

# Indonesia

## A briefing for members of the Consultative Group on Indonesia

### 1. Introduction

The slow progress in implementing reform, embarked on by the Indonesian government in 1998, continues to impact negatively on the human rights situation in Indonesia. Much needed legal and judicial reform has yet to take place with the result that the judiciary remains chronically weak and the law offers little protection against human rights violations. The failure of recent trials relating to crimes against humanity committed during 1999 in Timor-Leste (formerly known as East Timor) to deliver meaningful truth or justice, together with continued impunity in many other cases of human rights violations, have highlighted once again the structural weaknesses and political obstacles which prevent the rule of law from being upheld and accountability from being established.

Amnesty International is also concerned by a trend towards increased use of repression against non-violent critics of the government. There has been a disturbing increase in the number of individuals, including journalists, political and labour activists, throughout Indonesia who have been imprisoned solely on account of the peaceful exercise of their right to freedom of expression and association.

Serious human rights violations have been reported in the context of operations against armed opposition groups. In Nanggroe Aceh Darussalam Province (NAD), the imposition of a military emergency in May 2003 has brought renewed allegations of grave human rights violations, including extrajudicial executions, "disappearances", arbitrary detention and torture. Verification of such reports has been made virtually impossible because the province has been effectively closed to independent human rights monitors, humanitarian workers and journalists.

There is an urgent need to address these issues if Indonesia is to benefit from the political stability and rule of law necessary for its continued political, social and economic development. A number of donor governments and institutions have played an important role in supporting initiatives to promote judicial and legal reform, as well as in providing assistance to the peace process in NAD. Amnesty International believes that continued coordinated support in these areas is crucial, but that greater efforts should be made to ensure that human rights are at the centre of such initiatives. The organization urges donors to ensure that all assistance programs are developed and implemented in close cooperation with local non-governmental organizations and other members of civil society. The programs should include benchmarks to ensure accountability and monitoring of the progress in the implementation of changes by the Indonesian authorities.

## 2. Judicial and legal reform

*“The judicial reform process that began in 1999 has been slow. There are a number of initiatives under way, but it is unclear how they relate to each other. Whatever changes and reforms may have been undertaken by the Government and the judiciary, they are not seen in reality”.*<sup>1</sup>

This assessment of the program of judicial reform, made by the Special Rapporteur on the independence of judges and lawyers following his visit to Indonesia in July 2002, remains true today. Lack of progress in implementing legal and judicial reform continues to undermine the rule of law and impacts negatively in many areas, including human rights, poverty elimination and economic growth. The consequences of a weak judicial system have been recognized by the Consultative Group on Indonesia (CGI) Working Group on Justice Sector Reform which in 2003 stated that “[p]olicies for poverty alleviation can only be successfully implemented where they are supported by an effective, predictable, transparent and equitable justice sector”.<sup>2</sup> The Working Group also noted that, “the establishment of judicial procedures that are respectful of human rights is necessary to restore transparency and public confidence in the judiciary system”.<sup>3</sup> Lack of confidence in the justice system remains a serious problem in Indonesia and has contributed to vigilante justice.

### Corruption

Corruption remains endemic throughout the justice system and related institutions, including in the police, judiciary and the Attorney General’s Office. The UN Special Rapporteur on the independence of judges and lawyers noted in his report that the judiciary in Indonesia is perceived to be “open to the highest bidder in a system in which the mechanisms of control and accountability are weak and ineffective at best and non-existent at worst”.<sup>4</sup> The Special Rapporteur concluded that that the situation requires “drastic, urgent and far-reaching action” and made a number of recommendations to the Indonesian government aimed at resolving the problem of corruption. The failure of the Indonesian authorities to adequately address this problem severely compromises the ability of the justice system to guarantee equal protection under the law. This particularly risks affecting marginalized groups, including women and the poor.

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<sup>1</sup> Report of the Special Rapporteur on the independence of judges and lawyers Dato’ Param Cumaraswamy, submitted in accordance with Commission on Human Rights Resolution 2002/43. Report on the mission to Indonesia, 15-24 July 2002, E/CN.4/2003/65/Add.2, 13 January 2003.

<sup>2</sup> Working Group on Justice Sector Reform, Statement on Justice Sector Reform, Introduction, January 2003.

<sup>3</sup> Working Group on Justice Sector Reform, Statement on Justice Sector Reform, para. A.4, January 2003.

<sup>4</sup> Report of the Special Rapporteur on the independence of judges and lawyers Dato’ Param Cumaraswamy, submitted in accordance with Commission on Human Rights Resolution 2002/43. Report on the mission to Indonesia, 15-24 July 2002, E/CN.4/2003/65/Add.2, 13 January 2003.

### **Prisoners of conscience**

Although overt political interference in the judiciary has declined to some extent in recent years, it is still notable, particularly in political and human rights trials. Amnesty International knows of 50 people who have been imprisoned in connection with the legitimate and peaceful exercise of their right to freedom of expression since 1998.

Six prisoners of conscience are currently imprisoned. Ignatius Mahendra Kusuma Wardana, the Chairperson of the Yogyakarta branch of the National Democratic Student's league (*Liga Mahasiswa Nasional untuk Demokrasi*, LMND) and Yoyok Edo Widodo, a member of the Indonesian Street Musicians Union (*Serikat Pengamen Indonesia*, SPI) are serving three year prison sentences in Yogyakarta town, Central Java Province. They were convicted of "insulting the President and Vice President" (Article 134 of the Indonesian Criminal Code, *Kitab Undang-Undang Hukum Pidana*, KUHP) after burning their portraits during a peaceful demonstration. Muhammad Nazar, the head of Aceh Referendum Information Center (*Sentral Informasi Referendum Aceh*, SIRA) and Reza Pahlevi, also a SIRA activist, are serving prison sentences of five and three years respectively. Both were found guilty of "*spreading feelings of hostility, hatred or contempt against the government*" (Article 154 KUHP) in connection with peaceful pro-independence activities. Yohanes Wanggai and Edison Waromi were sentenced to two years' imprisonment each in October 2003 for "rebellion" (*makar*) (Articles 106 and 110 KUHP). The two men were arrested while raising a flag symbolising Papuan independence in the provincial capital Jayapura in December 2002.

Legal cases recently brought against media professionals have also raised concern about restrictions on the fundamental right to freedom of expression and the public's right to access to information. A number of journalists in Indonesia are currently being tried on criminal charges in a series of defamation cases and are threatened with imprisonment for their professional activities. In September 2003, Karim Paputungan, an editor with the daily *Rakyat Merdeka* was convicted of defamation (Article 310 KUHP) and sentenced to five months in jail, suspended for 10 months, after the paper published a caricature of the Speaker of the House of Representatives (*Dewan Perwakilan Rakyat*, DPR), Akbar Tanjung. In a separate case, on 28 October 2003, another *Rakyat Merdeka* editor, Supratman, was sentenced to six months' imprisonment, suspended for one year, for disseminating written materials insulting the President (Article 137(1) KUHP).

In addition, three journalists with the news magazine *Tempo*, Chief Editor Bambang Harymurti, Editor Iskandar Ali and journalist Ahmad Taufik, are facing charges that include both criminal and civil complaints, including criminal defamation under Article XIV of Law No. 1, 1946 for "*publishing an article that could cause unrest*". The charges were filed by powerful businessman Tomy Winata following the publication in *Tempo* magazine of an article which cited allegations that Tomy Winata stood to profit from a fire that had razed part of the Tanah Abang textile market in Jakarta in February 2003. The article also included a statement from Tomy Winata denying the allegations. Amnesty International is concerned

that charges have been filed in spite of the fact that the story adhered to the journalistic norm of covering both sides of a story and does not appear to have violated journalistic ethics. Tomy Winata has also filed charges of libel seeking substantial damages against Goenawan Mohamad, co-founder and former chief editor of *Tempo*, for a statement he made at a police station urging that the country not be allowed to fall into the hands of criminals.<sup>5</sup>

Amnesty International is concerned that the increasing use of repressive legislation under the government of President Megawati Sukarnoputri is indicative of mounting intolerance of government critics. Over the past year, increased use has been made of various articles under Indonesia's Criminal Code which punish "*insulting the President and Vice-President*" with up to six years' imprisonment (Articles 134, 136 and 137 KUHP). Other articles of KUHP known collectively as the "*Hate-sowing Articles*" (Articles 154, 155 and 160 KUHP) which punish the "*spreading feelings of hostility, hatred or contempt against the government*" with up to seven years' imprisonment are also being applied with increasing frequency. Amnesty International considers these articles to be in contravention of the right to freedom of expression, and has long campaigned for them to be repealed.<sup>6</sup>

### **Torture and unfair trials**

Recent trials of prisoners of conscience have once again highlighted failures in implementing existing safeguards against human rights violations contained in Indonesia's Code of Criminal Procedures (*Kitab Undang-undang Hukum Acara Pidana*, KUHP) as well as the need to strengthen these safeguards so that they are fully consistent with international standards. Among the trial irregularities documented by Amnesty International are: arrests which are carried out without warrant; failure to immediately inform detainees of the reasons for their arrest or detention and of the charges against them; the holding of individuals in incommunicado detention; denial or restriction of access of detainees to lawyers, family members and proper medical care.

Amnesty International also continues to document cases of torture and of cruel, inhuman or degrading treatment in both military and police custody. Although the risk of torture and other forms of ill-treatment is greatest in areas where counter-insurgency operations are taking place, namely in the provinces of NAD and Papua, torture is not confined to these contexts. Reports of torture of criminal suspects, individuals involved in disputes with the authorities over issues such as land, and of peaceful political activists have also been received by Amnesty International.<sup>7</sup>

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<sup>5</sup> See Amnesty International, "*Indonesia: Press freedom under threat*", (AI Index: ASA 21/044/2003), October 2003.

<sup>6</sup> See Amnesty International, "*Indonesia: Old laws – new prisoners of conscience*", (AI Index: ASA 21/027/2003), 10 July 2003.

<sup>7</sup> See Amnesty International "*Indonesia: Old laws – new prisoners of conscience*", (AI Index: ASA 21/027/2003), 10 July 2003 and "*Indonesia: Commentary on Indonesia's first report to the UN Committee against Torture*", (AI Index: ASA 21/048/2001), November 2001.

In November 2001, following the examination of Indonesia's first report on its efforts to implement the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), the Committee against Torture expressed its concern about the large number of allegations of acts of torture and the climate of impunity for such acts that exists in Indonesia. The Committee against Torture also made detailed, practical 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 penal legislation so that torture and other cruel, inhuman or degrading treatment or punishment are prohibited under criminal law; the establishment of an effective, reliable and independent complaint system to undertake prompt, impartial and effective investigations into allegations of ill-treatment or torture; and inviting the UN Special Rapporteur on Torture to visit Indonesia.<sup>8</sup> To date none of these recommendations have been implemented.

### ***Recommendations***

- Taking into account the shortcomings referred to above, donors should prioritise assistance for strengthening the Indonesian judicial system and law reform, including amendments of the Criminal Code (KUHP) and the Code of Criminal Procedures (KUHAP) so that these comply fully with international law and standards.
- The CGI should publicly call for the immediate and unconditional release of all prisoners of conscience in Indonesia.
- Donors should assist the government of Indonesia in its efforts to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the recommendations made by the Committee against Torture; and the recommendations made by the Special Rapporteur on the independence of judges and lawyers.

## **3. Impunity and the Timor-Leste trials**

Investigations into allegations of human rights violations are among the cases which have exposed many of the weaknesses of the judicial system, as well as unacceptable political interference. The vast majority of allegations of human rights violations are never investigated. Those cases which are investigated do not always result in suspects being brought to trial.

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<sup>8</sup> CAT/C/XXVII/Concl.3. Committee Against Torture, 27<sup>th</sup> session, 12-23 November 2001. Consideration of all reports submitted by states parties under Article 19 of the Convention.

In the few cases where trials have taken place, they have lacked credibility and failed to meet international standards of fairness. For example, the trial of seven members of the military's Special Forces Command (Kopassus) for the killing of Papuan independence leader Theys H. Eluay in November 2001 took place in a military court, which is not considered by Amnesty International to be sufficiently independent or impartial. The trial also did not address the issue of command responsibility for the killing.

Amnesty International believes that Indonesia's failure to bring to justice the perpetrators of human rights violations not only denies justice to the victims, but also significantly undermines the possibility that such trials could act as a deterrent to human rights violations being committed in the future.

Among the most high profile human rights cases are those that have been investigated under Law 26/2000 Concerning Human Rights Courts, which provides for the establishment of courts to hear cases of gross human rights violations, specifically genocide and crimes against humanity. To date, four cases have been investigated by the National Human Rights Commission (Komnas HAM) under this legislation.

Trials of suspected perpetrators tried under Law 26/2000 of crimes against humanity committed in Timor-Leste (formerly East Timor) in 1999 have recently concluded. A total of 18 people, including senior Indonesian military and police officers, were brought to trial in the *ad hoc* Human Rights Court on Timor-Leste. Twelve suspects were acquitted while six were found guilty and sentenced to between three and 10 years' imprisonment. All remain free pending appeal.

A second case, that of the extrajudicial execution of demonstrators in 1984 in Tanjung Priok, Jakarta, began in mid-September 2003. Amnesty International has documented many shortcomings in the Timor-Leste trials. The organization is concerned that the multitude of institutional, legal and procedural shortcomings exposed by the Timor-Leste trials were not addressed prior to the commencement of the Tanjung Priok trials, placing the success of this important trial in jeopardy.

In the Timor-Leste trials, a succession of procedural and other failures meant that the trials did not achieve the objectives of delivering justice and revealing the truth about the extent of the involvement of the Indonesian security forces and civilian authorities in perpetrating crimes against humanity and other serious crimes in Timor-Leste. The trials exposed existing problems with the broader criminal justice system in Indonesia, and also highlighted specific problems with the human rights courts. The shortcomings included:

***Political Influence:*** Under Law 26/2000 Concerning Human Rights Courts both parliament and the Head of State are required to agree to trials for cases of gross human rights violations that took place prior to the adoption of the legislation in 2000. Amnesty International has previously expressed concern that this role of political officials is

incompatible with the independence and impartiality of the process. In the case of the Timor-Leste trials these concerns were borne out by the decision by the President to limit the jurisdiction of the *ad hoc* Human Rights Court on Timor-Leste to such an extent that it could only hear a small number of the hundreds of cases of serious crimes committed in Timor-Leste during 1999.<sup>9</sup> Amnesty International believes that the limited jurisdiction impacted negatively on the possibility of demonstrating the widespread and systematic nature of the cases which have come before the court and has contributed to entrenching impunity for perpetrators of crimes under international law.

***Failure to bring effective prosecutions:*** Amnesty International considers that the Indonesian prosecutors failed in their duty under international law to bring effective prosecutions against the accused. Specific concerns include: presentation of indictments which did not reflect the widespread and systematic nature of the crimes which took place and which contained errors and inconsistencies; key documentary evidence was not presented to the court; and many victims or witnesses who had been identified in earlier investigations and who could have supported the prosecution's case were not summoned. Amnesty International is also concerned about the poor quality of advocacy which in itself appears to reflect a lack of training and experience as well as an unwillingness to give due attention to the prosecution of crimes committed by public officials.

***Inadequate protection for victims and witnesses:*** Law 26/2000 makes provision for a victim and witness protection program. No such program previously existed in Indonesia and a Government Regulation (*Peraturan Pemerintah 2/2002*) to establish such a program was issued only one day before the start of the first trial. The lack of experience and understanding of the requirements of providing effective protection to victims and witnesses was apparent during the first three trials. A number of witnesses from Timor-Leste who refused to travel to Jakarta to testify, cited fear for their security as the reason. Witnesses from Timor-Leste who did testify were not provided with facilities which adequately protected them from exposure to the general public, the accused and other potential risks. There are credible indications that some witnesses were subjected to undue pressure to alter their original statements. Amnesty International believes that the failure to provide adequate security to witnesses prevented key evidence from being heard by the court.

***Missing cases:*** Of the many hundreds of cases of human rights violations committed in Timor-Leste in 1999, only five were investigated by the Indonesian authorities. One of these cases, the extrajudicial execution of a Dutch journalist, Sander Thoenes, was closed by the Attorney General on grounds of insufficient evidence. Information from other sources indicates that there is sufficient evidence to bring prosecutions in this case.

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<sup>9</sup> The jurisdiction is limited to the two months of April and September 1999 and the three districts of Dili, Liquica and Suai. There are 13 Districts in Timor-Leste. Inquiries by Indonesia's National Commission on Human Rights and by the UN investigated serious crimes which were committed throughout the territory from January to October 1999.

**Recommendations:**

- The CGI should publicly express concern that the trials in the *ad hoc* Human Rights Courts on Timor-Leste have not been credible or effective, and that credible alternatives must now be sought. In the meantime, assistance should be provided to the Indonesian authorities to amend Law 26/2000 Concerning Human Rights Courts and to improve procedures, including in the area of victim and witness protection.
- Donors should urge the Indonesian government to establish an effective and credible mechanism to investigate all allegations of human rights violations and ensure that the perpetrators are brought to justice in trials which meet international standards for fairness.

#### **4. Military emergency in Nanggroe Aceh Darussalam (NAD)**

Amnesty International is gravely concerned about the human rights situation in Nanggroe Aceh Darussalam Province (NAD) following the declaration of a military emergency on 19 May 2003. The Indonesian authorities have so far successfully prevented any independent monitoring of the effects of the military emergency on the civilian population by closing the province to independent observers. It has also denied much needed assistance and protection to civilians by prohibiting direct access to them by humanitarian actors, including UN agencies and international humanitarian non-governmental organizations. Lack of information about the human rights and humanitarian situation cannot, however, justify inaction. On the contrary, the effectiveness with which the province has been sealed off from outside observers and assistance should be cause for alarm, and should result in increased efforts to persuade the Indonesian government to allow full and secure access to humanitarian agencies, independent human rights monitors, embassy representatives, journalists and other parties with a legitimate interest.

In the absence of independent observers, information about the situation in NAD comes mainly from official sources, with occasional unverified reports from local human rights groups or journalists. According to military figures, over 900 alleged members of the armed opposition group Free Aceh Movement (*Gerakan Aceh Merdeka*, GAM) had been killed between the start of the military emergency and mid-October 2003. Other sources claim that many of those killed were civilians. Both the military and the police have also accused GAM of committing abuses, including kidnappings and unlawful killings. Some of these reports are thought to be true, but lack of access to the province also prevents independent verification of such claims.

According to official figures, over 1,800 members of GAM had been arrested or surrendered by mid-October 2003. All of the detainees, most of whom have no access to the outside world, are at serious risk of torture and other grave violations of human rights. Thousands of people have been displaced as a result of the conflict, some forcibly. Many have returned to their homes only to find their possessions stolen or destroyed.

At a donor meeting on NAD sponsored by the World Bank in late May 2003, participants noted a statement by the Coordinating Minister for Security and Political Affairs on 22 May 2003 that the Indonesian government would respect international humanitarian law in NAD.<sup>10</sup> In view of the grave human rights violations that have been reported, it is imperative that the government clarifies what measures have been taken to ensure that international humanitarian law is being respected during operations by the security forces in NAD.

### **The humanitarian situation**

There is a longstanding need for humanitarian assistance resulting from years of conflict in NAD prior to the start of the military operations that commenced in May 2003. In January 2003, the Indonesian government estimated that between 250,000 and 300,000 people required humanitarian food assistance for a period of between three and six months.<sup>11</sup> The current military operation will inevitably have exacerbated the humanitarian situation.

The number of internally displaced persons (IDPs), although considerably lower than the 200,000 initially anticipated by the government, still numbered around 10,000 as of October 2003.<sup>12</sup> It is unlikely that official figures represent the true scale of the IDP situation which forms a complex pattern of forced and voluntary displacement, not only to officially designated camps, but also to the homes of friends and relatives, and in some cases to the forests.

While the government acknowledges its responsibility for IDPs and has shown a commitment to assisting them, there are serious doubts about its capacity to do so. Indeed, limited information available suggests that conditions in official camps are poor. Concerns include inadequate sanitation, water and food supplies and healthcare. Security, particularly for women and children, is also of concern in the government camps where shelter is reported to consist of large tents or barrack-style buildings in which no privacy is possible.

In 2002, before this latest emergency in NAD, the Special Representative of the UN Secretary-General on IDPs noted the lack of effective structures to deal with this problem. He emphasized that in areas of armed conflict in Indonesia, there is a need for collaboration among many actors, including both national and international non-governmental organizations. He called for a comprehensive strategy to be developed and implemented in order to enhance the role of the international community in the protection of the internally

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<sup>10</sup> "Aceh Donor Co-ordination Meeting Summary", World Bank Office Jakarta, 28 May 2003.

<sup>11</sup> "Promoting Peaceful Development in Aceh. Brief for the Consultative Group on Indonesia". January 2003. [http://wbln0018.worldbank.org/eap/eap.nsf/Attachments/CGI-0603-Aceh/\\$File/Aceh+Update.pdf](http://wbln0018.worldbank.org/eap/eap.nsf/Attachments/CGI-0603-Aceh/$File/Aceh+Update.pdf)

<sup>12</sup> IOM data reported in OCHA Consolidated Situation Report No. 151, 18-24 October 2003.

displaced civilian population in conflict areas.<sup>13</sup> The need for such a strategy during the current military emergency is increasingly urgent.

In view of the existing lack of capacity among government bodies, Amnesty International is seriously concerned by the government's insistence that all aid is channelled through the authorities and by the restrictions placed on international humanitarian organizations from carrying out their programs in NAD. The system of applying for permits introduced for international staff members of humanitarian agencies and non-governmental organizations is cumbersome and, except in a few instances, has resulted in rejection. The few international workers who have received permits since the start of the military emergency have not been permitted to travel outside of the provincial capital of Banda Aceh and their permits have only been valid for a few weeks.

Amnesty International is concerned that the continuing displacement of the civilian population, combined with the restrictions on the provision of humanitarian assistance, are causing additional and unnecessary suffering for the civilian population.

### **Human rights violations and investigations**

Amnesty International continues to receive reports of human rights violations including extrajudicial executions, "disappearances", torture, including rape and unlawful arrests and detention in the context of the military emergency in NAD. There are also reports of abuses, including the taking of hostages, and unlawful killings attributed to GAM. However, the government's refusal to allow independent human rights monitors to carry out investigations in the province means that reports of abuses by both sides are difficult to verify.

In an exception to the restrictions on human rights monitoring, Komnas HAM has been able to undertake several investigative missions to NAD. In a press release of 13 June 2003, it confirmed that it had found cases of torture, sexual harassment and extrajudicial execution. It also publicly confirmed that children have been among those killed, but did not attribute responsibility to either side, nor has it yet published the full report of its findings.

Further investigations are required to respond to ongoing allegations of human rights abuses by both sides. The military have carried out investigations in a few cases. In October 2003, twelve soldiers were acquitted by a military tribunal of kicking and beating around 50 Acehnese civilians with rattan sticks and rifle butts. The judge reportedly stated that soldiers had beaten the civilians, but that they could not be held accountable because the witnesses were unable to identify them. In July 2003, three soldiers were sentenced to between two-and-a-half and three-and-a-half years' imprisonment by a military tribunal after being found guilty of rape. Six other soldiers were sentenced to between four and five months' imprisonment in June 2003 for beating civilians. While Amnesty International welcomes efforts by the military to hold to account soldiers responsible for human rights violations, the organization does not

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<sup>13</sup> Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 2001/54, Addendum: Profiles in Displacement: Indonesia, E/CN.4/2002/95/Add.2, 15 February 2002.

believe that investigations and trials carried out by the military into the conduct of its own members are sufficiently independent or impartial.

The investigations carried out by the military account for only a minute proportion of the allegations of human rights violations that have been made. For example, in late August 2003, a coalition of human rights organizations claimed to have documented more than 100 cases of women and girls who have been raped since the start of the military emergency.<sup>14</sup> The military has denied the allegations, and has reportedly stated that it will sue the organizations who published the report if they do not clarify the allegations and apologize.<sup>15</sup>

Such allegations point to the urgent need for immediate, effective, independent investigations. It is therefore commendable that Komnas HAM has stated its intention to investigate reports of rape. Amnesty International urges that Komnas HAM receives full support and cooperation by both the civilian and military authorities during its investigations and that its findings are acted upon by the government.

### **Arrests and detentions**

According to media reports, as of mid-October 2003, the military claimed that around 1,800 people had been detained or surrendered since the start of the military operations.

GAM combatants who have either been captured or have surrendered are among the detainees. However, they also include civilians who have been accused of supporting or sympathizing with GAM. The definition of support or sympathy is broad and appears to include the wives and mothers of GAM members and individuals who are opposed to Indonesian government policy in NAD, including human rights defenders. Amnesty International considers such people to be arbitrarily detained.

The absence of precise information on the number, identity and whereabouts of detainees, combined with a lack of access to them by lawyers, places them at grave risk of torture which is already a well-established practice in both military and police detention in NAD. According to one source, detainees in the Banda Aceh Police Resort (*Polisi Resort*, Polres) have been beaten, kicked, burnt with cigarettes and lighters and deprived of sleep.

The safety of detainees in military detention is of even greater concern. Under Law 23/1959 on States of Emergency, the military has the authority to arrest and detain suspects for 20 days, extendable by 50 days. This provision contains no safeguards for the protection of detainees, such as rights of access by lawyers, doctors, and families of detained persons.

According to a statement by the military on 16 September 2003, the cases against 391 suspected GAM members have already been passed to the public prosecutor's office.<sup>16</sup> Amnesty International is seriously concerned that they will not receive a fair trial. Already

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<sup>14</sup> "Sudah Seratus perempuan Diperkosa", Kompas, 29 August 2003.

<sup>15</sup> "Pangkoops Aceh Ancam Gugat Sejumlah LSM", Tempo Interactive, 30 August 2003.

<sup>16</sup> "Operasi Terpadu di Nanggroe Aceh Darussalam Hari ke121", Puspen TNI, 16 September 2003, <http://www.tni.mil.id/>

concerns have been raised that some have been tortured into making confessions and many of the suspects are believed to have been interrogated without the presence of legal counsel.

Among those who have already been sentenced are five negotiators who represented GAM during the peace-talks with the Indonesian government. Amni bin Ahmad Marzuki, Teuku Muhammad Usman, Sofyan Ibrahim Tiba, Teuku Kamaruzaman and Nashiruddin Ahmad were sentenced to between 12 and 15 years' imprisonment after being found guilty of "rebellion" (*makar*) (Articles 106 and 108 KUHP) and of violating new anti-terrorism legislation (UU No. 15/2003). The five men were arrested on their way to the airport in May 2003, as they were due to fly to Japan in an attempt to rescue the peace talks. They were unable to attend the peace-talks, which subsequently broke down. During his trial, Sofyan Ibrahim Tiba submitted a complaint that he was ill-treated and threatened while in custody. Amnesty International is concerned that the trials of the five men may not have met international standards.

Guarantees of fair trial are vital for 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 non-international 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."

### **Human rights defenders**

Members of human rights organizations are among those publicly accused by the security forces of being linked to GAM and therefore appear to be considered legitimate targets for arrest and detention by the security forces. As a result, the essential work of local human rights defenders, including investigating allegations of human rights violations, locating detainees and providing them with legal representation, has all but ceased. They are prevented from communicating freely because of fears that public internet and phone facilities are being monitored by the security forces. Many have left NAD for other parts of Indonesia or have travelled abroad.

Human rights defenders have been subjected to human rights violations, including "disappearance", unlawful detention, threats and intimidation.<sup>17</sup> On 20 October 2003, a human rights training workshop held by Komnas HAM was interrupted when more than 20 members of the police arrived at the hotel in the provincial capital Banda Aceh where the workshop was being held. The police demanded that the workshop be stopped and asked the facilitators for a list of participants. Police then surrounded the venue at which the workshop was being held. Although the workshop was eventually allowed to continue following two

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<sup>17</sup> See Amnesty International, "*Indonesia: Protecting the protectors: human rights defenders and humanitarian workers in Nanggroe Aceh Darussalam*", (AI Index 21/024/2003), 3 June 2003.

days of negotiations between the security forces and Komnas HAM, Amnesty International is concerned about the safety of the participants following the conclusion of the workshop.

***Recommendations:***

- The CGI should demand that both domestic and international humanitarian agencies and human rights monitors are given full, unimpeded and unhindered access to all areas of NAD and that they are able to carry out their work free from intimidation, threats and human rights violations.
- Donors should seek clarification of what measures are being taken to ensure that international humanitarian law and human rights law and standards are being implemented and action taken where there are allegations of breaches.
- Donors should continue to exert pressure to allow regular access to diplomatic representatives, including from the Tokyo group (US, European Union and Japan), to NAD. As part of such visits, representatives should meet with members of civil society organizations, including humanitarian and human rights organizations. They should also visit places of military and police detention.
- Donors should urge the government to invite UN thematic mechanisms to visit NAD. Priority should be given to the Special Representative of the Secretary General on Human Rights Defenders; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Representative of the Secretary-General on internally displaced persons and the Special Rapporteur on torture.