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**SPECIFIC GROUPS AND INDIVIDUALS**

**Written statement\* submitted by the Asian Indigenous and Tribal Peoples Network  
(AITPN), a non-governmental organization in special consultative status**

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

[30 December 2004]

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

## Libya as the EU Immigration Officer: The Need for a UN Special Rapporteur on Refugees

The rights of refugees have never been a favorite subject of the Commission on Human Rights (CHR). The CHR does not formally discuss refugee issues and agenda item 14(c) titled “mass exoduses and displaced persons” has been reduced to internally displaced persons. At the 60<sup>th</sup> session, the Commission on Human Rights considered only the reports (E/CN.4/2004/77 and Add.1-4) of the Representative of the Secretary-General on internally displaced persons.

### **Failure of the UNHCR**

Since the collapse of the Berlin Wall, there have been attempts to make refugee rights as an internal issue. Refugee rights continue to be considered within the four walls of the Headquarters of the United Nations High Commissioner for Refugees during its annual Executive Committee meeting and lack of public debate generally found in the functional Commissions of the Economic and Social Council has not helped to promote the rights of the refugees and asylum seekers. UNHCR Executive Committee meeting where it requests funds from the governments is hardly the forum to discuss “rights”. In any event, as an implementing agency, UNHCR spurns any criticisms. The inhuman and degrading treatment of the refugees in many countries including India by the UNHCR has been deplorable.

### **Libya as the Immigration Officer of EU**

In the post-September 11<sup>th</sup>, the refugees have become more vulnerable. The European Union, which promoted the rule of law including the rights of the refugees, has been adopting anti-refugee laws. Many European governments which were hitherto considered as leaders on human rights have started questioning the *absolute* nature of the prohibition against torture and principles of non-refoulement. The “balance” between legitimate security concerns and the protection of individual civil liberties has tipped decidedly in favor of security.

Taking advantage of the post September 11<sup>th</sup> period, many countries across the world have been promoting illegal detention. It was Australia who legalized the exclusion and sought violent solution by dumping the asylum seekers in Nauru and other Pacific Islands.

The European Union started its process to undermine the refugee rights by identifying countries as “safe” and borrowing the discredited Australian example to establish centres to process asylum-seekers off-shore, in North African countries. And today, Libya, which has been pariah of the international community until recently, has been upgraded to be the immigration officer of the EU. In October 2004, hundreds of newly arrived African and Middle Eastern nationals were speedily returned from the Italian island of Lampedusa to Libya without adequate safeguards. Hundreds of refugees from Ethiopia, Eritrea, Somalia and Liberia are being deported from Italy to Libya. The fact that Libya has neither ratified the Refugee Convention nor established national asylum procedures does not seem to bother EU. Just the way Libya accepted the United States supremacy on nuclear issues, it may as well ratify the Refugee Convention and develop immigration procedures at the behest of the EU.

### **Plight of the Acehnese refugees:**

The situation of the refugees and asylum seekers also remain deplorable in Asia. After the collapse of ceasefire between the Free Aceh Movement, commonly known as GAM, and the Indonesian government in May 2003, scores of Acehnese fled to Malaysia to seek asylum. UNHCR considered 3,757 new cases of Acehnese asylum seekers 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. The largest number of asylum seekers arrived in May 2003. 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.

Majority of the Acehnese asylum seekers however cannot approach UNHCR. In mid-September 2004, the police arrested 15 refugees from outside the UNHCR office in Kuala Lumpur. In a similar crackdown in August 2003, Malaysian police arrested and detained more than 200 Acehnese asylum seekers from outside the UNHCR office. As a result, many asylum seekers could not approach UNHCR. According to UNHCR by 1 October 2004, about 300 refugees are currently detained at immigration detention centers in Malaysia. Most Acehnese refugees are likely to be deported when Malaysia starts mass arrest and deportation of all undocumented persons on 1 January 2005.

### **Plight of the Montagnard refugees**

The situation of the Montagnard refugees from Vietnam in Cambodia is similar to the situations of the refugees from Aceh in Malaysia. On 22 March 2002, UNHCR pulled out of a repatriation agreement with Hanoi and Phnom Penh and offered asylum to about 1,000 ethnic minorities who fled after the peaceful protests in February 2001. After the withdrawal of the UNHCR, the situation of the Montagnard asylum seekers further deteriorated. During the first week of January 2003, an estimated 50 Pnong indigenous people from Vietnam sought refuge in Cambodia. However, they were arrested near Koh Nheak in the Mondulkiri and Rattanakiri area by the Cambodian police and were forcibly handed over to the Vietnamese border police. Subsequently, around the third week of January 2003, another group of 30 Pnongs were again arrested by Cambodian police near Koh Nheak. But the men in this group were reportedly beaten up severely by the Cambodian police, in front of the women and children, before they were handed over to the Vietnamese border guards. According to a Cambodian parliamentarian, more than 160 Montagnards have been deported back to Vietnam since after the exodus of asylum seekers from 10 April 2004 onwards.

As UNHCR closed its office in Rattanakiri, asylum-seekers have had to travel some 600 kilometres over land to reach Phnom Penh. Despite such difficulties and repression, at least 94 others have reportedly managed to reach the Office of the UNHCR in Phnom Penh since late 2003.

Following the crackdown in the Central Highlands provinces of Dak Lak, Gia Lai and Dak Nong in Vietnam during the Easter weekend on 10 April 2004, hundreds of Montagnard refugees took shelter in the jungle of Mondulkiri and Rattanakiri provinces. About 282 asylum seekers were found by UNHCR in Rattanakiri province since July

2004 after Cambodia gave permission to open field offices. About 15 Montagnard asylum seekers, some of whom are seriously sick, are still hiding in the jungles at the time of writing of this report.

### **Plight of the Tibetan refugees**

Nepal, the main entry point for the Tibetan refugees has been refouling the Tibetan refugees. On 13 January 2004, three Tibetan refugees, including one minor, were handed over to Chinese border police by Nepalese officials at the Friendship Bridge border post at Dram. There were three incidents of forcible repatriation of Tibetans by Nepalese officials at the end of December 2003.

On 15 April 2003, the Government arrested 21 Tibetans, including 11 minors, on immigration charges. The three youngest children were released in UNHCR custody. On 31 May 2003, the Government handed over the 18 remaining Tibetans to Chinese authorities. The Government has since characterized the deportations as an aberration that does not reflect official policy. On 24 November 2003, the Government released all remaining Tibetan asylum seekers held in detention after a private benefactor paid their immigration fines.

### **Need for UN Special Rapporteur**

Freedom from arbitrary detention is a fundamental human right recognised under International Covenant on Civil and Political Rights, most national laws and the use of detention is contrary to the norms and principles of international law. The UNHCR's Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers adopted in February 1999 is instructive as to under what circumstances "Detention of asylum-seekers may exceptionally be resorted to for the clearly defined reasons as long as this is clearly prescribed by a national law which is in conformity with general norms and principles of international human rights law".

The Commission on Human Rights' resolution on protection of human rights and fundamental freedoms while countering terrorism recalled that the prohibition on torture is a non-derogable right that "must be protected under all circumstances, including in times of internal [or international] disturbance or armed conflict" and that "no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture".

In order to ensure respect for the rights of refugees as provided under international law, the 61<sup>st</sup> session of the Commission on Human Rights must take decisive action for the appointment of a Special Rapporteur on the Rights of Refugees and discuss the refugee rights as a separate sub-item of 14 of the UN Commission on Human Rights.