

EXTERNAL (for general distribution)

AI Index: ASA 28/15/91
Distr: UA/SC

Please bring this to the attention of the Refugee Coordinator in your section.

UA 330/91

Fear of Refoulement

9 October 1991

MALAYSIA/INDONESIA:

200 asylum-seekers

Amnesty International is deeply concerned that an estimated 200 Acehnese currently detained in the states of Kedah, Penang and Perak, Malaysia are in imminent danger of being forcibly returned to Indonesia where they may risk torture, extrajudicial execution or "disappearance". Fears of their forcible return increased after the announcement, on 7 October 1991, of an agreement between the governments of Indonesia and Malaysia to return the Acehnese to Indonesia as soon as possible. Amnesty International's Secretary General wrote to the government of Malaysia on 9 October urging that the detained Acehnese not be returned against their will.

The asylum seekers fled to Malaysia from the Aceh region on the northern tip of the island of Sumatra between March and October of this year. Since their arrival they have been held in various detention centres in Malaysia. The most recent arrivals, a group of 24, arrived less than one week ago, shortly after the return of at least ten who had been in Malaysia for several months. From the outset, Indonesian authorities have pressured the Malaysian government not to treat the Acehnese as refugees but as "illegal immigrants". Following the announcement of the agreement to return the Acehnese an Indonesian Foreign Ministry official said: "Basically we are thankful to Malaysia for the way it handled the arrivals. Malaysia has not treated them as refugees but as foreigners having entered the country without proper permits."

Indonesian armed forces have committed widespread human rights violations in Aceh and North Sumatra since mid-1989 while attempting to suppress a separatist insurrection there. The insurgency has been led by Aceh Merdeka (Free Aceh), whose members have themselves reportedly committed acts of violence. Amnesty International believes that more than 2,000 unarmed civilians, and possibly many more, have been killed by Indonesian security forces in the area within the past two years. The organization also knows of hundreds of suspected rebel supporters imprisoned without charge or trial, many of whom have been tortured while in custody. At least 21 suspected rebel supporters, including academics, civil servants and journalists, have been sentenced to lengthy prison terms in unfair trials during the year; Amnesty International believes that many of them may be prisoners of conscience.

Amnesty International believes that, given the current situation in Aceh, there is good reason to believe that some or all of the Acehnese currently facing return fled to Malaysia to seek protection and would risk extrajudicial execution, torture or "disappearance" if returned.

Malaysia is obliged, under the internationally-recognized principle of non-refoulement, not to return anyone to a country where they would be at risk of serious human rights violations. Malaysia would therefore be acting in clear violation of international law if it were to return such persons to Indonesia without permitting a full examination of every asylum seeker's reasons for seeking protection and the risks that he or she may face if forcibly returned. International standards also require that all asylum seekers be given an opportunity to contact a representative of the Office of the United Nations High Commissioner for Refugees (UNHCR). In view of these principles, Amnesty International is gravely concerned that none of the Acehnese have been allowed to present their case for asylum, and that the Malaysian authorities have not permitted representatives of the UNHCR to visit them.

It is reported that the Indonesian Government has given assurances to the Malaysian Government that none of those returned would be subjected to human rights violations. However, Amnesty

International believes that such assurances are of little value because there is no effective mechanism to monitor the situation of those returned.

The Indonesian authorities have consistently denied the overwhelming evidence of serious human rights violations in Aceh and they have restricted efforts of international and domestic human rights organizations to conduct first hand investigations. In July 1991, the government permitted the International Committee of the Red Cross (ICRC) to visit political detainees in Aceh. Amnesty International welcomed this decision and has learned that the treatment of prisoners in certain detention centres improved immediately after the visit. However it understands that there is currently no ICRC presence in the area, giving rise to concern that conditions in prisons may once again deteriorate and that human rights violations will continue. Despite repeated requests, Amnesty International has not been permitted to visit Indonesia or East Timor for more than ten years.

BACKGROUND INFORMATION

Amnesty International's concern for asylum seekers arises from its impartial work for the protection of human rights, notably for the release of prisoners of conscience, fair and prompt trials for political prisoners, and an end to torture and executions. Following from these concerns, Amnesty International opposes the forcible return of any person to a country where he or she risks imprisonment as a prisoner of conscience, torture, "disappearance" or execution. It therefore seeks to ensure that states provide such people with effective and durable protection from being sent against their will to a country where they risk being subjected to such human rights violations, or to any third country where they would not be afforded effective and durable protection against such return. The principle of non-refoulement is set out in Article 33 of the 1951 Convention relating to the Status of Refugees. The Government of Malaysia is not a party to this convention, but the principle of non-refoulement is internationally recognized as a norm of international customary law and as such is binding on all states whether or not they are party to the Convention.

RECOMMENDED ACTION: Telegrams/telexes/faxes/express and airmail letters:

- referring to the international principle of non-refoulement which is binding on all states;
- urging that the UNHCR be given immediate access to the estimated 200 Acehnese who are detained in the states of Kedah, Penang and Perak;
- urging that the detainees be given access to a fair and adequate refugee determination procedure as required by international standards for the protection of asylum seekers;
- urging that the estimated 200 Acehnese currently detained not be returned against their will to Indonesia where they may risk serious human rights violations such as torture and extrajudicial execution;
- expressing concern at the absence of any effective mechanism for monitoring the fate of those who may be returned; and at restrictions on efforts by domestic and international human rights organizations, including Amnesty International and the ICRC, to investigate the human rights situation in the territory.

APPEALS TO

His Excellency **Your Excellency**
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or 60 3 238 7215;

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His Excellency **Your Excellency**
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and to diplomatic representatives of Indonesia in your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat or your section office if sending appeals after 20 November 1991.