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July 28, 2016

HRW.org

President Barack Obama
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20500

Dear President Obama,

We are writing to express our concern regarding the critical situation confronting displaced Syrians stranded on Jordan's northeastern border. We know your administration is working hard to help find a solution for the nearly 70,000 Syrian displaced people who remain stranded on the Jordanian border, in the area known as "the berm," near the informal crossings known as Rukban and Haladat.

Our understanding is that Jordan has refused to allow any more Syrian asylum seekers to be moved from the berm to the Azraq camp and that it has proposed that the displaced Syrians be moved inside Syria 10 kilometers from the Jordanian border. Although we cannot confirm it, we have also heard that in some of these meetings, US government representatives have expressed support for the Jordanian position. If true, this would be quite alarming.

Given the surge of asylum seekers seeking refuge from Syria, including the hundreds of thousands that are already in Jordan, combined with the absence of both adequate capacity and resources, we are well aware that there is no easy option.

Nonetheless, we believe it is vital that two foundational areas of concern guide and inform your discussion in order to ensure a response that is legally sound, politically tenable, and compassionate. These key areas, detailed in the attached annex, include: 1) the physical safety and welfare of all Syrian asylum seekers currently located at the berm; and 2) the obligation on all states, including Jordan, to respect the principle of nonrefoulement as a norm of customary international law.

We understand that there have been many closed-door meetings since the ISIS border attack on June 21 involving Jordanian officials and donor governments with various proposals having been

discussed, but that the situation remains unresolved. Given the ongoing conflict in Syria, asylum seekers and refugees would be exposed to the real risk of serious harm if Jordanian authorities were to forcibly return them or reject them at the border. This step would violate their fundamental human rights and also send a message inconsistent with Jordan's reputation as a major international partner. The US government should make unequivocally clear that such action is not an option, not only because it violates customary international law, but also because it shows little compassion for the people who suffer the real consequences of decision-making.

As you know, these asylum seekers also cannot remain where they are, and need immediate food and humanitarian relief. Syrians have been stranded off and on in the berm area since July 2014, where they are exposed not only to severe food insecurity and extreme hardship due to the harsh environment, but also to lawlessness, the risk of abuse and violence at the hands of predators operating with impunity, and other threats to their physical safety, health, and integrity.

This essentially leaves two options – both of which will require bold leadership from the United States, working with Jordan, humanitarian agencies, and collectively with other key partners:

- 1) Immediately expand the Azraq camp or some other site and transfer the Syrian asylum seekers from the berm to that location, where they can be received in ways consistent with their human dignity but also where the Jordanian authorities will be able to identify and screen them in a manner consistent with Jordan's legitimate security concerns. The United States and other donor governments should expeditiously and generously provide financial, technical, and logistical support to enable Jordan to transfer asylum seekers from the berm to a secure location where they can be processed consistent with their rights and international standards, and with due concern for Jordan's security needs.
- 2) Respond positively to King Abdullah's February 2016 offer to facilitate the transfer of the asylum seekers at the berm to a place outside the region. The US government should set an example, that it will be able proudly to highlight at the September 20, 2016 summit on international responsibility sharing, by agreeing to consider for US asylum displaced Syrians who are now at the berm. We suggest modeling this initiative on the evacuation of about 6,500 Iraqis in 1996 who briefly transited Turkey en route to Guam, where US officials screened them for US admissibility and examined their asylum claims. Under this proposal, the US would agree to take those asylum seekers at the berm who voluntarily choose to accept its offer and fly them from

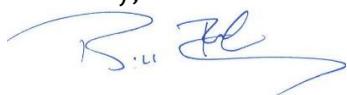
Jordan to Guam or to some other place where they would have the right under US law to lodge asylum claims and where they could stay in safety and dignity while undergoing screening. Asylum seekers at the berm would be assured that those who qualify as refugees and who are found to be admissible to the United States will be granted asylum in the mainland of the United States and a path to permanent residency and eventual US citizenship. But they would also be told—and Jordan would need to agree—that those rejected as not qualifying as refugees or found to be inadmissible would be returned to Jordan. There, the Jordanian authorities with assistance from UNHCR could make its own screening of the returnees for security, protection needs and other vulnerabilities. Those found to be in need of international protection would be allowed to remain in safety and dignity at Azraq (or, with Jordan's permission, to live in other parts of Jordan) until able to return voluntarily to Syria in safety and dignity or be permitted to seek resettlement in another country. Those found not to be in need of international protection would be treated humanely in accordance with Jordanian immigration laws and international standards.

A third option would be some combination of options one and two, where the US would agree to give expedited resettlement consideration for asylum seekers transferred from the berm to Azraq, while providing additional financial support to enable its expansion to accommodate the new arrivals in dignity.

Of course, we recognize that the ultimate solution to the Syrian refugee crisis is a resolution of the conflict in Syria and the establishment of a government there that is able and willing to protect and respect the human rights of all of its citizens and long-term residents. In the meantime, however, and in the run up to the September 20 refugee summit, the United States should exert its leadership not only to provide a humanitarian lifeline to asylum seekers with no other options but also to support a key ally in the region and to bring a modicum of stability to a destabilizing situation that could worsen security for Jordanians and Syrians alike.

We welcome the opportunity to discuss this further with you.

Sincerely,



Bill Frelick
Director
Refugee Rights Program



Sarah Margon
Director
Washington Office

Concerns about the Physical Safety and Welfare of Syrian Asylum Seekers at the Berm

As you know, since Jordan progressively began closing its informal border crossings with Syria in 2013, asylum seekers have been forced to seek entry to Jordan via remote and inhospitable stretches of the eastern border. In July 2014, authorities began holding Syrians at two remote crossing points known as Hadalat and Rukban, stranding thousands of asylum seekers along a raised earthen barrier, or berm, inside Jordanian territory. Between 2014 and March 2016 authorities allowed only a small number of Syrians to move from the berm to Azraq refugee camp. By mid-2016 the number of stranded Syrians had grown to tens of thousands. Between March 2016 and late June, Jordanian authorities permitted nearly 20,000 Syrians to move from the berm to a fenced area of Azraq camp for further security screening.

Operations at the berm halted on June 21, 2016 following an attack by an explosive-laden truck on Rukban that killed seven Jordanian soldiers. Since June 21, the Jordanian government has prevented deliveries of humanitarian aid, with the exception of some water deliveries, to what the Jordanian government now estimates as 103,000 people stranded at the berm at Rukban and Hadalat. Since the attack, authorities have allowed no asylum seekers to move to Azraq or anywhere else further inside Jordan.

Because Jordan declared the area a “closed military zone” following the June 21 attack, neither HRW nor humanitarian aid workers have had direct access to this stranded population. We understand, however, that conditions for the people there are dire and that their very lives are at risk. Doctors without Borders (MSF) reported on conditions there five weeks before the attacks, saying that they were then treating more than 200 children for malnutrition. We can only imagine how much more the people there are suffering after having received no aid for the past five weeks under scorching desert conditions. More than half of the stranded population are children, according to MSF.

Obligations under the Principle of Refoulement Not to Reject or Return Asylum Seekers at the Berm

The prohibition on forced return of a refugee applies equally to Jordan, even though it has not signed the 1951 Refugee Convention or its 1967 Protocol. The UN High Commissioner for Refugees states:

Because of its wide acceptance, it is UNHCR's considered view, supported by jurisprudence and the work of jurists, that the principle of non-refoulement has become a norm of customary international law. This view is based on a consistent State practice combined with a recognition on the part of States that the principle

has a normative character. As outlined above, the principle has been incorporated in international treaties adopted at the universal and regional levels to which a large number of States have now become parties. Moreover, the principle has also been systematically reaffirmed in Conclusions of the Executive Committee and in resolutions adopted by the General Assembly, thus demonstrating international consensus in this respect and providing important guidelines for the interpretation of the aforementioned provisions.

As members of the General Assembly, both the United States and Jordan have supported resolutions that affirm the principle of nonrefoulement. The UN General Assembly reinforced the international consensus that the nonrefoulement obligation adheres to all states, not just signatories to the Refugee Convention, when it adopted Resolution 51/75 on August 12, 1997, which:

[c]alls upon all States to uphold asylum as an indispensable instrument for international protection of refugees and to respect scrupulously the fundamental principle of nonrefoulement, which is not subject to derogation.

On the occasion of the 50th anniversary of the Refugee Convention in 2001, the Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees acknowledged "the continuing relevance and resilience of this international regime of rights and principles, including at its core the principle of nonrefoulement, whose applicability is embedded in customary international law." Later that year, the UN General Assembly welcomed the Declaration.

Jordan has explicitly pledged to uphold its nonrefoulement obligations on several formal occasions. In the Memorandum of Understanding Jordan signed with UNHCR in April 1998 it agreed:

In order to safeguard the asylum institution in Jordan and to enable UNHCR to act within its mandate it was agreed that the principle of non-refoulement should be respected that no refugee seeking asylum in Jordan will be returned to a country where his life or freedom could be threatened because of his race, religion, nationality, membership of a particular social group, or political opinion.

Note, particularly, that Jordan agreed that the principle of nonrefoulement adheres to any "refugee seeking asylum in Jordan."

When Jordan presented its candidacy to the UN Human Rights Council on April 20, 2006, it formally provided the United Nations with its pledges and commitments for the promotion and protection of human rights. It said:

Over the last decades, the country has given shelter and protection to many waves of refugees; Jordan, as a long-standing host country, reiterates its commitment to fulfilling its obligations in accordance with the principles of international refugee law including those which are peremptory as well as international human rights law.

Jordan's statements formally recognize that refugee protection is an obligation, and that it is committed to fulfilling this obligation, which includes abiding by peremptory norms (that is, customary law) – the most fundamental of which for refugees is the principle of nonrefoulement.

Notwithstanding claims about a so-called “no-man’s land,” all of the available evidence – from the analysis of [satellite imagery](#) and mapping to identifying the forces that exercises control in the area – indicates that the place where the overwhelming majority of the asylum seekers are located is actually within Jordanian territory, as well as within its jurisdiction and control.

For those Syrians displaced near the border who may not yet have crossed into Jordanian territory, the principle of nonrefoulement also applies at the frontier; states are prohibited from rejecting asylum seekers at the border to a place where their lives or freedom would be threatened. In its October 2004 meeting, UNHCR's Executive Committee issued Conclusion 99, which calls on States to ensure "full respect for the fundamental principle of nonrefoulement, including non-rejection at frontiers without access to fair and effective procedures for determining status and protection needs." Conclusion 99 was one of a long series of Executive Committee conclusions, starting with Executive Committee Conclusion 6 in 1977, which "reaffirms the fundamental importance of the observance of the principle of nonrefoulement-both at the border and within the territory of a State."

Because refugee status is a recognition of the fact that an asylum seeker meets the refugee definition, this necessarily means that the person would fulfill that criteria prior to being formally recognized. Recognition of refugee status, therefore, does not make a person a refugee but rather declares the person to be one. Therefore, the fundamental principles of refugee protection apply equally to asylum seekers who have not been formally recognized as refugees. UNHCR's Executive Committee reiterated that the nonrefoulement obligation equally protects asylum seekers in 1996 with Conclusion 79, which reaffirmed the principle of nonrefoulement as prohibiting the expulsion and return of refugees "whether or not they have formally been granted refugee status."