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Aceh Under Martial Law:

Problems Faced by Acehnese Refugees in Malaysia

Introduction

Thousands of Indonesians have fled to Malaysia since the start of military operations and martial law in Indonesia's Aceh province in May 2003. They are fleeing a brutal conflict marked by grave human rights violations, including extra-judicial executions, forced disappearances, kidnappings, beatings, arbitrary detentions, and strict limitations on freedom of movement. Young men, in particular, are singled out by Indonesian security forces on suspicion that they are separatist rebels or supporters. Ongoing fighting, massive internal displacement, drastic restrictions on movement, and restrictions on humanitarian assistance have made the province an unbearable place to live for many Acehnese. Braving a difficult, dangerous, and costly journey, many have fled to Malaysia to seek refuge.

Upon arrival in Malaysia, Acehnese refugees face a new set of challenges. Malaysia does not have a system to provide protection for refugees and asylum seekers. It does not recognize Acehnese fleeing the armed conflict at home as refugees. As a result, the Malaysian government has arrested, detained, and deported Acehnese refugees back to the very conflict they are fleeing. Those who manage to avoid deportation frequently live in situations of extreme poverty and are regularly subject to extortion from local police.

For this report, Human Rights Watch interviewed over eighty-five Acehnese in Malaysia in October and November 2003 who had fled the fighting in their home province. Most had arrived since martial law started; some had arrived only days or weeks prior to being interviewed. Interviews in Malaysia were primarily with Acehnese men between the ages of eighteen and thirty-five. Most interviews were conducted in Bahasa Indonesia without interpreters; the rest were done with Acehnese interpreters. Due to the risk of reprisal, the names of Acehnese sources, villages of origin, and locations in Malaysia have been omitted from this report. Human Rights Watch also interviewed a cross section of Acehnese community leaders, student activists, academics, representatives of Malaysian nongovernmental organizations, Malaysia's National Human Rights Commission, and staff at the Malaysia office of the United Nations High Commissioner for Refugees (UNHCR).

In this report, Human Rights Watch documents the failure of the Malaysian government to offer protection and assistance to Acehnese refugees fleeing persecution and armed conflict in Aceh. Malaysia's treatment of Acehnese in Malaysia falls far short of internationally accepted standards for treatment of refugees and asylum seekers. Statements by Malaysian officials suggest that the government fears that by granting protection to refugees it would open up a floodgate of asylum seekers to the country. Such fears do not justify the abuses of Acehnese in Malaysia that are detailed in this report, nor the Malaysian government's policy of routinely expelling Acehnese, who face the possibility of summary execution, forced disappearance, torture, detention, or persecution upon return to Indonesia.

Malaysia has yet to become party to the main international treaty for the protection of refugees,: The 1951 Convention Relating to the Status of Refugees and it s1967 Protocol

Relating to the Status of Refugees ("The Refugee Convention"). Malaysia does not have its own system for determining asylum claims, nor does it provide official protection and recognition to people whom UNHCR has recognized as refugees under its mandate, or to those whom UNHCR has found to be persons of concern and in need of temporary protection. This is particularly problematic, as many Acehnese in Malaysia have fled persecution and may be considered to be refugees.

Although Malaysia has not signed the Refugee Convention, it is still bound by the principle of *non-refoulement*—a universally accepted principle of customary international law that prohibits returning asylum seekers or refugees to any country where their lives or freedom would be threatened or they would be at risk of persecution.[1]

In spite of these obligations, the Malaysian government has repeatedly stated that it makes no distinction between illegal migrants and refugees.[2] A senior official from the Kuala Lumpur office of the UNHCR told Human Rights Watch that "the Malaysian government has never distinguished Acehnese from other Indonesian nationals for deportation purposes."[3]

Human Rights Watch calls on the Malaysian government to end the forced return of Acehnese so long as the armed conflict in Aceh continues; to bring its refugee practices into line with international standards governing the treatment of refugees, in particular to recognize the obligation of *non-refoulement* of refugees; and to ensure that the Malaysian police and other government agencies recognize the basic rights of Acehnese refugees while they remain in Malaysia.

Human Rights Watch urges the United Nations High Commissioner for Refugees (UNHCR) to recognize, on a *prima facie* basis, all Acehnese in Malaysia as under its extended mandate,[4] rather than continuing the current policy of designating them as "persons of concern." Such recognition would send a clearer signal to Malaysian

[1] Customary international law is defined as the general and consistent practice of states followed by them out of a sense of legal obligation. That *non-refoulement* is a principle of customary international law is well established. See for example "Problems of Extradition Affecting Refugees," EXCOM Conclusion No. 17, 1980; EXCOM General Conclusion on International Protection No. 25, 1982, and the Summary Conclusions on the Principle of Non-Refoulement at the Global Consultations Expert Roundtable on 9–10 July 2001.

[2] "Malaysia says will deport fleeing Acehnese," Reuters, June 3, 2003; "UNHCR concerned over plans to expel Aceh asylum seekers from Malaysia," Agence France-Presse, September 5, 2003; Baradan Kuppusamy, "Malaysia walks tightrope on Aceh refugees," *Asia Times*, September 9, 2003.

[3] Human Rights Watch interview with UNHCR representative [name withheld], Kuala Lumpur, Malaysia, October 27, 2003.

[4] UNHCR's mandate has been extended by various General Assembly resolutions to include persons who are outside of their country of origin and who are in need of international protection as a result of indiscriminate violence or public disorder in their country of origin. However, as outlined in this report, many of the Acehnese in Malaysia may also be considered refugees within the meaning of the Refugee Convention and some have been recognized as such by UNHCR. In addition, some Acehnese, due to their participation in the conflict in Aceh, may not be entitled to international protection. Granting of refugee status on a prima facie basis does not preclude the possibility of subsequently canceling such status for certain individuals if they are found to be undeserving of international protection based on article 1(F) (the exclusion clauses) of the Refugee Convention. UNHCR "persons of concern" letters are currently issued on the basis of a person's Acehnese ethnicity and non-combatant status.

authorities at all levels that deportations of Acehnese at this time violate the internationally recognized principle of *non-refoulement*.

Both Indonesian security forces and the Acehnese rebels bear responsibility for the flight of Acehnese to Malaysia. Both sides have committed human rights violations against civilians since the start of martial law and both must end the abuses that have forced asylum seekers to flee to Malaysia. The government of Indonesia should move as quickly as possible to return Aceh's administration to accountable civilian control.

The international community should press Malaysia to provide protection and assistance to all asylum seekers and refugees on its soil. In particular foreign governments should intervene with the government of Malaysia to stop the deportations of all Acehnese to Indonesia, and step up efforts to ensure that conditions are created under which Acehnese can voluntarily return to Indonesia in safety and with dignity and with human rights guarantees.

Background––Martial Law and Armed Conflict in Aceh and Refugee Flows

The current military offensive in Aceh began on May 19, 2003, after a six-month ceasefire failed to resolve the longstanding conflict in the province. The Aceh offensive is Indonesia's largest military campaign since the country's invasion of East Timor in 1975. The operation involves an estimated 30,000 troops, who are opposed by approximately 5,000 armed members of the Free Aceh Movement (Gerakan Aceh Merdeka, GAM).

Reasons for Acehnese to flee

> *When will our villages be safe? That is what we need. We need to go home to our villages. We need to see our families again. We need to find work in our villages and find food. That is all. We want to go home.*
> —Twenty-nine-year-old Acehnese man, October, 2003 [5]

Human Rights Watch has documented widespread human rights violations in Aceh province since the start of the military operations in the province in May 2003.[6] Based on testimony from Acehnese refugees in Malaysia there is substantial evidence documenting the role of Indonesian security forces in extra-judicial executions, forced disappearances, beatings, arbitrary arrests and detentions, and drastic limits on freedom of movement in Aceh. There is also a clear pattern of security forces singling out and persecuting young men, who the military claim to be members or supporters of GAM.

The renewed fighting has also caused massive internal displacement. Thousands of civilians have fled their homes and been forcibly relocated by the military for operational reasons. The military has used heavy artillery to attack rebel bases, causing more displacement of nearby villages as thousands flee their homes.[7]

The influx of troops has been accompanied by new and revived military tactics that are directly affecting civilians' daily lives. The stepped-up operations include patrols and "sweepings"—a set of tactics to identify separatists or their supporters through vehicle searches and document checks, moving systematically from one village to the next.[8] In many incidents described to Human Rights Watch, security forces beat and abusively

[5] Human Rights Watch interview with twenty-nine-year-old man [name withheld], Malaysia, October 26, 2003.

[6] See Human Rights Watch, "Aceh Under Martial Law: Inside the Secret War," *A Human Rights Watch Report*, Vol. 15, NO. 10 (C) December 2003; Human Rights Watch, "Aceh Under Martial Law: Muzzling the Messengers. Attacks and Restrictions on the Media," *A Human Rights Watch Report*, Vol. 15, No. 9 (C), November 2003; Human Rights Watch, "Aceh Under Martial Law: Can these men be trusted to prosecute this war?" *A Human Rights Watch Briefing Paper*, October 2003; Human Rights Watch, "Aceh Under Martial Law: Unnecessary and Dangerous Restrictions on International Humanitarian Access," *A Human Rights Watch Briefing Paper*, September 2003; Human Rights Watch, "Aceh Under Martial Law: Human Rights Under Fire," *A Human Rights Watch Briefing Paper*, June 2003.

[7] "Indonesia Moves Troops, Equipment To Battle Aceh Rebels," Associated Press, May 26, 2003.

[8] Dean Yates, "Indonesia steps up Aceh campaign against rebels," Reuters, May 26, 2003.

interrogated local residents. Other tactics under martial law include forcing villagers into compulsory night guard duty, and establishing a military presence at the village level, primarily through temporary posts manned by troops from outside Aceh. In all of these tactics young men are being singled out for harassment and abuse.

As of September 4, 2003, a military spokesman reported that at least 319 civilians had been killed since the start of martial law. In December 2003 a police spokesman put this figure at nearer 500. These figures do not specify responsibility for the deaths. In addition the military has reported that over 1,100 GAM fighters have been killed since the start of the military campaign.[9] Based on testimony collected from Acehnese refugees in Malaysia, it is clear that Indonesian security forces often do not distinguish between GAM combatants and civilians.[10] The high incidence of extra-judicial executions and persecution of young men in Aceh is a significant factor causing the refugee flow to Malaysia from Aceh.

Many Acehnese in Malaysia described to Human Rights Watch how particular incidents prompted their decision to leave Indonesia, often within a few hours of the incident, and sometimes with other young men in the village. Such incidents include witnessing or experiencing a physical assault by Indonesian security forces, or the killing or abduction of someone else in the village.

Several people reported they decided to leave as soon as it was clear martial law was coming, such as after demonstrations protesting the presence of international ceasefire monitors outside the monitors' office in March and April 2003.[11] One man from East Aceh explained: "I came [to Malaysia] in the HDC [Henry Dunant Centre, the mediator of the Cessation of Hostilities] period, after I saw the demonstration at the HDC office in Takengon. I knew it wasn't real, that people had been ordered [to attend] by TNI [the Indonesian military]. But I knew then that martial law was coming."[12]

A man from Central Aceh who arrived in Malaysia in early August told Human Rights Watch why he left Aceh:

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[9] "319 Masyarakat Tewas Selama DM," *Serambi*, 5 September 2003; "Indonesian police say almost 500 civilians killed in Aceh offensive," Agence France-Presse, December 31, 2003.

[10] Several Acehnese in Malaysia asserted that after killing a civilian, Indonesian soldiers would plant a GAM flag, gun, or mobile phone as false evidence that the victim was a GAM member, although only one person was able to provide eyewitness testimony. Human Rights Watch interview with forty-year-old Acehnese man [name withheld], Malaysia, October 26, 2003.

[11] Part of the cease-fire, or Cessation of Hostilities Agreement (COHA), signed on December 9, 2002, was the deployment of Thai and Philippine military officers across Aceh to monitor adherence to the terms of the agreement by both sides. In March and April 2003, a series of attacks on the ceasefire monitors' offices and staff led to the eventual withdrawal of the entire mission.

[12] Human Rights Watch interview [name withheld], Malaysia, October 27, 2003,. One recent arrival described what happened in her village in South Aceh: "TNI came to the village and told the village head to gather people for a demonstration at the HDC office saying if they didn't come they would be killed. The village head called everyone together. They wanted it to look like we didn't want them there, but it was better when they were there, collecting information on what was happening. I didn't go, but I later went to the mass loyalty oaths, because if you didn't they would say you were GAM." Human Rights Watch interview [name withheld], Malaysia, October 26, 2003; See also Human Rights Watch, "Indonesia: Aceh Ceasefire Threatened By Escalating Violence," Press Release, April 23, 2003.

> Because there is daily fighting and gunfire between the TNI and GAM all over Aceh. It increases my trauma, I can hear it from my village. So many things have happened. My friends have been beaten by the military. Many have been threatened. I can not live in Aceh anymore. The trauma is too much, wondering if I am going to live or die.[13]

Testimony from individuals who have returned to Aceh from Malaysia and others demonstrates that those who leave Aceh are more likely to be suspected as members of GAM by the military upon their return. Refugees who are returned to Aceh face a high risk of abusive punishment on account of their initial flight to Malaysia, and some are very fearful that they would suffer persecution if forced to return. In addition, Acehnese who have been living in Malaysia since before martial law was declared face the possibility of serious reprisals upon return. Simply fleeing from Indonesia brings suspicion of being a GAM member or supporter and consequently some Acehnese in Malaysia could be considered to be *refugees sur place*[14] within the meaning of the 1951 Refugee Convention.[15] The UNHCR has a longstanding understanding that *refugees sur place* are entitled to the protections of the Refugee Convention and its Protocol.[16]

Acehnese refugees in Malaysia told Human Rights Watch that deported Acehnese are separated from other Indonesians on arrival in Indonesia. Human Rights Watch also collected testimony indicating that refugees' family members who remained in Aceh suffered reprisals due to their relative's flight to Malaysia. One man told Human Rights Watch:

> When I arrived in Malaysia I called my parents [in Aceh]. They said all of those who fled are suspected of being GAM. My parents were called. My name was called out to find my parents. All the names of those who had left were called out. The TNI asked for a list of all the names of those not in the village, from the village head and from the TNI spies in the village.[17]

Several refugees told Human Rights Watch that relatives had told them by phone that the military was looking for them. One man who voluntarily returned to Aceh experienced so much suspicion and compulsory daily reporting to local authorities that

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[13] Human Rights Watch interview with fifty-seven-year-old man [name withheld], Malaysia, October 24, 2003.

[14] A *refugee sur place* is a person who was not a refugee when he left his country, but became a refugee at a later date, often due to circumstances arising in his country of origin during his absence. See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* [hereinafter *UNHCR Handbook*] paragraphs 94-96 (on the understanding of *refugee sur place*) and paragraph 61 (on severe punishment for illegal departure), HCR/IP/4/Eng/Rev1, (Geneva: UNHCR 1992).

[15] Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force Apr. 22, 1954 and Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force Oct. 4, 1967 ("the Refugee Convention").

[16] See, UNHCR *UNHCR Handbook*, paragraphs 94-96 (on the understanding of *refugee sur place*) and paragraph 61 (on severe punishment for illegal departure), HCR/IP/4/Eng/Rev1, (Geneva: UNHCR 1992).

[17] Human Rights Watch interview with twenty-seven-year-old man [name withheld], Malaysia, October 26, 2003.

he decided to leave again immediately. A twenty-four-year-old man interviewed soon after returning to Malaysia from North Aceh in early October explained:

> When martial law started I was here [Malaysia], but I was returned. I was arrested at the [Malaysian] night market in July. It was 2:00 a.m. and I was working, selling fish. One hundred police came in trucks and arrested fifty migrants, four of them Acehnese and the rest Javanese. At the police station they said, "You are GAM. Why are you here?" We said there was no work there so we came here. After ten days, during which we were split up, we were put on a ferry to Dumai [in Riau province, Indonesia]. There were 500 people on the ferry, most of them being returned, including 300 Acehnese. In Dumai we were questioned one by one. They looked at our ID cards and asked where we were from. If you said Banda Aceh you were let go. If you said North Aceh or East Aceh, it was serious, especially for men. I'm from North Aceh. I called my father when I was arrested, and he called a relative in the police force, so I was let go.
>
> Back in Aceh, between July and October it was a very difficult atmosphere. I couldn't go out–I was considered guilty, a GAM member. I couldn't go into town. I was afraid of checkpoints–they don't just question you, they hit first then ask questions. Whenever I was questioned I was hit. I didn't have an ID card—I was kicked by a Kostrad soldier at a post in Alue Bili Rayeuk, an Irianese corporal. I was slapped and pounded. He asked "Where have you been, out of sight?" "Looking for work." If you say Malaysia, that's it, they think you're GAM. My second day back in Aceh I was called by the police in Alue Putih subdistrict. Again I said I was looking for work in Medan. The third day I had to report to the village head. Every day I had to report–I couldn't stand it. With no ID card I was seen as GAM.[18] But if you don't report you'll be taken at night. I was afraid of the soldiers, afraid of being shot or disappeared at night.[19]

The family members of those who leave are also harassed. One woman who arrived in Malaysia from Pidie in late October told Human Rights Watch:

> The first reason I came to Malaysia is that my husband is here. The second is that security forces kept coming to the house looking for him. "Where did he go?" they'd ask. These were *TNI Operasi* [military] from

[18] Instead of the normal Indonesian identity card required nationwide, residents of Aceh are now required to possess a special red and white card, the *KTP Merah Putih* (*Kartu Tanda Penduduk Merah Putih*, or red and white identification card). Nine days after martial law began, Aceh regional military commander Major General Endang Suwarya announced that these new identity cards would be issued in Aceh because so many had been stolen by GAM, allowing them to pass through sweepings undetected. While this may have indeed been the primary motive, another important motive was to force all Acehnese to present themselves in front of officials. Those who did not were then presumed to be members of GAM. See Human Rights Watch, "Aceh Under Martial Law: Inside the Secret War."

[19] Human Rights Watch interview [name withheld], Malaysia, October 27, 2003.

> South Sulawesi. I'd tell them, "He's looking for work." I'd try not to answer too clearly where he was.[20]

Another man who fled Aceh in April after seeing his friend shot by soldiers in East Aceh told Human Rights Watch:

> In August, I was here [Malaysia]. My mother phoned me. She told me not to go back to the village because the Indonesian army was looking for me. About two or three nights TNI went to the house with dogs, looking through the windows, looking for me, and circling the house. I don't know how many people. What is clear is that the TNI were looking for me, my mother saw it through the windows. It was one time like this. Another time, maybe five days after I left for Malaysia they came into my house, without taking their shoes off, without saying "*Assalam Alaikum"* [proper Muslim greeting] or anything, asking my mother where I was. My mother said that I had already left, so they left. I am not GAM, but I am Acehnese, and that is it.[21]

History of Indonesian migration to Malaysia

The Indonesian province of Aceh lies on the northern tip of the island of Sumatra, just west of Malaysia across the Straits of Malacca. Building on a history of trade and travel across the straits, many Acehnese fled to Malaysia during the height of counterinsurgency operations in Aceh in 1990-93. While many were civilians, members of GAM also traveled back and forth between Aceh and Kuala Lumpur, Malaysia's capital, where GAM maintained an operational headquarters for a number of years beginning in the 1980s.

Malaysia also has a long history of serving as a prime destination for hundreds of thousands of Indonesians who migrate with and without proper documentation to the peninsula seeking work. These migrant workers form the backbone of Malaysia's construction industry, while others work as domestic workers and agricultural laborers.

Indonesian migrants have long been a source of controversy in Malaysia and the government periodically tries to control its borders through mass deportations of undocumented workers. For example, in August 2002 Malaysia expelled hundreds of thousands of undocumented Indonesian workers after announcing an amended, stricter immigration law, which included provisions allowing for the fining, whipping, and imprisonment of illegal immigrants and their employers. In 2003, 42,935 foreigners were arrested under these laws, and almost half were Indonesian.[22] Nine thousand of those

[20] Human Rights Watch interview [name withheld], Malaysia, October 27, 2003.

[21] Human Rights Watch interview with twenty-four-year-old man [name withheld], Malaysia, October 31, 2003.

[22] Unpublished statistics from the Department of Immigration, Malaysia. Human Rights Watch interview with Mohamed Fauzi Ismael, Assistant Deputy Director, Enforcement Unit, Department of Immigration, Ministry of Home Affairs, Kuala Lumpur, February 24, 2004.

sentenced were whipped.[23] The expulsions initially decreased after they threatened to harm relations between Indonesia and Malaysia. However, Malaysia's immigration authorities continue to routinely detain and deport large numbers of undocumented Indonesian migrant workers and their families, including Acehnese who may face persecution upon return.

Acehnese have been singled out in the past for deportation from Malaysia. On March 26, 1998, Malaysia deported 545 Acehnese from Malaysia on an Indonesian warship. The deportees included more than a dozen people recognized as refugees by UNHCR, others who had a potential claim to refugee status but had not been interviewed by UNHCR, and a small number of GAM activists.[24] Some of those repatriated were suffering from untreated injuries after riots broke out in detention centers prior to the deportations. On their return to Aceh, Indonesian military authorities detained and interrogated the group.[25]

[23] Statistics from the Department of Immigration, Malaysia cited in Tenaganita, "Migrant Workers: Access Denied," Kuala Lumpur, 2004.

[24] "Indonesia: The May 3, 1999 Killings in Aceh," *A Human Rights Watch Briefing Paper*, May 1999.

[25] Human Rights Watch, "Acehnese Deportees In Danger In Indonesia," A Human Rights Watch Press Release, March 31, 1998.

Malaysia's Response to the War in Aceh: Arrests and Deportation of Acehnese

> *We will treat them [Acehnese] as we do other refugees. We will detain them and send them back.*
> —Khalil Yaacob, Malaysia's Minister of Information, June 2003[26]

After fighting resumed in Aceh, the Malaysian government quickly reiterated its position of refusing to recognize asylum seekers in Malaysia, including the new flows of Acehnese refugees to the country. Information Minister Khalil Yaacob added that Malaysia would deport all people from Aceh caught entering the country illegally, regardless of whether they claimed to be refugees fleeing fighting in the Indonesian province.[27]

The resumption by the Indonesian armed forces of military operations in Aceh sparked a dramatic increase in the flow of Acehnese to Malaysia seeking safety. According to UNHCR, 3,757 new cases of Acehnese asylum seekers were registered with the agency by the end of October 2003, compared with 633 new cases for the whole of 2002. Registered arrivals surged in the period around the declaration of martial law, with May 2003 having the highest one-month total of the year. The vast majority of the new arrivals were men between the ages of eighteen and fifty-nine, who made up 93 percent of newly registered Acehnese asylum seekers between June and October 2003.[28] UNHCR in Kuala Lumpur reported a sharp increase in Acehnese seeking protection, though this number included both new arrivals and longer-term residents afraid to be sent back.

While these figures demonstrate a marked increase in the number of Acehnese asylum seekers since the start of martial law in Aceh province, they tell only part of the story. Many more Acehnese have arrived in Malaysia but have not registered with UNHCR, in part due to the fear and difficulty associated with approaching the agency (see below). In September 2003 UNHCR officials acknowledged that they believed there were 8,000-9,000 people from Aceh in Malaysia who may be of concern to UNHCR.[29] That number has undoubtedly risen since then.

[26] "Malaysia says will deport fleeing Acehnese," Reuters, June 3, 2003.

[27] Ibid.

[28] UNHCR, "Breakdown of Acehnese by Month/Year of Arrival," October 20, 2003; UNHCR, "Summary Registration Statistics by Ethnic Origin, with Demographic Profile," October 27, 2003.

[29] United Nations High Commissioner for Refugees, "Malaysia deports asylum seekers to Aceh despite UNHCR appeal," September 5, 2003.

The August Arrests at UNHCR

> *UNHCR? I don't understand about UNHCR. I don't fully understand who they are or who they are working for. I know some people went there and were arrested. I don't know what will happen if I go there, maybe I will end up dead.*
> —Twenty-two-year-old Acehnese man, October 2003[30]

In August 2003 Malaysian police arrested and detained at least 250 Acehnese asylum seekers outside the UNHCR office in Kuala Lumpur. The arrests outside UNHCR are widely known among the Acehnese in Malaysia, and are frequently cited as the primary reason why Acehnese refugees are now unwilling to go to the UNHCR office to register or obtain a protection letter.

The crackdown clearly targeted Acehnese asylum seekers, as the arrests occurred on two consecutive Tuesdays, the day of the week allocated by UNHCR to hear claims from Acehnese.[31] (UNHCR has subsequently stopped this practice and allows Acehnese to make claims any day the office is open).

One twenty-five-year-old man described the August 19 arrests to Human Rights Watch:

> My brother-in-law brought me to the U.N. One thousand people came, but some were sent home, so some 200 people were waiting outside the office. All 200 were arrested. This was at four in the afternoon. We were told by UNHCR to wait by a middle-aged foreign man who worked there. One Acehnese was asked to come up to discuss things with a supervisor. The police were already there, three trucks worth. They told us we would be brought to another place, which turned out to be the police station. There they told us to temporarily wait in the cells. They never said we were being arrested or would be sent home. . . After ten days, about fifteen to a cell, we were brought to a detention center in vans, all 200 of us. They told us to wait while our case was discussed and a decision was made. We asked for protection from the U.N., but in the end we were told that all Acehnese migrants would be returned home. We spent a month at the detention center, again about fifteen to a cell. Then we were put on a ferry to Medan [the largest city in Sumatra], together with other Indonesian migrants, more than 300 people. . . I got help, borrowed money from friends, and came right back here. That was two months ago. How can I go back to the UNHCR office without a guarantee of my safety?[32]

[30] Human Rights Watch interview with twenty-two-year-old man [name withheld], Malaysia, October 26, 2003.

[31] See Human Rights Watch, "Malaysia: Don't Return Indonesian Asylum Seekers," A Human Rights Watch Press Release, August 29, 2003.

[32] Human Rights Watch interview with twenty-five-year-old man [name withheld], Malaysia, October 26, 2003.

A thirty-two year old man was arrested the following Tuesday:

> I was arrested in August in front of UNHCR, the second time arrests were made there. Sixteen people were detained, all Acehnese. We were taken to Langkap, a temporary detention center. They also detained some Burmese; there were two trucks. We were there until October 7. Of the sixteen, all went back to Indonesia except for four or five. . . They threatened us. Tuan Basri from immigration at Langkap told us we would all be sent home. I flew from Ipoh [Malaysia] to Polonia airport [Medan, Indonesia], hoping it would be safer. I'd heard of people being arrested and killed after taking the ferry. When I arrived in Polonia they saw my papers and asked if was one of the ones arrested at UNHCR. I told him, "No, I was arrested near Kuala Lumpur." He asked for 50,000 Rupiah (U.S.$6) but I only had 50 Ringgit (U.S.$13). I gave him the Ringgit and he gave me 50,000 Rupiah change. My brother picked me up at the airport. I got a passport and flew back. When I was arrested I had a UNHCR letter [decision pending], with one year of extensions. . . I think UNHCR didn't even know I was sent home. I haven't been to UNHCR since being back.[33]

The August arrests have deterred many Acehnese from traveling to Kuala Lumpur and registering with UNHCR. One Acehnese man told Human Rights Watch:

> I heard about UNHCR but I am afraid, because I heard some news that more than 200 Acehnese were arrested in front of UNHCR. That makes me not dare to go there. If I am arrested I will be discarded back to Aceh. If that is the case, I will not be able to live anymore.[34]

Another man explained:

> I heard about UNHCR a long time ago but have not yet gone there, because in Malaysia they do not recognize UNHCR. So, I think if I am arrested I will be taken back there [Aceh]. I heard people with the [UNHCR] letter were sent back and then were disappeared when they arrived.[35]

At least seventy of those arrested outside the UNHCR offices in Kuala Lumpur have already been deported back to Indonesia. Whether more such detainees are deported depends on negotiations between UNHCR and the Malaysian government. Some of those arrested outside the UNHCR office remain in immigration detention centers in Malaysia. There have been no further arrests outside of the U.N. agency's office.

[33] Human Rights Watch interview with thirty-two-year-old-man [name withheld], Malaysia, October 27, 2003.

[34] Human Rights Watch interview with thirty-year-old-man [name withheld], Malaysia, October 31, 2003.

[35] Human Rights Watch interview with twenty-six-year-old man [name withheld], Malaysia, November 7, 2003.

Malaysian authorities say that the seventy who were deported had "voluntarily" returned to Indonesia.[36] Harsh conditions in the detention center and the prospect of long-term detention with no release undoubtedly were factors in the Acehnese agreeing to be deported. One former detainee, who managed to make his way back to Malaysia after deportation, explained to Human Rights Watch that he agreed to return to Indonesia because, while in detention, he was unable to provide for his family. He told Human Rights Watch:

> In detention it was never certain there'd be enough to eat. There were no vegetables, just sardines and rice.[37]

In addition to strong evidence provided in refugee interviews to Human Rights Watch, statistics show a sharp decline in new registration of Acehnese after August 2003. In July UNHCR reported 1,478 new Acehnese registrants. In August, the month of the arrests, they fell to 791, and by September they were at just 282.[38] This decline cannot be solely attributed to a decrease of new arrivals. Human Rights Watch was consistently told that new refugees were arriving from Aceh every day, and in fact interviewed many who had arrived in October and November 2003.

Other arrests and deportations

In mid-November 2003 Malaysia prepared to forcibly return eight Acehnese refugees, including a mother and her young child to Indonesia. All were holding temporary protection letters issued by UNHCR. Strong pressure from Malaysian and international NGOs helped bring attention to the case, and to reports of violence against the refugees, resulting in the Malaysian government agreeing to put the deportations on hold.[39]

This example, however, is not representative of the fate of other Acehnese refugees in Malaysia. For example, UNHCR reported that seven asylum seekers were sent home across the Straits of Malacca on September 5, 2003. Malaysia denied UNHCR access to the seven Acehnese asylum seekers in detention, all of whom had been interviewed by the agency in the previous two weeks.

The deportations occurred despite appeals from the U.N. High Commissioner for Refugees, Ruud Lubbers, for a moratorium on deportations of Acehnese, and just days before a high-level mission from the agency to Malaysia to discuss the subject.[40] Lubbers

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[36] Yoon Szu-Mae, "50 more asylum-seekers arrested in KL," Malaysiakini, August 26, 2003; Baradan Kuppusamy, "Malaysia walks tightrope on Aceh refugees," *The Manila Times*, September 8, 2003.

[37] Human Rights Watch interview with a thirty-two-year-old man [name withheld], Malaysia, October 27, 2003. Accounts of abuse by Malaysian authorities, overcrowding, and inadequate humanitarian assistance in Malaysia's immigration detention centers have been covered in previous Human Rights Watch reports. See Human Rights Watch, "Living in Limbo: Burmese Rohingyas in Malaysia," *A Human Rights Watch Report*, Vol. 12. No. 4 (C), August 2000; Human Rights Watch, "'By Invitation Only:' Australian Asylum Policy," *A Human Rights Watch Report*, Vol. 14, No. 10 (C), December 2002.

[38] Summary Registration Statistics by Ethnic Origin, with Demographic profile, July-September, 2003.

[39] Amnesty International, "Fear of torture or ill-treatment/Fear of forcible return," AI Index: ASA 28/028/2003, November 14, 2003.

[40] UNHCR, "Malaysia deports asylum seekers to Aceh despite UNHCR appeal," September 5, 2003.

said that the plans outlined in "persistent reports" ran counter to assurances provided by the Malaysian authorities, according to which the asylum seekers "would not be returned to a situation which could endanger their lives and well-being."[41] In a press statement issued from Geneva, UNHCR stated that it was "extremely concerned after learning that Malaysian authorities this morning deported seven asylum seekers who originated from the Indonesian province of Aceh, despite a request from the High Commissioner this week for a moratorium."[42]

In mid-September 2003 a high level UNHCR delegation, including Jean-Marie Fakhouri, the director of UNHCR's Asia-Pacific bureau, visited Malaysia to meet with the government about the August arrests and deportations. UNHCR publicly called for a moratorium on all deportations of the asylum seekers who had been arrested outside of the UNHCR office in August. Deportations of those arrested did cease, but the refugees remained in detention and to date have an uncertain status pending continued negotiations between UNHCR and the Malaysian government.

A U.S. Congressional letter to the Malaysian government signed by eight members of Congress also raised concern at this "apparent violation of the principle of *non-refoulement*." The letter added:

> Return of these asylum seekers to Aceh, when military operations are underway and where there are reports of widespread human rights violations, would be unacceptable. We urge that your Government's authorities abide by international law and not forcibly return any additional Acehnese to Aceh.[43]

Despite international criticism and pressure, police raids on Indonesian settlement areas continue. No distinction is made between Indonesian undocumented persons, asylum seekers, and refugees. For example, Malaysian police raided an Indonesian settlement in Limau Manis near Kuala Lumpur on September 16, 2003, and bulldozed many homes. The police told the Associated Press that 167 migrant workers without valid work permits had been detained and would be deported. Eyewitnesses reported that there were many Acehnese among those taken away.[44]

In October 2003 Malaysian police raided an undocumented workers camp in Penang and again arrested a number of Indonesians, including thirty-three Acehnese. A

[41] UNHCR, "UNHCR Seeks moratorium on deportations from Malaysia," September 4, 2003; "UNHCR concerned over plans to expel Aceh asylum seekers from Malaysia," Agence France-Presse, September 5, 2003.

[42] UNHCR Press Briefing, Geneva, September 5, 2003.

[43] Congressional Letter to Dato Ghazzali Sheikh-Abdul-Khalis, Embassy of Malaysia to the United States, signed by representatives Patrick J. Kennedy, Christopher Smith, Lane Evans, Tammy Baldwin, Barney Frank, Dennis Kucinich, Eleanor Holmes-Norton, and Sherrod Brown, September 3, 2003; "U.S. Congress reps rap Malaysia on deportation of Aceh asylum seekers," Agence France-Presse, September 4, 2003.

[44] Yoon Szu-Mae, "Mass arrest at Kg Limau Manis, Putrajaya," Malaysiakini, September 16. 2003; "Malaysian Police Raid Illegal Camp For Indonesian Workers," Associated Press, September 17, 2003.

Malaysian human rights organization, SUARAM (Suara Rakyat Malaysia, Voice of the Malaysian People), reported that four of them were believed to have been holding UNHCR-issued temporary protection letters. All those arrested are believed to have been taken to immigration detention centers for deportation.[45]

In January 2004, a Malaysian organization, Solidarity for Aceh, and the Organisation Mondiale Contre la Torture (World Organization Against Torture), reported that at least forty Acehnese asylum seekers were arrested after Malaysian police raided a migrant community settlement in Kampung Sungai Nibong, Penang, on January 25, 2004. The groups reported that those arrested were at grave risk of deportation.[46]

On February 21, 2004, the Penang Support Group for Aceh reported ten Acehnese asylum seekers were arrested in a police raid at Bukit Jambul. The Acehnese were detained at the Penang Southwest Police District Office with the expectation that they would be later transferred to the Juru detention centre in preparation for deportation.[47]

The above evidence suggests that, although largely unreported, deportations of Acehnese are regularly taking place as part of broader deportations of all undocumented Indonesians in Malaysia.

After the August arrests outside of the UNHCR office in Kuala Lumpur, UNHCR was unable to visit those arrested in August detained in Malaysia's immigration detention centers. Of the 289 persons known to have been detained, it identified 182 persons, mostly Acehnese, who asked for UNHCR intervention, and UNHCR provided temporary protection letters to those who did not already have them. According to the U.S. Committee for Refugees, the other 107 persons at the centers either declined UNHCR assistance or had already been deported.[48]

Problems faced by Acehnese returned to Indonesia

Human Rights Watch interviewed three Acehnese men who had returned to Malaysia from Indonesia after at least once previously having been arrested and repatriated from Malaysia. Two who had returned to Indonesia by boat told Human Rights Watch that Acehnese were separated from other Indonesians by authorities at the port of arrival, either Medan, North Sumatra (the main disembarkation point from Malaysia), or Dumai. One man was released due to the intervention of a relative in the police (as already recounted above), and the other claimed to be from another province. Neither knew the fates of those who were detained on arrival.

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[45] Susan Loone, "Police raid homes, arrest Acehnese in Penang," Malaysiakini, October 18, 2003.

[46] "Case MYS 300104 - arrest and risk of corporal punishment or deportation of forty Acehnese asylum seekers," Organisation Mondiale Contre la Torture, January 30, 2004; Yap Mun Ching, "More Acehnese allegedly arrested in dawn raid," Malaysiakini, January 27, 2004.

[47] "Urgent Alert: Acehnese Asylum Seekers Arrested in Penang," Penang Support Group for Aceh, February 22, 2004.

[48] "Malaysia Detains and Forcibly Returns Acehnese Asylum Seekers," U.S. Committee for Refugees, Refugee Reports, Vol. 24, No. 7, October 2003. Of the 182 seeking UNHCR protection, 82 were in the Langkap detention center in Perak. The others were held in two detention facilities in Kuala Lumpur.

Acehnese in Malaysia also reported rumors that some of those who had been deported had either "disappeared" or been killed before making it back to their families. The rumor of fifty decapitated heads of deported Acehnese asylum seekers in Lhokseumawe hospital was recounted by several refugees in Malaysia. Human Rights Watch was unable to confirm any of these reports. However, the rumors do demonstrate the level of fear felt by Acehnese in Malaysia, and their concerns over what will happen to them if they are returned to Indonesia. One man who was deported to Indonesia, and then made his way back to Malaysia, told Human Rights Watch:

> When we got to Medan we were processed at the port. They asked, "What were you doing in Malaysia?" If you say construction they don't believe you. But I said I came to make money, to help my village. The Acehnese were separated and taken away, I don't know where. There is not yet any word of other people from the boat returning to their home villages. I said I was not Acehnese but Minangkabau [from West Sumatra], and they let me go.[49]

[49] Human Rights Watch interview with twenty-five-year-old man [name withheld], Malaysia, October 26, 2003.

Violations of Civil Liberties and Harsh Living Conditions in Malaysia

The majority of new arrivals from Aceh are living in conditions of insecurity and poverty in Malaysia. Due to their vulnerable and illegal status, unemployment is high and external humanitarian assistance is rare.

Acehnese in Malaysia live primarily in two types of settings: camps of laborers around construction sites and settled communities. Labor camps consist of temporary housing built by workers on the fringes of Malaysia's many massive construction projects, where some of them work. In settled communities, new arrivals often join Acehnese who have lived there for years, some of whom have permanent resident status in Malaysia.

In both settings Human Rights Watch found that only a fraction of newly arrived Acehnese works at any given time. Those who work are expected to help pay for those who are unable, as well as send money home through banks, friends, or intermediaries. Many of those who spoke to Human Rights Watch had worked only a few days out of the previous month, and recent arrivals tended to have found no work at all. One man described the conditions:

> The majority do not work. I have a UNHCR letter, but there's no stamp from Malaysia, so it doesn't help us find work. We have to work with one eye open (*kerja tenggok*) and if we see the police we have to run. We look for opportunities. Work at the market is from midnight to 8:00 a.m. About half of us worked half of last night. We get ten Ringgit (U.S.$2.60) if we work half the night, or thirty (U.S.$7.80) till the end. When the police came we had to take off. We cook for ourselves. Sometimes newcomers don't know where to get work, and usually need help with food.[50]

Some Malaysian organizations have provided clothing and food to assist the Acehnese. However, because the government of Malaysia does not make a distinction between illegal migrants, asylum seekers, and refugees, provisions in Malaysian law[51] make it difficult for UNHCR and humanitarian agencies to provide asylum seekers and refugees with assistance. A formal and comprehensive humanitarian assistance program is essential in order to adequately address the food, shelter, and medical problems faced by the Acehnese.

[50] Human Rights Watch interview [name withheld], Malaysia, October 27, 2003.

[51] Certain provisions of Malaysian immigration law and criminal law, when read together, implicitly prohibit the delivery of humanitarian assistance to illegal migrants except in very limited circumstances.

Bribery and extortion

In addition to arrest and the prospect of being forcibly returned to Aceh, many Acehnese who enter illegally or whose visas have lapsed are targets of extortion from Malaysian police. One man told Human Rights Watch:

> I was arrested in the street, by myself. I was taken to the station from 8:00 a.m. to noon. I had to pay 800 Ringgit (U.S.$210) before I was released. I was hit [*pukul*] in the street, but not at the station. They were just putting me in the mood to pay them off. I showed them my ["under consideration"] UNHCR letter, but they said, "That's useless" [*tak ada fungsi*]. They checked my criminal record at the station but it was clean. They asked for money in the street, but I gave it to them in the station, after I phoned a friend to bring the money. But I gave it to one of the police officers when the supervisor wasn't there. This was two weeks ago, on Saturday night. Other people can pay them off with ten Ringgit; for Acehnese it's never less than 300.[52]

Another man told Human Rights Watch:

> In June I was arrested by three policemen. They asked for money. I was alone in the road and they stopped me and asked for my Malaysian ID card. I don't have a Malaysian ID card. I explained to them the problem in Aceh. I said that I could not return to my village, I will be shot. They clearly understood and released me. But they still asked for money. They asked for 200 Ringgit but I didn't have it. I gave 50 Ringgit. It was all I had, but they released me.[53]

One twenty-one-year-old man told Human Rights Watch:

> It was a Friday, October 10. Malaysian police arrested me in Ulu Klang, with some friends, three of us. They asked for documents. I gave them my passport and my airline ticket and they let me go. But my two friends were not released. Their visas had already expired. They were both taken to a detention camp. When the police were interrogating me they took 25 Ringgit. After they returned my documents, one policeman gave me back 4 Ringgit so that I could get back here. But it's not safe here. The police often enter, looking for Acehnese. It's not every day, but many times every month.[54]

Indonesian settlements in Malaysia are also regularly subjected to both official and unofficial police raids. In one settlement that Human Rights Watch visited, refugees said that men in plainclothes had visited the night before. They had detained one man and

[52] Human Rights Watch interview [name withheld], Malaysia, October 27, 2003.

[53] Human Rights Watch interview with twenty-four-year-old man [name withheld], Malaysia, October 31, 2003.

[54] Human Rights Watch interview with twenty-one-year-old man [name withheld], Malaysia, October 28, 2003.

forced him to pay them off. Residents at the settlement were not certain whether or not these men were police, but explained that it didn't matter, as they could not face the risk of not paying, no matter who they were. Another refugee told Human Rights Watch:

> Before there were two Malaysian police here saying that they were UNHCR. They asked for a GAM T-shirt and asked to see our Malaysian identity cards. I saw them but we didn't give them anything. But this is our experience. So, if people don't want to give you information, it is because of this.[55]

One man described a Malaysian police raid on a workers camp:

> I used to live one kilometer from here. They burnt eight huts and the canteen. I lost all my clothes, my passport, everything! Everybody ran. It was the Malaysian police. . . We all stayed in the empty canteen. This was two months ago. The police came in one month ago. There were no people there at the time, and they burnt the remaining four structures.[56]

Despite these hardships refugees repeatedly told Human Rights Watch that a difficult life in Malaysia was more preferable to returning to Aceh. As one man said:

> It is like this, it is just like this. It is better to be arrested and detained here [Malaysia] than go back there [Aceh].[57]

[55] Human Rights Watch interview with twenty-six-year-old man [name withheld], Malaysia, October 29, 2003.

[56] Human Rights Watch interview [name withheld], Malaysia, October 28, 2003.

[57] Human Rights Watch interview with twenty-two-year-old man [name withheld], Malaysia, October 31, 2003.

Inadequate Malaysian Law, Uncertain Refugee Status and Inadequate Protection

> *I am scared to go looking for work in Malaysia in case I am arrested. But I am more scared if I am sent back [to Indonesia] because the military already know my name.*
> —Twenty-seven-year-old Acehnese man, October 2003.[58]

As well as being a destination for migrant workers from all over Southeast Asia, Malaysia has long served as temporary host for refugees fleeing persecution and armed conflict. Malaysia has, on an *ad hoc* basis, willingly hosted certain groups of refugees—including Khmer Muslims from Cambodia and Filipino Muslims, some of whom Malaysia officially resettled within its borders. However, Malaysia offers very little in the way of legal protection for asylum seekers or refugees.

Malaysia has yet to become party to the main international treaty for the protection of refugees: the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees. While Malaysia has a well-developed legal system and sophisticated lawyers and judges, the Malaysian government has no system for determining asylum claims, nor does it provide official protection and recognition to people whom the UNHCR has recognized as refugees under its mandate, or to those whom UNHCR has found to be persons of concern and in need of temporary protection.

This is particularly problematic, as many Acehnese in Malaysia have fled persecution and may be considered to be refugees within the meaning of the 1951 Refugee Convention, which defines a refugee as a person who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country." And although Malaysia has not signed the Refugee Convention, it is still bound by the principle of *non-refoulement*—a universally accepted principle of customary international law that prohibits returning asylum seekers or refugees to any country where their lives or freedom would be threatened or they would be at risk of persecution.[59]

In spite of these obligations, the Malaysian government has repeatedly stated that it makes no distinction between illegal migrants and refugees.[60] Although decades old, this policy is particularly problematic now, when there is clear evidence that special

[58] Human Rights Watch interview with twenty-seven-year-old man [name withheld], Malaysia, October 26, 2003.

[59] Customary international law is defined as the general and consistent practice of states followed by them out of a sense of legal obligation. That *non-refoulement* is a principle of customary international law is well established. See for example "Problems of Extradition Affecting Refugees," EXCOM Conclusion No. 17, 1980; EXCOM General Conclusion on International Protection No. 25, 1982; and the Summary Conclusions on the Principle of Non-Refoulement at the Global Consultations Expert Roundtable on 9 – 10 July 2001.

[60] "Malaysia says will deport fleeing Acehnese," Reuters, June 3, 2003; "UNHCR concerned over plans to expel Aceh asylum seekers from Malaysia," Agence France-Presse, September 5, 2003; Baradan Kuppusamy, "Malaysia walks tightrope on Aceh refugees," *Asia Times*, September 9, 2003.

protection, including protection from deportation, should be provided to all Acehnese while the armed conflict continues in Aceh.

The sheer numbers of refugees arriving from Aceh following the start of military operations in May 2003 have made it difficult for UNHCR to conduct refugee status determination (RSD) interviews for most of the new arrivals. As a result, in July 2003, UNHCR began issuing temporary protection letters to Acehnese, indicating that they were a person of concern to the organization. The letters are issued on the basis of a person's Acehnese ethnicity and non-combatant status. They are being issued to all Acehnese regardless of when they arrived in Malaysia, recognizing the heightened vulnerability of all Acehnese while military operations continue. The letters are valid for six months and can be extended for another six months if the bearer re-approaches UNHCR.

The temporary protection letters are not a replacement for status determination; the decision to supplement normal RSD procedures with the temporary protection letters is largely due to the overwhelming numbers of new Acehnese asylum seekers in Malaysia. UNHCR recognizes the urgent need for international protection for civilians from Aceh, but does not currently have the capacity to provide it. Status determination by UNHCR in Malaysia normally would include more substantial interviews with asylum seekers to establish whether or not they meet the criteria for refugee status under the 1951 Convention, and, if they do, eventual third country re-settlement.

While the temporary protection letters are a positive step, in light of the armed conflict and serious human rights violations taking place in Aceh, UNHCR should formally recognize Acehnese in Malaysia as refugees under its extended mandate on a prima facie basis. As a result of successive United Nations General Assembly resolutions, UNHCR's mandate has been extended to persons who are outside of their country of origin and are in need of international protection as a result of indiscriminate violence or public disorder in their country of origin.[61] This recognition would send a strong signal to Malaysian authorities at all levels that deportations of Acehnese at this time are a violation of the internationally recognized principle of *non-refoulement*.

Acehnese refugees without government-issued documentation and even those with UNHCR-issued documents, including asylum seekers with "persons of concern" letters or recognized refugees with UNHCR-issued refugee letters, regularly face detention and summary return to Indonesia. In addition, Acehnese refugees repeatedly told Human Rights Watch that they were reluctant to approach UNHCR after the August 2003 arrests in front of the UNHCR office in Kuala Lumpur. This results in many living in the conditions of extreme insecurity described above.

[61] See in particular "Complementary Forms of Protection: Their Nature and Relationship to the International Refugee Protection Regime," EC/50/SC/CRP.18, paras 10 and 11, June 9, 2000. As highlighted already, some of these persons may also be considered to be refugees within the meaning of the 1951 Refugee Convention and some have been recognized as such by UNHCR. In addition, granting of refugee status on a prima facie basis does not preclude the possibility of subsequently canceling such status for certain individuals if they are found to be undeserving of international protection based on article 1 (F) (the exclusion clauses) of the Refugee Convention.

The logistical and financial difficulties encountered in making the journey to the capital serve to further deter asylum seekers from approaching UNHCR. At present there are no UNHCR mobile registration or protection units working in places other than detention centers and, except for those in detention, registration at the Kuala Lumpur office is the only means of acquiring a protection letter or registering for status determination. Most Acehnese in Malaysia are therefore living in a legal and protection vacuum, as they do not have permission to be in Malaysia and cannot return to Aceh.

While the interim protection letters issued by UNHCR to asylum seekers should in principle be respected by Malaysian authorities and police officers, the documents are not legally binding in Malaysia and thus are limited in their usefulness as a protection measure. As Malaysia makes no distinction between Acehnese asylum seekers and other Indonesian undocumented migrants in Malaysia, the Acehnese are still subject to arrest, detention, and extortion by local Malaysian authorities, with or without UNHCR letters. Acehnese holding temporary protection letters have been deported to Indonesia.

A twenty-nine-year old Acehnese man told Human Rights Watch:

> I heard about UNHCR and the protection letters but I know the Malaysian police do not accept them. One of my friends had a letter like that and was still arrested. So, it's better not to risk it, to leave the camp. My friend just recently got the letter, since martial law started, but it was not accepted by the police. So, if it is not accepted, why get the letter? If the letter definitely gave us protection then of course we would go and get it.[62]

At present there is no systematic method to check to what extent Malaysia is currently deporting Acehnese holding UNHCR protection letters, or those who have arrived since martial law. When asked if UNHCR was keeping track of Acehnese being returned to Indonesia at this time, a UNHCR official told Human Rights Watch:

> Deportations as such are not our concern. Hundreds, if not thousands, are deported to Indonesia or the Philippines each week from East and West Malaysia. There is no reason we would be given this data even if it was available.[63]

Given Malaysia's record of deporting individuals who are or should be recognized as refugees and the lack of screening for refugee status of those caught up in large-scale deportations of putative migrant workers, UNHCR should not only be seeking such data, but insisting upon access to all Acehnese facing deportation.

[62] Human Rights Watch interview with twenty-nine-year-old man [name withheld], Malaysia, October 26, 2003.

[63] Human Rights Watch email communication with UNHCR representative [name withheld], Malaysia, November 20, 2003.

Recommendations

To the Malaysian Government

- Ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Develop asylum and refugee protection procedures and enact appropriate implementing legislation. These procedures should be available to all asylum seekers, regardless of nationality.
- Recognize that in light of the ongoing armed conflict and widespread human rights violations taking place in Aceh, all Acehnese in Malaysia should be treated as prima facie refugees[64] and provided with protection and assistance.
- Respect the obligation under customary international law not to *refoule* (forcibly return) asylum seekers and refugees to a place where they may fear persecution or where their lives and freedom may be at risk. Specifically, the Malaysian government should:
    - Stop the deportation of Acehnese to Indonesia.
    - Provide unhindered access to UNHCR offices and staff to any Acehnese who wishes to make an asylum claim. Ensure that all Acehnese wishing to apply for asylum are not barred from making such application by the local authorities.
    - Permit UNHCR to have comprehensive access to holding centers and immigration detention facilities so that Acehnese asylum seekers and refugees may identify themselves to UNHCR to request protection.
    - Create a mechanism for notifying UNHCR immediately of the detention of any Acehnese on immigration grounds.
    - Ensure that no Acehnese who has made a claim for asylum or been recognized as a person of concern or refugee by UNHCR is deported to Indonesia on the ground that he or she is an illegal migrant.
- Immediately release from immigration detention all Acehnese refugees, asylum seekers, and persons who are registered with the UNHCR office in Kuala Lumpur. Specifically, release all remaining Acehnese refugees and asylum seekers who were arrested in August 2003 outside the UNHCR offices in Kuala Lumpur.
- Ensure that health, nutrition, and safety conditions in detention centers for undocumented persons and asylum seekers are sufficient so as not to act as a "push factor" to compel Acehnese to "voluntarily" return to a situation in which they are at significant risk. Specifically, ensure that conditions in detention centers conform with international and domestic standards, including the U.N. Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Detainees are entitled to sufficient food and water, prompt access to medical treatment, adequate washing facilities, and clean and adequate bedding. They must not be subject to cruel, inhuman, or degrading treatment.

[64] As highlighted in footnote 4 this does not preclude the possibility of subsequently canceling such status for reasons of exclusion.

- Revise existing laws so as to enable UNHCR and other agencies to provide formal humanitarian assistance to asylum seekers and refugees in Malaysia.
- Train police, immigration officials, and magistrates to recognize UNHCR documents and to refrain from arresting, detaining, and deporting asylum seekers, refugees, and persons registered with the UNHCR office.
- Take immediate steps to end widespread extortion of migrant workers, asylum seekers, and refugees by police officers and pervasive corruption in the handling of migrants and undocumented persons by police and immigration officials. Hold responsible senior immigration, police and Anti-Corruption Agency officials for abuse and extortion of migrants and undocumented persons by their subordinates. Thoroughly investigate all allegations of abuse by government officials, and take disciplinary action and bring prosecutions as appropriate against all those responsible.

To the United Nations High Commissioner for Refugees (UNHCR)

- Recognize the severity of human rights violations currently taking place in Aceh and recognize, on a prima facie basis, all Acehnese in Malaysia as refugees under UNHCR's extended mandate[65] until conditions in Aceh significantly improve.
- Take steps to ensure that the Malaysian government does not forcibly return Acehnese asylum seekers or refugees, in particular by:
    - Taking steps to ensure that the UNHCR office is accessible and a safe place for asylum seekers and refugees to make asylum claims and obtain protection from UNHCR, and assign staff to mobile registration, protection, and community services clinics.
    - Monitor immigration detention centers and holding camps for migrants in Kuala Lumpur and in areas with large communities of Acehnese workers, so that asylum seekers and recognized refugees have the opportunity to identify themselves and make a claim for asylum or protection.
- Conduct better outreach and protection activities so that Acehnese communities better understand the role of UNHCR and have information they need in order to make decisions in regard to making an asylum claim.
- Seek data on details regarding the numbers of Acehnese currently being deported, insist upon access to all Acehnese facing deportation, and intervene with the government of Malaysia on their behalf.
- Organize training programs for immigration officials, police officers, and magistrates in the rights of refugees and asylum-seekers under international law.
- Continue interventions with Malaysia to respect international refugee law, with a specific focus on its relevant domestic authorities such as the police, prisons service, and immigration department.
- To the extent possible, monitor the situation of refugees who have been *refouled* to Indonesia.

[65] Many of the Acehnese may also be considered to be refugees within the meaning of the 12951 Refugee Convention and some have already been recognized as such by UNHCR. Moreover, as highlighted in footnote 4 this does not preclude the possibility of subsequently canceling such status for reasons of exclusion.

To the Government of Indonesia

End the abuses that have forced asylum seekers to flee to Malaysia, specifically:

- Investigate fully allegations of violations of international human rights and humanitarian law. Discipline and prosecute as appropriate all officials, armed forces personnel, and police implicated in abuses, including extra-judicial executions; forced disappearances; torture and other ill-treatment; rape and sexual violence; looting; and extortion.
- Allow Indonesia's National Commission on Human Rights to carry out investigations in Aceh free from intimidation or interference by martial law authorities.
- Take all steps necessary to ensure that Indonesian military and police forces act in full accordance with international human rights and humanitarian law. Make sure that all forces operate under rules of engagement that are consistent with international humanitarian law. Move as quickly as possible to return Aceh's administration to accountable civilian control.
- Ensure that all commanders deployed in Aceh, at every level, have received training in the fundamental principles of humanitarian law, particularly the protection of civilians and non-combatants. All combatants should be trained and drilled in the proper treatment of civilians and non-combatants, including captured fighters.
- End the practice of using civilians in military, paramilitary, or security related functions, including the practice of compulsory night guard duty for men and boys.
- End the requirement of a special identification card for residents of Aceh so long as the government cannot ensure that such cards will not continue to result in abuses against the local population, including arbitrary arrests, ill-treatment, and unwarranted restrictions on freedom of movement.
- Respect international humanitarian law prohibitions on displacement of civilians providing that the displacement of the civilian population should occur only where the security of the civilians or imperative military reasons demand it.[66] Indonesia should also adhere to the United Nations Guiding Principles on Internal Displacement ensuring adequate facilities for those displaced.[67]

[66] Geneva Conventions, Protocol II, art. 17, which is considered reflective of customary international law, provides that the "displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand."

[67] The Guiding Principles on Internal Displacement (the Guiding Principles), adopted in September 1998 by the U.N. General Assembly, reflect international humanitarian law as well as human rights law, and provide a consolidated set of international standards governing the treatment of the internally displaced. Although not a binding instrument, the Guiding Principles are based on international laws that do bind states as well as some insurgent groups, and they have acquired authority and standing in the international community

To Foreign Governments

- Press Malaysia to provide protection and assistance to all asylum seekers and refugees on its soil, and to ratify the Refugee Convention.
- Intervene with the government of Malaysia to stop the deportations of Acehnese to Indonesia.
- Urge the government of Malaysia to revise its laws so as to permit UNHCR and other agencies to provide humanitarian assistance programs for asylum seekers and refugees.
- Support and strengthen UNHCR in its protection role in Malaysia, actively intervening with the government in support of UNHCR. Provide financial support to UNHCR so that it staffs provincial and mobile protection and outreach activities outside of the Kuala Lumpur office.
- Press Indonesia to open Aceh to international non-governmental organizations, journalists, and U.N. agencies, including UNHCR.
- Step up efforts to ensure that conditions are created under which Acehnese can voluntarily return to Indonesia in safety and with dignity and human rights guarantees. Insist that UNHCR be able to monitor conditions before, during, and after any such repatriations take place.
- Press Indonesia to not allow the indefinite extension of martial law.
- Ensure that military assistance to Indonesia is not used to contribute to human rights violations. Those states that have provided Indonesia with military assistance, including weapons, other equipment, and training, have a special responsibility. As such, they should impose strict conditions on the permitted use of the weapons or other military assistance, consistent with human rights and international humanitarian law standards. They also should put in place effective measures to monitor and ensure accountability for any misuse of the weapons or other assistance. Indonesia has a complementary duty to keep and offer for inspection the documentation necessary to demonstrate how it has used foreign-supplied equipment, and if necessary provide other forms of access to facilitate effective end-use monitoring.

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Its Asia division was established in 1985 to monitor and promote the observance of internationally recognized human rights in Asia. Brad Adams is executive director; Saman Zia-Zarifi is deputy director; Veena Siddharth is advocacy director; Sara Colm and Mickey Spiegel are senior researchers; Meg Davis, Meenakshi Ganguly, Ali Hasan, Charmain Mohamed, John Sifton, and Tejshree Thapa are researchers; Thomas Kellogg is Orville Schell Fellow; Liz Weiss is coordinator; and Ami Evangelista is associate. Joanne Leedom-Ackerman is chairperson of the advisory committee.

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