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**Opportunity to protect the rights of refugees, asylum seekers and migrants in Asia Pacific region must be seized**

Ahead of the Special Regional Conference on Irregular Movement of Persons due to be held on 20 August in Indonesia, Amnesty International calls on Asia-Pacific governments to ensure that regional approaches and solutions to address the plight of migrants, asylum-seekers and refugees will be developed with human rights protection at their heart.

According to available information, the Special Conference hosted by Indonesia in Jakarta is expected to discuss, among other issues, the arrival by boat of asylum-seekers and refugees to the shores of Indonesia and Australia. At least 13 countries are believed to have been invited to the meeting including Afghanistan, Australia, Bangladesh, Indonesia, Iran, Malaysia, Myanmar, New Zealand, Pakistan, Papua New Guinea, the Philippines, Sri Lanka, and Thailand.

The planned conference in Jakarta will host both states which are parties and states which are not parties to the Refugee Convention. Regardless of whether they are party to the Convention, all states have the duty to ensure that the principle of *non refoulement* of refugees and asylum-seekers to countries where they are risk of persecution (which is a customary rule of international law) is respected.

Amnesty International urges all participants at this meeting to ensure that any regional approach to irregular migration upholds international human rights law and standards, including the rights of refugees and asylum-seekers. Such an approach must address systemic regional failures to ensure the protection of refugees and asylum-seekers, as well as other individuals arriving by sea.

Amnesty International reminds governments that the seas are not an area where states are exempt from their legal obligations, including those emerging from international human rights law and international refugee law. In particular, the obligation to uphold the principle of *non-refoulement* is equally applicable on the high seas.<sup>1</sup>

While many “transit” and “destination” countries in the Asia-Pacific region have offered shelter to a significant numbers of persons fleeing persecution, they have failed to consistently recognize the right to asylum in law, to consistently carry out fair and efficient refugee status determination procedures and to grant refugees and asylum-seekers full access to their rights. States have also returned individuals to countries where they would be at risk of serious human rights violations, in violation of the principle of *non-refoulement*.

The meeting follows the announcement of new “Pacific” agreements between Australia and Papua New Guinea in July 2013, and Australia and Nauru in August 2013. Under these regional agreements, refugees and asylum-seekers who arrive on Australian territory by sea would be transferred to either PNG or Nauru, where they would be detained pending examination of their asylum application and where they would settle in the event that they are recognised as refugees.

In February 2013, New Zealand agreed to accept 150 refugees annually from Australia in return for the option to send mass arrivals of asylum seekers to offshore “processing” facilities. While this would require a law change to progress, such a move would be of grave concern.

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<sup>1</sup> In its Note on International Protection of 13 September 2001 (A/AC.96/951, § 16), the UNHCR has indicated that “The duty not to refoule ... encompasses any measure attributable to a State which could have the effect of returning an asylum-seeker or refugee to the frontiers of territories where his or her life or freedom would be threatened, or where he or she would risk persecution. This includes rejection at the frontier, interception and indirect refoulement, whether of an individual seeking asylum or in situations of mass influx.”

Amnesty International considers that forcible removal of refugees and asylum-seekers for the stated purpose of processing their asylum claims offshore, to circumstances where they face mandatory and possible indefinite detention or other serious human rights violations, violates Australia's and New Zealand's obligations under both international refugee and human rights law. By arbitrarily detaining refugees and asylum-seekers, PNG and Nauru are in turn violating their refugee and human rights law obligations.

Amnesty International urges countries of origin, transit and destination at this conference to adopt immediate measures ensuring the protection of asylum-seekers and refugees from persecution or discrimination, and to avoid pushing them to more dangerous migration routes. Countries must have mechanisms in place to assess the different needs for protection of individuals arriving at their borders - including refugees and asylum-seekers; victims of trafficking or individuals at risk of being trafficked, and others. Countries must also give those seeking international protection access to fair and efficient procedures to determine their claims.

To this end, Amnesty International recommends that all governments take the following measures at the earliest opportunity:

**Countries of origin of refugees and asylum-seekers, including Afghanistan, Bangladesh, Iran, Myanmar, Pakistan, and Sri Lanka:**

- Work towards a genuine regional solution that protects the rights of asylum seekers and refugees in accordance with international human rights and refugee law;
- Take all appropriate measures to protect the human rights of all individuals in their territory and jurisdiction including by ending persecution and discrimination on the basis of race, religion, nationality, membership of particular social groups or political opinion, and providing protection to all individuals from serious threat to their life, liberty or security;
- Review, amend or repeal security and criminal laws that may be used to penalize the peaceful exercise of the rights to freedom of expression, association and assembly;
- take steps to end impunity by ensuring that all allegations of serious human rights violations and abuses are investigated in a timely, independent and transparent manner and that perpetrators are brought to justice in accordance with international law and standards without recourse to the death penalty;
- ensure that all returning asylum seekers and internally displaced persons receive humanitarian assistance to provide for their immediate needs including housing, food, water, health care and education;
- ensure internally displaced persons are able to choose to return voluntarily and in safety or resettle voluntarily in another part of the country and facilitate the assistance of independent humanitarian organizations and UN agencies to this end;
- work with national and international aid agencies to provide livelihood opportunities for the displaced and returnees and to encourage sustainable reintegration;
- protect from arbitrary arrest or detention returning nationals who may have sought asylum or residency elsewhere or who return with escorts or documentation issued by a third country.

**Transit and destination countries of refugees and asylum-seekers including Australia, Indonesia, New Zealand, Malaysia, Papua New Guinea and Thailand:**

- Work towards a genuine regional solution that protects the rights of asylum seekers and refugees in accordance with international human rights and refugee law. In particular, ensure that laws, policies, practices or agreements do not undermine the obligation of all states to respect the principle of *non-refoulement* and the right not to be subjected to indefinite and/or mandatory detention;

- Allow persons to enter the country's own territory to seek asylum, regardless of their manner of entry;
- Give all individuals who wish to seek asylum access to a full, effective and fair procedure to assess their asylum claims;
- Ensure that refugees and asylum-seekers are not unlawfully or arbitrarily detained, that detention is only used as a last resort, and that asylum-seekers and refugees are not penalized for irregular entry or stay;
- Not engage in *refoulement* by returning anyone to countries where they may be at risk of serious human rights violations;
- Amend domestic legislation to ensure that refugees and registered asylum seekers are provided with the relevant documents that allow them to stay lawfully in the country;
- Ensure that refugees and asylum-seekers' rights to work; to education; to health care; to hold identity and travel documents and to move freely are respected, protected and fulfilled;
- Increase quotas of refugees accepted for resettlement;
- Ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.