

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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28 May 2015

The Honourable Julie Bishop, MP, Minister for Foreign Affairs
The Honourable Andrew Robb, AO, MP, Minister for Trade and Investment
The Honourable Steven Ciobo, MP, Parliamentary Secretary to the Minister for Foreign Affairs and to the Minister for Trade and Investment
Australian Government

House of Representatives

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Email: Julie.Bishop.MP@aph.gov.au, Andrew.Robb.MP@aph.gov.au, Steven.Ciobo.MP@aph.gov.au

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).

In early May 2015, an entrenched international human rights crisis in Southeast Asia became a humanitarian emergency as human traffickers abruptly abandoned boatloads of migrants -- men, women and children -- from Burma and Bangladesh in the Indian Ocean, leaving thousands stranded in life-threatening conditions. The root causes of this crisis include:

- failure by a number of States to abide by their international human rights obligations, lack of integrity of law enforcement officials and legal systems in several States;
- lack of commitment to international human rights standards by the member States of the Association of South East Asian Nations (ASEAN); and
- lack of consistent and firm insistence on implementation of human rights by other States with trading relationships in Southeast Asia.

In 2014, the UN Special Rapporteur on the situation of human rights in Myanmar stated that “the pattern of widespread and systematic human rights violations in Rakhine State may constitute crimes

against humanity as defined under the *Rome Statute of the International Criminal Court*.¹

We draw your attention to LRWC's [statement released on 26 May 2015](#)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 systemic persecution of Rohingya people from Myanmar and to implement international human rights law in their own States. We hope Australia will issue public and private statements to this effect at the meeting on "irregular migration" in Bangkok on 29 May 2015.

We note with appreciation that Australia announced on 20 May 2015 that it will provide \$6 million (AUD) in addition to its \$18 million (AUD) contribution to humanitarian assistance since June 2014 for emergency food, shelter and protection "for people in need in Burma, including vital support to improve security and livelihoods for vulnerable communities in Rakhine state" in part to address security concerns and in part to "undermine the ability of people smugglers to sell the false hope of unsafe boat journeys to neighbouring countries." We trust Australia will ensure that this funding will be applied in a non-discriminatory manner to ensure assistance to Rohingya people in Rakhine State.

We request that Australia urge Burma to immediately acknowledge the eligibility of Rohingya people to be citizens of the Union of the Republic of Myanmar and make the changes necessary to guarantee equality and non-discrimination for Rohingya people so that they can begin to enjoy the same access to education, health care, housing employment and the rights to movement, religious freedom and the right to vote, enjoyed by other people in Burma.

We also ask that Australia make strong recommendations that all ASEAN states and other states in the region:

- uphold the *Universal Declaration of Human Rights*³ and their multilateral human rights treaty obligations;
- Ratify the *Refugee Convention* of 1951⁴ (which only Philippines and Cambodia have ratified);
- Ratify all relevant core UN human rights treaties, In particular:
 - Myanmar should ratify the *International Covenant on Civil and Political Rights* (ICCPR),⁵ *International Covenant on Economic, Social and Cultural Rights* (ICESCR),⁶ *International Convention on the Elimination of All forms of Racial Discrimination* (ICERD),⁷ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT),⁸

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.refworld.org/docid/532068854.html>.

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

⁴ 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>.

⁵ 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>.

⁶ 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>.

⁷ 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>.

⁸ 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:

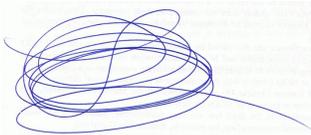
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW),⁹ and the International Convention for the Protection of All Persons from Enforced Disappearance (CED);¹⁰

- Malaysia should ratify the ICCPR, ICESCR, ICERD, CAT, CMW, and the CED;
 - Thailand should ratify the CMW and the CED; Thailand should also uphold its obligations under the ICCPR and immediately conduct full-suffrage elections and ensure fair trial rights and freedoms of expression and assembly (including media freedom).¹¹
 - Indonesia should ratify the CED.
- 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 1999.¹²

Finally, we urge your government to uphold in its public and private statements international human rights law binding on states in the region as well as the *Refugee Convention* ratified by Australia in 1954. We also ask your government to ensure that international human rights is a high priority in all of its trade relationships in Southeast Asia.

We look forward to your reply.

Sincerely,



Gail Davidson, Executive Director, LRWC

<http://www.refworld.org/docid/3b00f2224.html>.

⁹ 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]

¹⁰ UN General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006, available at: <http://www.refworld.org/docid/47fdfaeb0.html>.

¹¹ 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>.

¹² 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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