

**Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on trafficking in persons, especially women and children**

REFERENCE: UA  
IDN 5/2015:

21 May 2015

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the human rights of migrants; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on trafficking in persons, especially women and children pursuant to Human Rights Council resolutions 26/19, 26/12, 25/13, and 26/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **allegation of "push back" policies of irregular migrants from Myanmar and Bangladesh in the Bay of Bengal.**

According to the information received:

In 2014, 54,000 migrants have travelled irregularly through South-East Asia to enter the territorial waters of Malaysia, Thailand and Indonesia. As a result, some of them died during the crossing between the Andaman Sea and the straits of Malacca. Between September 2014 and March 2015, 920 migrants died while attempting this crossing.

In May 2015, many irregular migrants arrived in Malaysia, Thailand and Indonesia after days of navigation resulting from repeated push backs from one country to another. Reportedly, irregular migrants have limited access to water and food, resulting in their death both during their time at sea and after they have reached land.

In particular, on 15 May 2015, following arrests of smugglers and traffickers in Thailand, approximately 6,000 migrants and asylum seekers from Bangladesh and Myanmar were reportedly stranded in the Bay of Bengal and were in need of food and water. About 700 of them were rescued by a fisherman from a sinking boat near the Indonesian coastline. According to the information received, around 100 persons died on the boat and their bodies were thrown overboard. It is alleged that your Excellency's Government's authorities implemented the push back policy against irregular migrants in Indonesian territorial waters.

On 20 May 2015, the Governments of Indonesia and Malaysia reached an agreement to offer temporary shelter to 7,000 migrants and asylum seekers stranded at sea. Reportedly, the resettlement and repatriation process will be done in one year with the support of the international community. In addition, the Government of Thailand indicated it would no longer push back boats arriving in its territorial waters.

Serious concern is expressed about the push back policy implemented against irregular migrants in the Bay of Bengal who are entering Indonesia's territorial waters. Particular concern is expressed regarding the impact of this policy on the health and personal safety of migrants whilst at sea. Additional concern is expressed at the push back policy in instances where some may be asylum seekers leaving a country where they may face violence, persecution, torture or other cruel, inhuman or degrading treatment or punishment or other serious human rights violations.

While we do not wish to prejudge the accuracy of these allegations, they appear to be in contravention of Articles 3 of the Universal Declaration of Human Rights and 6 (1) of the International Covenant on Civil and Political Rights, acceded by your Government on 23 February 2006, which respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law. These allegations also appear to be in contravention of the principle of non-refoulement as set forth article 3 of the Convention against Torture (CAT), ratified by Indonesia on 28 October 1998, which provides that no State party shall expel, return, or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. We would also like to refer to the Universal Declaration of Human Rights and its article 14 that states the right to seek asylum, and the Convention on the right of the child ratified by Indonesia on 5 September 1990, which ensures to children to receive an appropriate protection and humanitarian assistance in case of asylum or asylum seeking. In addition, the State has the duty to assess all migrants and asylum seeker and should provide appropriate protection of international human rights and refugee law. Moreover, Articles 6 and 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and Principle 2 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking,

launched by the Office of the United Nations High Commissioner for Human Rights in 2002, provide that States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons, especially women and children from revictimization.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response of the initial steps taken by your Excellency's Government to safeguard the rights of the above mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any information and any comment you may have on the above-mentioned allegations.
2. Please provide details of any measures your Excellency's Government has undertaken to safeguard the life and personal safety and guarantee the full respect of the human rights of irregular migrants during the time the vessel was blocked from entering Indonesia territorial waters.
3. Please indicate who instructed your Excellency Government's navy vessels to intercept boats and refuse it entry, and any investigation initiated in this respect. Please indicate any action taken to ensure that this kind of situation does not arise in the future.
4. Please explain the measures taken to comply with the jus cogens norm of non-refoulement and guarantee that, under the push back policy, no person is returned to a State where there are substantial grounds for believing that she or he risks being subjected to torture or ill-treatment.
4. Please provide details of the agreement reached to offer temporary shelter to 7,000 stranded irregular migrants, whether it will be implemented immediately to avoid further harm and how the rights of both migrants and asylum seekers will be safeguarded during implementation
4. For those who were disembarked, please provide information with regard to their whereabouts and what steps were undertaken to identify and protect vulnerable groups including possible victims of trafficking from among them

5. Please provide information on whether access to legal representatives has been facilitated by the authorities. If not, please explain why.

6. Please indicate any policies implemented to screen for refugee status determination, as well as to identify other protection needs including possible victims of trafficking, unaccompanied children, or persons with health issues.

We would like to inform you that a copy of this letter has also been sent to the Government of Thailand and Malaysia.

While awaiting a reply, we urge that all necessary interim measures be taken to ensure the safety of the migrants at sea and to bring them to shore without delay as well as to prevent the re-occurrence of the alleged violations. We are intending to publicly express our concerns in the near future as we are of the view that the information on which this urgent appeal is based and which will inform the press release is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

François Crépeau  
Special Rapporteur on the human rights of migrants

Christof Heyns  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Juan E. Méndez  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Maria Grazia Giammarinaro  
Special Rapporteur on trafficking in persons, especially women and children