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India: Call for fair trial and no forcible repatriation to Myanmar of 34 Rakhine and Kayin detainees

Amnesty International is concerned that 34 Rakhine (Arakan) and Kayin (Karen) Myanmar nationals, who have spent years detained without charge in India and are now being tried in Kolkata (West Bengal), are at risk of being denied their right to a fair trial and subsequently forcibly returned to Myanmar.

The 34 men are reportedly members of the National United Party of Arakan (NUPA) and the Karen National Union (KNU) and were detained in India in February 1998. Both organisations are involved in armed conflicts against the ruling military authorities in Myanmar.

India's Central Bureau of Investigation (CBI) is prosecuting the men on charges of illegal possession of weapons. The accused reportedly contend that they were arrested during a meeting with Indian intelligence officials who had allegedly promised them assistance, and that six others detained at the time, reported to be their leaders, were then handed over to Myanmar officials. The Indian defence ministry deny both these allegations.

According to reports, following a campaign by local human rights organisations the Government of West Bengal withdrew an earlier decision that the trial be held in secret within prison premises. The trial is now being heard in a Kolkata High Court. However, the media and the public have reportedly remained barred when Indian intelligence officials tendered evidence, in accordance with a CBI petition.

Article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which India is a state party, provides that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." While the ICCPR allows for *in camera* hearings in the interest of national security, Amnesty International is concerned about reports that during such *in camera* hearings the rights of the defendants to a fair trial are not being fully respected.

Amnesty International is also concerned that, whether convicted or not, the 34 persons could face forcible deportation to Myanmar, where they are likely to face torture and other ill-treatment, as well as arbitrary detention, unfair trials and forced labour. These concerns have been underlined by the recent violent suppression of protests by the military government in Myanmar.

Under international law, States are under the absolute and unconditional obligation not to forcibly return any person to a country where they risk torture or other serious human rights violations (the principle of *non-refoulement*).

Amnesty International therefore urges the Indian authorities:

- o to ensure that the trial of the 34 accused persons meets international standards of fairness, in particular their right to examine or have examined all witnesses under the principle of equality of arms, and to an effective defence;
- o to investigate their arbitrary detention without charge or trial for several years, ensure that they receive full reparations, including judicial remedies, and that measure are taken to guarantee that similar violations do not occur in the future;
- o to investigate the long period between charges being brought forward and the trial itself, in violation of their right to be tried without undue delay, and ensure that measure are taken to guarantee that similar violations do not occur in the future;
- o to refrain from forcibly returning them to Myanmar after the completion of their trial and jail terms, if any.

Background

After their arrest in 1998 the 34 detainees were held for six years without charge or trial at the Campbell Bay and Port Blair prisons in Andaman Islands. In September 2004, they filed a petition before India's Supreme Court to ensure that they were formally charged in December 2004. During their detention at Port Blair, a female lawyer representing them was killed by unidentified assailants. Investigation into this incident is not yet complete.

Following complaints that the detainees were kept in inhumane conditions, the Supreme Court released them on bail; however, the Indian authorities confined them, for a few months, in barracks in Port Blair from where two other detained persons reportedly fled. Following another petition requesting speedy trial, the 34 persons were transferred to Kolkata prison in December 2005. However, they had to wait for a further 14 more months before trial proceedings finally commenced.