

PUBLIC

AI Index: ASA 28/021/2003

19 August 2003

UA 247/03 Fear of forcible return/Fear of ill-treatment

MALAYSIA 239 asylum seekers (names unknown), including 14 women and two children

Amnesty International is concerned for the safety of 239 asylum seekers from Myanmar and Indonesia, including 14 women and two children aged nine months and five years old, arrested on 19 August by police in the capital Kuala Lumpur. They are at risk of being forcibly returned to the Indonesian province of Nanggroe Aceh Darussalam (NAD), where they would be at serious risk of human rights violations.

According to reports, police erected roadblocks around the office of the United Nations High Commissioner for Refugees (UNHCR) in Kuala Lumpur early in the morning of 19 August and began arresting individuals who were trying to lodge asylum claims. The detainees were initially taken to Brickfields Police Station in Kuala Lumpur, but have since been taken to the Langkap detention camp in Perak State. In the past, people detained in such camps and centres have been subject to insanitary conditions and a lack of access to medical care, amounting to cruel, inhumane and degrading treatment.

Three Myanmar asylum seekers are also among the detainees. However, the majority of those arrested are from NAD province in Indonesia. A military emergency was declared in the province on 19 May 2003, and has resulted in renewed military operations against the armed opposition group, the Free Aceh Movement (GAM). There have been allegations of grave human rights violations, including extrajudicial executions, "disappearances" and torture in the province in the context of the operations. This has led to an increased number of asylum claims from Indonesian nationals living in NAD. In an attempt to assist the UNHCR in processing these claims, the organization has recently announced that it will only process the claims of those from NAD province on Tuesdays. It is still unclear what prompted the police action, but it may have been the sheer volume of people arriving at the UNHCR offices in the morning of 19 August.

One of the Indonesian nationals being detained has already been recognized as a refugee; the asylum claims of 51 others are in the process of being considered by the UNHCR. Forty-five other detainees had registered their intention to lodge asylum claims with the UNHCR. The three Myanmar nationals are also believed to have submitted asylum claims to the UNHCR and to be awaiting a decision.

The UNHCR has issued a statement expressing its alarm at this "unprecedented action" and urging that the detainees be treated in accordance with international standards. The statement further requests the Malaysian government to release those who have been detained and to respect the principle of *non-refoulement*, which requires Malaysia to ensure that the refugees and asylum-seekers are not forcibly returned to their country of origin. Malaysia is not a signatory to the 1951 Convention relating to the Status of Refugees or to its 1967 Protocol, which prohibits *refoulement*, the return of a person to a country where he or she would be at grave risk of human rights violations. However, the principle of *non-refoulement* is considered to be a principle of customary international law and is therefore binding on all states. Furthermore, Malaysia is a party to the UN Convention on the Rights of the Child and is thereby bound to protect the rights of child refugees and asylum-seekers.

BACKGROUND INFORMATION

In April 1998, 27 asylum seekers from NAD province, then known as Aceh, were arrested while seeking protection in foreign embassies in Kuala Lumpur. The UNHCR was denied access to them and they were forcibly repatriated several months later. On 31 July 2002, 135 asylum seekers were arrested outside the Liaison Office of the Office of the UNHCR in Kuala Lumpur. The majority of these asylum-seekers were

reportedly from NAD. Of the 135 people arrested, 89 had arranged future appointments with UNHCR regarding asylum claims.

In 2002, Malaysia amended its Immigration Act so that individuals who are in the country without legal documentation face a mandatory sentence of up to five years' imprisonment and up to six strokes of the cane. By the end of 2002, thousands of people had been caned. Prior to the amendment coming into force, a government amnesty from March to July 2002 resulted in thousands of undocumented migrants attempting to leave the country. Despite the amnesty, thousands of people were held in camps prior to deportation. They faced insanitary conditions, lack of medical care and ill-treatment. There were reports of dozens of people, including children, dying from dehydration and disease in the state of Sabah. Legitimate refugees and asylum seekers were also arrested and placed in detention camps. To date, the UNHCR has been granted access to asylum seekers in detention, and the asylum seekers are generally not charged under the amended Immigration Act.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language:

- calling for the immediate release of the 239 asylum seekers, including 14 women and two children aged nine months and five years old, detained in Kuala Lumpur on 19 August;
- calling on the authorities to ensure that the detainees are treated humanely;
- urging the authorities not to forcibly return the detainees to their country of origin;
- urging the authorities to ensure that all those seeking asylum have full access to representatives of the office of the United Nations High Commissioner for Refugees (UNHCR) to enable them to apply for asylum if they wish to do so;
- calling on the authorities to respect protection documentation issued to refugees and asylum-seekers by UNHCR.

APPEALS TO:

Minister of Home Affairs & Deputy Prime Minister

Dato' Abdullah Haji Ahmad Badawi

Ministry of Home Affairs (Menteri Dalam Negeri)

Aras 13, Blok D1

Parcel D, Pusat Pentadbiran Kerajaan Persekutuan

65202 Putrajaya, Selangor, Malaysia

Telegram: Minister of Home Affairs, Ministry of Home Affairs, Selangor, Malaysia

Fax: + 60 3 8886 8014 / 8888 3963)

Salutation: Dear Minister of Home Affairs

Inspector General of Police

Tan Sri Norian Mai

Ketua Polis Negara

Ibu pejabat Polis Diraja Malaysia

Bukit Aman

50502 Kuala Lumpur, Malaysia

Telegram: Inspector General of Police, Ketua Polis Negara, Kuala Lumpur, Malaysia

Fax: + 60 3 2273 1326 (please keep trying)

Salutation: Dear Inspector General of Police

COPIES TO:

Human Rights Commissioner

Tan Sri Abu Talib Othman

Suruhanjaya Hak Asasi Manusia Malaysia

29th Floor

Menara Tun Razak

Jalan Raja Laut

50350 Kuala Lumpur, Malaysia

Fax: + 60 3 2612 5620

and to diplomatic representatives of Malaysia accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 30 September 2003.