

INDONESIA
New military operations, old patterns of human rights abuses in Aceh (Nanggroe Aceh Darussalam, NAD)

PART I - Human rights abuses in NAD

1. Introduction

In May 2003 a military emergency was declared in the Indonesian province of Nanggroe Aceh Darussalam (NAD)(1) under which civilian government was suspended and a massive counter-insurgency operation was initiated against the armed pro-independence group, the Free Aceh Movement (Gerakan Aceh Merdeka, GAM). The following year marked one of the bloodiest in the 28-year conflict in NAD. In May 2004 the status of NAD was downgraded from military to civil emergency. While bringing the administration back under civilian authority, military operations continued as before and human rights abuses are still being reported.

Amnesty International recognizes that governments must respond to the threat posed by armed groups. It also takes no position on the political status of NAD, neither supporting nor opposing any demands for independence. The organization's concerns are limited purely to the human rights situation in the area in relation to which research is conducted both into human rights abuses committed by GAM as well as by the Indonesian security forces.

However, monitoring the human rights situation in NAD during the latest military campaign has been made difficult by tight restrictions on access to the province. These government-imposed restrictions have prevented Amnesty International and other international human rights organizations from undertaking research in NAD. Nevertheless, it has been possible to gather data from a variety of credible sources. For this report Amnesty International conducted interviews outside Indonesia with Acehnese human rights activists and lawyers, with some 55 refugees who have fled NAD since May 2003, as well as with independent experts and observers.

The information collected provides ample evidence of a disturbing pattern of grave abuses of civil, political, economic, social and cultural rights in NAD. The Indonesian security forces bear primary responsibility for these human rights violations, although GAM has also committed serious human rights abuses, most notably the taking of hostages and the use of child soldiers.

There are certain principles of international law which have risen to the level of peremptory norms meaning that they cannot be derogated from in any circumstances, including during a national emergency. They include the prohibition of the arbitrary deprivation of life and the right to be free from torture. Nevertheless, unlawful killings and torture are among the human rights abuses that have been committed during the past 15 months in NAD.

The current pattern of human rights abuses is all too familiar to the population of NAD who have suffered grave violations of human rights during previous counter-insurgency operations in the province. While dramatic changes in Indonesia's political landscape have taken place since 1998(2) and the process of democratization is proceeding, symbolised by recent parliamentary and presidential elections, it appears that little has changed in the way in which the security forces respond to both armed and civilian independence movements. It is also the case that, as in the past, little national or international attention has been given to the situation.

The human rights abuses that have taken place during the latest military operation are so pervasive that there is virtually no part of life in the province which remains untouched. As in previous military campaigns against GAM, the security of the civilian population has been paid scant regard. There has been a failure by the Indonesian military to distinguish between combatants and non-combatants. Young men are frequently suspected by the security forces of GAM membership and are particularly at risk of human rights violations, including unlawful killing, torture, ill-treatment and arbitrary detention. Members of GAM have also been unlawfully killed after being taken prisoner. Women and girls have been subjected to rape and other forms of sexual violence. Trials of individuals suspected of being members of or supporting GAM have contravened international standards for fair trials and some of those imprisoned may be prisoners of conscience.

In its efforts to sever the logistical and moral support of the population for GAM, the security forces have also forcibly displaced civilians from their homes and villages, carried out armed raids and

house-to-house searches and destroyed houses and other property. Civilians, including children, have been forced to participate in military operations and other activities in support of the military operations. Disproportionate restrictions have been placed on freedom of expression and movement and the delivery of humanitarian assistance has been severely disrupted.

The military has conducted investigations into some allegations of human rights violations and a number of soldiers have been brought to trial in military tribunals. However, these processes, which have only dealt with a fraction of the total number of allegations of human rights violations, lack independence and impartiality. In the meantime, while the National Commission on Human Rights (Komisi Nasional Hak Asasi Manusia, Komnas HAM) has conducted field investigations, local human rights monitors have been subjected to arrest, detention and other forms of harassment and intimidation. International human rights organizations are denied access to the province entirely.

Conditions in NAD have forced hundreds of Acehnese to flee to Malaysia as well as other countries. While the Malaysian government has shown some limited tolerance of the Acehnese and other refugee populations within its borders, officially it affords them no legal recognition or protection. Without such recognition refugees in Malaysia are at constant risk of arrest as "illegal immigrants" and can face charges under Malaysia's punitive Immigration Act, detention in the squalid conditions of an immigration detention centre, or both.

In contravention of the norm of customary international law which prohibits the return of persons to a situation where they would face serious human rights violations, Malaysia has forcibly returned Acehnese refugees to Indonesia on several occasions. The threat of prolonged detention in immigration detention camps in poor living conditions has also prompted some Acehnese refugees to "volunteer" to be returned to Indonesia. In addition to the risk of arbitrary detention and *refoulement* by Malaysia, the lack of formal recognition as refugees prohibits Acehnese asylum-seekers and refugees from working or accessing basic services such as healthcare and education.

The following report is divided into two parts. Part one provides details of the current human rights situation in NAD. Part two focuses on the situation for Acehnese refugees in Malaysia. Recommendations are provided to both the Indonesian and Malaysian governments, as well as to the United Nations (UN) and second governments which, if implemented, would contribute to reducing the suffering of the Acehnese people.

2. Political Background

The province of Nanggroe Aceh Darussalam (NAD), with a population of some 4.2 million, lies at the northern tip of the island of Sumatra, a short distance across the Straits of Malacca to Malaysia. The current conflict in the province dates back to the mid-1970s when, on 4 December 1976 the Aceh/Sumatra National Liberation Front (ASNLF), widely known as the Free Aceh Movement (Gerakan Aceh Merdeka, GAM), unilaterally declared independence. Support for independence in NAD is rooted in a long tradition of resistance to outside domination, including against the former Dutch colonial power. In recent times, the unequal benefits of economic development, the perceived lack of respect for cultural and religious traditions and the appalling record of human rights violations by the Indonesian security forces have fuelled the resentment of many Acehnese against the Indonesian government.

The 1976 insurgency was quickly crushed by the Indonesian security forces. Those among GAM's leadership who were not killed or imprisoned, fled abroad. A self-proclaimed government in exile, led by GAM's founder, Dr Tengku Hasan di Tiro, has since been established in Sweden.

In 1989, GAM's military wing re-emerged in NAD. Following a series of attacks on police and military installations the Indonesian security forces embarked on counter-insurgency operations that became characterized by grave human rights violations.⁽³⁾ At the time, NAD was a "Military Operations Zone" (*Daerah Operasi Militer*, DOM) which gave the military effective control of the province. The DOM status was finally lifted in August 1998, soon after former President Suharto, who had led Indonesia for 32 years, was forced to resign in the face of massive popular opposition to his authoritarian and corrupt rule.

The lifting of the DOM brought only brief respite. In January 1999, the first of a series of new military operations was launched following attacks on the security forces allegedly by GAM. Contrary

to the aims, the military operations, and the human rights violations and general hardships for the civilian population that accompanied them, led to increased support among the general population for GAM, or at least its declared goal of independence. The most visible demonstration of support was in November 1999 when, according to some estimates, one million people attended a rally in the provincial capital of Banda Aceh to demand a referendum on the political status of NAD. At the same time, GAM's own strength was increasing. Hundreds of village chiefs were reported to have transferred their allegiance to GAM. By mid-2001, GAM claimed to be in control of almost 75 per cent of the province(4) and was reported to have established parallel administrative systems, including for tax collection and registering births and marriages.

Although force continued to define the response of the military and some parts of the civilian leadership to GAM, former President Abdurrahman Wahid (October 1999 – July 2001), initiated efforts to seek a political solution to resolve the situation. On the one hand a dialogue between the two parties to the conflict was mediated by the Switzerland-based Centre for Humanitarian Dialogue.(5) At the same time, a law was drafted with a view to offering the Acehnese a greater level of autonomy in the government and administration of the province and greater control over revenues from natural resources. The law on special autonomy was regarded by observers as being intended to provide an alternative to independence and thereby undercut support for GAM's armed struggle.(6)

Law No. 18 on Nanggroe Aceh Darussalam, which provides the legal basis for special autonomy in NAD, was signed by the newly appointed President Megawati Sukarnoputri in August 2001, but was considered seriously deficient in key areas, particularly in relation to human rights and justice.(7) It was never fully implemented and was effectively superseded by the military emergency declared in May 2003.

In the meantime, the Centre for Humanitarian Dialogue had some success in bringing the two sides to the negotiating table. On 12 May 2000, the "Joint Understanding on a Humanitarian Pause for Aceh" was signed, the first of a series of agreements between the Indonesian government and GAM. The three month "humanitarian pause" was intended to facilitate the delivery of humanitarian assistance and reduce levels of violence. Initially it met with some success, but within a few months levels of violence began escalating once again. Nevertheless, talks continued intermittently over the next two years, culminating in the signing of the Cessation of Hostilities Agreement (CoHA) in Geneva, Switzerland on 9 December 2002.

The CoHA, which was a framework for peace talks, rather than a peace settlement, was ambitious, involving international monitors,(8) the establishment of "peace zones", disarmament of GAM and a limited withdrawal of Indonesian troops.

However, within months the CoHA had begun to unravel as both sides contested the interpretation of the agreement; levels of general violence and human rights abuses increased; and members of the international monitoring teams came under attack from vigilante groups, widely believed to be proxies for the Indonesian military.

By April 2003, the military had begun deploying additional troops to NAD in preparation for a new campaign against GAM and at midnight on 18 May 2003 a six-month military emergency was declared.(9) In contrast to DOM, which was a purely military response, the government described the new campaign against GAM as an "integrated operation" with military, humanitarian, law enforcement and local governance components. However, in reality the emphasis of this latest campaign has also been on the military operations, as a reported 48,000 troops were deployed against GAM which, it was claimed by the Indonesian authorities, had some 5,000 troops under arms.

In November 2003, the military emergency was extended by a further six months. In May 2004 it was downgraded to the status of civil emergency and authority was transferred back to the provincial civilian administration under the Provincial Governor.(10)

3. A well-established pattern of human rights violations

"Of course, it's alright to think about human rights but the more important thing is to think about the territorial integrity of the Unitary State of the Republic of Indonesia, NKRI" Minister of Defence, Matori Abdul Djalil.(11)

From the period of the DOM to the latest military campaign, the various military operations pursued against GAM in NAD have in common an almost total disregard for human rights norms and standards. During the first four years alone of DOM it is estimated that 2,000 civilians, including children and the elderly, were unlawfully killed by the Indonesian security forces. By the time the DOM status was lifted in 1998, many hundreds and possibly thousands more civilians had been killed. Several thousand people were arbitrarily arrested during these years on suspicion of supporting GAM. Many of those detained were subjected to extensive periods of incommunicado detention and torture and ill-treatment. Others "disappeared" in police or military custody.

Human rights violations, albeit at times at a reduced level, continued to be reported throughout the period of the peace negotiations and other political initiatives. In 1999, locally-based human rights groups estimated that over 421 people had been unlawfully killed in NAD. By 2001 the figure had more than doubled to 1,014 and in 2002 it increased again to 1,307.(12)

GAM has also committed human rights abuses both during and after the DOM period. According to official Indonesian sources and local media reports, GAM has been responsible for the targeted killing of suspected informers, government officials, civil servants and others with links to the Indonesian administration. It has also taken hostages and is alleged to have been involved in the burning of schools and other public buildings, and in intimidating, harassing and possible unlawful killings of non-Acehnese or "transmigrants."(13)

Data collected by Amnesty International about the human rights situation under the current military operations demonstrates a pattern of grave abuses of human rights that closely match both the pattern and the intensity of the human rights abuses committed during the height of the DOM period. Indeed, many of those interviewed by Amnesty International described the recent military emergency as "DOM 2".

The stated objective of the latest military campaign is to "crush" GAM and restore security to NAD. The methods employed to achieve this, in common with methods employed in previous operations, have frequently been in contravention of international humanitarian and human rights law which forbid the derogation of certain basic rights, including the right to life and the right not to be subjected to torture and ill-treatment. Such methods include unlawful killings, "disappearances", arbitrary detention, torture and other forms of cruel, inhuman or degrading treatment. GAM has retaliated with the taking of hostages, unlawful killings and other abuses.

A strategy of civil-military cooperation has been employed in which the civilian population is enlisted to provide support to the military operations. Measures have also been put in place, which have had the effect of controlling the population, restricting access to the province and preventing the gathering and dissemination of information about the human rights situation.

These strategies have resulted in considerable hardship for the population, including internal displacement, disruption to economic activity, denial of access to humanitarian assistance, and disproportionate restrictions on movement and freedom of expression.

Under the civil emergency, which has been in place since May 2004, military operations are continuing as before and civilian casualties are still being reported. Indeed, unlawful killings appear to have been sanctioned by the Head of the Regional Civil Emergency Authority (who is also the Provincial Governor), who stated in June 2004 that "unidentified, suspicious looking people" will be shot on sight.(14) In the meantime, many hundreds of political prisoners, tried in unfair trials and in many cases convicted primarily on the basis of evidence obtained under torture, remain in prison. Arrests of "GAM suspects" are still continuing and those detained are at grave risk of torture and ill-treatment. Moreover, an existing ban on access to NAD by foreigners has been extended, with the result that international humanitarian and human rights agencies are still unable to carry out their work in the province.

3.1 Militias and civilian defence

Counter-insurgency operations in Indonesia have historically made extensive use of civilians, including as militia, civilian defence groups and military auxiliary units. The current military operations in NAD are no different in this respect. Vigilante and militia groups are reported to have been set up in several areas and there are reports that they have carried out human rights

violations with impunity. All adult males must participate in compulsory night guard duty and there are reports of civilians, including women and children, being used during military operations as scouts and spies.

The concept of civilian defence is well-established in military doctrine in Indonesia where the use of military and police auxiliary units and other civil defence groups have been integral to military operations in the past in NAD, in East Timor (now named the Democratic Republic of Timor-Leste) and elsewhere. The legal basis of this concept is found in Indonesia's 1945 Constitution that states that civilians have both the right and the duty to participate in the defence of their country.⁽¹⁵⁾ Moreover, Law 23/1959 on States of Emergency, also provides the military with authority to instruct inhabitants of a region under a military emergency to perform compulsory labour in the interests of security and defence.⁽¹⁶⁾

However, Indonesia must comply with its obligations under International Labour Organization (ILO) Convention No. 29 on forced labour which forbids forced or compulsory labour⁽¹⁷⁾ and ILO Convention No. 182 on the worst forms of child labour, which specifically protects children from forced or compulsory labour, including forced or compulsory recruitment for use in armed conflict. Amnesty International is concerned that in some cases civilians have been used for counter-insurgency in a manner that may have violated these obligations. Amnesty International is also concerned by cases where children have been used by the military in contravention of Indonesia's obligations under the ILO conventions and the Convention on the Rights of the Child (CRC).

The capacity of militia for violence came to international attention in Timor-Leste in 1999 at the time of the UN-sponsored ballot on independence. In the months leading up to the ballot new militia groups were set up and old ones activated. Equipped, trained and supported by the Indonesian military, with the support of the civilian authorities, they were at the forefront of the campaign to intimidate the population into rejecting independence. When this failed, they participated in a massive wave of violence in which hundreds of people were unlawfully killed, thousands forcibly displaced and much of the territory reduced to ashes. Despite considerable evidence to the contrary, the Indonesian military continues to deny that it had any connection to the militia.⁽¹⁸⁾

There is no evidence that militia in NAD have carried out human rights violations on the scale seen in Timor-Leste, but given the history of the use of militia by the Indonesian military, the lack of clarity of their command and control structures and absence of accountability mechanisms, their existence in NAD is a cause for serious concern.

In June 2003, a member of the National Commission on Human Rights (Komisi Nasional Hak Asasi Manusia, Komnas HAM) publicly stated that militias were being recruited in Central Aceh District and that they were receiving military training, including in the use of firearms.⁽¹⁹⁾ The allegation was denied the next day by the Army Chief of Staff, General Ryamizard Ryacudu.⁽²⁰⁾ Since then though, provincial level military commanders have acknowledged the presence of such groups, but describe them as having been spontaneously formed for the purpose of self-defence against attacks by GAM. However, detailed reports both from local human rights activists and in the media indicate that support for these groups is being provided both by the military and civilian authorities.

One report from April 2004 written by an Acehese human rights defender in exile, describes the establishment of at least seven different militia groups in Central and East Aceh Districts since 2001 which, it is claimed, are supported to varying degrees by local government officials and the military. Funding is also said to be provided by local businessmen. Militia members are said to be recruited predominantly from transmigrants and from the Gayo ethnic-group, which is based mainly in the central and southern areas of the province, although some of the newer groups are said to have Acehese members. Equipment varies, but according to reports, can include military-style uniforms, assault rifles and two-way radios as well as home-made guns, knives and machetes. In some cases equipment is reported to have been provided by the military and ammunition purchased from them. Training and in some cases supervision is alleged to have been provided by a variety of military units, including, within the territorial command structure, the District Military Command (Komando Distrik Militer, Kodim) and Sub-district Military Commands (Komando Resor Militer, Koramil); as well as from specialised units such as the Army Strategic Reserve (Komando Strategis Angkatan Darat, Kostrad); the Combined Intelligence Task Force (Satuan Gabungan Intelijen, SGI); and the Police Mobile Brigade (Brigade Mobil, Brimob).⁽²¹⁾

According to this report and other reports in the media, militia groups have carried out patrols, identified GAM suspects to the military and in some cases carried out arrests and arson attacks. In a more recent report, militia in Central Aceh District are accused of killing 20 people during the course of an operation to search for GAM near the town of Takengon in June 2004. According to the report, which Amnesty International cannot verify, those killed were alleged by the militia to have been members of GAM, or were individuals who refused to provide information on the whereabouts of GAM.(22) Militia are also reported to have participated in joint operations with the military.(23)

A wide range of other anti-GAM civil defence-style groups have also been formed more widely throughout the province. Equipped with bamboo spears and curved swords, their primary duties appear to be to assist the security forces in identifying GAM members and participating in loyalty ceremonies. Membership of these groups is not in all cases voluntary. Village heads have been required to provide members for these groups. In other cases, it appears that young men have been instructed, directly by the military, to join. One man from Nisam Sub-district, North Aceh District described to Amnesty International how soldiers came to the market place and picked out young men whom they wanted to recruit for these civil defence groups.

Amnesty International has also received reports of the forced participation of civilians in military operations as scouts and human shields in violation of fundamental principles of international humanitarian law. A man from Lhoksuemawe in North Aceh told Amnesty International that at the beginning of the military emergency 10 young men from his village were forcibly taken to the jungle by the military on an operation. In September 2003 it was reported that 1,000 villagers from Leupang in Aceh Besar District had been drafted by the military to assist them in searching for GAM members.(24)

There have been reports that families of GAM members are among those who have been forced to act as human shields during military operations. In May 2004, for example, a credible source told Amnesty International that villagers, including wives, children and other relatives of suspected members of GAM, from three different villages in Nisam Sub-district, North Aceh had been instructed by the military to take two kilos of rice each and accompany them to the forest. They are alleged to have been ordered to walk in front of the soldiers, effectively acting as shields, as the military searched for GAM. Prior to being taken to the forest, the GAM family members were reported to have been separated out and beaten. The operation is reported to have lasted for three days from 16-18 May 2004.

Although forbidden by military regulations, children under the age of 18 have also been used by the Indonesian military for functions such as cooking, cleaning, spying and communications. According to informed sources, this practice does not take place systematically, but rather is on the initiative of individual soldiers. As a state party to the Convention on the Rights of the Child (CRC), Indonesia has an obligation to ensure that children are protected against exploitation when performing labour, and as a signatory to the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, the Indonesian government must not act in a way that is contrary to the Optional Protocol. In this instance Article 2 of the Optional Protocol prohibits the compulsory recruitment of children into the armed forces.

In addition, since the second week of the military emergency all adult males, throughout the province, have been obliged to participate in compulsory, unpaid night guard duty (known as "*jaga malam*"). The system of civilian night guards exists elsewhere in Indonesia and has previously been used in NAD, but never so intensely. In NAD it is organized by village leaders under the direction of the Sub-district head (Camat), police and military. The night guards are unarmed and do not receive any training. The frequency with which an individual must participate depends on the number of men in the village or community, but seems to vary between twice-a-week to once every few weeks. Generally it appears that only men over the age of 18 are required to participate, although some interviewees from smaller communities told Amnesty International that boys of 16 and 17 years old are also involved.

While civilians may be required to provide services in cases of emergency,(25) Amnesty International is concerned that the current system of compulsory night guard duty for all adult males in NAD may be a form of harassment of the general population. This is most obviously the case in situations such as that described to an Amnesty International delegate by a market vendor from a village in Muara Dua Sub-district near the town of Lhokseumawe. According to him, in the

run-up to the April 2004 parliamentary elections he and the other men in his village were required to perform night guard duty for 20 nights in a row. Individuals who fail to turn up for duty, or do not perform their duties to the satisfaction of the authorities, have been subjected to various forms of cruel, inhuman or degrading treatment or punishment.

3.2 Internal displacement

Although the numbers of internally displaced people (IDPs) never reached the governments' projected figure of 200,000,(26) tens of thousands of people have been displaced, the majority during the first months of the military emergency. In some cases the displacement was under threat of force. Several people interviewed by Amnesty International described how the military or police came to their village and ordered them to leave, sometimes without giving sufficient time to pack their belongings. One man from Juli Sub-district in Bireun District said that the military had come to his village in August 2003 and told all the villagers to leave or they would be considered to be members of GAM. They had to leave within 24 hours and were only permitted to take a small bag of clothes with them.

IDP numbers have decreased during 2004. The official figure for IDPs in NAD as of June 2004 was 6,946. Some of those who have returned to their villages are reported to have found their homes and other property looted or destroyed and their livestock stolen or killed. The man from Juli Sub-district told an Amnesty International delegate that residents from his village were permitted to return after three months in an IDP camp. On his return his father's house, in which he also lived, had been damaged, possessions destroyed and livestock and electrical goods stolen.

The Ministry of Social Welfare provides returnees with funds to assist their return. However, as is frequently the case with government funding in NAD, recipients may not necessarily receive their full entitlement. According to one local NGO which works with IDPs and which monitored the return of some 215 families to Bandar Sub-district in Central Aceh District in August 2003, they only received two million rupiah (US\$220) rather than the seven million rupiah (US\$780) that they had been promised.

Under international humanitarian law forcible relocation of civilians is only allowed for their own safety or for valid military reasons.(27) If forced relocation occurs for a legitimate reason under international law, the security forces are obliged to ensure an orderly evacuation, humane conditions in transit and adequate alternative accommodation. The duty of the authorities to assist IDPs to return, voluntarily, safely and in dignity to their homes, or to be resettled voluntarily in another part of the country is contained in the UN Guiding Principles on Internal Displacement. Principle 29.2 of the Guiding Principles states that:

"Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation."

Amnesty International is concerned that the Indonesian authorities are not fulfilling this duty in all cases.

3.3 Isolating GAM from the population

A range of measures directed at identifying GAM members within and isolating GAM from the general population were taken during the military emergency. The population has also been forced to take part in various public demonstrations of support for military operations against GAM. Amnesty International is concerned that some of these measures have been disproportionate and have violated the rights to freedom of expression and movement.

In its effort to remove GAM members from the local bureaucracy and general population, new identity cards (known as "Red and White" identity cards) were introduced in the first weeks of the military emergency.(28) The process of obtaining a new identity card entailed registering at four different local government, military and police offices, undergoing questioning and proclaiming loyalty to the unitary state of Indonesia. Frequent identity checks are carried out by the Indonesian

security forces and anyone not in possession of the "Red and White" identity card risks being labelled as GAM.

Acehnese refugees interviewed by Amnesty International who did not have the new identity cards expressed anxiety that if deported back to NAD, they would automatically be suspected of being members of GAM. A number of them explained that they had not dared to apply for a new identity card because they had been detained in the past and are therefore already suspected of being members of GAM.

In addition, beginning in July 2003, NAD's civil servants, who are reported to number over 85,000 people including local government officials and school teachers, were required to undergo a screening process to prove their loyalty to the state.⁽²⁹⁾ Some civil servants were reported in the local media to have been dismissed for refusing to make the pledge of loyalty.⁽³⁰⁾ Others reportedly resigned because they feared retaliation by GAM for participating in loyalty ceremonies.⁽³¹⁾ Civil servants are also among the many hundreds of people who have been detained under the military emergency.

The civilian population has also been required to show its support for the military operation through participation in loyalty ceremonies. These ceremonies have taken place across the province at strategic moments. For example, within the first weeks of the military emergency there were reports in the local media of large crowds assembling to pledge their loyalty to the Indonesian state. Similar ceremonies were held in advance of the six-month and one-year anniversaries of the military emergency. Individuals interviewed by Amnesty International were among the thousands of people who were ordered by the military to attend such events. They described how all the inhabitants of their village, including children and the elderly, were required to travel, in some cases in trucks provided by the military, to football fields, stadiums or other locations, where they were provided with t-shirts or banners and told to shout slogans such as: "Don't leave Aceh" and "We the people of Aceh demand the extension of the military emergency."

Participation in the parliamentary elections that took place in April 2004 was obligatory in NAD, although voting in Indonesia is not compulsory by law. Interviewees told Amnesty International that those eligible to vote were instructed by the military, via village heads or other community leaders, to cast their votes. As in the case of the ceremonies in support of the military emergency, threats were more frequently implied rather than made explicit, but it was widely understood that refusal to vote would result in being labelled as a member or supporter of GAM, with the associated risk this brings. No one reported being told for which party they had to vote, merely that they must cast their votes. There has been speculation that the intention was not to influence the outcome of the election, but rather to demonstrate that an election could be held in NAD under emergency conditions.

3.4 Restrictions on access to humanitarian and human rights actors

The civilian population in NAD has been almost entirely cut off for over one year from the assistance and protection afforded by the presence of independent human rights monitors and humanitarian workers. Mirroring the tactics so effectively employed in Timor-Leste, the Indonesian authorities have also attempted, in large part successfully, to close down all other channels of independent information about the situation in NAD, including by restricting the access of journalists to the province.

Statements by military officials, in which human rights organizations were publicly accused of links with GAM, quickly forced local human rights defenders into hiding or to flee the province and in some instances, the country. Those that have remained have been unable to carry out their work effectively due to fear of human rights violations. At least 24 NAD-based human rights defenders have been detained since the beginning of the military emergency, six of whom are on trial or have already been sentenced to terms of imprisonment. Amnesty International believes that the motivation for some, if not all, of these detentions is to discourage human rights defenders from carrying out their legitimate activities in NAD.

Although access by the media to NAD during the first week of the military emergency was relatively open, a succession of reports on human rights violations committed by the military, including the unlawful killing of children, quickly resulted in the introduction of restrictions. Since then Indonesian

journalists have come under intense pressure to report the official version of events, while international journalists have faced considerable difficulty in obtaining permits to travel to NAD.(32)

Access to humanitarian assistance has also been severely disrupted by the restrictions placed on the work of international humanitarian organizations. Under a decree issued at the end of June 2003, a system was introduced, under which international staff are required to apply to the government for permits (or "blue books" as they are known) in order to travel to the provincial capital, Banda Aceh. An additional permit is then required from the provincial authorities (previously the military, now the civil administration) for permission to travel outside Banda Aceh. Since the imposition of the military emergency, "blue books" have only been issued infrequently. The process of applying for them has been described by those that have to go through it as "a bureaucratic nightmare". Even with the permits, access to international humanitarian workers has been restricted both in the time that they can spend in the province (usually a few weeks only) and the places that can be visited.(33)

Although some improvement in access since the early days of the military emergency has been reported, at least for UN agencies, it remains far from the full, unimpeded access required for humanitarian organizations to implement their programs. The Provincial Governor, shortly after taking over as head of the Civil Emergency Authority, stated that the existing restrictions on international humanitarian agencies would be extended and access is reported to be particularly poor in areas regarded as GAM strongholds which are designated "black areas" by the military authorities. In some of these areas there is believed to have been no access by independent humanitarian actors since May 2003.

In the absence of qualified and independent humanitarian actors in NAD it is not possible to make a meaningful assessment of the humanitarian situation in the province, although some impression can be gained through media reports which indicate that economic activity has improved in recent months. However, Amnesty International was told by some Acehnese refugees that their communities had on occasions faced food shortages. Such shortages were typically reported to occur in rural areas during times of intense military operations when villagers were prevented from tending to their paddy fields, gardens, or from going to the forest to gather food. On some occasions the restrictions were reported to last for several weeks. Some complained that on returning to their fields or gardens they found crops destroyed or stolen.

Extortion by the security forces, although not unique to the current military operations, has also placed an additional burden on individuals and businesses. Much of the extortion is reported to be small-scale – typically in the form of requests for "cigarette money" or non-payment of restaurant bills. However, owners of larger businesses have reported being forced to enter into formal protection agreements with the military. GAM is also responsible for extortion, although their capacity to engage in such practices is likely to have been much reduced under the current military campaign.

The military operations may also have adversely affected access by the general population to health care and education. A number of the refugees in Malaysia told Amnesty International that the primary health clinics in their villages had closed down since the beginning of the military emergency. According to one unverified report from Peureulak in East Aceh District, in January 2004 nurses and midwives had been prevented from working in health centres in rural areas of the district because they were suspected of providing medical assistance to GAM.

While there appear to have been no further arson attacks on schools since some 600 were burnt down in the first weeks of the military emergency,(34) and schools in many areas appear to be operating, several interviewees noted that economic hardship resulting from the military emergency had made school fees prohibitively expensive for some families.

4. Extrajudicial executions under the military emergency

"Hunt them down and exterminate them", The Commander of the Armed Forces, General Endriatono Sutarto talking about GAM at a briefing of military officers in Jakarta in May 2003.(35)
"It won't do any damage to Indonesia to lose several people, rather than jeopardizing 220 million other people", President Megawati Sukarnoputri at the beginning of the military emergency.(36)

"We will not tolerate people in this territory who join the separatist celebration. No matter who they are, we will shoot them on sight for supporting the movement," the Military Commander for the Lilawangsa Military Resort (Korem 011/Lilawangsa) in advance of the anniversary of GAM's declaration of independence.(37)

"...unidentified, suspicious looking people will be shot on sight", the Governor of NAD on taking over authority in NAD from the military in May 2004.(38)

Statements such as these have set the tone for the behaviour of troops during the current military operations and leave little doubt as to the message from their superiors - that they should shoot first and ask questions later. Not surprisingly there have been frequent allegations of unlawful killings by members of the security forces, both of civilians and of members of GAM.

Various and often inconsistent figures have been issued of the number of people killed during the military operations. According to figures issued by the military in September 2004, 2,879 members of GAM have been killed since May 2003. Of this figure, 2,409 are said to have been killed during the military emergency and 440 since.(39) A military spokesman had previously put the number of GAM deaths at 400 in the first six weeks of the civil emergency.(40) The police have stated that 230 GAM members were killed in the first eight weeks of the civil emergency.(41)

The military has acknowledged that there have been civilian casualties. In mid-August 2004, according to media reports, the military said that 147 civilians had been killed during the past 10 months.(42) However, according to figures from the military information centre published in September 2004 the number of civilian fatalities is much higher. According to these figures 662 civilians have been killed; 579 during the military emergency period, and 83 since the beginning of the civil emergency.(43)

The military has not said who is responsible for these deaths, although in the past it has blamed GAM for civilian casualties, yet at the same time, it has also admitted that it has difficulty in distinguishing between GAM and civilians.(44)

The National Commission on Human Rights (Komnas HAM), which has been permitted to carry out investigations in NAD, has confirmed that unlawful killings have been carried out by both sides, but has not published the results of its investigations. Local non-governmental organizations (NGOs) believe that hundreds of civilians have been killed by the security forces.

Amnesty International is in possession of several testimonies from individuals who witnessed extrajudicial executions of civilians by the military. These cases are described below. The names of the interviewees and their home villages have been withheld to protect them or their families from possible reprisals.

The majority of those killed appear to be men, particularly young men who are more likely to be suspected of being members of GAM and have therefore been disproportionately targeted during the operations. However, there are also reports in the media of the unlawful killing of women and children. Among the testimonies received by Amnesty International are accounts of young men who have been shot dead while at work in the paddy fields or on shrimp farms. Others, including children, have been killed or injured during indiscriminate shootings. There is also evidence that suspected members of GAM have been unlawfully killed after being taken prisoner. In some cases their bodies, sometimes bearing marks of torture, have been found or returned to their families.

4.1 Illustrative cases of extrajudicial executions

A farmer from Samalanga Sub-district in Bireun District told Amnesty International that his 25-year-old brother, Ilhami, was shot by soldiers as he was cutting grass for his livestock on 9 April 2004. The farmer believes that his brother died instantly, although his body was taken away by soldiers and only sent back to the village four days later. The two brothers had lost their father in 1990, at the height of the DOM period, when he was taken away by soldiers and never returned. Following the killing of his brother in 2004, the young farmer fled the country fearing that he might also be at risk.

A grocery shop owner from Nisam Sub-district in North Aceh District recalled how, following an exchange of fire between soldiers and GAM in the early weeks of the military emergency, the

military had come to his village and shot dead three men called Fadli, Rosmani and Lukman, who were working in the paddy fields.

Another interviewee from Samalanga Sub-district told Amnesty International that a mentally ill man, Muhammad Hussain, from his village was shot dead in his paddy field by members of the marines after being accused of having a cache of weapons. A second man was allegedly shot in the leg, but escaped. Following the incident around 30 villagers were lined up by the marines and some, including the interviewee, were beaten. The interviewee, could not recall the exact date, but claimed that the incident had taken place within the first six months of the military emergency.

A 25-year-old farmer from Kuala Simpang Sub-district in East Aceh explained to Amnesty International that the reason he had fled Indonesia in January 2004 was because two men from his village had been killed by the military that month. The first was a former schoolfriend of the farmer called Ilyas who had been mistakenly taken by the military because he shared the same name as a member of GAM for whom they were searching. Ilyas's body was found in a paddy field three days later. The interviewee, who claimed to have seen the corpse, said he could hardly recognize Ilyas because his body was so badly mutilated. The second person to be killed was a man called Mayu. He was said to be a sympathiser, although not a member of GAM, who had previously surrendered to the security forces and undergone "re-education".⁽⁴⁵⁾ He was taken away during military operations to search for GAM in January 2004 and subsequently "disappeared". His family, the local imam and other villagers reportedly pleaded with a local military commander to return his body if he was dead, in order that he could receive a proper burial. The body was subsequently returned to them.

An eyewitness account was also received by Amnesty International of the shooting of a 16-year-old boy called Muliadi while he was working in the paddy fields in Samalanga Sub-district, Bireun District in October 2003. According to the account the boy attempted to flee after being summoned by the soldier, but was shot in the ankle as he ran and subsequently captured. The boy is believed to have survived the shooting, but there is no further information on his whereabouts.

5. Arbitrary detention and unfair trials under the military emergency

As of mid-July 2004, the authorities claimed to have arrested some 2,200 members of GAM. Hundreds, and possibly more than one thousand, of those detained have been or are in the process of being tried.⁽⁴⁶⁾ The vast majority of those put on trial are accused of membership or support for GAM and have been charged under Articles 106 and 108 of Indonesia's Criminal Code (Kitab Undang-Undang Hukum Pidana, KUHP) with "rebellion", which carries up to 20 years' imprisonment or, under some provisions, the death penalty. The district courts in NAD, most of which have not been functioning for the past few years, are now reported to be operating at full capacity, staffed by judges and prosecutors drafted in from North Sumatra Province and other areas on six-month contracts.

From the dozens of cases on which Amnesty International has data, it is apparent that the detentions and trials have manifestly contravened international norms relating to the right to fair trial. As such these detentions must be considered arbitrary. It is of particular concern that some of those accused of membership or links with GAM and who have sentenced to terms of imprisonment after unfair trials are children under the age of 18. While Amnesty International condemns the use of child soldiers by GAM it believes that priority should be given to prosecuting those who have recruited the children as soldiers and not the children themselves.

Arrests and detentions, usually a policing function under Indonesia's Code of Criminal Procedure (Kitab Undang-Undang Hukum Acara Pidana, KUHAP), may be carried out by the military during a military emergency under Law 23/1959 on States of Emergency. So, although in reality the military has frequently carried out arrests in NAD in the past, it is only during the one-year period of the military emergency that it had the legal authority to do so.

Under Law 23/1959, the military has the authority to detain suspects for up to 70 days. However, Law 23/1959 contains no provisions to safeguard the rights of detainees except that arrests shall be carried out with a warrant (Article 32(4)). The extensive, although not exhaustive, safeguards contained in KUHAP are interpreted by the military not to apply. For example, lawyers who have attempted to gain access to detainees during the first days of detention have been told that they

have no right to see them. In the meantime, the safeguards in KUHAP have been universally ignored by the police in NAD.(47)

The result is a protection vacuum which has been exploited by both the military and the police to deny detainees their most basic rights. Prosecutors, judges and lawyers in NAD have also failed to exercise their responsibilities to ensure the effectiveness, impartiality and fairness of trial proceedings and are often complicit in, or directly responsible for, violating the rights of suspects.

Among the extensive and serious contraventions of international standards relating to arrest and detention documented by Amnesty International are: the failure to present warrants on arrest; failure to inform detainees of the reason for arrest or detention and inform them promptly of any charges against them; failure to promptly notify detainee's family members of their arrest or whereabouts; denial of access to legal counsel, particularly during the first days of detention; failure to provide competent and effective legal counsel in cases where lawyers are provided by the state; denial of adequate time and facilities to prepare a defence and of the right to confidential communication with legal counsel; denial of adequate medical assistance; the absence of judicial oversight of detention and of opportunities to challenge the lawfulness of detention; the absence of safeguards during interrogation, including the presence of a lawyer; and the extensive use of torture and other forms of cruel, inhuman or degrading treatment to extract confessions.(48)

Rights at the actual trial are similarly denied. Despite the efforts towards judicial reform that have been carried out by the Indonesian authorities in recent years, including measures to strengthen the independence and improve the professionalism of the judiciary and related institutions, the trials in NAD demonstrate the considerable potential for political interference and the scope for other forms of improper influence. There is also an apparent lack of awareness among judicial officials of their role in ensuring that judicial proceedings are conducted fairly and that the rights of the parties are respected.

Many detainees do not have access to adequate legal representation. There are estimated to be only 13 human rights lawyers in the province who can handle only a fraction of the total number of cases. The majority of suspects are therefore defended by state appointed lawyers who human rights activists claim show little rigour in defending their clients. There have been reports that some of these lawyers have not accompanied their clients during interrogations and that, while they may appear in court, do not actually mount a defence on behalf of the suspect.

Some trials appear to be conducted in a fashion that human rights lawyers have labelled "instant trials". In one case, that of a woman from Pidie District who was accused of providing logistical support to GAM, the trial was completed in a single day. She was found guilty and sentenced to one year in prison. A teacher who was accused of collecting rice from villagers to raise funds for GAM was quoted in the media as saying: "*I blinked and the judges banged the gavel to end the trial.*" There were reported to have been no defence witnesses at his trial. He claimed that many people from his village had wanted to testify that he was raising funds for his school, but that they were too afraid to appear in court.(49)

Typical examples of other problems that have arisen during the trials have included the use of confessions elicited as a result of torture as primary evidence against suspects. Evidence is also reported to have been fabricated in some cases. Amnesty International was informed by human rights lawyers of individuals being forced to hold a gun and stand in front of a GAM flag to be photographed – the photograph was subsequently used as evidence of their membership of GAM. In two cases reported to the organization by a credible source, GAM symbols (in one case the GAM flag and in the second the word "GAM") was scored with a knife or other sharp instrument on to the chest or back of the suspects by police officers as proof of their GAM membership.

The right to call and examine witnesses is frequently denied. It is common for prosecution witnesses, who are generally from the police or military, not to appear in court in person, thereby denying the defence an opportunity to cross-examine them. In the absence of a victim and witness protection programme, witnesses for the defence are reluctant to testify in these politically sensitive trials. A lawyer with a legal aid organization in NAD said that, from the nearly one hundred cases handled by his organization, in only two did defence witnesses agree to appear.

Attempts by defence lawyers to challenge procedural violations or complain about the torture or ill-

treatment of their clients have met with threats of longer sentences by judges. In many cases, people do not appeal their sentences, either because they are not informed of their right to do so, or because they fear that their sentence will be increased on appeal.

From information gathered by Amnesty International, corruption appears to be rife at each step of the process. Amnesty International has been informed that detainees have been able to purchase their freedom from detention; to buy less serious charges from the prosecution; and to bribe judges to reduce their sentence. In this situation, where the judicial process is so thoroughly subverted by corruption, individuals without financial resources are particularly disadvantaged.

5.1 The case of the GAM negotiators

The most prominent of the many hundreds of NAD political prisoners are Sofyan Ibrahim Tiba, Teungku Kamaruzzaman, Amni Bin Ahmad Marzuki, Teungku Muhammad Usman Lampoh Awe and Nashiruddin Bin Ahmed. The five men were all negotiators on behalf of GAM during the Centre for Humanitarian Dialogue mediated talks with the Indonesian authorities. They were arrested in May 2003 on their way to the airport in Banda Aceh to catch a flight to Tokyo, Japan for the talks on 18 May 2003 which had been called to try and prevent the break-down of the Cessation of Hostilities Agreement (CoHA). They were released briefly, but never reached Tokyo. In the meantime, the CoHA collapsed, the military emergency was declared, and the five were rearrested.

Despite the high profile of the five negotiators, their trials were riddled with irregularities among which were the denial of access to legal representation, the lack of witnesses, retroactive application of legislation and the criminalization of the act of participating in the negotiations. There have also been allegations that some of the defendants were subjected to torture and ill-treatment during and subsequent to the pre-trial detention period.

The trials took place between July and October 2003 in Banda Aceh. All five men were found guilty of "terrorism" and "rebellion" and sentenced to prison terms of between 12 and 15 years. Their appeals to the High Court and Supreme Court were rejected in January and June 2004 respectively.

Amnesty International considers the trials to have breached international standards for fair trials and calls on the Indonesian authorities to set aside the convictions and ensure that they are retried on recognizably criminal offences in trials that conform to international standards of fairness, or release them.

Compliance of legislation to international law and retroactive application of legislation

The five negotiators were charged under provisions contained in Articles 106 and 108 of Indonesia's Criminal Code with attempting to separate the region of NAD from the state and of leading a rebellion which carry maximum prison sentences of 20 years and life respectively. In addition, and uniquely in the current wave of political trials in NAD, they were also charged under Indonesia's "anti-terrorism" law with provisions that relate to "assisting and facilitating terrorism" and "planning and attempting terrorism".(50)

The Law on Combating Criminal Acts of Terrorism (Law 15/2003) was adopted in April 2003. It replaced a Government Regulation in Lieu of Law on the Elimination of Terrorism (Peraturan Pemerintah Pengganti Undang-Undang, Perpu No.1/2002) which had been enacted in the aftermath of the bombing of a night club in Bali in October 2002 in which 202 people died.(51)

Amnesty International has previously expressed its fear that Indonesia's "anti-terrorism" legislation risks undermining human rights.(52) Among Amnesty International's concerns is the undefined nature of "terror" or "acts of terrorism" that are criminalized under the law -- it is a general principle of international law that all criminal offences must be defined precisely by law so that people know what is actually prohibited. It is also of concern that the death penalty is provided for some offences, including those with which the negotiators were charged. Amnesty International believes the death penalty to be the ultimate violation of the right to life and constitutes cruel, inhuman and degrading punishment.

Rights to fair trial are also not fully guaranteed under the legislation. Specific concerns include the period of arrest (seven days based on initial evidence) and detention (six months) without judicial

review (Articles 25 and 28); a provision under which the initial examination of evidence takes place in a closed session, which would appear to deny the defendant, or their legal representative, the opportunity to challenge the evidence presented to the court (Article 26.3); and provision for trial *in absentia* (Article 35). More positively, the law does provide for the protection of victims and witnesses as well as examiners, public prosecutors and judges (Article 35), which is not generally available in Indonesia except in the recently established Human Rights Courts.(53)

In relation to the cases of the negotiators there is also a concern that the legislation was applied retroactively in violation of the principle of non-retroactivity contained in the Universal Declaration of Human Rights (UDHR). This principle is also contained in the International Covenant on Civil and Political Rights (ICCPR), which Indonesia is due to ratify this year,(54) and is reflected in Article 28.i of the 1945 Constitution of the Republic of Indonesia, which protects individuals from being prosecuted for an offence which did not constitute a penal offence at the time it was committed.(55)

The five men were accused of conspiring, attempting or assisting to commit various acts of violence by GAM. These acts of violence are alleged to have taken place between January and March 2003. However, the assistance provided to GAM by the five is alleged to have taken place in some cases from as early as June 2000: that is, over two years before the original government regulation was adopted and nearly three years before it was replaced by Law 15/2003.

Although the provisions of Law 15/2003 (under which the negotiators were charged) are the same as those contained in the October 2002 Government Regulation (which Law 15/2003 replaced), Amnesty International considers that if the principle of non-retroactivity is strictly applied, the negotiators should not have been held criminally responsible under Law 15/2003 for acts that took place prior to April 2003 – the date when the law making these acts criminal offences came into force.

This conclusion appears to be supported by a recent ruling by Indonesia's Constitutional Court. On 23 July 2004, the Constitutional Court decided that in the case of Masykur Abdul Kadir, one of the 33 men convicted in relation to the October 2002 Bali bombings, the application of Law 16/2003, which authorizes the retroactive application of Law 15/2003 on Combating criminal Acts of Terrorism, was unconstitutional because the law had been enacted after the bombings took place.

Accusations and evidence

The main accusations against the five negotiators were that by representing GAM in the negotiations, and as members of one or more of the various committees set up to implement and monitor the CoHA and the earlier Joint Understanding on a Humanitarian Pause,(56) they were aware of, supported, or took no action to prevent, various "acts of terrorism" committed by GAM. The indictments then go on to list individual incidents of bombings, unlawful killings, hostage-taking and arson allegedly committed by GAM in early 2003.

Amnesty International is not in a position to judge whether or not the individual negotiators had any direct knowledge of or involvement in the various acts of which they are accused. Nevertheless there are concerns relating to the veracity of some of the prosecution's evidence against them. Few details are provided in the indictments about the listed acts, most of which were alleged to have taken place in the first three months of 2003. At most there is a date, location and name of victim. Lawyers for the defence complained that the prosecution did not present witnesses to any of the specific incidents referred to in the indictments. Instead, the evidence in relation to these incidents appears to have been based primarily on police intelligence documents that were submitted to the court. The defence lawyers were never permitted to see these documents.(57)

Among the few witnesses summoned by the prosecution in the trials were negotiators who were themselves on trial on the same charges. They refused to appear as witnesses in each other's trials and instead their police investigation reports were read out. Not only did this deny the lawyers for the defence the opportunity to cross-examine the witnesses, but their right to time and facilities to prepare a defence was undermined because they had never been permitted to see the police investigation reports for any of the five defendants.

Amnesty International is also seriously concerned that some of the charges against the five men were based on what is clearly a non-criminal act – that of engaging in an officially approved,

internationally mediated peace process.

Their support, indirect or direct for "acts of terrorism" appeared to have been partially based on the accusation that as negotiators for GAM, or as members of the committees set up to monitor the various agreements, they conspired to commit, attempted to commit, or assisted in committing "terrorist acts". However, in some instances, the very act of negotiating appears to have been regarded as evidence of providing support for acts of violence by GAM. Sofyan Ibrahim Tiba, for example, was accused, among other things, of fighting during the deliberations with the Indonesian government, *"for the wishes, mission, ideas, and interests of GAM as one effort on behalf of their struggle in the diplomatic field"*. The indictment further added that: *"This struggle in the diplomatic field is interconnected and inseparable from the armed struggle carried out by GAM soldiers in the field – the two struggles supporting and supplementing each other."*

In the case of the charges of rebellion, the accusations by the prosecution were based almost entirely on what appear to be the legitimate actions of individuals engaged in negotiations on behalf of one party to a conflict or as members of committees set up to monitor the various agreements resulting from the talks.

For example, among the accusations against Teungku Kamaruzzaman were that he *"met with other GAM negotiators both in Aceh and overseas (in Switzerland) to plan and discuss the steps that should be taken by GAM in the diplomatic and political fields to achieve its goals through the mechanism of the negotiation."* He was also accused of knowledge of and sympathy towards GAM's opposition to the Indonesian state. Similarly, Nashiruddin Bin Ahmad is accused of meeting with other GAM negotiators *"to plan and discuss the steps that should be taken by GAM to achieve its goal of re-establishing the authority of the sultanate of Aceh-Sumatra"*. He was further accused of providing in these meetings *"ideas and suggestions that aided GAM's struggle,"* and, as a GAM member or sympathizer *"and by becoming one of the GAM representatives in negotiations, the accused was party to unlawful conspiracy, attempts to commit or give assistance to terrorist acts, that directly or indirectly form an inseparable part of the activities of GAM"*.

The judges, like the prosecutors, appear not to have drawn a distinction between recognizable criminal acts, such as acts of violence carried out by GAM, and the non-criminal act of representing a party to a conflict in peace talks. Rather, representing GAM's objectives during the talks were regarded as having encouraged and supported GAM members in committing "acts of terrorism", while the act of negotiating was itself an act of subversion or rebellion.

Following the conviction of the negotiators the Centre for Humanitarian Dialogue issued a public statement in which it expressed concern that the convictions might have been related to their activities in relation to the peace process. The statement noted that *"[b]oth parties entered into the dialogue process and negotiated the CoHA in good faith in the belief that their involvement would not expose them to any legal repercussions related to these efforts."* It also warned of the potential negative implications the convictions may have for opportunities for future dialogue in NAD.(58)

Denial of legal representation

The five negotiators were denied access to lawyers during the first seven days of their detention. Regular access was subsequently permitted, but always within the hearing of a police officer. The lawyers protested, but were told that they would be denied access to their clients if they did not agree to the presence of a police officer during their meetings.

The right to confidential communication between lawyers and their clients is contained in the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles)(59) and the Basic Principles on the Role of Lawyers.(60) Indonesia's Criminal Procedure Code (KUHAP) also provides for confidential communication between a lawyer and their client, although makes an exception in cases involving crimes against the security of the state (KUHAP Article 71). Amnesty International regards this exception to be in violation of the right to fair trial.

The lawyers were also hampered in their task of preparing a defence because they did not have access to key documents. In particular, despite requests to the prosecutors, judges and other court officials, the defence lawyers were never provided with copies of the police investigation report.

Allegations of torture and ill-treatment

During his trial, Sofyan Ibrahim Tiba submitted a complaint to the judges that he was ill-treated and threatened while in police custody. According to the letter, Sofyan Ibrahim Tiba was shot at twice on 29 July 2003 by two members of the Police Mobile Brigade (Brigade Mobil, Brimob).(61) It has also been alleged that the negotiators were forced to watch other detainees being tortured. The five were held at the Regional Police Headquarters (Polda) in Banda Aceh from the date of their arrest until August 2004, even though in theory they should have been transferred to prison once the police investigation was complete and the prosecution took over. A continual flow of new detainees is brought to Polda and in some cases they are reported to have been brought to the area outside the negotiators' cells, apparently deliberately, where they were beaten and subjected to other forms of torture in full view of the negotiators.

Further adding to the distress of the negotiators and their families was a rumour in January 2004, that they were to be among prisoners who were to be transferred from NAD to prisons in Java. Three days before the transfer, all access to them by their families was stopped. They are reported to have been put through a trial run in preparation for the transfer that included being handcuffed and chained together. In the event, they were not moved in January 2004. However, Teungku Kamaruzzaman, Amni Bin Ahmad Marzuki, Teungku Muhammad Usman Lampoh Awe and Nashiruddin Bin Ahmed were among a group of 74 prisoners from NAD transferred to prisons in West Java on 25 August 2004.(62)

The four negotiators join over 400 other prisoners from NAD who have been transferred to Java since January 2004. The authorities have claimed that the reason for the transfers is to alleviate overcrowding in NAD's prisons. In view of the large numbers of people arrested and put on trial in NAD during the past year, it is likely that there is a problem of overcrowding in prisons in NAD. However, Amnesty International is concerned that the families of the prisoners, including the four negotiators, will now have difficulty in visiting them in Java because of the long distances and expense of travelling.

Sofyan Ibrahim Tiba was not transferred because of his ill-health. Aged 57, he suffers from heart disease and diabetes and is reported to be suffering from complications resulting from these conditions, including an ear infection and "swollen legs". He is believed to have received some treatment in a military hospital in Banda Aceh, although according to some sources requests for him to see his own doctor or to be treated in a civilian hospital have been turned down. Others among the negotiators are also reported to be suffering from ill-health and may have been denied appropriate medical treatment. Muhammad Bin Usman Lampo Awe is said to be suffering from respiratory and stomach problems. There has also been an unconfirmed report that Teungku Kamaruzzam suffers from a back injury resulting from ill-treatment during an earlier period of detention.

6. Possible prisoners of conscience

Among those detained and imprisoned in NAD are political activists, humanitarian workers, human rights defenders and an environmental activist. Amnesty International believes that some of them may be prisoners of conscience - that is, individuals who are detained solely on the basis of their peaceful and legitimate activities or beliefs.

In the few years prior to the military emergency Amnesty International adopted a number of prisoners of conscience in NAD. The majority were political activists, most notably members of the Aceh Referendum Information Centre (Sentral Informasi Referendum Aceh, SIRA), which promotes a referendum on the political status of NAD. Human Rights defenders and humanitarian workers were also subjected to grave human rights violations as well as lower-level intimidation and harassment during this time. Some 18 human rights defenders are believed to have been unlawfully killed or "disappeared" between January 2000 and May 2003.

Under the military emergency the authorities have demonstrated an increased level of intolerance for civilian pro-independence activists and members of non-governmental organizations whose work involves collecting and disseminating data on, and campaigning against, human rights abuses or providing assistance to the civilian population. Threatening statements have been made by

officials;(63) a workshop organized by Komnas HAM in Banda Aceh in October 2003 was broken up by the security forces; and a number of NAD-based political or human rights organizations have been publicly accused by the military of having links with GAM and their members threatened with investigation and arrest.

In a number of cases these threats have been realised. Three members of SIRA are currently in detention or serving prison sentences. They include the head of the organization, Muhammad Nazar, who was found guilty in July 2003 of publicly expressing "feelings of hostility, hatred or contempt against the government". The charges related to his involvement in organizing peaceful pro-independence events earlier the same year. Amnesty International considers him to be a prisoner of conscience and is calling for his immediate and unconditional release.

In addition, at least 24 human rights activists, environmental activists and humanitarian workers have been detained since the imposition of the military emergency. Most have been released, but six are accused of membership or other links with GAM and have been charged and put on trial. Details of these cases are provided below. There is insufficient information to determine whether or not there is any factual basis for the accusations of links with GAM, but in light of the record of the Indonesian authorities on imprisoning prisoners of conscience in NAD and its animosity towards those who are critical of its policies there, Amnesty International believes that it is likely that they may be prisoners of conscience. If this is the case, they should be immediately and unconditionally released.

6.1 Humanitarian workers

Yusni Abdullah, aged 26, and Mahyeddin, aged 23, are members of the NAD-based humanitarian organization, the People's Crisis Centre (PCC). Established in January 1999, PCC activities are focused around providing assistance to IDPs. The two men are currently serving prison sentences of one year and one year and six months' respectively having been found guilty of rebellion.

According to their colleagues in PCC, Yusni Abdullah and Mahyeddin's arrest and detention is linked to the arrest of a member of GAM who had spent a night in their office among a group of villagers who were visiting the town of Lhokseumawe. PCC frequently provides accommodation for villagers who have travelled to the town and who cannot return the same day because of the long distances and inadequate transportation. The member of GAM was subsequently arrested and is believed to have admitted, possibly under torture, to staying at the PCC office. In the current climate, this single link with PCC appears to have been sufficient to accuse two of its members of involvement with GAM.

Yusni Abdullah and Mahyeddin were allegedly subjected to torture in order to obtain confessions of their links with GAM. Yusni Abdullah was arrested from PCC's office in Lhokseumawe on the morning of 15 December 2003 and taken to a local post of the Combined Intelligence Task Force (Satuan Gabungan Intelijen, SGI). There he was reportedly beaten and questioned about the whereabouts of Sofyan Daud, the GAM Commander for North Aceh. When he said that he did not know, a member of SGI is alleged to have told him "*if you do not want to reveal the information, you will be annihilated*". He was also ordered to admit that PCC was involved with GAM. Not wishing to implicate the whole organization, he eventually admitted that he had been a member of GAM prior to joining PCC in 1999.

Mahyeddin was arrested some hours later on the same day also by members of SGI. At the SGI post he too was reported to have been beaten, questioned about the whereabouts of GAM and accused of passing information to them. On two separate occasions a plastic bag was reportedly placed over Mahyeddin's head until he was forced to admit that he knew of some GAM members.

Both men were subsequently transferred to Lhokseumawe Prison where they were allegedly subjected to further beatings and interrogations over the course of several days by the military police. Mahyeddin was told by a police officer that he would be released in exchange for a payment of 900,000 rupiah (US\$100). He refused to pay the bribe and instead he and Yusni Abdullah were put on trial on charges of rebellion.

6.2 Student and women's activists

Three activists with the Acehese Democratic Women's Organization (Organisasi Perempuan Aceh Demokratik, ORPAD), whose work is focused on the education and empowerment of women, and two student activists were arrested in Banda Aceh in February 2004 by members of Brimob. One of the student activists, Iwan Irama Putra (27 years old) is still in detention and is facing trial. He is a member of the Network of Lingke Students (Ikatan Mahasiswa dan Pelajar Lingke, Impel), whose work includes providing assistance for IDPs, and Student Solidarity for the People (Solidaritas Mahasiswa untuk Rakyat, SMUR), a student-based human rights and education group. Iwan Irama Putra has been accused of involvement in an attack on a Brimob post in Central Aceh District in 2000 in which three Brimob officers were killed. Harlina (f) aged 22, a member of both ORPAD and Impel, was also accused of involvement in the same incident, but has been released.

The arrests of the activists followed the detention on 19 February 2004 of Masrizal, an IDP from Central Aceh who had been living in Banda Aceh since 2001 and who the authorities allege is a member of GAM. Masrizal is acquainted with Iwan Irama Putra through his work in providing assistance to IDPs in Central Aceh with Impel. It is believed that Masrizal may have referred to Impel and the other non-governmental organizations under interrogation and that this has formed the basis of the accusations against Iwan Irama Putra.

Iwan Irama Putra was arrested at the home of a friend on 22 February 2004. The next day a series of raids were carried out on the homes of members of ORPAD. Harlina, Nursida (f), aged 22, and Nova Rahyu (f), aged 23, were arrested during the raids and taken to a Brimob post in the Lingke area of Banda Aceh. A sixth person called Syafruddin (m) who is a member of the student human rights and education group, SMUR, was arrested from a student hostel the following day.

Both Harlina and Syafruddin are reported to have been beaten on arrest. Harlina, Masrizal and Iwan Irama Putra were also reported to have been beaten at the Brimob post to where they were all taken.

Nursida, Nova Rahyu and Syafruddin were released within 24 hours. All have fled the province. Harlina was detained until 9 March 2004 when she was conditionally released. It is unclear whether she remains a suspect in the case, but she has been called as a witness against Iwan Irama Putra. At the time of writing, Iwan Irama Putra was being held in Keudah Prison in Banda Aceh on charges of "rebellion". Masrizal was transferred to Takengon Prison in Central Aceh in March 2004. It is not known if he has been charged or brought to trial.

6.3 Environmental activist

Bestari Raden, an environmental and indigenous peoples activist from NAD, was arrested in March 2004 and charged with "separatism" (KUHP Article 106), "rebellion" (KUHP Article 108 sub-clause 1.2) and "inciting acts of violence" (KUHP Article 160). Cumulatively these charges carry a sentence of up to 26 years' imprisonment. His trial, which began on 28 June 2004 in Tapak Tuan District Court, South Aceh, was still ongoing at the time of writing. The verdict is expected in early October 2004.

Bestari Raden was arrested by members of the Southeast Aceh District Military Command (Kodim) on 23 March 2004 during a visit to the district as part of a 37 member government team set up to review the Ladia Galaska road project. The proposed 500km-long Ladia Galaska highway has been strongly opposed by environmental groups because it will cut through virgin tropical rainforest in the Gunung Leuser National Park in NAD and North Sumatra. In contrast, there is reported to be support for the project by members of the security forces.⁽⁶⁴⁾ Some observers believe that Bestari Raden's arrest may be connected to his efforts to halt the construction of the highway as well as his earlier activities protesting against logging operations in NAD. Fellow activists have speculated that the reason for his arrest may also involve the settling of old scores by members of the police and businessmen in the area.

On his arrest Bestari Raden was accused of membership of GAM, of carrying out operations with, and extorting money on behalf of, GAM. He was also accused of organizing demonstrations in support of a referendum for NAD in 1999; of protesting against environmental damage caused by the logging operations by PT Medan Remaja Timber; and of inciting others to commit an arson attack on the company's logging camp in South Aceh District also in 1999.

Bestari Raden is reported to have confessed to all of the charges soon after his arrest because he

feared that he would be subjected to torture or ill-treatment. There is no information to suggest that he was tortured on this occasion, but his fear was based on earlier experiences in 1999 when he was detained on at least two separate occasions by police in South Aceh. On one of these occasions he is alleged to have been beaten by members of Brimob. These earlier arrests are reported to have been linked to his anti-logging protests which had earned him the reputation as a *provocateur* which, in the NAD context, implies GAM membership. His name was subsequently placed on a "wanted list" of GAM members. Colleagues, friends and relatives have always claimed that he is not a member of GAM nor linked to it in any way.

The arrests, beating and other forms of intimidation and harassment to which he was allegedly subjected in 1999, caused Bestari Raden to leave the province and take up residence in the Indonesian capital of Jakarta. From 2001-2003 he served as a Coordinator for the Alliance of Indigenous Peoples of the Archipelago (Aliansi Masyarakat Adat Nusantara, AMAN), a nationwide alliance that campaigns for the rights of indigenous people. In 2004 he became the national coordinator of the Environmental Caucus (Kaukus Lingkungan), a new alliance of Indonesia-based environmental groups.

Bestari Raden's defence team claims there are no basis for any of the current charges against him. Indeed, part way through the trial, the prosecution dropped the charge of "separatism". This charge was based on the accusation of his links with GAM and was dropped on the basis that there was insufficient evidence.

However, the two other charges of "rebellion" and "inciting to violence" still stand and the prosecution is demanding a prison sentence of five years for them. Bestari Raden's lawyers claim that he has not taken part in any activities in support of referendum on NAD's political future. They have also pointed out that, although he has always been vocal in his opposition to the environmental damage caused by logging, this did not amount to inciting others to commit acts of violence against logging companies.

Bestari Raden remains in prison in Tapak Tuan pending the outcome of his trial.

7. Torture and ill-treatment under the military emergency

"It's a good lesson how the [US and British] soldiers in Iraq treated the prisoners. We put it in our education in Kopassus units that they cannot and should not imitate this." Major General Sriyanto the Commander of the Special Forces Command (Kopassus).(65)

"For example, my soldier slugs a suspect across the face. That's no problem. As long as he is able to function after the questioning. [But] if it's gross torture which causes someone to be incapacitated... that's a no-no." The former Regional Military Commander and Commander of the Provincial Martial Law Authority (Penguasa Darurat Militer Daerah, PDMD) Brigadier-General Bambang Darmono, November 2003.(66)

Torture and ill-treatment during investigation appear to be routine in both military and police detention in NAD. However, such practices are not confined to places of detention. Beatings and other forms of torture and ill-treatment, particularly of young men, in order to obtain information on the whereabouts of GAM, to intimidate and to punish are commonplace during "sweeping operations" by the security forces in the villages. Rape and other forms of sexual violence against women and girls have also taken place in these contexts.

The methods of torture under the military emergency that have been documented by Amnesty International are consistent with well-established patterns of torture and ill-treatment in NAD over many years. It is striking that, despite significant changes in Indonesia's political landscape and important reforms in some areas, torture still appears to be a *modus operandi* in situations where there is resistance, armed or otherwise, to the state.

Those principally responsible for the torture have been military and police officials. The extent and severity of torture in NAD, and the failure of the Indonesian authorities to take effective preventative measures despite the numerous allegations both recent and past, indicates a high level of knowledge and acceptance of the practice among senior officials, if not actual authorization.

7.1 Torture and ill-treatment of political prisoners

Lawyers in NAD told Amnesty International that political detainees, almost without exception, are tortured and ill-treated within the first days of detention. The primary objective of this torture is to extract a confession of GAM membership or support which is then used as the basis for the charges against them.

The methods of torture commonly suffered by political detainees in NAD include: beatings, for which the butt of a gun, rattan stick, metal bar or wooden beam are commonly used; slapping, punching, kicking with heavy military boots and being stamped on. Other methods used include: electric shocks; near strangulation by placing a rope or wire noose around the neck and tightening; near suffocation by placing a plastic bag over the head; burning with lighted cigarettes or cigarette lighters; cutting the skin with a bayonet or other sharp instrument; having the muzzle of a gun placed in the mouth; death threats; immersion for long periods in water; showering with cold water or urine; sexual molestation and rape. Detainees have also been forced to swallow objects such as cardboard noodle boxes, a metal bolt nut and hair.

In addition, detainees have been forced to watch others being tortured and to participate in the torture or ill-treatment of others. There are reported cases of detainees being ordered to beat and slap other detainees. In some cases they have been ordered to kiss, smell, tickle or lick the armpits of or perform oral sex on other prisoners. In one case reported to Amnesty International, a male detainee was forced to have sexual intercourse with another male detainee.

The intensity of the torture or ill-treatment is reported to decrease after the first seven days, or after a confession has been obtained. However, the risk of further torture or ill-treatment is not entirely eliminated and, according to lawyers, the threat of being returned to military or police custody to face further torture, compels many of those tried for political crimes to plead guilty or offer no defence.

7.2 Illustrative cases of torture and ill-treatment of political prisoners

Information contained in the following cases has been obtained by Amnesty International both from interviews with victims and from reliable sources in NAD. The names of the victims and the names of their village have been withheld to protect them from possible reprisals.

a) A 22-year-old man, originally from Leupung Sub-district in Aceh Besar District, was arrested on 8 June 2003 and taken to Aceh Besar Police Resort (Polres). There, over the course of four days he was reported to have been beaten with a rifle butt, a rattan stick and leather shoes, kicked, trampled on by some 30 people and burnt with a cigarette. He was allegedly ordered to eat an instant noodle box and swallow a metal bolt nut. He was transferred to Lambaro police station, Aceh Besar. There he was reported to have been kicked, had the muzzle of a SS1 assault rifle placed in his mouth and he was trampled on. On one occasion he was reportedly forced to strip naked and to stand on his head and on another to perform oral sex on a fellow detainee. His hands were crushed using the metal bar used to secure the cell door and his eyes poked with fingers. He was forced to drink alcohol and smoke marijuana. In Keudah Prison in Banda Aceh, to where he was later transferred, he was ordered to run barefoot on hot tarmac with the result that the soles of his feet were burnt. He is since believed to have been put on trial, although the outcome is not known.

b) A 20-year-old man from Indrapuri Sub-district in Aceh Besar District was arrested at 8am on 8 July 2003 by soldiers from the West Java-based unit, Siliwangi Regional Command (Kodam III/Siliwangi) and police from the NAD Regional Police Command (Polda). According to information received by Amnesty International, before being taken to a military post in Lam Klieng, Aceh Besar, he was paraded around his village and beaten. At the military post his face was allegedly smeared with cow dung and he was forced to eat chicken dung. He was hit with a piece of wood, his fingers squeezed into an electric socket until he received an electric shock, and he was sprayed with urine. He is reported to have been transferred to another military post where it is alleged that his hands were pinned under a chair and they were then pricked with a needle. He was then said to have been subjected to further kicking and beating at the NAD Regional Military Command (Kodam) and Polda. At Polda, where he spent five days, fellow detainees were ordered to slap him. At Keudah Prison, where he was sent pending his trial he was also ordered to crawl into a ditch. He has since been sentenced to one year and six months' imprisonment.

c) A 25-year-old small shop owner from North Aceh District was arrested by members of Brimob in January 2004. He was accused of being a GAM intelligence officer. He denied that this is the case and believes he was detained because he had refused a request by members of Brimob to give them "cigarette money". He was taken to the local Brimob post and held for 24 hours during which time he claimed to have been beaten on the face and in his eyes with the butt of a rifle so that his nose was broken. He was also burnt with cigarettes on the arms, stomach and thighs. Dozens of burn marks were still visible on his arms when Amnesty International met him in May 2004. He was also still suffering from nose bleeds. He was released after members of his village came to look for him and on a payment of 200,000 rupiah (US\$22). He has since fled the country.

d) A 30-year-old rice farmer also from North Aceh was arrested in March 2004 by soldiers from the Siliwangi District Command. He claimed to have been taken to a temporary military post where he was tortured because he could not give names of GAM members. According to his testimony, his hands were tied behind his back and he was beaten and punched by 12 different people on his face and body. At one point he was struck on his head with the antennae of a two way radio and a hot electric soldering iron was dragged across his chest five times. The torture took place during the first day of detention. He was released two days later after agreeing to pay half a million rupiah (US\$55) for his release. He was given three days to gather the money, but fled before the deadline and is now living outside Indonesia.

e) A 29-year-old a farmer from Indrapuri Sub-district, Aceh Besar District was arrested on 15 August 2003 at around 5pm by soldiers from the Rajawali military unit and local police officers. He was taken to the sub-district community centre for interrogation, during which time he was punched in the face, kicked in the chest, hit with a wooden plank on the back, and he was trampled on. He is reported to have sustained further beatings at a military police post and in Keudah Prison. At the Regional Police Headquarters (Polda) in Banda Aceh where he, he was reportedly forced to have sexual intercourse with another male detainee. He has since been sentenced to two years' imprisonment.

f) A 23-year-old builder from Darussalam Sub-district in Aceh Besar District was arrested on 15 July 2003 by soldiers and local police officers. He was taken to the District Military Command Headquarters (Kodim) where he is reported to have been locked in a small room with 12 soldiers who proceeded to beat him with fists, rifle butts and military helmets. The same afternoon he was ordered to stand in front of his cell fully clothed while eight buckets of cold water were poured over him. At a military post in Mata Ie, Aceh Besar he was allegedly hit with a wooden mallet on his head and nails and received burns on his lips, hands and elbows. At Polda in Banda Aceh he was again beaten and kicked by police officers. He and other detainees were ordered to tickle one another and to lick each others armpits. He has since been put on trial and sentenced to three years and six months' imprisonment.

g) A market vendor from Muara Dua, Lhokseumawe was arrested by members of the military shortly before the parliamentary elections which took place on 5 April 2004. He told Amnesty International that he had provided food and other support to GAM, but claimed not to be a member. He said that he was held for 24 hours at a military post in his village where he was tortured as he was questioned about the whereabouts of GAM and of their weapons. According to his testimony, he was beaten with the butt of a gun, hung upside down by his feet for approximately 20 minutes and a plastic bag was placed over his head. At one point he felt his back being burnt but was unable to see what was causing the pain. He fled the country shortly after he was released.

7.3 Torture and ill-treatment in public settings

Both the military and the police have also carried out torture and ill-treatment in public places and in homes. This frequently takes place during "sweepings" of villages and house-to-house searches, most commonly in rural areas and often after an exchange of fire between the security forces and GAM. During such searches it is common for the men of the village to be rounded-up and beaten, kicked and slapped to force them to cooperate in locating a suspect or as a form of reprisal.

Torture and other forms of cruel, inhuman and degrading treatment are also inflicted as a punishment for reasons such as failing to turn up for, or falling asleep during compulsory guard duty or for refusing to provide members of the military or police with free cigarettes or other provisions on request. Punishments that have been reported for such misdemeanours are beatings,

submersion in water for prolonged periods, being forced to lie in a muddy gutter or to simulate swimming while lying on dry ground.

7.4 Illustrative cases of torture and ill-treatment in public settings

a) A grocery shop owner, aged 51, from Nisam Sub-district in North Aceh, explained to Amnesty International that he was regarded by the Indonesian military as a "separatist" and was subjected to beatings on several occasions because he had given cigarettes, under pressure, to members of GAM. In one incident, before he fled the country in April 2004, around 60 soldiers arrived in his village and rounded up between 20 and 30 men. The men were beaten, including the grocery shop owner, whose little finger was broken and ribs bruised as a result.

b) A 31-year-old farmer from Banda Baru Sub-district in Pidie District left Indonesia in March 2004 to escape the numerous beatings to which he had been subjected during military operations in his village. He described how the men of the village had been repeatedly lined up and individuals, particularly the younger men, would be called out of the line and beaten. He claimed to have been beaten on 12 separate occasions since the beginning of the military emergency.

c) A farmer, aged 27, from Muara Tiga Sub-district in Pidie District claimed that he was stopped by two soldiers in plain clothes at a checkpoint on 16 July 2003 as he was on his way to tend his garden. The soldiers accused him of being a member of GAM. When he denied the accusation he was beaten. He suffered a broken knee from having been kicked and a broken tooth from being hit in the mouth with a rifle butt. He was left on the road to limp home. He later heard that he was being searched for by the military and so fled initially to Medan, the capital of North Sumatra Province, but feeling insecure in Medan, he eventually fled the country in January 2004. When Amnesty International met with him in May 2004, he was still limping as a result of his injuries.

d) Night guards in a village in Baitussalam Sub-district, Aceh Besar District have been subjected to beatings and forced to perform humiliating acts for failing to turn up for compulsory night guard duty, falling asleep while on duty, or otherwise failing to perform their duties. Punishments have included beatings and standing in water for several hours. On one occasion some youths from the village moved the bamboo guard post as a joke. When members of Brimob arrived and discovered what had happened all the men in the compound were gathered and ordered to stand in muddy water and then to watch as a local school teacher was singled out and verbally insulted in public. Another informant described how a 35-year-old man called Abdurrahman from his village in Jeunieb Sub-district, Bireun District was forced to lie in water for half a day for failing to turn up for duty one night in December 2003.

7.5 Indonesia's obligations under the Convention against Torture

Indonesia acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in 1998. In consideration of its initial report to the Committee against Torture⁽⁶⁷⁾ in 2001, the Committee expressed its concern about the *"large numbers 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 the authorities, and in areas of armed conflict (Aceh, Papua, Maluku etc.)"*.⁽⁶⁸⁾

The concerns of the Committee against Torture echoed those made nearly 10 years earlier by the Special Rapporteur on torture following a visit to Indonesia. In his 1992 report following the visit the Special Rapporteur noted:

"... the Special Rapporteur cannot avoid the conclusion that torture occurs in Indonesia, in particular in cases which are considered to endanger the security of the State. In areas which are deemed unstable, ... torture is said to be practised rather routinely".⁽⁶⁹⁾

As a state party to the Convention against Torture, Indonesia is required to take effective legislative, administrative, judicial or other measures to prevent acts of torture from taking place. However, little progress has so far been made to implement the various measures contained in the Convention against Torture, or in implementing recommendations made by the Committee against Torture.

8. Violence against women

Women have been subjected to human rights violations, including unlawful killings, arbitrary detention and torture during the military emergency. However, physical violence is only one aspect of the suffering experienced by women in NAD. The years of conflict have also brought economic hardship and isolation. Thousands of women have been widowed over the years as a result of unlawful killings and "disappearances" of their husbands. Between 1989 and 1998, Komnas HAM estimated that 3,000 women were widowed as direct result of the conflict. Given the large number of people who have been killed during the military emergency and afterwards it can be assumed that this number will have significantly increased since May 2003.

Women are also left as sole providers because their husbands and other male relatives have fled. For example, it is notable that the overwhelming majority of the refugees who have fled since the beginning of the military emergency are men. Many leave behind wives and children. In some cases they have left them in the care of relatives, but often they must fend for themselves. Many of the refugees to whom Amnesty International spoke expressed anxiety about the well-being of their families and their inability to support them. In some cases they had lost touch with them altogether.

8.1 Arbitrary detention of women

Women who have been accused of membership of GAM or of providing logistical or other support to it have been detained and imprisoned. Wives and other relatives of GAM members, or suspected GAM members have also been detained, in some cases effectively as hostages *in lieu* of their male relatives.

As of April 2004, there were reported to be 33 women convicted of GAM-related offences in Lhoknga Prison in Aceh Besar District. They were serving prison sentences of between one and 11 years. There are also believed to be female prisoners in other prisons in NAD, although the numbers are unknown. Amnesty International believes that these women may have been convicted in unfair trials.

In addition, Amnesty International has received reports of nearly 50 separate cases in which female relatives and children of GAM commanders and troops have been detained since May 2003. In some cases they are reported to have been tortured or ill-treated, in others they are alleged to have been forced to take part in military operations. Amnesty International cannot verify most of the individual reports, but the detention of wives, children and other family members *in lieu* of their male relatives in GAM, is known to have taken place in other counter-insurgency campaigns in Indonesia.

In one confirmed case, the wife and two young children, aged three years and four months, of GAM's Commander-in-Chief, Muzakkir Manaf were detained briefly in April 2004. In another case, a reliable source, who was involved in negotiating the release of the wife of a GAM Commander in Aceh Besar District held by Kopassus at their base in Indra Puri, Aceh Besar, told Amnesty International that Kopassus insisted that she was not being detained, but that they had merely asked her to go for questioning. According to the source, she was not physically harmed although she was intimidated. She was instructed to persuade her husband to surrender.

8.2 Rape and other sexual crimes

There is a long-established pattern of rape and other sexual crimes against women in NAD which have been repeated in the current operations. Female detainees have been subjected to torture, including rape and other forms of sexual violence including fondling of breasts and genitalia. They have also been threatened with rape and subjected to verbal sexual insults.

Rape and other forms of sexual violence have also been committed during military exercises in the villages of NAD both before and during the latest military campaign. Women are reported to have been forced to strip naked in front of soldiers and in some cases have been fondled. There are also reports of women being forced to expose their breasts to members of the security forces so that they can check for crescent moon tattoos which members of Inong Bale, the female unit of GAM, are reported to bear on their breasts.

The extent of such crimes is unknown, but the fact that they take place is confirmed by first-hand and eyewitness accounts received by Amnesty International, by information received from credible NGOs, by the findings of investigations carried out by Komnas HAM and by investigations and trials

by the military into several cases.

8.3 Illustrative cases of violence against women

Torture and rape in military and police detention

One woman told Amnesty International that she had been stripped naked and raped by six soldiers while in military detention in Pidie District from 2 July to 28 September 2003. The woman explained that her family is suspected of close links to GAM and that over the course of the last 10 years, her four brothers and husband have been shot dead by the military. She denied any links with GAM, but said that she believes she and her family have been targeted because her father is a wealthy coffee merchant who has angered members of the military by refusing to pay bribes. While being interrogated, the woman was accused of providing food to GAM and was asked about the whereabouts of her father.

Initially she was held at a military post in Kembang Tanjung, in Pidie District. It was during this time that she claims to have been raped. She also described how she was punched and beaten with a wooden plank and, on one occasion, forced to stand in a tank of cold water up to her neck for nine hours. Her family was not informed of her whereabouts, although after searching for one month they did manage to locate her. Her requests to see her three children, ranging in age from four to 13 years old, were met with refusal and threats that they would be killed. The woman was eventually released after paying five million rupiah (US\$555) and has since fled Indonesia leaving her three children in the care of relatives.

A 27-year-old human rights activist, who was arrested in Pidie District in June 2003 by the troops from both Delima Sub-district Military Command (Koramil Delima) and Brimob, was reported to have been subjected to sexual violence while in detention. According to an interview in the media, the activist had her headscarf and shirt ripped off, was forced to fondle the genitalia of a soldier, and was threatened with gang rape if she did not admit to being a member of GAM. She is also reported to have been punched, kicked, slapped and throttled as a confession was demanded from her. The activist was released after two weeks and has since left the province.(70)

Information on other cases of violence against women has been received by Amnesty International by reliable sources in NAD. Among the cases is that of a 25-year-old woman who works as a farmer in Montasik Sub-district, Aceh Besar District. She was arrested on 11 June 2003 by soldiers from Rajawali unit. During the first day of detention she is reported to have been hit with the butt of a rifle, slapped, and trampled on as she knelt down. She was also threatened with rape with comments such as: "*We have now a blanket and a place to satisfy our libido*". She has since been put on trial and has been sentenced to two years and eight months' imprisonment.

A female tailor, aged 32, from Kuta Baro Sub-district, Aceh Besar District, is reported to have been arrested on 22 July 2003 by members of Brimob and the local police. She was taken to the office of the head of Kutabaro Sub-district where she was allegedly beaten with a metal bar, a rifle butt and a rattan cane and slapped. She was subsequently transferred to Kuta Baro Police Sector (Polsek) and then to Lambaro Polsek where she was once again reported to have been subjected to beatings and slappings. As she was beaten she was questioned about the numbers of guns belonging to her and the whereabouts of members of her family and friends who were suspected of being members of GAM. She has since been put on trial and sentenced to two years and two months' imprisonment.

Rape of girls

A 12-year-old girl is alleged to have been raped by soldiers in August 2003 in Jeumpa Sub-district, Bireun District. A neighbour of the girl described to Amnesty International how he had seen the military arrive in trucks, fire shots into the air and burn houses in the village. It was during this raid that the rape is alleged to have taken place. The neighbour claimed that villagers had tried to report the incident, including the rape, both to the local military and the Sub-district Head (Camat), but that both refused to consider it.

Several cases of rape of teenage girls have also been reported in the respected weekly news journal, Tempo. In June 2003, it reported on separate cases of three girls aged 14, 15 and 16, who it was alleged had been raped by members of the military or Brimob. The 16-year-old claimed that

she was gang raped by soldiers who had come to her house to look for her brother. The 14-year-old is alleged to have been raped by four members of Brimob.(71)

Cases of public stripping and beating of women

One 29-year-old woman from Samalanga Sub-district in North Aceh District told Amnesty International how soldiers had come to her house in October 2003, claiming to be searching for her father. She explained that her father had died many years previously and that she was not married. Nevertheless, she was forced to take off her clothes and was hit with the butt of a rifle on her face and back. She was instructed to give the soldiers gasoline which they then used to set light to her uncle's house next door. Following this experience, she decided to leave Indonesia. She borrowed two million rupiah (US\$220) from friends to help finance the journey. She is now in debt and, unable to find a job, and has little prospect of being able to repay the money.

A farmer from Ranto Peureulak Sub-district in East Aceh told Amnesty International that to his knowledge no women had been raped in his village, but that early on in the military emergency three women had been forced to strip in public and were touched and fondled, including on the genitals. He claimed to have seen the three women, one of whom was pregnant, being slapped as they tried to resist and that they were later tied up with their husbands. It is not known what happened to them subsequently.

8.4 Indonesia's obligations under international law to protect women against human rights violations

Under international law rape and other sexual crimes constitute grave violations of international human rights and humanitarian law, and are recognised as war crimes and crimes against humanity. They have been recognized in the Rome Statute of the International Criminal Tribunal as such.(72) Rape and other sexual abuse by officials constitute torture or ill-treatment and states have an obligation to prohibit, prevent and punish such acts.

Indonesia, as a state party to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), has a general obligation to respect, protect and fulfil the human rights of women. Gender-based violence such as rape and other sexual crimes against women constitute a form of discrimination. The Committee on the Elimination of All Forms of Discrimination against Women in their General Recommendation 19 have confirmed that: "*Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men*".

UN Security Council Resolution 1325 (2000) on Women, Peace and Security requires all parties to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts. Among the applicable standards is the CEDAW and the Convention on the Rights of the Child (CRC) both of which have been ratified by Indonesia.(73) In addition, Common Article 3 of the four Geneva Conventions which relates to conflicts not of an international nature, prohibits violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture; the taking of hostages and outrages upon personal dignity.

In 1998 the Committee on the Elimination of All Forms of Discrimination against Women expressed concern that the information provided by Indonesia in its report to the Committee on the situation of armed conflict reflected a limited understanding of the problem. The Committee noted that the government's remarks were "*confined to the participation of women in the armed forces and do not address the vulnerability of women to sexual exploitation in conflict situations, as well as a range of other human rights abuses affecting women in such conflict*".(74)

Later the same year, the UN Special Rapporteur on violence against women, its causes and consequences visited Indonesia and Timor-Leste. In her subsequent report the Special Rapporteur stated that rape had been used "*as an instrument of torture by certain elements of the Indonesian army in Aceh [NAD], Irian Jaya [Papua] and East Timor [Timor-Leste]*". She urged the Indonesian government to acknowledge that human rights violations had taken place in Indonesia and to "*move beyond a denial culture*".(75)

Indonesia has failed to adequately address the rape and sexual violence committed against women

in the NAD or to take measures to prevent their occurrence. The culture of denial of violence against women in Indonesia, both in conflict and non-conflict situations, also remains strong. Although important initiatives have been taken in some areas,(76) women in situations of armed conflict remain as vulnerable as they were when the UN experts made their comments six years ago.

9. A well-established pattern of impunity

"I've told my staff and forces in Aceh to be careful about harming civilians." The Chief of the Police of the Republic of Indonesia (Polri), General D'ai Bachtiar, May 2003.(77)

"If there are soldiers who do violate (the order) and cause suffering to people in the field, then just shoot them in the head." The Commander of the Armed Forces, General Endriatono Sutarto at a briefing of military officers in Jakarta in May 2003.(78)

"Any soldier who misbehaves will be sanctioned, even for minor disciplinary violations, let alone if they kill someone arbitrarily." The Military Chief of Staff, General Ryamizard Ryacudu.(79)

It is notable that in this most recent military campaign against GAM, some senior military and police officials have publicly expressed their commitment to the concept of accountability. In marked contrast to prevailing practices during the DOM period, the military has also taken it upon itself to investigate a number of allegations of human rights violations by its members and, in some cases, has brought soldiers to trial before military tribunals.

In March 2004, the head of the military prosecution office in Banda Aceh stated that 120 soldiers had been tried in military tribunals in Banda Aceh and Lhokseumawe in 90 separate cases since the beginning of the military emergency. According to the official, the majority of the cases were for theft, violence, rape and extortion. Two months later, in May 2004, the Commander of the Armed Forces, General Endriatono Sutarto, stated that 511 violations had been recorded since May 2003. Of these 511 violations, it is claimed that suspects in 429 cases had been brought before military courts and that 57 soldiers had been convicted and sentenced to terms of imprisonment.(80)

Field investigations have also been carried out Komnas HAM in NAD. Investigation teams have been sent on several occasions and, although the full reports of their findings have not been made public, there has been media coverage of the key points. Its latest report in March 2004 was reported to have included allegations of extrajudicial executions, torture, and rape and other sexual crimes by members of the Indonesian security forces, including high ranking military officers. Komnas HAM has also accused GAM of committing unlawful killings, torture, kidnappings, sexual violence, violations of the rights of children and arson. Both the security forces and GAM are accused of extortion.(81)

In the Indonesian context, where impunity for human rights violations has been firmly entrenched for many years, these initiatives are not without significance. However, ultimately they must be judged against their success in reducing the level of human rights abuses in NAD. In this regard, it is not clear that they have had any visible effect.

The reason for this lies in part in their limited scope, but is more fundamentally rooted in the lack of a deterrent in the form of either legislation or institutions through which allegations of human rights violations can be effectively and credibly resolved. Other than Komnas HAM, the capacity of which is limited, no mechanism exists in Indonesia through which allegations of human rights violations can be independently and impartially investigated. Trials of members of the security forces generally take place in military courts which, in Amnesty International's view, are not independent or impartial. In the meantime, the effectiveness of the new human rights courts in bringing perpetrators of grave human rights violations to justice has been brought into serious doubt by their recent failure to hold members of the security forces accountable for crimes against humanity committed in Timor-Leste in 1999.(82)

Specifically in NAD, no perpetrators have ever been brought to trial for any of the thousands of cases of human rights violations believed to have taken place during the nine-year-long DOM period, and Amnesty International knows of only two instances in which cases have been investigated and resulted in trials between 1998 and May 2003.(83)

The recent cases which have been investigated by the military and in which trials of members of the

security forces have taken place, while a positive development, represent only a fraction of the number of allegations of human rights violations during the current military campaign. Moreover, the investigation and trial of military officials by the military is not regarded as being impartial or independent. In order for the investigations and trials to be effective and to be regarded as credible, persons belonging to the military or police who are alleged to have committed crimes under Indonesia's national law and infringements of international law should be brought to trial in civilian courts in processes which are in accordance with international standards for fair trials.

While Komnas HAM's efforts in NAD are to be welcomed, the institution has historically encountered obstacles in carrying out its work in NAD and elsewhere in Indonesia. Its findings have at times been controversial, its recommendations have frequently not been implemented and its occasional strong statements over the years about human rights violations have had little impact. In many respects little has changed. In the early months of the military emergency, Komnas HAM compiled a report, the validity of which was challenged by the military. Both the Commander of the Armed Forces and the Military Chief of Staff were reported to have reacted with hostility to its findings. More recently the tone of military response has been more constructive. General Endriatono Sutarto, for example, is reported to have said that: "*We welcome Komnas HAM to investigate rights abuses allegedly committed by my troops while carrying out their duties*", but a warning was also added that the investigations "*should not have a political motive. It should also record human rights violations committed by rebels*".⁽⁸⁴⁾ It is not known what the government response to Komnas HAM's reports has been, although it appears that up until now no action has been taken to initiate the necessary criminal investigations into its allegations of human rights abuses.

Other than Komnas HAM no independent human rights organization has been permitted to carry out field investigations in NAD since the beginning of the military emergency.

Moreover, no UN body has ever been permitted to visit the province. Requests to visit NAD by the Special Rapporteur on violence against women, its causes and consequences in 1998 and the Special Rapporteur on torture in 1991 were refused by the Indonesian authorities on the grounds that there was insufficient time. A request by the Special Rapporteur on the independence of judges and lawyers to visit NAD (as well as Papua and the Moluccas) during his visit to Indonesia in July 2002 was turned down on the basis that his security could not be guaranteed. In early 2003, the Special Representative on human rights defenders was informed that she would not receive an invitation to visit Indonesia because there had been several recent visits by other UN experts. The Special Rapporteur on torture has had an outstanding request for an invitation for many years to which no response has been received.

10. Human rights abuses by GAM

GAM is reported to have committed human rights abuses against both military and civilian targets both during and prior to the current military operations. Amnesty International condemns unreservedly acts of violence, such as unlawful killings and the taking of hostages, by armed opposition groups and has repeatedly over the years called upon GAM to uphold and abide by the principals of international humanitarian law.

GAM is believed to have abducted or taken several hundred people hostage over the past year contrary to international humanitarian law. Some 140 people were reported to have been released in May 2004. Among those who have been abducted are individuals suspected of collaborating with the Indonesian security forces; local politicians; civil servants; individuals engaged in government projects, relatives of military or police officers and journalists.

Among the hostages that have been taken were Ersia Siregar, a journalist with the private television channel, Rajawali Citra Televisi Indonesia (RCTI), his cameraman Ferry Santoro and their driver. The three were stopped by GAM as they were driving through Langsa in East Aceh District on 29 June 2003. It is believed that they were targeted because they were carrying in their vehicle the wives of two Indonesian military officers who were also taken hostage at the same time. One of the two women, Cut Soraya, was pregnant at the time.

On 3 July 2003, a press release was issued by Tengku Sofyan Dawood, the military spokesman for GAM in NAD, stating that the five were being held for investigation purposes and that "*once they are proven to be innocent under the usual international norms, and we are certain that they are not*

TNI spies... we shall release them immediately".(85) Malik Mahmood, of the ASNLF in Sweden, has denied that the journalists were hostages because no demand for payment or other demands were made in exchange for their release. In the case of the two women, he acknowledged that the local GAM commander had initially asked for wives of GAM members detained by the Indonesian security forces to be exchanged for them, but that on the intervention of ASNLF in Sweden the demands were dropped.(86) Whilst few if any express demands were made by GAM as a condition for their release, Amnesty International considers that these individuals were hostages because it would appear that they were seized and detained with the intention of exerting pressure on the government and its agents.(87)

On 19 December 2003, Rahmatsyah, the 20-year-old driver of the television crew, was released. Ten days later, Ersa Siregar was killed in cross-fire between GAM and marines. An investigation by the Indonesian military found that an Indonesian military bullet had killed the 52-year-old journalist. He was married with three children. In late January 2004, the two women were freed. It was not until mid-May 2004, 11 months after he was originally taken hostage, that the release of Ferry Santoro was successfully negotiated.

In an interview following his release, Ferry Santoro claimed that he had on one occasion been threatened with death, but that in general his treatment was reasonable. Cut Soraya is reported to have miscarried during her captivity and also claimed to have been beaten on occasions.

In addition to the taking of hostages, GAM is also regularly accused by the Indonesian authorities of the unlawful killing of civilians, including of children. The media has also reported cases of unlawful killings by GAM. For example, in an interview with an Australian journalist a trader from Selimeum Sub-district in Aceh Besar District claimed to have witnessed the killing by GAM of the village secretary.(88) In another report, a journalist from a North Sumatra-based newspaper, *Waspada*, claimed that his wife, an elementary school teacher, had been shot dead by members of GAM in July 2003 because he had been unable to pay the US\$2,000 "tax" demanded by them.(89) There are many credible accounts that GAM has carried out unlawful killings in the past.(90) However, without access to NAD it is not possible to verify the recent reports.

Children are also reported to have been recruited by GAM. The majority of children involved in GAM are boys, although a number of alleged members of GAM's female unit, Inong Bale, who have been arrested are under the age of 18. According to local NGOs children are involved in a range of tasks including acting as informants, collecting "taxes", participating in arson attacks, providing food and other supplies, cooking and collecting firewood.(91) It is unclear to what extent recruitment is voluntary and there are reports that some children may be forced to join, or are forced to remain in GAM if they joined of their own accord.

The use of children in armed conflict is in violation of the Option Protocol to the Convention on the Rights of the Child which prohibits governments and armed groups from using children under the age of 18 in the conflict and bans the voluntary recruitment of children under 18 by armed groups.

Amnesty International is concerned that the possibility of human rights abuses by GAM may have increased as a result of a statement issued by the ASNLF made in response to the Indonesian government's decision to replace the military Emergency with a civil Emergency without reducing troop numbers. In the statement the ASNLF declared that GAM "*shall henceforth regard all Indonesian military or civilian government facilities and personnel, as parts of the colonial occupational war machine, and that it reserves the right to attack them*".(92)

11. The role of the international community

Efforts to find a negotiated settlement in NAD have been supported by the international community. The CoHA agreement had both the political and financial support of various second governments and of international financial institutions, in particular the US and Japan governments, the European Union and the World Bank. Known as the "Tokyo Group" because they co-chaired the Preparatory Conference on Peace and Reconstruction in Aceh that took place in Tokyo, Japan on 3 December 2002, they and the other donors present set priorities for post-conflict reconstruction that included support for the peace process in addition to humanitarian aid, reconstruction of the physical infrastructure and support for communities, governance and public planning.

In April 2003, as the CoHA was close to collapse the Tokyo Group urged both sides to refrain from armed or any other violence which it stated "*is not an effective means to bring a solution to the conflict.*"(93) Since then there have been just a few intermittent protests from the Tokyo Group or its individual members. In November 2003 for example, the Group expressed their concern at the extension of the military emergency. They also stated their hope "*...that human suffering is minimized and that the transparency of the situation in Aceh is improved. In this regard, we continue to call for access to Aceh by international agencies and relevant NGOs operating for humanitarian purposes.*"(94)

Although the US government publicly condemned the arrest in February 2004 of human rights activists,(95) little has been said, at least publicly, by second governments about the human rights situation in NAD. The UN has been similarly quiet. Beyond a statement in late May 2003 by the UN Secretary-General expressing concern about the impact of the renewed hostilities on civilians(96) and another from UN Children's Fund (UNICEF) on the negative impact of the conflict on children in NAD(97), the UN has been publicly silent on the issue.

While recognizing the Indonesian government and GAM are primarily responsible for the human rights situation in NAD, Amnesty International believes that the absence of protest and the lack of strong and sustained pressure by second governments and the UN on Indonesia to respect human rights has contributed to a sense within Indonesia that the repressive measures used against GAM are acceptable. The organization believes that the international community should be doing more to assist the population there. At the very least they should be publicly condemning the allegations of grave human rights violations and putting pressure on the Indonesian authorities to allow immediate and unrestricted access for human rights monitors and humanitarian agencies to NAD.

PART II - Acehese refugees in Malaysia

12. Flight and the fate of Acehese refugees in Malaysia

There is a long history of Acehese fleeing to Malaysia to seek refuge from counter-insurgency operations by the Indonesian security forces, and of migration for economic reasons. Acehese community leaders estimate that there are between 20,000 and 23,000 Acehese currently in Malaysia. Many arrived prior to the military emergency, although the community leaders told Amnesty International that they have noted a marked increase in new arrivals since May 2003.

In July 2003, the United Nations High Commissioner for Refugees (UNHCR) began providing temporary protection letters (TPL) for Acehese in Malaysia in recognition of the fact that the high level of generalized violence in NAD placed them at potential risk of human rights violations if forced to return. Between May 2003 and August 2004, 7,115 Acehese registered with UNHCR. However, the registration figures are not necessarily reflective of the numbers of Acehese in need of protection, as many do not seek UNHCR protection. The main reason for non-registration appears to be logistical. For those living outside of Kuala Lumpur or even on the outskirts of the capital city, the cost of transport to UNHCR's office can be prohibitively high. There is also the risk of arrest if stopped at one of the many police roadblocks. Amnesty International understands that UNHCR envisages mobile registration in certain areas outside Kuala Lumpur to overcome these difficulties.

However, even for those who have registered with UNHCR, the temporary protection status offers only limited legal, social or material protection. Malaysia is not a party to the 1951 Convention relating to the Status of Refugees nor to the 1967 Protocol and makes no distinction in policy and very little distinction in practice between refugees and illegal immigrants.

The Malaysian government's unwillingness to give legal recognition and thus protection to refugees and asylum-seekers means that the Acehese are at constant threat of arrest, detention, imprisonment, corporal punishment and *refoulement*. They also run the risk of harassment and extortion by the police. The TPL offers variable protection from arrest during frequent police identity checks. In some cases the letter is accepted as a valid document establishing the status of its holder, in many others it is ignored, confiscated or destroyed by police officers. Payments of bribes, often of several hundred ringgit are commonly demanded by police during these identity checks. (98)

Their lack of formal legal status prevents Acehese refugees from finding legal work and from accessing basic services such as healthcare and education. While some Acehese do find work it is

usually of a temporary and manual nature and wages are low – usually between 25-50 ringgit (US\$6.5-13) per day. Their "illegal" or undocumented status also means that there is wide scope for exploitation by unscrupulous employers. It is not unusual to hear accounts of payment of wages being refused. At the same time, employers are themselves at risk of prosecution under provisions relating to "harbouring illegal migrants" under the Immigration Act for employing individuals not in possession of a valid work permit thereby making some less willing to employ Acehnese.

Among the Acehnese refugees are some, including recent arrivals, who are suffering from the physical or mental effects of torture. Medical care for these individuals and for others suffering from ordinary ailments is limited and often only available in the most extreme cases. UNHCR, in coordination with local NGOs, attempts to assist in the most vulnerable cases, but its resources are limited and they cannot substitute for state support structures. Living conditions for some refugees contributes to ill-health, specifically for the several thousand Acehnese who live in primitive shelters in the jungle areas close to the construction sites around Kuala Lumpur.

Refugee children also suffer discrimination. Acehnese and other refugee children born in Malaysia receive birth certificates that state that they are "non-citizens", but which provide them with no legal status. Acehnese refugee children, whether born in Malaysia or in NAD, are not permitted to attend state schools and do not have the right to health-care. In addition, Acehnese refugee children are among those Acehnese refugees who have been arrested and detained.

Malaysia is a state party to the Convention on the Rights of the Child (CRC). Under Article 22 of the CRC, state parties are required to ensure that any child who is considered a refugee or is seeking refugee status, whether accompanied or unaccompanied, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights contained in the CRC and in other international human rights or humanitarian instruments to which the state is a party.(99)Amnesty International is concerned that Acehnese children in Malaysia are being denied their rights under the CRC.

12.1 Arrest, detention and imprisonment of Acehnese in Malaysia

Hundreds of Acehnese refugees have been arrested in Malaysia during the last year, either at police checkpoints or during raids on their places of accommodation or work by immigration officials and the police. While UNHCR has intervened successfully in some cases to bring about their release, some have been put on trial for immigration offences and many others have been sent to immigration detention centres pending deportation or, in a very limited number of cases, resettled in a third country.

Several dozen Acehnese arrested since May 2003 are believed to have been charged as illegal immigrants under amendments dating from 2002 to Malaysia's Immigration Act of 1959 which carry a prison sentence of up to five years, whipping of up to six strokes with a rattan cane or a fine of 10,000 Malaysia ringgit (US\$2,630).(100)

In one such case, a 55-year-old man was arrested as he entered Malaysia in April 2004. According to his son, who had already fled to Malaysia in November 2002 because he was accused of being a member of GAM, his father had telephoned him from NAD early in 2004 to tell him that he had been beaten by soldiers and to ask for his help to flee to Malaysia. His son sent him money to pay for his travel expenses and he made his way to Malaysia from Medan by boat. The next time his son heard of him, it was via a phone call from a Malaysian police officer informing him that his father had been arrested and was being detained at a police station in Klang, a port area near Kuala Lumpur. He was told by the police officer that his father could be released on the payment of 600 ringgit (US\$157). His son went to the police station, taking the money with him. There he claimed to have found his father handcuffed to the legs of a chair. He was told that his case was already being processed, and that it was too late to release him.

It was reported to Amnesty International that the son informed UNHCR of his father's arrest and place of detention, but when UNHCR attempted to locate him the police denied that he was being detained. Later the same week, the son was informed that he had been transferred to Sungai Buloh Prison near Kuala Lumpur. UNHCR is also reported to have attempted to access him there, but again his presence was denied. A local human rights organization, HAKAM, managed to locate him after around a fortnight and found that he had already been tried and sentenced for immigration offences to four months' imprisonment. His sentence expired in mid-August 2004 and he has now

been transferred to Semenyih Immigration Detention Centre in Selangor state.

In another case, five Acehnese men were arrested on 18 March 2004 after they were stopped at a roadblock in Sungai Rengit, Johor state. The driver of the vehicle in which they were travelling was an Acehnese who has permanent residence status in Malaysia. Of the four passengers, three had UNHCR temporary protection letters. The five men were held in police custody for 10 days for further investigation. The driver was subsequently charged under a provision in the Immigration Act that punishes individuals who are found guilty of allowing "illegal immigrants" to enter or occupy their property with a fine of up to 30,000 ringgit (US\$7,895), imprisonment of up to one year or both. He was released on bail. The four other refugees were transferred to Simpang Renggam Prison in Johor state. Following UNHCR intervention in the case, the charges against the driver were dropped and the four others were also released after several weeks in detention.

In the vast majority of cases, Acehnese who are detained are not charged. A few have been released from police custody. However, since May 2003, hundreds of others, including women and children, have been sent directly to one of Malaysia's 11 immigration detention centres.

One recent case involves the arrest on 17 July 2004 during a police raid in the Selayang area of Kuala Lumpur of two men, two women and three children between the ages of five and 15 years old. All seven were registered with UNHCR and were in possession of temporary protection letters which were ignored by the arresting officers. The group were held at Jinjang Police Station in Kuala Lumpur where conditions were reported to have been poor. In this case, UNHCR was successful in securing their release after a few days.

Sixty-one refugees who were arrested from the same area of Kuala Lumpur nine days later were not so fortunate. The group was detained during an operation, involving members of the immigration department, the police and the People's Volunteer Corps (Ikatan Relawan Rakyat Malaysia, RELA)(101) that took place in the late evening and early morning of the 26 and 27 July 2004. Several children were among those arrested. Three people were released because they were in possession of work permits, but others, all of whom are reported to have been in possession of UNHCR temporary protection letters, were transferred to Semenyih Immigration Detention Centre. They are among over one hundred Acehnese refugees, including a number of children, who were reported to be in Semenyih at the time of writing. Once transferred to immigration detention camps the prospect of release for refugees, even those formally registered with UNHCR, is significantly reduced.

Conditions in some of the immigration detention centres are so poor as to amount to cruel, inhuman or degrading treatment. Problems include severe overcrowding, poor hygiene and sanitation and inadequate nutrition. Verbal abuse and threats to detainees by camp guards are reported by detainees to be common. Physical abuse, such as beatings, is reported to occur on occasions. Detainees reportedly do not have access to adequate medical care and are often not provided with basic provisions such as toothpaste, soap or washing powder.

In recent years, the Human Rights Commission of Malaysia (Suruhanjaya Hak Asasi Manusia Malaysia, Suhakam) has conducted regular inspection visits to the detention centres and have been vocal in its criticism of conditions. Among the problems that Suhakam has highlighted are: the detention of children; overcrowding; shortage of staff; and unhygienic living conditions resulting in health risks to detainees and staff. In Macap Umboo Immigration Detention Centre in Malacca, for example, it reported an outbreak of meningitis and in Lenggeng Immigration Detention Centre in Negeri Sembilan it noted that detainees had "*skin infections and rashes all over their bodies and pus oozing from their skin*".(102)

One of Suhakam's recommendations has been that the Prison Department should take over the daily running of the immigration detention centres from the Immigration Department. This process is underway and the main immigration detention centres of Semenyih, Lenggeng, Macap Umboo, Langkap and Pekan Nanas are now all under the Prisons Department. Suhakam and others to whom Amnesty International has spoken were optimistic that conditions would improve under the Prison Department. Although there were some early indications that this might be the case, conditions, at least in Semenyih, are reported to have deteriorated again recently. Poor conditions in the centre are reported to have been among the reasons for a hunger-strike by detainees in Semenyih in early September 2004.

In addition to concerns relating to conditions of detention, Amnesty International is more generally concerned by the practice in Malaysia of detaining asylum-seekers and refugees without legitimate reason and without a prompt, fair, individual hearing before a judicial or other similar competent, impartial and independent authority.

UNHCR guidelines state unequivocally that "*as a general rule asylum seekers should not be detained*". Freedom from arbitrary detention is a fundamental human right, and in the case of vulnerable individuals such as refugees and asylum-seekers, there should be a presumption against detention. In particular, international standards require that children should not be detained. UNHCR guidelines further state that where asylum-seekers are detained, the conditions of detention should respect the inherent dignity of the person, and should be prescribed by law.(103)

Further concerns arise because, once in detention, Acehnese asylum-seekers can be inhibited from pursuing their refugee claims. While UNHCR does have access to the immigration detention centres, its representatives can only meet with detainees on request which requires that they know of their presence in the camp. Detainees in both police lock-ups and immigration detention centres are often not permitted to make phone calls and are therefore unable to inform UNHCR, family members or others that they have been detained. Amnesty International is aware of cases where individuals have not been able to make their presence known and have therefore slipped through UNHCR's protection net. Moreover, detainees have difficulty in accessing legal and other advice to enable them to fully pursue their refugee claims.

12.2 Refoulement of Acehnese refugees

In exercise of its protection mandate for Acehnese refugees in Malaysia, UNHCR has attempted in various ways to prevent the deportation of these refugees. For Acehnese refugees at risk of *refoulement* from immigration detention centres in Malaysia, UNHCR therefore attempts to find resettlement places in third countries. However, the resettlement of Acehnese refugees can take many months and in some cases over a year. For example, Amnesty International has been informed of the cases of two Acehnese in Semenyih immigration detention centre who have been awaiting resettlement since August 2002. In addition, the total number of places offered to Acehnese refugees by resettlement countries is very limited in comparison to the much larger numbers of these refugees that are at risk of *refoulement*: in 2005 UNHCR envisages that it will be able to refer just 350 Acehnese for resettlement to third countries.(104)

The threat of prolonged detention in poor conditions is believed to have caused some Acehnese to abandon their claim for asylum and to "volunteer" to return to Indonesia despite the risk of human rights violations in NAD. Amnesty International believes that treatment which has the indirect effect of forcing people to return to such conditions would effectively constitute a *refoulement* (constructive *refoulement*).

The true numbers of Acehnese who have been returned to Indonesia during the past year are not known, although it is estimated to be at least several hundred. Among the recent returns are 13 people who were among 26 people (17 Acehnese and nine people from other parts of Indonesia) arrested during a police raid in the Bukit Jambul area of Penang at 3am on the 27 May 2004. The 17 Acehnese were initially taken to Balik Pulau Police Station in Penang where two were reportedly able to "purchase" their release for the sum of 1,500 ringgits (US\$395).

The remaining 15 (one woman and 14 men) were transferred to Langkap Immigration Detention Centre in Perak state. Conditions in the camp were reported to have been poor. The detainees were alleged to have been told by a camp official that this was deliberate in order to encourage them to agree to return to Indonesia. They had no clothes other than those they were wearing when they were arrested and no bedding, including mattresses or blankets, was provided. The accommodation block was said to be infested with mosquitoes and other insects from which detainees had no protection. They were reported to have been served stale or rotten food and were unable to bathe regularly.

Ten of the detainees are reported to have agreed to return to Indonesia and were deported after around one week in Langkap. Five others, who refused to return, were reported to have been threatened by immigration officials to try and persuade them to "agree" to deportation. They were

allegedly told that they would be handed over to the Indonesian security forces via the Indonesian embassy in Kuala Lumpur; that that they would be put in sacks and deported; and that if they did not agree to be returned there would be a repeat of the "Semenyih incident".(105)

Despite the threats, Amnesty International received information in early June 2004 that these individuals wished to remain in the camp to await resettlement. However, on 24 June 2004, Amnesty International learnt that three of them had been deported. An activist with the Aceh based NGO, the Monitoring Committee for Peace and Democracy (Komiti Monitoring Perdamaian dan Demokrasi), was also deported at the same time. He (name withheld to protect his security) had recently completed a seven-month prison sentence for "illegal immigration" and had been transferred to Langkap Immigration Detention Centre on 7 June 2004. The activist had been recognized by UNHCR as a refugee and two of the other deportees were in possession of UNHCR temporary protection letters.

There are also allegations that physical force may have been used against one of the detainees. According to a report received by Amnesty International, one of those returned to Indonesia on 24 June 2004 was physically taken from the accommodation hall to an office where he was told to sign a letter agreeing to his deportation and he was smacked on his head by one of the officers. He was reported to have been escorted by two armed police officers during the journey from the immigration detention camp to the port of embarkation in Johor.

Amnesty International believes that the combination of inadequate conditions and other pressure was instrumental in forcing the 13 Acehnese arrested in Bukit Jambul and the activist to agree to return to Indonesia. Whether the pressure was indirect, resulting from poor conditions and the threat of prolonged detention, or direct, through physical force real or threatened, the Malaysian authorities acted in contravention of their obligation under the principle of customary international law not to forcibly return asylum-seekers or refugees to a country where they would be at risk of torture or other serious human rights violations.

In most cases the fate of those who have been returned to Indonesia is unknown. However, a few have subsequently managed to return to Malaysia or have contacted Acehnese in Malaysia and provided information about their treatment, including human rights violations, experienced upon their return to Indonesia. Amnesty International fears that others may be subjected to similar treatment.

One of the Acehnese deported from Langkap Immigration Detention Centre on 24 June 2004 described what happened to him and 16 other Acehnese who were on the same boat from Malaysia. All 17 were arrested by a joint police/military unit as they arrived in the port of Dumai in West Sumatra and immediately handed over to "preman", the name given to gangsters in Indonesia. A ransom of 130,000 rupiah (US\$14) was demanded by the preman from each of the detainees on the first day. The amount was increased by 50,000 rupiah (US\$5.50) on day two and they were threatened that if they did not pay they would be sold for three million rupiah (US\$335) each to a logging company as labourers. Fifteen of the refugees are known to have managed to escape or purchase their freedom. The fate of the other two is not known.

Amnesty International also interviewed a 25-year-old man from Jangka Sub-district in Bireun District who had been deported to Dumai, West Sumatra, in October 2003 after being arrested by the Malaysian police on 19 September 2003. He described how he and seven other Acehnese deportees were separated out on arrival and arrested by the military. He claimed that he and the other seven detainees were held for around one week in a military facility in Medan, North Sumatra, before being transferred to another military facility in the town of Lhokseumawe, North Aceh. During the first night in Lhokseumawe he said they were beaten until some of them fainted. The interviewee was beaten so severely that he sustained back injuries which were still causing him pain in May 2004. He said that three of the seven eventually confessed to being members of GAM and claimed that they were then shot dead in front of the other four. For reasons that are unclear, the surviving four were driven by the military to the border between NAD and North Sumatra Province where they were left by the side of the road. The interviewee spent the next month in Medan recovering from his injuries before making his way to Tanjung Balai Port in North Sumatra from where he returned to Malaysia in March 2004.

In July 2004, the Malaysian authorities announced their intention to deport around 1.2 million

"illegal migrants". It is estimated that between 600,000 and 750,000 of this number are Indonesians. The Malaysia authorities have stated that repatriation of undocumented Indonesians will begin in January 2005. Disturbingly it was also reported that Malaysia may be intending to prosecute and punish these "illegal immigrants" prior to their deportation.(106)

Amnesty International is seriously concerned that in view of the Malaysian authorities' unwillingness to distinguish between illegal immigrants and refugees, the planned mass arrests and deportations are likely to include Acehnese and other refugees in Malaysia. The organization believes that these plans should be urgently reviewed and measures taken to ensure that asylum-seekers and refugees are not forcibly returned to a situation where they would be at risk of serious human rights violations.

13. Conclusion and recommendations

On 20 September 2004, Indonesia elected a new President, Susilo Bambang Yudhoyono. In his previous position as Coordinating Minister for Political and Security Affairs in the administration of former President Megawati Sukarnoputri, Susilo Bambang Yudhoyono was closely involved in government efforts to mediate with GAM and subsequently with the decision in May 2003 to declare the military emergency. In early September 2004, in the run up to the presidential election, he visited NAD where, in front of a crowd of thousands of people, he promised to find a solution to the conflict in NAD and to improve the standard of living of the Acehnese.

Amnesty International welcomes the commitment of the new President to resolving this conflict and urges him to ensure that it is among his first priorities on taking office. An improvement in the standard of living of the Acehnese is dependent on the population being given a chance to lead normal and secure lives, which will ultimately require a resolution to the conflict between Indonesia and GAM. However, for any future peace agreement to be meaningful and durable it will have to address human rights issues. In addition to including measures to ensure that the human rights of the population of NAD are protected and respected it is also essential that it includes provisions for the establishment of credible and effective mechanisms for resolving the human rights abuses committed during the whole period of the conflict by both the Indonesian security forces and by GAM. In the meantime, and in order to begin building the necessary confidence to pursue a political solution, both sides must take immediate and effective steps to end human rights abuses.

Amnesty International also appeals to the international community not to turn a blind eye to events in the province. Both second governments and the UN system must use their influence to pressure the Indonesian government to address the grave human rights situation in NAD and support efforts aimed at resolving the conflict.

To this end Amnesty International makes the following recommendations which are aimed both at improving the human rights situation in NAD and to ensuring protection for Acehnese refugees in Malaysia.

13.1 Recommendations to the President of Indonesia

Official condemnation and chain of command control

- Formally put on the public record their opposition to human rights violations, including unlawful killings, torture and arbitrary detentions. Clear and strongly-worded directives should be given to the security forces to adhere to international human rights and humanitarian law under all circumstances and mechanisms should be put in place to monitor this adherence;
- The prohibition of human rights violations, including unlawful killings, "disappearances" and torture, should be reflected in the training and all orders given to officials involved in the arrest and custody of prisoners and all officers authorized to use lethal force;
- Officials who are found to have ordered or tolerated human rights violations by those under their command should be held criminally responsible for such acts.

Effective investigations and prosecutions of alleged perpetrators of human rights violations

- In view of the scale and pervasiveness of the human rights abuses in NAD a high-level fact finding team should be established. It should be mandated to conduct a comprehensive inquiry into the human rights abuses committed in NAD and their causes which should cover both the current and previous military campaigns. It should establish and make public the truth about the situation and recommend measures both to ensure full accountability of those responsible and to ensure that such abuses are not repeated in the future. To be credible and effective, the fact finding team must be made up of independent experts with the necessary skills and experience to conduct such an inquiry;
- In general, all allegations of human rights violations committed by members of the security forces or groups under their command or control should be immediately and effectively investigated by a credible and impartial mechanism that is independent of the military or police;
- Individuals suspected of committing human rights violations should be suspended from positions of responsibility pending the outcome of investigations;
- All individuals against whom there is evidence of involvement in committing human rights violations, including command responsibility, should be brought to trial in a civilian court in a manner which is consistent with international standards for fair trials;
- Establish a victim and witness protection program which can provide effective protection during investigations and during and after trials, until any threat to personal safety ends.

Prisoners of conscience and unfair trials

- Immediately and unconditionally release all prisoners of conscience;
- Conduct a prompt and independent review of all cases where political prisoners have been convicted in trials which did not meet international standards for fair trials, including in cases where confessions were obtained through use of torture.

Preventing torture

- Take measures to bring an end to the widespread practice of torture by implementing without delay the recommendations of the UN Committee against Torture including:
- Amend the penal legislation so that torture and other cruel, inhuman and degrading treatment or punishment are offences strictly prohibited under criminal law and adopt adequate penalties that reflect the seriousness of the crimes;
- Establish an effective, reliable and independent complaint mechanism to undertake prompt, impartial and effective investigations into allegations of torture and ill-treatment and, where findings so warrant, to prosecute and punish perpetrators;
- 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;
- Reinforce human rights education to provide guidelines and training regarding, in particular, the prohibition of torture, for law enforcement officials, judges, and medical personnel;
- Invite the Special Rapporteur on torture to visit.

Preventing extrajudicial executions

- Take measures to prevent extrajudicial executions in accordance with the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Measures should include:
 - prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out unlawful killings;
 - ensure that those in charge of the security forces maintain strict chain-of-command control to ensure that officers under their command do not commit extrajudicial executions;

Protection of women

- Publicly condemn all human rights violations against women, including rape and other sexual crimes;
- Ensure that the crimes against women and children are not committed under any circumstances. In accordance with UN Security Council Resolution 1325 (2000), the government should respect fully international law applicable to the rights of women and girls, including the Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child, both of which have been ratified by Indonesia. Special measures should be taken to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict. Individuals responsible for committing crimes relating to sexual and other violence against women should be brought to justice.

Use of civilians by the security forces and protection against forced labour

- In accordance with its commitments under ILO conventions and the Convention on the Rights of the Child, instructions should be issued to the military and other authorities in NAD that no person, especially children, should be requested to perform forced labour, including as members of militias or other civilian defence forces;
- Where civilians are used to supplement or support the military or the police they should be subject to the same standards. In particular, they should undergo practical training in international humanitarian law and human rights standards, should be subject to strict and transparent chain-of-command control and should be held accountable for human rights violations.

Human rights defenders

- Publicly affirm its commitment to the principles contained in the Declaration the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (The Declaration on Human Rights Defenders);
- Ensure that both domestic and international human rights defenders have full, unimpeded and unhindered access to all areas of NAD and that they can carry out their work free from intimidation, threats and human rights violations;
- Cooperate fully with Komnas HAM, including by providing secure access to members of its monitoring teams to all areas of the province and to all available sources of information. Recommendations made by Komnas HAM as a result of its investigations should be acted upon by the relevant authorities;
- Invite UN thematic mechanisms to visit NAD. Priority should be given to the Special Representative to the Secretary-General on Human Rights Defenders; the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture, the Special Rapporteur on violence against women and the Working Group on Arbitrary Detention.

Humanitarian assistance and IDPs

- Permit full, unimpeded and unhindered access to the civilian population, including to internally displaced persons, by national and international humanitarian agencies. The system of permits for international staff of such organizations should be immediately lifted;
- Ensure that there is an absolute prohibition on acts by the security forces or other officials that cause forcible displacement. No one should be ordered to move from the home unless there are compelling reasons of security or imperative military reasons. These reasons should be made public.

Training

- Ensure that all members of the military and police serving in NAD receive training in the practical application of international humanitarian and human rights law.

13.2 Recommendations to GAM

- Publicly declare its opposition to human rights abuses by its members and its intention to adhere to common Article 3 of the Geneva Conventions which provides that persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms or who are *hors de combat*, including because they are sick, wounded or in detention should be treated humanly. Acts including murder, mutilation, cruel treatment, torture, hostage taking and the passing of sentences and carrying out of executions without previous judgement by a regularly constituted court with full judicial guarantees, are prohibited under common Article 3 and should therefore be explicitly prohibited in directions by GAM Commanders;
- Take immediate steps to prevent the recruitment, either voluntary or compulsory, of anyone under the age of 18, and ensure that no children are amongst the serving members of GAM;
- No action should be taken by GAM that in any way inhibits the supply and delivery of humanitarian aid to the civilian population;
- Prohibit GAM forces from intimidating, threatening or committing human rights abuses against human rights defenders. The collecting and dissemination of information relating to human rights abuses by GAM, including by journalists, is not justification for any act which threatens the physical integrity of human rights monitors or otherwise prevents them from carrying out their work.

13.3 Recommendations to the Malaysian government

- Ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol;
- Respect the fundamental principle of *non-refoulement* and refrain immediately from returning anyone to a situation where they would be at risk of torture or other serious human rights violations. Under current conditions in NAD, no Acehnese, including all Acehnese recognized as persons of concern by UNHCR should be deported to Indonesia;
- Provide effective protection to all Acehnese refugees on its territory, including respect for their economic, social and cultural rights. As a state party to the Convention on the Rights of the Child, Malaysia should register all Acehnese children born in the territory and ensure basic education to Acehnese and other refugee children;
- Revise the Immigration Act to ensure that it cannot be applied to detain or imprison refugees or asylum-seekers in contravention of international human rights standards and established guidelines on the detention of refugees and asylum-seekers. In particular, Malaysia should refrain from detaining refugee children;
- All Acehnese refugees currently in detention who are not accused or convicted of a recognizable crime should be immediately released;
- If refugees are detained, the authorities should ensure that they are not inhibited in any way from pursuing asylum claims. A mechanism should be established to ensure that UNHCR is notified of the detention of all Acehnese on immigration grounds. UNHCR should be permitted access to these refugees and to all areas of immigration detention camps so that others have the opportunity to identify themselves and request protection. All Acehnese refugees in detention should be provided with immediate access to competent legal counsel, as well as interpreters as necessary;
- Ensure that conditions in police lock-ups, prisons and immigration detention centres are consistent with the standards in the UN Standard Minimum Rules for the Treatment of Prisoners and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, including access to adequate food and water, washing facilities and medical attention. Prompt, independent and impartial investigations should be carried out into allegations of cruel, inhuman or degrading treatment, including physical and verbal abuse;
- Urgently review the plans to undertake mass deportations of "illegal immigrants". Measures should be put in place to ensure that asylum-seekers and refugees are not arrested or deported under this initiative.

13.4 Recommendations to second governments and the United Nations

- Express serious concern, directly in meetings with senior Indonesian government representatives and through public statements, about reports of grave human rights violations in NAD. Demand that there are immediate, independent and impartial investigations into these allegations; that prisoners of conscience are released and that the trials of political prisoners are reviewed by a credible, independent tribunal;
- Both the UN and second governments should dramatically increase the pressure on the Indonesian authorities to immediately permit full unimpeded and unhindered access to NAD by human rights defenders and humanitarian workers. The authorities should also be strongly encouraged to issue invitations to UN experts and thematic mechanisms to visit NAD;
- Second governments should request that their embassy officials in Jakarta can visit NAD on a regular basis. During such visits officials should meet with local non-governmental organizations, including members of legal aid groups involved in defending political detainees. They should also request to be permitted to visit places of detention – both military and police, and to observe trials of alleged GAM suspects;
- Second governments should ban the transfer of arms to Indonesia while the Indonesian military and police continue to commit gross violations of human rights. In view of the extensive and persistent violations of fundamental rights by these forces, any international training or technical support given to the Indonesian security forces should exclude operational training until the serious lack of adequate systems of accountability is addressed.

(1) The province was formerly known as Aceh, but was renamed Nanggroe Aceh Darussalam by the Indonesian government in 2001. Aceh is the modern Indonesian spelling which can also be spelt Aceh. For the sake of consistency Aceh is used in this report, except where an alternative spelling is used as part of an official title.

(2) Former President Suharto, who had governed Indonesia for 32 years, was forced to resign in May 1998. Until 1998, Indonesia was effectively a one-party state in which freedom of expression was tightly controlled and grave human rights violations were committed. Immediately following President Suharto's resignation there was a period known as "reformasi" (reform) during which significant political reforms were introduced and some restrictions on freedom of expression lifted.

(3) See Amnesty International document: Indonesia: "Shock Therapy", Restoring Order in Aceh, 1989-1993, (AI Index: ASA 21/07/93), July 1993.

(4) Aceh: Can Autonomy Stem the Conflict? International Crisis Group (ICG), 27 June 2001.

(5) Previously known as the Henri Dunant Centre and still commonly known as HDC.

(6) For further details on the law on special autonomy see: Aceh: Can Autonomy Stem the Conflict? and Aceh: A Fragile Peace, by the International Crisis Group (ICG), 27 June 2001 and 27 February 2003 respectively.

(7) The law on special autonomy made no reference to justice for past human rights violations in NAD.

(8) Thai and Filipino soldiers joined members of the Indonesian military and GAM in the Joint Security Committee established to monitor the security situation and investigate violations of the CoHA.

(9) Presidential Decision No.28/2003 on the Declaration of a Dangerous Situation and the Imposition of a Military Emergency in the Province of Nanggroe Aceh Darussalam.

(10) The Governor of NAD, Abdullah Puteh, has been named in a multi-million dollar corruption case involving the purchase of a Russian helicopter. There have been calls for him to resign.

(11) "Preserving the Unitary State of Indonesia is more important than human rights", Detikcom, 8 July 2003.

(12) Figures published by the Commission for Disappearances and Victims of Violence (Komisi untuk Orang Hilang dan Korban Tindak Kekerasan, Kontras).

(13) Transmigrants are economic migrants who moved to NAD from different parts of the country, in many cases as part of the government-sponsored transmigration project aimed at reducing population pressure particularly on the island of Java. Transmigrants are often perceived in Aceh as receiving preferential treatment and of benefiting disproportionately from economic development in the province.

(14) "Foreigners still not allowed to enter Aceh despite lifting of martial law", The Jakarta Post, 10 June 2004.

(15) Article 30.1.

(16) Article 30 of Law 23/1959 states that: "The Military Emergency Authority shall have the power to instruct persons living in a region declared to be under military emergency to do compulsory labour for the implementation of regulations or to perform other labour in the interests of security and defence".

(17) Under ILO Convention 29, forced or compulsory labour is defined as "all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntary." Exceptions are made inter alia for work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country, and work or service exacted in cases of emergency. Under Article 2(d) of the Convention, emergency is defined as "...war or ... a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect, or vegetable pests, and in general any circumstance that would endanger the existence or well-being of the whole or part of the population".

(18) The UN-supervised ballot took place on 30 August 1999. In the months before and the weeks immediately following the vote, militia groups, supported by and sometimes with the direct involvement of the Indonesian security forces, carried out grave human rights violations against the population of Timor-Leste. See Amnesty International Reports: East Timor: Seize the Moment, (AI Index: ASA 21/49/1999), June 1999; East Timor: Violence Erodes Prospects for Stability, (AI Index: ASA 21/91/99), August 1999; and Indonesia and Timor-Leste: Justice for Timor-Leste: The Way Forward, (AI Index: ASA 21/006/2004), April 2004.

(19) "TNI Training Militias in Aceh", Kompas, 11 June 2003.

(20) In a radio interview with RRI in which he was responding to Komnas HAM's allegations, General Ryamizard Ryacudu said: "Just bring that Komnas HAM here, I'll punch their heads. They are only capable of talking." Text of report on Radio Republik Indonesia, 12 June 2003.

(21) Militia: Indonesia's Military Proxy Army in Aceh, by Teuku Samsul Bahri, April 2004.

(22) Fear in the Shadows: Militia in Aceh, Eye On Aceh, July 2004.

(23) See for example: "Militia, by any other name", Tempo, 7 July 2003 and "Front Lines", Tempo, February 2004.

(24) "Civilians drafted to hunt Aceh rebels", The Jakarta Post, 17 September 2003.

(25) Article 8.3(a) of the International Covenant on Civil and Political Rights (ICCPR) states that: "No one shall be required to perform forced or compulsory labour." Article 8.3(c)(iii) adds that the term "forced or compulsory labour" shall not include: "Any service exacted in cases of emergency or calamity threatening the life or well-being of the community." Indonesia has committed to sign the ICCPR in 2004.

(26) In May 2003, it was announced that up to 200,000 Acehnese would be transferred from their homes into government-run tented camps.

(27) Article 17 of Protocol II Additional to the Geneva Conventions on 12 August 1949 states: "The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacement have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition." This provision is regarded to reflect customary international law and is therefore applicable to Indonesia even though it is not a state party to Protocol II.

(28) Red and white is the colour of the Indonesian flag.

(29) The re-registration was nationwide, but only in NAD was a loyalty test included.

(30) "67,000 civil servants in Aceh face loyalty test," The Jakarta Post, 3 July 2003.

(31) "Village heads quit en masse," The Jakarta Post, 9 June 2003.

(32) See: Indonesia: Protecting the protectors: Human rights defenders and humanitarian workers in Nanggroe Aceh Darussalam, Amnesty International, (AI Index: ASA 21/024/2003), 3 June 2003 and Indonesia: Aceh Under Martial Law: Muzzling the Messengers: Attacks and Restrictions on the Media," Human Rights Watch, November 2003.

(33) Initially the military did not allow those members of UN agencies who had "blue books" to travel outside Banda Aceh. Although these restrictions appear to have relaxed a little, UN security guidelines do not currently allow its representatives to leave the provincial capital.

(34) The Indonesian authorities have blamed GAM for the arsons attacks. Amnesty International does not have any evidence to support or contradict the allegations. In a report published in July 2003 called, Aceh: How Not to Win Hearts and Minds, the International Crisis Group (ICG) stated that it was clear from its interviews that GAM was responsible for some of the attacks, but that there was scepticism among Acehnese that so many schools could have been burnt so quickly without some level of complicity on the part of government forces.

(35) "Indonesia troops told to 'exterminate' Aceh rebels, spare civilians," Agence France-Presse, 20 May 2003.

(36) "Jakarta bombs rebels," Reuters, 20 May 2003.

(37) The Commander of Lilawangsa Military Resort, Lieutenant Colonel A. Y. Nasution, the day before the 27th anniversary of GAM's declaration of independence for NAD.

(38) "Foreigners still not allowed to enter Aceh despite lifting on martial law," The Jakarta Post, 10 June 2004.

(39) "TNI Klaim Telah Tewaskan 2,800 Anggota GAM", Acehkita, 17 September 2004

(40) "Indonesia Army kills 400 alleged Aceh rebels since May 19", Associated Press, 16 July 2004.

(41) "Indonesian military says it killed over 230 rebels in two months", Agence France-Presse, 20 July 2004.

(42) "Nearly 1,160 Aceh Rebels Killed in 10 Months", Laksamana. Net, 18 August 2004

(43) "Versi TNI: 662 Warga Sipil Tewas Sejak Darurat Militer", Acehkita, 17 September 2004

(44) "We have difficulties distinguishing between GAM and civilians. We cannot [guarantee] a zero casualty rate. But it's not on purpose". "Assault on Aceh targets students", The Guardian, 26 May 2003.

(45) Members of GAM who surrender to the Indonesian authorities undergo a five-month re-education program which is reported to involve "loyalty" exercises, such as flag-raising ceremonies and classes on nationality, as well as skills training.

(46) The exact number of people brought to trial and convicted since May 2003 is not known. However, on 17 August 2004, it was announced that 961 GAM prisoners would receive the remission that is traditionally given on the anniversary of Indonesia's independence. The media also reported in August 2004 that 793 cases of alleged GAM members were being processed by the police or prosecution.

(47) Among the rights contained in KUHAP are: the right to legal representation immediately upon arrest and at each stage of examination (Article 54 + Article 69); the right to choose a legal advisor (Article 55); the right to be appointed a legal advisor free of charge by the state where the suspect has none of their own and is charged with an offence that carries a prison sentence of five years or more. In cases where a suspect is charged with an offence that carries a prison sentence of 15 years or more or the death penalty the state is obliged to provide a legal representative. (Article 56); the right to have his or her family or friends informed about their detention and to receive visits from them (Articles 59-60); the right to contact and receive medical assistance from a personal doctor (Article 58) (there is no provision obliging the authorities to provide free medical assistance).

(48) Fair trial guarantees are contained in treaties including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) to which Indonesia is a state party and the International Covenant on Civil and Political Rights which Indonesia has committed to ratify in 2004 under its 2004-2009 National Action Plan on Human Rights, as well as UN human rights standards including, the Universal Declaration of Human Rights (UDHR), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Standard Minimum Rules for the Treatment of Prisoners.

(49) "Suspected Indonesian rebels tell of jailhouse terror", The Taipei Times, 7 December 2003.

(50) Articles 13 and 15 of the Law on Combating Criminal Acts of Terrorism (Law 15/2003).

(51) Under Indonesia's 1945 Constitution, Government Regulations in Lieu of Law (Perpu) may be issued by the President "in the event of a compelling emergency". The Perpu must then be approved by the parliament at its next session or it will lapse.

(52) See Amnesty International's Annual Reports for 2003 and 2004.

(53) Legislation for the establishment of Human Rights Courts was adopted in November 2000. These courts have jurisdiction over crimes against humanity and genocide which had previously not been included in Indonesian domestic law.

(54) Article 15 of the ICCPR states that: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed".

(55) Article 11(2) of the UDHR states that: "No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed..." Article 21.i of the Indonesian Constitutions states that: "The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances."

(56) The Committees were: the Joint Committee on Security Modalities (Komite Bersama Modalitas Keamanan, KBMK) and the Joint Committee on Humanitarian Action (Komite Bersama Aksi Kemanusiaan, KBAK) set up under the Humanitarian Pause and the Joint Security Committee (JSC) set up under the CoHA. All had representatives from the Indonesian authorities and GAM. The KBMK's tasks included contributing to the reduction of tension and cessation of violence and preparation of ground rules for the humanitarian pause. The KBAK was established to coordinate the distribution of funds for humanitarian, rehabilitation and development projects in the province. The JSC's functions included overall implementation of the agreement, monitoring of the security situation and investigating violations of the agreement.

(57) Concern has been raised by experts that the use of intelligence reports as legal evidence

permitted under Law 15/2003 risks intelligence reports being contrived by unscrupulous police. See: Indonesia's New Anti-Terrorism Law: Damned if you Do, Damned if you Don't, Tim Lindsey, Associate Professor and Director, Asian Law Centre, The University of Melbourne.

(58) The Centre for Humanitarian Dialogue, 21 October 2003.

(59) Principle 18(4) of the Body of Principles states: "Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official."

(60) Principle 22 of the Basic Principles on the Role of Lawyers states: "Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential."

(61) Letter from Sofyan Tiba dated 29 July 2003 read to the Panel of Judges presiding over his trial.

(62) The Military Emergency Authorities had previously announced that it planned to transfer those individuals who had been sentenced to prison terms of three years or more with the exclusion of those awaiting the outcome of appeals.

(63) For example, a spokesperson for the military was quoted in Detik.com on 25 May 2003 as saying: "We will investigate them one by one. They shouldn't just be yapping about human rights. We all support human rights, but what kind of human rights". On 8 December 2003 the Army Chief of Staff, General Ryamizard Ryacudu, was reported by the state news agency, Antara, to have said that: "People who dislike the military emergency in Aceh are GAM members."

(64) There is speculation that the support of the security forces for the proposed highway is because it will provide more opportunities for logging operations in the area in which the military has traditionally had business interests.

(65) "Kopassus chiefs want new Aussie ties", Australian Associated Press, 17 May 2004.

(66) "Military chief approves of beatings", Associated Press, 22 November 2003.

(67) The treaty body comprised of independent experts which monitors compliance with the Convention against Torture.

(68) Conclusions and Recommendations of the Committee against Torture: Indonesia. 22/11/2001. CAT/C/XXVII/Concl.3. Committee against Torture, 27 Session, 12-23 November 2001.

(69) Report of the Special Rapporteur on torture on his visit to Indonesia and East Timor. UN Document E/CN.4/1992/17/Add.1. 8 January 1992.

(70) "Casualties of the War in Aceh", World Press Review, 9 February 2004.

(71) "At War with TNI", Tempo, 30 June 2003.

(72) Under the Rome Statute, crimes against humanity and war crimes include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity. (Articles 7(g) and 8.2(b)(xxii)).

(73) Indonesia ratified CEDAW in 1984 and CRC in 1990.

(74) Report of the Committee on the Elimination of Discrimination against Women, (eighteenth and nineteenth sessions), General Assembly, Fifty-third session, Supplement No. 38 (A/53/38/Rev.1).

(75) Report of the Special Rapporteur on violence against women, its causes and consequences. UN Doc E/CN.4/1999/68/Add.3, 21 January 1999.

(76) For example, new legislation has been drafted on domestic violence and on trafficking of women and children.

- (77) "Jakarta takes cue from Iraq war", *New Straits Times*, 20 May 2003.
- (78) "Indonesian troops told to 'exterminate' Aceh rebels, spare civilians", *Agence France-Press*, 20 May 2003.
- (79) "No region can break away", *Time Asia*, 2 June 2003.
- (80) "TNI admits to wrongdoings in Aceh", *The Jakarta Post*, 6 June 2004.
- (81) "Rights body finds human rights violations in Aceh", *The Jakarta Post*, 10 March 2004.
- (82) Legislation for the establishment of human rights courts was adopted, under intense international pressure, in the aftermath of 1999 events in Timor-Leste where pro-Indonesia militia supported by the Indonesian security forces carried out human rights violations that were so widespread and systematic that they are considered crimes against humanity. The ad hoc Human Rights Court on East Timor heard cases against 18 suspects, including 16 Indonesian military and police officers. Six people were found guilty of committing crimes against humanity, including three members of the military and one police officer. The four security force members were acquitted in July 2004. See Amnesty International reports: *Indonesia & Timor-Leste: Justice for Timor-Leste the Way Forward*, (AI Index: ASA 21/006/2004), April 2004, and *Indonesia & Timor-Leste: International responsibility for justice*, (AI Index: ASA 03/001/2003), April 2003.
- (83) Five soldiers were sentenced by a military tribunal to between two and six-and-a-half years' imprisonment for beating to death five detainees in Lhokseumawe, North Aceh in early 1999. Twenty-four members of the military and one soldier were sentenced by a joint civilian/military court (koneksitas court) to terms of imprisonment of between eight-and-a-half and 10 years for their involvement in the unlawful killing of a Muslim cleric, Teungku Bantaqiah and over 50 of his followers in West Aceh in July 1999.
- (84) "TNI Admits to Wrongdoings in Aceh", *The Jakarta Post*, 6 May 2004.
- (85) Press Release by the Aceh-Sumatra National Liberation Front, Aceh National Armed Forces (TNA) Military Information Centre, 3 July 2003.
- (86) Letter to the General Secretary of the International Federation of Journalists from Malik Mahmood, prime minister of the self-proclaimed government in exile.
- (87) Article 1 of the International Convention Against the Taking of Hostages defines a hostage-taker as: "Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any acts as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages (hostage-taking) within the meaning of this Convention."
- (88) "Living in fear in Aceh's black belt", *The Australian*, 28 June 2004.
- (89) "Suspected rebels kill journalist's wife in Aceh, Indonesia", *Associated Press*, 21 July 2003.
- (90) International Crisis Group (ICG), an international organization whose work is focused on the prevention of conflict, noted that it had heard credible accounts of human rights abuses by members of GAM, including the murders of 19 people over a period of several months in 2000 and the killing of at least 10 non-Acehnese residents of Central Aceh who were accused of collaborating with the security forces. See: *Aceh: Can Autonomy Stem the Conflict?* ICG, 27 June 2001.
- (91) *Armed Conflict in Aceh: Involvement of Children in Armed Forces*, Kelompok Kerja Studi Perkotaan, Yayasan Anak Bangsa, People's Crisis Centre and Jesuit Refugee Service, 2004.
- (92) "Comments on Martial Law and Civil Emergency in Aceh", Policy Statement by the ASNLF, 16 May 2004.
- (93) "Joint Statement by Japan, European Union, United States and the World Bank on the present

situation in Aceh", 9 April 2003.

(94) "Joint Statement on Aceh by the European Union, Japan and the US", 6 November 2003.

(95) "Indonesia: Arrests and Treatment of Activists in Aceh", 5 March 2004, US Department of State.

(96) UN Press Release SG/SM/8726, 29 May 2003.

(97) "Humanitarian aid needed for children in Aceh", UNICEF, 23 May 2003.

(98) One ringgit equals approximately US\$0.26.

(99) The Malaysian government has expressed a reservation to Article 7 of the CRC which requires state parties to register children immediately after birth, in particular where the child would otherwise be stateless. Under the reservation it states that this provision "shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia."

(100) These new penalties were introduced in 2002 in the context of a crackdown to rid the country of an estimated 1.5 million undocumented immigrants. Hundreds of thousands of Indonesian workers were among those expelled from Malaysia and in 2003 some 9,000 people were reported to have been sentenced under the Immigration Act and whipped.

(101) RELA is a voluntary youth program established in 1972 under the Interior Ministry to provide assistance to the security forces.

(102) "Prisons Department should take over management of more immigration depots", Suhakam, 22 October 2003.

(103) See UNHCR, UNHCR revised guidelines on applicable criteria and standards relating to the detention of asylum-seekers, February 1999.

(104) See UNHCR, Projected Global Resettlement Needs 2005, p. 67.

(105) The "Semenyih incident" dates back to March 1998 when the Malaysia police mounted a major operation to deport hundreds of Indonesians from four heavily overcrowded immigration detention centres including Semenyih. Among them were some 500 Acehnese. A number of the detainees were killed or badly injured as they attempted to resist the deportation. The Acehnese were reported to have been arrested and interrogated on arrival in Indonesia. The incident is notorious among the Acehnese community in Malaysia and is frequently referred to as an example of what they fear might happen to them. See Amnesty International: Malaysia: Asylum-seekers at risk in mass deportation of economic migrants, (AI Index ASA 28/09/98), 2 April 1998.

(106) The Deputy Prime Minister, Najib Razak, was quoted in the Star newspaper as saying: "We feel that prosecuting only those arrested at random while sparing those arrested during special operations is unfair as both groups should be treated the same". "Malaysia vows to punish illegal migrants before deportation", Agence France-Presse, 11 August 2004.