Indies colonial administration. That is not true. This is not exile; the justice and human rights ministry has nothing to do with politics.”<sup>110</sup>

A lawyer from Aceh told Human Rights Watch:

The official reason from the government is to eradicate their [the GAM detainees] ideology. Secondly the lack of detention facility capacity in Aceh. But, really it is more consistent with the first point. Endang Suwarya [martial law administrator] often says things like that. The military emergency from before had a plan to make Nasi Island a kind of Guantanamo, but there wasn't enough money. It is cheaper to transfer them to Central Java by Hercules.<sup>111</sup>

Prisoners told Human Rights Watch that the transfers have caused an enormous amount of trauma and resentment. The majority of those interviewed told Human Rights Watch that they were unaware of plans to transfer them until the last minute. This meant that very few prisoners were able to inform their family members of their transfer or see them before their departure. One man described the morning of his transfer:

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<sup>107</sup> Slamet Susanto and Teuku Agam Muzakir, “Another 89 GAM prisoners exiled to Javanese jails,” *The Jakarta Post*, January 26, 2004.

<sup>108</sup> “The transfer of Acehnese prisoners to Java,” Press Release, State of Aceh, Office of the Ministry of Foreign Affairs, January 26, 2004.

<sup>109</sup> “Aceh rebels to be jailed in Java,” *The Jakarta Post*, January 20, 2004.

<sup>110</sup> “The transfer of Acehnese prisoners to Java,” Press Release, State of Aceh, Office of the Ministry of Foreign Affairs, January 26, 2004; “Slamet Susanto and Teuku Agam Muzakir, “Another 89 GAM prisoners exiled to Javanese jails,” *The Jakarta Post*, January 26, 2004.

<sup>111</sup> Human Rights Watch interview with defense lawyer from Aceh, Medan, May 7, 2004.

At 8 o'clock in the morning we were taken out of the prison, but that was normal. Then arrived the news that I was ordered to get ready, they said I was going to be transferred. Straight away I asked, "Where am I going to be transferred to, sir?" He said to Lhokseumawe [in Aceh] and that was very sudden. At that time there were four of us and I asked again, "Why didn't you say that to us yesterday?" and he said that he also didn't know. We were transferred to Lhokseumawe. After we arrived in Lhokseumawe, myself and a friend were summoned by the military police and I asked, "Is it true we will be transferred to Java" and he said "Yes, it's true you will be transferred," and I was really panicked and didn't know how to say anything, should I send a letter to my family or not? But it was not possible that I could do anything because it was sudden and I did not expect that I would be here [Java] now. Before, I thought they were pretending, just to frighten me, but it really has happened.<sup>112</sup>

Another man told Human Rights Watch:

At the time of departure me and some other friends were ordered to prepare because we were going to be sent to Java island, and I didn't have a chance to send the news to my wife that I would be sent to Java and maybe my wife does not even know that I was already transferred. On January 25, 2004 we were lined up, and then hands, feet, and our bodies were tied with chain and we were sent to Java on a Hercules.<sup>113</sup>

Another man explained how he felt:

I was transferred in January 25, 2004 and at the time our hands, feet, and bodies were tied and we were ordered to get on a truck, then we left for the airport and flew here [Java]. The first time we were taken to LP Bireuen, after that transferred to LP Banda Aceh. At that time there were 33 of us taken and our sentences were very different, some with three, four, five, six years. The highest sentence was six or seven years and even one with ten years.... I thought that maybe we were people who would be "disappeared" because at the time of our departure it was like they were hiding us, really early in the morning, and they seemed to

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<sup>112</sup> Human Rights Watch interview with 22-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>113</sup> Human Rights Watch interview with 29-year-old prisoner from Aceh, prison in Central Java, 2004.



be scared in case journalists found out. I really don't know why it was like this ... We didn't ask them because we were treated like goats who were being taken to, I don't know where, and we were tied just like animals. At the time I was very sad and I just submitted to my fate. If you want to speak, you must go where? Even in the trial we were not listened to, so what about outside the trial ... I do not want to take the risk, even though I am not guilty. Yeah, what can I say? It is better to just be quiet than to be dead.<sup>114</sup>

In July 2004 the Indonesian government announced more transfers of prisoners, from Aceh to Kalimantan and East Nusa Tenggara.<sup>115</sup>

Rule 44(3) of the U.N. Standard Minimum Rules for the Treatment of Prisoners provides that “[e]very prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.”<sup>116</sup>

### ***Restrictions on Family Visits***

*“Now I don’t know anymore how my family is and they also do not know how I am here [in Java]. I only wish to Allah SWT that our hopes are protected.”*

Twenty-eight-year-old prisoner from Aceh<sup>117</sup>

For many prisoners the transfer to Java is the first time they have spent an extended period away from their families<sup>118</sup> and the first time they have traveled outside of Aceh. One twenty-year-old man was visibly distraught by the process of his trial and subsequent transferal to Java. When asked about whether or not he had had any contact with his family since his arrival in Java, he said:

There has not been any because it is really difficult and I am very sad because I cannot meet with my family, and I even don't know how my family is at this moment. My wish is to be returned to Aceh even

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<sup>114</sup> Human Rights Watch interview with 28-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>115</sup> “More GAM prisoners to be moved,” *The Jakarta Post*, July 1, 2004.

<sup>116</sup> U.N. Standard Minimum Rules for the Treatment of Prisoners, Rule 44(3)

<sup>117</sup> Human Rights Watch interview with 28-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>118</sup> Most prisons in Aceh allow regular family visits to detainees and prisoners.

though it is very bitter there. At night I always cry remembering my family in Aceh.<sup>119</sup>

Another man told Human Rights Watch:

I really long for my family, but what to do? It is only held in my heart. I have already sent a letter to my village but until now there has not yet been a reply. I really miss my family but what can be done? My sentence has not yet finished and I have to go along with this punishment as it has been decided. I have four children, the oldest is in class 3 SLTP and the youngest has just turned ten months. It was only a week after my wife gave birth that I was arrested.<sup>120</sup>

One eighteen-year-old told Human Rights Watch:

The question of my family? We are already far apart now and I have only sent a letter to my family, I have just recently sent a letter to my family, even if they want to visit me, how could they do that? It is far away, so I can only just pray.<sup>121</sup>

Even those who have accepted their convictions and are willing to serve out their sentences are confused and angered by the transfer to Java. One man told Human Rights Watch:

For me everything is normal [in Java], what is definite is my wish, if it's possible, that we can just be returned to Aceh and just be rehabilitated there, because if we are in Aceh we are close to our families. Indonesia is just fine because we do not want to be considered as rebels. We are only ordinary civilians who every day just look for a life which is calmer and pleasant. We do not want Aceh to continue to be in turmoil.<sup>122</sup>

Rule 37 of the U.N. Standard Minimum Rules for the Treatment of Prisoners states that “[p]risoners shall be allowed under necessary supervision to communicate with their

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<sup>119</sup> Human Rights Watch interview with 20-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>120</sup> Human Rights Watch interview with 37-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>121</sup> Human Rights Watch interview with 18-year-old prisoner from Aceh, prison in Central Java, 2004.

<sup>122</sup> Human Rights Watch interview with 21-year-old prisoner from Aceh, prison in Central Java, 2004.

family and reputable friends at regular intervals, both by correspondence and by receiving visits.”<sup>123</sup>

## **VII. Recommendations**

### ***To the Government of Indonesia***

#### ***Treatment in Detention***

- The president, the armed forces commander, and other senior public officials should publicly condemn torture and other forms of mistreatment in detention. They should issue orders to all security personnel to immediately end all mistreatment of detainees, whether for the purpose of extracting a confession, to exact retribution for real or alleged support of GAM, or for any other reason. Official statements condemning torturing and other ill-treatment must be disseminated widely within the Indonesian armed forces and police service and on public media.
- Take all necessary steps to ensure that the armed forces, police, and other security forces treat detainees in accordance with international human rights and humanitarian law. All personnel should understand that they have a right and duty to refuse orders to commit torture or other mistreatment against persons in custody.
- To deter abuses, all members of the security forces, including interrogators, should wear with badges bearing their name.
- Take steps to reduce the possibility of mistreatment of persons in detention, such as permitting unfettered access to independent monitors and the placement inside detention facilities of non-governmental organizations or Komnas HAM.
- Require medical personnel at detention facilities to report any signs of abuse that may be due to mistreatment and report such information to the appropriate authorities.
- Ensure that conditions of detention conform to the U.N. Standard Minimum Rules for the Treatment of Prisoners.
- Communicate information on persons taken into custody promptly to relatives and legal counsel. Customary international humanitarian law provides for the right of detained persons to be allowed to send and receive correspondence and to receive visits from family members.

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<sup>123</sup> U.N. Standard Minimum Rules for the Treatment of Prisoners, Rule 37

- Permit and encourage visits to detainees by legal counsel, medical personnel, and appropriately supervised family members.
- Establish a central register of detainees, which would enable judicial authorities and penitentiary administrations to monitor the location and transfers of, and status of judicial proceedings in respect of, all detainees in Indonesia.

### ***Arbitrary Arrest and Detention***

- End the practice of arbitrary and indefinite detention. Promptly release all detainees for whom there is no legal basis for detention or charge them with a legally cognizable offense.
- Publicly identify all places of detention in Aceh and allow access to impartial humanitarian agencies. Provide access for non-governmental agencies to all detention facilities and prisons in Indonesia.
- Ensure that the military in Aceh complies with the law on civil emergencies. Clarify which agencies have the authority to carry out arrests and detentions and what procedures should be applied.
- Ensure that all arrests except those *in flagrante delicto* are carried out with properly issued arrest warrants.

### ***Right to a Fair Trial***

- Ensure all trials conform to international fair trial standards.
- Permit prompt access to defense attorneys. Permit them adequate time and facilities to prepare a defense.
- Ensure that the defense at trial is able to question prosecution witnesses and present defense witnesses.
- Prohibit prosecutors from seeking to admit evidence obtained through torture or other cruel, inhuman, or degrading treatment.
- Instruct prosecutors not to seek to admit into any legal proceeding evidence obtained through torture or other cruel, inhuman, or degrading treatment.
- Permit persons questioned regarding criminal offenses to have defense counsel present at the time of questioning.
- Courts must enforce the requirement that two forms of evidence are necessary for a conviction; confessions alone should never be the basis for convictions.
- Put into place an effective legal aid system providing free and competent legal assistance to those who cannot afford legal representation.

### ***Accountability***

- Cooperate with investigations by the National Commission on Human Rights, Komnas HAM, and NGOs of detainee treatment and the trial process for those convicted of treason/rebellion or other criminal offenses relating to actions on behalf of GAM.
- Invite the United Nations Special Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment, and the Special Rapporteur on the Independence of Judges and Lawyers to investigate and report on these allegations and make relevant recommendations.
- Military and police officials should launch their own investigations and discipline personnel found to have committed or been complicit in the torture or other mistreatment of detainees.
- Instruct prosecutors to open investigations of allegations of mistreatment and file criminal charges in cases in which credible evidence is discovered.
- Make all findings of official investigations public.

### ***To the Indonesian Judiciary***

- Fulfill role as judicial officers and refuse to accept evidence produced as the result of torture or other mistreatment.

### ***To the international community, particularly the quartet (U.S., E.U., Japan, World Bank) taking the lead on Aceh***

- Make clear to the Indonesian government that enhanced military cooperation will depend on accountability within the armed forces for abuses in Aceh and elsewhere.
- Insist in public and private that Indonesia open Aceh to independent national and international journalists, human rights workers, diplomats, and observers.
- Pressure the government to implement the recommendations made by the Committee against Torture and the recommendations made by the Special Rapporteur on the Independence of Judges and Lawyers.
- Donor assistance for strengthening the Indonesian judicial system should prioritize criminal justice reforms that would ensure that the criminal law, criminal procedure code, and judicial practice comply with international human rights standards.

## VII. Appendix

### ***Appendix 1: Recommendations made by the Committee Against Torture on November 12-23, 2001:124***

- (a) Amend the penal legislation so that torture and other cruel, inhuman or degrading treatment or punishment are offences strictly prohibited under criminal law, in terms fully consistent with the definition contained in article 1 of the Convention. Adequate penalties, reflecting the seriousness of the crime, should be adopted.
- (b) Establish an effective, reliable and independent complaint system to undertake prompt, impartial and effective investigations into allegations of ill treatment and torture by police and other officials and, where the findings so warrant, to prosecute and punish perpetrators, including senior officials.
- (c) Ensure that all persons, including senior officials, who have sponsored, planned, incited, financed or participated in paramilitary operations using torture, will be appropriately prosecuted.
- (d) Take immediate measures to strengthen the independence, objectivity, effectiveness and public accountability of the National Commission on Human Rights (Komnas-HAM), and ensure that its reports to the Attorney General are published in a timely fashion.
- (f) Ensure that crimes under international law such as torture and crimes against humanity committed in the past may be investigated and, where appropriate, prosecuted in Indonesian courts.
- (g) Continue measures of police reform to strengthen the independence of the police from the military, as an independent civilian law enforcement agency.
- (h) Reduce the length of pre-trial detention, ensure adequate protection for witnesses and victims of torture and exclude any statement made under torture from consideration in any proceedings, except against the torturer.

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<sup>124</sup> "Conclusions and Recommendations of the Committee Against Torture: Indonesia," CAT/C/XXVII/ Concl.3, Committee Against Torture, 27th session, November 12-23, 2001.

- (k) Reinforce human rights education to provide guidelines and training regarding, in particular, the prohibition of torture, for law-enforcement officials, judges, and medical personnel.
- (l) Invite the Special Rapporteur on Torture to visit its territories.
- (n) Take immediate steps to address the urgent need for rehabilitation of the large number of victims of torture and ill-treatment in the country.
- (o) Make the declarations provided for in articles 21 and 22 of the Convention.
- (p) Include, in its next periodic report, statistical data regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, disaggregated by, *inter alia*, gender, ethnic group, geographical region, and type and location of detention. In addition, information should be provided regarding complaints and cases heard by domestic bodies, including the results of investigations made and the consequence for the victims in terms of redress and compensation.
- (q) Widely disseminate the Committee's conclusions and recommendations throughout the country, in all appropriate languages.]

## **Appendix 2: Other HRW publications on Aceh**

For more information on the human rights situation in Aceh since the resumption of the fighting in May 2003, please see the *Aceh under Martial Law* series of reports and briefing papers produced by Human Rights Watch:

- 1) *Aceh Under Martial Law: Human Rights Under Fire*  
A Human Rights Watch Briefing Paper, June 2003
- 2) *Aceh Under Martial Law: Unnecessary and Dangerous Restrictions on International Humanitarian Access*  
A Human Rights Watch Briefing Paper, September 2003
- 3) *Aceh Under Martial Law: Can These Men Be Trusted to Prosecute This War?*  
A Human Rights Watch Briefing Paper, October 2003

- 4) *Aceh Under Martial Law: Muzzling the Messengers: Attacks and Restrictions on the Media*  
A Human Rights Watch Report, November 2003
- 5) *Aceh Under Martial Law: Inside the Secret War*  
A Human Rights Watch Report, December 2003
- 6) *Aceh Under Martial Law: Problems Faced By Acehnese Refugees in Malaysia*  
A Human Rights Watch Report, April 2004.