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HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the human rights of migrants and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

REFERENCE: AL G/SO 214 (106-10) G/SO 214 (78-15)
THA 12/2012

11 December 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance pursuant to Human Rights Council resolution 17/12 and 16/33.

In this regard, we would like to refer to the communications of 10 November 2009 (THA 10/2009), 2 February 2010 (THA 1/2010), and 8 September 2010 (THA 6/2010) on the alleged exploitation of and systematic discrimination against migrant workers from Myanmar, and the alleged negative impact of the nationality verification process on the human rights of migrants.

We thank you for your reply to these communications, dated 5 July 2011, in which you provide more information on the nationality verification process and the situation of migrant workers in Thailand in general. We welcome that a large number of migrants from Myanmar have been registered and have received temporary passports and work permits under the nationality verification process.

However, we would like to bring to the attention of your Excellency's Government information we have received concerning **the upcoming deadline of the nationality verification process on migrant workers from Myanmar**, and the potential negative consequences that this might have.

According to the new information we have received:

Despite agreements in July 2012 between Myanmar President Thein Sein and Thai Prime Minister Yingluck Shinawatra to prioritise protection and regularisation of migrant workers, during a bilateral meeting between Myanmar and Thailand that took place in Bangkok on 26 November 2012, your Excellency's Government informed the Myanmar delegation that the Nationality

Verification process for workers from Myanmar had to be completed by 14 December 2012. This deadline, which has also been stated in previous Thai Cabinet resolutions, will have a possible extension until 30 December 2012 at the latest. It is reported that after the deadline, regularisation of irregular workers in Thailand will no longer be possible, and all five Myanmar temporary Nationality Verification centres should be closed and no longer issue passports or visas. Furthermore, only legal import of workers from Myanmar under the Memoranda of Understanding process will be permitted, and Thai law enforcement authorities will implement a crackdown to remove irregular workers from Myanmar.

It has been reported that a large number of migrants from Myanmar who submitted their documents and tried to complete the nationality verification process on time, still have not been able to complete the process in order to obtain their passports and work permits, and thus risk deportation.

We have been informed that Myanmar requested that the Nationality Verification process be extended for a sufficient length of time so as to afford many more migrants with the possibility of registering, and that there be no crackdown or mass deportation of workers from Myanmar. However, this proposition was reportedly rejected by your Excellency's Government.

Concern is expressed that the implementation of this deadline may lead to forced and mass deportations of an estimated 1.5 million irregular migrant workers from Myanmar, and that forced deportations might lead to extortion by law enforcement and migration officials, and violent encounters between law enforcement officials and migrants. Furthermore, concern is expressed that migrants may be deported to unsafe areas across the border, where they risk becoming victims of debt bondage and trafficking. With the massive number of potential deportees, transportation to and from deportation points in overcrowded and poor quality vehicles may result injury or death of migrants. Indiscriminate crackdowns and deportations may also render migrants more vulnerable, increasing the risks of forced labour and trafficking. Deportation may furthermore result in the separation of irregular migrant workers from their children or dependents.

While we do not want to prejudice the accuracy of the allegations reported above, we would like to recall Human Rights Council Resolution 15/16, which 'requests States to effectively promote and protect the human rights and fundamental freedoms of all migrants, including, in particular, the right to life and physical integrity, especially that of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party'. The Resolution also "reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants.

The obligation to protect the right to physical and mental integrity of all persons is set forth inter alia in the Universal Declaration of Human Rights (UDHR), as well as the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), both ratified by your Excellency's Government.

In this connection we would also like to refer your Excellency's Government to the principle of non-discrimination enshrined in article 2 of the UDHR, and article 2 and 26 of the ICCPR as well as in several other United Nations declarations and conventions which provide that every individual is entitled to the protection of their rights and freedoms without discrimination or distinction of any kind, and that all persons shall be guaranteed equal and effective access to remedies for the vindication of those rights and freedoms.

Furthermore, we would like to highlight that under international human rights law, migrants shall not be subject to measures of collective expulsion, and each case of expulsion shall be examined and decided individually.

Additionally, we would also like to recall your Excellency's Government of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination ratified by your Excellency's Government on 29 October 1996.

In particular, we would like to draw your Excellency's Government's attention to General Recommendation No. 30 of the Committee on the Elimination of Racial Discrimination which recommends States parties "18. To ensure that non-citizens enjoy equal protection and recognition before the law [...]". "

In its General Recommendation the Committee further recommends:

- "25. To ensure that laws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies";

- "26. To ensure that non-citizens are not subject to collective expulsion, in particular in situations where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account";

- "28. To avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life".

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

1. Are the facts alleged above correct?
2. Please provide details of any measures your Excellency's Government has undertaken to guarantee the full respect of the human rights of all migrant workers from Myanmar who are at risk of deportation.
3. Please indicate the options available for the migrants from Myanmar who were not able to register under the Nationality Verification process.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of all migrant workers from Myanmar who are at risk of deportation are respected. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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discrimination, xenophobia and related intolerance