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**AMNESTY
INTERNATIONAL**



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To the Governments of Australia, Bangladesh, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Switzerland, Thailand, United States of America, and Viet Nam

OPEN LETTER: SOUTH EAST ASIA REFUGEE CRISIS

On 29 May 2015, Thailand is scheduled to host a Regional Summit on Irregular Migration in Bangkok to address the current refugee and migrant crisis in South East Asia, which has seen more than 2,000 people arrive by boat in Malaysia and Indonesia in May. According to the International Organization for Migration (IOM), thousands remain stranded at sea.

Amnesty International urges governments attending the meeting to cooperate and take immediate action to protect people whose lives are at risk in South East Asian waters. Any national and regional measures must meet governments' responsibilities under international law and respect the human rights of migrants and asylum seekers. Governments must also adopt measures to address the root causes of the current crisis.

Amnesty International is calling on governments to meet their responsibilities under international human rights law and standards. ASEAN Member States must abide by the Charter of the Association of South East Asian Nations (ASEAN Charter), in particular Article 7, which lists among the ASEAN "Principles and Purposes" the duty "to promote and protect human rights and fundamental freedoms" (Article 1(7)).

SEARCH AND RESCUE OPERATIONS

According to the UNHCR – the UN refugee agency – up to 4,000 refugees¹ and migrants may still be at sea as of mid-May 2015. With lives still at risk, Amnesty International reminds regional governments of their specific obligations under the law of the sea, which are applicable to situations of refugees or migrants found or intercepted at sea. The UN Convention on the Law of the Sea (UNCLOS) and the International Convention for the Safety of Life at Sea,² include obligations to provide assistance to those found in distress at sea. In addition, the duty of flag states and coastal states to render assistance to persons found at sea in danger of being lost, and people in distress, is a rule of customary international law binding on all states.

A range of circumstances should be taken into consideration when determining if a vessel is 'in distress', including:

- A request for assistance;

¹ UNHCR, Press Release, 19 May 2015, available at <http://www.unhcr.org/555b03ee9.html>

² To which Bangladesh, India, Indonesia, Malaysia, Myanmar and Thailand are also state parties.

- The seaworthiness of the vessel and the likelihood that the vessel will not reach its final destination;
- The number of persons on board in relation to the type and condition of the vessel;
- The availability of necessary supplies such as fuel, water and food, to reach shore;
- The presence of qualified crew and command of the vessel;
- The availability and capability of safety, navigation and communication equipment;
- The presence of persons on board in urgent need of medical assistance;
- The presence of deceased persons on board;
- The presence of pregnant women or of children on board; and
- The weather and sea conditions, including weather and marine forecasts.

Thailand, Malaysia and Indonesia have previously refused to offer assistance to vessels of refugees and migrants which are clearly 'in distress' under these criteria. Furthermore, in some cases directions have been given to push back (sometimes euphemistically described as 'help on') or turn away vessels which are clearly in distress.

While the announcement on 20 May 2015 by Thai, Malaysian and Indonesian authorities, that they will provide assistance to up to 7,000 people, including those still at sea, is a welcome step, it falls short of full compliance with these states' international legal obligations, which include the establishment and maintenance of search and rescue services, including through regional co-operation arrangements.

PUSH-BACK POLICIES AND DISEMBARKATION

In early May 2015, Indonesian, Malaysian and Thai authorities stated that it was their policy to block boats from entering their territorial waters unless they are not seaworthy. Policies of refusing to allow people to disembark violate international human rights law, including the right to life. Furthermore, any failure to examine the individual circumstances of each intercepted person before forcing them out of a state's territory would also constitute a violation of the rule of non-refoulement.

In the past six months, there have been numerous examples of the authorities pushing back boats carrying refugees and migrants that were seeking to land in Australia, Thailand, Malaysia and Indonesia. In none of these cases was any attempt made to properly assess claims of asylum.

Governments must end the practice of push-backs; moreover, the authorities should take proactive measures to rescue boats that are clearly in distress.

ENSURING THE SAFETY AND DIGNITY OF THOSE RESCUED

Ensuring the safety and dignity of those rescued, including crew, must be the immediate consideration once individuals are rescued at sea. Under international law, the state responsible for the search and rescue region in which survivors were recovered is responsible for providing a place of safety or ensuring that such a place of safety is provided.

Although Indonesia, Malaysia and Thailand are not state parties to the 1951 Refugee Convention, and Thailand and Malaysia lack formal legislative and administrative frameworks to address refugee matters, all these countries must abide by relevant rules of customary international law. This includes the rule of non-refoulement, which prohibits the transfer of anyone to a country where their life would be at risk, or where they would face persecution or torture.

Both Australia and Malaysia have policies of detaining people who arrived by boat. Australia has unlawfully detained people for more than two years, solely based on their method of arrival or immigration status. Amnesty International urges countries to provide appropriate safeguards against arbitrary detention of refugees and migrants, in accordance with international human rights law and standards. In Amnesty International's view, no person should be penalised solely on the basis of their means of arrival in a country.

ADDRESSING HUMAN RIGHTS ABUSES IN COUNTRIES OF ORIGIN

Amnesty International believes that a key measure to provide a durable regional solution to the current crisis is to address human rights abuses in countries of origin. Amnesty International urges governments to address the root causes of irregular migration as well as the immediate protection needs of refugees and migrants.

The majority of those recently rescued and those who remain at sea appear to be Rohingya fleeing systemic discrimination and persecution in Myanmar. They are not recognised as an official ethnic group and continue to be denied equal access to citizenship rights and freedom of movement, which has had serious repercussions on their livelihood and food security. In 2012, widespread violence between Buddhist and Muslim communities in Rakhine state led to the displacement of tens of thousands of people.³ Amnesty International continues to receive reports of arbitrary arrests, allegations of torture and other ill-treatment of Rohingya in detention and deaths in custody.

The Myanmar government severely restricts access to Rakhine state, making it very difficult to obtain independent and accurate information on the human rights situation. Transparency is critical to ensuring the protection of human rights. Governments must call on Myanmar to ensure free and unimpeded access to Rakhine state to humanitarian actors, the United Nations, international human rights organisations and journalists.

CONCLUSION

Thailand, Malaysia and Indonesia have hosted persons fleeing discrimination and persecution for decades, but lack an adequate legal regime, policies and practices for the protection of their rights. The recent crisis, where thousands of lives remain at risk at sea, has only highlighted the absence of such a protection framework. The summit offers the opportunity for governments in the region to develop and maintain a strong regional protection framework which is consistent with the ASEAN Charter and respects international human rights law.

RECOMMENDATIONS

Amnesty International urges countries within the South East Asia region and Australia to:

- Co-ordinate search and rescue operations to locate and assist boats in distress;
- Allow all boats carrying refugees and migrants to land safely in the nearest country and not push them back, threaten or otherwise intimidate them;
- Provide or ensure the provision of the immediate humanitarian needs of refugees and migrants including food, water, shelter and health care;
- Ensure that people claiming asylum are able to access fair refugee status determination procedures;
- Respect the rule of non-refoulement, by ensuring that people are not transferred to any place, including their country of origin, where their lives, and freedom from persecution and torture are at risk;
- Ensure that individuals are not criminalised, detained or otherwise punished solely for their method of arrival in the country;
- Ratify the UN Convention relating to the Status of Refugees, its 1967 Protocol and the UN Convention relating to the Status of Stateless Persons and implement these instruments in law, policy and practice;
- Work closely with UNHCR, the agency with the mandate to protect refugees and stateless people and the technical expertise on refugee status determination.

Amnesty International makes the following recommendations to specific countries:

- Malaysia, in its capacity as ASEAN Chair, should convene an emergency ASEAN summit to deal with the crisis, in accordance with the ASEAN Charter (which states “The ASEAN Summit shall... address emergency situations affecting ASEAN by taking appropriate actions”);
- Myanmar must put an end to systemic discrimination and violence against Rohingya;
- Myanmar must ensure free and unimpeded access to Rakhine State by humanitarian actors, international human rights organisations and journalists, in addition to other key stakeholders.

³ According to recent statistics by the UN Office for the Coordination of Humanitarian Affairs (OCHA), 139,000 people – mainly Rohingya – remain displaced in squalid conditions in internally displaced people camps across Rakhine State. See OCHA Humanitarian Bulletin – Myanmar, 1-31 March 2015, available at http://reliefweb.int/sites/reliefweb.int/files/resources/Bulletin_Humanitarian_OCHA_Mar2015.pdf

Amnesty International makes the following recommendations to all states:

- Increase humanitarian intake of refugees, specifically related to this crisis;
- Provide technical and financial assistance to countries in the South East Asia region for search and rescue operations as well as for the provision of immediate and longer-term needs of refugees and migrants in South East Asia.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Salil Shetty', with a horizontal line underneath the name.

Salil Shetty
Secretary General