

Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA IND 6/2021

8 April 2021

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 and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/6, 44/5 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the **situation of 78 Rohingya asylum seekers and refugees and some 3 Bangladeshis in distress on the Andaman Sea and their immediate need to disembark at the closest safe port.**

According to the information received:

On 11 February 2021, a group of 87 Rohingya asylum seekers and refugees and 3 Bangladeshis, including 56 women, 21 men, 8 girls and 5 boys, departed from Cox's Bazar and Teknaf, southern Bangladesh, presumably heading to Malaysia.

On 15 February 2021, the engine of the boat broke down and the boat started drifting on the Andaman Sea.

On 20 February 2021, the Indian Coast Guard was reportedly alerted of the situation of this group of individuals in distress near India's Andaman and Nicobar Islands and that eight of them had already died due to extreme dehydration or hunger. According to the source, despite the alert and pleas, two navy or coastguard vessels were on site for several days but did not help until four days later, namely on 24 February 2021.

On 24 February 2021, the Indian coast guard conducted a rescue operation and found 81 survivors, eight people dead including children, and one individual missing. There are women and children among the survivors. Some 47 individuals are in possession of identity cards issued by UNHCR office in Bangladesh stating that they are displaced Myanmar nationals.

Although the survivors have been receiving food, water and medical care from the Indian Coast Guard, there has been no information on any plan for disembarkation at a safe port. This boat has remained adrift on the Andaman Sea since 15 February 2021. The condition and specific needs of the survivors on the boat are unknown. The safety of these individuals remains under threat.

There is a serious concern that the condition of survivors, including women and children, may deteriorate further if not disembarked immediately.

According to the source, this group of Rohingya asylum seekers and refugees might be at imminent risk of being pushed back to the high seas, which would further endanger their safety and may lead to further deaths.

Without prejudging the accuracy of the information received, we are deeply concerned about the physical and mental integrity of all the individuals, especially women and children on this boat who have been adrift in distress on the Andaman Sea since 15 February 2021. They have been subjected to precarious conditions on the boat for a prolonged period and without any immediate possibility to disembark, amounting to cruel, inhuman or degrading treatment. In this regard, we wish to draw the attention of your Excellency's Government to article 7 on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, of the International Covenant on Civil and Political Rights (ICCPR), to which India is a party since 1979.

We are seriously concerned about the alleged delay in search and rescue, and that eight individuals on board have reportedly died and one person is missing. We are also concerned about the absence of any disembarkation plan to date. We wish to emphasize that search and rescue operations at sea, as well as disembarkation plans must be conducted swiftly and to a safe port in accordance with international human rights law, in particular the right to life, codified in article 6 of the ICCPR. We draw the attention of your Excellency's Government to General Comment No. 36 of the Human Rights Committee on article 6 of the ICCPR, in which the Committee stressed that "States parties are also required to respect and protect the lives of [...] those individuals who find themselves in a situation of distress at sea, in accordance with their international obligations on rescue at sea". Regarding a place of safety for disembarkation, we would like to refer your Excellency's Government to Principle 4 of the Principles and Guidelines: Migrants in Vulnerable Situations for practical guidance on preparing safe places for arrival and disembarkation that meet human rights standards for reception and assistance.

We are particularly concerned about the situation of the Rohingya children on the boat. In this regard, we would like to draw the attention of your Excellency's Government to human rights obligations under the Convention on the Rights of the Child (CRC), to which India is a party since 1992. Article 6 of the CRC stipulates that, "every child has the inherent right to life"; and article 37 requires States to ensure that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment".

With regard to concerns that this group of Rohingya asylum seekers and refugees might be forcibly pushed back to the high seas, we wish to stress that States should ensure that all border governance measures taken at international borders, including those aimed at addressing irregular migration, are in accordance with the principle of non-refoulement and the prohibition of arbitrary or collective expulsions. The prohibition of refoulement under international human rights law applies to any form of removal or transfer of persons, regardless of their status. As an inherent element of the prohibition of torture and other forms of ill-treatment, the principle of

non-refoulement is characterised by its absolute nature without any exception. Heightened consideration must also be given to children in the context of non-refoulement, whereby actions of the State must be taken in accordance with the best interests of the child.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we respectfully urge your Excellency's Government to promptly take steps to ensure the safety of those on board including through disembarkation and would appreciate a response on 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 additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the current whereabouts of the boat, and particularly whether it is still under the jurisdiction or effective control of India?
3. Please provide information on the situation, including physical and mental condition, of the 81 survivors on the boat, including the 78 Rohingya refugees and asylum seekers, especially children and women.
4. Please provide information on how the search and rescue operation was planned and carried out by the Indian Coast Guard and any information on the search for the missing person as well as the cause of death of the eight victims.
5. Please indicate any protection measures envisaged to prevent further harm and any plan in the near future to disembark all individuals on the boat at the closest safe port. Please provide information on the outcome of any discussions in this regard with other States in the region.
6. Please indicate what measures have been taken by your Excellency's Government to ensure the protection of the human rights of migrants at international borders, including sea borders, are in accordance with international human rights law and other relevant standards, especially with regard to the principle of non-refoulement and the prohibition of arbitrary and collective expulsions.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please note that a copy of this letter will be transmitted to Bangladesh as concerned State for their information.

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

Felipe González Morales
Special Rapporteur on the human rights of migrants

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment