Lawyers' Rights Watch Canada

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2 June 2015

The Honourable Robert Nicholson, PC, MP, Minister of Foreign Affairs
The Honourable Ed Fast, PC, MP, Minister of International Trade
The Honourable Christian Paradis, PC, MP, Minister of International Development
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Dear Ministers,

Re: Human rights crisis involving Rohingya people and other migrants in the Indian Ocean

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law. LRWC is an NGO in Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations (UN).

LRWC is gravely concerned about the deep-rooted patterns of human trafficking in Southeast Asia as well as the widespread and systematic human rights violations against Rohingya people in Burma, which, according to the 2014 report of the UN Special Rapporteur on the situation of human rights in Myanmar, "may constitute crimes against humanity as defined under the *Rome Statute of the International Criminal Court*."[1]

In early May 2015, this entrenched international human rights crisis became a humanitarian emergency as raids and arrests in Thailand led human traffickers to abruptly abandon boatloads of migrants -- men, women and children -- from Burma and Bangladesh in the Indian Ocean, leaving thousands stranded in life-threatening conditions off the coasts of several countries in Southeast Asia, particularly Thailand, Malaysia and Indonesia. The root causes of this crisis include:

- failure by a number of States to abide by their international human rights obligations, and lack of integrity of law enforcement officials and legal systems in several States;
- lack of commitment to international human rights standards by a number of States, including member States of the Association of South East Asian Nations (ASEAN); and

[1] UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, 2 April 2014, A/HRC/25/64, at para 51, available at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-64_en.doc.

- lack of consistent and firm insistence on implementation of human rights by other States with trading relationships in Southeast Asia.

On 26 May 2015, LRWC issued a statement[2] urging all States in the region and their economic partners to create a regional plan of urgent action to push the Myanmar government to end its systematic persecution of Rohingya people and to implement international human rights law in their own States and trade agreements.

On 29 May, Thailand hosted a meeting in Bangkok of representatives from 17 countries in Asia as well as the UN High Commissioner for Refugees (UNHCR), the UN Office on Drugs and Crime (UNODC), the International Organization for Migration (IOM), and the UN Resident Coordinator for Thailand. A number of ambassadors and hundreds of journalists also observed the meeting.[3] The final Statement of the meeting was disappointing in that it addressed the issues only in general terms. However, the Statement did record an agreement among the States to address "root causes" and "factors in the areas of origin" including promotion of "full respect for human rights and adequate access of people to basic rights and services such as housing, education and healthcare…"

The mention of "root causes" and "human rights" in the 29 May statement provides opportunities for Canada to strengthen and deepen its commitments to promote adherence to international human rights in the region and to insist that a primary root cause, namely the persecution of Rohingya people, be addressed urgently. We note with appreciation that Canada has been concerned about human rights in the region and has publicly expressed concern about human rights in Thailand, particularly since the May 2014 military coup d'état.[4] Canada has also expressed concern about freedom of expression in

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[2] Lawyers' Rights Watch Canada, "Southeast Asia: Systematic violations of the internationally protected rights of Rohingya and other migrants is costing lives and must be stopped", Statement, 26 May 2015, available at http://www.lrwc.org/?p=9116

[3] The States attending were Afghanistan, Australia, Bangladesh, Cambodia, India, Indonesia, Iran, Lao PDR, Malaysia, Myanmar, New Zealand, Pakistan, Papua New Guinea, The Philippines, Sri Lanka, Thailand and Viet Nam. Summary: Special Meeting on Irregular Migration in the Indian Ocean, 29 May 2015, Bangkok, Thailand, Ministy of Foreign Affairs, Kingdom of Thailand, available at http://www.mfa.go.th/main/en/media-center/14/56880-Summary-Special-Meeting-on-Irregular-Migration-in.html. This followed a meeting a meeting of Foreign Ministers of Thailand, Malaysia and Indonesia on 20 May 2015, at which the Ministers agreed to address "root causes of the recent influx of irregular migrants" and Indonesia and Malaysia agreed to provide humanitarian assistance irregular migrants still at sea. The three governments sought support and financial assistance from other States "to enable them to provide temporary shelter and humanitarian assistance to the irregular migrants currently at risk. These migrants will be sheltered in a designated area to be agreed by the affected countries and administered by a joint task force to be established by the affected countries" and asked the "international community" to "take responsibility for the repatriation of the irregular migrants to their countries of origin or resettlement to third countries within a period of one year."Joint Statement: Ministerial Meeting on Irregular Movement of People In Southeast Asia, 20 May 2015, available Ministry of Foreign Affairs, Malaysia, http://www.kln.gov.my/web/guest/press-release/-/asset_publisher/t3pS/content/joint-statement:-ministerial-meeting-on-irregular-movement-of-people-in-southeast-asia-english-version-only?redirect=%2Fweb%2Fguest%2Fpress-release

[4] Canada Condemns Thai Military Coup, Foreign Affairs, Trade and Development Canada (DFATD), 22, May 2015, available at http://www.international.gc.ca/media/aff/news-communiques/2014/05/22b.aspx?lang=eng. Also see Canadian Press, "Baird condemns military coup in Thailand," CTV News, 22 May 2014, available at http://www.ctvnews.ca/politics/baird-condemns-military-coup-in-thailand-1.1833497; Canada Concerned by Worsening Human Rights Situation in Thailand, DFADT, 29 May 2014, available at http://www.international.gc.ca/media/aff/news-communiques/2014/05/29a.aspx?lang=eng; "Statement by Minister Nicholson on Thailand's Lifting of Martial Law," 3 April 2015, available at http://www.international.gc.ca/media/aff/news-communiques/2015/04/03a.aspx?lang=eng. Canada also Canada suspended its Military Training and Cooperation Program (MTCP) with Thailand. See Department of Defence and the Canadian Armed Forces, "Canada's Defence Relations in the Asia-Pacific Region: The Military Training and Cooperation Program," available at

Malaysia.[5] We appreciate both the recent denunciation of persecution of the Rohingya Muslim population by Canada's Ambassador for Religious Freedom [6] and Canada's recent provision of funding to "strengthen tolerance, religious freedom and pluralism" in Burma including through funding of CD$580,000 for education on religious freedom and development of capacity to respond to violations of religious freedom.

We urge Canada to make saving lives and protecting the basic rights of migrant men, women and children the immediate priority. LRWC also calls on Canada to promote improved human rights standards throughout Southeast Asia by making specific recommendations to all States involved in the migrant crisis including Bangladesh and all ASEAN members, that they:

- uphold the *Universal Declaration of Human Rights*[7] and their multilateral human rights treaty obligations;
- Ratify the *Refugee Convention* of 1951[8] (which only among ASEAN States only Philippines and Cambodia have ratified);
- Ratify the *Rome Statute of the International Criminal Court* (Rome Statute of the ICC)[9] (which among ASEAN States only Philippines and Cambodia have ratified);
- Ratify all relevant UN human rights treaties. In particular:
  - Burma should ratify the *International Covenant on Civil and Political Rights* (ICCPR),[10] *International Covenant on Economic, Social and Cultural Rights* (ICESCR),[11] *International Convention on the Elimination of All forms of Racial Discrimination* (ICERD),[12] *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT),[13] *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (CMW),[14] and the *International Convention for the Protection of All Persons from Enforced Disappearance* (CED);[15]

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http://www.forces.gc.ca/en/news/article.page?doc=canada-s-defence-relations-in-the-asia-pacific-region/hob7h9ya

[5] "Canada Concerned About Freedom of Expression in Malaysia, Press Release," 26 January 2015, available at http://www.international.gc.ca/media/aff/news-communiques/2015/01/22b.aspx?lang=eng

[6] Mike Blanchfield, "Canada's religion envoy denounces persecution of Myanmar Muslims," Canadian Press/ City News, 6 May 2015, available at http://www.citynews.ca/2015/05/06/canada-funds-myanmar-religious-tolerance-projects-as-part-of-re-engagement/

[7] N General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: http://www.refworld.org/docid/3ae6b3712c.html.

[8] UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: http://www.refworld.org/docid/3be01b964.html.

[9] UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6, available at: http://www.refworld.org/docid/3ae6b3a84.html

[10] UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: http://www.refworld.org/docid/3ae6b3aa0.html.

[11] UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: http://www.refworld.org/docid/3ae6b36c0.html.

[12] UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: http://www.refworld.org/docid/3ae6b3940.html.

[13] UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment : resolution / adopted by the General Assembly.*, 10 December 1984, A/RES/39/46, available at: http://www.refworld.org/docid/3b00f2224.html.

[14] UN General Assembly, *International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families : resolution / adopted by the General Assembly.*, 18 December 1990, A/RES/45/158, available at: http://www.refworld.org/docid/3b00f2391c.html [accessed 25 May 2015]

[15] UN General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearance*, 20

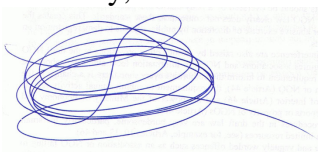
- Malaysia should ratify the ICCPR, ICESCR, ICERD, CAT, CMW, and the CED;
- Thailand should ratify the CMW and the CED; Thailand should also uphold the its obligations under the ICCPR and immediately conduct full-suffrage elections and ensure fair trial rights and freedoms of expression and assembly (including freedom of expression by media and human rights defenders);[16]
- Indonesia should ratify the CED;
- Bangladesh should ratify the CED and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the United Nations *Convention against Transnational Organized Crime,* New York, 15 November 2000.

- Ensure adequate domestic legal frameworks to prevent, investigate and prosecute all those involved in human trafficking in accordance with international human rights standards; and
- Ensure protection of the legitimate work of lawyers and human rights defenders, including human rights journalists, in conformity with the provisions of the UN *Declaration on Human Rights Defenders*, adopted by the General Assembly of the UN in 1999.[17]

Finally, we urge Canada to ensure that respect for and adherence to international human rights law is central to the implementation of existing and a condition precedent to prospective trade relationships in Southeast Asia.

We look forward to your reply.

Sincerely,



Gail Davidson, Executive Director,
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December 2006, available at: http://www.refworld.org/docid/47fdfaeb0.html .

[16] For more information see LRWC, "Thailand: Trials of civilians in military courts violate international fair trial rights: Judicial harassment of lawyers and human rights defenders," Statement on 25 May 2015 available at http://www.lrwc.org/?p=9095.

[17] UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144, available at: http://www.refworld.org/docid/3b00f54c14.html. The *Declaration*, while not in itself a binding instrument, is based on human rights standards enshrined in other international instruments that are legally binding including the ICCPR. The *Declaration* was adopted by consensus of the General Assembly and thus represents a unanimous commitment by States to its implementation. In particular, we draw attention to Article 1, which states that "everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels," and Article 12.2, which provides that "the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration."

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