

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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

Berkas Perkara: Prosecutor's Dossier.

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

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

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

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

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

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

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

Kopassus: *Komando Pasukan Khusus*, Special Forces.

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

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

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

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

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

LP: *Lembaga Pemasyarakatan*, Prison.

Marinir: A special unit within the navy.

PM: *Polisi Militer*, military police.

Polda: *Polisi Daerah*, provincial level police.

Polres: *Polisi Resort*, district level police.

Polsek: *Polisi Sektor*, subdistrict level police.

POM: *Polisi Militer*, Military Police.

Rutan: *Rumah Tahanan*, Detention Centre.

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

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

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

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

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

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

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

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

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

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

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

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

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

In response to the annual U.S. State Department report on human rights, which highlighted a variety of abuses in Indonesia, in May 2004 Marty Natalegawa, the Ministry of Foreign Affairs spokesman, shot back: "The U.S. government does not have the moral authority to

assess or act as a judge of other countries, including Indonesia, on human rights, especially after the abuse scandal at Iraq's Abu Ghraib Prison."^[5] Yet Indonesia no less than the United States is obliged to respect the human rights of all people on its soil. While rightly criticizing the United States for abuses at Abu Ghraib, the Indonesian government has signally failed to respond in a serious manner to allegations by Indonesian human rights lawyers, Human Rights Watch, and others of grave and apparently systematic human rights violations in Aceh since the resumption of war in May 2003.

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

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

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

Because of prohibitions on access to Aceh, Human Rights Watch fears that the information on abuses contained in this report may represent just the tip of a dangerous iceberg. It is crucial that the international community, in particular the quartet (the U.S., E.U., Japan, and the World Bank) that has attempted to broker a peace deal, insist in public and private that Indonesia open Aceh to independent national and international journalists, human rights workers, diplomats, and observers. Many of the abuses documented in this report may have been committed because soldiers and police have been able to operate behind closed doors and away from public scrutiny. Greater openness is necessary as a deterrent to further abuse.

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

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

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

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

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

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

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

Rahmatsyah managed to escape on December 17, 2003. On December 29, 2003, Ersi Siregar, still in GAM captivity, was shot and killed

in a firefight between GAM and TNI soldiers. Fery Santoro was not released by GAM until May 16, 2004, almost a year after he was first taken hostage. His release, along with an estimated 150 others, was eventually negotiated by the International Committee of the Red Cross (ICRC) and the Indonesian Red Cross (PMI). The Indonesian military immediately questioned whether or not GAM was continuing to hold other civilians against their will.^[7] It is unclear whether or not GAM is still holding civilians.

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

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

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

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

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

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

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

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

HOW MANY DEAD AND WOUNDED IN ACEH?

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

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

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

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

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

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

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

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

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

The use of torture or coercion to extract confessions is illegal under Indonesian and international law. Article 421 of Indonesia's Criminal Code states that, "Any official who in a criminal case makes use of means of coercion either to force/compel a confession or to provoke a statement, shall be punished by a maximum imprisonment of four years."^[20] International human rights and humanitarian law prohibit the use of torture and ill-treatment to obtain information; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture), to which Indonesia is a party, requires states to "ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings."^[21]

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

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

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

When asked about his torturers he said:

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

APPLICABLE INTERNATIONAL AND DOMESTIC LEGAL STANDARDS

Indonesian and GAM forces in Aceh are bound by international humanitarian law (also known as the laws of war). The conflict in Aceh is considered to be a non-international (internal) armed conflict, for which the applicable law includes Article 3 common to the four Geneva Conventions of 1949 and the customary laws of war.^[26]

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

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

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

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

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

Sopyani, the sixteen-year-old boy mentioned at the outset of this report, was detained by the TNI on June 9, 2003. Soon afterwards he

was transferred to police custody. He told Human Rights Watch what happened to him while in detention at a police station in Aceh:

When asked if he could identify his perpetrators he said:

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

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

A PATTERN OF TORTURE IN ACEH

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

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

The Committee also made recommendations on measures that should be taken by the Indonesian authorities to resolve this problem and to meet its obligations as a state party to the Convention against Torture. They included amending the penal legislation so that torture and other cruel, inhuman, or degrading treatment or punishment are strictly prohibited under criminal law; establishing an effective, reliable, and independent complaint system to undertake prompt, impartial, and effective investigations into

allegations of ill-treatment and torture; reducing the length of pre-trial detention; ensuring adequate protection for witnesses and victims of torture; excluding any

statement made under torture from consideration in any proceedings, except against the torturer; and inviting the U.N. Special Rapporteur on Torture to visit Indonesia.[\[34\]](#)

To date none of these recommendations have been implemented.

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

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

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

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

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

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

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

Another man told Human Rights Watch:

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

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

On July 21, 2003 Syamsul Syahputra became the first reported alleged member of GAM to go on trial in Aceh since the start of martial law in May 2003. Syahputra was charged with treason, in the first of a series of trials apparently aimed at establishing that GAM members were trying to break up the Republic of Indonesia. At the opening of his trial the state prosecutor, Moch Adnan, stated that Syahputra, allegedly a district secretary of GAM, "was trying to create revolt against the legal government with an aim to set up an independent state, separated from the Republic of Indonesia."[\[46\]](#) Since his trial hundreds of others have taken place, largely unreported, and without independent monitors.

According to the Indonesian military, over 2,000 Acehnese have been arrested by Indonesian security forces in Aceh since the start of martial law in May 2003. Hundreds have been charged, tried, and convicted for *makar* (treason or rebellion) under Indonesia's criminal code (*Kitab Undang-Undang Hukum Pidana*, or KUHP) and are now in prisons across Aceh and Central Java. Under Indonesia's criminal

code a conviction for *makar* can result in life imprisonment. The charges have generally been based on allegations of membership in, associating with, or assisting GAM, mostly for providing financial or other material support for GAM.

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

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

Persons arrested for their participation in, or support for the GAM in Aceh, are typically charged with the crime of *makar* (treason or rebellion). The government seems to favor this catch-all offense, which uses extremely broad language and is punishable by up to life imprisonment, rather than to prosecute persons for specific offenses, such as weapons possession, kidnapping, or murder. Membership in GAM itself is not a violation of the law in Indonesia, as GAM is not an illegal organization. [48]

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

Article 106

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

Article 107

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

Article 108

- 1) Guilty of rebellion and punished by a maximum imprisonment of fifteen years shall be:

First, the person who takes up arms against the government;

Second, the person who, with the intent to rebel against the government, rises with or joins a band which take up arms against the government,

- 2) Leaders and originators of a rebellion shall be punished by life imprisonment or a maximum imprisonment of twenty years. [49]

The majority of new prisoners in Aceh have been charged and convicted of *makar* (treason or rebellion) under these articles. The charges filed against 140 of the 143 prisoners transferred from Aceh to Java in January 2004 included *makar*; the charges against 126 consisted solely of offenses under articles 106-108. [50]

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

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

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

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

In 1999 the United Nations Working Group on Arbitrary Detention visited Indonesia. In its report following the visit they drew particular attention to some articles in KUHP and called for them to be amended. One group of articles raised were the provisions related to crimes against the security of the state (Articles 104-129). The Working Group stated that:

The definition of an act in support of GAM that constitutes *makar* is extremely elastic and susceptible to abuse by security officials and prosecutors attempting to prove a crime. Although GAM combatants who have either been captured or have surrendered are among the detainees and prisoners in Aceh and Java, the detainee population also includes civilians who have been accused of supporting or

sympathizing with GAM. The definition of support or sympathy is so broad that it includes families of GAM members, as well as individuals who are opposed to Indonesian government policy in Aceh, including human rights defenders, non-violent political activists, and students. One defense lawyer from Aceh told Human Rights Watch:

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

Even during a state of emergency, all arrests must be made with an arrest warrant, unless the suspect is caught *in flagrante delicto* ("in the act").^[55] Article 18 of the KUHAP states that:

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

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

However, they had one thing in common: none of the 35 prisoners Human Rights Watch interviewed said that they were ever shown an arrest warrant or informed in writing at the time of their arrest of the charges against them. One Indonesian lawyer who has monitored trials in Aceh in the last year told Human Rights Watch:

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

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

Another man recounted his arrest without a warrant:

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

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

A defense lawyer from Aceh explained to Human Rights Watch:

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

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

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

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

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

An Indonesian NGO that monitored the trials in Aceh found that court documents were sometimes manipulated to give the appearance that there was a defense lawyer at the trial when none was present. Said a worker for the organization: "There are many cases without a defense lawyer but the documentation has a falsified signature."^[68]

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

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

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

Another man told Human Rights Watch:

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

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

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

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

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

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

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

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

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

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

The man was nevertheless convicted.

A 22-year-old man described his trial:

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

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

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

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

One man told Human Rights Watch:

Another man explained:

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

The perception that the outcome of trials had been determined in advance by the martial law administrator was widely held among the prisoners interviewed by Human Rights Watch. The resignation and acceptance of harsh sentences and the widespread reluctance to appeal reflects this. One eighteen-year-old explained why he did not appeal his three-and-a-half-year sentence:

Another man told Human Rights Watch:

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

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

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

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

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

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

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

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

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

THE FIVE GAM NEGOTIATORS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Although Justice Minister Mahendra vehemently denied any political reasons for the transfers, then Coordinating Minister for Political and Security Affairs Susilo Bambang Yudhoyono told reporters, "Incarcerating GAM members outside Aceh is a government policy for dealing with state security convicts or those involved in separatist movements, based on national security interests."[\[107\]](#)

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

A lawyer from Aceh told Human Rights Watch:

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

Another man told Human Rights Watch:

Another man explained how he felt:

In July 2004 the Indonesian government announced more transfers of prisoners, from Aceh to Kalimantan and East Nusa Tenggara.^[115]

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

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

Another man told Human Rights Watch:

One eighteen-year-old told Human Rights Watch:

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

Rule 37 of the U.N. Standard Minimum Rules for the Treatment of Prisoners states that "[p]risoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits."^[123]

Make clear to the Indonesian government that enhanced military cooperation will depend on accountability within the armed forces for abuses in Aceh and elsewhere.

Insist in public and private that Indonesia open Aceh to independent national and international journalists, human rights workers, diplomats, and observers.

Pressure the government to implement the recommendations made by the Committee Against Torture and the recommendations made by the Special Rapporteur on the Independence of Judges and Lawyers.

Donor assistance for strengthening the Indonesian judicial system should prioritize criminal justice reforms that would ensure that the criminal law, criminal procedure code, and judicial practice comply with international human rights standards.

Appendix 1: Recommendations made by the Committee Against Torture on November 12-23, 2001:^[124]

(a) Amend the penal legislation so that torture and other cruel, inhuman or degrading treatment or punishment are offences strictly prohibited under criminal law, in terms fully consistent with the definition contained in article 1 of the Convention. Adequate penalties, reflecting the seriousness of the crime, should be adopted.

(b) Establish an effective, reliable and independent complaint system to undertake prompt, impartial and effective investigations into allegations of ill treatment and torture by police and other officials and, where the findings so warrant, to prosecute and punish perpetrators, including senior officials.

(c) Ensure that all persons, including senior officials, who have sponsored, planned, incited, financed or participated in paramilitary operations using torture, will be appropriately prosecuted.

(d) Take immediate measures to strengthen the independence, objectivity, effectiveness and public accountability of the National Commission on Human Rights (Komnas-HAM), and ensure that its reports to the Attorney General are published in a timely fashion.

(f) Ensure that crimes under international law such as torture and crimes against humanity committed in the past may be investigated and, where appropriate, prosecuted in Indonesian courts.

(g) Continue measures of police reform to strengthen the independence of the police from the military, as an independent civilian law enforcement agency.

(h) Reduce the length of pre-trial detention, ensure adequate protection for witnesses and victims of torture and exclude any statement made under torture from consideration in any proceedings, except against the torturer.

(k) Reinforce human rights education to provide guidelines and training regarding, in particular, the prohibition of torture, for law-enforcement officials, judges, and medical personnel.

(l) Invite the Special Rapporteur on Torture to visit its territories.

(n) Take immediate steps to address the urgent need for rehabilitation of the large number of victims of torture and ill-treatment in the country.

(o) Make the declarations provided for in articles 21 and 22 of the Convention.

(p) Include, in its next periodic report, statistical data regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, disaggregated by, *inter alia*, gender, ethnic group, geographical region, and type and location of detention. In addition, information should be provided regarding complaints and cases heard by domestic bodies, including the results of investigations made and the consequence for the victims in terms of redress and compensation.

(q) Widely disseminate the Committee's conclusions and recommendations throughout the country, in all appropriate languages.]

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

1) *Aceh Under Martial Law: Human Rights Under Fire* A Human Rights Watch Briefing Paper, June 2003

2) *Aceh Under Martial Law: Unnecessary and Dangerous Restrictions on International Humanitarian Access* A Human Rights Watch Briefing Paper, September 2003

3) *[Aceh Under Martial Law: Can These Men Be Trusted to Prosecute This War?](#)* A Human Rights Watch Briefing Paper, October 2003

4) *Aceh Under Martial Law: Muzzling the Messengers: Attacks and Restrictions on the Media* A Human Rights Watch Report, November 2003

A Human Rights Watch Report, December 2003

6) *Aceh Under Martial Law: Problems Faced By Acehnese Refugees in Malaysia*

A Human Rights Watch Report, April 2004.

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

[2] Human Rights Watch interview with foreign embassy official, Jakarta, March 31, 2004.

[3] In this report the term prisoner refers to individuals convicted of a crime. The term detainee refers to individuals in detention who have not been convicted.

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

[7] "Freed hostages of Aceh rebels were civilians: Indonesian military," Agence France Presse, May 19, 2004.

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

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

[11] "Violations rampant during martial law: Rights body," *The Jakarta Post*, May 24, 2004.

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

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

[15] "Over 230 Aceh rebels killed in two months: Military," Agence France Presse, July 21, 2004.

[17] "Indonesia: OCHA Humanitarian Update," U.N. Office for the Coordination of Humanitarian Affairs, Indonesia, June 30, 2004.

[18] Human Rights Watch interview with 22-year-old prisoner from Aceh, prison in Central Java, 2004.

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

[20] KUHP (Kitab Undang-Undang Hukum Pidana, Indonesian Criminal Code), article 421.

[21] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51

(1984)], entered into force June 26, 1987, article 15. Indonesia ratified the Convention against Torture in 1998. See also ICCPR, article 14(3)(g) (anyone charged with a criminal offense may "[n]ot be compelled to testify against himself or to confess guilt.")

[22] Human Rights Watch interview with 32-year-old prisoner from Aceh, prison in Central Java, 2004.

[23] Human Rights Watch interview with 21-year-old prisoner from Aceh, prison in Central Java, 2004.

- [24] Human Rights Watch interview with 21-year-old prisoner from Aceh, prison in Central Java, 2004.
- [25] Human Rights Watch interview with 53-year-old prisoner from Aceh, prison in Central Java, 2004.
- [26] Indonesia became a party to the Geneva Conventions in 1958. Also applicable is the Second Additional Protocol of 1977 to the Geneva Conventions (Protocol II). Although Indonesia is not a party to Protocol II, many if not all of its provisions reflect customary international law.
- [27] While Indonesia is not a party to the International Covenant on Civil and Political Rights and some other important human rights treaties, the fundamental rights found within are recognized as part of customary international law.
- [28] Human Rights Watch interview with 53-year-old prisoner from Aceh, prison in Central Java, 2004.
- [29] Human Rights Watch interview with 16-year-old prisoner from Aceh, prison in Central Java, 2004.
- [30] Human Rights Watch interview with 16-year-old prisoner from Aceh, prison in Central Java, 2004.
- [31] Human Rights Watch interview with 30-year-old prisoner from Aceh, prison in Central Java, 2004.
- [32] Human Rights Watch interview with 42-year-old prisoner from Aceh, prison in Central Java, 2004.
- [33] "Conclusions and Recommendations of the Committee Against Torture: Indonesia," CAT/C/XXVII/ Concl.3, Committee Against Torture, 27th session, November 12-23, 2001.
- [34] "Conclusions and Recommendations of the Committee Against Torture: Indonesia," CAT/C/XXVII/ Concl.3, Committee Against Torture, 27th session, November 12-23, 2001. A full list of the Committee's recommendations can be found in Appendix 1 at the end of this report.
- [35] Human Rights Watch interview with 18-year-old prisoner from Aceh, prison in Central Java, 2004.
- [36] Human Rights Watch interview with 30-year-old prisoner from Aceh, prison in Central Java, 2004.
- [37] Human Rights Watch interview with 34-year-old prisoner from Aceh, prison in Central Java, 2004.
- [38] Human Rights Watch interview with 37-year-old prisoner from Aceh, prison in Central Java, 2004.
- [39] Human Rights Watch interview with 37-year-old prisoner from Aceh, prison in Central Java, 2004.
- [40] Human Rights Watch interview with 22-year-old prisoner from Aceh, prison in Central Java, 2004.
- [41] Human Rights Watch interview with 45-year-old prisoner from Aceh, prison in Central Java, 2004.
- [42] Human Rights Watch interview with 36-year-old prisoner from Aceh, prison in Central Java, 2004.
- [43] Human Rights Watch interview with 23-year-old prisoner from Aceh, prison in Central Java, 2004.
- [44] Human Rights Watch interview with 21-year-old prisoner from Aceh, prison in Central Java, 2004.
- [45] Human Rights Watch interview with foreign embassy official, Jakarta, March 31, 2004.
- [46] "Aceh rebel faces treason charges in Indonesia," Deutsche Presse-Agentur, July 21, 2003.
- [47] "Law enforcement in Aceh not working," *Kompas*, March 27, 2004.
- [48] The only organization to have been banned in Indonesia is the Indonesian Communist Party, which was banned in 1966 by a decree of the Provisional People's Consultative Assembly (Decree XXV/MPRS/1966).
- [49] KUHP, Articles 106-108.
- [50] Information provided by DepKeh-Ham (*Departemen Kehakiman dan Hak Asasi Manusia*, Department for Justice and Human Rights).
- [51] Legal evidence materials are defined under KUHP article 184 as, "a) the testimony of a witness; b) information of an expert; c) a letter; d) an indication; e) the statement of a defendant," These are further explained in subsequent articles, Article 184, Chapter XVI, KUHP.
- [52] Article 53 is a general article related to an "attempt" to commit a crime. This requires evidence that there was an intention to commit a crime and that the person undertook an act towards that goal, even if the act was not completed.
- [53] Report of the Working Group on Arbitrary Detention on its visit to Indonesia (January 31 February 12, 1999), E/CN.4/2000/4/add.2, August 12, 1999.
- [54] Human Rights Watch interview with defense lawyer from Aceh, Medan, May 7, 2004.
- [55] Law No. 23/1959 covers both a state of military and civil emergency and states, "Martial Law authority is entitled to arrest and detain people for 20 days at most, but the arrest must be reported to the martial law authority within 14 days; Within 10 x 24 hours, the

detainee must be investigated, the result of which must be reported to the martial law authority. The investigations must result in a dossier (BAP); If in 20 days the investigation is not completed and if detention is still required, the said person can be detained up to 50 days by the central authority of martial law; All arrests and detentions must be made with an arrest warrant," Article 32, Law No. 23, 1959 on States of Emergency.

[56] KUHAP, Article 18.

[57] Human Rights Watch interview with Indonesian lawyer from Aceh, Medan, May 7, 2004.

[58] Human Rights Watch interview with 30-year-old prisoner from Aceh, prison in Central Java, 2004.

[59] Human Rights Watch interview with 22-year-old prisoner from Aceh, prison in Central Java, 2004.

[60] Human Rights Watch interview with 30-year-old prisoner from Aceh, prison in Central Java, 2004.

[61] If arrests and detentions are conducted beyond what is regulated in the 1959 law, Article 1 of Chapter X in the Criminal Code applies, and the military authority can be brought to court, "A court of first instance has the authority to examine and decide, inline with the provisions contained in this law: a) whether or not an arrest, detention, termination of an examination or prosecution is valid," Article 77a, Chapter X, KUHAP; Luhut M.P Pangaribuan, Lawyer, Jakarta, "Aceh Martial Law authority not unaccountable," *The Jakarta Post*, June 23, 2003.

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

[63] Human Rights Committee, General Comment 20, paragraph 1.

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

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

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

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

[68] Human Rights Watch interview with Indonesian NGO worker, Jakarta, May 11, 2004.

[69] Human Rights Watch interview with 40-year-old prisoner from Aceh, prison in Central Java, 2004.

[70] Human Rights Watch interview with 31-year-old- prisoner from Aceh, prison in Central Java, 2004.

[71] Human Rights Watch interview with 46-year-old prisoner from Aceh, prison in Central Java, 2004.

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

[73] See generally, ICCPR, article 14,

[74] Human Rights Watch interview with Indonesian NGO Worker, Jakarta, May 11, 2004.

[75] Human Rights Watch interview with 34-year-old prisoner from Aceh, prison in Central Java, 2004.

[76] Human Rights Watch interview with 34-year-old prisoner from Aceh, prison in Central Java, 2004.

[77] Human Rights Watch interview with defense lawyer from Aceh, Medan, May 7, 2004.

[78] Human Rights Watch interview with 30-year-old prisoner from Aceh, prison in Central Java, 2004

[79] Human Rights Watch interview with 22-year-old prisoner from Aceh, prison in Central Java, 2004.

[80] Human Rights Watch interview with 29-year-old prisoner from Aceh, prison in Central Java, 2004.

[81] Human Rights Watch interview with 28-year-old prisoner from Aceh, prison in Central Java, 2004.

- [82] Human Rights Watch interview with 37-year-old prisoner from Aceh, prison in Central Java, 2004.
- [83] Human Rights Watch interview with 26-year-old prisoner from Aceh, prison in Central Java, 2004.
- [84] Human Rights Watch interview with 28-year-old prisoner from Aceh, prison in Central Java, 2004.
- [85] Human Rights Watch interview with 18-year-old prisoner from Aceh, prison in Central Java, 2004.
- [86] Human Rights Watch interview with 42-year-old prisoner from Aceh, prison in Central Java, 2004.
- [87] Human Rights Watch interview with defense lawyer from Aceh, Medan, May 7, 2004.
- [88] Human Rights Watch interview with human rights defender from Aceh, Medan, May 7, 2004.
- [89] Human Rights Watch interview with 42-year-old prisoner from Aceh, prison in Central Java, 2004.
- [90] Human Rights Watch interview with 31-year-old prisoner from Aceh, prison in Central Java, 2004.
- [91] Human Rights Watch interview with 45-year-old prisoner from Aceh, prison in Central Java, 2004.
- [92] Human Rights Watch interview with 23-year-old prisoner from Aceh, prison in Central Java, 2004.
- [93] Protocol I of 1977 to the Geneva Conventions of 1949, article 37.
- [95] Press Release, The Centre for Humanitarian Dialogue (HDC), Geneva, October 21, 2003.
- [96] Human Rights Watch interview with 23-year-old prisoner from Aceh, prison in Central Java, 2004.
- [97] It is estimated that many prisoners starved to death on the island, unable to produce enough food to live on from the dry and unfertile land.
- [98] Nani Farida, "Surrendered GAM rebels express fears over their safety," *The Jakarta Post*, July 4, 2003.
- [99] "Indonesia cancels plans to hold rebels in island prison," Agence France Presse, July 23, 2004.
- [100] Nurdin Hasan, "First group of former Aceh rebels leaves re-education program," Agence France Presse, January 18, 2004.
- [101] Nani Farida, "More GAM members to receive re-education course," *The Jakarta Post*, April 12, 2004; "School for change," *Tempo Magazine*, August 26, 2004 September 1, 2004.
- [102] Nani Farida, "438 ex-rebels go home after 're-education'," *The Jakarta Post*, January 19, 2004.
- [104] Human Rights Watch interview with foreign Ambassador to Indonesia, Jakarta, April 15, 2004.
- [106] Human Rights Watch email communication with representative from UNICEF, Indonesia, July 27, 2004.
- [108] "The transfer of Acehnese prisoners to Java," Press Release, State of Aceh, Office of the Ministry of Foreign Affairs, January 26, 2004.
- [109] "Aceh rebels to be jailed in Java," *The Jakarta Post*, January 20, 2004.
- [110] "The transfer of Acehnese prisoners to Java," Press Release, State of Aceh, Office of the Ministry of Foreign Affairs, January 26, 2004; "Slamet Susanto and Teuku Agam Muzakir, "Another 89 GAM prisoners exiled to Javanese jails," *The Jakarta Post*, January 26, 2004.
- [111] Human Rights Watch interview with defense lawyer from Aceh, Medan, May 7, 2004.
- [112] Human Rights Watch interview with 22-year-old prisoner from Aceh, prison in Central Java, 2004.
- [113] Human Rights Watch interview with 29-year-old prisoner from Aceh, prison in Central Java, 2004.
- [114] Human Rights Watch interview with 28-year-old prisoner from Aceh, prison in Central Java, 2004.
- [115] "More GAM prisoners to be moved," *The Jakarta Post*, July 1, 2004.
- [116] U.N. Standard Minimum Rules for the Treatment of Prisoners , Rule 44(3)
- [117] Human Rights Watch interview with 28-year-old prisoner from Aceh, prison in Central Java, 2004.
- [118] Most prisons in Aceh allow regular family visits to detainees and prisoners.
- [119] Human Rights Watch interview with 20-year-old prisoner from Aceh, prison in Central Java, 2004.
- [120] Human Rights Watch interview with 37-year-old prisoner from Aceh, prison in Central Java, 2004.
- [121] Human Rights Watch interview with 18-year-old prisoner from Aceh, prison in Central Java, 2004.

[\[122\]](#) Human Rights Watch interview with 21-year-old prisoner from Aceh, prison in Central Java, 2004.

[\[123\]](#) U.N. Standard Minimum Rules for the Treatment of Prisoners, Rule 37

[\[124\]](#) "Conclusions and Recommendations of the Committee Against Torture: Indonesia," CAT/C/XXVII/ Concl.3, Committee Against Torture, 27th session, November 12-23, 2001.

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