COMMISSION ON HUMAN RIGHTS
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SPECIFIC GROUPS AND INDIVIDUALS:
MASS EXODUSES AND DISPLACED PERSONS

Written statement* submitted by the Asian Legal Resource Centre (ALRC),
a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 January 2004]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.04-10802
Forced repatriation of asylum seekers from Malaysia

1. At the heart of the Universal Declaration on Human Rights are the right to life and the right to protection when life is threatened. Therefore, the Commission on Human Rights must respond vigorously when these rights are challenged or ignored. By detaining and repatriating asylum seekers from Myanmar and Indonesia, the Government of Malaysia is disregarding these rights; the Commission is obliged to respond.

2. Although Malaysia has not signed the Convention Relating to the Status of Refugees, its government is still required to uphold the rights to life and protection. Moreover, the Malaysian government is bound by the principle of non-refoulement, a part of customary international law that applies to all states regardless of whether they have signed and ratified the said Convention. Non-refoulement applies to both asylum seekers and recognised refugees, and pertains to deportation to third countries where the asylum seeker or refugee will not be protected, as well as to the person's country of origin.

3. The Government of Malaysia, however, ignored these international obligations when police arrested hundreds of asylum seekers in July and August of 2003, while blocking their access to a United Nations agency. On June 29, police arrested 19 Rohingya asylum seekers from Myanmar. They also set up roadblocks near the office of the United Nations High Commissioner for Refugees (UNHCR), in Kuala Lumpur. Over two weeks in August, they arrested some 250 more asylum seekers. Of those arrested in August, most were from Aceh, Indonesia, and included at least 14 women, a nine-month-old baby and a five-year-old child. At least one of the detainees had already been recognised as a refugee by the UNHCR. Because of the police actions, UNHCR temporarily closed its office.

4. The asylum seekers from Aceh had good reason to flee. The conflict in Aceh, which began in 1976, has so far resulted in over 10,000 deaths, mostly of civilians. The Indonesian military began a new offensive there with a declaration of martial law on 19 May 2003, after a breakdown in ceasefire talks. The assault is estimated to have involved 30,000 troops. Indonesia's National Human Rights Commission (Komnas HAM) soon reported on summary executions, arbitrary detentions and torture, sexual violence, forced displacement and the intentional burning of schools there. Other reports indicate a shortage of food and water, and increasing health problems and malnutrition in camps for the internally displaced. Moreover, since the offensive began Aceh has been largely closed to the outside world. International agencies and others find it difficult to get access; human rights workers there face threats to their lives. These conditions breed impunity and the likelihood of further human rights violations.

5. The Government of Malaysia, however, describes the persons arrested as 'illegal immigrants'. This is because Malaysia's immigration law makes no distinction between refugees and illegal immigrants. They therefore all risk imprisonment of up to five years, six strokes of a cane, a fine of up to 10,000 ringgits (about US$2,600) and deportation. The government has also not established any means for asylum seekers to challenge and overturn their detention and repatriation through judicial or administrative avenues. By September 5, the Government of Malaysia had in fact repatriated 66 asylum seekers to Aceh, claiming they had 'volunteered' to
return, when in fact these persons were powerless to defend the rights that the government had stripped from them.

6. To rectify this situation, Malaysia's National Human Rights Commission (Suhakam) must first pressure the government to immediately free all asylum seekers, and allow them access to UNHCR. Secondly, Suhakam can study the absence of any means for redress in these cases, and recommend to the government how to amend regulations so that people facing similar circumstances in the future will have their rights protected.

7. The Commission can assist and guide Suhakam to these ends. Because United Nations human rights institutions have fostered the development of national bodies, this is an important opportunity for an international agency to strengthen a domestic one, through work on a specific issue of joint concern. The Asian Legal Resource Centre therefore recommends that the Commission, in collaboration with Suhakam and UNHCR, urgently:

   a) Secure the immediate release from detention of all asylum seekers.

   b) Ensure that the Government of Malaysia permits all asylum seekers to approach the UNHCR unimpeded.

   c) Advise the Government of Malaysia on how to amend regulations so as to permit asylum seekers a means for review of their cases and redress where their rights have been violated.

   d) Encourage the Government of Malaysia to sign and ratify the Convention Relating to the Status of Refugees and its Optional Protocol, as well as other international human rights instruments to which the country has not acceded.

9. In addition, the Asian Legal Resource Centre draws attention to the current situation in Aceh, which it has only briefly described. It is essential that the Commission act on what is happening in Aceh that is forcing people to flee into Malaysia and other countries. The Commission must:

   a) Pressure the Government of Indonesia to end martial law in Aceh and permit international access to the territory.

   b) Send a mission to Aceh to ascertain human rights conditions there with a view to stemming the widespread abuses that have been reported.

   c) Advise the Security Council to mediate the conflict and bring the warring parties to a speedy peaceful settlement.