

# **Indonesia**

## **Protecting rights in Nanggroe Aceh Darussalam during the military emergency**

Following the breakdown in the Cessation of Hostilities Agreement (CoHA) between the Government of Indonesia and the Free Aceh Movement (*Gerakan Aceh Merdeka*, GAM), Amnesty International calls upon both sides to the conflict to make the protection of civilians a priority during the renewed military operations.<sup>1</sup>

Amnesty International is gravely concerned that the status of military emergency in Nanggroe Aceh Darussalam (NAD) which came into force on 19 May 2003, dramatically increases the likelihood of human rights violations taking place. There are already reports that this is the case and that civilians, including children, have been subjected to extrajudicial execution, and that many thousands of people have been forced to flee their homes.

Under the Law on States of Emergency (Law No. 23/1959), which provides the legal basis for Presidential Decree 28/2003 under which the military emergency was declared, there is potential for extensive powers regarding public order and security to be vested in the military. Implementing instructions have not been made public and therefore the extent and nature of the military's current powers in NAD remain unclear. This lack of clarity contributes to the possibility of arbitrary and illegal actions by the military.

Public commitments have been made by government officials to minimise the hardships suffered by the population of NAD resulting from the conflict, including by rebuilding homes, keeping schools open and ensuring that displaced people receive food and medical assistance. Amnesty International urges that these commitments are implemented without delay as part of a holistic approach to ensure the protection of the full range of human rights, including access to education, services and economic development.

Specific measures by both sides are also urgently required to protect the right to life and physical integrity of the civilian population during this period. Amnesty International reminds the Government of Indonesia that the declaration of a military emergency does not allow derogation of basic human rights, including the right to life and to protection from torture and freedom of thought, conscience, religion and belief. Any suspension of other rights must be made public, be strictly required by the situation and proportionate to the harm

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<sup>1</sup> The CoHA was signed on 9 December 2002. It was hoped that the agreement would be the first step in ending the 26-year-old conflict between Indonesian government forces and the pro-independence armed group, GAM. The CoHA, which had been mediated by the Geneva based Centre for Humanitarian Dialogue, was not a peace settlement in itself, but provided a framework for negotiating a settlement to the conflict and provided for various steps to be taken to prevent hostilities during the implementation period. Initially it brought about a dramatic decrease in the level of violence, but by April 2003 the violence began to escalate again. Efforts to rescue the CoHA finally broke down in mid-May 2003 and was immediately followed by the declaration of a military emergency in NAD by the Government of Indonesia on 19 May 2003.

that suspension of rights seeks to address. It should also not involve discrimination on grounds of race, colour, sex, language, religion, or social origin.

Amnesty International notes that various government, military and police officials have stated their commitment to avoiding human rights violations and civilian casualties during the renewed military operations. In view of the grave human rights violations that are already being reported from NAD, it is imperative that the government clarifies how this is to be achieved and that it takes immediate measures to ensure their instructions are implemented by troops on the ground.

The following 10 recommendations are made on the basis of specific concerns Amnesty International has based on past experience of operations by the Indonesian security forces in NAD and elsewhere in Indonesia. If the massive human rights violations which have characterised previous operations are not to be repeated, the 10 points must be stringently adhered to. Where appropriate they should be incorporated into implementing instructions, regulations and other guidelines that govern the declared emergency.

Recommendations are also made to the leadership of GAM.

## **Recommendations to the Indonesian government**

### **1. Official condemnation**

Amnesty International welcomes statements made by various government, military and police officials to the media that civilian casualties will be avoided that human rights standards will be adhered to during the military emergency, but believes that an official public statement by the government is required.

- The government should formally put on public record its opposition to human rights violations such as unlawful killings, including extrajudicial executions, “disappearances” and torture. A clear message should be given to members of the security forces that such violations will not be tolerated under any circumstances and that those found to be responsible for such violations will be brought to justice.**

### **2. Chain-of-command control**

Senior military or police officials in Indonesia are rarely held accountable for human rights violations committed by their subordinates, even when they are known to issued orders which directly caused such violations. It is of particular concern that one senior officer who, in what is an exceptional case, is currently on trial on charges of crimes against humanity allegedly committed in Timor-Leste (formerly known as East Timor) in 1999, continues to be on active duty in a position which gives him a direct role in the military operations in NAD - he has

been unable to attend recent trial sessions because of his commitments in relation to the campaign in NAD.

Statements by some senior military officials indicate that human rights violations are an accepted part of military operations. For example, General Ryamizard Ryacudu, the Army Chief of Staff in a statement to the media described as “heroes” seven members of the Special Forces Command (Koppasus) who had just been convicted for the murder of a civilian independence leader in the province of Papua (formerly known as Irian Jaya).<sup>2</sup>

- **The government should issue clear and strongly worded directives to its security forces to adhere to international human rights and humanitarian law under all circumstances and to put in place mechanisms to monitor this adherence. Military Commanders, including the Regional Military Commander, District Military Commanders, Sub-District Military Commanders and Commanders of military and police special units, should maintain strict control to ensure that officers under their command do not commit human rights violations.**
- **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.**

### **3. Individual responsibility**

The Indonesian military routinely fails to adhere to human rights standards including those relating to the use of force and firearms and on arrest and detention. The record of the police is similarly poor. This is particularly true of the Police Mobile Brigade (Brimob) whose members have been responsible for gross violations of human rights violations in NAD and elsewhere in Indonesia. Additional Brimob units have been deployed to NAD to supplement the military in its new offensive against GAM. In rare cases when members of the security forces suspected of committing human rights violations have been brought to trial, they have on some occasions sought to justify their actions by stating that they were acting under orders.

- **The prohibition of unlawful killings, including extrajudicial executions, “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 authorised to use lethal force.**
- **These officials should be instructed that they have the right and duty to refuse to obey any order to participate in human rights violations. An order from a superior officer or a public authority must never be invoked as a justification for a human rights violation. All officials must be made aware that they will face criminal prosecution for such acts.**

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<sup>2</sup> *Detik.com*, 23 April 2003.

#### **4. Effective investigations and prosecution of alleged perpetrators of human rights violations.**

Despite the thousands of cases of human rights violations that have been reported in NAD over the years, in only three cases known to Amnesty International have investigations been completed and members of the security forces been brought to trial. The lack of justice continues to cause anger and resentment in NAD and has contributed to the ongoing conflict.

- **The government should create effective systems to ensure security personnel are held criminally accountable for human rights violations committed by them. The definition of those responsible should include those who may have given orders as well as those who carried out actions.**
- **The government should ensure the independent investigation by the National Commission on Human Rights (Komnas HAM) or a similar body of all allegations of serious human rights violations. The investigators should have necessary resources and powers to carry out their work effectively, including powers to compel witnesses to attend and to obtain documentary evidence. The methods and findings of all such investigations should be made public in full.**
- **Officials suspected of responsibility for unlawful killings, including extrajudicial executions, “disappearances” or torture should be suspended from active duty during investigations. Complainants, witnesses, lawyers and others involved in investigations should be protected from intimidation and reprisals.**

#### **5. Protection of suspects in military or police detention**

Under Law 23/1959 on States of Emergency the military has authority to arrest and detain suspects for 20 days, extendable by 50 days. This provision, which contains no safeguards for the protection of detainees, such as rights of access by lawyers, doctors, and families of detained persons, creates a high risk of torture and other human rights violations. Even before the imposition of the military emergency, the military frequently carried out detentions, although they had no legal authority to do so. Torture of detainees in both police and military custody was widespread as were deaths in custody and “disappearances” of suspects.

Torture is explicitly prohibited under any circumstances both by the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment and by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Indonesia is a state party. Both declare that 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.

Guarantees of fair trial are vital to protecting human rights, including preventing torture, during states of emergency and should therefore never be suspended. The need to safeguard the right to fair trial is recognized under Common Article 3(d) of the Geneva Conventions which applies to internal armed conflicts and which prohibits the passing of

sentences and the carrying out of executions without previous judgement by a regularly constituted court “affording all the judicial guarantees which are recognized as indispensable by civilised peoples”.

The military has declared that captured members of GAM will be regarded as prisoners of war, although this status does not apply in conflicts of a non-international nature. The authority of the military to hold suspects was contradicted by National Police Headquarters on 21 May 2003 in a statement which was reported in the media to have said that law enforcement remains the responsibility of the police and that suspects should be transferred to them for processing in accordance with the law.<sup>3</sup> Amnesty International fears that this lack of clarity on the status of detainees greatly heightens the risk of human rights violations.

- **The government should immediately clarify which agencies have the authority to carry out arrests and detentions and what procedures should be applied.**
- **Anyone detained by the military or police, whether combatant or non-combatant, should be treated in accordance with the relevant international standards, including the rights laid out in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) apply. Among the standards that must be rigorously applied are the rights of detainees to be brought before a judge with out delay; to have access to legal representation, and to be provided with the opportunity to challenge the lawfulness of their detention.**

## **6. Protection of women and children**

Women and children are disproportionately the victims of conflict, internal or otherwise. In the context of armed independence struggles in NAD and elsewhere in Indonesia, torture, including rape and other forms of sexual abuse of women and girls, have been committed by members of the security forces as a form of intimidation and as punishment for their, or their relatives', alleged involvement with or support of armed opposition groups. Thousands of women have been widowed or children orphaned because husbands and fathers have been unlawfully killed during the course of operations by the security forces in these regions. Women and children have also been among the many thousands of people that have been displaced by the actions of security forces.

According to reports in the media, children are among those who have been extrajudicially executed by the military during this latest military campaign against GAM. According to a report by the BBC on 22 May 2003, three boys aged 11, 13 and 14 were among a group of at least eight people who were extrajudicially executed in Mapa Mamplam

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<sup>3</sup> “Police to Limit Military Role in Aceh”, *Laksamana.Net*, 21 May 2003.

village near Lhokseumawe in North Aceh District by members of the Special Forces Command (Kopassus).<sup>4</sup>

Generally women and children are owed a duty as civilians, to be protected from harm during conflict, and not to be subjected to violence, in particularly murder, mutilation, cruel treatment and torture, and other outrages on personal dignity, or being taken as hostages.

However, specific violations of the rights of women and children are considered crimes under international law. It has been frequently confirmed that crimes against women such as rape, sexual slavery, enforced prostitution, or any other form of sexual violence is a crime under international law. Certain violations of the rights of children are also crimes under international law, such as conscripting or enlisting children. Children also are owed special duties of protection in armed conflict.

Amnesty International draws the attention of the government to the UN Security Council resolutions on the protection of women and children in armed conflict (Security Council Resolution 1325 (2000) and 1261 (1999)) respectively and urges that they should be implemented in full.

- **Amnesty International calls on the government to ensure that crimes against women and children are not committed under any circumstances and the violation of the rights of women and children will not be tolerated.**
- **In accordance with 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 United Nations 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 woman should be brought to justice.**
- **In accordance with Security Council Resolution 1261 (1999) the government should undertake feasible measures to minimize the harm suffered by children such as “days of tranquillity” to allow the delivery of basic necessary services. Special measures should be taken to protect children, in particular girls, from rape and other forms of sexual abuse and gender based violence.**

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<sup>4</sup> “They killed them one by one”, *BBC News*, 21 May 2003.

## 7. Protection of internally displaced persons

Amnesty International is concerned that provisions under Law 23/1959 which permit the Military Emergency Authority to prohibit individuals considered “dangerous” from living in the region, could result in forced deportations which is a crime under the Rome Statute of the International Criminal Tribunal (ICC). The government initially stated that 100,000 people could be displaced by the renewed conflict. According to recent media reports the military is planning to forcibly move up to 200,000 people from their homes into camps. Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand, is considered a crime under the Rome Statute.<sup>5</sup>

- **The government should place an absolute prohibition on acts by its security forces or other officials that cause forcible displacement, including deliberately provoking individuals to flee an area through threats or use of violence or total disrespect for their fundamental human rights, or destruction of shelter, means of livelihood or other materials essential to survival, or through acts intended to terrorize the civilian population.**
- **No one should be ordered to move from their homes unless there are compelling reasons of security or imperative military reasons. These reasons should be made public.**

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

During all past counter-insurgency operations, in NAD, Timor Leste and elsewhere, the Indonesian security forces have made extensive use of civilians, including as militia, civilian defence groups and military auxiliary units. Members of such groups typically undergo minimal training and are armed with lethal weapons, including firearms. Their command and control structures are unclear and there are no effective mechanisms by which they can be held accountable if they commit human rights violations. Militia groups, supported by the military, are already reported to be operating in some areas of NAD.

Not all those recruited by the military to participate in such groups do so voluntarily. During 1999 in Timor-Leste, for example, many people claim that they were forced to join militia which took part in committing crimes against humanity and other serious human rights violations. Refusal resulted in being labelled as the enemy with the corresponding dangers that this brought. Children under the age of 18 were among those conscripted into militia groups.

The status of “military emergency” in NAD heightens the risk that civilians could be recruited against their will into civilian defence units or militia and be forced to commit human rights violations. Article 30 of Law 23/1959 allows the Military Emergency Authority

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<sup>5</sup> Indonesia has yet to ratify the Rome Statute.

to instruct inhabitants of a region under military emergency to perform compulsory labour in the interests of security and defence.

Unpaid forced labour is in contravention of International Labour Organization (ILO) Convention No 29 on forced labour, to which Indonesia became a party in 1950. Children are specifically protected from forced or compulsory labour, including forced or compulsory recruitment for use in armed conflict under ILO Convention No. 182 on the worst forms of child labour, to which Indonesia became a party in 2000.

- **In accordance with its commitments under the ILO conventions, the Indonesian government should issue instructions to the Military Emergency Authority in NAD that no person, especially children, should be requested to perform forced labour, including as members of militia or other forms civilian defence force.**
- **Where civilians are used to supplement or support the military or the police they should be subject to the same standards as the military. In particular, they should undergo practical training in international human rights standards, should be subject to strict and transparent chain of command control, and should be held accountable if they commit human rights violations.**

## **9. Provision of humanitarian aid**

For many years livelihoods in NAD have been disrupted by counter-insurgency operations against GAM. Insecurity resulting from the military emergency is likely to create additional hardship for the population and increase the need for humanitarian assistance.

- **Measures must be taken to ensure that the humanitarian needs of the Acehnese population are fully met, including by ensuring provision of food, water, shelter, sanitation and medical care. The Indonesian authorities should facilitate the full, safe and unhindered access of national and international humanitarian personnel to all areas of NAD where humanitarian assistance is required.**

## **10. Protection for human rights defenders and political activists**

There are grave concerns for the safety of local human rights activists during the military emergency. In the past, the Indonesian security forces have not distinguished between combatants and non-combatants and civilians have been widely punished for their alleged support of GAM. Individuals engaged in legitimate peaceful activities, such as human rights monitoring, have been among those who have been accused of sympathising with GAM and subjected to human rights violations as a result. Since 2000, 13 human rights defenders are believed to have been extrajudicially executed in NAD and scores of others subjected to torture, detention without charge and harassment and intimidation.

The safety of members of peaceful political groups that support independence for NAD are also considered is also of serious concern. Both human rights and political groups

are among those that have been named by the military authorities of being suspected of having connections with GAM and their members have been threatened with arrest.

- **The Indonesian government must take concrete measures to protect human rights defenders. It should allow unimpeded access to both local and national and international human rights monitors to all areas of the province and ensure that they can carry out their legitimate work without risk of human rights violations.**
- **No one should be arrested or detained solely on account of their membership of a political or any other organization which, while it may hold different views from that of the government, does not engage in, advocate or support violence.**

## **Recommendations to GAM**

Amnesty International has also documented human rights abuses by GAM in the past. Information on GAM abuses is often difficult to verify, but there have been credible reports of unlawful killings, abductions and torture being carried out by GAM members both against members of the security forces and civilians. Children under the age of 18 have been recruited by GAM. Among those recruited are children whose parents have been unlawfully killed, “disappeared” or subjected to other human rights violations as a result of Indonesian security force operations. Amnesty International has documented some cases where those who refuse to join have been accused of being collaborators or informers and threatened with death.

Local government officials and other members of the Indonesian authorities have been subjected to threats, intimidation and other abuses and government facilities destroyed by them. A wave of arson attacks on schools, which is reported to have resulted in some 200 schools being destroyed in the past few days, has been attributed by the Indonesian authorities to GAM.

Amnesty International promotes minimum standards of humane behaviour, such as the fundamental provisions contained in humanitarian law, by which an armed group should abide. It urges GAM to uphold these standards. Non-international armed conflicts, such as that in NAD, are governed by Common Article 3 of all four Geneva Conventions, which applies to all parties to a non-international conflict.

### **1. Protection of non-combatants**

- **GAM’s Commanders should publicly declare their opposition to human rights abuses by its members and its intention to adhere to the 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 humanely. 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 in directives from GAM's commanders.

## **2. Prohibition of child-soldiers**

- GAM Commanders should 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 their serving members.

## **3. Protection of internally displaced persons**

- GAM should avoid actions which provoke or otherwise force the displacement of Acehnese civilians. Where internal displacement does occur GAM should ensure that actions of its forces do not further threaten their security.

## **4. Provision of humanitarian aid**

- No action should be undertaken by GAM which in any way inhibits the supply and delivery of humanitarian aid, including food, shelter, sanitation and medical care to the civilian population.

## **5. Protection of human rights defenders**

- GAM forces should be prohibited 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 is not a justification for any act which threatens the physical integrity of human rights monitors or otherwise prevents them from carrying out their legitimate work.