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OPEN LETTER: ROHINGYA PEOPLE'S LIVES AT RISK AT SEA

To the Governments of: Australia, Bangladesh, Brunei, Cambodia, India, Indonesia, Laos, Malaysia, Myanmar, Pakistan, Philippines, Singapore, Timor-Leste, Thailand, Sri Lanka and Viet Nam

Several fishing trawlers carrying hundreds of women, men and children – believed to be Rohingya – are currently stranded at sea, after being pushed away by governments invoking COVID-19 pandemic related restrictions to deny them permission to disembark. Amnesty International urges governments in the region to work together and take immediate action to protect people whose lives are at risk. 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 situation.

In this regard, Amnesty International is calling on governments to meet their responsibilities according to international standards and regional commitments.

ASEAN Member States must abide by the Charter of the Association of South East Asian Nations (ASEAN Charter), in particular Article 1, which lists among the ASEAN "Principles and Purposes" the duty "to promote and protect human rights and fundamental freedoms" (Article 1(7)).

Governments must also uphold commitments made under regional declarations, including the 2010 ASEAN Declaration on search and rescue operations at sea, the 2016 Bali Declaration, and the outcome of the February 2020 meeting of the Taskforce on the Bali Process, which "emphasized the primacy of saving lives at sea and not endangering the life and safety of persons in responding to irregular maritime migration."

Governments should ensure that public health measures taken in response to the COVID-19 pandemic are proportionate, non-discriminatory and based on available scientific evidence. The COVID-19 pandemic cannot justify states' refusal to allow Rohingya to disembark. Forcing refugees to remain on boats also poses risks to their right to health and potentially their right to life.

SEARCH AND RESCUE OPERATIONS

According to information obtained by Amnesty International, as many as 800 refugees and migrants are still believed to be at sea. Two weeks ago, dozens of lives were lost on a boat the Malaysian authorities turned away. The survivors, allowed to disembark in Bangladesh, were severely malnourished and dehydrated. With hundreds more lives 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 include obligations to provide assistance to those in distress at sea. In addition, the duty of 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.

The International Convention on Maritime Search and Rescue, which serves as an expression of international standards, states that survivors of distress should be provided with assistance, regardless of their nationality or immigration status or the circumstances in which they are found. In addition, states must ensure that all operations and procedures, such as

screening and status assessment of rescued persons that go beyond rendering assistance to persons in distress are carried out after disembarkation to a place of safety.

As emphasised by UNHCR, the rescue of persons in distress at sea is not only an international obligation, but also a humanitarian necessity, regardless of who these persons are or their reasons for moving. Persons with international protection needs should be guaranteed safety and access to a durable solution. In light of the 2015 Andaman sea crisis when an untold number of Rohingya people were not rescued and hundreds lost their lives, there is now an urgent need to limit loss of life and suffering at sea to avoid further tragedy.

PUSH-BACK POLICIES AND DISEMBARKATION

In recent days, while initially accepting boats at sea, Malaysia and Bangladesh are now refusing to offer assistance to refugees and migrants in need of rescue. Moreover, coastguards have pushed back these vessels. Other countries have not responded.

Any failure to examine the individual circumstances of people claiming to have a well-founded fear of persecution, before removing them from a state's territory, would constitute a violation of the principle of *non-refoulement*. The principle states that no one should be returned to a country where they would face irreparable harm. It should be applied to all refugees and asylum-seekers including the Rohingya, whose lives and well-being are at serious risk.

States are bound by the duty to carry out search and rescue under the law of the sea framework.¹ Push-back policies are also in contravention of the commitment made by governments in the 2010 ASEAN Declaration on cooperation on search and rescue operations, and the 2016 Bali Declaration, in which states publicly pledged to cooperate on the search and rescue of people, including irregular migrants.

In a March 2016 meeting, Ministers in the Bali Process² committed governments in the region to a comprehensive regional approach to irregular migration, based on burden-sharing and collective responsibility. The declaration from the meeting pledged that governments would collaborate on the establishment of disembarkation options and cooperate on search and rescue efforts. Governments also agreed to address root causes of irregular migration by resolving the problem of statelessness and ensuring that refugees and migrants had safe routes by which to seek safety and avoid dangerous travel by sea.

All governments must collectively bear this responsibility. Action plans need to converge on common elements of search and rescue and disembarkation. Otherwise, push-backs by one country leaves rescue and disembarkation to another.

ADDRESSING HUMAN RIGHTS VIOLATIONS IN COUNTRIES OF ORIGIN

A key component of a durable regional solution to the current crisis is to address human rights violations 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 crimes against humanity and systemic discrimination and persecution in Myanmar. They are not recognized as an official ethnic group there and continue to be denied equal access to citizenship rights and freedom of movement, which has had serious repercussions on their livelihoods, health, and food security.

Since August 2017, more than 740,000 Rohingya have fled to Bangladesh from Myanmar's Northern Rakhine State after security forces unleashed a brutal campaign of violence against them. The UN Independent International Fact Finding Mission on Myanmar reported that these crimes may constitute genocide. The Myanmar authorities are maintaining an

¹ UNCLOS: UN Convention on the Law of the Sea, UN Doc. A/CONF.62/122, Art. 98(2): "Every coastal state shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose."

² Established in 2002, the Bali process aims to address smuggling, trafficking and related transnational crime. The process comprises 45 members states, including Afghanistan, Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Fiji, France (New Caledonia), Hong Kong SAR, India, Indonesia, Iraq, Japan, Lao PDR, Macau SAR, Maldives, Myanmar, Mongolia, Nauru, Nepal, New Zealand, Pakistan, Philippines, Palau, Papua New Guinea, Republic of Korea, Samoa, Singapore, Solomon Islands, Syria, Sri Lanka, Thailand, Timor Leste, Tonga, Turkey, United Arab Emirates, United States of America, and Vietnam

apartheid regime targeting the Rohingya in Rakhine State and it is still not safe for the hundreds of thousands of Rohingya women, men and children who fled during 2017 and in previous waves of violence to return to Myanmar. Access to Rakhine State, where an estimated 600,000 Rohingya people remain, continues to be severely restricted for humanitarian workers and independent journalists.

CONCLUSION

Many countries in the region have admirably hosted persons fleeing discrimination and persecution for decades, but the current situation, in which hundreds of lives are again at risk, has demonstrated the absence of a coordinated response. This moment offers the opportunity for governments in the region to come together to implement a strong regional protection framework for refugees and migrants, consistent with the ASEAN Charter that respects international human rights law.

RECOMMENDATIONS

Amnesty International urges governments within the South and South East Asia regions to:

- Co-ordinate search and rescue operations to locate and assist boats in distress, in line with regional declarations and international law;
- Allow all boats carrying refugees and migrants to land safely in the nearest country and not push them away, threaten or otherwise intimidate them;
- Provide or ensure the provision of the immediate humanitarian needs of refugees and migrants including adequate food, water, shelter and health care;
- Ensure that people claiming asylum are able to access fair refugee status determination procedures;
- Respect the principle of *non-refoulement*, by ensuring people are not transferred to any place, including their country of origin, where their lives are at risk, or where they may be tortured or persecuted;
- Ensure that individuals are not criminalized, detained or otherwise punished solely for their method of arrival in the country;
- Develop emergency mechanisms to respond to future boat movements in the region;
- 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 governments:

- Viet Nam, in its capacity as ASEAN Chair, should convene an emergency meeting to deal with the situation, 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 the Rohingya people; and also ensure free and unimpeded access to Rakhine State by humanitarian actors, international human rights organizations and journalists, in addition to other key stakeholders.

Amnesty International makes the following recommendations to all states:

- Increase humanitarian intake of refugees in the spirit of shared responsibility;
- Provide international cooperation and technical and financial assistance to countries in the South and South East Asia region for search and rescue operations and for the provision of immediate and longer-term needs of refugees and migrants in the region.

Yours sincerely,



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